

## **Human Rights Committee Consideration of the Seventh Periodic Report of the Russian Federation**

Submission on the List of Issues

Amsterdam, 25 April 2014

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## I Introduction

### *Submitting Party*

1. Lawyers for Lawyers (L4L) is an independent Netherlands foundation and is funded by lawyers' donations. The foundation was established in 1986 and has special consultative status with ECOSOC since 2013.<sup>1</sup>
2. L4L promotes the proper functioning of the rule of law through a free and independent exercise of the legal profession, in conformity with international law, including but not limited to the International Covenant on Civil and Political Rights (ICCPR) and the Basic Principles on the Role of Lawyers of the United Nations (Basic Principles).<sup>2</sup> We do this by supporting lawyers across the world who are threatened or suppressed as a result of discharging their functions and by promoting the proper role of lawyers.<sup>3</sup>
3. L4L wishes to provide its views to the Human Rights Committee, in advance of the preparation of the list of issues for the Periodic Report of the Russian Federation.

## II Executive Summary

### *Issues*

4. This submission outlines L4L's key areas of concern about the failure of the Russian authorities 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 ICCPR.
5. It highlights, in particular, concerns in relation to the following issues:
  - (i) No effective guarantees for the functioning of lawyers:
    - a. increasing harassment and intimidation of lawyers and their family members,
    - b. attacks on lawyers, including killings (Articles 6,7 and 14)
    - c. abuse of disciplinary proceedings against lawyers (Article 14)
    - d. lack of protection against harassment and attacks on lawyers (Articles 6,7, 14)
  - (ii) Impunity for harassment of and attacks on lawyers (Articles 6,7 and 14).

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<sup>1</sup> For more information visit our website: <http://www.advocatenvooradvocaten.nl/about-us/>

<sup>2</sup> 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.

<sup>3</sup> For more information visit our website: <http://www.advocatenvooradvocaten.nl/what-we-do/>

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*Recommendations*

6. **The Human Rights Committee should address as a matter of priority the harassment of lawyers and attempts to impede or interfere with their defence of clients, immediately impacting the right to effective legal representation as enshrined in Article 14 of the ICCPR.**
7. **The Human Rights Committee should address as a matter of priority the lack of effective measures, especially in practice, to protect lawyers whose security is threatened due to their professional activities.**
8. **The Human Rights Committee should address the lack of effective investigations into the threats against, attacks on and killings of lawyers in relation to their professional activities. The impunity of these acts has an immediate negative effect on the right to effective legal representation as enshrined in Article 14 of the ICCPR.**

### III **Effective mechanisms for the protection of human rights**

9. 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 ICCPR.
10. In its task of promoting and ensuring the proper role of lawyers, the Russian government should respect and take into account the Basic Principles within the framework of its national legislation and practice. Adherence to the Basic Principles is considered a fundamental precondition to fulfilling the requirement that all persons have effective access to independent legal assistance.<sup>4</sup>
11. In its concluding observations of 24 November 2009, the Human Rights Committee urged the Russian Federation to take effective measures to protect lawyers whose lives are under threat due to their professional activities<sup>5</sup> and to refrain from taking measures that constitute harassment or persecution of lawyers and unnecessarily interfere with their defence of clients.<sup>6</sup>
12. In response to the first of the abovementioned recommendations, the Russian government stated that the laws governing the legal profession in the Russian Federation contain principles guaranteeing the independence and the protection of lawyers.

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<sup>4</sup> Basic Principles on the Role of Lawyers, Preamble and paragraph 8 in particular.

<sup>5</sup> Concluding observations of the Human Rights Committee regarding the Russian Federation of 24 November 2009, CCPR/C/RUS/CO/6, recommendation 14, paragraph 1 (d), p 6.

<sup>6</sup> Idem, recommendation 22, p. 10.

13. However, reports gathered by L4L and information that we received from lawyers in the Russian Federation, demonstrate that there is a gap between the laws and their implementation and that the Russian authorities do not always uphold the necessary guarantees for the proper functioning of the legal profession in practice. As a consequence, lawyers encounter difficulties in carrying out their profession independently, immediately impacting the right to effective legal representation as enshrined in Article 14 of the ICCPR.

