
**ATTENDING TRIALS INVOLVING
HUMAN RIGHTS DEFENDERS IN RUSSIA
A HANDBOOK FOR DIPLOMATS**



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INTRODUCTION

The work of human rights defenders (HRDs) is crucial to ensuring respect for and fulfilment of universally recognized human rights. The importance of HRDs and their work was recognized through the adoption of the UN Declaration on HRDs in 1998. In spite of this, governments and other actors prevent HRDs from carrying out their activities or take reprisals on them for it. The misuse of the judicial system is one of the most common tools used to hinder the work of HRDs. Repressive laws and trumped-up charges used against HRDs result in violations of their basic civic freedoms, crippling financial penalties or unjust imprisonment. At the same time, the judicial system usually fails to hold violators of the rights of HRDs accountable, resulting in impunity.

In recognition of their crucial role and the obstacles they face, in 2004 the European Union adopted Guidelines on the Protection of Human Rights Defenders. Attending the trials of HRDs as observers is one of the methods mentioned in the guidelines for supporting and protecting HRDs. Numerous individual EU member states and other like-minded countries also have their own guidelines.¹ These all mention attending trials involving HRDs as a key activity contributing to the protection of HRDs. Not only in policy, but in practice, attending trials is one of the most common concrete actions through which diplomatic missions of the EU and other countries seek to support HRDs.

PURPOSE OF THIS HANDBOOK

This concise handbook is meant for staff of diplomatic missions and other representatives of EU and like-minded countries who might attend trials involving HRDs in Russia. It provides diplomats with information they might find useful in attending such trials of HRDs in local courts. The information is meant to facilitate diplomats' efforts while at the same time – by providing practical pointers and guidance – to contribute to making these efforts as effective as possible. It highlights the specific situation of HRDs in Russia and the ways in which the Russian judicial system is misused to impede their work. For inspiration, a few “success stories” are described. The handbook recognizes that the objectives and conduct of diplomats attending trials, including sending a message to the authorities and giving moral support for persecuted HRDs, are different from those of trained trial observers who make detailed assessments of procedures, maintain strict neutrality and refrain from public comment while the trial is taking place.

METHODOLOGY

The handbook was drafted on the basis of interviews with diplomats with experience of attending trials involving HRDs in Russia and with lawyers involved in such cases.

1) Finland, Switzerland, Canada and Norway all have their own guidelines. The OSCE also has *Guidelines on the Protection of Human Rights Defenders* which says that diplomats of participating states should support HRDs by attending their trials (p.20)



WHY SHOULD DIPLOMATS ATTEND TRIALS INVOLVING HRDs?

In Russia, as in other countries, the potential importance of trial attendance by foreign diplomats depends on the particulars of each case. It can be important for any of the following reasons:

1. Persecution of HRDs through the implementation of repressive laws and use of trumped-up charges is one of the main ways that the work of Russian HRDs is undermined. Such persecution is having very damaging effects. Therefore, preventing or mitigating it is a key way of protecting HRDs in Russia.
2. Trial attendance – especially in combination with other measures – can result in more positive outcomes of trials and/or individual hearings. HRDs may be fined instead of imprisoned, they could receive better treatment in detention, they could receive a shorter sentence, charges could be dropped, they could be found innocent, or have their sentence reviewed and be released. The “success stories” described in this handbook are a few examples of the positive outcomes that trial attendance has contributed to in Russia.
3. Diplomats can see for themselves the extent to which trials involving HRDs are fair and whether international fair trial norms are respected. Diplomats can witness the conduct of judges towards HRDs and their lawyers, get first-hand experience of the atmosphere in the courtroom and assess the treatment of HRDs by the justice system.
4. When diplomats share their assessments of trials with the international community, it increases the chances that international actors will try to influence Russia to keep its commitments to respect the rights of HRDs.
5. Trial attendance sends a signal to the authorities that there is international concern about the case, that the persecution of HRDs/NGOs isn't going unnoticed.
6. It affects the behavior of the judge and court staff. For example, a judge might be more willing to allow the defence's pleas or include its evidence on file, follow the rules for due process better, be more respectful towards a HRD/lawyer, or be more likely to give permission for videos and photographs to be made in the courtroom (see page 8, under “rules and regulations”).
7. If diplomats' attendance is well publicized, it can draw the attention of the media and the public to the trial. This increases transparency and – especially in criminal trials – can deter convictions on the basis of false evidence.
8. It provides psychological or moral support for the HRD/NGO/lawyer which helps them to keep fighting. It means a lot to them that the international community shows interest in their case.
9. It reduces overall pressure on the HRD/NGO, and raises their status in general.



