

# Access to Lawyers for Anti-war Protesters in the Russian Federation

Briefing paper  
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# **ACCESS TO LAWYERS FOR ANTI-WAR PROTESTERS IN THE RUSSIAN FEDERATION**

A briefing paper prepared by the International Commission of Jurists (ICJ)

June, 2022

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## Introduction

The months following the Russian Federation's military invasion in Ukraine have been marked, in Russia itself, by a wave of protests against the invasion and systematic official suppression of expressions of opposition to the invasion. The government has hastily adopted new restrictive laws limiting expression of views on the conflict, followed by immediate enforcement through thousands of mostly arbitrary arrests and criminal charges related to the protests. In many cases, those arrested have not had access to prompt and confidential legal advice, and their right to an effective defence in court has been impeded. While obstruction of the work of lawyers in defence of human rights is a long-standing problem in Russia,<sup>1</sup> the problem has become particularly acute in relation to the recent arrests of protesters. This briefing paper addresses some of the barriers to access to a lawyer, and harassment and obstruction of the work of lawyers defending protesters, which have compounded violations of human rights of protesters, violating Russia's obligations under the European Convention on Human Rights (ECHR)<sup>2</sup> and the International Covenant on Civil and Political Rights (ICCPR) as well as the rights of the lawyers themselves and international law and standards concerning the legal profession.

## Background: suppression of anti-war protests

Immediately after the military invasion of Ukraine by the Russian Federation on 24 February 2022,<sup>3</sup> anti-war protests erupted across Russia.<sup>4</sup> Some such protests were held as gatherings in larger or smaller protesting groups, while others took the form of individual protests where people would hold a sign or a sheet of paper with or in some cases without text. Regardless of their form, the protests have been met with systematic suppression by the Russian law enforcement authorities, in violation of the rights to peaceful assembly and freedom of expression. Since 24 February 2022, at least 15451 people have been detained, mostly arbitrarily<sup>5</sup>, in at least 150 cities and towns across Russia.<sup>6</sup>

Many protesters have been detained and charged under the so-called "protest" provisions of the Code of Administrative Offenses (CAO) of the Russian Federation. These include the articles on:

- the rules for participating in a demonstration (CAO Article 20.2);
- the organization of a mass simultaneous gathering or movement of citizens in a public place (CAO Article 20.2.2),

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<sup>1</sup> See ICJ, Towards a Stronger Legal Profession in the Russian Federation, 2015, pp.53-58 <https://www.icj.org/wp-content/uploads/2015/11/Russia-Towards-a-Stronger-Legal-Profession-Publication-2015-Eng.pdf>

<sup>2</sup> The Russian Federation has now ceased to be a Member of the Council of Europe (Resolution CM/Res(2022)2), but remains bound by obligations under the ECHR in respect of acts or omissions taking place until 16 September 2022.

<sup>3</sup> See ICJ, "Ukraine: International law must be respected," <https://www.icj.org/ukraine-international-law-must-be-respected/>, 24 February 2022

<sup>4</sup> *Ibid.*

<sup>5</sup> Russia: UN experts alarmed by 'choking' information clampdown, <https://www.ohchr.org/en/press-releases/2022/03/russia-un-experts-alarmed-choking-information-clampdown>.

<sup>6</sup> OVD-Info, "OVD-News," <https://ovdinfo.org/> (accessed 14 June 2022).

- failure to comply with the orders of police officers (CAO Article 19.3).<sup>7</sup>

Under these administrative offences, protesters can be fined up to 50,000 roubles or be placed under administrative detention for up to 15 days.<sup>8</sup>

In recent weeks, the Russian authorities have begun to rely on newly enacted amendments to the Criminal Code (CC) of the Russian Federation, which entered into force on 4 March 2022.<sup>9</sup> The violation of these provisions carry criminal, not administrative consequences. Under these amendments, protesters have been criminally charged for public dissemination of “deliberately false information” about the actions of Russian Armed Forces (CC Article 207.3). Protesters have also faced newly enacted administrative charges for committing public actions “discrediting the Russian Armed Forces” (CC Article 20.3.3), with the threat of facing the criminal counterpart to CC Article 20.3.3 for repeated violations which discredit the Russian Armed Forces (CC Article 280.3).<sup>10</sup> Those charged may face fines ranging from 100 000-3 000 000 roubles (EUR 1500 to 4500)<sup>11</sup> or 3 to 15 years in jail.<sup>12</sup>

The new provisions, because they are overbroad and vague in terms of the individual conduct that may be engaged under them, fall afoul of the principle of legality. This requires that the law has a sufficient degree of clarity and precision to enable individuals to understand which behaviour may fall under it. It also must be narrowly tailored to meet the objective of the law, ie, not overbroad, and the objective cannot be for an illegitimate purpose such as to curtail the exercise of human rights guaranteed under international law.

