Naciones Unidas A/HRC/26/32/Add.1

Asamblea General

Distr. general
30 de abril de 2014
Español
Original: inglés

Consejo de Derechos Humanos
26º período de sesiones
Tema 3 de la agenda
Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

Informe de la Relatora Especial sobre la independencia de los magistrados y abogados, Gabriela Knaul

Adición

Misión a la Federación de Rusia*

Resumen

La Relatora Especial sobre la independencia de magistrados y abogados llevó a cabo una visita oficial a la Federación de Rusia del 15 al 25 abril de 2013. El propósito de la visita era examinar los progresos realizados por el país para garantizar la independencia e imparcialidad de los jueces, magistrados y fiscales y el libre ejercicio de la profesión de abogado. La Relatora Especial también examinó los desafíos relacionados con la administración imparcial y apropiada de la justicia y la igualdad de acceso a la justicia.

Durante su visita, la Relatora Especial se reunió con una amplia variedad de altos funcionarios gubernamentales, tanto a nivel federal como regional, jueces de tribunales de distintas instancias, fiscales, abogados, profesores universitarios y representantes de organismos de las Naciones Unidas y la sociedad civil en Moscú, San Petersburgo, Rostov del Don, Azov y Nizhni Nóvgorod.

La Relatora Especial comienza su informe con un breve panorama general del sistema de justicia, para tratar a continuación de los desafíos a la independencia e imparcialidad del poder judicial y la administración de la justicia. Se hace referencia a: a) la independencia e imparcialidad de los jueces, en particular su nombramiento, sus condiciones de servicio y titularidad de la plaza, así como su imagen entre la ciudadanía; b) los avances y las deficiencias en la administración de justicia, en particular las facultades

* El resumen del presente informe se distribuye en todos los idiomas oficiales. El propio informe, que figura anexo al resumen, se distribuye tan solo en el idioma en que fue presentado y en ruso.

de los presidentes de los tribunales, la asignación de las causas, la aplicación del derecho internacional y el acceso a la información; c) la rendición de cuentas y los procedimientos disciplinarios en la judicatura; d) los problemas relacionados con un juicio imparcial y las actuaciones judiciales, en particular las cuestiones relativas a la prisión preventiva, la presunción de inocencia y la igualdad de medios procesales; y e) las cuestiones relativas al acceso a la justicia, en particular los juicios con jurado, la ejecución de las decisiones judiciales, la asistencia letrada y la falta de un sistema de tribunales administrativos. La Relatora Especial destaca las buenas prácticas en materia de justicia juvenil, el papel de los servicios de la fiscalía, la preocupante situación de los abogados y la creación de capacidad.

La Relatora Especial expresa su profunda preocupación por las denuncias de amenazas directas e indirectas a los jueces, la influencia, la injerencia y las presiones indebidas de las que son objeto, y las amenazas, la intimidación, las agresiones, las acciones judiciales incoadas sin fundamento y, en los casos más graves, el asesinato de los abogados que desempeñan su tareas profesionales. La Relatora Especial señala que esas tendencias suponen un grave revés para la independencia del poder judicial y la aplicación del estado de derecho en la Federación de Rusia. Al final del informe se formulan recomendaciones.

Anexo

[Inglés únicamente]

Report of the Special Rapporteur on the independence of judges and lawyers on her mission to the Russian Federation

Contents

I. Introduction

1. The Special Rapporteur on the independence of judges and lawyers, Ms. Gabriela Knaul, undertook an official visit to the Russian Federation from 15 to 25 April 2013. She examined the progress made by the country in implementing its obligations under international law to ensure the independence and impartiality of judges, magistrates and prosecutors and the free exercise of the legal profession. She also explored the challenges relating to safeguards for and protection of the independence of judges, lawyers and prosecutors, the fair and proper administration of justice, and equal access to justice.

2. The Special Rapporteur visited Moscow, Saint Petersburg, Rostov-on-Don, Azov and Nizhny Novgorod. She met with a number of senior Government officials, including the Deputy Minister of Justice, the Deputy Minister of Internal Affairs, and the Governors of Saint Petersburg and the Rostov region; the Chair of the Constitutional Court, the Chief Justice of the Supreme Court, the Deputy Chair of the Supreme Arbitration (*Arbitrazh*) Court, federal judges and justices of the peace of different courts; the Chair and members of the High Qualification Collegium of Judges; the Deputy Prosecutor General, and members of prosecution services in Moscow and the regions; the Chair and members of the Presidential Council for Civil Society and Human Rights; the Chair of the Civic Chamber Committee on Citizens' Security and Interaction with Law Enforcement and Judicial Bodies; the Russian Federation Commissioner for Human Rights, and the Commissioners for Human Rights of Saint Petersburg, the Rostov region and the Nizhny Novgorod region; the Rector of the Russian Academy of Justice; lawyers and members of bar associations; non-governmental organizations (NGOs); and United Nations agencies.

3. The Special Rapporteur would like to express her gratitude to the Government of the Russian Federation for the invitation and the support provided to her throughout the visit. She also wishes to thank the senior human rights adviser of the United Nations and his staff for their invaluable cooperation and assistance.

II. The justice system

4. Following the fall of the Soviet system, the State undertook a number of reforms of the justice system aimed at strengthening the independence of the judiciary and putting an end to the political subordination of judges. The achievements and shortcomings of the first waves of efforts to establish an independent and impartial justice system were analysed by the former Special Rapporteur, Leandro Despouy, during his visit to the Russian Federation in May 2008 (A/HRC/11/41/Add.2). His report also highlighted some of the then-recent reforms and developments affecting the judicial system. In the present report, the current Special Rapporteur examines the reforms and developments undertaken since Mr. Despouy's visit and makes her recommendations in the light of her own findings.

A. Constitutional provisions related to the judiciary

5. The Constitution of the Russian Federation enshrines the principle of the separation of powers in articles 10 and 11. Judicial authority is regulated by chapter 7, which establishes safeguards for the independence of the judiciary, guaranteeing the irremovability, inviolability and immunity of judges, the public nature of judicial proceedings, the principle of equality of arms and the financial autonomy of courts. Those safeguards are further regulated by a federal law.

6. The Constitution also guarantees a comprehensive set of fundamental rights and freedoms, including civil, cultural, economic, political and social rights. It enshrines guarantees relating to the rights to a fair trial, due process, equality before the law, freedom from arbitrary detention, presumption of innocence and compensation.

