



НАЦІОНАЛЬНА АСОЦІАЦІЯ
АДВОКАТІВ УКРАЇНИ

**ВИЩА КВАЛІФІКАЦІЙНО-ДИСЦИПЛІНАРНА
КОМІСІЯ АДВОКАТУРИ**

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Polish Bar Council

Swietojska 16, 00-202

Warsaw

To Chairman of Polish Bar Council

Mr. Lukasz Tkacz

Dear Mr. Lukasz,

We hereby express our respect and appeal to you on the following.

The Ukrainian National Bar Association and the Higher Qualification and Bar Commission - all-Ukrainian non-governmental organizations, which unites all advocates, representing various spheres of the legal profession, and stands for the prevalence of the Rule of Law and promotion of the legal society.

The Ukrainian National Bar Association and the Higher Qualification and Bar Commission hereby notify you of the facts of detention of Mr. Denis Bugay, his inappropriate custody and the groundless suspicion of crimes associated with his client.

First, Bugay Denis Volodymyrovych was detained by the Ukrainian border service officers of Boryspil International Airport on 21 March 2014 at 5:15 a.m. without any notice to the Kyiv Board of Attorneys, which is a violation of Article 23 of the Law of Ukraine "On Attorneys and Attorney Practice", and to the Center of Secondary Legal Aid. Such detention of an attorney, regardless of its grounds, is to be carried out subject to certain special attorney guarantees provided in Article 23 of the Law of Ukraine "On Attorneys and Attorney Practice", which guarantees are part of the attorney's legal status. The protocol executed upon such detention specified that the detention took place in the presence of representatives of the Kyiv Board of Attorneys. However, this is far from being true. In fact, no representative of the Kyiv Board of Attorneys was present at such detention or was at least notified of such detention. Moreover, the protocol now contains false information claiming that the detention was carried out in the presence of I.V. Rafalska, representative of Kyiv Board of Attorneys. Mrs. Rafalska addressed an appeal to the law enforcement authorities claiming that the protocol of detention was forged.

The attorney was detained with gross violation of the requirements contained in the Code of Criminal Procedure of Ukraine. Thus, Denis Bugay was detained without any ruling issued by the investigating judge, which represents a gross violation of part 1 of Article 208 of the Code of Criminal Procedure of Ukraine (the "CCP of Ukraine"). Detention of an individual without a ruling by the investigating judge is allowed only if the individual was caught when committing the crime or attempting to commit the crime, or immediately after the crime is committed. However, D.V. Bugay did not commit any criminal acts in Boryspil International Airport, nor he intended to commit the same. Moreover, from the notice of alleged suspicion which was delivered later it follows that he is suspected of crimes perpetrated in the years 2009 – 2013, which makes it impossible to detain an individual without a court ruling. Moreover, the notice of suspicion itself was presented to D.V. Bugay by a person who is not authorized to do so. According to the Law of Ukraine "On Attorneys and Attorney Practice" and the CCP provisions, a notice of suspicion may be presented to the attorney only by the Attorney General, his deputy, regional prosecutor, or prosecutor of Kyiv or Sevastopol. In fact, such requirement was not met.

Irrespective of the actual detention of Denis Bugay at 5:15 a.m., the protocol of his detention was executed by the investigating officer of General Prosecutor's Office only at 10:20 p.m., which is also a gross violation of the CCP. Moreover, within the following 60 hours after his detention Denis Bugay was not brought to the court for selecting a restrictive measure for him; thus, he was to be freed on 23 March 2014 at 5:16 p.m. in accordance with the provisions of Article 211 of the CCP. However, contrary to the legal provisions, Denis Bugay was unlawfully kept in custody at the premises of the Security Service of Ukraine for 6 hours after expiration of the statutory 60 hour period, which fact was recorded by his attorneys in the report of the crime provided in Article 371 of the Criminal Code of Ukraine. The said facts evidence the unlawful detention of Denis Bugay, the attorney, and his further unlawful custody by the investigating officers of the General Prosecutor's Office of Ukraine.

Such acts committed by the investigating personnel of the law enforcement authorities also contain the violation of section 1 (c) and section 3 of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms which guarantees the right to freedom and security of the person.

Second, the detention of Denis Bugay is connected with his activity as attorney within the framework of legal support provided to his client. Under the Law of Ukraine "On Attorneys and Attorney Practice" no identification of the attorney with his client is allowed. However, regardless of this, the General Prosecutors Office of Ukraine suspecting Denis Bugay of committing the crime provided in Article 225 of the Criminal Code of Ukraine (participation in criminal organization), without any sufficient ground for such suspicion, violated the attorney guarantees attempting to induce the attorney to disclose the information protected by attorney-client privilege. Such detention gives every reason to believe that it pursues a different goal rather than that contemplated by the law in case of a detention. This also may be deemed as a violation of Article 18 and Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Third, Denis Bugay is suspected of a crime allegedly committed by him within the period from the 2009 and to 2013. Therewith, the only ground for such suspicion was the fact that Denis Bugay was holding the position of the Chairman of the Supervisory Board of JSC "Brokbiznesbank" to which he was elected by the decision issued by the General Meeting only on 3 September 2013. However, Denis Bugay became member and Chairman of the Supervisory Board solely for the representation of the interests of his client who is a shareholder of the bank. Such actions were performed by Denis

Bugay within the framework of the legal services agreement and without formalizing the labor relations with the bank and without receiving any salary. The schedule to the said agreement between Denis Bugay and his client stipulated the attorney's obligation to represent the client at the Supervisory Board of the bank. No asset management functions were granted to Denis Bugay according to the said agreement. The Law of Ukraine "On Attorneys and Attorney Practice" establishes that the attorney may be involved in any types of activities which are not prohibited by law. Thus, neither Denis Bugay nor the Supervisory Council in general issued any resolution with respect to administration and disposal of the bank's assets as well as the bank's operating activities since such actions were not within the competence of the Supervisory Board in accordance with the

legal provisions and internal rules. Thus, any accusations against Denis Bugay appearing in the mass media with respect to money laundering and embezzlement of the bank's funds are groundless.

Fourth, considering the above in view of the comments of Oleg Makhnitskyi, the Acting General Prosecutor of Ukraine, it becomes obvious that subordinates of the Acting General Prosecutor provide him with misleading information regarding the current status of Denis Bugay's case. Apparently, such actions are aimed to hide the flagrant violations of the Ukrainian legislation which, *inter alia*, may be qualified as criminal offence.

Moreover, we would like to point out that the situation with the detention of Denis Bugay had highlighted the problem which has been a burning issue of the legal community for many years – *i.e.* identification of an attorney with its client.

"Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions" – this is one the most important guaranties of the attorneys' professional activity which is stipulated in paragraph 18 of the Basic Principles on the Role of Lawyers adopted by VIII UN Congress on the Prevention of Crime in August 1990.

In its turn, any breach of the guarantees of the professional activity entails other consequences such as a threatened violation of the right to protection guaranteed by the Ukrainian legislation and international law. Also, a failure to comply with the attorney's professional guarantees questions the existence of the institute of advocacy in Ukraine in general, since in such case the profession of attorney loses its special status and purpose.

Considering the foregoing, we hereby ask you of any possible support, in particular, in the form of official reaction of Polish Bar Council with regard to serious violation of rights and freedoms of attorneys in Ukraine.

Sincerely,

**Head of the Ukrainian National Bar
Association, Ukrainian Bar Council**

Lidiya Izovitova

**Executive Chairman of the Higher
Qualification and Bar Commission**

Oleg Belyaev