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Meeting: 1186 meeting (3-5 December 2013) (DH)

Item reference: Action plan (23/09/2013)

Communication from Ukraine concerning the case of Golovan against Ukraine (Application No. 41716/06).

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Communication de l' Ukraine relative à l'affaire Golovan contre Ukraine (requête n° 41716/06)  
**(anglais uniquement)**

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Annex to the letter of the Government Agent of  
Ukraine before the European Court of Human Rights  
of 20 September 2013 no. K.O.I. - 23/3692

**Action plan/ report**  
**on measures to comply with the Court's judgment**  
**in the case of Golovan v. Ukraine**  
(appl. no. 41716/06, judgment of 05/07/2012, final on 05/10/2012)

The first applicant is a practising lawyer. The second applicant is his wife. The case concerned the applicants' complaint under Article 8 of the Convention that the search carried out in the premises, which the first applicant used as his office, as well as the seizure of documents concerning one of his clients were unlawful. The applicant also complained under Article 13 of the Convention that there had been no effective remedies in this respect.

The Court held that there was a violation of Article 8 of the Convention on account of:

- non-compliance of the measures impugned with the provisions of domestic legislation;
- insufficient degree of protection against arbitrariness in the national law when conducting a search, due to the absence of appropriate safeguards (*inter alia*, supervision by an independent observer);

- unforeseeability of application of different provisions of the national law on the subject;

The Court held that there were violations of Article 13 (Right to an effective remedy) of the Convention on account of the failure of the domestic authorities to carry out an effective investigation into the applicant's allegations thus negating also all applicant's expectations of obtaining any retrospective relief, including civil-law redress.

**Individual measures**

In the light of the Court's conclusions in the present case, individual measures required are the payment of just satisfaction, and *restitutio in integrum*.

Just satisfaction

The sum awarded by the Court was duly paid on 14 December 2012.

Restitutio in integrum

By letter of 7 of November 2012 the Government of Ukraine informed the applicant about the possibility provided by the legislation in force to apply for the review of the impugned proceedings.

No information stating that the applicant has submitted a respective complaint is available.

**General measures**

The violations found in the present case concern the deficiencies in the relevant national legislation and in administrative practice.



### *As regards the violation of Article 8 of the Convention*

#### **Procedural rules of conduction of the search of premises and seizure of documents in the framework of criminal proceedings**

The new Code of Criminal Procedure of Ukraine (CCP), which was adopted by the Parliament of Ukraine on 13 April 2012, and came into force on 19 November 2012, envisages a number of provisions aimed at effective improvement of the procedure of premises' search.

Firstly, the new Code redefined 'home' as any premise an individual legally owns whatever purpose it serves. Logically, it appears that a lawyer's workplace is included (Article 233). Further, the CCP clearly establishes how to conduct a search.

The search shall be conducted solely under a motivated court's decision. Exception is envisaged only for the cases of emergency and/or a criminal's pursuit. Notwithstanding, in such cases an investigating officer is still obliged to apply for a court's permission *post factum*, and rejection of such a permission shall result in non-admissibility of the evidence obtained (Article 233). This provision is of extreme importance in the light of prevention of any abuses which might take place when the search of home is conducted. Therefore, a motivated court's decision allowing to conduct a search is an indispensable condition preventing any abuse thereby. The goal of the search must be also stated in the decision - the limited list of options is envisaged by the Code: particular object, material or person, expected to be found shall be indicated in the decision (Article 235). Moreover, the investigator shall prove the existence of sufficient grounds to believe that objects and documents to be found are in the home, are important for the pre-trial investigation and may serve as evidence during trial (Article 234). Finally, the copies of the documents confirming the necessity to conduct a search, and an extract from the Integrated Register of Pre-Trial Investigations shall be attached to the relevant submission.

Therefore, the current legislation properly defends respect for private life and home within the meaning of Article 8 of the Convention, and envisages a strictly defined procedure to interfere when needed.

#### **Legislative guarantees of advocates' privilege**

The new Law of Ukraine "On advocacy and legal practice" (Bar Act), which was adopted by the Parliament of Ukraine on 5 July 2012 and came into force on 15 August 2012, quashed the previous law, and included a set of provisions to guarantee fairness and impartiality during a search of the lawyer's premises. The new Bar Act contains a particular provision regarding the search of the lawyer's premises and lawyer's documents seizure (Article 23). A lawyer's premises can be searched only if the Prosecutor General of Ukraine, his deputies, or prosecutors of the Autonomous Republic of Crimea, prosecutor of the region, of the cities Kyiv and Sevastopol requests the court, and permission is issued by the latter. The necessity to specify the goal of a search when issuing such permission is reiterated.

