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Meeting: 1302nd meeting (December 2017) (DH)

Communication from a NGO (15/12/2016) in the cases of ANNAGI HAJIBEYLI, MAMMADLI, GAYA ALIYEV AND OTHERS, SOLTANOV AND OTHERS v. Azerbaijan (Applications No. 2204/11, 2326/11, 29781/11, 30362/11).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

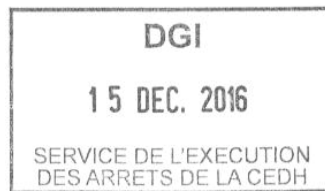
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Réunion : 1302^e réunion (décembre 2017) (DH)

Communication d'une ONG (15/12/2016) dans les affaires ANNAGI HAJIBEYLI, MAMMADLI, GAYA ALIYEV ET AUTRES, SOLTANOV ET AUTRES c. Azerbaïdjan (Requêtes n° 2204/11, 2326/11, 29781/11, 30362/11)
[anglais uniquement]

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



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To the members of
the Committee of Ministers
of the Council of Europe

15 December 2016

**Re : Execution of *Annagi Hajibeyli v. Azerbaijan* (Application no. 2204/11);
Gaya Aliyev and others v. Azerbaijan (Application no. 29781/11 and others) ;
Soltanov and others v. Azerbaijan (Application no. 30362/11 and others) ;
Mammadli and Others v. Azerbaijan (Application no. 2326/11 and others)**

Dear members of the Committee of Ministers,

The International Commission of Jurists (ICJ) would like to address your Committee in relation to the execution of the judgement of the European Court of Human Rights in the abovementioned cases under Rule 9.2 of the Rules of Procedure of the Committee of Ministers, in accordance with its supervisory role on execution of judgments of the European Court of Human Rights.

The ICJ has acted as third party intervenor before the European Court of Human Rights in the case of *Annagi Hajibeyli v. Azerbaijan* on the specific issue of the violation of the applicant's right to petition under article 34 ECHR.

The ICJ would like to present recent findings on the situation of lawyers in Azerbaijan that have an impact on the right to a lawyer under article 6 ECHR, including the right to petition to the European Court of Human Rights under article 34 ECHR. Since the issue of article 34 ECHR is examined also in the cases of *Gaya Aliyev and Others*, *Soltanov and Others* and *Mammadli and Others*, the ICJ submits this information in these cases as well.

A summary of the ICJ findings

Pursuant to a fact-finding mission to Azerbaijan carried out in June 2016, the ICJ concluded, in its report *Defenceless defenders: Systemic problems in the legal profession of Azerbaijan*, annexed to this submission, that "the profession operates in a difficult environment [and that] the Bar Association's internal problems and deficiencies have undermined its independence for many years."¹

¹ International Commission of Jurists, *Defenceless defenders: Systemic problems in the legal profession of Azerbaijan*, Geneva, 2016, p. 35.

The Bar Association was said to be failing to fulfil its role of protecting the independence of the legal profession and upholding high ethical standards, as it “too often act[ed] as a top-down bureaucracy whose interests are not those of its members.”² The ICJ mission reported serious shortcomings in the Bar Association’s management and operation, including with regard to “to transparency of the budget, accountability before its members, democratic participation of lawyers and their protection in instances of harassment and persecution of lawyers.”³ The ICJ concluded that, “[i]n this environment, the Bar Association tends to function, in practice, to repress the independence of lawyers rather than to defend it.”⁴

With regard to the admission procedures to the legal profession, the ICJ noted that the Qualification Commission of the Bar Association had not been respecting the requirement of independence including because it was not composed - and was not required to be composed - predominantly of advocates. With regard to the international law standard that admission requirements and rules must be provided for by law, the ICJ mission found that, for many years, “no such rules were put in place and the Qualification Commission’s work was not regulated.”⁵ Rules of qualification had not been made publicly available.⁶ The ICJ reported on the lack of guidelines to guide the assessment of the knowledge and skills of the lawyers applying to the Bar, and of an objective grading system.⁷ The mission concluded that the “qualification process itself suffers from a lack of objective criteria for evaluation of candidates and arbitrariness in its application.”⁸

As regards the disciplinary procedure, the report found that the Code of Ethics includes as ethical obligations requirements of politeness, objectivity or political neutrality that “are vague and raise concerns about their possible improper use against lawyers”.⁹ In particular, ‘politeness’ was considered to be a term with starkly subjective implications and the duty of ‘political neutrality’ contrasts with the fact that lawyers, unlike judges, are not required to be impartial. This notwithstanding, the ICJ expressed concern that the Code of Ethics has not been used as a real everyday guide for the work of Azerbaijani lawyers,¹⁰ but primarily as a means to repress the activity of lawyers dedicated to defending human rights.¹¹

The ICJ expressed concern at the fact that the list of grounds for initiation of disciplinary proceedings was excessively broad in scope, including, for example, the possibility to initiate disciplinary proceedings for contravention of undefined “other legal acts.”¹² This contravened the requirement of foreseeability of the principle of

² *Ibid.*, p. 35.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*, p. 14

⁶ *Ibid.*: they “are not posted on any website including that of the Bar Association itself, nor are they in the possession of many lawyers: indeed, many lawyers appear unaware of the existence of any document setting out the rule.”

⁷ *Ibid.*, p. 18

⁸ *Ibid.*, p. 35.

⁹ *Ibid.*, p. 20.

¹⁰ *Ibid.*, p. 21.

¹¹ *Ibid.*, pp. 35-36.

¹² Article 22(I), Law of the Republic of Azerbaijan on Advocates and Advocates’ Activity, 28 December 1998 no. 783-IQ (unofficial translation).

legality.¹³ Furthermore, the ICJ report documents that it is unclear from the law or other normative acts what are the grounds for disbarment referred to in article 22(VIII) of the *Law on Advocates and Advocates' Activity*, making it extremely difficult to foresee the threshold for the application of the sanction of disbarment, which leads to the termination of the lawyer's professional activity as an advocate.¹⁴

The ICJ mission reported that it was unclear that disciplinary procedure within the Presidium, the governing body of the Bar Association in charge of the final decision within the Bar for disciplinary proceedings, was regulated by any written guidance or other document.¹⁵ The decision of the Presidium to disbar a lawyer must be ratified by a court, but the ICJ report found that in practice this requirement had not appeared to be an "effective check against arbitrary decisions which undermine the independence of the legal profession."¹⁶

The ICJ considers that the Bar Association in Azerbaijan remains institutionally weak and unable to operate as self-governing independent institution. The system of governance of the legal profession in Azerbaijan does not ensure that its procedures of admission and disbarment are in line with the obligations of article 6.1 ECHR. The judicial system does not constitute a sufficiently thorough, effective and independent judicial review to be able to compensate for these fundamental flaws. This has a deleterious impact on the possibility of applicants to access and maintain representation by competent lawyers to exercise their right to petition before the European Court of Human Rights under article 34 ECHR.

The ICJ hopes that these observations and the attached report will assist the Committee in its examination of the execution of these cases and related judgments. The ICJ remains at the Committee's disposal for any information needed.

Yours sincerely,



Róisín Pillay

Director, Europe Programme, ICJ

Annex: ICJ Report, *Defenceless defenders: Systemic problems in the legal profession of Azerbaijan*, Geneva, 2016

¹³ ICJ, *Defenceless defenders: Systemic problems in the legal profession of Azerbaijan*, op. cit., p. 23.

¹⁴ Article 22(VIII), *Law on Advocates and Advocates' Activity*.

¹⁵ ICJ, *Defenceless defenders: Systemic problems in the legal profession of Azerbaijan*, op. cit., p. 24.

