

RUSSIAN FEDERATION

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

Submission

Amsterdam, 31 January 2022

Lawyers for Lawyers Foundation

PO Box 15732

1001 NE

Amsterdam

The Netherlands

T +31 (0) 20 717 16 38

E info@lawyersforlawyers.org

@ www.lawyersforlawyers.org

I. Introduction

Submitting Party

1. 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
2. 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 (**'Covenant'**)³ and the United Nations Basic Principles on the Role of Lawyers (**'Basic Principles'**).⁴
3. On 14 August 2020, the Human Rights Committee (**'the Committee'**) adopted a List of Issues in relation to the eighth periodic report of the Russian Federation,⁴ in response to which the Russian Federation submitted a reply.⁵ Prior to the adoption of the List of Issues on the Russian Federation, L4L submitted a contribution to the List of Issues on the Russian Federation, particularly in relation to the obstacles to the independent exercise of the profession of lawyers and violations committed against them.
4. During its 134th session, from 28 February to 25 March 2022, the Committee will consider the eighth periodic report submitted by the Russian Federation under article 40 of the Covenant and adopt concluding observations that will assist the Russian Federation in the implementation of the Covenant. In the context of this review, Lawyers for Lawyers wishes to provide a concise update to our report submitted before the adoption of the List of Issues.⁶

II. Executive Summary

Issues

5. This submission outlines L4L's key areas of concern about the failure of the government of the Russian Federation to comply with its international human rights commitments to guarantee effective access to legal services provided by an independent legal profession as set out in the Basic Principles, which is required to ensure the right to equality before courts and tribunals and to a fair trial, in accordance with Article 14 of the Covenant and to protect the right to freedom of expression of lawyers, in accordance with article 19 of the Covenant.
6. In its List of Issues, the Committee requested the authorities of the Russian Federation to provide information under articles 2, 6, 7, 9, 14 and 19 of the Covenant, on the "threats and attacks against, and the groundless prosecution of, lawyers who discharge their professional

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 List of issues in relation to the eighth periodic report of the Russian Federation, Addendum: Replies of the Russian Federation to the list of issues, CCPR/C/RUS/RQ/8, 29 March 2021.

6 Submission on the List of Issues by the Lawyers for Lawyers Foundation for the Human Rights Committee Consideration of the 8th Periodic Report of the Russian Federation, 28 May 2020, available at: <https://lawyersforlawyers.org/wp-content/uploads/2020/06/Submission-LOI-RusFed-L4L.pdf>.

duties, and reports of arbitrary criminal or disciplinary proceedings against lawyers taken in the context of their professional activities, the lack of protection provided for them against attacks, threats and harassment”.⁷ The Committee also requested the authorities of the Russian Federation to respond” to the difficulties faced by lawyers in gaining access to their clients in places of detention and the lack of confidentiality of lawyer client-meetings”.⁸ The authorities of the Russian Federation have responded to this request only by stating that the meetings between suspects and their lawyers are not subject to any restrictions and that meetings are conducted in compliance with the public health requirements for prevention of the spread of coronavirus disease (COVID-19).⁹ The authorities of the Russian Federation did not elaborate on any of the other topics on which the Committee requested further notion.

7. The authorities of the Russian Federation have not adequately responded on the Committee’s questions from the List of Issues. Lawyers for Lawyers remains gravely concerned about the situation of lawyers in the Russian Federation, as set out in our submission on the List of Issues.¹⁰ Since submitting our report for the adoption of the List of Issues in May 2020, new cases of interference with the work of lawyers have been brought to the attention of Lawyers for Lawyers, as described below. New types of interferences with the work of lawyers have also emerged since submitting our report in May 2020, amongst others in the form of labeling lawyers as “foreign agents”. We call on the Committee to ask the authorities of the Russian Federation to provide adequate answers to the questions listed in the List of Issues and make the following recommendations:

Recommendations

The Russian Federation should take measures to prevent the harassment of lawyers and attempts to impede or interfere on improper grounds with their defence of clients, in accordance with Article 14 of the Covenant and articles 16 and 18 of the Basic Principles on the Role of Lawyers.

The Russian Federation should recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential in accordance with article 14 of the Covenant and article 22 of the Basic Principles on the Role of Lawyers and not force lawyers to act as a witness in cases in which they represent their clients.