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SUCCESS STORY: ALI FERUZ

Ali Feruz (real name Hudoberdi Nurmatov), a journalist writing about issues such as the plight of migrants, had fled to Russia from Uzbekistan in 2008 after being detained and tortured by the country's security services. In August 2017, he was arrested in Moscow for "immigration violations" and held at an immigration detention center. In the Russian courts, he fought deportation to Uzbekistan, where he believed he would again be tortured, and for the right to leave Russia for another country. He succeeded not only in avoiding deportation but was also able to have the barriers to his departure to a third country removed and in February 2018, left Russia for Germany. Diplomats from the EU Delegation and numerous EU and non-EU countries attended key hearings in his trial (including the last two hearings). These efforts were an important element of the considerable international attention which helped him win his case.



WHAT KINDS OF TRIALS INVOLVING HRDs SHOULD BE PRIORITIZED?

Diplomatic missions, due to resource limitations, cannot attend all trials in which HRDs are involved. Considering the patterns of persecution of HRDs and NGOs in Russia, they should prioritize the following kinds of cases:

1. Cases where individual HRDs are facing criminal prosecution. In these cases, convictions result in imprisonment or at least a criminal record, which has serious negative repercussions for the HRD. HRDs may face various kinds of trumped-up charges, including theft, libel, espionage, child pornography and drug possession.
2. Cases brought under repressive laws which violate the basic rights of HRDs/NGOs such as the Law on Foreign Agents, laws concerning public demonstrations and anti-extremism laws.
3. Cases where the outcome would set a harmful precedent.
4. Cases involving key HRDs or NGOs in regions (even when the outcome is predictable or the persecution “routine”), especially where there are few HRDs/NGOs and this persecution therefore causes significant harm to local civil society. Diplomats do not often attend trials in the regions – when they do it stands out and can make a significant impact.
5. Cases where HRDs/NGOs are combating smear campaigns. For example, NGO cases against state-run media.

Within a certain trial, some hearings can be more important than others. Diplomats should consult HRDs and lawyers in order to prioritize those hearings where most is at stake.



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SUCCESS STORY: VALENTINA CHEREVATENKO

Valentina Cherevatenko leads the NGO Women of the Don in Rostov Region. In June 2016, she was notified that a criminal investigation was being opened against her for “maliciously evading” requirements of the repressive Law on Foreign Agents. This occurred at the same time as other proceedings targeting her NGO. In August 2016, representatives of the EU Delegation and the embassies of three EU countries traveled to Rostov-on-Don to attend a court hearing related to her NGO.

The EU also issued numerous public statements – in Brussels as well as Vienna (OSCE Permanent Council) – and raised the case with Russian authorities. EU member states such as France and Germany also intervened, reportedly at the highest level. Though the charge was formalized in June 2017, two weeks later it was abruptly dropped, and a trial didn’t take place.