The crucial point is that a Local Advocates' Council representative should be present during a search with having been notified of such actions in advance. The representative shall be authorized to supervise the search, ask questions, and comment on any issues arising. These questions, comments shall be included to the record of the search. Logically, such a representative shall be highly expected to master law, which meets the Court's assessment on the matter, and solves the problem of usual lack of legal knowledge of the attesting witnesses.

Finally, the law provides that the authorities shall be bound by the requirements of the Convention and the Court's case-law. Therefore, additional leverage to prevent arbitrariness, to guarantee lawyer-client privilege is provided by the amended legislation.

With regard to the above, the amended legislation of Ukraine, namely the new CCP and Bar Act, eliminates factors leading to violation of Article 8 of the Convention.



### **As regards the violation of Article 13 of the Convention**

This violation was found by the Court on account of ineffectiveness of the investigation into the applicant's complaints due to numerous refusals to open criminal proceedings being later quashed, and absence of the applicant's victim status (being him thus completely excluded from the proceedings). In this contest, and turning back to the new CCP: the new order of institution of criminal proceedings, absence of pre-investigation examination and granting victims with status and set of rights arising from the very beginning of the investigation shall be noted.

The provisions of the new Code envisage obligatory institution of criminal proceedings in any case where indication of crime exists. In particular, investigator, public prosecutor shall immediately, but in any case no later than within one day after submission of a report, information on a criminal offense or after he/she has learned on his/her own from any source about circumstances which are likely to indicate that a criminal offence has been committed, to enter the respective information to the Integrated Register of Pre-Trial Investigations, and to initiate investigation (Article 214 §1). Pre-trial investigation shall start from the moment the respective information has been entered to the Integrated Register of Pre-Trial Investigations (Article 214 §2).

Investigator, public prosecutor, other official authorized to accept and register reports, information on criminal offenses, is required to accept and register such report or information. Refusal to accept and register a statement or information on a criminal offense shall be inadmissible (Article 214 §4).

Such new procedure excludes the stage of preliminary enquiry provided for by the Code of 1960 and envisages that after an information on a crime was registered a full-scale investigation shall commence. This procedure also guarantees that the investigator has more possibilities for investigative measures in the first hours after the commitment of crime than he had on preliminary enquiry stage.

These provisions shall also remedy a situation where the law-enforcement authorities repeatedly refuse to institute criminal proceedings, which was also the case in the present judgment.

As to the status of a victim it shall be noted that the rights and duties of the victim shall arise from the very moment of filing an application that a criminal offence has been committed against him/her or application for being involved in criminal proceedings as a victim (Article 55 §2). A victim shall be served a leaflet advising on his/her procedural rights and duties by the person who accepted the application that a criminal offence has been committed (Article 55 §2).

Throughout the entire criminal proceedings, a victim has the right, in particular, to know the substance of suspicion and charges, be informed on imposition, change or revocation of precautionary measures taken in respect of the suspect, accused or about termination of the pre-trial investigation, examine parties' materials directly related to the criminal offence committed in their respect, as well as examine the materials of criminal proceedings directly related to the criminal offence committed in their respect in case the proceedings have been closed, have an authorized representative etc (Article 56 §1). These provisions shall considerably contribute to the victim's involvement into respective criminal proceedings and therefore improve the effectiveness of the investigations into allegations of unlawful search.

These innovations of the CCP shall effectively contribute to elimination of the legislative shortcomings underlying the violation of Article 13 of the Convention in the present case.

### ***Other measures***

As to the training activities on the implementation of the new CCP of Ukraine it shall be noted that in this context on 5 July 2012 the President of Ukraine issued a respective Decree. Following this Decree a comprehensive set of trainings and seminars was held for the

prosecutors, law-enforcement authorities and judges as well as the staff of the State Security Service and tax police.

Detailed information on all the measures implemented in respect of adoption of the new CCP of Ukraine, in particular, conduction of respective training activities for the legal professionals were already stated in the action report of 4 April 2013 no. 12.0.1-23/3263.

