



The Protection of Lawyers in Russia

Submission to the Special Rapporteur on the independence of judges and lawyers
December 2021

Background

The following is a Human Rights House Foundation submission focused on the protection of lawyers in Russia and based on input from Human Rights Houses. It is a response to a call for information from the United Nations Special Rapporteur on the independence of judges and lawyers on the protection of lawyers, ahead of the mandate reporting on this topic at the 50th session of the Human Rights Council in June 2022.

Responses to the questionnaire of the Special Rapporteur

- 1. Taking into consideration the guarantees for the functioning of lawyers, contained in principles 16-22 of the Basic Principles on the Role of Lawyers, please describe the constitutional, legal, administrative and policy measures adopted in your country to enable lawyers to exercise their professional activities in favour of their clients in a free and independent manner.*

The fundamental regulating role in the field of providing professional legal assistance in the Russian Federation is with the Federal Law “On Attorney Activities and Legal Profession”, which was adopted in 2002, and undergoes updates on a regular basis. Overall, the above statutory instrument is of a progressive nature and contains theoretical guarantees of unencumbered unhampered performance of the legal profession. However, political measures have been taken by Russian authorities over the last decade with the intension to suppress activities of Russian civil society and extremely adversely affect the practical implementation of statutory guarantees.

Thus, one of the fundamental guarantees of the advocacy activities is a ban of interference or obstruction of such activities as regulated by article 18 of the above law. However, no criminal or administrative liability for such acts is provided for with the Russian law. The necessity of the introduction of such regulation has been repeatedly discussed for several years but remained only at the stage of a pending bill¹.

Introduction of a regulation of article 450.1 of the Code of Criminal Procedure of the Russian Federation in 2017 regarding performing a search at an attorney’s is only based on a court judgement and mandatorily in the presence of a representative of a regional chamber of lawyers can be regarded as a relative legislative innovation that notably affected an enhancement of the institute of the advocate secrecy. Law-enforcement officers sometimes ignore the requirement of the law²

¹ <https://fparf.ru/news/fpa/dolgozhdannaya-initsiativa/>

² <https://golos-kubani.ru/v-krasnodare-u-advokata-mixaila-benyasha-utrom-proshel-obysk/>

from time to time; however, in most cases, participation of a representative of the chamber of lawyers enables not only to protect the advocate's secrecy but also to successfully contest illegal search ordinances³.

- 2.** *What entities and/or mechanisms are in place to prevent and/or punish interferences with the free and independent exercise of the legal profession? Please briefly describe them and specify whether they are independent bodies or if they belong to the administrative structure of the State.*

Overall, there are no special agencies or mechanisms promoting prevention or punishment of interference with the exercise of the legal profession in Russia. Prosecution for such interference occurs extremely rarely, and standard national mechanisms of the criminal prosecution are applied in such cases.

The only exceptions are commissions for defence of professional rights of attorneys established under Chambers of Law in regions. Such commissions are manned by attorneys only, they respond to applications they receive and pass conclusions thereunder that are of an advisory nature. A national-level Commission under the Council of the Federal Chamber of Law of the Russian Federation was established in 2017 but is virtually inactive⁴. In certain regional chambers (Moscow, Saint-Petersburg, Leningrad Region, Krasnoyarsk and Krasnodar Territories), commissions operate intensively and fight for the exercise of the professional rights of attorneys; however, the efficiency of such internal structures is extremely low due to lack of real authorities and delayed nature of the response.

Groups of authorized representatives for protection of professional rights⁵ were established in 2019 under the Chamber of Law of Saint-Petersburg, as an experiment. The purpose of the groups is an immediate response on a situation of obstruction of the legal profession and a timely documentation or remedy of the emerging obstructions.

- 3.** *Please indicate if there are any legislative, administrative, or institutional barriers that have hindered the work of lawyers and the exercise of the legal profession in your country and describe them.*

The major barrier hindering the work of lawyers is the absence of the institute of independence of the national court and a proper competition in the national justice system, first of all, in cases where the State is a party, in criminal and administrative legal procedure, or under civil cases involving federal or local authorities or officials.