RULES AND REGULATIONS - SOME THINGS TO KNOW WHEN ATTENDING TRIALS IN RUSSIA

- Diplomats, like other members of the public, have a right to attend hearings in public trials.
- In order to enter the courtroom, diplomats, like other members of the public, must present a piece of identification. In the case of diplomats, a passport is required. Diplomatic cards should also be presented to enhance the diplomat's visibility (see p.13).
- Taking notes and making audio recordings in the courtroom are allowed – no permission is needed.
- Permission from the judge is needed for taking photographs, making videos or a live transmission of the hearing through radio, television or Internet (including live reports of proceedings on social media such as Facebook or Twitter). One of the parties or people who themselves plan to make a video can submit an application in advance to the Judge or the Chairman of the Court. Such a request must be considered by the Judge at the beginning of the hearing. If such a request is submitted by a party, the Judge will not be able to ignore it.²
- Talking or asking questions during the hearing is not allowed. Whispering interpretation is therefore not allowed. The judge can use “disruptive” whispering interpretation as a reason or pretext for expulsion from the courtroom.

2) See *Law about providing access to information about activities of the courts in the Russian Federation*, Federal Law No. 262, http://www.consultant.ru/document/Cons_doc_LAW_82839/ (in Russian)



WHAT DIPLOMATS SHOULD LOOK FOR WHEN ATTENDING TRIALS - COMMON IRREGULARITIES

Some of the most common irregularities are:

- Lawyers are denied adequate access to the HRD before a trial/hearing.
- Unequal treatment of the two sides (prosecution and defence). For example: the judge doesn't allow the defence to fully express its point of view, present evidence or question witnesses; objections of the defence are repeatedly overruled.
- The court doesn't give the defence enough time to examine materials or prepare its arguments, especially written arguments.
- The HRD is not allowed to speak on his/her own behalf.
- People are unable to attend the hearing. The appointed courtroom may be too small in relation to the level of public interest in the case. Specific individuals may be turned away without justification. No possibility to follow events in the courtroom – such as an adjacent room with live transmission of the hearing – is provided.
- The judge or court asks members of the public audience to identify themselves. However, according to Russian law, no one, including diplomats, can be required to identify themselves in the courtroom.
- The judge prohibits audio recordings or even note-taking.
- Members of the audience are expelled without justification.
- On the scheduled day, hearings sometimes start only after a long delay. When they do, parties who are no longer present are registered as not having shown up even though they may have waited for hours before leaving.
- Hearings may continue long after the official closing time of the court without justification.

Diplomats may not always be in a position to understand or assess the procedural aspects of trials. Nevertheless, they are able to experience and report on the context of the trial, the atmosphere in the courtroom, and the behavior of the parties.



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Court hearing in the case of **Oyub Titiev**, Head of Human Rights Centre “Memorial” in Chechnya, arrested in January 2018 on a trumped-up charge of “drug possession”. Representatives of the EU and EU member states attended several hearings.



TIPS FOR BEING EFFECTIVE

To maximize effectiveness, diplomatic missions or diplomats attending trials should:

BEFORE THE TRIAL OR HEARING

1. Send the highest possible level of diplomat to attend trials. The higher the level of a diplomat, the more impact it will have – attendance by Ambassadors has the most impact.
2. Prepare by getting information about the trial and the logistics of attending it. Diplomats should know the charges and relevant legal norms (translated from Russian if necessary), what is at stake in each hearing, which hearings are the most important, what has happened so far, and what to expect in the courtroom. To prepare, they should contact the HRD or the lawyer working on the case. They can also consult independent jurists about cases. In the Annex, some jurists who can be contacted and consulted about trials involving HRDs are listed.
3. Know the general rules for attending court hearings as well as any rules of the specific court where the hearing will take place.
4. Reach out to and coordinate with other diplomats from EU or non-EU/like-minded countries. Share information about the case and engage in “burden-sharing.”
5. Arrange interpretation for diplomats who don’t speak Russian. Since whispering interpretation is not allowed in court, alternatives can be used. For example, the diplomat can read interpretations written by the interpreter on a notepad. Diplomats who don’t speak Russian should cooperate with and obtain information from those who do.

AT THE HEARING

1. If possible, attend hearings in pairs or in a group to enhance visibility and security. At least one diplomat should speak good Russian.
2. Be neutral in terms of where they sit, who they talk to. Avoid emotional reactions to events in the courtroom. The judge can claim that such reactions are “disruptive” and use this to justify expulsion from the courtroom.
3. Be seen to be listening with concern and regularly taking notes.
4. Talk to people they meet at the hearing (lawyers, journalists, NGO representatives) to better understand the context of the case.
5. Not hesitate to address questions to guards, bailiffs or court employees before or after the hearing or during breaks.

