



IBA Human Rights Institute

the global voice of the legal profession

Russia: concerning incidents involving lawyers

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Dear President Medvedev,

We are writing you on behalf of the International Bar Association's Human Rights Institute (IBAHRI) regarding a recent series of incidents involving lawyers in Russia which have raised our concern as to state of the rule of law in Russia.

The International Bar Association's Human Rights Institute (IBAHRI) works to promote, protect and enforce human rights under a just rule of law. We believe in the fundamental right of the world's citizens to have disputes heard and determined by an independent judiciary, and for the judges and lawyers to be able to practice freely without interference.

In a press statement issued on 3 September 2008, the IBAHRI expressed its concerns at the news of lawyers' offices being raided. These lawyers acted as representatives of Hermitage Fund. We called upon the Russian government to protect lawyers' ability to represent their clients and to refrain from any interference in their work that not only contravenes Russian legislation, but also goes against the Basic Principles on the Role of Lawyers adopted by the United Nations. It appears that since then, the situation has deteriorated and further harassment has taken place against lawyers linked to Hermitage Fund.

We have received information that on 24 November 2008, one of the HSBC and Hermitage legal advisers working at the law firm Firestone Duncan, Mr Sergey Magnitskiy, was arrested following a search of his home and office. Prior to his arrest, Mr Magnitskiy had apparently given witness statements detailing the complicity of Interior Ministry officials in the alleged frauds against HSBC and Hermitage. We understand that he has since been held without bail in a Moscow pre-trial detention facility.

We have received reports that at the same time, the Interior Ministry has opened a criminal case against another independent lawyer retained by HSBC and Hermitage, Mr Eduard Khayretdinov, on the grounds that he has been representing interests of the Hermitage Fund's Russian investment companies by filing complaints to courts and law enforcement agencies, i.e. by carrying out his duties to this client. The case alleges that such representation is improper because he was acting under a power of attorney issued by the HSBC officials who – having been removed (allegedly by fraud) as directors of the Russian companies – were no longer technically empowered to issue the power of attorney after the theft.

Three additional lawyers representing HSBC and the Hermitage Fund have had their homes searched by the Moscow Interior Ministry. Mr. Jamison Firestone, the founding partner of Firestone Duncan, and who also currently sits on the Board of Directors of the American Chamber of Commerce in Moscow, is now mentioned in several of the cases against the lawyers is concerned for his safety.

We are concerned that these activities are in contravention of Russia's obligations national and international law.

Article 17 of the Russian Constitution guarantees that 'the basic rights and liberties in conformity with the commonly recognized principles and norms of the international law.' Article 20 guarantees the right to life, and Article 22 states that 'everyone shall have the right to freedom and personal inviolability.'

Russia ratified the International Covenant of Civil and Political Rights (ICCPR) in 1976. According to Article 9 of the ICCPR, everyone 'has the right to liberty and security of person,' and the right to life is outlined in article 6.

Russia is also party to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which provides, at article 5(3), that 'Everyone arrested or detained [...] shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial.'

We would also like to remind you of the United Nations Basic Principles on the Role of Lawyers, which provide standards by which lawyers worldwide should be treated. According to principle 16, 'governments shall ensure that lawyers are able to perform all of their professional functions

without intimidation, hindrance, harassment or improper interference'.

Respect for the role of lawyers and the independence of the judiciary represent an essential feature of the rule of law. The treatment of lawyers related to Hermitage raise doubts as to Russia's efforts to foster the rule of law and establish a credible justice system.

We urge you to look into the actions taken against the lawyers who are defending the Hermitage Fund and more specifically, the pre-trial detention of Mr. Magnitskiy. Furthermore, we call on you to ensure that all lawyers and judges are able to carry out their duties without fear of intimidation or harassment.

We look forward to your response.

Yours sincerely,

Justice Richard Goldstone
Martin Šolc

IBAHRI Co-Chairs

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