The provisions are also unlawful on their face, as they place impermissible limits on the exercise of fundamental freedoms protected under the ICCPR and the ECHR. These include freedom of expression (Article 19 ICCPR and Article 10 ECHR) and freedom of assembly (article 21 ICCPR and Article 11 ECHR). The laws impose impermissible restrictions on the exercise of these rights, which may only be limited when strictly necessary to meet a narrow range of legitimate public purposes, such as national security, public health and public order.<sup>13</sup> The very existence of these laws has a chilling effect on freedom of expression and assembly.

The police and the courts appear to be adopting a broad interpretation of the scope of conduct that constitutes a violation of any of these laws. For example, a court in Moscow fined protester Anna Krechetova 50,000 rubles after she was detained for holding a poster which said “Fascism will not pass.”<sup>14</sup> Reportedly, court files stated that the “content of visual agitation is clearly expressing a negative attitude towards the Armed Forces of the Russian Federation,” thus discrediting the Armed Forces and constituting a violation of CAO Article 20.3.3.<sup>15</sup> Such overbroad broad and arbitrary interpretation and applications of the law by

<sup>7</sup> The Federal Law from 4 March 2022 No. 31-F3 “On the Amendments to the Code of the Russian Federation on Administrative Offenses,” <http://publication.pravo.gov.ru/Document/View/0001202203040006> , 4 March 2022 (accessed 22 April 2022).

<sup>8</sup> *Ibid.*

<sup>9</sup> The Federal Law from 4 March 2022 No. 32-F3 “On the Amendments to the Criminal Code of the Russian Federation and Articles 31 and 151 of the Criminal Procedure Code of the Russian Federation,” <http://publication.pravo.gov.ru/Document/View/0001202203040007> , 4 March 2022 (accessed 22 April 2022).

<sup>10</sup> *Ibid.*

<sup>11</sup> As of 19.05.2022 the minimal salary in Russia is approximately EUR 200 (e.g. <https://mintrud.gov.ru/social/330>).

<sup>12</sup> *Ibid.*

<sup>13</sup> HRC, General Comment No 34, Article 19: Freedoms of opinion and expression, paras 21,33, HRC, General Comment No 37, on the right of peaceful assembly (Article 21), paras 36, 37,

<sup>14</sup> OVD-Info LIVE, Telegram Post, 23 March 2022, <https://t.me/ovdinfo/6695> (accessed 22 April 2022).

<sup>15</sup> *Ibid.*

the courts and imposition of harsh sanctions for expression of critical views concerning the Russian armed forces clearly violate Russia's international human rights law obligations in respect of freedom of expression under ECHR Article 10 and ICCPR Article 19, and where protesters are detained on these grounds, lead to arbitrary detention contrary to ECHR Article 5 and ICCPR Article 9.<sup>16</sup> They may also lead to violations of freedom of assembly as protected under ECHR Article 11 and ICCPR Article 21.<sup>17</sup>

## The role of lawyers

Under international human rights law and standards, the importance of lawyers in protecting human rights and the contribution they make to maintaining the rule of law and the fair administration of justice is well recognised.<sup>18</sup> Amongst other things, international human rights law protects the right of detainees to access to a lawyer both in trial and pre-charge and pre-trial phases,<sup>19</sup> and establishes the right to an effective defence, lawyer-client confidentiality and equal access of lawyers to documents and witnesses, as elements of the right to a fair trial.<sup>20</sup> Access to lawyers is also essential in ensuring the right to an effective remedy for human rights violations, protected under international law including the ICCPR (article 2(3)) and the ECHR (article 13).

The European Court of Human Rights has stressed that

“...the fairness of proceedings requires that an accused be able to obtain the whole range of services specifically associated with legal assistance. In this regard, counsel has to be able to secure without restriction the fundamental aspects of that person's defence: discussion of the case, organization of the defence, collection of evidence

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<sup>16</sup> ECHR, *supra* note 8 at Articles 5, 10; ICCPR, *supra* note 8 at Articles 9, 19.