B. Legal and institutional framework

7. The independence of the judiciary is regulated by Federal Act No. 3132-1 "On the Status of Judges" of 26 June 1992, which has undergone several amendments. The Act establishes (a) selection procedures; (b) the powers of the president of each court and the procedure for their appointment; (c) the duties, independence, terms of office, disciplinary responsibility, immunity and conditions of work of judges; (d) the different bodies of the judicial community; and (e) the qualification collegia.

8. Over the last decade, the Russian authorities have implemented two consecutive federal justice reform plans (2002–2006 and 2007–2011) to support judges' work, raise their salaries and improve their working conditions, modernize the system of administration of justice, court premises and technical equipment, and make the work of the courts more transparent. Several laws and amendments have been passed to support the reforms.

9. The recently approved federal programme for the development of the judicial system for the period 2013–2020 targets the execution of judicial decisions, the development of legal assistance and access to justice. According to information received, the new plan was developed by the Ministry of Economic Development rather than the Supreme Court, and its implementation will be entrusted to the Ministry.

10. In 2001, a federal constitutional bill on administrative courts was submitted to the Parliament (Duma) and has been pending ever since. On 21 May 2013, the Duma adopted the first reading of a draft federal code of administrative procedure. The Duma is expected to consider the draft code in second reading during its spring 2014 session. According to information received from the Government, since 2011 several steps were taken towards the specialization of judges in administrative matters.

11. In February 2014, the Duma passed an amendment to the law "On the Supreme Court of the Russian Federation and Prosecutor's Office of the Russian Federation". One of its main elements is the abolition of the Supreme Arbitration Court and the transfer of its jurisdiction and functions to the Supreme Court, thereby *de facto* integrating the system of courts of arbitration into the system of courts of general jurisdiction. The Special Rapporteur is concerned about the amendment, as the courts of arbitration have developed a more efficient, modern and transparent administration of justice than the courts of general jurisdiction. The arbitration courts represent a model to be followed by the general jurisdiction courts in the Russian Federation.

C. The court structure

12. The Russian judiciary is founded in the civil law system, the main principles of which are codified into a referable system of law.

13. The Russian court system is enshrined in the Constitution and in the Federal Constitutional Act "On the Court System of the Russian Federation". The system comprises all courts, including federal courts and the courts of the constituent entities of the Russian Federation. The structure of the court system is described in detail in the report of the Special Rapporteur's predecessor (A/HRC/11/41/Add.2, paras. 12–16).

III. Challenges to the independence and impartiality of the judiciary and the proper administration of justice

A. Independence and impartiality of judges

14. During her visit, the Special Rapporteur heard many allegations of direct and indirect threats to – and improper influence, interference and pressure on – the judiciary, which continue to adversely affect its independence and impartiality. An independent judiciary is essential if the courts are to fulfil their democratic role as guardians of the rule of law in the country, ensuring that everyone, including State agents, is treated equally before the law.

15. The Special Rapporteur is concerned about the many reported attempts by State authorities and private actors alike to exercise control over the judicial system — interference often referred to as "telephone justice". While she was occasionally told that "telephone justice" does not happen anymore, many interlocutors said that interference with the judiciary from the executive or other powerful stakeholders is still entrenched in the system.

16. In some regions, especially in small or remote places, judges are said to maintain close links with the executive and prosecution services. Despite its prohibition in the law, the interference is reportedly usual and constitutes a major factor in the forces that undermine the independence and impartiality of the judicial system. The worrisome perception that judges already know what they are going to decide before proceedings are completed is reinforced by the frequent lack of justification for verdicts rendered, including decisions on pretrial detention.

1. Judicial appointment

17. Judges of the Constitutional, Supreme and Supreme Arbitration Courts are appointed by the Federation Council upon nomination by the President of the Russian Federation. Other federal judges are appointed by the President on the recommendation of the relevant qualification collegium. Justices of the peace and judges of constitutional (charter) courts are, in turn, elected by the local legislative organ or the population according to the relevant regional legislation. The Special Rapporteur is concerned that the current mechanism for appointing judges may expose them to undue political pressure. Appointments or nominations by the President can have a strong influence on judges' attitudes and behaviour, particularly concerning representatives of the executive.

18. Qualification collegia are bodies of judicial self-regulation that are established at the regional (Judicial Qualification Collegia) and national (the High Qualification Collegium) levels. Their members are judges, representatives of the public and a representative of the President of the Russian Federation, and they play a key role in the appointment, promotion and dismissal of judges. The Special Rapporteur considers that any representation from the executive, and to the extent possible the legislative, should be avoided. An appointment body that is independent of both the executive and legislative branches of Government is essential in order to counter politicization in the appointment of judges and minimize the likelihood of judges having improper allegiance to interests other than those of fair and impartial justice.

19. Prior to the appointment itself, the selection process of judges is worrying. While the law is clear regarding the criteria that have to be fulfilled to become a judge, the Special Rapporteur was told that, in practice, the mandatory examination lacks both transparency

and anonymity. She is concerned about reports that the examination process can be, and often is, manipulated by the president of the court where the vacancy is located. There is also a real risk that newly appointed judges may feel indebted towards the president of their court. When selection criteria are objective, clear, based on merit, transparent, and well-publicized, public understanding of the process increases and the perception of fair selection or appointments is strengthened. At the time of finalizing the report, the Government informed the Special Rapporteur that the Duma was considering several amendments that aimed at improving the examination process.

20. The Special Rapporteur heard claims that, as a result of the current selection and appointment procedures, lawyers interested in entering the judicial profession suffer *de facto* discrimination and rarely succeed. Reportedly, the majority of judges have previously worked as prosecutors, court assistants or members of law enforcement services. While the Special Rapporteur could not verify the veracity of those allegations, they point to a serious dysfunction in the selection and appointment procedures. Such procedures should be above all reproach in order to avoid giving the perception that they are partial and discriminatory.

2. Conditions of service and security of tenure

21. In order to safeguard the independence of judges, their status, term of office, independence, security, remuneration, conditions of service, pension and retirement age should be adequately secured by law. Throughout the Russian Federation, the material conditions of service of federal judges have improved dramatically in recent years. However, at the regional level, particularly in the case of justices of the peace, the introduction and implementation of measures to improve conditions of service seem to have taken more time and to have made less progress.

22. According to the Basic Principles on the Independence of the Judiciary, "judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists" (principle 12). In that context, abolishing the three-year probationary period at the beginning of a judge's career was an important step to ensure their independence. However, fixed-term mandates still exist for justices of the peace.