¹⁶ *Ibid.* p. 34.

Defenceless Defenders: Systemic Problems in the Legal Profession of Azerbaijan

ICJ Mission Report 2016



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Defenceless Defenders: Systemic Problems in the Legal Profession of Azerbaijan

ICJ Mission Report 2016



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INTRODUCTION

This report, which includes the findings of the ICJ following a mission in June 2016, analyses the situation of lawyers and the independence of the legal profession in Azerbaijan based on national legal framework and the information obtained from meetings with lawyers during the mission. It addresses the institutional independence of the profession, including governance by the Bar Association (called the Collegium of Advocates under Azeri law), and the capacity of individual lawyers to carry out their professional responsibilities, and to protect the human rights of their clients. These issues are considered in light of the international human rights law obligations of Azerbaijan, and international standards on the independence of lawyers.

Development of the Legal Profession in Azerbaijan

The Bar Association, the first organization charged with governance of the Azerbaijan legal profession, was established in the Soviet era in 1922.¹ Its modern history dates back to 1980 when it began operation under the *Law On the Regulation of Advokatura* of the Azerbaijan Soviet Social Republic.² From the breakup of the Soviet Union in 1991 until the adoption of legislation reforming the legal profession in 1999, there was no governing institution which united the legal profession as was the case in most other CIS countries.³ Prior to the 1999 reform, lawyers obtained licenses to practice law issued by the Ministry of Justice and they exercised their profession as members of specialized legal offices.

In 1999, with the adoption of the new *Law On Advocates and Advocates' Activity*, a legal profession was established making membership in the Bar Association a requirement for lawyers to have the status of an advocate with all the relevant guarantees accorded by the law.⁴ According to the Law, the Bar Association of Azerbaijan is "an independent legal institution which professionally carries out legal defence activity".⁵ Under the 1999 Law, the Bar Association assumed a number of important functions, including responsibility for the qualification process for prospective lawyers, for developing ethical standards and conducting disciplinary proceedings against lawyers.

The profession, which did not have a history of self-regulation and independence, faced challenges in establishing itself as an independent power under the new law, and it has continued to suffer from institutional weaknesses that prevented it from consistently defending its members against unwarranted interference with their professional work.

¹ Azerbaijan: Freedom of Expression on Trial, April 2014, Report of the International Bar Association's Human Rights Institute (IBAHRI), <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=e1192b49-6a7c-410d-a833-a17f5fd4bcbb>.

² Website of the Bar Association of Azerbaijan, http://www.azerbaijans.com/content_1801_en.html.

³ ICJ Report, *Independence of the Legal Profession in Central Asia*, <http://icj2.wpengine.com/wp-content/uploads/2013/09/Independence-of-the-Legal-Profession-in-CA-Eng.pdf>; *Towards a Stronger Legal Profession In the Russian Federation*, <http://www.icj.org/wp-content/uploads/2015/11/Russia-Towards-a-Stronger-Legal-Profession-Publication-2015-Eng.pdf>.

⁴ A distinction should be made between "advocates"—members of the Bar Association—and other persons who provide legal assistance but are not members of the Bar Association—"jurists". Jurists, like any other persons, may represent people before most of the courts in Azerbaijan.

⁵ *Law of the Republic of Azerbaijan On Advocates and Advocate's Activity* of 28 December 1999, No. 783-IQ, article 1.

Current challenges

Today, lawyers in Azerbaijan face multifarious daily challenges in carrying out their work. These include confronting barriers to gaining access to their clients in detention and to reprisals when they defend their clients in a rigorous way. These problems are linked to the wider failings of the justice system, which does not reliably protect the right to a fair trial.⁶ Defence lawyers in criminal cases face particular difficulties: statistical data shows that more than 99 per cent of defendants in criminal cases are convicted.⁷ The staggeringly low rate of acquittals points to the challenges that lawyers face upholding the right to an effective defence and numerous fair trial standards, the right to the presumption of innocence of their clients.⁸ One lawyer described the work of lawyers in Azerbaijan to the ICJ as “farming in the Arctic” or “Don-Quixote-ship” where lawyers have to struggle for the defence of every client, while understanding that their conviction is inevitable. Defence lawyers in criminal cases are unable to act as equal counterparts of the Prosecutor’s Office, which was said by lawyers the ICJ spoke with, to be the main actor in the justice system and which has formal and informal powers that far exceed those of defence lawyers.⁹

There has been a dramatic deterioration of the situation of independent lawyers in recent years. Lawyers have faced harassment through prosecutions, searches of their working premises, suspension of their professional status, disbarments, and other means. Such attacks have taken place in the broader context of a shrinking space for the work of human rights defenders and Civil Society Organizations (CSOs) in Azerbaijan.¹⁰ Lawyers who have worked to protect human rights, including by taking cases to the European Court of Human Rights (ECtHR), have been particularly targeted for intimidation and harassment. Such attacks have often been marked by allegations of unfair trial and arbitrariness of disciplinary proceedings against lawyers.

Although the disciplinary system has been an important instrument used to restrict the activities of lawyers, other legal avenues have also been employed as means of harassment or reprisal against lawyers working for the protection of human rights. Disbarments of such lawyers, along with criminal prosecutions, searches and administrative measures such as freezing of assets, can be seen as part of a wider picture of harassment of human rights defenders, including not only lawyers, but also journalists, NGO workers and others.

The Bar Association has not responded actively to instances of the harassment of lawyers and indeed, has played a central role in disciplinary proceedings against lawyers or disbarments on other grounds that have failed to meet international standards. However, while there has been considerable national

⁶ E.g.: One third of applications before the European Court of Human Rights concern article 6 of the ECHR, http://echr.coe.int/Documents/Stats_violation_1959_2015_ENG.pdf.

⁷ Echo News Agency, In Azerbaijan, less than 1% of defendants obtain an acquittal, <http://www.echo.az/article.php/article.php?aid=79879>, 6 March 2015.

⁸ *Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Gabriela Knaut, A/HRC/26/32/Add.1, 30 April 2014, para. 45.

⁹ E.g.: ECtHR, *Abdulgadirov v. Azerbaijan*, Application No. 24510/06, Judgment of 20 June 2013, paras 44–49; ECtHR, *Rafiq Aliyev v. Azerbaijan*, Application No. 45875/06, Judgment of 6 December 2011, paras. 97, 108–110.

¹⁰ E.g.: Parliamentary Assembly of the Council of Europe, *Resolution 2062 (2015), The functioning of democratic institutions in Azerbaijan*, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21953&lang=en>.

and international attention to cases of attacks on lawyers, there appears to be relatively little discussion in Azerbaijan about the institutional independence of the Bar Association, or its role in protecting lawyers from harassment including when pressure is exerted by State bodies.

A striking weakness of the legal profession in Azerbaijan is the very low number of registered lawyers relative to the population. Only some 900 lawyers who are qualified as members of the Bar Association operate in the country. There are disproportionately low numbers of lawyers in rural areas of Azerbaijan, with some regions reportedly having no lawyers, or only a single lawyer who is a member of the Bar Association and therefore qualified to represent defendants in criminal cases. This situation has obvious and acute consequences for the right to a fair trial and for access to justice and effective remedies and for the people of Azerbaijan. At the same time, it is notable that, since it is not mandatory to be a member of the Bar Association in order to provide representation before the civil or administrative courts, many practicing lawyers, including those involved in litigating on human rights issues, choose not to apply to be members of the Bar Association. This further weakens the Bar Association and its ability to regulate and defend the profession as a whole.