The share of acquitting verdicts under criminal cases in the total number of pronounced verdicts is immensely small and has not exceeded 0.4 per cent in recent years⁶. That said, trials by jury acquit in more than 25 per cent of cases⁷ after a small extension of their authorities in 2018. However,

³ <https://apmo.ru/novosti/pobeda-v-mosgorsude/>

⁴ <https://fparf.ru/fpa-rf/rights-protection-commission/solutions/>

⁵ <http://www.apspb.ru/about/ppz.php>

⁶ <https://pasmi.ru/archive/309187/>

⁷ <https://rg.ru/2021/02/14/prisiazhnye-stali-chashche-opravdyvat-podsudimyh.html>

courts of appeal, in their turn, refute up to 90 per cent of such acquitting verdicts, thus neutralizing the public inquiry for justice⁸.

Under such circumstances, the role of attorneys as defenders under criminal cases is essentially diminished to a palliative function for mitigation of the criminal qualification of the alleged offence and reduction of the volume of the punishment. Sometimes, because of a low activity or poor preparation of prosecutors, attorneys are forced to oppose not the accusation but the court, which has nothing in common with democratic principles of the independence of justice and competitiveness of the parties.

For example, the Code of Administrative Offence of the Russian Federation does not provide for a mandatory participation of the prosecutor in most of administrative proceedings. Therefore, judges themselves essentially maintain the function of the accusation during legal proceedings. The court operates quite actively sometimes: they define sufficiency of the scope of proof, they are biased when reviewing motions, they demand additional proofs of guilt. The European Court of Human Rights pronounced a pilot judgement under the case “Karelin vs. Russia” back in 2016, where the Court identified an obvious violation of Article 6 of the Convention under a similar case; however, the above did not result in any legislative or law-enforcement changes⁹.

Another vivid example of applying double standards is an extensive practice of excessively harsh punishments of citizens for inflicting damage to law-enforcement officers, and, on the contrary, rare exceptions when law-enforcers are reluctantly brought to justice for violence against “common” citizens.

A report “Violence at Protest Acts” analyses in detail the law enforcement practice for bringing to justice the persons who used violence at protest acts on both sides of the barricades. Conclusions by the author reflect the nature of the law enforcement practice: “While criminal cases under art. 318 of the Criminal Code of the Russian Federation (“Use of violence against a person in public authority”) are initiated and investigated quickly (test, identification are conducted, necessary video tapes are sought and withdrawn), then a typical response to statements of persons that suffered violence on the part of law-enforcers are refusals to initiate criminal proceedings after conducting “standby” scrutiny, procedural “ping-pong” and red tape. Also, a risk exists that after a statement on use of violence by the law-enforcers, a criminal case may be initiated against the applicants themselves. Such law-enforcement practice is not unique for cases of civil activists: it has shaped up long ago under case unrelated to the political protest (in particular, under cases regarding tortures in law-enforcement agencies)”¹⁰.

Another adverse trend that immediately and adversely affects the work of lawyers is the desire of national authorities to restrict the openness of legal procedures using a variety of methods: from a physical refusal to allow press or public into court rooms to a prohibition for lawyers to spread information on what is going on in the course of investigation and court hearings.

⁸ <https://www.advgazeta.ru/novosti/apellyatsiya-otmenila-pochti-90-opravdatelnykh-prigovorov-rayonnykh-sudov-vynesennykh-s-uchastiem-prisyazhnykh/>

⁹ <https://ovdinfo.org/news/2016/09/21/espch-v-pilotnom-reshenii-prizval-reformirovat-administrativnoe-sudoproizvodstvo-v>

¹⁰ <https://docs.rferl.org/ru-RU/2019/02/28/b22215ce-753a-47cf-bc4d-ff816285da81.pdf>

Numerous cases of refusal to allow public and mass media into court proceedings have occurred for several years in different regions¹¹. That said, the initiative of a selective allowance of citizens, and especially journalists, to the court room, often originates from judges themselves¹². Such phenomena manifest most vividly on “high-profile” political processes, for instance, on “the case of the Net”¹³ or the case of journalist Ivan Safronov accused of a high treason¹⁵. The COVID-19 pandemic also adversely affected the openness of Russian courts.