The Russian Federation should take all necessary measures to prevent that lawyers suffer or be threatened with prosecution, disciplinary action or other sanctions on improper grounds, in accordance with article 14 of the Covenant and article 16 of the Basic Principles on the Role of Lawyers.

The Russian Federation should take measures to guarantee the effective protection of the right of freedom of expression of lawyers as set out in article 19 of the Covenant and article 23 of the Basic Principles on the Role of Lawyers, in particular their right to take part in public discussion of matters concerning the law, the administration of justice and

⁷ List of issues in relation to the eighth periodic report of the Russian Federation, CCPR/C/RUS/Q/8, 14 August 2020, par. 12.

⁸ Ibid, par. 13.

⁹ List of issues in relation to the eighth periodic report of the Russian Federation, Addendum: Replies of the Russian Federation to the list of issues, CCPR/C/RUS/RQ/8, 29 March 2021, par.79-80.

¹⁰ Submission on the List of Issues by the Lawyers for Lawyers Foundation for the Human Rights Committee Consideration of the 8th Periodic Report of the Russian Federation, 28 May 2020, available at: <https://lawyersforlawyers.org/wp-content/uploads/2020/06/Submission-LOI-RusFed-L4L.pdf>.

the promotion and protection of human rights, without suffering professional restrictions by reason of their lawful action.

The Russian Federation should refrain from improper interference with legitimate work of lawyers by labeling them as "foreign agents", in accordance with article 14 of the Covenant and article 16 of the Basic Principles on the Role of Lawyers.

III. Substantive Part - The implementation of article 14 of the Covenant by the Russian Federation

A. Effective Mechanisms for the Protection of Human Rights

8. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers, along with judges and prosecutors, are able to carry out their professional activities independently. This follows from – amongst other international instruments - the Covenant.
9. Interference in the work of lawyers may lead to violations of the right to a fair trial under Article 14 of the Covenant, as has been recognized by the Committee.¹¹ 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'*.¹² 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'*.¹³
10. The right to a fair trial also entails the principle of equality of arms. In view of the Committee, this means that *'the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant'*.¹⁴
11. In its task of promoting and ensuring the proper role of lawyers, the government of the Russian Federation should respect and take into account the Basic Principles within the framework of its national legislation and practice.¹⁵ Adherence to the Basic Principles is considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to independent legal assistance.¹⁶
12. In May 2020, Lawyers for Lawyers submitted a report for the adoption of the List of Issues on the Russian Federation. In this report, we outlined information indicating that in practice, the authorities of the Russian Federation do not always uphold the necessary guarantees for the proper functioning of the legal profession. Lawyers are regularly subject to improper interference, encounter difficulties with access to clients in detention, witness a lack of lawyer-client confidentiality during meetings with clients in detention and face harassment and threats against them. This violates the right to a fair trial as set out in article 14 of the Covenant.

¹¹ Human Rights Committee, General Comment No.32, CCPR/C/GC/32, para.34. 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, especially article 12.

¹² Ibid, par. 34.

¹³ Ibid, par. 34.

¹⁴ Ibid, par. 13.

¹⁵ Basic Principles, Preamble, paragraph 11.

¹⁶ Basic Principles, Preamble, paragraph 9.