3. Public perception and confidence

23. The Special Rapporteur was informed that, according to recent surveys, the general public reportedly has very limited confidence in the judiciary. The judicial system is perceived as corrupt — one in which judges adopt politically motivated decisions that aim to protect only the interests of the State. The lack of confidence in the judicial system seems to be exacerbated by the fact that investigators, lawyers and bailiffs are also perceived as corrupt.

B. Administration of justice

1. Powers of the president of the court

24. The Special Rapporteur is particularly concerned about the allegedly extensive powers of court presidents, which go far beyond their role of *primus inter pares*. She heard many reports of judges receiving instructions or orders from their court president. The Bangalore Principles of Judicial Conduct clearly state that, in performing judicial duties, judges must be independent of judicial colleagues in respect of decisions which they are obliged to make independently (principle 1.4). The Special Rapporteur was also told that judges' career progression largely depends on their court president, who can play a decisive role in everything from promotion to disciplinary proceedings.

25. Presidents and deputy presidents of all courts of general jurisdiction are appointed by the President of the Russian Federation on recommendation of the Chief Justice of the Supreme Court for a six-year term, which is renewable once. The Chairperson of the Constitutional Court and the Chief Justices of the Supreme Court and Supreme Arbitration Court are appointed by the Federation Council on the recommendation of the President. In many courts, particularly at local level, court presidents allegedly often maintain strong ties with other State authorities, including the executive. Such ties should be combatted, as they represent a threat to the independence, impartiality and objectivity of the judiciary.

2. Allocation of cases

26. The Special Rapporteur heard about the apparent lack of appropriate procedures for the assignment of cases to individual judges. In courts of general jurisdiction, the president of the court assigns cases to judges, which is of concern because, in the absence of an appropriate and transparent procedure for the allocation of cases, the judicial system becomes vulnerable to manipulation, corruption, external and internal pressure and interference. It is particularly troubling that the president of the court can use the current procedure for allocating cases as an instrument to reward or punish judges or give high-profile cases to judges whose decisions can be easily influenced.

3. Application of international and regional human rights law at domestic level

27. In the Russian Federation, international treaties that are duly ratified in accordance with domestic legal procedures become part of the domestic legislation of the State, and can, in theory, be directly applied by national courts and directly invoked by private individuals. According to the Supreme Court, judgments of the European Court of Human Rights (hereafter European Court) are immediately applied by the relevant national authorities. The Supreme Court publishes all international and regional instruments ratified by the Russian Federation, as well as the judgments of the European Court. The Supreme Court also regularly sends judges to Strasbourg for training on the European Convention on Human Rights (hereafter European Convention) and the European Court. However, despite international law being fully integrated at the domestic level and the efforts of the Supreme Court to train its judges, the Special Rapporteur is concerned that some members of the judiciary still perceive the judgements of the European Court as an intrusion in the domestic affairs of the State and as interference with their own independence.

28. In 2007, the Supreme Court issued a regulation recommending that judges use international norms and European Court jurisprudence in their rulings. On 27 July 2013, the Supreme Court adopted another resolution on the application of the European Convention and its protocols by domestic courts. Nevertheless, it is still extremely rare for judges to refer to international norms and standards and international or regional jurisprudence in their decisions.

29. Russian authorities do not always abide by the judgements of the European Court. The Committee of Ministers of the Council of Europe, which supervises the execution of judgments of the European Court,[1] has adopted several decisions and resolutions exhorting the Russian Federation to comply with the judgements of the Court. In general, the authorities comply with measures concerning monetary compensation ordered by the Court. The Special Rapporteur emphasizes that the authorities are also obliged to comply with the other measures of redress and reparation included in the judgements of the Court, including amending legislation to prevent further violations when so requested, and individual measures such as re-initiating judicial proceedings. Recent legislative amendments tend to suggest that the authorities are trying to address this issue.

[1] See article 46 of the European Convention on Human Rights, as amended by Protocol No. 11.

4. Access to information and transparency

30. The Special Rapporteur welcomes the progress made by the State in improving the transparency of the justice system, including with the adoption of the Act "On access to information about the activities of the courts in the Russian Federation".

31. Nevertheless, she is concerned that, in practice, in some cases it remains difficult for the general public to have access to judicial decisions, particularly those adopted by justices of the peace, and to information on legal proceedings. In an effort to address this issue, the Supreme Court has developed a programme on access to information aimed at publishing information about decisions adopted by domestic courts and the status of proceedings, including hearings or cases that have been suspended.

32. The Special Rapporteur also regrets that information on all court proceedings at all levels of the court system nationwide is not yet accessible to the public on the Internet. Some stakeholders deplore the fact that audio recordings of hearings are not yet obligatory and that the minutes of hearings are not always drafted or made available to the public. Reportedly, parties to legal proceedings often do not have access to the minutes at the end of a hearing. As a result, the minutes can be manipulated and tailored to the decision taken, which can affect people's right to adequately prepare their defence or present an appeal.

33. According to information received, the Supreme Arbitration Court has been quite dynamic in spearheading the implementation of changes and assessing the performance of its courts. The arbitration court system has put in place an electronic system of exchange of documents between courts, a database with information on the courts' procedures, including all judicial decisions, and a sophisticated and effective electronic system of case distribution. As a result, arbitration courts are considered to be the most efficient courts in the Russian Federation and enjoy a higher rate of public confidence than their counterparts in the general jurisdiction.

C. Accountability and disciplinary proceedings of judges

34. In the Russian Federation, the qualification collegia are in charge of examining complaints of a disciplinary nature. The High Qualification Collegium has three months to examine a complaint, while the Judicial Qualification Collegia at the regional level have one month to issue a ruling. There are now three disciplinary measures they can adopt to sanction judges: a notification, a warning or dismissal.

35. In 2010, the Disciplinary Judicial Presence was established as a specialized federal court to hear appeals against decisions on the dismissal of judges adopted by qualification collegia, including the High Qualification Collegium. The Disciplinary Judicial Presence does not have jurisdiction to consider appeals against decisions on other disciplinary measures. The Disciplinary Judicial Presence is composed of six judges — three Supreme Court judges and three Supreme Arbitration Court judges. Before the creation of the Disciplinary Judicial Presence, such complaints were brought before the Supreme Court. The decisions reached by the Disciplinary Judicial Presence are final. According to information received from the Government, a draft bill adopted in first reading by the Duma in January 2014 would terminate the Disciplinary Judicial Presence. To replace the Presence, a new disciplinary collegium would be established within the Supreme Court.

