**Information of the Prosecutor General’s Office in response to the Questionnaire of the UN Special Reporter on the Situation of Human Rights Defenders**

**General Comments.**

Following Article 1 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms adopted by the UN General Assembly’s Resolution on 08.03.1999, everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Therefore, within the meaning of the Declaration, everyone may carry out human rights activity.

At the same time, the Ukrainian current legislation doesn’t provide for a notion of “human rights defender”. The human rights activity may be conducted by both public authorities and NGOs, as well as individuals.

Thus, Article 1 of the Law of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights”, the function of parliamentary control over the observance of constitutional human and citizens' rights on the territory of Ukraine and within its jurisdiction is exercised by the Ukrainian Parliament Commissioner for Human Rights.

Following the provisions of Article 116 of the Constitution of Ukraine, the Cabinet of Ministers of Ukraine shall take measures to ensure human and citizen rights and freedoms.

Article 131-2 of the Constitution of Ukraine provides for that in Ukraine, the advocacy acts to provide professional legal assistance. The advocate shall be exclusive representative of the other individual in court, and shall provide the defence from criminal charges.

**Question No. 1. Does your Government accept the legitimate right to defend human rights and if a defender is killed in the course of their work, do you publicly condemn it?**

Article 3 of the Constitution of Ukraine envisages that the human being, his or her life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value. The State of Ukraine recognizes the legitimate right to the protection of human rights and condemns actions aimed at causing damage to human life.

Article 27 of the Constitution of Ukraine provides for that every person shall have the inalienable right to life.

Murder constitutes the elements of criminal offence provided for by Article 115 of the Criminal Code of Ukraine (hereinafter referred to as the CC of Ukraine). Qualifying elements of this offence are, inter alia, the wilful murder of “a person or a person's close relative in relation to that person's official duties or public functions” (Article 115 paragraph 2 subparagraph 8 of the CC of Ukraine).

As it was mentioned above that the advocates pertain to a group of people conducting the human rights activity. Article 400 of the CC of Ukraine, in its turn, establishes criminal liability for a murder or attempted murder of a defence attorney or legal representative, or their close relatives, in connection with their legal assistance.

**Question No. 2. Have there been any cases of human rights defenders killed in your country since 1 January 2019 up to 30 June 2020?**

One murder of the advocate has been registered in Ukraine in the period from 1 January 2019 to 30 June 2020.

**Question No. 3. How many convictions of perpetrators of killing of human rights defenders were there in your country since 1 January 2019 up to 30 June 2020?**

During the mentioned period, two convictions were made in Ukraine for those who have killed human rights defenders. At present, these sentences have not entered into force due to their appeal through the prescribed procedure.

**Question No. 4. Does your government have a procedure to respond to death threats to human rights defenders?**

The Criminal Code of Ukraine stipulates criminal liability for an act of threatening to kill, which is provided for by Article 129 of this Code.

In order to ensure the safety of certain categories of people due to the increased level of public danger of the act compared to the act provided by the general rule, the legislator established criminal liability for threatening to kill, including a government or public figure (Article 346), state official or citizen, who performs a public duty (Article 350), a defender or a representative of a person (Article 398).

The commission of a crime against a defender poses an increased public danger. Thus, actions with the threat to kill, violence or destruction or damage to property against a defence counsel or a person’s representative, as well as against their close relatives in connection with activities related to the provision of legal assistance, constitute a crime provided for by Article 398 of the Criminal Code of Ukraine.

Article 400 of the Criminal Code of Ukraine stipulates criminal liability for the murder or attempted murder of a defence counsel or a person’s representative or their close relatives in connection with activities related to the provision of legal assistance.

The procedure of criminal proceedings on the territory of Ukraine is determined exclusively by the criminal procedural legislation of Ukraine.

The Article 214 of the Criminal Procedure Code of Ukraine obliges the investigator, coroner, prosecutor to immediately enter the relevant information into the Unified Register of Pre-Trial Investigations and initiate an investigation, but not later than 24 hours after the filing of an application, notification of a criminal offense or after his own discovery from any source of circumstances that may indicate the commission of a criminal offense.

**Question No. 5. Does your Government have or would be willing to put in place legal guarantees and other protection measures to allow human rights defenders to do their work without persecution?**

Legal guarantees of professional activity of certain categories are determined by the relevant laws.

 In particular, in accordance with Article 1 of the Law of Ukraine “On the Bar and Practice of Law”, practice of law consists in carrying out independent professional activity of a lawyer to provide protection, representation and other legal assistance to a client.

The state guarantees lawyers the right to practice law, prohibits interference with their activities and condemns actions aimed at hindering their professional activity.

The legislation of Ukraine defines a special procedure for criminal proceedings against a lawyer. Article 481 of the Criminal Procedure Code of Ukraine defines a special entity/person who must notify the lawyer in writing of suspicion of having committed a criminal offence. This is the Prosecutor General, his/her deputy, head of the regional prosecutor’s office. A similar rule is contained in sub-paragraph 13 of paragraph 1 of Article 23 “On the Bar and Practice of Law”.

In addition, operational search measures or investigative actions against a lawyer, which can be carried out only with the permission of court, are carried out on the basis of a court decision to be adopted upon a motion of the Prosecutor General, his/her deputies, Prosecutor of the Autonomous Republic of Crimea, prosecutor of region, prosecutors of Kyiv City and Sevastopol City (sub-paragraph 3 of paragraph 1 of Article 23 of the Law of Ukraine “On the Bar and Practice of Law”).

Other guarantees of observance of professional rights are mandatory notification of the bar self-government bodies about imposition of a preventive measure, passing of a sentence against a lawyer (Article 483 of the Criminal Procedure Code of Ukraine) and taking disciplinary action only in the manner and on the grounds provided for by the Law of Ukraine “On the Bar and Practice of Law” (Article 33 of the said Law).

Translators of the Prosecutor General’s Office: O. Syva

I. Furman

I. Pravnyk