Moreover, respective seminars and round tables are regularly held by the Ministry of Internal and the General Prosecutor's Office, including those with the participation of the representatives of the Government Agent's Office.

Additionally, most of the Court's judgments are included to the training programs for the prosecutors and law-enforcement officers.

### *Publication and dissemination*

The summary of the judgment was published in the Government's Courier [Uriadovyi Kurier], no. 213 of 20 November 2012 and placed on the Ministry of Justice official web-site.

The Court's conclusions in the above case were reported to the staff of the General Prosecutor's Office and the Donetsk Region Prosecutor's Office together with subordinate departments.

Explanatory notes as to the conclusions of the Court in the abovementioned judgment were sent to the the Prosecutor's Office of Voroshylyvskiy District of Donetsk.

The Supreme Court of Ukraine, the High Specialized Court of Ukraine for civil and criminal cases and the Donetsk Region Court of Appeal reported the Court's conclusions in the above case to the judges of these courts.

Moreover, the Court's conclusions in the above judgment were included into the submission to the Cabinet of Ministers of Ukraine as to execution of ECRH judgments (as of December 2012). The Cabinet of Ministers of Ukraine instructed relevant authorities to take measures to remedy the violation found, to avoid similar violations and bring their practices in accordance with the requirements of the Convention.



Annex to the Action plan/report  
as to the execution of the Court's judgment  
in the case of Golovan v. Ukraine

### Code of Criminal Procedure of Ukraine of 13 April 2012 (in force since 19 November 2012)

#### **Article 3. Definition of the Code's principal terms**

[...]

18) Investigating judge is a judge of a court of first instance charged with carrying out, in accordance with the procedure established by the present Code, court supervision over the observance of rights, freedoms and interests of persons involved in criminal proceedings [...].

#### **Article 13. Inviolability of home or any other possession of a person**

1. It shall not be allowed to penetrate into a home or any other possession of an individual, conduct inspection or search therein otherwise than upon reasoned court's decision, except for cases specified in the present Code.
- 2.

#### **Article 15. Non-interference in private life**

1. In the course of criminal proceedings, everyone shall be guaranteed non-interference in private (personal and family) life.
2. No one may collect, store, use and impart information on personal and family life of an individual without their consent, except for cases prescribed in the present Code.
3. Information on personal and family life of an individual obtained in accordance with the procedure established by the present Code may not be used otherwise than for the purpose of achieving the objectives of criminal proceedings.
4. Everyone who has been granted access to information on private life shall be required to prevent disclosure of such information.

#### **Article 55. Victim**

1. A victim in criminal proceedings may be a physical person, who has sustained moral, physical or material damage as a result of a criminal offence, as well as a legal person, that has sustained a material damage.
2. Rights and duties of the victim shall arise upon filing an application that a criminal offence has been committed against him/her or application for being involved in criminal proceedings as a victim.  
A victim shall be delivered a leaflet advising on his/her procedural rights and duties by the person who accepted the application that a criminal offence has been committed.
3. A victim shall also be the person, who has not filed the application but who suffered damage as a result of criminal offence and who consequently, after criminal proceedings have been instituted, lodged the application for being involved in criminal proceedings as a victim.
4. [...].
5. If an application, information on a crime or an application for being involved in criminal proceedings as victim is lodged by a person who has not sustained the damage specified in part one of this Article, investigator or public prosecutor shall adopt a motivated ruling refusing to recognize the person to be a victim, which may be appealed to investigating judge.
6. If a criminal offence caused the death of a person or a person is in a state which does not allow him/her to file a respective application, provisions of parts one to three of the present Article shall apply to close relatives or family members of such person. One person from among close relatives or family members who has filed an application to be engaged in proceedings as victim shall be recognized to be a victim, and upon relevant application, several persons may be



recognized to be victims.

7. [...]

