

RUSSIAN FEDERATION

Human Rights Committee Consideration of the 8th Periodic Report of the Russian Federation

Submission on the List of Issues by the Lawyers for Lawyers Foundation

Amsterdam, The Netherlands
28 May 2020

Lawyers for Lawyers
P.O. Box 15732
1001 NE Amsterdam
The Netherlands

T +31(0)207171638
E Info@lawyersforlawyers.org
@ www.lawyersforlawyers.org

I Introduction

Submitting Party

Lawyers for Lawyers (**'L4L'**) is an independent, nongovernmental organization, supported by contributions from private individuals and organizations related to the legal profession. Established in 1986, L4L has special consultative status with ECOSOC since 2013.¹

L4L promotes and protects the independence of the legal profession through the support and empowerment of lawyers around the world who face reprisals, improper interferences, and undue restrictions, as a result of discharging their professional functions.² In doing so, we advocate for adherence to core values underpinning the legal profession, in conformity with internationally recognized human rights laws, norms and standards, including but not limited to the International Covenant on Civil and Political Rights (**'ICCPR'**)³ and the Basic Principles on the Role of Lawyers (**'Basic Principles'**).⁴

Concerning

In May 2019, The Russian Federation submitted its eight periodic report on its implementation of the ICCPR.⁵ At its 129th session, the Human Rights Committee (**'the Committee'**) will adopt a List of Issues on the Russian Federation (**'State party'**). L4L welcomes the opportunity to contribute to the List of Issues on the State party in preparation for its eight periodic review by the Committee. Our submission will focus on the situation of lawyers in the State party, particularly the obstacles to the independent exercise of their profession and violations committed against them.

Methodology

L4L has been closely following the situation of lawyers in the State party. The information for this submission is collected through ongoing desk-research, interviews and engagement with and reports from Russian lawyers and other local and international stakeholders.

Role of L4L in seventh periodic review State party

After the State party filed its previous (seventh) periodic report, L4L filed a submission on the List of Issues on 24 April 2014, noting *inter alia* the lack of effective guarantees for the functioning of lawyers and pervasive immunity for harassment of and attacks on lawyers. A copy of this submission may be found in the OHCHR online archives.⁶

The Committee considered the previous (seventh) periodic report of the State party at its 3136th and 3137th meetings (16 and 17 March 2015). In the Concluding Observations of

¹ For more information visit our website: <https://lawyersforlawyers.org/en/about-us/>

² For more information visit our website: <https://lawyersforlawyers.org/over-ons/wat-doen-wij/>

³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (**'ICCPR'**).

⁴ Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 (**'Basic Principles'**).

⁵ Eight Period Report Submitted by the Russian Federation under Article 40 of the Convention, 17 May 2019, CCPR/C/RUS/8.

⁶ See:

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/RUS/INT_CCPR_ICO_RUS_1713_4_E.pdf

31 March 2015, the Committee came to the following relevant observations and conclusions:

*"The Committee remains concerned (CCPR/C/RUS/CO/6, paras. 14 and 16) at reports of harassment, death threats, intimidation, physical violence and killing of lawyers, journalists, human rights defenders and opposition politicians, in particular of those working in the North Caucasus, in connection with their professional activities, and at the slow progress in investigating such cases, including with regard to the killings of journalists Khadzhimurad Kamalov (2011) and Akhmednabi Akhmednabiev (2013) and human rights advocate Natalia Estemirova (2009) (arts. 2, 6, 7, 9, 14 and 19)."*⁷ (par. 18)

*"The State party should take immediate steps to provide, in practice, effective protection to lawyers, journalists, human rights defenders and opposition politicians whose lives, safety and security are under threat due to their work in monitoring and reporting on human rights issues and on other matters of legal and public interest, and refrain from taking any measures that may constitute harassment or persecution or undue interference in the exercise of their work or of their right to freedom of opinion and expression. It should effectively investigate, prosecute and bring perpetrators of the above acts to justice."*⁸

In its eight periodic report, the State party responded to paragraph 18 of the above-mentioned concluding observations:

"Lawyers may not be held liable in any way for expressing views while exercising their profession, unless a sentence that has just taken effect implicates them in a criminal act (or failure to act).

Lawyers, members of their families and their property enjoy the protection of the State. The internal affairs agencies are under the obligation to take the steps necessary to ensure the safety of lawyers and their family members and to protect their property. The criminal prosecution of lawyers is carried out in conformity with the safeguards provided for under the criminal procedural law.