<sup>17</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 213 U.N.T.S. 221, 4 November 1950, Articles 10, 11; International Covenant on Civil and Political Rights (ICCPR), 999 U.N.T.S. 171, 16 December 1966, Articles 19, 21.

<sup>18</sup> UN 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, UN Doc. A/CONF.144/28/Rev. 1, Preamble; Recommendation No. R (2000) 21 of the Committee of Ministers to Member states on the freedom of exercise of the profession of lawyer, Preamble; ICJ Declaration and Plan of Action on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis, Principles 7-9; Strengthening of the rule of law - Report of the Secretary General to the United Nations General Assembly, UN Doc. A/57/275, 5 August 2002, para. 41; Commission on Human Rights, Resolution 2004/33, Independence and Impartiality of the judiciary, jurors and assessors and the independence of lawyers, UN Doc. E/CN.4/RES/2004/33, 19 April 2004; Human Rights Committee, General Comment No. 20, Article 7: Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment, 10 March 1992, para. 11; Concluding Observations of the Human Rights Committee on Tajikistan, UN Doc. CCPR/CO/84/TJK, 18 July 2005, para. 12; Thailand, UN Doc. CCPR/CO/84/THA, 8 July 2005, para. 15. See inter alia: UN Basic Principles on the Role of Lawyers; UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms; Recommendation 2000 (21) on the Freedom of exercise of the profession of lawyer of the Committee of Ministers to Member States of the Council of Europe; and Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa. See also *infra* Principle no. 9 and its Commentary.

<sup>19</sup> E.g. ECHR, Article 5; ICCPR, Article 9; ICCPR, HRC General Comment 32 para. 34;; HRC General Comment 35 paras 15, 34; 58; ECtHR, *Salduz v Turkey* (36391/02), Grand Chamber (2008), paras 54-55; 1, *Othman v United Kingdom* (8139/09), European Court (2012), para. 259.

<sup>20</sup> ECHR, Article 5; ICCPR, Article 9; ICCPR, HRC, General Comment 32, para 32; ECtHR, *Dayanan v Turkey* (7377/03), paras 30-32; ECtHR, *Salduz v Turkey* (36391/02), Grand Chamber (2008) para. 54; UN Basic Principles on the Role of Lawyers, *supra* note 12 at Principles 7, 8;

favourable to the accused, preparation for questioning, support of an accused in distress and checking of the conditions of detention".<sup>21</sup>

Under the UN Basic Principles on the Role of lawyers, lawyers when exercising their professional functions must themselves be protected from harassment, threats or reprisals.<sup>22</sup> Lawyers must not be identified with their clients or their clients' causes as a result of discharging their professional functions.<sup>23</sup>

Contrary to these standards, lawyers who represent the protesters come under severe pressure themselves. Judges and police officials are interfering with the independent work of lawyers who defend those detained at these protests including at police departments and in courts.

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<sup>21</sup> Daynan v. Turkey, ECtHR, Application No. 7377/03 judgment, 13 October 2009, para. 32; ICJ, "International standards on the independence and accountability of judges, lawyers and prosecutors," <https://www.icj.org/themes/cijl/international-standards/> (accessed 22 April 2022).

<sup>22</sup> UN Basic Principles on the Role of Lawyers, Principle 16; Protection of lawyers against undue interference in the free and independent exercise of the legal profession Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, A/HRC/50/36, 22 April 2022, para 112.

<sup>23</sup> UN Basic Principles on the Role of Lawyers, *supra* note 12 at Principle 18.



## I. Interference with legal assistance at police stations

At police stations, lawyers in different regions of the Russian Federation, have been prevented from providing legal assistance to detainees. There has been a widespread practice by police across Russia of denying admission to police stations, either temporarily or fully. In some cases, lawyers have been reportedly forced to wait for admission from one to six hours, while in other cases lawyers were unable to gain admission entirely. Law enforcement authorities across different police stations throughout the country employed similar tactics which obstructed the ability of lawyers to perform their professional duties. Denial of access to a lawyer in detention removes an essential safeguard against arbitrary deprivation of liberty, as well as a protection against torture or other ill-treatment. Under international human rights law, all arrested or detained persons have a right to prompt and confidential access to a lawyer, within at the very most 48 hours from the time of deprivation of liberty<sup>24</sup> and be brought before a court.<sup>25</sup>