AFTER THE TRIAL OR HEARING

1. Meet with lawyers to understand what happened at the hearing and what it means.
2. Share reports including recommendations with colleagues who can take further action such as the Head of Mission, Foreign Ministry, Permanent Representation. Translate reports into English and share them with missions of other EU and like-minded countries, the European External Action Service, etc.

3. Take additional or follow-up actions. Trial attendance has the most impact if it is combined with other measures. The “success stories” in this handbook illustrate this. It is advisable that official positions on cases are publicized through public statements, tweets, Facebook postings and media interviews. Cases should be raised with the authorities. It’s crucial for countries of diplomats attending trials to make public statements condemning the use of repressive laws and trumped-up charges to persecute HRDs.³ Otherwise, as the OSCE has underlined, attending trials risks legitimizing a flawed process and the repression of HRDs through the manipulation of the justice system.⁴
4. If a trial is being attended through “burden-sharing,” diplomats should ensure they pass on relevant information to their colleagues.
5. Ensure continuity of trial attendance. Trials usually involve a number of hearings with different outcomes at stake during each hearing. Attendance should be sustained over the course of the trial, or at least the most important hearings should be attended.

DO NO HARM

Diplomats should ensure that their trial attendance in any case does no harm or worsen the situation of the HRD/NGO. This is a particular risk in cases where HRDs/NGOs are being accused of being “foreign agents” or “spies”. For this reason, it’s crucial that diplomats consult with HRDs/heads of NGOs or their lawyers before hearing to confirm that their attendance is welcomed.

3) Amnesty International endorses the “do’s and don’ts” recommended by the Brussels-based Human Rights and Democracy Network concerning EU/EU member state public statements on trials involving HRDs, available at <http://hrdn.eu/2016/04/29/dos-donts-29-april-2016>

4) See OSCE (2012), p.18, available at <https://www.osce.org/odihr/94216?download=true>



ENSURING VISIBILITY OF TRIAL ATTENDANCE

Having an impact through trial attendance depends on the awareness of HRDs/lawyers, judges, court staff, prosecutors, government officials and media of the presence of diplomats. Diplomatic missions or diplomats attending trials can enhance their visibility by taking the following steps before, during and after trials or hearings:

- Inform the HR1 lawyer that they will attend a hearing. In order for HRDs/lawyers to feel supported by the diplomatic community, they need to know that diplomats are there.
- Publicize the fact that they are monitoring the trial or individual hearings through websites of the Ministry of Foreign Affairs, embassy, EEAS and EU Delegation; through international and local media and social media.
- Notify the court in advance that a diplomat will attend the trial/hearing (if recommended by the HRD's/NGO's lawyer).
- Attend hearings, in pairs or in a group if possible.
- Besides their (diplomatic) passport, show their diplomatic card and even business card (Russian version) when registering their attendance at the court. When a diplomat is in attendance, this is often reported to the judge.
- Sit in a place in the courtroom where they will be seen by the judge, in the front row if possible.
- Cooperate with HRDs' efforts to publicize the attendance of diplomats by meeting HRDs and taking photographs with them.
- Give interviews to the local or international media before or after trials or hearings – although diplomats should avoid speaking with pro-government media who could misrepresent their comments or present them out of context. (HRDs/lawyers could be consulted on this.)



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SUCCESS STORY: ILDAR DADIN

In December 2015, **Ildar Dadin** was the first person to be convicted under Article 212.1 for repeatedly carrying out one-man demonstrations. He was sentenced to three years imprisonment which was reduced to two and a half years on appeal. He challenged the law in the Russian courts. In February 2017, the Constitutional Court ruled that the sentence was disproportionate and should be reviewed by the Supreme Court. The Supreme Court hearing was attended by the EU Delegation and the embassies of a number of EU and non-EU countries. The EU and EU member states had also made public statements about the case. The Supreme Court ordered that Ildar Dadin be released and awarded him the right to compensation. He was freed on 26 February 2017, after serving only about half of his sentence. International attention to the case, including trial attendance by diplomats, was credited with contributing to this outcome.