36. While the request to launch disciplinary proceedings against judges can come from various sources (judges, other State agencies and officials, or members of the public, among others), the Special Rapporteur is concerned about the role played by court presidents. She was told by different sources that court presidents are entrusted with

extensive powers, including in disciplinary procedures, and in some instances do use their position to improperly influence the judicial decisions of the judges of their courts.

37. The Special Rapporteur also heard with concern that in practice judges can be dismissed for the decisions they take, such as having a high acquittal rate or for releasing a suspect from custody. It appears that, in a number of high-profile cases, judges were dismissed for applying the law against the instructions they had received. In a case where the European Court found a violation of article 10 of the Convention,[2] the dismissed judge was compensated but not reinstated. As a result, judges are reluctant to adopt decisions that could be out of line with the ideas or instructions received from the president of their court for fear of repercussions or dismissal.

38. The Special Rapporteur is troubled that hundreds of judges have reportedly been dismissed in recent years; on average some 40 to 50 judges are dismissed every year. Even taking into account the size of the country and the number of judges — approximately 30,000 — the number is high. One issue highlighted during the visit is that there was no time limit for commencing disciplinary proceedings against judges. Apparently, in some instances where judges were suspected of misconduct, instead of launching the appropriate investigation and disciplinary procedures, the authorities in possession of incriminating information kept it as compromising material and used it to exercise strong pressure over judges. In a positive development, the Special Rapporteur was informed that an amendment to the law "On the Status of Judges" was passed on 3 July 2013 introducing a limitation period of two years for taking disciplinary action against a judge from the time of the misconduct complained of or six months from the moment when the alleged misconduct first became known, provided that such knowledge is attained within two years of the act of misconduct itself. The new provision provides an important safeguard and should be strictly adhered to.

39. A new code of ethics was adopted in December 2012. Many people claim, nevertheless, that it only serves to provide a pretext for disciplinary proceedings to get rid of judges who are inconvenient and/or do not follow orders.

40. The Special Rapporteur wishes to highlight the fact that disciplinary proceedings should be impartial, objective and transparent, and aimed at holding judges and other judicial actors to account in cases of misbehaviour or incapacity to discharge their duties. She further wishes to underline that, in accordance with the Basic Principles on the Independence of the Judiciary, judges are entitled to a fair hearing under an appropriate procedure which should be subject to an independent review. Disciplinary proceedings should not, therefore, be used as a tool to pressure, threaten or control judges and judicial actors.

D. Fair trial and judicial proceedings

1. Pretrial detention

41. The Special Rapporteur is highly concerned about reports that judges order pretrial detention as a rule rather than an exception. Domestic legislation provides that pretrial detention should be exceptional, and judges should clearly explain in their decisions why alternative measures are not appropriate in a particular case. The Special Rapporteur heard of cases in which defendants were held in pretrial detention despite the fact that the maximum penalty prescribed in law for the violation allegedly committed was a fine. Such instances are unacceptable since they pervert the essence of the law and the principle of legality.

[2] *Kudeshkina v. Russia*, No. 29492/05, 26 February 2009.

42. Cases of prolonged pretrial detention are not uncommon, and in some instances persons are held in pretrial detention for longer than the maximum sentence they could receive. The complexity of a case cannot be legitimately invoked as a justification for prolonged pretrial detention.

2. Presumption of innocence

43. The Special Rapporteur is troubled that concerns regarding respect for the fundamental principle of the presumption of innocence have not been addressed by the authorities. The principle is enshrined in the Constitution and the Criminal Procedure Code and the burden of proof for the charges lies with the prosecution. Nevertheless, as noted by her predecessor, most of the court rooms where criminal trials are held continue to be equipped with a metal cage where the defendant is held (A/HRC/11/41/Add.2, para. 37). Some courts were upgraded with a wooden box equipped with glass windows instead of the simple metal cages. Both cages and boxes are allegedly used for the security of the defendants.

44. Whether it is in metal cages or wooden boxes, having the defendants go through their trial sitting in such constructions is a serious breach of the presumption of innocence. Some judges affirmed that the cages are not seen as a problem, which casts doubt on their understanding of that fundamental principle of law.

45. Another related issue is the extremely low acquittal rate. As indicated by the former Special Rapporteur, it is about 1 per cent (A/HRC/11/41/Add.2, para. 37), which would suggest that the presumption of innocence is not consistently respected in practice. According to many sources, it is easier for judges to ignore the poor quality of an investigation rather than take the responsibility of acquitting the defendant. Some judges seem to be unaware of their duty to acquit the accused when the prosecutor fails to provide sufficient evidence for his or her prosecution. In other instances, judges are said to be under pressure from the prosecution to issue a guilty verdict. Interestingly, that attitude does not seem to apply to State officials and law enforcement officials, who are reportedly 20 times more likely to be acquitted for an offence than other persons.

3. Equality of arms

46. The right to equality before the courts and tribunals, enshrined in article 14 of the International Covenant on Civil and Political Rights, guarantees the principles of equal access and equality of arms, and ensures that parties to legal proceedings are treated without any discrimination (CCPR/C/GC/32, paras. 12 and 13). Equality of arms means that the same procedural rights are to be enjoyed by all parties, unless distinctions are provided for by the law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant. The principle also applies to civil proceedings, and demands, inter alia, that each side be given the opportunity to contest all the arguments and evidence adduced by the other party.

47. Many sources complained that lawyers in the Russian Federation are not given access to material and evidence in the same way as the prosecution. In many instances, lawyers are granted very limited time to examine evidence in the possession of the prosecution services. Under such circumstances, it seems extremely difficult for lawyers to prepare their cases and represent their clients adequately.

48. In addition, the general perception is that the defence team has no meaningful participation in court. Under the Criminal Procedure Code, lawyers have a right to collect documentation and evidence on a case, thus conducting a sort of parallel investigation, but in practice they can reportedly only include information they receive from the investigators or the prosecution. Investigators are unlikely to include exculpatory evidence, and without

their authorization, evidence cannot be heard in court. In some instances, lawyers were reportedly not allowed on court premises even though they showed their identification.

E. Access to justice

1. Jury trials

49. The law provides for the use of jury trials for a limited category of serious crimes. One of the most remarkable results of jury courts seems to be that acquittal rates are significantly higher than when cases are heard by judges — about 20 per cent as opposed to 1 per cent of cases heard by judges. Several reasons have been suggested to justify the difference in acquittal rates, including: (a) juries actually examine the case and the evidence provided, which is often very poor; (b) contrary to judges, members of a jury are not afraid to acquit the accused since it has no impact on their jobs; and (c) in general, it is more difficult to pressure all the members of a jury.