#### IV No effective guarantees for the functioning of lawyers

14. L4L has long been concerned at attempts to harass and disrupt the work of lawyers in Russia who act as human rights defenders or represent persons perceived to be opponents of the Russian authorities.<sup>7</sup>

15. According to the information L4L received, lawyers in Russia face threats, intimidation, including searches of their offices, confiscation of sensitive documents and overt surveillance, (physical) attacks, groundless prosecutions and disciplinary proceedings, and in the gravest cases murder.<sup>8</sup> Especially lawyers in the North Caucasus are subject of threats and pressure from law enforcement and justice system officials.<sup>9</sup> Where lawyers had the courage to issue complaints about acts of harassment by those officials, they had themselves faced criminal proceedings as a result.

16. This is illustrated by the following cases:

##### Omar Saidmagomedov

On 20 January 2012, lawyer Omar Saidmagomedov and his cousin were killed by security officials in a street of Makhachkala. Omar Saidmagomedov was working for Kavkaz (advokatskaya kollegiya 'Kavkaz'), a law firm known for defending persons accused of membership of armed groups. Lawyers from Kavkaz repeatedly alleged that law enforcement agencies fabricated criminal evidence and used torture in relation to their clients. For years, lawyers of this firm have been receiving threats in connection with their professional activities and facing acts of harassment by members of the authorities. Konstantin Mudunov, Saidmagomedov's colleague, survived an attempt on his life on 19 November 2008.

<sup>7</sup> <http://www.advocatenvooradvocaten.nl/countries/russianfederation/>

<sup>8</sup> See also Gabriela Knaul, *Preliminary observations on the official visit to the Russian Federation by the Special Rapporteur on the independence of judges and lawyers*, 25 April 2013, at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13264&LangID=E>

<sup>9</sup> See also 'Confronting the circle of injustice. Threats and pressure faced by lawyers in the North Caucasus', Amnesty International, 2013 at <http://www.amnesty.org/en/library/info/EUR46/003/2013/en>

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The authorities reported the murder of Saidmagomedov and his cousin as a killing of two members of an armed group, although there were allegedly strong allegations that Saigmagomedov was targeted in connection with his work and extra judicially executed. According to our information, these allegations have never been effectively investigated.

Saidmagomedov's colleagues requested a parallel investigation to ensure that the authorities impartially investigated his death, but this led instead to themselves being harassed by investigation officials.<sup>10</sup>

### **Magamed Abubakarov**

Magamed Abubakarov is an ethnic Chechen who settled as a lawyer in Grozny (Chechnya) in 2004. Abubakarov specifically works on politically sensitive cases. He has been defending several suspects of high Islamic-political profile since 2007 in Russia's first mass criminal trial in Nalchik, the capital of Kabardino-Balkaria (a province of the Northern Caucasus region). Amongst his clients is Rasul Kudayev, one of seven Russian nationals to be released from Guantanamo Bay in 2004, imprisoned and subjected to torture in Russia after his return. Working on the Nalchik case Abubakarov began receiving threats and in 2011, the human rights organization Memorial he is associated with was forced to remove him from the case for his personal safety. In the same year, Abubakarov was hit by a car in an 'accident', shattering the bones in one of his legs and affecting his nervous system. Abubakarov had to rehabilitate for a year, and still walks with a cane. Authorities refused to investigate the case. Abubakarov was already forced to leave Russia temporarily twice. He also stayed in The Hague for three months as part of the Shelter City Initiative, a programme of Justitia et Pax which assists human rights defenders under great pressure.

