

дотримання прав затриманих (2024): Закон України від 21 березня № 3623-IX. URL: <https://zakon.rada.gov.ua/laws/show/3623-20#n14>

5. Інструкція з організації діяльності чергової служби в Національній поліції України (2024). Затверджена Наказом МВС України від 23.05.2017 № 440 із змінами, внесеними згідно з Наказом МВС № 447 від 26.06.2024. URL: <https://zakon.rada.gov.ua/laws/show/z0750-17?find=1&text>

6. Інструкція із забезпечення режиму тримання та охорони осіб, які утримуються в ізоляторах тимчасового тримання Національної поліції України (2024). Затверджена Наказом МВС України від 25.09. 2023 року № 777 із змінами, внесеними згідно з Наказом МВС № 472 від 11.07.2024. URL: <https://zakon.rada.gov.ua/laws/show/z2034-23#Text>

DOI <https://doi.org/10.36059/978-966-397-533-7-4>

THE INTERNATIONAL LEGAL PROTECTION OF ATTORNEYS' RIGHTS: CURRENT SITUATION AND OPPORTUNITIES

Volokhov Oleksii Serhiiovych

*Candidate of Sciences (Law), Attorney at Law,
Partner of SLA Attorneys
Kyiv, Ukraine*

The protection of attorneys' rights is fundamental to upholding the rule of law, ensuring access to justice, and safeguarding human rights. After all, such negative phenomena as the identification of attorneys with a client, the illegal initiation of criminal, economic, and other measures against attorneys by judicial and executive authorities, hinder attorneys' professional activities. Despite public coverage of the risks to the activities and lives of attorneys, solving the above-mentioned problems requires effective changes to the national legislation and a review of the legislator's position on these questions [1, p. 116].

At the same time, increasing guarantees for attorneys' rights and protecting their professional activities leads to restrictions on the activities of law enforcement agencies and special procedures for their control, which can be an obstacle to the rapid investigation of cases or court proceedings. As a result, the protection of attorneys' rights is not a priority for either the legislature or the executive branch, which is the opponent to lawyers

in many cases. In such conditions, only international standards and their implementation can serve as a basis for revising legislation and creating legal mechanisms to ensure the rights and guarantees of lawyers' activities.

The current international legal framework is represented both on the universal and regional levels, including key instruments such as the UN Basic Principles on the Role of Lawyers and the recently adopted Council of Europe Convention for the Protection of the Profession of Lawyer.

At the universal level, the UN Basic Principles on the Role of Lawyers, adopted in 1990, serve as a cornerstone document [2]. These principles outline guarantees for attorneys' functioning, such as the ability to perform professional duties without intimidation or improper interference, and the right to travel and consult clients freely. They also provide for immunities, including civil and penal protection for statements made in good faith during legal proceedings, and mandate confidentiality in attorney-client communications. Governments are required to ensure adequate safeguards when attorneys' security is threatened and to respect the self-governance of professional associations. Complementing these are general human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR), which enshrines rights to life, liberty, security, and a fair trial—rights that extend to attorneys in their professional capacities [3, p. 14]. Attorneys are also protected under the UN Declaration on Human Rights Defenders, recognizing their role in promoting justice and human rights. The UN Declaration on Human Rights Defenders (1998) extends protections to attorneys as defenders promoting justice and rights. Additionally, the UN Office on Drugs and Crime (UNODC) emphasizes access to legal aid to protect marginalized groups, translating into justice for the disadvantaged.

A key monitoring body of the guarantees for attorneys' rights of the UN is the Special Rapporteur on the Independence of Judges and Lawyers, established in 1994 by the Commission on Human Rights (Resolution 1994/41) and continued under the Human Rights Council. The mandate involves documenting attacks on judicial and legal independence, making recommendations to states, and promoting enhancements to these protections. Over the years, the mandate has recorded a significant number of attacks against judges and prosecutors and restrictions to the free and independent exercise of their profession and brought these allegations to the attention of the national authorities.

On June 19th, 2017, the UN Human Rights Council (HRC) on its 35th session passed an important Resolution A/HRC/35/L.20 on the independence of lawyers, incorporating robust language against reprisals, and strengthening the implementation of guarantees and immunities. Significantly, this Resolution calls on States to provide human rights training for judges, prosecutors, and lawyers, and to consider

regional and international human rights law and the concluding observations and decisions of human rights mechanisms, such as treaty bodies and regional human rights courts.

By capitalizing on recent resolutions, toolkits, and collaborative initiatives, the international community can enhance these mechanisms, ensuring attorneys operate freely and effectively. Strengthening UN protections is imperative for upholding human rights and the rule of law globally.

Regionally, non-binding instruments like the Council of Europe's Recommendation R (2000) 21 on the Freedom of Exercise of the Profession of Lawyer and the African Commission's Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa reinforce the UN standards, emphasizing non-discrimination, independence, and protection from harassment. Many countries have adopted local laws that comply with international standards; however, the implementation of these norms in practice remains far from complete [4].