DEALING WITH PROBLEMS OR OBSTACLES

There are a number of possible problems that can arise or obstacles that can emerge. These include:

1. **Closed trials.** According to Article 241 of the Criminal Procedure Code, judges may close trials to the public, either partly or entirely, on the basis that they might reveal state secrets or other secrets protected by law, involve defendants under the age of 16, or might reveal information about intimate lives of the parties or details denigrating their honour or dignity. Judges can close trials in the interests of the safety and security of the parties, their close relatives or others. Diplomats can still have a positive effect by being visibly present at the courthouse (though not the courtroom), speaking to lawyers, etc. They thereby provide moral support to the HRD and his/her relatives or colleagues, and signal that the international community is closely following the case. Furthermore, they can attend the preliminary and sentencing hearings, which are always public. When the closure of a hearing or trial is unjustified, EU/EU member states can condemn this through public statements or by raising it with authorities.
2. **“No space in the courtroom”.** Diplomats, as well as others, may be excluded from the courtroom on this basis. This reason is unjustified. In Russia, in public trials, everyone who wants to get into the courtroom should be able to get in. Diplomats, like members of the public, have a right to attend trials. By arriving at court enough time before the hearing starts (30 minutes before is a guide, but it takes longer to get in to some courtrooms than others), diplomats can help ensure that the courtroom is not too full to get in. If it is, the hearing may sometimes be viewed on closed circuit TV in an adjacent room. There is no way to officially reserve a seat at a hearing, but diplomats may ask others – even people associated with the HRD – to save a seat for them. If diplomats can’t get into the courtroom, they can argue to get in, write a complaint to the head of the court later, or condemn their exclusion through a media interview or public statement.
3. **Trials are in one of the regions, far from Moscow.** Solutions can be “burden-sharing,” asking colleagues from consulates to attend hearings, contact with HRDs/lawyers to get information about how hearings went, or receiving and following up on reports or information from local or international NGOs.
4. **Language issues.** For non-Russian speaking diplomats, simultaneous (verbal) interpretation is not allowed in Russian courtrooms. One alternative might be to bring a notepad or laptop/tablet/smartphone and have an interpreter write/type text for the diplomat to read. In case the diplomat is watching the hearing through closed circuit TV in a separate room, there are no restrictions on interpretation there.
5. **Threats to physical security.** Although attacks on diplomats have not taken place in Russia, this is potentially a concern in some regions, such as the North Caucasus. Solutions include seeking the advice and support HRDs/NGOs in arranging visits, avoiding overnight stays in less secure regions, hiring a professional observer to represent the EU, and visiting the region in at least a small group.

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6. **Harassment by pro-government journalists or activists.** State-run or pro-government media may cover diplomats' attendance of a trial and portray their action in a negative light or distort statements they make – especially in on-camera interviews. Examples of such media outlets are NTV, Ren TV, Life, RT, Sputnik and Channel Five. (To facilitate identification of these outlets, their logos are reproduced in the Annex.) Diplomats should have a prepared response or not make any comments at all in case they are harassed by such journalists. Pro-government activists or groups, such as NOD (National Liberation Movement), could hold demonstrations or videotape diplomats. Awareness of these possibilities can help diplomats ignore, avoid or even withdraw from such situations. Diplomats should have on hand emergency numbers they can call in case they feel threatened.
 7. **Scheduling of hearings.** Often the date and time of hearings are publicized very little in advance. Hearings can also be postponed. The number of the courtroom can be changed at the last minute. For this reason, diplomats should keep themselves updated through personal contact with HRDs, NGOs and lawyers involved in the case. If possible, diplomats could also monitor the websites of courts. Diplomats can receive updates and notifications by monitoring Facebook and Twitter accounts of NGOs or consulting sources such as the Urgent Response Center for the Protection of Human Rights Defenders in Russia and others listed in the Annex.
 8. **In case of inevitable delays** and long hearings, diplomats should bring water, food and reading material with them.
 9. **It can become uncomfortably warm in courtrooms** – dress in layers.



