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Legal Opinion

On the Draft Law of Ukraine №12320 (Law No. 4547-IX of July 16, 2025) "On Amendments to the Code of Ukraine on Administrative Offenses, the Criminal and Criminal Procedure Codes of Ukraine to Ensure Compliance with the Guarantees of Advocacy"

Division for Co-operation on Freedom of Expression

The role and responsibility of the Council of Europe in protecting freedom of expression has been underlined in the "Reykjavik Principles for Democracy", the Reykjavík Declaration – United around our values.

Funded within the Council of Europe Action Plan for Ukraine "Resilience, Recovery and Reconstruction" 2023-2026, the Project "Safeguarding Freedom of Expression and Freedom of Media in Ukraine – Phase II" project aims to address urgent needs of major stakeholders and media players in the country. The Project's objective is "Enabling a pluralistic media environment in Ukraine through harmonisation of legal and policy frameworks in line with European standards" and it is built around three main components:
(1) Alignment of Ukraine's framework on media, freedom of expression and freedom of access to information with the European standards;
(2) Effective implementation of the legal framework governing the protection of journalists, public broadcasting and regulatory authority in line with European standards;
(3) Effective and efficient communication strategies governing a balanced media coverage and preventing information disorder.

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I. Introduction

This Legal Opinion has been prepared within the framework of the Council of Europe Project "Safeguarding Freedom of Expression and Freedom of the Media in Ukraine – Phase II" (hereinafter "the Project"). The subject of this assessment is the compliance of the Draft Law of Ukraine "On Amendments to the Code of Ukraine on Administrative Offenses, the Criminal Code and the Criminal Procedure Code of Ukraine to Ensure Compliance with the Guarantees of Advocacy" (Draft Law No. 12320), and the corresponding Law of Ukraine No. 4547-IX, adopted by the Verkhovna Rada of Ukraine on 16 July 2025 (hereinafter referred to as Law No. 4212-IX of 14 January 2025), with the human rights standards on freedom of expression established by the Council of Europe and international law.

The basis for this Legal Opinion is the text of Draft Law No. 12320 as adopted in the version of Law No. 4212-IX of 14 January 2025, as published on the official website of the Verkhovna Rada of Ukraine. The Opinion was requested on 17 July 2025, by Yaroslav Yurchyshyn, Chair of the Committee of Verkhovna Rada of Ukraine on Freedom of Speech.

II. Background

In July 2024, the Verkhovna Rada of Ukraine adopted in the second reading the draft law No. № 12320 (hereinafter referred to as the "draft law") on the protection of the professional activities of lawyers (attorneys). It is currently awaiting the President's signature and will enter into force on the day following its publication. The draft law introduces a new administrative offence in the form of identifying a lawyer with their client and amends Article 397 of the Criminal Code of Ukraine regarding the definition of the crime of interfering with the activities of an attorney or legal representative of a person.

The importance of the legal profession (the Bar) as an essential institution in a state governed by the rule of law and is directly enshrined in Article 59 of the Constitution of Ukraine. The Constitutional Court of Ukraine states this in its decision of 30 September 2009: "*The constitutional right of everyone to legal assistance is, in essence, a guarantee of the realization, protection and safeguarding of other rights and freedoms of the individual and the citizen, and therein lies its social significance. Among the functions of this right in society, the preventive function should be highlighted, which not only contributes to the lawful exercise of rights and freedoms by individuals, but is also aimed, first and foremost, at preventing possible violations or unlawful restrictions of human and civil rights and freedoms by state authorities, local self-government bodies, and their officials and civil servants*."

Given its significant role in the protection of human rights and freedoms, the legal profession, both as an institution and through the work of individual lawyers, requires regulatory safeguards to ensure its independence, which is expressly guaranteed by Article 131-2 of the Constitution of Ukraine.

The provisions of draft law No.12320 regarding the introduction of administrative liability, including for association or linking a lawyer with a client without the intention of obstructing the legal defence, are consistent with the 1990 UN Basic Principles on the Role of Lawyers (paragraph 18) stating that lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions. In the local context, the new provision develops the prohibition on identifying a lawyer with his or her client contained in the guarantees of legal practice set out in paragraph 16 of Part 1 of Article 23 of the Law of Ukraine "On the Bar and Legal Practice".