While some international standards on legal protection of attorneys' rights have detailed obligations which should be implemented in interim legislation, others provide just a legal framework which can be useful but not obligatory for governments of the member-states. For instance, an international court of the Council of Europe – the European Court of Human Rights (ECtHR), which interprets the European Convention on Human Rights (ECHR) and provides significant practice on the rule of law application highlights the importance of legal protection of attorneys' rights. Like in *Smirnov v. Russia* case (2007), the ECtHR ruled that searches of attorneys' premises must be proportionate and respect confidentiality to avoid undermining fair trials. Similarly, in *Geerings v. the Netherlands* case (2007), the ECtHR emphasized safeguards during property deprivations affecting attorneys' work [3, p. 202]. These cases underscore states' duties to conduct effective investigations into threats and ensure non-derogable rights, but remain the flexibility of states for adherence to the ECtHR practice in their law-making activities.

Nowadays, the flexibility of international standards on legal protection of attorneys' rights gives no guarantee that such protection will be provided by local governments. In this case, an independent international monitoring mechanism, working due to an international treaty or the decision of an international organization, can be the only way to guarantee the observance of attorneys' rights.

A significant recent development is the Council of Europe Convention for the Protection of the Profession of Lawyer, adopted in March 2025. This first-ever binding international treaty aims to counter rising attacks on attorneys by requiring states to prevent threats, harassment, and interference, investigate criminal incidents, and ensure the independence of professional

associations. It establishes monitoring mechanisms, including an expert group and a committee of parties, and will enter into force upon ratification by at least eight countries, including six Council of Europe members.

Ukraine expressed its interest in the signing and ratification of the Convention on the Protection of the Profession of Lawyer (the Convention), which the Council of Europe adopted on March 12, 2025. Still, as of September 2025, this process has been delayed due to the lack of an official translation. However, the Minister of Justice has promised to submit the document to the Ministry of Foreign Affairs for further approval [5].

If the Convention is ratified, the legal community of Ukraine believes that it will gain several important advantages:

- in cases of threats, attacks, or pressure, the legal community will be able to turn to international mechanisms, in particular the GRAVO Group of Experts, which will help strengthen security guarantees for lawyers;
- bringing national legislation into line with the provisions of the Convention regarding searches of lawyers, detention, and compliance with the attorney-client privilege;
- taking into account the realities of full-scale invasion and the post-war period, the Convention will guarantee lawyers additional security and independence in the performance of their duties in cases related to war crimes, population displacement.

In addition, the Convention has been developed taking into account the specificities of national legal traditions and models of bar organization in different Council of Europe member states.

Among the key achievements of the Convention are:

- the specification of a set of rights and guarantees for lawyers, including disciplinary procedures and searches;
- the introduction of a monitoring mechanism through a special Group of Experts (GRAVO) capable of responding to serious or systematic violations;
- clear regulation of the principle of self-government of professional bar associations and freedom of expression, which contributes to the development of civil society;
- a specific ratification procedure covering not only Council of Europe member states, but also other countries wishing to accede [6].

The international legal protection of attorneys' rights has advanced significantly, with frameworks like the UN Basic Principles and the new Council of Europe Convention providing robust standards. However, persistent threats highlight the urgency of better implementation and changes to national legislation. By seizing opportunities for ratification, monitoring, and collaboration, the global community can ensure attorneys fulfill their essential role, bolstering the rule of law and human rights worldwide.

Bibliography

1. Комарницька І. І. Сучасні проблеми ототожнення адвоката з клієнтом. *Юридичний науковий електронний журнал*. 2024. N 2. С. 114–117. DOI: <https://doi.org/10.32782/2524-0374/2024-2/25>
2. Basic Principles on the Role of Lawyers adopted on 07 September 1990 BY the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba. URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>
3. International Legal Digest: Lawyers' protection and states' obligations. International Bar Association. 217 p. URL: <https://www.ibanet.org/MediaHandler?id=c0a1f2cc-0a0c-4e97-a180-fa6fc53b4a32>
4. Cameron J. Lawyers Under Threat: Highlighting Their Plight. Just Security. 2023. Jan. URL: <https://www.justsecurity.org/84880/lawyers-under-threat-highlighting-their-plight/>
5. The process of signing the Convention on the protection of the profession of advocate has begun. URL: <https://en.unba.org.ua/activity/news/10677-the-process-of-signing-the-convention-on-the-protection-of-the-profession-of-advocate-has-begun.html>
6. Council of Europe Convention for the Protection of the Profession of Lawyer on 12 March 2025. Ref CM(2024)191add1final. URL: <https://rm.coe.int/native/0900001680b4c020>

DOI <https://doi.org/10.36059/978-966-397-533-7-5>

ДІЯЛЬНІСТЬ АДВОКАТУРИ ІЗ ЗАПОБІГАННЯ ЗЛОЧИНАМ: МІЖНАРОДНО-ПРАВОВИЙ АСПЕКТ

Дерев'янко Наталія Зеновіївна

доктор філософії в галузі права, доцент,

декан юридичного факультету,

Міжнародний економіко-гуманітарний університет

імені академіка Степана Дем'янчука

м. Рівне, Україна

Введення військового стану на території України внесло свої корективи в професійну діяльність адвокатів. Використовуючи міжнародні нормативно-правові акти адвокати буквально засипали Європейський суд з прав людини низкою позовів до держави агресора.