SUMMARY: FINAL CHECKLIST FOR ATTENDING TRIALS INVOLVING HRDs

Diplomats should:

1. Be aware of the policy of the EU/EU Delegation/their own country or mission on support for HRDs and on attending trials involving HRDs.
2. Identify priority cases by monitoring the situation of HRDs and NGOs through contacts with local HRDs and human rights organizations, contacts with international human rights organizations, social media, news websites, etc.
3. Consult with the HRD/NGO/lawyer involved in the case regarding the desirability of trial attendance by diplomats and how this should most effectively be done.
4. Contact HRDs, lawyers and local and international NGOs to get more information about cases.
5. Network and cooperate with diplomats from other EU or like-minded countries to get information about cases and attend hearings together. Pair up with colleagues who speak good Russian.
6. Ensure visibility of trial attendance.
7. Make reports, translate them into English and share them with EU missions and others.
8. Take or recommend additional or follow-up actions.

ANNEX

RUSSIAN LAWYERS

Who can be consulted regarding trials involving HRDs:

- **Elena Pershakova**, Public Verdict Foundation, pershakova@publicverdict.org, tel. +79858647028.
Can be contacted for information on cases and laws and to help organize trial attendance in regions (meetings with HRDs, contacts with local authorities, interpretation).
- **Tumas Misakyan**, independent lawyer, e-mail misakyantumas@gmail.com, tel. +79269669523
Can be contacted especially regarding criminal cases against HRDs/NGOs.
- **Max Olenichev**, Team 29, maks.olenichev@team29.org, tel. +7 921 593-13-27
Can be contacted in relation to cases being handled by Team 29.
- **Tatiana Glushkova**, Human Rights Centre “Memorial”, glushkova@memohrc.org, tel. +79057065341.

USEFUL WEBSITES

For monitoring the situation of HRDs/NGOs, including trials they are involved in:

- **Urgent Response Center for the Protection of Human Rights Defenders in Russia:** <https://www.facebook.com/urgent.response.center/>
- **OVD info:** <https://ovdinfo.org/>
- **Monitoring the pressure on HRDs in Russia:** <https://hr-defenders.mhg.ru/>
- **Human Rights Centre “Memorial”:** <https://memohrc.org/ru>
- **Agency for Social Information – offers a more general overview of the situation of NGOs:** <https://www.asi.org.ru/>

TRIAL OBSERVATION MANUALS AND HANDBOOKS

- **Amnesty International’s Fair Trials manual:** <https://www.amnesty.org/en/documents/POL30/002/2014/en/>
- **Reference Manual for trial monitoring by THE Organization for Security and Cooperation in Europe (OSCE):** <https://www.osce.org/odihr/94216?download=true>
- **Front Line Defenders (FLD) trial observation handbook for HRDs:** <https://www.frontlinedefenders.org/en/file/1894/download?token=bJrZAF-R>
- **“Trial Observation Manual for Criminal Proceedings,” International Commission of Jurists (ICJ), 2009:** <https://www.icj.org/wp-content/uploads/2009/07/trial-observation-manual-Human-Rights-Rule-of-Law-series-2009-eng.pdf>
- **“Trial Monitoring”, IFEX:** https://www.ifex.org/campaign_toolkit/trial_monitoring/
- **“Trial Observation and Monitoring the Administration of Justice”, Chapter 8 of “Training Manual on Human Rights Monitoring”, Office of the High Commissioner for Human Rights (OHCHR):** <http://www.ohchr.org/Documents/Publications/training7Introen.pdf>

LOGOS OF SOME PRO-GOVERNMENT MEDIA OUTLETS



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