13. In its List of issues in relation to the eighth periodic report of the Russian Federation, the Committee asked the Russian federation to respond to the multiple reports of intimidation and violence against and the killing of human rights defenders and lawyers in the Russian Federation, respond to reports of arbitrary criminal or disciplinary proceedings against lawyers taken in the context of their professional activities, the lack of protection provided for them against attacks, threats and harassment, the difficulties faced by lawyers in gaining access to their clients in places of detention and the lack of confidentiality of lawyer-client meetings. The Committee also requested the Russian Federation to inform the Committee about measures taken to investigate such incidents, prosecute the perpetrators and provide reparation to victims.¹⁷
14. In their reply to the List of Issues, the authorities of the Russian Federation commented that *'meetings between suspects or accused persons and their lawyers are not subject to any restrictions as to their number and duration, except in the cases provided for by the Code of Criminal Procedure'* and that *meetings are conducted in compliance with the public health requirements for prevention of the spread of coronavirus disease (COVID-19), which are set out in Decision No. 345 of the Chief State Medical Officer of the Federal Penal Service of 27 April 2020 and Decision No. 649 of 23 May 2020.'* Furthermore, the authorities stated that *'to prevent the spread of COVID-19 among suspects, accused persons, convicted prisoners and employees in facilities of the penal correction system, in accordance with the Decisions of the Chief State Medical Officer of the Federal Penal Service of 16 March 2020 on the introduction of additional public health measures to prevent the outbreak and spread of COVID-19, visits to these facilities by federal government representatives, public monitoring commissions, lawyers and other persons must be restricted until further notice.'*¹⁸
15. The authorities of the Russian Federation have not provided any comments in their reply to the List of Issues, on any of the safeguards they have in place to prevent that lawyers who work on human rights related cases, are being subjected to arbitrary criminal or disciplinary proceedings. Furthermore, no information was provided on the measures taken to eliminate the lack of protection provided for lawyers against attacks, threats and harassment, the difficulties faced by lawyers in gaining access to their clients in places of detention and the lack of confidentiality of lawyer-client meetings.
16. The authorities of the Russian Federation have not adequately responded to the Committee's questions from the List of Issues. Lawyers for Lawyers remains gravely concerned about the situation of lawyers in the Russian Federation, as set out in our submission on the List of Issues. Since submitting our report for the adoption of the List of Issues, new cases of interference with the work of lawyers have been brought to the attention of Lawyers for Lawyers, as described below. Meaning that lawyers continue to encounter difficulties in carrying out their profession independently, immediately impacting the right to effective legal representation as enshrined in Article 14 of the Covenant.

¹⁷ List of issues in relation to the eighth periodic report of the Russian Federation, CCPR/C/RUS/Q/8, 14 August 2020, par. 12.

¹⁸ List of issues in relation to the eighth periodic report of the Russian Federation, Addendum: Replies of the Russian Federation to the list of issues, CCPR/C/RUS/RQ/8, 29 March 2021, par.79-80.

B. No effective guarantees for the functioning of lawyers

I. Access to clients in detention

17. In our report for the adoption of the List of Issues, we reported that *“lawyers from the State party (...) often experience difficulties with access to their clients in detention, especially when they are working on sensitive cases”*.¹⁹ In cases where lawyers are able to meet with their clients, they have indicated that in some instances *“insufficient measures are taken by prison personnel to guarantee the confidential nature of the meetings of lawyers with their clients”*.²⁰
18. The Basic Principles provide that *“all 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”*.²¹ Moreover, the Basic Principle lay down that governments *“shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.”*²²
19. Even though the authorities of the Russian Federation stated that *“meetings between suspects or accused persons and their lawyers are not subject to any restrictions as to their number and duration, except in the cases provided for by the Code of Criminal Procedure”*,²³ new cases of lawyers facing difficulties in accessing their clients were brought to the attention of L4L. These problems particularly emerged during the large-scale protests that took place in the beginning of 2021, and is illustrated by the following cases:

Lawyers providing legal assistance to protesters

*After the arrest of Russian opposition leader Aleksey Navalny at the Sheremetyevo airport on 17 January 2021 and his ensuing detention, hundreds of thousands of people participated in January 2021 in peaceful protests throughout the Russian Federation. A great number of protestors were detained on the 23rd and 31st of January 2021. After the trial against Navalny on 2 of February, which resulted in his imprisonment, a new wave of protests emerged, and 1400 people were detained. Russian lawyers who tried to offer legal assistance to the people who were arrested during the protests experienced difficulties in reaching their clients in detention. This denial of access to clients did not only happen in Moscow, but in many other cities across the country.*²⁴

Mansur Gilmanov

One of the cases documented by “Voice of the Bar” concerns the situation of human rights lawyer Mansur Gilmanov. Mr. Gilmanov tried to visit his client, a lawyer from the Foundation Against Corruption, in detention in Moscow on 21 January 2021. Mr. Gilmanov presented all the required documents at the police checkpoint and was asked to wait while the officers would get his client. After 40 minutes of waiting, observing that others were able to enter, and multiple requests to see his client, Mr. Gilmanov informed the police officers that he would like to file a

¹⁹ Submission on the List of Issues by the Lawyers for Lawyers Foundation for the Human Rights Committee Consideration of the 8th Periodic Report of the Russian Federation, 28 May 2020, p. 5.

²⁰ Ibid, p. 5.

²¹ Principle 8 of the Basic Principles

²² Principle 22 of the Basic Principles.