III. Assessment

Amendments to the Code of Ukraine on Administrative Offences

The draft law provides for the addition of a new Article 185$^{(-16)}$ to the Code of Ukraine on Administrative Offences (hereinafter referred to as the "Code on Administrative Offences") with the following content:

"**Article 185^{-16}. Violation of the prohibition on identifying a lawyer with a client**

Public, including through the media, journalists, public associations, professional unions, digital platforms, social networks, internet resources, identifying a lawyer with a client to whom such lawyer provides professional legal assistance, committed without the intention of obstructing the lawyer's performance of his or her statutory powers to defend, represent and provide other types of legal assistance to the client,

shall entail the imposition of a fine on citizens of between two hundred and three hundred non-taxable minimum incomes and on officials of between three hundred and four hundred non-taxable minimum incomes.

The act provided for in part one of this article, committed by a person who has been subject to administrative penalties for the same violation within a year,

shall entail the imposition of a fine of six hundred to eight hundred non-taxable minimum incomes.

Note. *Identification of a lawyer with a client means any identification (association, linking) of a lawyer with a client, with the activities or actions of his client, which creates a biased attitude towards the lawyer, indicates the personal involvement of the lawyer in the client's case, affects the independent status of the lawyer and/or exerts negative pressure during the lawyer's activities, and/or violates the guarantees of the lawyer's activities, and/or impedes the realisation of the lawyer's rights provided for by the Law of Ukraine "On the Bar and the Practice of Law".*

The relevant administrative cases will be considered in local courts (in accordance with the amendments to Article 221 of the Code of Administrative Offences), and the minutes of the offences will be drawn up by the chair of the Bar Council of the Autonomous Republic of Crimea, the regions, the cities of Kyiv and Sevastopol, or a member of the Bar Council authorised by the Council (amendment to Article 255 of the Code of Administrative Offences).

Guarantees for the protection of lawyers

The identification of lawyers with their clients is one of the main reasons for attacks, smear campaigns and even criminal prosecution of lawyers, as also mentioned in the reports of the UN Special Rapporteur (A/64/181, A/71/348). Such identification can create a negative situation where lawyers refuse to take on high-profile or politically sensitive cases.

Guarantees of the protection of lawyers' rights, access to the profession and access to professional legal assistance are important components of ensuring the rule of law, as enshrined in national and international legislation and the practice of the European Court of Human Rights (hereinafter referred to as the ECHR). However, restrictions on the criticism of lawyers - including instances where such criticism links or associates a lawyer with their client - may conflict with the right to freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights and Article 34 of the Constitution of Ukraine.

When protecting a lawyer from being identified with a client or from the negative consequences of such identification, care must be taken to avoid imposing restrictions on freedom of expression, particularly by journalists, civil society organisations, or activists. **The current wording of the draft law is overly broad and vague, posing a potential threat to media coverage of court proceedings.**

It is evident that the principle of lawyer independence should not become a shield against public criticism or prevent holding a lawyer legally accountable. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognised by national and international law and shall at all times act freely and **diligently in accordance with the law and recognised standards and ethics of the legal profession** (in accordance with the UN Basic Principles on the Role of Lawyers, 1990, paragraph 14).

In the international practice, lawyers play a crucial role in safeguarding the right to a fair trial and regularly exercise the right to freedom of expression, as protected by Articles 6 and 10 of the European Convention on Human Rights. The European Court of Human Rights (ECtHR) has consistently emphasised - particularly in cases such as *Morice v. France*, *Pisanski v. Croatia*, and *Bagirov v. Azerbaijan* - that lawyers must be able to act independently and without fear of persecution, even when representing unpopular or "toxic" clients.

As a general rule, a lawyer is prohibited from acting contrary to the rights, freedoms, and legitimate interests of their client (Article 21(2)(1) of the Law of Ukraine "On the Bar and the Practice of Law," hereinafter "the Law on the Bar"). However, this does not mean that a lawyer must act exclusively in the client's interest. Certain limitations apply, in particular, a lawyer may not act contrary to the law in the course of defending a client (Article 21(1)(6) of the Law "On the Bar"), nor may they mislead a court or other authorized bodies (Article 384 of the Criminal Code of Ukraine).