International legal framework on the role of lawyers

Lawyers, along with judges and prosecutors, play an essential role in upholding the rule of law and ensuring that human rights are guaranteed.¹¹ Their ability to exercise their functions freely and independently determines to a large extent whether the justice system is capable of protecting human rights, including the right to a fair trial enshrined in article 14 of the *International Covenant on Civil and Political Rights* (ICCPR) as well as article 6 of the *European Convention on Human Rights* (ECHR).

A number of international instruments prescribe standards on the role and independence of the legal profession. These instruments include the *UN Basic Principles on the Role of Lawyers*,¹² as well as regional standards such as the Council of Europe Committee of Ministers' *Recommendation No. R (2000) 21 on the freedom of exercise of the profession of lawyer*.¹³ These standards recognize that lawyers play an essential role in the justice system and the protection of human rights.¹⁴ The *UN Basic Principles on the Role of Lawyers* identify lawyers as "essential agents of the administration of justice" who "shall at all times maintain the honour and dignity of their profession".¹⁵ They stipulate that the institutional independence and self-governance of the profession

¹¹ UN Human Rights Council Resolution, *Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers*, 30 June 2015, A/HRC/29/L.11.

¹² *Basic Principles on the Role of Lawyers*, UN Doc. A/CONF.144/28/Rev.1, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August – 7 September 1990.

¹³ *Recommendation No. R (2000) 21 of the Committee of Ministers to Member states on the freedom of exercise of the profession of lawyer*, Adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers' deputies.

¹⁴ ICJ Practitioners Guide No. 1, *International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors*, <http://icj2.wpengine.com/wp-content/uploads/2012/04/International-Principles-on-the-Independence-and-Accountability-of-Judges-Lawyers-and-Prosecutors-No.1-Practitioners-Guide-2009-Eng.pdf>, p. 63.

¹⁵ *Basic Principles on the Role of Lawyers*, *op. cit.*, principle 12.

as a whole should be guaranteed,¹⁶ and that at an individual level, the State must take measures to ensure that lawyers “are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference”.¹⁷

These standards are not isolated, but they are closely related to the obligations of Azerbaijan under international human rights law, including obligations to protect the right to a fair trial, the right to liberty including the right to challenge detention, the right to freedom from inhuman and degrading treatment and the right to an effective remedy for violations of human rights. Protection of each of these rights depends greatly on the capacity of lawyers to give prompt and unhindered legal advice that is competent and independent. Therefore, every person’s right to access to a lawyer must be guaranteed immediately after detention in order to seek remedy for any violation of their rights or indeed prevent such violations and guarantee a fair trial from the outset. The independence of lawyers therefore serves as one of the foundations of a fair justice system, which is based on the rule of law and protects human rights.

Throughout this report, international standards on the role of lawyers will therefore be considered in light of the international human rights instruments binding on Azerbaijan. Among many other instruments, these include the *International Covenant on Civil and Political Rights* (ICCPR), the *International Covenant on Economic Social and Cultural Rights* (ICESCR), and the *Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR). The UN Special Rapporteur on the Independence of Judges and Lawyers, the Council of Europe Venice Commission on Democracy through Law (“the Venice Commission”) and the reports of other relevant international institutions are key in this regard too. This body of international law and standards as well as jurisprudence of international human rights bodies informs the present report.

The ICJ mission to Azerbaijan

This report is based on a research mission to Azerbaijan undertaken from 20 to 23 June 2016. The mission was undertaken in part in response to recent cases of harassment of lawyers in Azerbaijan, which have raised serious questions regarding compliance with human rights and with international standards on the independence of lawyers.

During the mission, the ICJ met with lawyers and legal experts to discuss the governance of the legal profession, questions of access to the profession and the qualification of lawyers, and disciplinary proceedings against lawyers. The mission also addressed the role of the Bar Association in protecting lawyers against harassment or interference in their work. The ICJ expresses gratitude to all the experts and lawyers who met with and shared their insights with the mission.

Structure of the Report

This report analyses Azerbaijan legislation governing the legal profession as well as the situation of lawyers in practice, with reference to individual cases,

¹⁶ See *inter alia*: *Basic Principles on the Role of Lawyers*, *op. cit.*, principle 24; Human Rights Council, *Resolution 23/6, Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers* (2013), Preamble.

¹⁷ *Basic Principles on the Role of Lawyers*, *op. cit.*, principle 16.

to assess the reality of the problems facing lawyers in Azerbaijan, and the consequences for the rule of law and protection of human rights.

This report includes four chapters. Chapter one is dedicated to the governing bodies of the Bar Association and their procedures; Chapter two describes the process for qualification of lawyers, disciplinary procedures and issues related to these topics; Chapter three outlines cases of abusive application of the disciplinary system and other ways of harassment of lawyers; Chapter four provides recommendations aimed at strengthening the independence of lawyers in Azerbaijan.

CHAPTER I: Independence and structure of the Bar Association

International standards

International standards on the independence of lawyers recognize the importance of self-governing institutions of the legal profession. The *UN Basic Principles on the Role of Lawyers* emphasize the importance of the independence of bar associations in ensuring the fair and effective administration of justice. Such associations must be institutionally independent, both in law and in practice, from all external actors, including the government, other executive agencies, parliaments and outside private interests. In particular, the “executive body of the professional associations of lawyers shall be elected by its members and shall exercise its functions without external interference.”¹⁸ In addition to representing the professional interests of lawyers, bar associations are charged with functions including promoting continuous education, protection of lawyers’ professional integrity¹⁹ and strengthening the independence of the legal profession.²⁰

The *Basic Principles* also encourage co-operation between the bar association and the institutions of the State: “[p]rofessional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics”.²¹ This places a direct obligation on States to not only abstain from any unlawful interference with the work of professional associations of lawyers, but to encourage and support the establishment of the work of such associations.²²

Exercising the legal profession

There are a relatively small number of lawyers operating within the Bar Association in Azerbaijan. Members of the Bar Association may provide representation in all forms of court proceedings including proceedings before the Supreme Court of Azerbaijan.²³ In respect of criminal cases, and cases heard by the Supreme Court, members of the Bar Association have exclusive rights of audience before the courts.²⁴ Many lawyers with legal qualifications, particularly

¹⁸ *Basic Principles on the Role of Lawyers*, op. cit., principle 24. See also *Draft Universal Declaration on the Independence of Justice* (“Singhvi Declaration”), prepared by Dr L. V. Singhvi, UN Special Rapporteur on the Study on the Independence of the Judiciary, para. 97.

¹⁹ *Recommendation No. R (2000) 21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer*, Council of Europe, Adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers’ Deputies, principles V (3) and (4); InterAmerican Court of Human Rights has established that professional associations constitute a means to regulate and control professional ethics, see its *Consultative Opinion OC-5/85*, 13 November 1985, Series A, No. 5, para. 68.

²⁰ *Recommendation No. R (2000) 21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer*, op. cit., principle V (4).

²¹ *Basic Principles on the Role of Lawyers*, op. cit., principle 25.

²² Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, UN Doc. A/64/181, 28 July 2009, para. 21.

²³ *Law of the Republic of Azerbaijan On Advocates and Advocates’ Activity*, of 28 December 1999, No. 783-IQ, article 8(III).

²⁴ According to the amendments made to the Criminal Procedural Code in October 2014, only an advocate with a valid power of attorney given by a person with notary certification, or family members (relatives) of a person during the criminal proceedings can represent a defendant in a criminal case. In order to appeal to the Supreme Court, a person must sign a contract with an advocate and an “advocate order” should be supplemented to it.

those not practicing criminal law, choose not to go through the process to become a member of the Bar Association.