### The “Fortress” Plan

Many lawyers have reported that police stations have applied the “Fortress” plan, a special regime governing the administration of police stations in response to a declared possible terrorist threat.<sup>26</sup> The application of the “Fortress” plan results in principle in the complete shutdown of a police station, prohibiting any entry into or exit from the building by any person.<sup>27</sup> However, some lawyers reported that the policy was being applied selectively. For example, on 24 February, lawyer Tatyana Solomina was unable to access a police station in Moscow after her client, Grigory Yudin, was detained at the station, where he was allegedly beaten and eventually taken away in an ambulance. First, the police, reportedly, told her that they needed to coordinate her access with their superiors. Later, the “Fortress” plan was applied, and the lawyer was denied access. She noted, however, that the “Fortress” plan had been applied selectively, as other visitors to the precinct, such as representatives of the FSB, were permitted entry.<sup>28</sup>

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<sup>24</sup> UN Basic Principles on the Role of Lawyers, *supra* note 12 at Principle 7; UN Human Rights Committee (HRC), *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992

<sup>25</sup> ICCPR, article 9.3; Human Rights Council resolution 21/4 (2012) §18(a); ECtHR, *Schiesser v Switzerland* (7710/76), (1979) paras. 25-38, ECtHR, *Assenov and Others v Bulgaria* (24760/94), (1998) paras. 146-150, ECtHR, *McKay v United Kingdom* (543/03), Grand Chamber (2006) para. 40; ECtHR, *Medvedyev v France* (3394/03), Grand Chamber (2010) paras 124-125; See UN Mechanisms Joint Report on detainees at Guantánamo Bay, UN Doc. E/CN.4/2006/120 (2006) para. 28.

<sup>26</sup> Order of the Ministry of Internal Affairs of the Russian Federation from 25 May 2009 No.400, “О совершенствовании подготовки сил и средств органов внутренних дел Российской Федерации и внутренних войск МВД России к действиям при чрезвычайных обстоятельствах,” 25 May 2009; see also RIA News, “Специальные сигналы для сбора личного состава МВД при ЧС,” (“Special signals for the collection of personnel of the Ministry of Internal Affairs in emergency situations”), <https://ria.ru/20131119/971094188.html> , 19 November 2013 (updated 1 March 2020, accessed 22 April 2022).

<sup>27</sup> *Ibid.*

<sup>28</sup> Meduza.io, “На антивоенных акциях по всей России задержали больше тысячи человек. Среди них — социолог Григорий Юдин. Его доставили в ОВД без сознания” (“More than a thousand people were detained at anti-war rallies across Russia. Among them is the sociologist Grigory Yudin. He was taken to the precinct unconscious”), <https://meduza.io/news/2022/02/24/na-antivoennyh-aktsiyah-po-vsey-rossii-zaderzhali-bolshe-tysyachi-chelovek-sredi-nih-sotsiolog-grigoriy-yudin-ego-dostavili-v-ovd-bez-soznaniya> , 24 February 2022; Advokat Street (Advstreet.ru), “В связи с мировой обстановкой” (“In connection with the situation in the world”), <https://advstreet.ru/article/v-svyazi-s-mirovoy-obstanovkoy/> , 5 March 2022.

## Delayed Access to Lawyers

In many cases, lawyers have only been able to access detainees after they had been interrogated or the police had completed interrogations and finalized their official reports on those detainees. In such cases, the lawyers were admitted to the police stations after the questioning was completed or the detainees were released from the station after the completion of questioning. For example, on 27 February, lawyer Dmitry Zakhatov was not admitted to a police station in Moscow after he was told his client would not need a lawyer. While he was arguing with authorities regarding admission, his client was released after interrogation.<sup>29</sup> In a similar case, a lawyer in Rostov-on-Don, Rustam Mukhamadeev, was told that he was being denied admission until the authorities started drawing up “reports”<sup>30</sup> in regard to the detainees. Three hours later, the lawyer was granted admission into the department. However, at that time, the lawyer discovered that the report had been concluded and the documentation against his clients had already been finalised without his participation.<sup>31</sup> In one particularly high profile case, Marina Ovsyannikova, the editor of TV channel “Channel 1” who achieved widespread international exposure with an anti-war poster during the live broadcasting of an evening news program, was denied access to a lawyer after her arrest, despite several lawyers attempting to reach her. Ultimately, Ovsyannikova’s lawyer, Anton Gashinsky, was able to reunite with his client in court, though this was after Ovsyannikova spent 14 hours in police interrogation without legal counsel.<sup>32</sup>