A lawyer may not accept or carry out a client's instructions if their content or the means of achieving them are contrary to the law, professional duties, or the Rules of Professional Conduct. If it is not possible to agree on modifications, the lawyer is obliged to withdraw from the contract (Article 19 of the Rules of Professional Conduct for Lawyers).

Similarly, international instruments stipulate that a lawyer shall defend the interests of his client **only in a lawful manner**, being **loyal to the interests of his client** (paras. 14 and 15 of the UN Basic Principles on the Role of Lawyers).

In the case law of the ECtHR, questions have repeatedly arisen as to how a lawyer should act even when doing so may not be in the client's interest. In particular, the Court has developed an approach whereby the protection of a client's interests by a lawyer is not absolute. Although the ECtHR consistently recognizes that freedom of expression extends to lawyers, they are not entitled to make statements that exceed the bounds of permissible criticism without an adequate factual basis (ECtHR judgments in *Karpetas v. Greece*, No. 6086/10, § 78; *Morice v. France*, § 139). Furthermore, lawyers may not resort to insults (ECtHR judgments in *Coutant v. France*, No. 17155/03; *Morice v. France*, § 139).

A lawyer is not permitted to make unfounded or offensive verbal criticisms of experts performing their official duties, even if such criticism is entirely and exclusively aimed at defending the client in court (*Fuchs v. Germany*).

Accordingly, in representing a client, a lawyer must act within the limits of the law and provide only substantiated information. At the same time, where a competent authority directly requests information from a lawyer and disclosure to the court would be contrary to the client's interests, the lawyer is obliged to provide such information in cases prescribed by law. Concealing or providing misleading information would constitute an attempt to mislead the court or a competent authority.

Although most information is protected by attorney-client privilege, there are exceptions provided for by law, namely:

- Provision by a lawyer of information about a financial transaction or the holder of the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organisations of information about the ultimate beneficial owner or ownership structure of a legal entity (within the requirements of financial monitoring) – Part 7 of Article 22 of the Law on the Bar.

- Disclosure of information about a trust at the tax authorities' request in accordance with Article 44-2 of the Tax Code of Ukraine (Part 8 of Article 22 of the Law on the Bar).

- De facto, the Criminal Procedure Code allows law enforcement agencies and courts to access even information that constitutes attorney-client privilege if the attorney is a suspect or defendant in criminal proceedings (under certain conditions). In such exceptional cases, a lawyer may be required to disclose information that constitutes lawyer-client privilege, even if this is contrary to the client's interests.

Paragraph 141 of the ECtHR judgment in *Correia de Matos v. Portugal* (2018) states that the practice of law must be carried out in a manner that strengthens the rule of law. In addition, the principles applicable to the legal profession encompass values such as the dignity and honour of the profession, the integrity and high reputation of individual lawyers, respect for fellow professionals, and respect for the fair administration of justice.

Accordingly**, a lawyer should be regarded as a defender only of the legitimate rights of their client, and only through lawful means**. This prohibits a lawyer from assisting a client in any illegal activity, from concealing such activity when disclosure is required by law and obliges the lawyer to provide the court only with reliable information supported by substantiated statements.

The European Court of Human Rights recognises in its practice an exceptionally high level of protection for the freedom of expression of lawyers, in particular in statements addressed to judges, prosecutors and other representatives of law enforcement authorities, especially in the exercise of their professional duties. This practice is important not only for assessing the limits of lawyers' freedom of speech, but also, by analogy, for assessing the admissibility of mirror criticism of lawyers themselves by journalists, if such criticism concerns issues related to publicly significant proceedings.