50. For defenders of the jury system, jury trials seem to have brought hope of fairer, more independent and more impartial justice. Opponents, who are said to include members of the prosecution services and the executive, have tried — and succeeded to a certain degree — to progressively sideline and reduce the jurisdiction of jury courts. A recent bill on victims, which at the time of the visit was in its first reading before the Duma, excludes the purview of jury courts in the case of certain categories of victim, such as juveniles. Supporters of jury trials are nevertheless campaigning to broaden their jurisdiction; a bill was prepared that extends the jurisdiction of jury courts not only to regional level, but to district level.

51. According to information received, about 25 per cent of acquittals pronounced by juries are later overturned, thus returning the cases to lower courts that do not have jury trials. According to the former Special Rapporteur, the selection of jurors is also problematic (A/HRC/11/41/Add.2, para 26). Jurors should be chosen randomly. In reality, no verifications are carried out. The Special Rapporteur was told of cases in which persons external to the process had access to lists of potential jurors, thus undermining the random selection process. She wishes to underline the fact that jury courts are not always unbiased, as they can be influenced, especially in tight communities that have strong family or tribal links. However, that should not constitute grounds for reducing the jurisdiction of the institution of jury trials, but rather constitute an incentive to reinforce the selection procedures and the protection of jury members, as well as ensuring that all the safeguards for their independence are put in place and implemented.

2. Execution of judicial decisions

52. The enforcement of judicial decisions remains an issue of great concern in the Russian Federation, even though the Constitutional Court clearly stated in a decision that the non-execution of judicial sentences constitutes a violation of constitutional rights. The magnitude of the problem is immense: reportedly, only 50 to 60 per cent of court rulings are implemented. The lack of execution of judicial decisions is the main reason for filing cases against the Russian Federation before the European Court.

53. The bodies responsible for executing judicial decisions fall under the responsibility of the Ministry of Justice. They reportedly have difficulties dealing with their high workload and apparently have some serious organizational issues. Corruption is also said to be rampant among such services. It was reported that the salary of bailiffs is insufficient, making them vulnerable to corruption.

54. In this context, a Federal Act "On Compensation for Infringement of the Rights to Access to Legal Proceedings or Enforcement of a Judicial Act within a Reasonable Period" was adopted in 2010. The Act's main purpose is the compensation of victims of such infringements, but it was hoped that in the longer term it would also push the authorities to directly address the issue of lack of enforcement of judicial decisions. Nonetheless, the majority of interlocutors cited the execution of judicial decisions as one of the main problems regarding access to justice. To date, it is not clear how the Federal Act has been implemented in practice and if it has had a positive effect on the general issue of lack of enforcement of judicial decisions.

55. The Special Rapporteur believes that, if the enforcement of judicial decisions is to remain under the responsibility of the Ministry of Justice, a strong commitment is required from the executive to ensure that there is no interference in or any kind of improper control over judicial decisions.

3. Legal aid

56. The right to free legal assistance, which is enshrined in federal legislation, is limited to criminal cases, with the exception of a very narrow list of cases in which legal aid must be provided in civil proceedings.

57. Defence lawyers are appointed *ex officio* and fall under the exclusive purview of bar associations. A serious issue that was brought to the attention of the Special Rapporteur, and which directly affects the quality of court-appointed lawyers, is that their salary is disproportionately small — about US$ 17 a day, compared to the US$ 40 or so they would earn for a normal consultation. Moreover, that sum is totally inadequate considering the service that has to be provided. As a result, lawyers who are appointed do not always serve the interests of their clients properly, in breach of their own professional responsibilities. Often, it is less qualified and less experienced lawyers are appointed to provide legal aid.

58. Federal legislation on legal aid excludes assistance to victims of crimes and in non-criminal matters. Hence, legal aid is not available to persons charged with administrative offences, which often carry sentences akin to those in criminal cases, or victims of crimes who take part in criminal or civil proceedings. Illegal migrants, who can be held for up to two years in special detention centres, are also not eligible for legal aid.

59. Some regions have begun to address the gaps in the provision of legal aid by adopting their own legislation to extend the eligibility criteria. Saint Petersburg, for instance, now has a city law on legal aid for indigent persons. In Nizhny Novgorod, the bar association has created a special unit to provide legal aid. Work is also being undertaken with legal clinics in universities. Since January 2013, all residents of Rostov region have been eligible for legal aid in all cases.

60. NGOs often provide some level of legal aid for persons who are not otherwise eligible for it under federal law. The Special Rapporteur considers their work invaluable. She is therefore extremely concerned about the searches and inspections of NGO premises and documents requested by the Prosecutor General, which started shortly before her visit and increased immediately after her departure. The inspections were reportedly carried out regardless of the fact that no information of a real or suspected violation was received, contrary to the provisions of the law.

61. According to the Ministry of Justice, discussions are under way regarding legislative amendments to ensure that legal aid from qualified professionals is available in full compliance with international standards. In May 2013, a meeting with the International Bar Association was scheduled to discuss the issue.

4. Administrative court system

62. Administrative cases are heard by courts of general jurisdiction or by arbitration courts, but a number of interlocutors supported the establishment of an administrative court system. At present, the Russian Federation has an administrative code, but not yet a code of administrative procedure, which, allows judges to take arbitrary and potentially harsh decisions in cases concerning violations of administrative law, such as administrative violations committed in the context of peaceful protests. Moreover, without an administrative procedural code, it is difficult for judges to effectively consider complaints concerning the actions of State authorities, including administrative decisions, or their failure to act. The Special Rapporteur notes with appreciation that the Duma finally approved the first reading of a draft federal code of administrative procedure in May 2013.

63. According to some interlocutors, the main issue preventing the establishment of administrative courts is the financial burden. Some people support the idea of establishing specialized administrative chambers within the framework of the courts of general jurisdiction as an initial and less costly step. The draft federal code of administrative procedure does not entail the creation of a separate system of administrative courts; the courts of general jurisdiction will be competent to hear administrative cases. Regardless of the system that will be set up, judges will need to be adequately trained.

64. Echoing one of the former Special Rapporteur's recommendations, the current Special Rapporteur urges the Russian authorities to swiftly adopt a comprehensive code of administrative procedure and to seriously consider establishing an administrative court system as a means of strengthening mechanisms to fight corruption and ensuring the liability of State officials (A/HRC/11/41/Add.2, para. 97).

