



29 January 2024

Input to the UN Special Rapporteur on the situation of human rights in Russia with the request of urgent intervention letter and the UN Special Rapporteur on the independence of judges and lawyers for her thematic report to the 56th session of the Human Rights Council

Submission by "Initiative 2018", in cooperation with "Centre de la Protection Internationale" with the support of "Eurasian Advocacy" international law journal

NOTE: This input is confidential for security reasons and should not be published in the public domain. It can be used in the thematic report in a depersonalised manner.

Initiative 2018 was created in 2018 by lawyers from 54 regions of the Russian Federation and is a public professional organization of lawyers (advocates) and jurists, carrying out its activities without forming a legal entity. Since its creation, its members have conducted research and organized public events (round tables, conferences and open discussions), collecting and developing proposals aimed to improve legislation on the legal profession and advocacy in the Russian Federation; bring corporate standards and the internal structure of the legal profession and the system of providing qualified legal assistance in line with international standards; protect the rights of lawyers; and to prepare and publish resolutions and petitions on these issues.¹

The chairperson of the board of Initiative 2018, the lawyer Dmitry Talantov, is persecuted by the authorities for his social and professional activities and is held in pre-trial detention since 28 June 2022, facing charges for the alleged public dissemination of "deliberately false information" about the actions of the Russian Armed Forces.² He has been recognized by human rights organizations as a political prisoner and prisoner of conscience.³

Centre de la Protection Internationale is an independent non-governmental, non-profit human rights international organization registered in Strasbourg, France since 2006.⁴ The Centre has affiliated organizations in Russia, Ukraine, Armenia and Georgia, and affiliation with International Commission of Jurists (ICJ).

"Eurasian Advocacy" is an international scientific and practical law journal and an open information and analytical platform for the exchange of views on the organization and activities of the advocacy and current problems of the developments of the legal profession, law and practice⁵.

This input intends to address the following key questions:

- **Have lawyers played an active role in safeguarding democracy and upholding fundamental democratic rights in your country?**
- **Are lawyers facing any risks, obstacles, or challenges in your country when fulfilling this role?**
- **Are there any policies or institutional arrangements in place to limit the role of lawyers or the bar association in safeguarding democracy?**

¹ <https://www.facebook.com/groups/i2018>; <https://t.me/initiative2018>;
https://www.youtube.com/channel/UC-eNEW_hHYPW90d1VQh1K0A ;
https://zakon.ru/blog/2023/12/20/obraschenie_pravleniya_mr00_iniciativa_2018v_organy_organizacii_obedinennyh_nacijk_mezhdu_narodnym_as?ysclid=lrzefvui69118598859 ;

² <https://www.frontlinedefenders.org/en/case/pre-trial-detention-human-rights-lawyer-dmitry-talantov-extended>

³ <https://memopzk.org/figurant/talantov-dmitrij-nikolaevich/> <https://www.amnesty.org/en/documents/eur46/5801/2022/en/>

⁴ <https://cpingo.org/about-us/>

⁵ <http://www.eurasian-advocacy.ru>

The present submission is based on the outcomes of monitoring, research and public events conducted by Initiative 2018 and Centre de la Protection Internationale in the period 2018 to 2023.

Introduction

Following his mission to the Russian Federation in 2008, the UN Special Rapporteur on the independence of judges and lawyers, Leandro Despouy noted in his report (A/HRC/11/41/Add.2), that the 2002 Federal Law "On Advocacy and the Bar in the Russian Federation" had created independent and self-regulatory bodies of the legal profession. Under this law, bar chambers were established in each of the regions, with the Federal Bar (Federalnaya palata advokatov Rossijskoj Federacii) set up as an umbrella organization.

However, developments in over twenty years since the adoption of the law show that the hope for the democratization of lawyers' self-government bodies and for accountability and transparency of their activities has not materialised.

According to international standards, set out, first of all, in the UN Basic Principles on the Role of Lawyers and the Universal Declaration on the Independence of Justice ("Singhvi Declaration"), bar associations should be independent, self-regulated, provided for by law and have a general mandate to protect the independence of the legal profession and the interests of its representatives. Based on its research and monitoring "Initiative 2018" concludes that the structure, functions and practice of the Federal Bar and the Chambers do not meet international standards. The Federal Bar is not - and cannot be - a professional association of lawyers, since lawyers are not members of this organization, and it is not accountable to lawyers.