- *Morice v. France (No. 29369/10)*. A lawyer criticized investigating judges for bias in a case of high public interest. His statements were found to be evaluative opinions based on sufficient factual grounds. The ECtHR found a violation of Article 10 of the Convention: even harsh criticism of the judicial system by a lawyer is protected by freedom of expression if it is well-founded, relevant to the context of the case and does not contain personal insults.
- *Bagirov v. Azerbaijan (Nos. 81024/12 and 28198/15)*. A lawyer was subjected to disciplinary sanctions for criticizing the judiciary. The Court found a violation of Article 10 of the Convention, emphasising that disciplinary proceedings against lawyers for criticising public

authorities restrict not only the freedom of expression of lawyers but also the public's right to receive information.

- *Pisanski v. Croatia (Nos. 28794/18, 2024)*. The Court found a violation of Article 10 of the Convention due to a fine imposed on a lawyer for ironic and critical remarks in an appeal. The Court concluded that the lawyer had not shown disrespect for the court but had exercised a procedural function: the criticism was procedurally relevant, and the tone (even sarcastic) was permissible within the limits of defence.

Thus, although **ECtHR cases under Article 10 of the European Convention on Human Rights in the context of lawyers mainly concern situations involving statements made by lawyers themselves** (in particular, against judges, who also exercise their professional functions to ensure justice and must be protected from unlawful interference), **similar approaches should also apply to statements made, for example, by journalists against lawyers.**

The ECtHR consistently applies a three-step test to assess whether a restriction on freedom of expression is lawful and justified. A restriction is compatible with the Convention only if all of the following conditions are met:

- Was the interference "prescribed by law"? The restriction must have a clear legal basis in national law, and the law must be accessible, sufficiently precise, and foreseeable so that individuals can anticipate the consequences of their actions (*Sunday Times v. the United Kingdom*, 1979).

- Did the restriction pursue one or more legitimate aims? According to Article 10(2) of the Convention, interference with freedom of expression can only be justified if it pursues one or more of the legitimate aims listed in that provision (*Handyside v. the United Kingdom*, 1976).

- Was the interference "necessary in a democratic society"? The Court assesses whether the interference was proportionate to the aim pursued, whether there was a pressing social need, and whether the measures taken were the least restrictive and reasonably justified in a democratic society (*Lingens v. Austria*, 1986).

The application of the proposed Article 185-16 of the Code of Administrative Offences is unlikely to meet these criteria, firstly because of the vagueness of the provision (which does not make it possible to predict with certainty the legal consequences of conduct and therefore does not meet the first criterion of a law in accordance with the rule of law), and secondly, it will probably be found to be unnecessary in a democratic society and disproportionately restrictive of freedom of expression. The risk of violations and numerous appeals to the ECtHR in this regard was pointed out by the Main Scientific and Expert Directorate of the Verkhovna Rada in its conclusion on the draft law under review. **In view of this, imposing sanctions solely for statements identifying a lawyer with a client, which do not cause harm or are not based on falsehoods, risks violating Article 10 of the Convention, among other things.**

Regulation of the identification of lawyers with their clients under the new Council of Europe Convention for the Protection of the Profession of Lawyers

In 2025, the Council of Europe Convention for the Protection of the Profession of Lawyer was adopted (dated 13 May 2025, Agreement No. 226), which is currently open for ratification by Council of Europe member states and other states (link to the card with details and text in Ukrainian). In particular, Article 6(5) and Article 9(4) of the Convention provide that:

"5. Parties shall ensure that lawyers do not suffer adverse consequences as a result of being identified with their clients or their clients' cause. This article shall be applied without prejudice to freedom of expression as protected by the Convention for the Protection of Human Rights and Fundamental Freedoms and domestic law."

"4. Parties:

a. shall ensure that lawyers and their professional associations are able to carry out their professional activities and to exercise their rights under Article 7 of this Convention without being the target of:

i. any form of physical attack, threat, harassment or intimidation; or

ii. any improper hindrance or interference;

b. shall refrain from engaging in the conduct specified in sub-paragraph a of this paragraph; and
c. shall conduct an effective investigation into the occurrence of conduct specified by sub-paragraph a of this paragraph where there is reason to believe this may amount to a criminal offence."

