

**Mandates of the Special Rapporteur on the situation of human rights in the Russian Federation
and the Special Rapporteur on the independence of judges and lawyers**

Ref.: OL RUS 1/2024
(Please use this reference in your reply)

14 March 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in the Russian Federation and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 54/23 and 53/12.

In this connection, we would like to refer to draft legislation that has been brought to our attention, which could interfere with the legal profession and impact the right to a fair trial and the independence of lawyers in Russia. Namely, we would like to bring your Excellency's Government attention to the proposed amendments to the law "On Advocacy and the Legal Profession", referenced as draft Federal Law No. 301952-8, currently pending before the State Duma of the Federal Assembly of the Russian Federation.

An assessment of the 2002 Federal Law "On Advocacy and the Bar in the Russian Federation" and its implementation has been carried out and shared with your Excellency's Government by the mandate of the United Nations Special Rapporteur on the independence of judges and lawyers, in the 2008 country visit report (A/HRC/11/41/Add.2) and the 2013 follow-up report (A/HRC/26/32/Add.1).

Through this letter, we do not wish to make an exhaustive analysis of the amendments to this law that are currently pending before the legislator. Rather, in our assessment, we will focus on those innovations that would affect the capacity of bar associations to defend the interests of their members, limit the capacity of lawyers to exercise their profession independently, and undermine the due process guarantees of the right to a fair trial. The analysis is based on your Excellency's Government's international legal obligations.

According to information received:

The legal profession in Russia is regulated by the Federal Law No.63-FZ "On Advocacy and the Legal Profession" of 31 May 2002. This legislation establishes the Russian bar, or "advokatura", as a self-governing, independent entity operating at both federal and regional levels. Its primary objective is to provide access to qualified legal assistance and professional defense services, including free services in certain situations as stipulated by the Russian Constitution and the Criminal Procedure Code.

On 11 April 2023, the State Duma of the Federal Assembly of the Russian Federation conducted a first reading and approved amendments to the law "On Advocacy and the Legal Profession", referenced as draft Federal Law No. 301952-8. Subsequently, the Ministry of Justice of the Russian Federation expanded this draft with additional provisions for disqualifying lawyers based on their relocation abroad for permanent residence or for a period exceeding

one year. On 11 December 2023, the Russian Government endorsed the Ministry of Justice's recommendations regarding these amendments. Federal Law No. 301952-8 is slated for review by the State Duma of the Federal Assembly of the Russian Federation before its adoption.

The draft law aims to expand the Ministry of Justice of the Russian Federation's oversight of the legal profession through centralized administrative control, diminishing the autonomy of bar associations within the Russian Federation. This includes the creation of a Unified State Register of Lawyers within the Russian Federation, which would centralize detailed information about all lawyers, including their status, accreditation, and membership in regional bar associations, as well as information on those who have failed the qualification examination. According to the draft, only those listed in the Unified Register would be authorized to practice law.

Furthermore, the Ministry of Justice would gain the authority to approve procedures for conducting qualification exams and evaluating candidates for lawyer status, as well as the power to request regional bar associations to impose disciplinary sanctions on lawyers, a right currently held only by territorial branches of the Ministry of Justice.

The draft law also proposes changes in the composition of regional qualification commissions by increasing their membership and altering the majority held by lawyers, alongside revising voting procedures to grant the chairperson of the commission a decisive vote in tie situations. It introduces a limit on the validity of a lawyer's license to 15 years, with renewal options, and sets forth conditions under which a lawyer must return their license, including suspension, termination of status, or prolonged residence abroad with specified exceptions.

The proposed draft legislation changes the conditions under which lawyers could lose their license by expanding the lawyer's responsibilities in the performance of his professional duties beyond the client-lawyer relationship to include "other stakeholders or interests" that are not specifically named. This departs from the established principle establishing the lawyer's obligations are to their client and to the administration of justice.