Cases where lawyers are not allowed into the court in spite of the fact that their apprehended defendants are in the building and taking part in court hearings have become frequent too. So, on 15 April 2020, attorney Yulia Tregubova was denied entry to Tverskoy District Court of Moscow¹⁶; on 1 February 2021, attorney Sergei Loktev was not allowed into Krasnogvardeysky District Court of Saint-Petersburg¹⁷. Such incidents happened earlier in the Krasnoyarsk Territorial Court with attorney Yevgeny Barannikov¹⁸ and in the Pervomaysky District Court of Krasnodar with attorney Mikhail Benyash¹⁹.

Preliminary investigation bodies have generalised and continue to develop the practice to dismiss active lawyers from defence by summoning them for interrogation and rendering the attorney the status of witness under criminal cases²⁰. Even in the case that the lawyer refuses to deliver evidence, investigators withdraw the attorney from defence on the basis of the mere fact of interrogation and a formal acquisition of the status of the witness.

Situations of removal of lawyers from court hearings due to an industrious position while defending interests of their defendants are also noted, including by using physical force.

Another widely adopted method of suppression of professional activities of lawyers is an unlimited use of the non-disclosure statement regarding outcomes of the preliminary investigation by investigators. Lawyers’ self-regulation organizations have repeatedly noted and continue to note situations when the investigation is interested not so much in observance of their legal interests but rather in obstruction of professional activities of the lawyers²¹. Moreover, in the opinion of the lawyer community, an excessive application of the institute of prohibition on disclosure of

¹¹ <https://ovdinfo.org/articles/2019/01/16/pochemu-aktivistov-i-advokatov-ne-puskayut-na-zasedaniya-i-kak-s-etim-borotsya>

¹² <https://www.vedomosti.ru/politics/articles/2019/01/30/792879-v-sudi-pustyat-ne-vseh>

¹³ <https://clck.ru/YzQu5>

¹⁴ <https://zona.media/news/2018/04/19/kras-court>

¹⁵ [https://www.znak.com/2020-11-](https://www.znak.com/2020-11-30/rodstvennikov_i_zhurnalistov_ne_puskayut_v_sud_na_zasedanie_po_prodleniyu_aresta_safro)

[30/rodstvennikov_i_zhurnalistov_ne_puskayut_v_sud_na_zasedanie_po_prodleniyu_aresta_safro](https://www.znak.com/2020-11-30/rodstvennikov_i_zhurnalistov_ne_puskayut_v_sud_na_zasedanie_po_prodleniyu_aresta_safro)
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¹⁶ <https://ovdinfo.org/express-news/2020/04/15/advokata-otkazalis-puskat-v-sud-na-zasedanie-po-povodu-zaderzhaniya-ee>

¹⁷ <https://advstreet.ru/online/31-yanvarya-advokat-i-ovd/>

¹⁸ <https://pravo.ru/news/view/144689/>

¹⁹ <https://pravo.ru/news/202417/>

²⁰ http://rapsinews.ru/incident_news/20210618/307148107.html

²¹ <https://www.advgazeta.ru/novosti/kogda-dopustim-otkaz-zashchitnikov-dat-podpisku-onerazglashenii-dannykh-predvaritelnogo-sledstviya/>

investigation facts is a blatant method to exert pressure on lawyers, to the extent of their criminal prosecution²²²³.