Today we are seeing a significant increase in a longstanding pattern of attacks against lawyers. The number of cases of harassment and persecution are growing, including arbitrary criminal and disciplinary charges, and the disbarment and criminal prosecution of lawyers, which requires an urgent response, including from the international community. Lawyers' rights are being violated - to professional independence both from the state and from the corporate bodies of the legal profession; to carry out their professional activities without threats, obstacles, intimidation, unjustified restrictions and interference; to the protection of lawyer-client privilege, to physical integrity, and to the freedoms of association, expression, assembly and movement.

Successive amendments to the 2002 law have increasingly subordinated the legal profession to the state authorities. Since 2002, the leadership of the Federal Bar and the Chambers have integrated a number of significant changes into the Code of Professional Ethics of Lawyers and accepted the amendments to the Law, which included, inter alia, the transfer of the register of lawyers under the Ministry of Justice, and the constant expansion of the representation of state bodies in the Federal Bar and the Chambers. The bar associations' unconditional agreeing to the increasing interference of the state in the independence of the legal community has led to a protracted, deep and systemic crisis in the legal profession.

1. Authoritarianism, suppression of democracy, intensification of state influence, censorship

The formation of lawyers' self-government bodies takes place on the basis of non-alternative, indirect elections. Presidents of the Chambers are not directly elected by lawyers, but by members of the Council of the Chamber from among its members, through a "rotation" system, in which the same persons, take part in the structures of the chambers, and often lead them for decades. Only when the President is "elected" for a third term can the delegates to the Conference of the Chamber nominate an alternative candidate, and then only from among the persons who are already members of the Council. The composition of the Council is decided by the President, and not through direct election by the lawyers, but elected on the basis of the principles of favoritism and nepotism. Formally, the delegates of the Conference have the right to nominate alternative candidates from among

themselves, but the holding of a preferential vote obviously cannot lead to a large-scale renewal of the Council. The Council of the Federal Bar elects the President from among its own members, and the procedures for the formation of the Federal Bar is similar to the procedures of the Chambers. The supreme body of the Federal Bar, the All-Russian Congress of Lawyers, brings together a limited circle of practically irremovable presidents of the Chambers. As a result, several dozens of delegates to the Congress, under the strict control of members of the Council of the Federal Bar, determine the fate of more than 80,000 lawyers.

As concerns the right to freedom of association, now it is practically impossible to create new independent public and professional associations of lawyers, under the pretext that this would duplicate the functions of the Federal Bar and Chambers. At the same time, existing independent lawyers' associations have been either closed down or placed under the control of the Federal Bar. As a result, a majority of lawyers are excluded from participating in setting the agenda of the profession.

The media that used to belong to public associations of lawyers were placed under the control of the Federal Bar, which exercises censorship and a ban on publications by certain authors. Propaganda was organized, which imposes the official position of the Federal Bar and the Chambers, self-promotes its leaders and persons close to them, and acts as well-functioning mechanism to discredit undesirable lawyers and their associations. The official position of the Federal Bar is further reinforced by the support of so-called "advisers of the Federal Bar" and organizations of "young lawyers". They also help the Federal Bar in persecuting of lawyers.

Heads of the bodies of the Federal Bar and the Chambers are co-opted for positions in state advisory bodies and associations dependent on the state (such as the Public Chamber of the Russian Federation, the Public Council under the Ministry of Internal Affairs, the Association of Lawyers of Russia) and receive state awards. Having given up the independence of the legal profession and submitted to will of the state, they condone violations of human rights and the rule of law, fail to take action to effectively protect the rights of lawyers, prosecute them at the request of the state bodies, and initiate disciplinary proceedings against them.

2. Corruption, financial abuses and discriminatory practices

Such practices include:

- Corruption actions against candidates seeking admission to the Bar;
- Non-transparent and groundless spending of funds including disproportionately high remuneration of the heads of the Federal Bar and Chambers, uncontrolled rental payments to persons affiliated with them, excessive expenses for trips, events, receptions and award ceremonies, financing for the "special military operation", etc.), while at the same time public defence lawyers receive minimal remunerations; insurmountable obstacles have been created for lawyers to obtain information about the financial activities of the Federal Bar and the Chambers.
- Discriminatory restrictions for applicants to the bar, based on property and resources, age, "residency" and in some regions, on their legal education;
- Compulsory paid subscriptions to media affiliated with the leadership of the Federal Bar.