Searches, inspections and seizures with respect to lawyers (including at their place of residence and offices used by them to practise law) may take place only after a criminal case has been brought against them or they have been charged with an offence, if the criminal case was brought against other persons or on evidence that a criminal act was committed on the basis of an order of the court authorizing such searches, inspections or seizures, provided that the inviolability of privileged material and information is not compromised.

The Investigative Committee makes the necessary organizational arrangements for thoroughly investigating and solving crimes against lawyers, journalists, human

⁷ Concluding observations on the seventh periodic report of the Russian Federation, Human Rights Committee, 28 April 2015, CCPR/C/RUS/CO/7, par. 18

⁸ Idem, p. 7-8

rights defenders and opposition politicians in connection with their professional activities and establishing the circumstances that gave rise to them.”⁹

However, Lawyers for Lawyers has information indicating that these issues remain a concern.

II Substantive Part – Implementation of the ICCPR and related issues

Issues of concern

In this submission, L4L sets out its concerns with regard to the State party’s failure to comply with article 14 of the ICCPR. Based on this provision, the State party is required to uphold the right to equality before courts and tribunals as well as the right to a fair trial, which encompasses the obligation to guarantee effective access to legal services provided by an independent legal profession in accordance with the Basic Principles.¹⁰

Adherence to the Basic Principles is considered a fundamental pre-condition for the adequate protection of the human rights and fundamental freedoms to which all persons are entitled.¹¹ In its task of promoting and ensuring the proper role of lawyers, the State party should respect and take into account the Basic Principles within the framework of its national legislation and practice.¹²

Consequently, it is the State party’s duty under the ICCPR to respect and guarantee that all persons within its jurisdiction have effective and equal access to lawyers of their own choosing, and that lawyers are able to perform their professional functions without intimidation, hindrance, harassment or improper interference from any quarter, or be threatened with sanctions for any action taken in accordance with recognized professional duties, standards and ethics.¹³

The State party must also ensure that lawyers are adequately protected when their security is threatened because of carrying out their legitimate professional duties, and that they are not be identified with their clients or their clients’ causes.¹⁴ In addition, the State party must recognize and respect that all communications and consultations between lawyers and their clients within their professional relationships are confidential.¹⁵ The Basic

⁹ Eight Period Report Submitted by the Russian Federation under Article 40 of the Convention, 17 May 2019, CCPR/C/RUS/8, par. 125-128.

¹⁰ Interference in the work of lawyers may lead to violations of the right to a fair trial under article 14 of the ICCPR, as has been recognized by the Committee. Human Rights Committee, General Comment No.32, CCPR/C/GC/32, paragraph 34. In particular, the Committee has stated that “*lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter.*” See also Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, in particular article 12.

¹¹ Basic Principles, preamble, paragraph 9.

¹² Basic Principles, preamble, paragraph 11.

¹³ Idem, Principles 1,2 and 16.

¹⁴ Idem, Principles 17 and 18.

¹⁵ Human Rights Committee, General Comment No.32, CCPR/C/GC/32, paragraph 34. In particular, the Committee has stated that lawyers should also be able to “*meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications.*” See also Principle 22 of the Basic Principles.

Principles affirm that lawyers, like other citizens, are entitled to freedom of expression and assembly.¹⁶

According to our information, however, the State party fails to fully respect and ensure the guarantees for the proper functioning of lawyers under article 14 of the ICCPR.

This submission highlights the following issues that give rise to L4L's concerns:

- A. Difficulties with access to clients in detention
- B. Lack of lawyer-client confidentiality during meetings with clients in detention
- C. Harassment of, and threats against, lawyers

As a result, the professional rights and privileges of lawyers in the State party are violated systematically. This impairs their ability to provide effective legal representation and consequently severely undermines the proper functioning of the rule of law and the adequate protection of rights to which all persons are entitled, including the rights to effective remedy and fair trial. The work of lawyers is indispensable for the public confidence in the administration of justice and to ensure effective justice for all person.

In addition to the violations of their professional rights and privileges under article 14 of the ICCPR, these violations also encroach upon other rights that lawyers, like other citizens, are entitled to, including the rights to security of person (article 9), privacy and unlawful attacks on a person's honour and reputation (article 17), and freedom of expression (article 19).

Given the vital role of lawyers in the protection of the rule of law and the protection of rights, and the fact that lawyers in the State party are specifically targeted because of their work as a lawyer, L4L would like to recommend the Committee to specifically address the position of lawyers, whenever appropriate, when reviewing the State party's implementation of the ICCPR.

A - Difficulties with access to clients in detention

Lawyers for Lawyers was informed by lawyers from the State party that they often experience difficulties with access to their clients in detention, especially when they are working on sensitive cases.