On occasions of mass protests, the Ministry of Interior blatantly applies the mechanism of refusal of access to defendants delivered to police stations against lawyers. Most often, the lawyers are not allowed on the pretext of implementation of the “Fortress” plan intended to repel terrorist attacks. So, on 31 January 2021, during public events and mass apprehensions, not less than 26 facts of refusal to allow lawyers to police stations were identified, 12 of them being under the pretext of the “Fortress” plan²⁴. Lawyers note in the majority of cases that such a ground is used exclusively against the lawyers, because otherwise the access to premises of facilities of the Ministry of Interior is unrestricted for other visitors, including pizza delivery persons²⁵.

That said, certain lawyers have contested the procedure of the “fortress” access denial for more than two years; however, national courts mostly side with the police, being governed by formal grounds²⁶.

Meanwhile, law-enforcement agencies spread the practice of refusal of access of lawyers to their defendants irrespective of any acts of protest, which causes more severe consequences too. So, in May 2020, in Nalchik, during a conflict, police officers apprehended a lawyer Ratmir Zhilokov who had provided legal assistance to a female defendant. After three female lawyers, including Diana Tsipinova, had arrived at the police station to defend their colleagues, police officers used violence against them, pushed them out of the building, and then initiated a criminal case against Zhilokov and Tsipinova. Despite the obvious violation of professional rights of the lawyers, availability of video records, and an industrious support on the part of lawyer’s self-regulation organizations, the criminal prosecution against the lawyers is still pending, and no proper investigation has been conducted against the police officers²⁷.

4. Please describe the role of the national bar association(s) in protecting lawyers and the free exercise of the legal profession. Is the bar association de jure and de facto independent from the State?

Lawyers of each region (constituent territory of the Russian Federation) are united in regional chambers, and the chambers are merged into the Federal Lawyers’ Chamber of Russia (FLC). Activities of the chambers are coordinated by advisory bodies – councils of chambers, whose representatives are present in the Council of FLC. The role of the “lawmaker” is exercised by the supreme body of FLC – the All-Russia Congress of Lawyers held once in two years.

On the whole, bodies of the lawyers’ self-regulation are independent in their work from the State and vindicate lawyers’ rights. Only one of internal bodies of lawyers’ chambers – the qualification commission – incorporates representatives of the Ministry of Justice and active judges, but they

²² <https://pravo.ru/story/231408/>

²³ <https://www.kommersant.ru/doc/4654830>

²⁴ <https://advstreet.ru/online/31-yanvarya-advokat-i-ovd/>

²⁵ <https://www.advgazeta.ru/mneniya/krepost-kak-prepyatstvie-na-puti-k-doveritelyam-/>

²⁶ <https://advstreet.ru/article/poluchaetsya-kakoy-to-advokat-shryedingera/>

²⁷ <https://www.advgazeta.ru/diskussii/ugolovnogo-presledovanie-advokatov-ap-kbr-diany-tsipinovoy-i-ratmira-zhilokova/>

constitute the minority of the total manning of the commission. The qualification commission reviews issues of obtaining the lawyer status and bringing to disciplinary liability.

5. *Please provide detailed information on the number of lawyers that have been subject to criminal, administrative or disciplinary proceedings in the last five years for alleged violations of standards of professional conduct. How many of them were found guilty? How many of them were ultimately disbarred?*

According to the report of the Council of FLC²⁸ for the period of 2019-2020, disciplinary penalties (admonitions or warnings) were applied to 4652 lawyers. The status was terminated for 553 lawyers as a disciplinary measure, which constitutes 2 per cent of the number of complaints received. Grounds for withdrawal of the status, among other things, were the following: failures to perform or improper performance of resolutions of lawyers' chambers – 275 lawyers (49.7 per cent); ethics violations – 174 lawyers (31.5 per cent); failures to perform or improper performance of their obligations to trustees – 87 lawyers (15.7 per cent).

Moreover, 91 lawyers were stripped of the lawyer title for committing deliberate crimes. The same report states that 126 criminal proceedings were initiated against lawyers, out of which, 60 were delivered to courts, and 20 cases were terminated.

