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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**COMMENTS**  
**ON THE DRAFT LAW**  
**ON THE BAR AND PRACTICE OF LAW**  
**OF UKRAINE**  
**by**  
**Mr Dan MERIDOR (Member, Israel)**

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### Preliminary Remarks on Draft Law of Ukraine on the Bar and Practice of Law

These are preliminary remarks on the draft law, concerning issues which may interest the Venice Commission.

1. It seems that the draft law applies only to defense lawyers. It does not apply to lawyers working for the state, prosecution, local authorities, enterprises and institutions.
2. Subsequently, the Ukrainian Bar does not include all these lawyers who do not fall into the category of defense lawyer (advocate).
3. Article 1 of the draft law defines “advocate” and “practice of law”:

#### **Article 1. Definition of terms**

1. The terms in this Law shall have the following meaning:

1) advocate – an individual carrying out practice of law on the grounds and according to the procedure as defined by this Law;

2) practice of law – independent professional systematic activities of **a defense lawyer (an advocate)** on provision of legal assistance, performing legal defense and representation according to the Constitution of Ukraine and under the procedure and within the framework as determined by this Law and other laws of Ukraine;....

and Article 7 defines activities incompatible with the status of advocate:

#### **Article 7. Activities incompatible with the status of advocate**

1. The following activities are incompatible with the status of an advocate:

1) work in court, prosecution office, internal affairs bodies, the Security Service of Ukraine, on the appointed positions in state and local authorities, state service, in the staff of enterprises and organizations including by combination of positions (except for scientific, educational and creative activities);

2) military or alternative (non-military) service;

3) notarial activities;

4) forensic expert activities.

....

#### **Article 24 Types of law practice, p.2 states:**

2. The following is not classified as practice of law:

1) the activities of persons working as lawyers or legal advisors at enterprises, institutions, or organizations and providing the kind of legal assistance specified in paragraph 1, part one, of this Article, to these enterprises, institutions, or organizations;

2) the activities of employees of bodies of state power and of local self-government who, according to the law, protect the rights and freedoms of man and citizen within the limits of their competence.

4. Creating a bar (association of lawyers) and mandatory rules of conduct only for defense lawyers, leaving out all other lawyers seems to create two categories of lawyers with different ethics rules and different rules of behavior (e.g. – before the court).
5. Article 9, p.2 (6) requires a certificate of the absence of criminal record to be attached to the application for admission to the qualification examination. This precludes anyone from becoming a lawyer if he has a criminal record, regardless of the gravity of the conviction and of the time elapsed since the conviction. This seems to be non proportional in case of a light infringement of the law and when the offence was committed a long time ago (e.g. at a young age). We suggest both a definition of the gravity of the offence and a period of time after which a conviction would not be taken into account for this purpose.
6. **Article 37, Professional rights of an advocate** lists rights and obligations of an advocate. It may be implied that these rights pertain to the advocate and not to the client. The advocate cannot have more rights than his client. Among the rights of the advocate the paragraph mentions are, inter alia :
  - 3) submit advocate's inquiries to bodies of state power, local self-government bodies, their officials, enterprises, institutions, or organizations irrespective of forms of ownership, associations of citizens, etc, and demand answers thereto;
  - 4) be apprised, without any hindrance, at any legal entities with documents, materials, other sources of information required for the performance of the power of attorney, including those constituting state or commercial secret, in accordance with the procedure set forth for familiarization with this category of documents;
  - 5) obtain experts' written opinions on issues requiring special expertise;
  - 6) write applications, complaints, petitions and other legal documents and present them in the manner prescribed by the law;
  - 7) provide advice and briefing notes on legal issues in verbal as well as written form;
  - 8) certify copies of documents in cases undertaken by the advocate, except for those requiring mandatory notarial certification pursuant to the law;
  - 9) use technical means, in particular to copy materials of a case in which the advocate is providing defense, representation, or legal assistance, make an audio or video recording of the legal proceedings in which the advocate is involved, document the course of the hearing, etc;
  - 10) present applications, petitions, or complaints during meetings with officials and receive written motivated answers thereto, attend the hearing of the advocate's applications, petitions, or complaints, provide explanations of their essence, in particular during sessions of collegiate bodies;
  - 11) requiring no special permission, meet face-to-face, without any restrictions and on terms providing for confidentiality, with the client, in particular during the client's detention, arrest, or stay in custody, with no limit to the number of meetings or to their duration;

- 12) upon obtaining consent, interview individuals if they have information pertaining to the case in which the advocate is involved, document interviews or examinations in writing;
  - 13) attend any procedural actions in relation to the person whose interests the advocate protects or represents, being entitled to ask questions of all the participants in the procedural actions and have these questions and answers entered into the record in accordance with the procedure prescribed by relevant procedural law;
  - 14) have unimpeded access to the premises of bodies of state power, courts, prosecutor's office, bodies of inquiry or pretrial investigation, or other official premises in connection with his/her practice of law on the basis of advocate's certificate, except for cases specified by the legislation;
  - 15) obtain copies of procedural documents and receive written notifications in cases prescribed by the law;
  - 16) have guarantees of personal security as well as of the security of the members of the advocate's family pursuant to the legislation of Ukraine;
  - 17) hire advocate's assistants as well as other employees;
  - 18) perform other actions insofar as these are not at variance with the legislation.
7. If the paragraph that **only** advocates can perform this function and that only they – and not the person they represent -are entitled to the assistance and cooperation of the authorities, then this makes the use of advocate's services compulsory and it deprives people of their right to act personally in pursuit of their right without using advocate's services. If this is not what this paragraph stipulates, it is not clear why is it stipulated as the advocate's – and not the person's - right.
  8. **Articles 39 specifying guarantees pertaining to law practice** raises the same question.
  9. **Article 40 describes "an advocate's inquiry"**. Is this only the right of the lawyer to obtain the information etc. specified herein, or can the person himself do it without an advocate?
  10. **Article 51, Hearing a disciplinary case** does not stipulate whether the hearing is held in open court or behind closed doors. Transparency might have a positive impact on the confidence of the people in disciplinary procedure.