F. Juvenile justice and the Rostov region model

65. During her visit, the Special Rapporteur had the opportunity to visit the Rostov region, which was the first Russian region to undertake a thorough reform of the juvenile justice system. The initiative was based on a resolution of the Plenum of the Supreme Court from 2000, which highlighted the need to bring the juvenile justice system in the Russian Federation into line with international human rights standards. Subsequent developments were guided by the 2003 resolution of the Plenum of the Supreme Court highlighting the fact that Russian judges are directly bound by international norms and standards, which should take precedence over domestic legislation in case of conflict.

66. The reform was initiated by judges of Rostov Regional Court and implemented through the joint endeavours of Rostov Regional Court, the administration of the Judicial Department of Rostov Region and the United Nations Development Programme. Seminars and conferences involving judges, prosecutors, representatives from legislative and administrative bodies, social services and foreign experts played an important role in the development of the programme.

67. The Rostov model is based on a rehabilitative approach to juvenile justice with four central elements: (a) the specialization of judges; (b) the specialization of the judicial apparatus, particularly the introduction of social workers in courts; (c) the establishment of the necessary regional legal and institutional framework, including a functioning social service system; and (d) the establishment of coordination mechanisms between all the actors working in the field of juvenile justice. The comprehensive juvenile justice model is rooted in the principle of the best interests of the child.

G. Prosecution services

68. According to several sources, the Prosecutor's Office (the *prokuratura*) is the least reformed institution in the Russian Federation. The Prosecutor's Office is said to exercise excessive prerogative in criminal cases and in its general oversight function. In the criminal justice system, the Prosecutor's Office allegedly plays a significant role in pressuring judges; several judges were dismissed in the past for not having followed the prosecution's instructions.

69. Prosecutors also have broad supervisory powers over the executive and legislative branches, investigative bodies and administrative agencies. The Prosecutor's Office can therefore summon members of those institutions to provide explanations in relation to any matter subject to the prosecutor's supervision or investigation. The grounds for supervisory powers are excessively broad, and the whole procedure requires clarification in the law. As advocated by the former Special Rapporteur, consideration should be given to transferring those supervisory functions to an independent body separate from the prosecutors or the judiciary (A/HRC/11/41/Add.2, para. 100).

70. In the Russian Federation, the Prosecutor General and the Deputy Prosecutor General are appointed by the Federation Council on the recommendation of the President. Other federal prosecutors are appointed by the Prosecutor General. Non-federal prosecutors are appointed by the Prosecutor General in consultation with the relevant regional entity, and are only subject to the authority of the Federal Prosecutor General. No grounds for dismissal seem to be prescribed by law, which, in the opinion of the Special Rapporteur, opens the door to undue pressure and influence on prosecutors, in particular from the executive.

71. In September 2007, an investigative committee was established to separate the two functions of pretrial investigation and prosecution. The aim of separating the two functions was to eliminate bias, or the perception of bias, in investigations, especially with regard to corruption cases or cases involving State agents.

72. The investigative committee has exclusive jurisdiction over pretrial investigation into serious and particularly serious crimes, including rape and murder. The police carry out investigations of ordinary offences that do not fall under that jurisdiction. The number of cases dealt with by the police remains higher than the number investigated by the committee; the police are in charge of investigating administrative offences which are prosecuted and can lead to prison sentences.

73. While the legal oversight of all investigations remains with the prosecution, frictions and rivalry regarding who is really in charge of the investigation process continue to exist.

74. The *raison d'être*, efficiency and quality of the work of the investigative committee have been questioned. Investigators, like police officers, are often accused of abuse of power and corruption. In reaction to those criticisms, in 2012 a special unit was created within the investigative committee to deal with crimes committed by law enforcement representatives. However, the special unit is said to be understaffed; the 60 individuals who cover the whole country reportedly face an immense workload. With the exception of a handful of cases, the special unit has not yet had a visibly positive impact, which is not surprising given the means placed at its disposal.

75. The Special Rapporteur is particularly concerned about reports that allegations of torture are not properly investigated, particularly allegations of torture during interrogation or pretrial detention. As a consequence, it seems that evidence obtained under torture continues to be used in violation of relevant international standards, such as the Guidelines on the Role of Prosecutors, which prohibit the use of evidence obtained through such

methods and require the adoption of adequate measures to ensure that those responsible for using such methods are brought to justice (guideline 16).

H. Lawyers

76. In the Russian Federation, the Federal Act "On Legal Practice and the Bar" secures the independence of the legal profession by providing lawyers with a strong set of rights. Nevertheless, the Special Rapporteur was told that the Act has not always been implemented or respected. She was also told of attempts to modify the legislation governing the role and independence of the legal profession, which would have the effect of restricting that independence.

77. The bar is a self-managed independent body. Qualification boards exist in each chamber of lawyers and are in charge of examinations, selection and disciplinary measures, among others. However, a representative of the respective federal or regional Ministry of Justice sits on each qualification board. In addition, the registration of lawyers falls under the purview of the Ministry of Justice. The Special Rapporteur is concerned that the legal profession may thus be conditioned or controlled by the executive branch.

78. That fact that the registration of lawyers is the responsibility of the executive is of concern and is inconsistent with the Basic Principles on the Role of Lawyers. Indeed, while lawyers are not expected to be impartial in the same way as judges, they must be as free from external pressures and interference as judges. When lawyers cannot freely and independently discharge their duties, the door is opened for both private and public actors who seek to influence or control judicial proceedings to pressure lawyers and interfere in their work.

79. The Special Rapporteur was alarmed to hear about the immense list of obstacles facing lawyers and the level of threats and attacks that some lawyers encounter on a daily basis merely because they wish to discharge their professional duties and represent the interests of their clients. Lawyers sometimes face insurmountable difficulties in their attempts to meet their clients in private and gain access to transcriptions of court hearings and copies of case materials. It is also allegedly not uncommon for investigators to forge lawyers' signatures on documents submitted to the courts. In some extreme cases, lawyers were not allowed on court premises. In most cases, judges condone or directly participate in such violations of lawyers' rights and privileges. As a consequence, in too many trials, lawyers have only a cosmetic role to play, no matter how convincing their arguments might be.

1. Lawyer-client confidentiality

80. Although prohibited by Russian legislation, a practice that seems to have developed in some regions is the interrogation of lawyers as witnesses in order to remove them from legal processes. The practice is in flagrant contradiction of the basic principle of lawyer-client confidentiality as enshrined, inter alia, in principle 22 of the Basic Principles on the Role of Lawyers.