No other statistics can be obtained from public sources.

6. *Please provide information on any case where lawyers in your country have been subject to intimidation, hindrance, harassment or improper interference, whether from State authorities or non-State actors, for action taken in accordance with their recognized professional duties. Please also describe the measures that State authorities have taken to investigate and bring perpetrators to justice.*

On 9 September 2018, in Krasnodar, lawyer Mikhail Benyash, while accompanying his female defendant, suffered an assault by two detective officers, including being beaten and apprehended under an administrative case for an alleged publication of a call to participate in an unauthorized rally. Furthermore, a criminal case was initiated against Benyash for resisting the police officers. The court proceedings regarding Benyash have been pending from 2019 until now; a guilty verdict pronounced earlier was dismissed due to material defects of proceedings. However, law-enforcement bodies, on the consent of national courts, have not conducted a proper investigation of violence of the police officers against the lawyer²⁹.

On October 25, 2021, in Crimea controlled by the Russian authorities, a police officer apprehended a lawyer, Edem Semedlyaev, for audio recording of an interview of police officers with his defendant and drafted a record of administrative offence for disobeying his order to stop the recording. After that, the police officer demanded that the lawyer should strip off all his clothes for a body search; after the lawyer's refusal, he drafted another record of administrative offence for that. Russian courts operating in Crimea arrested Semedlyaev for 12 days on the grounds of the above records³⁰.

²⁸ https://fparf.ru/upload/medialibrary/70d/Otchet-soveta_2021.pdf

²⁹ <https://www.kommersant.ru/doc/4081071>

³⁰ <https://graty.me/news/mne-nado-tvoi-trusy-uidet-sud-v-krymu-arestoval-na-12-sutok-i-oshtrafoval-advokata-za-otkaz-razdetsya-dogola-dlya-dosmotra-policziej/>

In November 2021, under an extrajudicial procedure, the Ministry of Justice of the Russian Federation listed two lawyers, Ivan Pavlov and Valeria Vetoshkina, in the list of “mass media – foreign agents”³¹. Such status features a deeply adverse message for Russian citizens and imposes additional obligations, for example, a specification in large print in each document or public message of the status of the foreign agent and drafting of extensive accounts on their incomes and activities under penalties of costly fines and criminal prosecution.

The Office of the UN High Commissioner for Human Rights repeatedly urged the Russian authorities to dismiss or to revise the law on foreign agents, as they have stated that the law is used against civil society and mass media³². In the situation of the lawyers, the above-mentioned excesses violate the lawyers’ secrecy and actually suppress the opportunities for the legal profession.

The growing trend of prosecuting lawyers and attorneys for a legal fee too high in the opinion of investigative agencies causes a reinforced alert within the attorney community. During 2019-2021, lawyers Igor Tretyakov³³, Sergei Yuriev³⁴, Diana Kibets and Alexander Slivko³⁵, Irina Danilova³⁶, and others were brought to criminal liability. Law-enforcers accuse lawyers that they received excessively large fees but did not provide or improperly provided legal assistance. Although the victims objected to prosecutors, and lawyers reasonably refuted the accusations, national courts keep holding lawyers in custody for months and years and pronounce guilty verdicts. Law-enforcers use “expert opinions” comparing average rates for similar services as proofs of excessiveness of the fees. Such methods of prosecution for the professional activities jeopardize any lawyer, first those providing legal assistance to Government-owned corporations.

7. To what extent has, the legislation and/or measures adopted in your country because of the Covid-19 pandemic, affected the exercise of the independence of the legal profession or security of lawyers. Please explain.

Lockdown measures applied in Russia to mitigate consequences of the Covid-19 pandemic produced an extremely adverse effect on the legal profession. First of all, this bore upon matters of access of trustees to justice and openness of court hearings.

From the middle of 2020 until the present, the personal delivery of process is forbidden in all national courts, which only makes it possible to deliver applications by mail or via the “Justice” State-owned automated system.