In addition to the Convention itself, there is also an explanatory report (link to the text in English), paragraph 52 of which contains the following clarification:

"Paragraph 5 is concerned with lawyers not suffering adverse consequences as a result of being identified with either their clients or their clients' causes. It should be read in conjunction with Article 9, paragraph 4, as the observance of the obligation arising under this provision will be particularly important as a means of ensuring that no adverse consequences flow from any identification of lawyers with their clients or their clients' cause. The need to ensure that such adverse consequences do not occur is of vital importance as identification with their clients or their clients' cause has resulted in lawyers being subjected to physical attacks, threats, harassment, and intimidation, and in serious hindrance and interference in the carrying out of their professional activities. The identification with which this paragraph is concerned can result from, inter alia, statements by politicians, articles and other material published by the media. The adverse consequences to which the paragraph is directed can take many forms that reach a degree of seriousness, notably threats, physical attacks or intimidation through legal action taken by private individuals and disciplinary, criminal, or administrative proceedings12, including those brought by professional associations (see paragraph 76). This paragraph is not intended to detract from the right to freedom of expression under Article 10 of the European Convention on Human Rights. In some countries, the protection of freedom of expression may also be enshrined in national constitutions, thus giving it a high level of protection in the domestic legal order. Therefore, this provision should be applied taking into account the balance to be reached with freedom of expression."

An analysis of this provision of the Convention for the Protection of the Profession of Lawyers leads to the conclusion that there are significant differences between the approaches of the Convention and the draft law under consideration to the issue of preventing the identification of lawyers and their clients. The provisions of the Council of Europe Convention state **that lawyers should be protected not from identification with their clients as such, but from the negative consequences of such identification** (obstruction of their activities, physical attacks, threats, persecution, intimidation, etc.). The formula chosen by the Convention aims to guarantee the protection of lawyers' rights without prejudice to the right to freedom of expression, which is guaranteed in particular by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 34 of the Constitution of Ukraine.

It is therefore essential to ensure that any legislative or regulatory measure aimed at protecting the legitimate interest of a lawyer not to be identified with their client is carefully designed and proportionate. In particular, where such a measure comes into conflict with other fundamental human rights - most notably the right to freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights and Article 34 of the Constitution of Ukraine - there is a significant risk that the measure will be found incompatible with higher-ranking legal norms. Accordingly, the legal framework must be crafted in a manner that ensures a proper balance between competing rights and complies with the requirements of legality, legitimacy, necessity, and proportionality.

Thus, Article 6(5) of the Council of Europe Convention for the Protection of the Profession of Lawyers points to maintaining a balance between the abovementioned interests. **The Convention does not prohibit identification of a lawyer with their client or public discussion *per se*, but only the negative consequences of such identification for the lawyer.** It has been repeatedly emphasised that these provisions should not restrict freedom of expression.

Instead, Article 185^{-16} of the Code of Administrative Offences, as formulated, provides for liability for the mere fact of identification, even in the absence of actual harm to the independence, security or status of the lawyer, as well as in the absence of an intention to cause such harm. At the same time, **there are no reservations about the need to ensure freedom of speech, while the definition of "identification" includes any associative link, which may be subjective, media-based or even accidental, and interpreted arbitrarily, creating a disproportionate restriction on the freedom of expression of views.**

It should be noted that Ukraine has not yet ratified the Convention and will only enter into force upon ratification by at least eight countries (including six member states of the Council of Europe). Nevertheless, at present, it reflects the most relevant interpretations of the principle of identification of a lawyer with their client.

Legal technique and compliance with the principle of legal certainty

Attention should be drawn to the fact that the core elements of the offence are defined in a note to the article - an approach that is a typical for the formulation of legal norms of this nature. In the proposed Article $185^{(-16)}$ of the Code of Administrative Offences, there is no specific subject, but there is a reference to the person of the offender:

*("Public, including through the media, journalists, public associations, trade unions, digital platforms, social networks, Internet resources, identification [**by whom? the subject of the offence] of a person [who?] a lawyer** with a client, [...]").*

In administrative and criminal law, it is standard practice to use impersonal provisions, those that define permitted or prohibited models of conduct, without specifying the offender's identity, except in cases where the offence involves a special subject.