The exercise of professional activities by lawyers who are members of the Bar Association is regulated by the *Law On Advocates and Advocates' Activity*. Lawyers who are members of the Bar Association, also known as advocates, can practice law in Azerbaijan either independently or under the auspices of a number of forms of collective groupings of lawyers, such as legal consulting offices, law offices, law firms (referred to collectively in this report as "legal advice offices"). Such offices must be established by a lawyer or lawyers²⁵ in accordance with relevant legislation, in particular the *Law On Advocates and Advocates' Activity*.²⁶ Their work can be carried out only upon State registration in one of the types of law firms or offices provided for by law.²⁷

Legal advice offices must register with the relevant State body (the Ministry of Tax),²⁸ and their members must be members of the Bar Association.²⁹ The organization and operation of these offices is regulated by their respective charters, which must comply with the Charter of the Bar Association.³⁰ The founders of the legal advice office elect the head of the office.³¹ The founders sign a contract among themselves about the establishment of the office and the terms of structure. Advocates must submit statistical reports to the Bar Association according to the rules and forms, which are defined by the Presidium.³²

There is a significant shortage of legal advice offices and lawyers in Azerbaijan. Only in 25 regions out of 64 in Azerbaijan are there legal advice offices at all.³³ Besides the shortage of legal advice offices, there is a deficit of practicing lawyers. Most practicing lawyers work in Baku: in 2014, out of 834 advocates only 234 worked in the regions.³⁴ The problem of access to legal advice has been acute in Azerbaijan for many years and has impeded access to legal advice and assistance.³⁵

Despite this obvious shortage, acceptance of new members to the profession has been extremely problematic for a long period of time. A report on Azerbaijan's legal profession published more than a decade ago described the situation in the following terms:

²⁵ *Law On Advocates and Advocates' Activity*, *op. cit.*, article 5(VI).

²⁶ *Ibid.*, article 5(V).

²⁷ *Ibid.*

²⁸ *Charter of the Bar Association*, article 9.2.

²⁹ *Ibid.*

³⁰ *Ibid.*, article 9.3.

³¹ *Ibid.*, article 9.4.

³² *Ibid.*, article 9.

³³ Vətəndaşlar keyfiyyətli hüquqi yardım ala bilirlərmi? — MÜSAHİBƏ [Do people get high quality legal aid?], <http://olaylar.az/news/musahibe/44674>.

³⁴ The State of Advokatura in Azerbaijan, Annaghi Hajibayli, 24 September 2014, HDIM.NGO/0112/14, <http://www.osce.org/ru/odihr/124151?download=true>, p. 1.

³⁵ Apa.az news agency, Azer Tagiyev: "It is true that there are not many lawyers in the regions. One reason is that advocates are not willing to work in those places. The Bar Association is unable to force a lawyer to work in a region. An advocate has to request to work in one of those regions, says A. Taghiyev. In some regions, only one criminal act happens in one year, thus the lawyer refrain to work there, he adds. Another reason is low income of the lawyers in the regions" (<http://apa.az/xeber-az/hadise/azerbaycanda-vekillerin-sayi-teleb-olunandan-10-defe-azdir-arasdirma.html>).

*"Since the enactment of the Law On Advocates in December 1999, the Professional [i.e. Qualification—ICJ] Commission has not been established. Therefore, no examination has taken place and no nominees have been recommended for admittance into the Bar Association. The Presidium, although continuing to function, has failed to admit any new members, stating that they are waiting for the Professional Commission to be appointed and an exam to take place."*³⁶

Therefore, no new members were admitted to the Bar Association between 1999 and 2005 at least. The consequence of this lack of attention to admittance of new members is visible now in the severe shortage of lawyers in the country. This practice has had a highly detrimental effect on access to justice throughout the country.

Another contributing factor to the shortage of qualified advocates appears to be the lack of prestige associated with work as a defence lawyer in Azerbaijan. Advocates are not highly regarded within the justice system, and the Bar Association is not trusted or viewed as independent by many lawyers. Although no statistics are available on this point, the ICJ's conversations with lawyers in Azerbaijan suggest that a significant cohort of lawyers do not want to join the Bar Association and prefer to operate outside of it, providing legal advice or representation on civil or administrative cases.

The role and independence of the Bar Association in Azerbaijan

According to the *Law On Advocates and Advocates' Activity*, the legal profession "is an independent legal institution which professionally carries out legal defence."³⁷ Its functions are based on the principles of the supremacy of law, independence, democracy, humanity, fairness publicity and confidentiality.³⁸

The Bar Association is the main governing body of the legal profession, established under law,³⁹ which exercises key functions related to the regulation of the profession.⁴⁰ It is a nongovernmental independent self-governing organization comprised of all advocates of the Republic of Azerbaijan.⁴¹

Under the *Law On Advocates and Advocates' Activity*, the Bar Association's role is, *inter alia*, to prevent interference with the work of lawyers or pressure on them by the prosecutorial, judicial and other authorities or persons and to adopt independent decisions on matters of self-governance.⁴² The Charter itself does not contain such clear-cut language on the role of the Bar Association in regard to lawyers, stating only that the Bar Association "defends the rights of its members".⁴³ The objective of the legal profession as a whole under the *Law On Advocates and Advocates' Activity* is "the protection of rights, freedoms and legitimate interests of natural and legal persons and the provision of high quality legal assistance to those persons."⁴⁴ Under the *Charter of the Bar Association*,

³⁶ Legal Profession Reform Index for Azerbaijan, February 2005, American Bar Association, <https://apps.americanbar.org/rol/publications/azerbaijan-lpri-2005.pdf>, p. 23.

³⁷ *Law On Advocates and Advocates' Activity*, *op. cit.*, article 1(I).

³⁸ *Ibid.*, article 1(II).

³⁹ *Ibid.*, article 9(III).

⁴⁰ *Ibid.*, article 9.

⁴¹ *Ibid.*, article 9.I; *Charter of the Bar Association*, *op. cit.*, article 1.1.

⁴² *Law On Advocates and Advocates' Activity*, *op. cit.*, article 1(III).

⁴³ *Charter of the Bar Association*, *op. cit.*, article 3.1.

⁴⁴ *Law On Advocates and Advocates' Activity*, *op. cit.*, article 3.

it is the duty of the Bar Association and its members “to defend rights and freedoms and interests of people protected by law, to provide high quality professional legal assistance with honour and to improve the image of the profession”.⁴⁵

Among the functions of the Bar Association are managing admission to the legal profession; disciplinary supervision, issuing opinions on questions related to the activity of advocates pursuant to a request by law enforcement bodies or court presidents; supervisory control over lawyers in regard to legalization of finances; and “resolution of other issues”.⁴⁶

Despite its independence being established and guaranteed in law, in practice the Bar Association has demonstrated institutional weakness and a lack of either capacity or will to defend the independence of the profession. The ICJ heard strong concerns from lawyers that the Bar Association is not independent in its operation and acts in close and improper coordination with or direction from the Ministry of Justice. Although the ICJ has not been in a position to definitively confirm this generalized allegation, the role that has been played by the Bar Association in cases of harassment of lawyers through disciplinary proceedings is strongly indicative of a deficit of institutional independence. (See Chapter IV).