²³ List of issues in relation to the eighth periodic report of the Russian Federation, Addendum: Replies of the Russian Federation to the list of issues, CCPR/C/RUS/RQ/8, 29 March 2021, par.79.

²⁴ Lawyers for Lawyers, ‘Concerning circumstances for lawyers in Russia’, 15 March 2021, available at: <https://lawyersforlawyers.org/en/concerning-circumstances-for-lawyers-in-russia/>

complaint because according to him the police was violating the right of his client to legal assistance.²⁵

II. Harassment – physical attacks, criminal- and disciplinary proceedings

20. As set out in our submission on the List of Issues, lawyers in the Russian Federation 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.²⁶
21. 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.”²⁷
22. Since May 2020, new cases of the harassment of lawyers in the form of e.g. physical attacks were brought to the attention of L4L:

Mansur Gilmanov

After being denied access to his client on 21 January 2021 (as described above), Mr. Gilmanov was brought to the police station to file his complaint regarding the violation of the right of his client by the police officers. When Mr. Gilmanov arrived at the officer’s window, an officer rushed towards him who subsequently hit him on the ground, kicked him multiple times and insulted him. After the incident, Mr. Gilmanov was detained at the police station for a few hours before he was transported to another police station and detained overnight. The following day, Mr. Gilmanov was brought before a judge for “failure to comply with police orders”, and was sentenced to five days in detention. In response to the physical attack of Mr. Gilmanov, fellow lawyers published an open letter, signed by almost 300 lawyers, condemning the attack on Mr. Gilmanov and calling for police accountability.²⁸

23. Furthermore, some lawyers are subjected to arrests, criminal investigations and proceedings, in connection with their legitimate activities as attorneys.²⁹ The Basic Principles provide that “governments 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.”³⁰
24. Russian lawyers in several cases have been subjected to criminal prosecution. The criminal prosecution of lawyers in the Russian Federation is illustrated by the following cases:

Detention of protesting lawyers

On 31 May 2020, four lawyers started picketing in front of the building of the Investigative Committee of the Russian Federation to draw public attention to the situation of their colleagues in the Kabardino-Balkaria Republic (KBR) and to express concern about systematic violations of lawyers’ professional rights in the Russian Federation. Their colleagues had experienced

²⁵ Ibid.

²⁶ Submission on the List of Issues by the Lawyers for Lawyers Foundation for the Human Rights Committee Consideration of the 8th Periodic Report of the Russian Federation, 28 May 2020, p. 7.

²⁷ Basic Principle 16 (a) of the Basic Principles.

²⁸ Адвокатская улица, ‘Адвокаты требуют от МВД уважения к своей профессии’, 23 January 2021, available at: <https://advstreet.ru/news/advokaty-trebuyut-ot-mvd-uvazheniya-k-svoey-professii/>

²⁹ Submission on the List of Issues by the Lawyers for Lawyers Foundation for the Human Rights Committee Consideration of the 8th Periodic Report of the Russian Federation, 28 May 2020, p. 8.

³⁰ Basic Principle 16 (c) of the Basic Principles.

physical force by the law enforcement authorities in the KBR, only because they were trying to provide legal assistance to another lawyer colleague. Subsequently, four lawyers were detained and charged with violating the regime of self-isolation regime (Part 2 of Article 3.18.1 of the Code of Administrative Offences of Moscow) and violating the order of holding public events (Part 5 of Article 20.2 of the Code of Administrative Offences of the Russian Federation). Fifteen lawyers, who arrived at the police station a little later, were denied access to their clients and were forced to wait outside in heavy weather conditions.³¹

Ivan Pavlov

On 30 April 2021, Federal Security Service (FSB) officers of the Russian Federation together with officers of the Investigative Committee raided the hotel room of human rights lawyer and Head Litigator of the Team 29 human rights group Ivan Pavlov in Moscow. Following the search in his hotel room, Mr. Pavlov was detained by the FSB officers and interrogated by Investigative Committee of the Russian Federation (Investigative Committee). At the time, Team 29 was representing a former journalist facing treason charges as a result of his legitimate work as an investigative journalist. After the Investigative Committee interrogation, Mr. Pavlov was charged with “disclosure of materials of the preliminary investigation” in the case of Ivan Safronov under Article 310 of the Criminal Code of the Russian Federation. The charge sheet stated that Mr. Pavlov gave the newspaper Vedomosti a copy of the indictment against his client, and that he told reporters in front of Moscow’s Lefortovo District Court that an anonymous witness had appeared in the case against the investigative journalist.³²

Later the same day, the Basmanny District Court of Moscow issued restriction measures against Mr. Pavlov. According to the measures, Mr. Pavlov may no longer communicate with witnesses in the criminal case of the investigative journalist, with the exception of close relatives, and he is forbidden to use any postal and telegraphic communications, including the internet, for any purpose, except to call the emergency services or communicate with the investigator in the case.³³ On 7 September 2021, Mr. Pavlov left the Russian Federation due to the fear of persecution.