#### **Article 56. Rights of a victim**

1. Throughout the entire criminal proceedings, a victim shall have the right to:

1) be advised in his/her rights and duties as set forth in the present Code;  
2) know the substance of suspicion and charges, be informed on imposition, change or revocation of precautionary measures taken in respect of the suspect, accused or about termination of the pre-trial investigation;

3) produce evidence to investigator, public prosecutor, investigating judge, court;

4) propose disqualifications and submissions;

5) [...];

6) give explanations, testimonies or refuse to do so;

7) challenge decisions, acts, and omissions of the investigator, public prosecutor, investigating judge, court in accordance with the procedure laid down by the present Code;

8) have an authorized representative and at any time during criminal proceedings waive his/her services;

9) give explanations, testimonies in native language or any other language in which he/she is fluent, benefit from free translator's services at the State's expense if he/she has no knowledge of the State language or the language in which the criminal proceedings is conducted;

10) [...];

11) examine parties' materials directly related to the criminal offense committed in their respect, [...], as well as examine the materials of criminal proceedings directly related to the criminal offense committed in their respect, in case the proceedings has been closed;

12) in compliance with the requirements of the present Code, use technical means during the conduct of procedural actions he/she takes part in. Investigator, public prosecutor, investigating judge, court may prohibit a victim the use of technical means during the conduct of a specific procedural action or at a certain stage of criminal proceedings, in order to prevent disclosure of data containing a secret protected by law or related to intimate sides of human life, as prescribed by a motivated decision (ruling);

13) obtain copies of procedural documents and receive written notifications in cases specified by the present Code;

14) enjoy other rights specified in the present Code.

2. During pre-trial proceedings, the victim shall have the right to:

1) have his/her application that a criminal offence has been committed against him/her and to be recognized as victim accepted and registered promptly;

2) obtain from the competent body where he/she has lodged the application, a document confirming the filing and registering of the application;

3) produce evidence which support his/her application;

4) take part in investigatory (search) and other procedural actions in the course of which ask questions, submit his/her comments and objections with regard to the conduct of procedural action, such comments and objections being put in the record of the procedural action concerned, as well as review the records of the investigatory (search) and other procedural actions conducted with his/her participation;

5) after the completion of pre-trial investigation, obtain copies of materials which directly relate to criminal offence which has been committed against him/her.

3. During trial in any court instance, a victim shall have the right to:

1) be timely informed on the time and place of trial;

2) participate in trial conducted by court of any instance;

3) participate in direct examination of evidence;

4) prosecute in court if the public prosecutor waives prosecuting on behalf of the State;



5) express his/her opinion when the issue of imposing a punishment on the defendant and of indemnifying the damage caused by criminal offence, is being disposed, as well as express his/her opinion when the issue of applying compulsory measures of medical or educational nature, is being disposed;

6) familiarize with the decision made by the court, journal of court session and technical recording of criminal proceedings in court;

7) challenge court's decision as prescribed in the present Code.

4. [...].

#### **Article 87. Inadmissibility of evidence obtained through serious violation of human rights and fundamental freedoms**

1. Inadmissible shall be evidence obtained through essential violation of human rights and fundamental freedoms guaranteed by the Constitution of Ukraine and international treaties the Verkhovna Rada of Ukraine has given its consent to be bound by, as well as any other evidence which was obtained thanks to information obtained through essential violation of human rights and fundamental freedoms.

2. The court shall be required to find essential violations of human rights and fundamental freedoms, in particular, in the following acts:

1) conducting procedural actions which require previous permission of the court without such permission or with disrespect of its essential conditions;

[...]

3. Evidence referred to in this Article shall be found by court inadmissible during any trial except trial when the issue of liability for the said essential violation of human rights and fundamental freedoms as result of which such evidence was obtained is disposed.

#### **Article 214. Initiating pre-trial investigation**

1. Investigator, public prosecutor shall be required immediately but in any case no later than within one day after submission of a report, information on a criminal offense or after he/she has learned on his/her own from any source, about circumstances which are likely to indicate that a criminal offense has been committed, to enter the information concerned in the Integrated Register of Pre-Trial Investigations, and to initiate investigation.

2. Pre-trial investigation shall start from the moment the information concerned has been entered in the Integrated Register of Pre-Trial Investigations. [...]

3. Conducting pre-trial investigation before entering the information in the Register or without such entering shall not be permitted and shall entail liability established by law. [...]

4. Investigator, public prosecutor, other official authorized to accept and register reports, information on criminal offenses, shall be required to accept and register such report or information. Refusal to accept and register a statement or information on a criminal offense shall be inadmissible.