It is also notable that the Bar Association is not widely perceived among lawyers as a genuinely self-governing institution for their profession. To the contrary, the ICJ heard many lawyers express the view that as individual advocates they feel unable to influence the decision making of the Bar Association. Some lawyers dismissed the Bar Association as a “Soviet-style” bureaucracy which is ineffective in ensuring self-governance of lawyers. In a report of 2014 by an Azerbaijani advocate, a member of the Bar Association, stated: “[a]n authoritarian way of management, which is used in the Bar Association, creates serious impediments on the way of development of *advokatura*.”⁴⁷ The Bar Association was said to be “a decoration for the justice system”.⁴⁸

However, it should also be noted that the Bar Association does not exist in a vacuum. It is unsurprising that it might reflect the deficiencies of the justice system of which it is part. As far back as 2002, the ICJ had concluded that: “. . . like most semi-public institutions in Azerbaijan, the Bar Association is de facto under the influence of the executive branch”⁴⁹ and that “[a]dvocates working within the Bar Association are influenced by the organisation’s direct control over their work and pay”.⁵⁰ The mission observed that little has changed since this assessment.

Structure and Governance of the Bar Association

The main organs of the Bar Association are:

- The General meeting (conference) of members of the Bar Association;
- The Presidium of the Bar Association;

⁴⁵ *Charter of the Bar Association*, *op. cit.*, article 2.2.

⁴⁶ *Law On Advocates and Advocates’ Activity*, *op. cit.*, article 9(V); See also: *Charter of the Bar Association*, *op. cit.*, article 3.1.

⁴⁷ *The State of Advokatura in Azerbaijan*, Annaghi Hajibayli, *op. cit.*, p. 2.

⁴⁸ *Ibid.*, p. 3.

⁴⁹ ICJ, *Azerbaijan—Attacks on Justice*, http://icj2.wpengine.com/wp-content/uploads/2012/03/azerbaijan_attacks_justice_27_08_2002.pdf, p. 37.

⁵⁰ *Ibid.*, p. 38.

- The Qualification Commission of Advocates;
- The Disciplinary Commission of Advocates;
- The President of the Bar Association;

The Bar Association has regional offices in 25 out of 64 regions.⁵¹

The General Meeting

The General Meeting of the Bar Association is one of the main bodies of self-governance of the legal profession in Azerbaijan. Under the Law, it must be convened no less than twice every three years by the Presidium of the Bar Association.⁵² An extraordinary meeting can be summoned at the request of one third of the members of the Bar Association no more than once every two years.⁵³

The General Meeting has major powers in all the spheres of the regulation of the profession. In particular it has exclusive competences over the following matters:

- Adoption and amendment of the Charter of the Bar Association;
- Adoption of regulations for the qualification and disciplinary commissions and regulation of the rules of Advocate's Ethics, their modification and amendments;
- Election of the President, Deputy President and other members of the Presidium of the Bar Association;
- Election of the President and members of the Disciplinary Commission;
- Adoption of the Emblem of the Bar Association and special outfit for lawyers;
- Adoption of the budget of the Bar Association and membership fees.⁵⁴

While the law prescribes that the Meeting must be held at least twice every three years,⁵⁵ in practice, a General Meeting has not been held since 2004. On 5 October 2009, the Presidium of Bar Association adopted a decision postponing the General Meeting which was scheduled to be held in November that year until the consideration of the amendments to the *Law On Advocates and Advocates' Activity* by the Parliament. In June 2010, the Presidium again made a decision postponing the General Meeting, justifying the postponement on the grounds that a qualification exam to the Bar was also about to be held. Thus different reasons were given not to hold the General Meeting until 2012. In 2004, amendments were passed to the *Law On Advocates and Advocates' Activity*, establishing that the General Meeting of all members of the Bar Association would be replaced with a smaller meeting, a Conference of Delegates, if the number of the members of the Bar Association exceeded 500 advocates.⁵⁶

⁵¹ Vətəndaşlar keyfiyyətli hüquqi yardım ala bilirlərmə? — MÜSAHİBƏ, <http://olaylar.az/news/musahibe/44674>.

⁵² *Law On Advocates and Advocates' Activity*, *op. cit.*, article 10(III).

⁵³ *Ibid.*

⁵⁴ *Ibid.*, article 10(I).

⁵⁵ *Ibid.*

⁵⁶ See: On introduction of amendments and additions to the Law On Advocates and Advocates' Activity, <http://www.meclis.gov.az/?/az/legislation/view/646>; *Law On Advocates and Advocates' Activity*, *op. cit.*, article 10(I).

As a result, in 2012, a Conference was held in the place of the General Meeting. At the moment, the Bar Association appears to have more than 900 lawyers as its members, though this is not confirmed by official statistics publicly available.⁵⁷

The current President of the Bar Association has justified the failure to convene a General Meeting on budgetary grounds, and has been quoted as saying in an interview: "Non convening of the General Meeting is related to our problems. An attempt to bring together 800 advocates may destroy our budget".⁵⁸ Concerns were expressed by the lawyers the ICJ met that the failure to convene the General Meeting, and its replacement with the Conference, has among other things effectively meant that the more independent advocates do not take part in the governance of the profession. Since only the more loyal lawyers tend to be invited to participate in the Conference, others have no opportunity to express themselves on the issues discussed there.

The result of the failure to regularly hold the General Meeting or the Conference is that many of the functions of the General Meeting had not been carried out for many years, before the holding of the Conference in 2012. The pattern may be resuming now that more than three years have passed since the last Conference in 2012.

The inability of the General Meeting or the Conference to exercise their functions for this long period of time resulted in the non-election of the other bodies of the Bar Association—the Presidium and the President of the Bar Association—therefore putting under question their legitimacy. The lack of General Meetings also undermined the transparency of the use of the budget of the Bar Association, which is financed by advocates' fees.

Presidium of the Bar Association

The Presidium of the Bar Association is a governing body of the Bar Association, consisting of advocates with at least three years of professional experience.⁵⁹ Members of the Presidium including the President and Deputy President are elected by the General Meeting for a five-year term.⁶⁰ An advocate who has "gained respect among colleagues" can be elected as a member of the Presidium. It is unclear how such "respect" can be measured and what tools exist to evaluate if an advocate has met the criteria. An advocate cannot be elected as President, Deputy President or a member of the Presidium if he or she has been subjected to a disciplinary sanction.⁶¹

The functions of the Presidium among others include:

- Convening General Meetings and enforcement of decisions;
- Admittance to the profession and termination of the activity of advocates;

⁵⁷ In 2015, 706 candidates applied to pass the Bar. 215 of them passed the first round. After the second tour, only 154 of them managed to become an advocate. Thus number of members of the Bar increased and became 934. These 154 candidates were only 30% of all participants at the exam. <https://www.meydan.tv/az/site/politics/5398/>.

⁵⁸ APA News Agency, Azer Taghiev: "The Bar Association Operates Based on Law", 24 February 2011, <http://ru.apa.az/novosti-azerbaydjana/proisshestvie-v-azerbaydjane/azer-tagiev-kollegiya-advokatov-dejstvuet-na-osnove-zakona-.html>.

⁵⁹ *Law On Advocates and Advocates' Activity*, op. cit., article 11(I).

⁶⁰ *Ibid.*, article 11(II).

⁶¹ *Ibid.*, article 11(I).