Thus, the current version of the Draft Law refers to the identification of a lawyer as a general concept, rather than a specific individual lawyer. As a result, there is an increased risk that even hypothetical considerations regarding the possibility of lawyers being involved in illegal activities could result in administrative liability. In practice, this wording could have a significant chilling effect on freedom of expression and lead to self-censorship by journalists.

It is also necessary to agree with the Conclusion of the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine on the draft Law of Ukraine "On Amendments to the Code of Ukraine on Administrative Offences, the Criminal Code and the Criminal Procedure Code of Ukraine to ensure compliance with guarantees of the legal profession," which states that "*the broad scope for interpretation of the term 'identification' does not contribute to compliance with the principle of legal certainty, one of the fundamental requirements for the imposition of administrative liability.*"

The definition of "identification" using lexemes such as "identification," "association," or "linking," combined with the independent criterion of "creating a biased attitude towards a lawyer," effectively expands the potential scope of the offence to encompass virtually any negative statement about a lawyer that includes mention of their client.

Regarding the crime in the form of interference in the activities of a lawyer (amendments to the Criminal Code)

In addition, according to the draft law, Article 397 of the Criminal Code of Ukraine (hereinafter referred to as the "Criminal Code") will be revised as follows:

Current	*According to the draft law*
Article 397. Interference in the activities **of a defence lawyer or representative**	**Article 397.** Interference in the activities **of a lawyer**
1. Obstructing in any form the lawful activities of **a defence counsel or representative** of a person in providing legal assistance or violating the guarantees established by law for their activities and professional secrecy shall be punishable by shall be punishable by a fine of one hundred to two hundred non-taxable minimum incomes or corrective labour for a term of up to two years, or probation for a term of up to three years, or restriction of liberty for the same term.	1. **Illegal obstruction of** a lawyer's **arrival** at a court, prosecution authorities, pre-trial investigation authorities, enterprises, institutions, organizations regardless of their form of ownership, or their separate premises for the purpose of representing the interests of a person to whom such a lawyer provides legal assistance, **illegal obstruction of a meeting** between a lawyer and a person to whom legal assistance is provided, as well as **any other intentional obstruction of the professional activities** of a lawyer and the exercise of his powers to defend or represent a person as determined by laws or other regulatory legal acts, – shall be punishable by a fine of two hundred to seven hundred non-taxable minimum incomes, or corrective labour for up to two years, or probation for up to three years, or restriction of liberty for the same period.
2. The same actions committed by an official using his official position shall be	2. The same actions **committed by interfering in any form in confidential communication** between a lawyer (lawyers) and a person to whom such lawyer (lawyers) provides legal assistance, including by listening to, intercepting, recording the

shall be punishable by a fine of three hundred to five hundred non-taxable minimum incomes of citizens or probation for a term of up to three years, or restriction of liberty for the same term, with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years.	content of conversations, messages and correspondence, illegal inspection, copying, seizure or disclosure of materials (documents) collected, processed or prepared by a lawyer, as well as the unlawful inspection, seizure and copying of information contained on technical devices and media used by the lawyer in connection with their professional activities, **entering the lawyer's home (premises, place of work), conducting inspections, searches or other investigative actions therein, conducting a personal search of the lawyer, demanding or seizing documents of a lawyer,** as well as any other intentional actions that led to access by unauthorised persons to lawyer-client privilege and/or its disclosure, except in cases where such actions are committed in the manner and in the cases provided for by the Criminal Procedure Code of Ukraine, shall be punishable by a fine of between three hundred and one thousand non-taxable minimum incomes, corrective labour for up to two years, or probation for up to two years. shall be punishable by a fine of three hundred to one thousand non-taxable minimum incomes of citizens or corrective labour for a term of up to two years, or probation for a term of up to three years, or restriction of liberty for the same term.
	3. **Influencing in any form**, except for the actions provided for in Articles 398-400 of this Code, **a lawyer with the aim of preventing him from performing his legally defined powers to defend**, represent and provide other types of legal assistance to a person shall be shall be punishable by a fine of six hundred to one thousand non-taxable minimum incomes, or corrective labour for up to two years, or probation for up to three years, or restriction of liberty for the same period.
	4. Actions provided for in parts one, two or three of this article, committed **by an official using his official position**, shall be shall be punishable by a fine of seven hundred to one thousand five hundred non-

	taxable minimum incomes of citizens or probation for up to three years, or restriction of liberty for the same period, with deprivation of the right to hold certain positions or engage in certain activities for up to three years.