III. Disciplinary proceedings against lawyers

25. In its List of Issues the Committee requested the Russian Federation to respond to “*reports of (...) disciplinary proceedings against lawyers taken in the context of their professional activities*”.³⁴ As indicated in paragraph 6, the Russian Federation failed to provide an answer to this question.
26. Principle 16 (c) of the Basic Principles states 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”. Furthermore, according to Principle 27 of the Basic Principles, charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. They further lay down that disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority or before a court, and shall be subject to an independent judicial review.”³⁵

³¹ Lawyers for Lawyers, ‘Prosecution and detention of protesting lawyers in Russia’, 17 June 2020, available at: <https://lawyersforlawyers.org/prosecution-and-detention-of-protesting-lawyers-in-russia/>

³² Lawyers for Lawyers, ‘Statement on the judicial harassment of Ivan Pavlov, 5 May 2021, available at: <https://lawyersforlawyers.org/en/statement-on-the-judicial-harassment-of-ivan-pavlov/>.

³³ Ibid.

³⁴ List of issues in relation to the eighth periodic report of the Russian Federation, CCPR/C/RUS/Q/8, 14 August 2020, par. 13.

³⁵ Basic Principle 28 of the Basic Principles.

27. L4L has been informed that lawyers have been threatened with or subjected to disbarment or other disciplinary proceedings on improper grounds such as the expression of critical views or the nature of the cases they are involved in. The following cases illustrates this:

Ivan Pavlov

*On 20 September 2021, the St. Petersburg Department of the Ministry of Justice of the Russian Federation submitted a motion to initiate disciplinary proceedings against Mr. Pavlov seeking his disbarment. The following grounds were cited by the Ministry of Justice as grounds for the disbarments: the presence of an allegedly unwarranted transcription of State secret information from a case file, failure to attend investigative actions, and serving as president of an NGO recognized by the authorities as “undesirable”.*³⁶

*The Ministry of Justice motion also stated that by giving interviews to the media, Mr. Pavlov had carried out “an attempt to put pressure on the investigation and the court by unilaterally submitting information to the media and presenting the public with distorted data on the investigation of a criminal case”. Mr. Pavlov has stated that these allegations are factually incorrect or unsubstantiated.*³⁷

On 30 December 2021, a submission to bring Mr. Pavlov to disciplinary responsibility was made by the vice-president of the St. Petersburg Bar Association.

28. With regards to the disbarment of lawyers the United Nations Special Rapporteur on the Independence of Judges and Lawyers has stated that “disbarment, which consists in taking away a lawyer’s license to practice law, possibly for life, constitutes the ultimate sanction for the most serious violations of the code of ethics and professional standards” and stressed that “disbarment should only be imposed in the most serious cases of misconduct, as provided in the professional code of conduct, and only after a due process in front of an independent and impartial body granting all guarantees to the accused lawyer.”³⁸
29. According to the Basic Principles, lawyers, like any other individuals, have the right to freedom of expression. In particular they have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights.³⁹ This right is guaranteed under article 19 of the Covenant. Furthermore, lawyers, like any other individuals, have the right to freedom of association with others. The case of Mr. Pavlov therefore constitutes not only a violation of article 14 of the Covenant, but also of article 19 of the Covenant and article 22 of the Covenant.⁴⁰ The disciplinary proceedings that have been initiated against Mr. Pavlov on the abovementioned ground amount to arbitrary interference with his rights to freedom of expression and association.

IV. Foreign Agents Law

30. One of the emerging problems that have been reported, is that lawyers have been targeted specifically by the “Amendments to Legislative Acts of the Russian Federation regarding the Regulation of the Activities of Non-profit Organisations Performing the Functions of a Foreign Agent”, also known as the “foreign agents’ law”.