In most regions, access to courts is forbidden for citizens not participating in the court proceedings; however, no compensating measures have been taken for an alternative provision of the principle of transparency of justice³⁷. In February 2021, the Presidium of the Supreme Court of the Russian

³¹ <https://www.bbc.com/russian/news-59055192>

³² <https://tass.ru/obschestvo/12976133>

³³ <https://advstreet.ru/article/moya-vina-tolko-v-tom-chto-ya-eti-sudy-vyigral/>

³⁴ <https://advstreet.ru/article/v-materialakh-net-dokazatelstv-versii-sledstviya/>

³⁵ <https://advstreet.ru/news/advokat-zayavil-o-falsifikatsii-dokazatelstv-po-delu-aeroflota/>

³⁶ <https://advstreet.ru/interview/vozbudit-delo-mogut-na-lyubogo-yurista-sotrudnichavshago-s-goskompaniy/>

³⁷ <https://pravo.ru/story/230236/>

Federation approved the “Survey on certain issues of judicial practice related to the application of law and measures for combatting the spread of the new coronavirus infection (COVID-19) in the Russian Federation No.3” that stated that the necessity to provide the health security of members of court hearings cannot constitute grounds for holding hearings on camera. Nevertheless, such instructions did not cause any changes in regulatory enforcement: courts keep banning journalists and public from court rooms and forbid any video broadcasting suggested as a compensation³⁸.

Lawyers faced a lot of difficulties visiting their defendants in pre-trial detention facilities or in penal colonies as quarantine measures are being introduced. During the last 18 months, in virtually all facilities mentioned above, lawyers have been forced to communicate with their defendants held in custody without an opportunity to consult in privacy: the communications take place through a glass, in the presence of an employee of the penal colony, and the exchange of documents also occurs via a warden. Some regions or certain facilities arbitrarily introduce additional restrictions and demand anti-exposure suits, PCR tests, or QR codes on vaccination from lawyers³⁹. As a rule, restrictions do not cover investigators, prosecutors, or other representatives of authorities.

The restrictions introduced not only enhance even greater non-transparency of the penitentiary system and aggravate the position of the arrested/confined, but also allow the Federal Penitentiary Service to promote new restrictions. So, in Summer 2021, lawmakers forbade lawyers to bring photo or video equipment for communicating with the defendants in penal colonies⁴⁰, and in the Autumn the Russian Ministry of Justice developed a bill with amendments introducing new pretexts for denial of access of lawyers to penal colonies⁴¹.

8. *Please describe the measures and policies you would suggest to better protect and guarantee the free exercise of the legal profession.*

No improvement of guarantees and mechanisms of protection for legal professionals is possible without strengthening democratic principles of justice, transparency and independence of the court, priority of human rights and development of institutes of the civil society. However, the Russian authorities have consistently suppressed civil rights and liberties, used law-enforcement institutes and national courts to neutralize political opponents during the recent years.

Such phenomena could not but reflect on the judicial system that has essentially grown accustomed to the executive power and exercises the state repression function in Russia. The role of lawyers during proceedings has been diminished to a ritual presence to observe procedures established formally. That said, active, industrious lawyers, legal firms, and human rights organization suffer an excessive interest on the part of law-enforcement agencies that results in administrative and criminal prosecution.

Therefore, to secure unencumbered activities of lawyers, the Russian authorities need to return to democratic principles: liberty of speech and association, independent and fair trial, honouring of

³⁸ <https://mhg.ru/news/nablyudatelyam-otkazali-v-dostupe-na-sudebnyy-process-v-sochi-po-delu-pravozashchitnika-semena>

³⁹ <https://pravo.ru/news/235865/>

⁴⁰ <https://www.interfax.ru/russia/768900>

⁴¹ <https://www.kommersant.ru/doc/5062162>

life, freedom, and inviolability of person, to stop suppressing independent mass media and civil societies, to secure electivity of authorities and political competition in the country.