## Denied permission by police superiors

In many instances, lawyers were told that they had been denied access due to orders from police superiors. Alternatively, lawyers were told that the police could only admit lawyers with explicit permission or presence of police supervisors. For example, on 6 March in Moscow, lawyer Veronika Glazkova was told by the authorities that denial of permission to see her client was “as ordered by superiors.”<sup>33</sup> In St. Petersburg, lawyer Maxim Kamakin waited for six hours for “a superior” to arrive at the police station. Ultimately, no superior officer arrived, and the lawyer left, without being granted access to the police station.<sup>34</sup>

## Allegations of “absence” of clients in detention

In some cases, lawyers were turned away from police stations after being told that their clients were not there, while in fact their clients were being questioned and reports were issued on their custody. For example, on 1 March, lawyer Igor Skachko was unable to access a police precinct in St. Petersburg after he was told there were no detainees inside the police station. The following day in court, after reviewing the detainees’ documents, the lawyer was

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<sup>29</sup> Advokat Street (Advstreet.ru), “В связи с мировой обстановкой” (“In connection with the situation in the world”), *supra* note 21.

<sup>30</sup> Official reports about detention under the Russian law.

<sup>31</sup> Advokat Street (Advstreet.ru), “Недопустимая работа” (“Impermissible work”), <https://advstreet.ru/article/nedopustimaya-rabota/>, 25 March 2022.

<sup>32</sup> BBC News, “Marina Ovsyannikova: Russian journalist tells of 14-hour interrogation,” <https://www.bbc.com/news/world-europe-60749279>, 15 March 2022.

<sup>33</sup> Advokat Street (Advstreet.ru), “Недопустимая работа” (“Impermissible work”), *supra* note 24.

<sup>34</sup> *Ibid.*

able to confirm that the detainees had indeed been in the precinct when he was denied access to his client.<sup>35</sup>

## Claims detainees refused or failed to request a lawyer

In some instances, lawyers were prevented from entering police precincts after being told that the detainees had either refused legal services or failed to request a lawyer. Once released, detainees often relayed a different story. For example, [on 6 March, lawyer Irina Ruchko](#) was prevented from entering a police precinct in Yekaterinburg. At first, the police asked her to wait; an hour and a half later, the head of the department promised that she would be granted entrance if the detainees requested her presence. Four hours later, the precinct began to release the detainees, who told the lawyer that the detainees attempted to request her presence but had been told that there were no lawyers near the department.<sup>36</sup>

## Use of physical abuse against lawyers

In at least one case, a lawyer attempting to gain access to his clients was subjected to ill-treatment. On 7 March, lawyer Alexei Kalugin was denied entry into a police station in St. Petersburg. When he tried to video-record it, the police authorities forcefully dragged the lawyer into the building, handcuffed him and verbally abused him, accusing him of "defending the Nazis."<sup>37</sup>

Actions of the police officers in these and other such incidents violate the right of detainees to access to a lawyer, in breach of obligations to guarantee the rights to liberty and to fair trial. They are also violations of international law and standards on the independence of lawyers. According to the UN Basic Principles on the Role of Lawyers, States must ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference and that they do not suffer, or be threatened with prosecution for any action taken in accordance with recognized professional duties, standards and ethics.<sup>38</sup> Physical abuse against lawyers may also violate rights to physical integrity (Article 8 ECHR) and will amount to torture or cruel, inhuman or degrading treatment (Article 3 ECHR, Article 7 ICCPR, Convention against Torture). In accordance with the State's obligations under these provisions, allegations of such ill-treatment must be independently, impartially, promptly, and thoroughly investigated, leading to those responsible being brought to justice in fair trials.

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<sup>35</sup> Advokat Street (Advstreet.ru), "В связи с мировой обстановкой" ("In connection with the situation in the world"), *supra* note 21.

<sup>36</sup> Advokat Street (Advstreet.ru), "Недопустимая работа" ("Impermissible work"), *supra* note 24.

<sup>37</sup> Novaya Gazeta, "Адвокат Алексей Калугин опубликовал видео, на котором сотрудник отдела полиции в Петербурге нападает на защитника" ("Lawyer Alexei Kalugin published a video in which a police officer in St. Petersburg attacks a defense lawyer"), <https://novayagazeta.ru/articles/2022/03/17/advokat-aleksei-kalugin-opublikoval-video-na-kotorom-sotrudnik-otdela-politsii-v-peterburge-napadaet-na-zashchitnika-news>, 17 March 2022.