- Creation of the roster of advocates who provide legal aid;
- Preparation of methodological recommendations on the issues of advocates activity;
- Initiation of disciplinary proceedings in respect to advocates.⁶²

Both under the law and in practice the Presidium is one of the key bodies of the Bar Association on which the responsibility to ensure the independence of the profession rests. For example, an advocate may be disbarred only by the Presidium or based on the Presidium's opinion.⁶³ It is one of the main functions of the Presidium to convene the General Meeting or the Conference. However, as noted above, the Presidium has in practice failed to do that for some time. The Presidium's failure to effectively carry out all of its functions is therefore of concern.⁶⁴

The mission was repeatedly and consistently told that the Presidium lacks independence in practice, and that the President of the Bar Association has crucial influence on other members of the Presidium. This confirms findings of the ICJ as long ago as 2002, when it concluded that "[a]lthough the Ministry of Justice does not micromanage the day-to-day operations the Bar Association leadership it is said to give high consideration to what is politically acceptable to the Presidential Administration or the Ministry of Justice".⁶⁵ Throughout the mission, the ICJ has heard criticism that the Presidium is unable to withstand pressure when faced with politically sensitive cases. In particular, it was the Presidium which recently authorized a wave of disbarments of advocates on dubious grounds or for acts which constitute exercise of the profession of a lawyer under international human rights law and Azerbaijan's own legislation (see Chapter III).

Criticism of the Presidium was expressed by experts on the governance of the Bar Association, throughout the mission. In particular, concerns were expressed as to lack of transparency including lack of financial reporting on the use of the budget of the Bar Association. The budget issue seems to preoccupy many advocates, bearing in mind that the fees that advocates regularly pay to the Bar Association are substantial. A member of the Presidium explained the payment details in an interview: "Regardless of the case's failure or success, advocates have to pay 42 manats (approximately 23 Euros) membership fee to the Collegium. An advocate pays 20 percent tax from his honorarium, three percent to the pension fund and 14 percent tax from his income. Advocates working in the consulting offices of the Bar pay 70–150 manats monthly to the office. This money is used for bookkeeping and utility services".⁶⁶

President of the Bar Association

The President of the Presidium of the Bar Association is *ex officio* President of the Bar Association.⁶⁷ To be elected as President an advocate must meet

⁶² *Ibid.*, article 11(III).

⁶³ *Ibid.*, article 23(II).

⁶⁴ The problem of legitimacy of operation of the Presidium itself due to a failure to reelect its members in a timely manner was raised before the appointment of the current membership in 2012. See e.g. Apa News Agency, Azer Taghiev: "The Bar Association Operates Based on Law", 24 February 2011, <http://ru.apa.az/novosti-azerbaydjana/proisshestvie-v-azerbaydjane/azer-tagiev-kollegiya-advokatov-dejstvuet-na-osnove-zakona-.html>.

⁶⁵ ICJ, *Azerbaijan — Attacks on Justice*, *op. cit.*, http://icj2.wpengine.com/wp-content/uploads/2012/03/azerbaijan_attacks_justice_27_08_2002.pdf, page 37.

⁶⁶ <http://qafqaznews.az/2015/08/v-kill-r-kollegiyasi-ancaq-uzvluk-haqqi-yigmaqla-m-sguldur/>.

⁶⁷ *Law On Advocates and Advocates' Activity*, *op. cit.*, article 11(II).

the general criteria for members of the Presidium.⁶⁸ The President and his/her deputies are elected at general meetings of members of the Bar Association.⁶⁹ They can be elected for no more than two terms.⁷⁰

The competences of the President of the Bar Association among others specified by law include:

- Representation of the Bar Association;
- Organization of the Presidium's work and of its staff;
- Preparation and submission for consideration at the Presidium's meetings of issues of admission of lawyers to the Bar Association and exclusion from it;
- Presiding over meetings of the Presidium;
- Organizing the analysis of the statistical data.⁷¹

The current President of the Bar Association, Azer Tagiyev, first became head of the largest Collegium of Lawyers in Azerbaijan in 1994, before the unification of the profession, at a time when lawyers were licensed by the Ministry of Justice and practiced law through independent legal advice offices or individually. He was first elected as head of a new Bar Association following the adoption of the new *Law On Advocates and Advocates' Activity* of 1999, which unified the profession, and continues to head the organization sixteen years after the adoption of the new law. The mission has heard criticism from different quarters of the fact that the President remains in office, although his term of office has, according to the law, long ago expired. In the course of its mission, the ICJ could not obtain any clarification of the grounds for this irregularity. Whatever the explanation, it is clear that the current situation is at odds with the requirements of the *Law On Advocates and Advocates' Activity* as well as the *Charter of the Bar Association*. It also appears to be at odds with the principle of free election of office-holders of the Bar Association, enshrined in international standards.⁷² The ICJ is concerned at the long-standing failure to re-elect the bodies of the Bar Association in Azerbaijan in accordance with the legally prescribed time-limits and the ease with which this serious irregularity has been tolerated for a long period of time.

Qualification Commission of the Bar Association

The Qualification Commission is a body of the Bar Association established to determine "the correspondence of the candidates seeking advocate's status to the requirements of this Law [the *Law On Advocates and Advocates' Activity*] and professional competence".⁷³ It is composed of eleven members including five advocates, three judges and three legal scholars.⁷⁴ Its advocates-members are appointed by the Presidium of the Bar Association,⁷⁵ while its judges-mem-

⁶⁸ *Ibid.*, article 11(I).

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*, article 11(II).

⁷¹ *Ibid.*, article 12.

⁷² *Basic Principles on the Role of Lawyers*, *op. cit.*, principle 24; *Singhvi Declaration*, *op. cit.*, para. 97.

⁷³ *Law On Advocates and Advocates' Activity*, *op. cit.*, article 13(I).

⁷⁴ See also: *Law On Advocates and Advocates' Activity*, *op. cit.*, article 13(II).

⁷⁵ *Ibid.*, article 11(III).

bers are appointed by the Plenary Session of the Supreme Court of Azerbaijan and scholars-members are appointed by “the relevant executive authority”.⁷⁶ Thus while the Qualification Commission is a body of the Bar Association, the majority of the Commission members are not advocates, which raises issues of the independence of the qualification procedure.

The Qualification Commission conducts qualification examinations of candidates seeking the status of advocates.⁷⁷ It has power to request information from State bodies, legal entities and individuals.⁷⁸ Following an assessment of a candidate, the Qualification Commission submits its opinion to the Presidium.⁷⁹ A refusal to admit a candidate as a member of the Bar Association can be challenged before the court.⁸⁰ A person may retake the examination no earlier than one year after an unsuccessful attempt to pass it.⁸¹

The regulations on the operation of the Qualification Commission are adopted by the General Meeting,⁸² while the rules of the qualification examination are adopted by the Presidium.⁸³

For many years, no such rules were put in place and the Qualification Commission’s work was not regulated, contrary to the *Law On Advocates and Advocates’ Activity*.⁸⁴ The rules of qualification are not publicly available, they are not posted on any website including that of the Bar Association itself, nor are they in the possession of many lawyers: indeed, many lawyers appear unaware of the existence of any document setting out the rules. The absence in the public domain of one of the fundamental documents for the regulation of the profession, striking and unusual for a Council of Europe country and for the CIS region, cannot be justified.

The Qualification Commission’s current operation appears not to satisfy the need for a sufficient number of new members to be brought into the profession. The number of advocates remains extremely low, the lowest among the Council of Europe states. Among the Council of Europe countries the average number of lawyers per 100,000 people is 139, while in Azerbaijan it is about 10 per 100,000.⁸⁵ As noted above, between 2000 and 2005, no new members were qualified by the Bar Association at all due to the absence of a Qualification Commission.⁸⁶ Currently the Qualification Commission does operate, however, it fails to qualify a sufficient number of lawyers to meet the country’s needs. Its meetings are reported to take place very rarely and rates of qualification for candidates are reported to be low though no official statistics are available on this matter. While it is the duty of the qualifying body of a Bar Association

⁷⁶ *Ibid.*, article 13(III).

⁷⁷ *Ibid.*, article 13(IV).

⁷⁸ *Ibid.*.

⁷⁹ *Ibid.*, article 13(V).