New grounds for the termination of a lawyer's status have been introduced by the proposed draft legislation, namely permanent residence or absence from the country for a period of more than one year. In addition, the draft law allows for the termination of a lawyer's status if during the transfer from one bar association to another bar association the administrative staff are slow or ineffective in processing the lawyer's transition documents.

Moreover, the amendments seek to establish the Comprehensive Information System of the Bar of Russia, aiming to consolidate extensive data about lawyers and their clients, including attorney-client privileged information.

Lastly, the draft law intends to restrict lawyers' rights regarding legal inquiries by prohibiting agreements for legal assistance solely for conducting inquiries and granting authorities broad discretion to refuse cooperation on vaguely defined grounds.

The proposed amendments to the legal framework for the legal profession in Russia, as outlined above, along with the lack of public consultations, seem to be at odds with your Excellency's Government international human rights obligations as set under the International Covenant on Civil and Political Rights, ratified by the Russian Federation on 16 October 1973.

Taking this opportunity, we would like to draw the attention of your Excellency's Government to inconsistencies with international standards concerning the right to a fair trial, privacy, freedom of expression, and the independence of the judiciary and the legal profession.

Article 14 of the International Covenant on Civil and Political Rights provides that "everyone has the right to a fair and public hearing by an independent and impartial tribunal established by law." Your country's accession to this treaty means that it must, among other things, adopt all appropriate measures to guarantee the independence of the judiciary. In addition, article 14 of the International Covenant on Civil and Political Rights provides a set of procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, a counsel of their own choosing.

In its General Comment No. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14 (3) (b) requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. They should also be able "to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter" (CCPR/C/GC/32, para. 34).

These standards provide that the legal profession and its free exercise are an essential element of the rule of law, the protection of human rights, and the functioning of an independent judicial system.

Further, the free exercise of the legal profession contributes to ensuring access to justice, oversight of state power, protection of due process and judicial guarantees. According to international standards, States must guarantee that those who practice law can do so free from intimidation, obstacles, harassment or interference. States must put in place all appropriate measures to ensure that lawyers are not subject to, or threatened with, prosecution or any administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

We wish to recall that without the protection provided by an independent bar association, lawyers are extremely vulnerable to attack and to restrictions on their independence, especially from State authorities.

We would like to bring the following provisions to your attention:

Free Exercise of the Legal Profession

As described above, the free exercise of the legal profession is one of the cornerstones of the right to a fair trial, as enshrined in article 14 of the International Covenant on Civil and Political Rights.

The establishment of the Unified State Register of Lawyers envisages centralized control and transfer of jurisdiction from the Bar to the Ministry of Justice, which could affect the free exercise of the legal profession, potentially making lawyers more susceptible to governmental pressure and interference.

Moreover, making the lawyer responsible to “other stakeholders or interests” in the performance of their professional duties, which could potentially conflict with the lawyer’s responsibility to act in the best interests of their client and the administration of justice, raises questions about accountability and the independence of the legal profession.

The Right to Privacy

The creation of the Comprehensive Information System of the Bar of Russia, which would contain extensive data about lawyers and their clients, would be at odds with article 17 of the International Covenant on Civil and Political Rights, which protects against arbitrary or unlawful interference with one’s privacy.

The exposure of confidential information to state bodies could also be contrary to article 14 of the International Covenant on Civil and Political Rights. In its general comment no. 32 (2007), the Human Rights Committee explained that lawyers “should 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 CCPR/C/GC/32, para. 34).

The principle of client-lawyer confidentiality is clearly established under the Basic Principles on the Role of Lawyers, which represent the most comprehensive international normative framework aimed at safeguarding the right of access to legal assistance and the independent functioning of the legal profession.

Restrictions on the Legal Profession’s Practice

The limitations on lawyers’ rights to engage in legal inquiries and the broad discretion granted to authorities to refuse cooperation with such inquiries could impede lawyers’ ability to effectively represent their clients. This may infringe upon the principle of equality of arms, which is part of the right to a fair and public hearing in the determination of one’s rights and obligations, as stated in article 14 of International Covenant on Civil and Political Rights.