Three weeks after Abubakarov's return in January 2013, he received threats again which he reported to the police. We understand that the police investigation is without result so far.<sup>11</sup>

### **Sapiyat Magomedova**

Sapiyat Magomedova is a criminal lawyer known for her work on cases involving human rights violations allegedly committed by members by law enforcement agencies in Dagestan. In July 2010, she launched an official complaint against members of police for beating and forcibly removing her from Khasavyurt town police station on 17 June 2010 where she went to visit her client. The police launched a counter-claim alleging that she had attacked and publicly insulted them. According

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<sup>10</sup> <http://www.advocatenvooradvocaten.nl/8202/russia-lawyer-from-dagestan-killed/>

<sup>11</sup> <http://www.advocatenvooradvocaten.nl/lawyers/magamed-abubakarov/> see also:

<http://www.advocatenvooradvocaten.nl/7954/magamed-abubakarov-ontvangt-lawyers-for-lawyers-award/>

to Magomedova, investigators repeatedly tried to pressure her into withdrawing her complaint against the police, and threatened that she would face criminal charges herself. After months of flagrantly slow investigation into Magomedova's allegations, her alleged assailants were finally charged with abuse of authority on 15 July 2011. However, following her repeated and firm refusal to withdraw her complaint, on 27 July Magomedova herself was charged with two criminal offences, the use of violence in relation to representatives of state authority and publicly insulting them while on duty. On 14 March 2012, Magomedova received notification stating the case involving the Khasavyurt Police who beat her on 17 June 2010 had been closed as had the case in which she stood accused of using violence against the police officers.

### SAPIYAT MAGOMEDOVA AND MUSA SUSLANOV

In June 2013, the lawyers Sapiyat Magomedova and Musa Suslanov took up a high-profile case in which they are representing the families of five men killed in March 2012. In connection to this case they have since received threats of physical violence, arson attacks and bombing of the building where they work if they do not halt their work on behalf of the victims of the case. Magomedova and Suslanov have submitted official complaints to the authorities asking that the threats be investigated. Only in September 2013, an investigation into the threats was started by the Russian authorities.<sup>12</sup>

17. L4L also received information on cases where investigators, prosecutors and sometimes judges issued complaints about lawyers with their respective Bar Associations for reasons that appear more related to the type of cases they are working on rather than genuine infringement of the rules or professional standards. Lawyers may be impacted heavily by such complaints because they may lose their license to practice law as a result.

In one case the Investigative Committee filed a complaint against a lawyer representing a detainee in a high profile case. The accusation was made that the lawyer had attempted to stall the pre-trial investigation by failing to attend investigative proceedings and taking too much time to familiarize himself with the 64 volumes of the criminal case against his client. According to the Investigative Committee the lawyer had violated his client's right to an effective legal representation.

The lawyer denied the allegations and argued that the Investigative Committee had distorted the facts. According to the lawyer, he did attend all proceedings and

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<sup>12</sup> <http://www.advocatenvooradvocaten.nl/actions/sapiyat-magomedova-and-musa-suslanov/>

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finished familiarizing himself with the case within the designated timeframe. This was also confirmed by his client.<sup>13</sup>

**The Human Rights Committee should address as a matter of priority the harassment of lawyers and attempts to impede or interfere with their defence of clients, immediately impacting the right to effective legal representation as enshrined in Article 14 of the ICCPR.**

**The Human Rights Committee should address as a matter of priority the lack of effective measures, especially in practice, to protect lawyers whose security is threatened due to their professional activities.**

#### **V Impunity for harassment of and attacks on lawyers**

18. As becomes clear from the cases mentioned above, the Russian authorities in these cases concerning the functioning of lawyers in practice, have failed to carry out prompt, thorough, impartial and transparent investigations into the threats, attacks and killings, so as to identify all those responsible and bring them to justice. Impunity of such acts of persecution has a “chilling effect” on other lawyers, negatively influencing the quality of their work, potentially forcing them to renounce to certain kinds of cases, and working in the fear that they or their families may be at risk because of their work.<sup>14</sup> Obviously this negatively impacts the 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 ICCPR.

**The Human Rights Committee should address the lack of effective investigations into the threats against, attacks on and killings of lawyers in relation to their work as lawyers. The impunity of these acts has an immediate negative effect on the right to effective legal representation as enshrined in Article 14 of the ICCPR.**

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<sup>13</sup> <http://www.advocatenvooradvocaten.nl/8275/russian-federation-lawyer-keeps-his-license-after-successful-campaign/>

<sup>14</sup> See also Gabriela Knaul, *Preliminary observations on the official visit to the Russian Federation by the Special Rapporteur on the independence of judges and lawyers*, 25 April 2013, at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13264&LangID=E>