2. Pressure, threats, attacks and killings

81. In some regions of the Russian Federation, lawyers are targeted for discharging their professional functions. Lawyers are subjected to threats, intimidation, attacks, groundless prosecutions, and in the gravest cases, murder. The perpetrators are both State and non-State actors. The situation of lawyers who work in the North Caucasus is of particular concern to the Special Rapporteur. In the context of terrorism and counter-terrorism

activities, courageous lawyers who continue to discharge their professional duties live in a state of permanent fear.

82. Lawyers involved in politically sensitive cases are also particularly vulnerable to pressure and regularly face security threats.

83. In many regions of the country, the impunity surrounding such acts of persecution has had a strong chilling effect on lawyers, negatively influencing the quality of their work, forcing them to refuse to work on certain types of cases, and obliging them to face the fear that they or their families may be at risk because of their work.

I. Training and capacity-building

84. Most of the people the Special Rapporteur met during her visit recognized the importance of high-quality education, professional training and capacity-building programmes for all the actors in the judicial system in order to ensure an independent, impartial and effective administration of justice.

85. The Russian Academy of Justice, created in 1998, provides regular courses and training for judges and court staff at all levels. The Academy also includes a law school which trains about 80,000 students. The Academy suffers from limited funding — its resources come from the State — and limited access to technology, such as video-conferencing, which could facilitate the provision of training.

86. As previously mentioned, the law requires newly appointed judges to undertake initial practical training. Continuing education was also made compulsory for judges, who have to undertake training every three years. The Special Rapporteur was informed that such trainings usually take place at the Russian Academy of Justice.

87. Assessing the effectiveness of the training is not a straightforward matter, but some interlocutors reported to the Special Rapporteur that, even after attending the training provided by the Academy, many judges continue to be unaware of legislation concerning immigration and refugees and regional and international human rights and the jurisprudence of the European Court.

IV. Conclusions

88. **In December 2013, the Russian Federation celebrated the 20th anniversary of its Constitution. Since the end of the Soviet regime, the justice system has been heavily reformed to respond to the founding requirements of democracy and the rule of law.**

89. **While all the efforts to strengthen the independence of the judiciary and end the political subordination of judicial actors are welcome, the reform programmes, including new legislation, have yet to be fully implemented. All the stakeholders in the justice system, including civil society, should be involved in the implementation of the reforms and new laws, so that the Russian Federation can move forward in its consolidation of democracy.**

90. **It is of paramount importance that both the public and the authorities, including the judiciary, fully internalize the changes brought about by the end of the Soviet system in order to get away from the public perception that the justice system is a remnant of the old regime. That will require specific action based on the democratic concepts introduced by the Constitution. Indeed, it is equally important that justice be done and be perceived to be done. Any lack of public trust has to be urgently addressed and specific measures taken to reconnect the public with a**

judiciary that exists to enforce their rights. One such measure should be the immediate prohibition of cages in criminal courts in order to uphold the principle of the presumption of innocence, thereby reinforcing fair trial guarantees.

91. **The Special Rapporteur wishes to highlight the fact that the independence of the judiciary as a key element of democracy encompasses both the independence of individual judges and the institutional independence of the judiciary as a whole. Any improper interference in the independence of the judiciary, such as the appointment of judges by the executive, must therefore be avoided. Moreover, pressure on, threats against, and in the most extreme cases, murders of judges and lawyers in total impunity cannot be tolerated. Any kind of direct or indirect threat or improper influence, interference or pressure on judges, prosecutors or lawyers must be tackled immediately in order to prevent serious setbacks for the independence of the justice system and the implementation of the rule of law in the Russian Federation.**

92. **The Special Rapporteur recalls that it is of utmost importance to ensure that the successes achieved thus far are maintained while moving forward with a comprehensive set of short- and long-term measures aimed at addressing the issues and challenges that have been identified.**

V. Recommendations

93. **The Special Rapporteur wishes to make the following recommendations with a view to contributing to the reinforcement of the independence and impartiality of the justice system. She notes with concern that many of the issues raised by the former Special Rapporteur in 2008 have not yet been addressed and that a number of his recommendations have yet to be implemented.**

Government judicial reform plan

94. **The new government justice reform plan for 2013–2020 should be implemented with the full and informed participation of members of the judiciary, including members of the Supreme Court, as well as other stakeholders such as lawyers and members of bar associations. The Special Rapporteur would welcome additional information on the measures the federal authorities intend to take to implement the new programme and assess its results.**

Independence of the judiciary

95. **All State institutions in the Russian Federation should respect and uphold the independence of the judiciary. Interference and threats to the institutional and individual independence of judges should be addressed as a matter of urgency, investigations should be carried out when necessary and perpetrators should be prosecuted and punished. Specific measures to safeguard the justice system and protect judges should be taken and implemented in practice.**

96. **The selection of candidates for the position of judge must be based on merit alone and undertaken through competitive, objective and transparent examinations conducted at least partly in a written and anonymous manner.**

97. **All judges should be selected and appointed by an independent body, which should have a plural and balanced composition, and in which judges have a substantial voice. In this sense, the composition of the qualification collegia and the**

procedures for appointing their members should be reviewed, and measures taken to ensure their full independence and avoid political influence. Judges should not be appointed by the executive.

98. **Selection and appointment procedures should be transparent and public access to relevant records ensured.**

99. **All judges, including justices of the peace, should receive life tenure.**

100. **Clear procedures and objective criteria for the promotion of judges should be followed.**

101. **The role and powers of court presidents should be clearly defined and limited to the proper administration of the court. The principle of *primus inter pares* should be respected and court presidents should be elected by the judges of their respective courts; any involvement of the executive or the legislative power in the election process should be excluded.**

Accountability

102. **The gravity of conducts, which determines the kind of disciplinary measure to be applied, should be clearly established. Judges' right to a fair hearing and review of the decision by an independent body should be respected in all disciplinary proceedings.**

103. **Relevant legislation and standards should clearly indicate that the fact that a judge's decision, no matter how controversial, is overturned by a higher instance court does not itself constitute a valid ground for disciplinary action. It is the role of the appeal courts to correct judicial errors.**

104. **Any information pointing to the inappropriate conduct of a judge should be brought to the attention of the relevant qualification collegium and investigated in accordance with the appropriate procedures within the new limitation period.**

105. **An independent body should be in charge of disciplining judges. In addition to the recommendation in paragraph 97 above, the separation of the qualification collegia into two bodies – one in charge of the qualification, selection, appointment and promotion of judges, and the other dealing with disciplinary proceedings – should be considered.**

106. **The jurisdiction of the Disciplinary Judicial Presence, thus far limited to appeals against dismissals of judges, should be extended to the other forms of disciplinary measures.**