Disciplinary Sanctions and Control over Qualification Exams

Granting the Ministry of Justice authority to request disciplinary sanctions against lawyers and to control the procedure for conducting qualification exams could further compromise the independence of the legal profession. Such measures could be

used to target lawyers who are involved in sensitive or politically charged cases, thereby chilling freedom of expression and the right to seek and impart information as guaranteed by article 19 of the International Covenant on Civil and Political Rights.

Potential for Arbitrary License Limitations

The proposal to limit the validity of a lawyer's license to 15 years with the possibility of renewal, along with conditions that could lead to the termination of a lawyer's status for reasons such as prolonged residence abroad, may introduce arbitrariness in the granting of licences for the legal profession. This could restrict individuals' access to legal representation of their choice, undermining the principles of fairness and equality before the law. Such conditions could disproportionately affect exiled professionals, potentially stripping them of their ability to practice law if they cannot return to renew their license or if their absence is deemed too prolonged.

The provisions described above may in practice restrict lawyers from exercising their professional duties in defending the rights of clients in the legitimate exercise of their profession. These limits may also be a deterrent to lawyers considering taking on certain sensitive cases, in particular those related to human rights defenders or individuals whose cases are deemed to relate to national security.

The application of these provisions would provide the Russian authorities with the power to deny, temporarily or indefinitely, the right to practice to lawyers without reasonable and effective avenues for appeal.

It is our assessment that these provisions would allow for undue interference with the freedom of lawyers to exercise their legal profession, and thus may be incompatible with the right to a fair trial and equality before the law by restricting lawyers from fulfilling their legal duties to their clients and creating a chilling environment for the handling of certain kinds of cases.

The implementation of these provisions may also have an impact on the right to a fair trial for defendants in specific cases. In addition to guaranteeing access to counsel, international standards on the right to a fair trial also provide that accused persons must have adequate time and facilities for the preparation of their defense and must be able to communicate with counsel of their choice. Clients, especially human rights defenders and those accused of crimes under national security legislation, may be deprived of independent legal representation if lawyers face consequences for representing them.

Additionally, the implementation of these measures thus risks leaving lawyers without a livelihood. Moreover, the termination of a lawyer's status if, during the transfer from one bar association to another, the administrative staff is slow or ineffective in processing the lawyer's transition documents raises concerns about the accountability of administrative processes affecting legal practitioners' careers, and potentially punishing lawyers for administrative inefficiencies beyond their control.

These challenges highlight the need for any reforms to the legal profession to be carefully considered and implemented in a manner that respects and upholds international human rights standards, the principles of independence of the judiciary, and the rights to, privacy, freedom of expression, and to a fair trial.

We recommend review and reconsideration of the draft Federal Law No. 301952-8 to ensure that the law complies with Russia's international human rights obligation. Russia must ensure that any changes to the legal framework governing the legal profession do not infringe upon these fundamental human rights and freedoms. We stand ready to engage in dialogue with Your Excellency's government on this very important matter.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all matters brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned assessment of the draft Federal Law No. 301952-8.
2. Please explain how the legislation is compatible with Your Excellency's Government's obligations under article 14, 17 and 19 of the International Covenant on Civil and Political Rights and how Your Excellency's government may remediate the inconsistencies with international human rights standards enshrined in the draft Federal Law No. 301952-8.
3. Please provide information on the measures taken to ensure the independence of the legal profession, lawyers' ability to effectively represent their clients, and protect lawyers from harassment and intimidation in the Russian Federation, in line with obligations under the International Covenant on Civil and Political Rights.
4. Please provide information regarding the measures taken to ensure access to guarantees of fair trial, including the right to freely choose the lawyer, client-lawyer confidentiality and equality of arms.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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