3. Repressive rules and disciplinary persecution of lawyers

The Code of Professional Ethics contains norms that are unclear in terms of content and application, some of which going beyond the scope of the lawyer's professional activities. Moreover, the Code is used as a means to sanction criticism of the bar associations and to restrict freedom of expression by establishing liability for "encroachment on the authority of the legal profession". It is also forbidden for lawyers to appeal to state bodies regarding crimes and abuses by the heads of the Federal Bar and the Chambers, under the pretext of allegedly violating unwritten "norms of ethics and traditions".

A lawyer's license can be revoked not only upon the complaint of the client, but also at the personal initiative of the leadership of Federal Bar and the Chambers. More and more often, lawyers are disbarred at the request of the Ministry of Justice, the actual initiators of which are law enforcement agencies who act as opponents in court procedures.

Provisions have been introduced that exclude the objective consideration of a disciplinary case against a lawyer by an impartial body in accordance with the right to a fair trial. In particular, instead of the presumption of "good faith of a lawyer", the rules build on the "presumption of good faith of the Chamber" considering a disciplinary case. Thus, the exercise of the right to challenge is prohibited, the case of a lawyer who is absent for a valid reason is allowed to be considered, a re-trial is allowed in the event that the court cancels its earlier decision, making it difficult to appeal against the termination of the status of a lawyer in court. It is however possible to appeal against a decision on disbarment to the Commission on Ethics and Standards of the Federal Bar, through a non-transparent, non-standard and absentee procedure.

Lawyers who were disbarred following disciplinary proceedings are long-term banned from legal representation. The leadership of the Federal Bar and the Chambers are also seeking to impose a ban on legal representation for those lawyers who do not have a status of "advocate", forcing them to join the bar.

The leadership of the Federal Bar and the Chambers abstains from supporting preventive actions initiated by lawyers aimed at protecting the rights of lawyers persecuted for their professional activities. The comprehensive system of protection of the professional rights of lawyers has been replaced by self-defence of lawyers and the selective defence by the Bar of individual lawyers, while other lawyers are not effectively assisted.

As mentioned above, the leadership of the Federal Bar and the Chambers have supported and/or condoned the development of legislation to the detriment of the legal profession and of the protection of lawyers, and continue to do so.

4. Recent legislative developments detrimental to the legal profession

Legislative changes in 2023 included amendments to the Federal Law on State Secrets and to the 2002 Federal Law "On Advocacy and the Bar in the Russian Federation", which further undermine the independence of lawyers and the legal profession, without any counteraction from the Federal Bar.

Legislation on state secrets

In the course of his professional duties in defending or representing a case, a lawyer may be compelled to obtain access to State secrets. According to the provisions of Federal Law No. 312862-8⁶, if a lawyer is granted such access, he/she is obliged to deposit his/her foreign passport with the issuing authority, for a period determined at the discretion of the official of the state body, after which the lawyer has the right to travel outside the Russian Federation only with the permission of the state body. If the lawyer has close relatives living abroad or having residence permits in foreign countries or foreign citizenship, or if he/she has been included in the register of "foreign agents", the lawyer is denied access to state secrets, which then means losing the possibility to work on such a case and the accused losing his/her right to have a lawyer of his/her choice. These restrictions can be imposed by the investigation or the court in any case at their discretion.

The Federal Bar ignored the reasoned objections made by lawyers to the proposed amendments and did not oppose the adoption of Federal Law No. 312862-8. If on 31 January 2024 this law enters into force, the rights of lawyers to freely choose their cases, to freedom of movement,

⁶ <http://publication.pravo.gov.ru/document/0001202308040022?index=1>

and the right of a person to receive qualified legal assistance by concluding an agreement with a lawyer of their choice will be infringed, and the independence of lawyers and the legal profession in general will be undermined.