⁸⁰ *Ibid.*, article 13(VII).

⁸¹ *Ibid.*, article 13(VIII).

⁸² *Ibid.*, article 13(X).

⁸³ *Ibid.*, article 13(IX).

⁸⁴ *Legal Profession Reform Index for Azerbaijan, op. cit.*, p. 22.

⁸⁵ CEPEJ Report on “European judicial systems— Edition 2014 (2012 data): Efficiency and quality of justice”, http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf, p. 377.

⁸⁶ *Legal Profession Reform Index for Azerbaijan, op. cit.*, p. 23; The first exam was held on 6 February 2005. 141 candidates of 300 were passed to the interview in 2005, the State Students Admission Commission of the Republic of Azerbaijan: <http://tqdk.gov.az/commission/history/2005-2006/>.

to ensure that the qualification process upholds a high standard for qualification through a rigorous examination, under international standards, bar associations also have a responsibility to ensure that “everyone has effective and equal access to legal services.”⁸⁷ A drastic shortage of advocates, such as exists in Azerbaijan, plainly fails to satisfy the need of the public for legal services. The present *status quo* poses a serious challenge for the justice system as a whole and impedes protection of the right to a fair trial and access to justice, including for victims of violations of human rights.

Disciplinary Commission

The disciplinary process is conducted by the Disciplinary Commission of Advocates, although only the Presidium may impose disciplinary measures on advocates.⁸⁸ The Committee is regulated by the *Law On Advocates and Advocates' Activity*, according to which additional regulations regarding its functions and procedures are to be adopted by the General Meeting of the Bar Association.⁸⁹ The Disciplinary Commission members are elected at the General Meeting (Conference) of the Bar Association. The Commission is composed of a chairperson, deputy chair, and other advocates.⁹⁰ The *Charter of the Disciplinary Commission* does not specify the number of members of the Disciplinary Commission.

The Charter confers the following functions and powers on members of the Commission:

- To participate in the investigation of the requests and materials filed to the Disciplinary Commission;
- To receive the materials intended to be reviewed in the meeting of the Disciplinary Commission and to obtain excerpts from them;
- To obtain information about the time and location of the meeting of the Disciplinary Commission;
- To participate in the review of the applications and complaints;
- To report on reviewed issues;
- To pose questions to people invited to a meeting, to send a petition to obtain necessary documents and materials, to present his/her own evidences and conclusions;
- To recuse themselves in cases of bias or family connections with the advocates who are the subject of disciplinary proceedings;
- To participate in the voting with regard to decision making process of the Disciplinary Commission;
- To add an individual opinion to the decision of Disciplinary Commission where they wish to do so.

⁸⁷ *Basic Principles on the Role of Lawyers*, op. cit., principle 25; *Recommendation No. R (2000) 21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer*, op. cit., principle IV; *Singhvi Declaration*, op. cit., para. 99(i).

⁸⁸ *Charter on the Disciplinary Commission*, article 1.3.

⁸⁹ *Law On Advocates and Advocates' Activity*, op. cit., article 21(II).

⁹⁰ *Charter on the Disciplinary Commission*, op. cit., article 2.

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Despite these broad powers, it appears that the Disciplinary Commission in practice acts primarily as a subsidiary body of the Presidium and is unable to initiate proceedings on its own motion. Nor are its decisions final; the Commission's powers are confined to providing an opinion about a case, with the ultimate decision being taken by the Presidium.

Conclusion

Despite the existence of a detailed legal framework which could provide a basis for the independent self-governance of lawyers, and the development and maintenance of high standards in the profession, in practice the Bar Association of Azerbaijan suffers from significant institutional weaknesses which prevent it from adequately discharge these functions. Bodies of the Bar Association seem not to have sufficient leeway to carry out their functions in an independent manner. The Bar Association has failed to follow the procedure in regard to holding events required by law, rotating members of its governing bodies, and adopting the necessary documents to regulate the qualification and work of lawyers. This puts under question the legitimacy of its bodies and creates doubt about the ability of the Bar Association to effectively regulate the profession.

CHAPTER II: Qualification, ethics and disciplinary procedures

Qualification as an advocate

International standards provide that States, professional associations of lawyers and educational institutions have a duty to protect against any discrimination against a person with respect to entry into the legal profession or continued practice.⁹¹ This includes any discrimination within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, sexual orientation or gender identity, disability, or economic or other status, with the exception of the requirement of having the nationality of the country concerned.⁹² It is equally important that entrants to the legal profession possess the “necessary qualifications, integrity and good character to become a lawyer and to continue to practise as a lawyer.”⁹³

Recommendation No. R (2000) 21 of the Committee of Ministers emphasizes the importance of independence in the qualification process: “decisions concerning the authorisation to practise as a lawyer or to accede to the profession, should be taken by an independent body. Such decisions, whether or not taken by an independent body, should be subject to review by an independent and impartial judicial authority.”⁹⁴

The qualification of advocates in Azerbaijan is carried out by the Qualification Commission of the Bar Association (see Chapter I). The rules of the qualification procedure are not provided for in legislation but fall to be determined by the Presidium of the Bar Association.⁹⁵

According to the law, a person should meet the following requirements to become an advocate:

- A university degree in law;
- Possession of at least three years of professional experience as a lawyer or at least three years of professional experience in the legal sphere in academic and pedagogical educational institutions;
- Successful qualification examination (written exam and an interview);
- Successful completion of a compulsory training.⁹⁶

Former advocates (except those who had been disbarred) or judges only require an interview to become advocates.⁹⁷ Those with an academic degree

⁹¹ *International Covenant on Civil and Political Rights*, article 26; *European Convention on Human Rights*, article 14; *Basic Principles on the Role of Lawyers*, *op. cit.*, principle 10; See also: *Singhvi Declaration*, *op. cit.*, para. 77; *Convention on the Rights of Persons with Disabilities*, articles 4, 5; ICJ, *Sexual Orientation, Gender Identity and International Human Rights Law*, Practitioners Guide No. 4, 2009.

⁹² *Basic Principles on the Role of Lawyers*, *op. cit.*, principle 10; See also: *Singhvi Declaration*, *op. cit.*, para. 77.

⁹³ *Singhvi Declaration*, *op. cit.*, para. 80.

⁹⁴ *Recommendation No. R (2000) 21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer*, *op. cit.*, principle I.2.

⁹⁵ *Law On Advocates and Advocates' Activity*, *op. cit.*, article 13(IX).

⁹⁶ *Ibid.*, article 8(I).

⁹⁷ *Ibid.*

of a doctor of law or former judges of the Constitutional Court of Azerbaijan, presidents of courts of appeal and cassation can become advocates without any further qualification.⁹⁸ Dual citizenship, obligations before other countries,⁹⁹ incapacity by law or legal restriction of legal capacity, mental disability, commission of minor offences, having a criminal record for committing serious and particularly serious crimes, or inability to perform an advocate's duties in accordance with the law, disqualify candidates from becoming advocates.¹⁰⁰

Those holding official state positions may only become advocates after resignation from this position and qualification according to the law.¹⁰¹ Use of the title of an advocate without holding it in accordance with the law entails criminal responsibility.¹⁰²

The ICJ heard complaints from a number of lawyers that the process of qualification is not well organized and allows for arbitrary decisions to be taken when examining candidates. For example, no guidelines exist providing the criteria which the panel of examinations should use to objectively assess the knowledge and skills of the person whose qualification is being checked. Moreover, as mentioned above, the qualification process did not take place at all in some years, or in other years was not organized often enough to ensure the number of advocates is sufficient to provide legal advice throughout the country.