5. The following information shall be entered in the Integrated Register of Pre-Trial Investigations:

1) date of arrival of the report or information on criminal offense or of finding from another source the circumstances that may indicate the commission of criminal offense;

2) last name, first name, patronymic (name) of the victim or applicant;

3) other source of learning about the circumstances that may indicate the commission of criminal offense;

4) brief description of the circumstances that may indicate the commission of criminal offense, provided by victim, applicant or learned from other source;

5) provisional legal qualification of the criminal offense with indication of Article (Article part) of the Ukrainian law on criminal liability;



6) last name, first name, patronymic and position of investigator, public prosecutor who entered the information in the Register and initiated investigation;

7) other circumstances specified by regulation on the Integrated Register of Pre-Trial Investigations.

In the Integrated Register of Pre-Trial Investigations the date of entering the information shall be fixed automatically, and the criminal proceedings number shall be assigned.

6. Investigator shall immediately, in written form, inform public prosecutor about the initiation of investigation, the grounds for beginning the investigation, and other information specified in part three of this Article.

7. If information on criminal offense has been entered in the Integrated Register of Pre-Trial Investigations by public prosecutor, he/she shall be required immediately but in any case not later than next day, in compliance with investigative jurisdiction rules, to transfer materials in his/her possession to the agency of pre-trial investigation and assign the conduct of pre-trial investigation.

#### **Article 233. Entering home or any other possession of a person**

1. Nobody is allowed to enter home or any other possession of a person for any purpose whatsoever otherwise than upon voluntary consent of the owner or based on a ruling of investigative judge, and except in cases specified in part three of this Article.

2. It is understood that "home" means any premise an individual permanently or temporarily legally owns whatever purpose it serves and whatever legal status it has, and adapted for permanent or temporary residence of physical persons, as well as all constituent parts of such premises. Premises specially intended for keeping of persons whose rights have been restricted by law, are not deemed dwellings. "Other possession of a person" refers to vehicle, land parcel, garage, other utility structures, buildings of household, manufacturing and other purpose etc., which a person legally owns. Other possessions also include a lawyer's or notary's workplace.

3. Investigator, public prosecutor has the right to enter home or any other possession of a person without court's ruling only in urgent circumstances related to saving human life and property or to a hot pursuit of persons suspected of committing a crime. [...]

#### **Article 234. Search**

1. A search is conducted with the purpose of finding and fixing information on circumstances of commission of criminal offense, finding tools of criminal offense or property obtained as a result of its commission, as well as of establishing the whereabouts of wanted persons.

2. A search shall be based on motivated ruling of investigator approved by public prosecutor, with the exception of a search of home or other possession of a person conducted on the basis of investigative judge's ruling.

3. Whenever it is necessary to conduct a search of home or other possession of a person, investigator with approval of public prosecutor, or public prosecutor shall submit an appropriate request to investigative judge containing the following information:

- 1) designation and registration number of criminal proceedings;
- 2) brief description of circumstances of the criminal offense in connection with investigating which the request is submitted;
- 3) legal qualification of the criminal offense indicating Article (Article part) of the Ukrainian law on criminal liability;
- 4) grounds for search;
- 5) home or any other possession of a person or a part thereof or other possession of the person where the search should be conducted;
- 6) person who owns the home or other possession, and person in whose actual possession it actually is;



7) objects, documents or individuals to be found.

The request shall be required to be attached originals or copies of documents and other materials by which public prosecutor, investigator substantiates the arguments of the request, as well as an extract from the Integrated Register of Pre-Trial Investigations related to the criminal proceedings in the framework of which the request is submitted.

4. A request for search shall be considered in court on the day of receipt, with participation of investigator or public prosecutor.

5. Investigative judge shall reject a request for search unless public prosecutor, investigator proves the existence of sufficient grounds to believe that:

- 1) a criminal offense was committed;
- 2) objects and documents to be found are important for pre-trial investigation;
- 3) knowledge contained in objects and documents being searched may be found to be evidence during trial;
- 4) objects, documents or persons to be found are in the home or any other possession of a person indicated in the request.

#### **Article 235. Ruling to authorize a search of home or any other possession of a person**

1. Investigative judge's ruling authorizing search of home or other possession of a person on grounds provided in public prosecutor's, investigator's request, shall give the right to enter home or other possession of a person only once.

2. Investigative judge's ruling authorizing search of home or other possession of a person shall be required to comply with general requirements for court decisions laid down in the present Code. In addition, the investigative judge's ruling authorizing search of home or other possession of a person shall contain information on the following:

- 1) term of effect of the ruling which may not exceed one month after the day it was passed;
  - 2) public prosecutor, investigator who requests the search;
  - 3) legal provision based on which the ruling is passed;
  - 4) home or any other possession of a person or a part thereof, or other possession of the person where the search should be conducted;
  - 5) person who owns the home or other possession, and person in whose actual possession it actually is;
  - 6) objects, documents or individuals to be found.
3. Two copies of the ruling should be prepared and expressly marked as copies.