The Basic Principles provide that governments "shall ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention."¹⁷ In addition, the Basic Principles provide that "[A]ll arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality". Such access may serve as a preventive measure against ill-treatment, coerced self-incriminations and confessions or other violations of the rights of the

¹⁶ Principle 23 of the Basic Principles.

¹⁷ Principle 7 of the Basic Principles.

suspect.¹⁸ The right of access to a lawyer is a constitutional right protected under article 48 of the Constitution of the State party.¹⁹

According to law, only two documents must be provided by a lawyer to be admitted to visit a client in detention: a lawyer's certificate and a warrant.²⁰ According to our information, however, lawyers are regularly prevented from meeting with their clients upon presentation of only the two documents. A permit issued by an investigator or a judge may also be required.

Furthermore, it was reported that lawyers also face other practical difficulties when accessing clients in places of detention. L4L has received reports of lawyers who have to wait several hours before being allowed to see their clients and in some cases are being made to wait outside in hard weather conditions. Moreover, it is not always guaranteed that after such a long waiting period the lawyer is able to meet the client. Clients are also transferred to other institutions without giving appropriate notice and information to the lawyer.

B – Lack of lawyer-client confidentiality during meetings with clients in detention

The Basic Principles provide that governments "shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential"²¹. In addition, the Basic Principles provide that "[A]ll arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality" and that such consultations "may be within sight, but not within the hearing, of law enforcement officials."²² Under Russian law, any information related to a lawyer's representation of his or her client is protected by lawyer-client privilege²³.

However, lawyers from the State party have reported that insufficient measures are taken by prison personnel to guarantee the confidential nature of the meetings of lawyers with their clients.

Meetings with clients in detention are sometimes attended by prison personnel, to 'guarantee the safety of the lawyer'. However, even after requests of the lawyers for the personnel to leave, they may insist on remaining in the room. Even though consultations may be within sight, they may not be within the hearing of law enforcement officials²⁴. Refusal of personnel to leave the room could lead to them overhearing the consultations between lawyers and their clients, which is not in line with international standards. Meetings with clients are furthermore often interrupted by prison personnel, for example

¹⁸ Human Rights Committee, General Comment No. 20 on article 7, par. 11.

¹⁹ Any person detained, taken into custody, accused of committing a crime shall have the right to receive assistance of a lawyer (counsel for the defence) from the moment of detention, confinement in custody or facing charges accordingly. See the Constitution of Russia, article 48 (2), available on: <http://www.constitution.ru/en/10003000-01.htm>

²⁰ Criminal Procedural Code of the Russian Federation, article 49 (4).

²¹ Principle 22 of the Basic Principles.

²² Principle 8 of the Basic Principles.

²³ Federal Law No. 63-FZ of 31 May 2002 (as amended on 2 July 2013) "On lawyers' activities and advokatura in the Russian Federation", article 8 (1).

²⁴ Principle 8 of the Basic Principles.

to take the clients' finger prints or for other (generally fabricated) reasons. Some lawyers have reported that they are only allowed to communicate with their clients through glass and telephones. These lawyers fear that the phones are tapped by security personnel of the prison.

Upon leaving the prison facilities, lawyers are often searched or forced to hand over their documents for inspection. Such inspections are automatically recorded by personal video cameras carried on the guards' clothing.

C - Threats against, and harassment of, lawyers

Lawyers in the State party, especially those working on sensitive cases, have reported that they are subjected to threats and harassment in connection to their legitimate professional activities.

The Basic Principles provide that, governments "shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference".²⁵

According to the information L4L received, lawyers in the State party who are working on sensitive cases (often with a political dimension) are sometimes subjected to attempts by investigative authorities to harass and disrupt their work. They face threats, intimidation and (physical) attacks in connection with their legitimate activities as lawyers.

This is illustrated by the following cases:

Irina Biryukova

Irina Biryukova is a human rights lawyer with Public Verdict Foundation, which raises awareness of human rights violations committed by law enforcement agents, contributes to ensure public oversight of places of detention in the Russian Federation and provides victims who have suffered abuse by law enforcement with legal help.

On 20 July 2018, a Russian newspaper published a video showing the torture of Evgeny Makarov, a detainee in prison colony N1 in Yaroslavl and client of Irina Biryukova. The video had been leaked to the lawyer who then gave it to the press. Two days after a newspaper published the video, a confidential source close to the prison administration informed Irina Biryukova that her physical safety was in danger and she also began to receive threats on social media. After the Investigative Committee of the Yaroslavl region decided to deny state protection to her and her daughter due to the "unpersonalised nature of threats", Irina Biryukova had to flee the country. In November 2018, Irina Biryukova was notified that state protection measures to her and her daughter were applied after Irina Biryukova appealed the previous decision of the Investigative Committee of the Yaroslavl region.²⁶

²⁵ Principle 16(a) of the Basic Principles.