³⁶ Lawyers for Lawyers, ‘Russian Federation: Authorities must cease harassment of Ivan Pavlov, 2 December 2021, available at: <https://lawyersforlawyers.org/russian-federation-authorities-must-cease-harassment-of-lawyer-ivan-pavlov/>

³⁷ Ibid.

³⁸ Report of the Special Rapporteur on the independence of judges and lawyers, U.N. Doc. A/71/348 (22 Aug. 2016), par. 96, available at: <https://undocs.org/A/71/348>.

³⁹ This follows from article 23 of the Basic Principles

⁴⁰ Article 19 and 22 of the Covenant.

31. The “foreign agents’ law” of the Russian Federation came into force on 21 November 2012. The scope of the law has been expanded over the years.⁴¹ The law enables the Ministry of Justice of the Russian Federation to label anyone; groups, organizations or individuals who receive foreign funding and engaging in “political” activities, an ill-defined term that does not meet international standards of prescription by law, as a “foreign agent” even if they are not acting as a foreign entity. This goes along with fines, harassments and the limited access to public institutions. The Ministry of Justice of the Russian Federation has full discretion assigning the “foreign agent” label and does so in an arbitrary manner without any clear rules about what “political activity” means.⁴² The “foreign agents” laws require those designated as a “foreign agent” to register with the authorities and label all their content and materials, being it in writing, on social or audio, including articles, reports and social media posts with a special disclaimer, which says that the information is coming from a “foreign agent”.⁴³ Consequently, since 2012, *“the law has been repeatedly modified and has been used against civil society and media organisations, journalists and individual human rights defenders and bloggers, among others. As a result, many organizations have been repeatedly audited and heavily fined for the slightest regulatory violation, with some forced into liquidation”*.⁴⁴
32. The application of the “foreign agents’ law” against human rights defenders has been heavily criticized by various international institutions. The European Union has repeatedly condemned the “foreign agents” law as it runs “counter to Russia’s international obligations and human rights commitments, including with regard to freedom of expression and association”.⁴⁵ The United Nations Special Rapporteur on the situation of human rights defenders has stated that the Russian Federation “*must stop using its “foreign agents’ law” to punish people whose legitimate work is standing up for human rights*” and that “*in Russia the term ‘foreign agent’ is understood to mean ‘traitor’ or ‘spy,’ so this label can be very damaging*”.⁴⁶ Moreover, the United Nations High Commissioner for Human Rights has urged the authorities of the Russian Federation to abolish the “foreign agents” law.⁴⁷
33. According to reports received by L4L, the “foreign agents’ law” is now more and more being applied against lawyers and lawyers’ organizations. The danger of this law is that the lawyers who are labelled as “foreign agent” are facing difficulties in executing their work and therefore are not able give the assistance and defend human rights activists as they did before they received this label. Moreover, lawyers have indicated that the “foreign agent” label stigmatizes lawyers and consequently ruins their public reputation. Influential media in the Russian Federation will, for example, no longer ask a “foreign agent” for professional comments on media laws, amendments to those laws or other legal media developments. Lawyers being designated as “foreign agents” are also losing clients, including businesses who have links to the government or simply want to avoid any risk to a political conflict. Besides, this affects the judicial system and brings in jeopardy the right of all persons to call upon the assistance of a lawyer of their choice and to protect and establish their rights and to defend them in all stages

⁴¹ Human Rights Watch, ‘Russia: New Move to Suffocate Civil Society’, 23 November 2020, available at: <https://www.hrw.org/news/2020/11/23/russia-new-move-suffocate-civil-society>

⁴² Lawyers for Lawyers, ‘Russian Federation: Authorities must cease harassment of Ivan Pavlov’, 2 December 2021, available at: <https://lawyersforlawyers.org/russian-federation-authorities-must-cess-harassment-of-lawyer-ivan-pavlov/>

⁴³ Ibid.

⁴⁴ OHCHR, ‘Press briefing notes on Russia’, 19 November 2021, available at: <https://www.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=27830&LangID=E>

⁴⁵ European Union External Action Service, ‘Russia: Statement by the Spokesperson on the continued crackdown on independent media outlets, journalists and civil society’, 22 July 2021, available at:

https://eeas.europa.eu/headquarters/headquarters-homepage/102335/russia-statement-spokesperson-continued-crackdown-independent-media-outlets-journalists-and_en

⁴⁶ OHCHR, ‘Russia: Free Semyon Simonov and stop criminalising human rights defenders for legitimate work – UN expert’, 31 August 2021, available at: <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=27418&LangID=E>.