#### **Article 236. Execution of the ruling to authorize search of home or any other possession of a person**

1. Investigator or public prosecutor may execute the ruling to authorize a search of home or any other possession of a person. The victim, the suspect, defense counsel, representative, and other participants to criminal proceedings may be invited to attend. Whenever investigator, public prosecutor needs assistance in issues requiring special knowledge, they may invite specialists to participate in the search.

2. A search of home or other possession of a person based on investigative judge's ruling should be conducted in time when the least damage is caused to usual occupations of their owner unless the investigator, public prosecutor finds that meeting such requirement can seriously compromise the objective of the search.

3. Prior to the execution of investigative judge's ruling, the owner of home or any other possession or any other present individual in case of the absence of the owner, should be produced court's ruling and given a copy thereof. Investigator, public prosecutor may prohibit any person from leaving the searched place until the search is completed and from taking any action which impede conducting search. Failure to follow these requests entails liability established by law.



4. If no one is present in the home or other possession, the copy of ruling should be left visible in the home or other possession. In such a case, investigator, public prosecutor is required to ensure preservation of property contained in the home or any other possession and make it impossible for unauthorized individuals to have access thereto.

5. Search based on court's ruling should be conducted within the scope necessary to attain the objective of search. Upon decision of the investigator, public prosecutor, individuals present in the home or other possession may be searched if there are sufficient grounds to believe that they hide on their person objects or documents which are important for criminal proceedings. Such search should be conducted by individuals of the same sex.

6. During the search, investigator, public prosecutor shall have the right to open closed premises, depositories, objects if the person present during the search, refuses to open them, or if the search is conducted in the absence of persons specified in part three of this Article.

7. During the search, investigator, public prosecutor may conduct measurements, shoot pictures, make audio or video recording, draw plans and schemes, produce graphic images of the searched home or other possession of a person, or of particular objects, make prints and moulds, inspect and seize objects and documents which are important for criminal proceedings. Objects seized by law from circulation shall be subject to seizure irrespective of their relation to the criminal proceedings concerned. Seized objects and documents not included in the list of those directly allowed to be found in the ruling authorizing the search, and are not among objects withdrawn by law from circulation, shall be deemed provisionally seized property.

8. Persons who are present during the search have the right to make statements in the course of investigative (detective) action, such statements being entered in the record of search.

## **The new Bar Act (in force since 15 August 2012)**

### **Article 23. Guarantees of the advocates' activity**

1. Professional rights, honor and dignity of a lawyer are guaranteed and protected by the Constitution of Ukraine, this Act and other laws, including:

[...]

3) searches, investigation activities regarding a lawyer may be conducted only under the court's authorisation, shall be based on the court's decision, adopted at the request of the Prosecutor General of Ukraine, his deputies, prosecutors of the Autonomous Republic of Crimea, prosecutor of the region, of the cities of Kyiv and Sevastopol;

4) the review, disclosure, discovery or seizure of documents related to advocacy is prohibited;

[...]

2. Where search or inspection of housing, other property of the lawyer, premises where he carries out advocacy, temporary access to objects and documents of a lawyer is conducted, investigating judge, the court, in its decision shall define objects, documents which are expected to be found, identified or seized during the investigative action [...].

During the search or inspection of housing, other property of the lawyer, premises where he carries out advocacy, temporary access to objects and documents of a lawyer, a representative of the Local Advocates' Council shall be present [...]. To ensure his/her participation, investigating officer conducting investigative action [...] shall notify the Local Advocates' Council in advance.

In order to ensure compliance with the provisions of this law concerning lawyer-client privilege when performing respective procedural actions, a representative of the Local Advocates' Council shall be granted with a right to ask questions, submit comments and objections in the course of investigative (detective) action, such statements being entered to the record of the search.

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[...].

3. Public and local authorities, and their officials and employees in dealing with lawyers shall be bound by the Constitution of Ukraine and laws of Ukraine, the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and the Protocols thereto, agreed to be binding by Verkhovna Rada of Ukraine, the European Court of Human Rights case law.