The proposed amendments have an important goal – to improve the protection of lawyers, especially in a situation where there have been increasing cases of law enforcement agencies resorting to wiretapping lawyers or conducting searches without a court order. **However, the current version raises several concerns**.

First, the changes narrow the circle of victims: instead of protecting any person who provides defence (including a defence counsel by consent, a legal representative, a close person, etc.), the rule applies exclusively to lawyers, which contradicts the principle of equal access to legal protection.

Second, the wording regarding the means of obstructing the activities of lawyers is overly abstract and evaluative. Terms such as "influencing independence" or "creating obstacles to the exercise of rights," without clear legal criteria, open the door to arbitrary interpretation and application, which contradicts the principle of legal certainty and predictability of criminal law.

In addition, the proposed amendments to Article 397 of the Criminal Code raise questions about **the unjustified criminalisation of acts that are already covered by existing criminal law provisions** or for which administrative liability has already been established.

1. *Duplication of certain existing criminal offences*. For example, the draft provision on "trespassing on the premises (premises, place of work of a lawyer)" is already covered by Article 162 of the Criminal Code of Ukraine, "Violation of the inviolability of the home". Moreover, in the current Criminal Code, this form of interference is recognised as a minor offence, while in the proposed version of the draft law, it is classified as a criminal offence, which effectively reduces the level of criminal law protection for lawyers compared to the previous provision.

2. *Unjustified criminalisation of an administrative offence*. The proposed amendments introduce criminal liability for the unlawful refusal to accept statements or documents from a lawyer (Part 1 of Article 397 of the Draft Law), despite the fact that a comparable situation—namely, the refusal to provide information in response to a lawyer's request—is already regulated as an administrative offence under Article 212^3 of the Code of Administrative Offences. This creates inconsistency in the legal framework and may result in legal uncertainty.

3. *Unjustified reduction of the level of protection in certain cases*. Some of the acts envisaged by the draft, such as interference in the activities of lawyers by officials, provide for milder sanctions than the current provisions of the Criminal Code (for example, in the case of violation of the inviolability of the home), which contradicts the stated goal of strengthening guarantees for the activities of lawyers.

IV. Conclusions

The protection of independence, safety, and effective functioning of lawyers is a vital element of the rule of law. Draft Law No. 12320 seeks to address these concerns by introducing administrative and criminal liability for actions that may undermine the legal profession. While this objective is legitimate and aligned with international commitments, including recent developments such as the Council of Europe Convention on the Protection of the Profession of Lawyer (2025), the current wording and approach raise several concerns.

- *Risk of disproportionate restriction on freedom of expression*. The introduction of administrative liability for the fact of "identifying" a lawyer with their client, regardless of whether such identification causes harm, risks creating an extensive restriction on public discourse. This approach is inconsistent with the three-part test developed by the European Court of Human Rights (ECtHR) under Article 10 of the European Convention on Human Rights.

- *Threat of self-censorship and chilling effect.* The current formulation of Article 185-16 of the Code of Administrative Offences has the potential to suppress legitimate journalistic activity, public oversight, and civil society discourse on matters of public interest, especially in high-profile or politically sensitive cases.

- *Inconsistencies with international legal standards*. Unlike Draft Law No. 12320, the 2025 Council of Europe Convention does not prohibit the identification of lawyers with their clients per se. Rather, it prohibits the *negative consequences* of such identification, such as intimidation, harassment, or obstruction. The Convention also emphasizes that any protection granted must be balanced against freedom of expression. The current draft law fails to incorporate such balancing language.

It is recommended that the wording proposed in the Draft Law to be revised in line with European standards, focusing **not on "identification" as such, but on the occurrence of specific negative consequences for the lawyer**, and only in cases where they **are unlawful and incompatible with the rule of law**.