⁴⁷ OHCHR, ‘Press briefing notes on Russia’, 19 November 2021, available at: <https://www.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=27830&LangID=E>

of criminal proceedings, as laid down in article 1 of the Basic Principles.

34. The trend of the labelling of lawyers as “foreign agent” is illustrated by the following cases:

Ivan Pavlov

On 8 November 2021, the Ministry of Justice of the Russian Federation declared Mr. Pavlov to be a “foreign agent”. The consequence of this designation is that Mr Pavlov has now been added to the Russian registry of “foreign agents”. The decision was based on Article 25.1 of the Law of the Russian Federation “On Mass Media” that designates as a “foreign agent” a media outlet or an individual receiving foreign funding and engaging in “political” activities”.⁴⁸

Valeria Vetoshkina

In addition to Mr Pavlov, four of his former colleagues from Team 29, including lawyer Valeria Vetoshkina, were also labelled as a “foreign agent” on 8 November 2021.⁴⁹ Ms. Vetoshkina worked as the lead lawyer for Team 29 in the case against the Anti-Corruption Foundation. In her capacity as lawyer she also worked on a number of high-profile treason cases and defended detained protesters who peacefully protested for the exercise of their right to freedom of peaceful assembly.

Maxim Olenichev

Maxim Olenichev was also labelled as a “foreign agent” on 8 November 2021. Maxim Olenichev is a trial lawyer and human rights defender for the former Team 29, litigating cases on access to information on the activities of public authorities, environmental cases, trials for vulnerable groups and “foreign agents”.

Galina Arapova

Galina Arapova is a media lawyer and head of the Mass Media Defense Center which is an organization that has been included in the list of “foreign agent” NGOs in 2015. In October 2021 Galina Arapova was designated in her personal capacity as a ‘mass media foreign agent’. Ms. Arapova is the first lawyer designated by the Russian government as a “foreign agent”.⁵⁰

V. Conclusions and recommendations

35. The authorities of the Russian Federation do not always uphold the necessary guarantees for the proper functioning of the legal profession in practice. Lawyers are regularly subject to improper interference and harassment. Some lawyers are even subjected to criminal proceedings, in connection to their legitimate professional activities. Furthermore, lawyers are being disbarred and designated as “foreign agent”. As a result, lawyers are not in an equal position to represent their clients. This violates the right to a fair trial as set out in article 14 of the Covenant.

Recommendations

The Russian Federation should take measures to prevent the harassment of lawyers and attempts to impede or interfere on improper grounds with their defence of clients, in

⁴⁸ Ibid.

⁴⁹ Lawyers for Lawyers, ‘Russian Federation: Authorities must cease harassment of Ivan Pavlov, 2 December 2021, available at: <https://lawyersforlawyers.org/russian-federation-authorities-must-cease-harassment-of-lawyer-ivan-pavlov/>

⁵⁰ Radio Free Europe/Radio Liberty, ‘Targeted Twice, Russian Media Lawyer Is A ‘Foreign Agent’ Standing Up For ‘Foreign Agents’, 12 October 2021, available at: <https://www.rferl.org/a/russia-lawyer-arapova-foreign-agent/31505671.html>

accordance with Article 14 of the Covenant and articles 16 and 18 of the Basic Principles on the Role of Lawyers.

The Russian Federation should recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential in accordance with article 14 of the Covenant and article 22 of the Basic Principles on the Role of Lawyers and not force lawyers to act as a witness in cases in which they represent their clients.

The Russian Federation should take all necessary measures to prevent that lawyers suffer or be threatened with prosecution, disciplinary action or other sanctions on improper grounds, in accordance with article 14 of the Covenant and article 16 of the Basic Principles on the Role of Lawyers.

The Russian Federation should take measures to guarantee the effective protection of the right of freedom of expression of lawyers as set out in article 19 of the Covenant and article 23 of the Basic Principles on the Role of Lawyers, in particular their right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights, without suffering professional restrictions by reason of their lawful action.

The Russian Federation should refrain from improper interference with legitimate work of lawyers by labeling them as "foreign agents", in accordance with article 14 of the Covenant and article 16 of the Basic Principles on the Role of Lawyers.