<sup>38</sup> UN Basic Principles on the Role of Lawyers, *supra* note 12 at Principle 16.

## II. Interference with the right to legal representation in courts

Lawyers who represent anti-war protesters have also faced numerous instances of interference with the exercise of their professional duties in courts. Lawyers reported obstacles ranging from being denied access to their clients prior to scheduled hearings, to being denied admission to the court by administrative staff, bailiffs, and judges. Such obstruction is likely to violate the right to liberty and the right to a fair trial, in particular the right to an effective defence, (ECHR Article 6.3.c, ICCPR Article 14.3.d),<sup>39</sup> and in some instances the right to an effective remedy (article 13 ECHR, article 2(3) ICCPR). As provided by the UN Principles on the Role of Lawyers, States must ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference and that they do not suffer or be threatened with prosecution for any action taken in accordance with recognized professional duties, standards and ethics.<sup>40</sup>

### New or extraordinary requirements for access to a court

In many cases, lawyers were prevented from entering the courthouse by bailiffs, despite having the necessary paperwork and permissions usually required for entry. Lawyers were made to wait for up to several hours to gain admission and were only able to do so through extraordinary means, such as contacting judges' administrative staff directly or by direct order of a judge. For example, on 7 March, lawyers Ksenia Briks, Elena Fadeeva and Maria Belyaeva were told that the Nevskiy Court in St. Petersburg was closed, and they would only be able to gain admission by direct order of the judge once their clients each filed a petition for their admission. As a result, the lawyers were forced to shout instructions to their clients while the detainees were led into the courthouse and, eventually, all three lawyers were able to gain access to the courthouse through such means.<sup>41</sup> Similarly, on 7 March, lawyers Maria Zyryanova, Anastasia Pilipenko, and Mark Alekseev were initially unable to access the Moscow District Court in St. Petersburg. According to Maria Zyrynova, she heard bailiffs receive instructions over radio not to let the lawyers in. The lawyers were only able to gain admission after they called judges' chambers and judges' assistants directly, conducting their conversations over speakerphone so that the bailiffs could hear the confirmation and grant entrance for each lawyer.<sup>42</sup>

### Complete denial of entry

In other cases, lawyers were not allowed to enter the courthouse to act for their clients in proceedings. For example, on 26 February, lawyer Dmitry Gerasimov was unable to access the Moscow District Court in St. Petersburg. The bailiffs reportedly told him that he was not on the list of participants for the hearing. After communicating with his client and later the judge's chambers multiple times and receiving assurances from the judge's assistant that he

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<sup>39</sup> ECHR, *supra* note 8 at Article 6.3.c; ICCPR, *supra* note 8 at Article 14.3.d.

<sup>40</sup> UN Basic Principles on the Role of Lawyers, Principle 16.

<sup>41</sup> OVD-Info, "No to war," <https://reports.ovdinfo.org/no-to-war#1> (accessed 22 April 2022); Advokat Street (Advstreet.ru), "Адвокатов записывают в соучастники" ("Lawyers treated as accomplices"), <https://advstreet.ru/article/advokatov-zapisyvayut-v-souchastniki/>, 16 March 2022.

<sup>42</sup> *Ibid.*

would be admitted, Gerasimov never was granted entry by the bailiffs. Ultimately, his client's case was called in his absence and the defendant was sentenced to six days of detention.<sup>43</sup>

## Ejecting lawyers from courthouses

Lawyers also reported that even after they were able to gain access, they were often rushed out of the courthouse prior to completing their work. In this way, lawyers were either prevented from attending multiple scheduled hearings or providing further assistance to their clients after hearings. For example, in St. Petersburg, lawyer Kseniya Briksa was escorted out of the courthouse because "the hearing was over and there was no reason for her to stay in the court house", while she was still instructing a client on the appeals process for their case.<sup>44</sup> The same tactic was used against lawyer Mariya Belyaeva.<sup>45</sup> Such actions interfere with the right to have adequate time and facilities for the preparation of a defence (ECHR Article 6.3.b, ICCPR Article 14.3.b) an important element of the right to a fair trial.<sup>46</sup>

In some cases, lawyers endured openly hostile attitude from judges. In at least one case, a lawyer reported that a judge refused to admit lawyers into the courthouse upon being requested to do so. On 7 March, upon gaining access to a court in St. Petersburg, lawyer Yelena Fadeeva asked a judge to let at least some of her colleagues into the entranceway of the courthouse. The judge bluntly refused her. She quoted the judge as saying: "to have lawyers moping about here and looking for clients – I do not need that."<sup>47</sup>

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<sup>43</sup> Advokat Street (Advstreet.ru), "Установка отсекаать адвоката" ("Distancing lawyers"), <https://advstreet.ru/article/ustanovka-otsekat-advocata/>, 16 March 2022.