107. **The inclusion of one or more judges of the Constitutional Court in the composition of the Disciplinary Judicial Presence should be considered.**

Administration of justice and judicial proceedings

108. **Efforts to modernize courts should be strengthened. The use of technology, including the Internet, databases and videoconferencing, should be streamlined throughout the country at both federal and regional levels.**

109. **Where they do not exist already, objective and transparent mechanisms should be put in place for allocating cases to individual judges. Information and criteria on the assignment of cases should be available to the public in order to counter suspicions of malpractice and corruption.**

110. **Court hearings should be properly recorded; the records should be available to all interested persons, especially the parties to the proceedings.**

111. **Pretrial detention should be the exception rather than the rule, and based on an individualized determination that it is reasonable and necessary in all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. The relevant factors to determine pretrial detention should be specified in law and should not be vague or expansive.**

112. **Judges should always justify their decisions in accordance with the law to maintain a defendant in pretrial detention.**

113. **The law should stipulate that, if the length of time the defendant has been detained reaches the length of the highest sentence that could be imposed for the crimes charged, the defendant should be immediately released. Pretrial detention in cases of violations for which the highest possible sentence is a fine should be prohibited in law, as it does not comply with the requirement to be reasonable.**

114. **Explicit time limits on the length of pretrial detention for serious crimes should be respected.**

115. **Respect for the principles of equality of arms and presumption of innocence should be reinforced. In particular, metal cages and closed wooden boxes should be removed from court rooms immediately.**

116. **Defence lawyers should have access to investigative bodies' files and all the evidence they compile during the investigative phase, and the right to make copies.**

117. **Allegations of torture, including torture to extract confessions, should be investigated immediately in an impartial and effective way.**

118. **The special unit created in 2012 within the investigative committee to deal with crimes committed by law enforcement representatives should be provided with the necessary human and financial resources to operate and yield tangible results.**

Jury courts

119. **The jurisdiction of jury courts should not be limited.**

120. **The system of selecting jurors should be reformed to exclude the possibility of arbitrary selection. The system should automatically exclude State agents and other persons whose service as jurors would present a conflict of interests.**

Execution of judicial decisions

121. **Efforts to improve the execution of domestic and international judicial decisions should be strengthened. An independent mechanism should be established at the federal level and provided with the necessary resources to oversee the enforcement of judicial decisions at all levels and with the competence to recommend action to remedy situations in which it considers that judicial decisions have not been properly and/or fully executed. Its functions should also include gathering and publishing statistical data on the execution of judicial decisions.**

122. **Specific measures, including measures to tackle corruption, should be adopted urgently to improve the effectiveness and transparency of the work of bailiffs and other actors in charge of enforcing judicial decisions. Closer cooperation between bailiffs and the courts should be institutionalized.**

123. **The judgments of the European Court of Human Rights concerning the Russian Federation should be duly enforced and official translations into Russian made available on a public database in order to make them easily accessible.**

Legal aid

124. **A federal legal framework should be adopted to establish a comprehensive legal aid system that is accessible, effective, sustainable and credible in all the entities of the Federation. The framework should (a) include the broadest possible definition of legal aid and specific criteria to determine eligibility for legal aid; (b) ensure that legal assistance is provided at all stages of the criminal justice process and in any non-criminal judicial or extrajudicial procedure aimed at determining rights and obligations; (c) ensure that information on legal aid is widely available to the general public; and (d) determine the minimum qualifications and training of all professionals working for the legal aid system.**

125. **Defence lawyers appointed to provide legal assistance in criminal cases should be adequately remunerated for all their services.**

126. **The Russian authorities should recognize and support the contribution of NGOs in providing legal aid. The authorities should adopt all appropriate measures to ensure that non-governmental legal aid providers are able to carry out their work effectively, freely, independently, and without any intimidation, harassment or improper interference. The authorities should put an immediate stop to groundless inspections, investigations and prosecutions of NGOs.**

Administrative court system

127. **A comprehensive administrative procedural code should be adopted. All relevant stakeholders should be able to contribute to and participate in discussions on the content of the code.**

128. **Specific steps should be taken to establish an administrative court system as a means of contributing to the fight against impunity for violations or omissions committed by State agents, including corruption, and to strengthen public confidence in the justice system. Specific training should be provided for administrative court judges.**

Juvenile justice

129. **The adoption and implementation of a comprehensive and inclusive framework for juvenile justice, based on international standards and principles on children's rights, should be seriously considered at the federal level. Juvenile justice models, such as the one developed in the Rostov region, should be encouraged and serve as examples for all entities of the Federation.**

Prosecution services

130. **Prosecutors should conduct themselves in a professional manner at all times and strive to be, and to be seen to be, independent and impartial. They should not try to directly or indirectly pressure or influence judges.**

131. **Prosecutors should cooperate with the legal profession and public defenders and ensure that the rights to a fair trial and to adequate access to legal defence are respected.**

132. **The dismissal of prosecutors should be subject to strict criteria that are established by law and that do not undermine the independent and impartial performance of their functions.**

133. **The grounds for the supervisory powers of the prosecution should be reduced and the procedure should be clarified in the law.**

Lawyers

134. **The bar should be consulted on any legislative procedures that could affect the rights and independence of the legal profession.**

135. **Responsibility for the registration of lawyers should be transferred from the Ministry of Justice to the legal profession itself. Qualification boards should be composed of legal professionals only; representatives of all government entities, including the Ministry of Justice, should be excluded from participating.**

136. **Legislation should be adopted to guarantee that lawyers have full access to the relevant information, files and documents in the authorities' possession or control to allow them to prepare an adequate defence. The information concerned should include all materials that are exculpatory or that the prosecution plans to use against the accused in court.**

137. **The authorities, together with bar associations and educational institutions, should ensure that lawyers receive proper training and are made aware of lawyers' ethical duties and the human rights and fundamental freedoms enshrined in domestic and international law.**

138. **Any acts of harassment, threats or physical assaults against lawyers, including killings, should be promptly investigated by an impartial and independent body and the perpetrators sanctioned.**

139. **Where the security of lawyers is threatened as a result of discharging their functions, the authorities should adopt effective measures to ensure their security and that of their families.**

Capacity-building

140. **Judges, prosecutors and lawyers should have access to adequate legal and professional training, including continuing education, specialized training and other kinds of capacity-building. The training should include specific courses on international and regional human rights law and its application at the domestic level.**

141. **Training opportunities should be equally accessible to all judicial actors, regardless of the instance at which they operate and the distance from the capital.**