²⁶ <https://www.frontlinedefenders.org/en/case/threats-against-irina-biryukova>

Dmitriy Sotnikov

On 12 September 2019, Moscow-based lawyer Dmitriy Sotnikov was blocked by a court officer from entering the courtroom to represent his client at the Novomoskovsk District Court. While attempting to enter the room again, he was pushed face down by the officer and handcuffed. After having spent eight hours in the local department of the Investigative Committee without being officially registered, Dmitriy Sotnikov inquired whether he was officially in custody. On being told that he was not, he attempted to leave and was reportedly again, attacked, this time by investigators, who beat him on the head and slammed a door shut on his fingers. Consequently, Dmitriy Sotnikov sustained injuries from both incidents and had to undergo medical treatment for the same.²⁷

Some lawyers are subjected to arrests, criminal investigations and proceedings, in connection with their legitimate activities as attorneys. The Basic Principles provide that “[G]overnments shall ensure that lawyers shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics”.²⁸

This is illustrated by the following case:

Mikhail Benyash

For a decade, defence lawyer Mikhail Benyash has been working on civil and criminal cases in Sochi, Krasnodar Region, Russia. In the context of authorities’ reluctance to sanction peaceful protests, Mikhail Benyash has been providing legal assistance to the participants of rallies that were not officially approved. He has also attended a number of protests in order to monitor and prevent police brutality.

On 9 September 2018, Mikhail Benyash was violently arrested after going to the city of Krasnodar to provide legal assistance to participants in a peaceful rally against pension reforms. During his arrest he has allegedly been beaten and choked by police officers, who initially did not introduce themselves and were wearing civilian clothes. After he was brought to the police station his lawyer was denied access to him for several hours. On 11 September 2018, he was charged with "resisting the police's legitimate orders" and he was sentenced to 14 days of "administrative detention". On 23 September 2018, the day of his release, Mikhail Benyash was charged with "violence against a representative of authority". A charge not raised at the time of his earlier conviction in relation to the same incident. The Investigative Committee claimed that Mikhail Benyash hit a police officer in the face three times and bit him on the arm. On 11 October 2019, he was found guilty of this charge and was fined 30 000 RUB.²⁹ On 23 October the Krasnodar Regional Court overturned his two month pre-trial detention order and ordered his release on bail, set at 600 000 RUB (approximately 8000 EUR).

²⁷ <https://www.icj.org/the-russian-federation-use-of-physical-force-against-lawyer-must-be-investigated/>

²⁸ Principle 16(c) of the Basic Principles.

²⁹ <https://lawyersforlawyers.org/lawyer-mikhail-benyash-indicted/>

III Conclusions and recommended questions

According to our information, the State party fails to fully respect and ensure the guarantees for the proper functioning of lawyers under article 14 of the ICCPR. As a result, the lawyers' professional rights and privileges are violated. This impairs their ability to provide effective legal representation, makes lawyers increasingly wary of working on sensitive cases, and consequently severely undermines the proper functioning of the rule of law and the adequate protection of rights to which all persons are entitled, such as the right to effective remedy and fair trial as well as the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment. The work of lawyers is indispensable for the public confidence in the administration of justice and to ensure effective justice for all persons in the State party.

In addition to the violations of their professional rights and privileges under article 14 of the ICCPR, these violations also encroach on other rights that lawyers, like other citizens, are entitled to, including the rights to security of person (article 9), privacy and unlawful attacks on a person's honour and reputation (article 17), and freedom of expression (article 19).

Given the vital role of lawyers in the protection of the rule of law and the protection of rights, and the fact that lawyers in the State party are specifically targeted because of their work as a lawyer, **L4L recommends the Committee to specifically address the position of lawyers, whenever appropriate, when reviewing the State party's implementation of the ICCPR.**

Recommended Questions to State Party:

Please respond to reports of difficulties of lawyers to access clients in detention centers and the lack of guarantees for the confidentiality of these meetings.

Please provide information on what measures the State party has taken to ensure that lawyers are able to carry out their professional functions safely and independently and are protected against attacks, threats and harassment.

Have any policy decisions been taken to address persistent reports of arbitrary criminal or disciplinary proceedings initiated against lawyers in the context of their legitimate professional activities?