Amendments to the legislation on the Bar

The Federal Bar was closely involved with the Ministry of Justice in a totally untransparent manner, in the development of the amendments to the Law, which are currently under consideration in the State Duma (draft Federal Law No. 301952-8⁷). Despite the fact that the changes apply to all lawyers and their clients, they were not submitted for wide public discussion. The conclusions of the expert examination by the Federal Bar have not been made public to date, which directly contradicts the provisions of article 37, para. 3.7 of the Law.

Moreover, the Federal Bar ignored the critical responses and comments by a number of Chambers (Moscow, St. Petersburg, Novosibirsk and Nizhny Novgorod) to the draft law, as well as our expert opinion and an open appeal signed by more than a thousand lawyers and human rights defenders.

The draft law contains provision that threaten the loss of attorney-client privilege, and the disclosure of personal data and information about the private life of both lawyers and their clients.

Notably, it introduces the following provisions:

It makes the status of a lawyer dependent on the "performance of duties" not to the client, as it has always been, but to unnamed interested persons;

The use of a database "Integrated Information System of the Bar of Russia" created by the Federal Bar, which contains a significant amount of data about the lawyer, his/her relatives and clients. This database, which has already been implemented, leads to excessive control over the legal profession and lawyers by the Federal Bar and Chambers and state bodies, including law enforcement. The database is not protected from information leaks, including within the framework of operational search activities;

Provisions establishing admission to the bar depending not on successfully passing the examination and taking the oath, but on the decision of the Ministry of Justice to include the lawyer in the Unified State Register. It is also planned to transfer the maintenance of this register to the Federal Ministry of Justice, in violation of the principles of independence and self-management of the legal profession;

Furthermore, a lawyer could be disbarred in the case of omission (for example delay in presenting the documents) by a bar association's staff when the lawyer moves to another Chamber;

To establish that the regulations on the procedure for passing the qualifying examination and assessing the knowledge of applicants, as well as the procedure for changing a lawyer's membership of the bar association, have to be approved by the Ministry of Justice;

To supplement the composition of the Qualification Commission of the Chamber with a representative from the "scientific community" (additionally to the six representatives of state bodies: two from the judiciary, two from the executive and two from legislative bodies) while it is not specified what formal criteria the person must meet and how he/she would be selected;

The draft also contains other novelties that infringe on the independence of the legal profession and lawyers. These proposals were put forward by the government – and supported by the

⁷ <https://sozd.duma.gov.ru/bill/301952-8>

Federal Bar, such as revoking a lawyer's status if it is revealed that he/she had residence for a long term status or for a period of more than one year outside of the Russian Federation.

5. Conclusions and recommendations

The general negative actions and omissions of the leadership of the Federal Bar Association and the Chambers run counter to international standards and significantly complicate or make impossible the effective protection by lawyers of both their own rights and the rights and interests of their clients as protected by law.

The recommendations on the establishment of an independent professional association of lawyers, made by the UN Special Rapporteur on the independence of judges and lawyers Leandro Despouy in his 2009 report to the General Assembly (A/64/181) are deliberately ignored by the leadership of the Federal Bar and the Chambers. In such circumstances, the Federal Bar cannot be considered at the national and international level as an organization authorized to represent the interests of Russian lawyers, since it does not adhere to and does not promote the principles of democracy, the rule of law and human rights, does not uphold justice and incorruptibility, and in fact belittles the interests and needs of Russian lawyers and their rights.

Initiative 2018, as a professional organization of lawyers (advocates) and jurists practicing in the Russian Federation, Centre de la Protection Internationale and "Eurasian Advocacy" international scientific and practical law journal, make the following proposals:

- to conduct a comprehensive study of the legislation and practice of the functioning of the Russian legal profession and their compliance with generally recognized provisions of international law regarding the role and rights of lawyers;
- to conduct a comprehensive study of the activities of the Federal Bar and the regional bar associations of the Russian Federation for their compliance with recognized norms of international law regarding the role of lawyers;
- to involve the experts of our organizations when conducting research and preparing reports on the obstacles of the organization and activities of the Bar Association;
- to support the creation of a platform for strengthening the independence of the Russian legal profession and bringing its structure and legislation on advocacy and the legal profession in line with international standards;
- to prevent the adoption of the draft Federal Law No. 301952-8 and to initiate changes in the provisions of Federal Law No. 312862-8;
- to take this submission into account when preparing thematic reports within the competence of UN special procedures.



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