<sup>44</sup> Advokat Street (Advstreet.ru), "Адвокатов записывают в соучастники" ("Lawyers treated as accomplices"), *supra* note 33.

<sup>45</sup> *Ibid.*

<sup>46</sup> ECHR, *supra* note 8 at Article 6.3.b; ICCPR, *supra* note 8 at Article 14.3.b.

<sup>47</sup> *Ibid.*

## Conclusions

There is consistent evidence of police resorting to practices of ill-treatment and arbitrary arrests and deprivation of liberty of protesters since the beginning of armed conflict with Ukraine in February 2022.<sup>48</sup> Those arrested are at high risk of unfair procedures in pre-trial and trial stages, in a legal system where the judiciary lacks independence and is ineffective in upholding national or international human rights guarantees.<sup>49</sup>

Law enforcement officials at police stations and court houses have engaged in widespread obstructive practices which have impeded the work of lawyers, who are attempting to assist those detained and/or charged for anti-war protests. These practices are contrary to Russian domestic law and international legal obligations. Such treatment of lawyers may point to cases of identifying lawyers with their clients and their political and other views and conduct.

Lawyers have been subjected to physical ill-treatment in relation to the discharge of their professional duties. Under international human rights law, lawyers must be protected against attacks both in connection with the human rights of their clients and the human rights of the lawyers themselves. Harassment of lawyers may lead to violations of the rights of their clients including, among others, the right to a fair trial (ICCPR Article 14; ECHR Article 6), the right to liberty (ICCPR Article 9; ECHR, Article 5), or freedom from torture or other ill-treatment (ICCPR Article 7; ECHR Article 3).<sup>50</sup>

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<sup>48</sup> Russian Federation: illegal invasion of Ukraine is no excuse for clampdown on peaceful protest at home, <https://www.icj.org/russian-federation-illegal-invasion-of-ukraine-is-no-excuse-for-clampdown-on-peaceful-protest-at-home/>.

<sup>49</sup> Add ICJ reports on judiciary

<sup>50</sup> ECHR, *supra* note 8 at Articles 3, 5, 6; ICCPR, *supra* note 8 at Articles 7, 9, 14.

## Recommendations

The Russian Federation must ensure that the rights of protesters and their lawyers are respected at every stage of administrative and criminal proceedings, including at police stations and courthouses. The ICJ stresses that there must be no impediment to the exercise of professional duties by lawyers, and that obstacles to the work of lawyers violate fair trial rights and undermine the justice system's ability to protect human rights.

In particular the ICJ recommends that:

- The executive and legislature should repeal criminal law provisions that impose vaguely worded and disproportionate restrictions on freedom of assembly and expression, including CC Article 207.3, CC Article 20.3.3 and CC Article 280.3
- Pending such repeal, the police, prosecutors, and courts should adopt restrictive, clear and predictable interpretations of criminal conduct under these provisions, in accordance with international human rights law principles of legality, necessity and proportionality
- Law enforcement authorities should issue and enforce clear instructions to their officials to refrain from obstructing access of lawyers to police stations
- Law enforcement authorities should refrain from applying the "Fortress" plan outside of the most extreme circumstances of imminent terrorist attack. The plan should not be applied in response to the arrest of anti-war protesters or to unduly restrict access to lawyers.
- Law enforcement officials should ensure that detainees are able to meet and communicate with their lawyers expeditiously and in private without any impediments, restrictions and without additional extra-procedural authorization requirements from any quarter. Officials who order denial of access to lawyers, or prevent such access contrary to national law, should face disciplinary action.
- Judges, bailiffs and other court staff should ensure that lawyers have unimpeded access to court buildings and court rooms where the cases of their clients are heard.
- Courts should not tolerate practices where access of a lawyer to a client is obstructed contrary to the law.
- Where attacks on lawyers occur, prompt, thorough, impartial and independent investigations into such incidents should be carried out which should, where appropriate, result in bringing those responsible to justice.