Particular concerns were expressed by lawyers about the oral examination, which is provided for by law. It was said that the questions asked at this stage of the exam may be arbitrary and may depend on the preferences of an individual examiner. The panel is not limited in asking questions by prescribed standards or by transparent, fair rules of examination. It was reported that the panel can and do in practice ask questions which sometimes may be only loosely related to questions of law. No guidelines on how to conduct an assessment of the examinees are provided. The process of examination therefore lacks clear methodology and is unsystematic.

The system of grading is problematic as well. The mission was informed that grading is not transparent, or based on standard, objective criteria; rather the examiners base their decisions on their own personal judgment. This potentially results in arbitrariness of the evaluation, with criteria not related to legal skills and knowledge, playing a decisive role in the evaluation. For example, the ICJ was told that certain professional backgrounds may automatically bar a person from qualifying, including work with NGOs or with lawyers who are identified with political groups opposed to the government (sometimes referred to as "opposition lawyers").

Professional Ethics

It is an important function of the lawyer's association "[t]o maintain the honour, dignity, integrity, competence, ethics, standards of conduct and discipline of the profession."¹⁰³ The *UN Basic Principles* provide that codes of professional conduct for lawyers should be established by the organs of the profession,

⁹⁸ *Ibid.*

⁹⁹ The law does not specify what these obligations may be.

¹⁰⁰ *Law On Advocates and Advocates' Activity, op. cit.*, article 8(II).

¹⁰¹ *Ibid.*, article 8(IV).

¹⁰² *Ibid.*, article 8(V).

¹⁰³ *Singhvi Declaration, op. cit.*, para. 99(b).

or by legislation.¹⁰⁴ A strong code of ethics is an essential tool in prescribing the conduct of lawyers in accordance with international standards, ensuring high professional standards and protecting the standing of the profession in society.¹⁰⁵

International standards stipulate that a lawyer's professional duties must be carried out diligently in accordance with the law and recognized standards and ethics of the legal profession.¹⁰⁶ In this regard, particular attention is attached to honesty and integrity, considered as professional obligations for lawyers.¹⁰⁷ Lawyers must be able to act freely, diligently and fearlessly in accordance with the wishes of their clients, being guided by the established rules, standards and ethics of the profession.¹⁰⁸

The *UN Basic Principles* provide that "lawyers shall always loyally respect the interests of their clients."¹⁰⁹ They further specify that this duty and any other obligation towards the client should be carried out to the best of their ability, diligently and at all times remain independent.¹¹⁰ Providing legal assistance to the best of their abilities includes: "(a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients; (b) Assisting clients in every appropriate way, and taking legal action to protect their interests; (c) Assisting clients before courts, tribunals or administrative authorities, where appropriate."¹¹¹

According to the *Law On Advocates and Advocates' Activity*, advocates in Azerbaijan are independent and are subject to the requirements of the law.¹¹² It stipulates that, when exercising their functions as lawyers, advocates are entitled to defend their clients (natural and legal persons); represent their interests before various bodies and other entities including foreign states and organizations; use various means in line with the Law and the *Code of Ethics* to defend their clients; conduct an independent investigation; collect evidence from various entities; obtain expert opinions to investigate the case; make use of "equipment" (which could include digital and other technology when meeting with clients); and meet and communicate with their clients without any hindrance as prescribed by law.¹¹³

The Law imposes certain obligations on advocates. They are obliged to observe the requirements of the Law and to use all means available by law to defend the interests of their clients; maintain advocates' secrecy, the oath and ethics of advocates; they are prohibited from taking any action that

¹⁰⁴ *Basic Principles on the Role of Lawyers*, *op. cit.*, principle 26.

¹⁰⁵ Eastern partnership project report, *Enhancing Judicial Reform in the Eastern Partnership Countries*, working group "Professional Judicial Systems", Directorate General of Human Rights and Rule of Law, Strasbourg, May 2012, p. 68.

¹⁰⁶ *Basic Principles on the Role of Lawyers*, *op. cit.*, principle 14.

¹⁰⁷ *Code of Conduct for European Lawyers* was originally adopted at the CCBE Plenary Session held on 28 October 1988, and subsequently amended during the CCBE Plenary Sessions on 28 November 1998, 6 December 2002 and 19 May 2006, General Principles 2.2.

¹⁰⁸ *Singhvi Declaration*, *op. cit.*, para. 83.

¹⁰⁹ *Basic Principles on the Role of Lawyers*, *op. cit.*, principle 15.

¹¹⁰ *Ibid.*, principle 14.

¹¹¹ *Ibid.*, principle 13.

¹¹² *Law On Advocates and Advocates' Activity*, *op. cit.*, article 15(I).

¹¹³ *Ibid.*, article 15(II).

contradicts the interests of their clients and hinders the exercise of their clients' rights, from admitting a link between the client and the crime alleged to have been committed contrary to the interests of the client, or admitting the guilt of the client; declaring a reconciliation between the client and the victim; admitting a civil claim filed against a client, or withdrawing a complaint submitted on behalf of a client, against the client's interests.¹¹⁴ Advocates are prohibited from disseminating facts which became known to them as a result of representation of their clients without the permission of the client; disseminating information which may damage morals, public order in the democratic society or state safety; and disseminating information in cases where there is a need to protect the interests of minors, and the private and family life of the parties.¹¹⁵ Advocates are prohibited from using secrecy for their own or a third party's personal interests,¹¹⁶ and they cannot refuse to defend a client once they have undertaken to do so.¹¹⁷ The Law specifically mentions that advocates must comply with the *Law On Combating the Legalisation of Money and Other Assets Obtained by Illegal Means and the Financing of Terrorism*.¹¹⁸

The Law specifies that advocates bear financial responsibility for damage to property of their clients.¹¹⁹ Advocates may not acquire property of their clients which is contested.¹²⁰ Advocates should regularly undergo professional training and improvement of their qualification.¹²¹ The *Code of Ethics* introduces some additional requirements, such as a requirement of politeness, objectivity or political neutrality which are vague and raise concerns about their possible improper use against lawyers. In particular, the requirement of politeness is a term that allows for a subjective judgment. Furthermore, the requirement of political neutrality is problematic since lawyers, unlike judges, are not required to be impartial — being partisan in defending their clients is an essential part of the lawyers' professional role. As the UN Special Rapporteur on Independence of Judges and Lawyers said: "[l]awyers are not expected to be impartial in the

¹¹⁴ *Ibid.*, article 16(I).

¹¹⁵ *Ibid.*

¹¹⁶ Article 17 of the *Law On Advocates and Advocates' Activity* outlines in detail the notion of lawyers' secrecy: "Advocate confidentiality

I. Obtaining by the advocate of information, provision of consultation and provision of references in relation with implementation of professional obligations comprise the advocate confidentiality.

II. The disclosure by the advocate of known information comprising the secrets of preliminary investigation is allowed only upon the consent of the prosecutor or investigator.

III. Advocates, guilty of disclosure of information, which comprises the secret of preliminary investigation, shall bear liability in accordance with procedures established under the legislation of the Azerbaijan Republic.

IV. The advocate may not be called as a witness and questioned on facts made known to him in relation with provision of legal assistance to applicant. The advocate shall not provide explanations on specified facts and disclose the information made known to him by the settler.

V. Information that comprises the advocate confidentiality shall not be considered as evidences in legal, civil and administrative cases, under which the advocate performs the legal assistance, as well as court proceedings with participation of this advocate.

VI. Other material provisions apart from those specified in parts IV and V of this article shall be determined by the Procedural Criminal Law of the Azerbaijan Republic."

¹¹⁷ *Law On Advocates and Advocates' Activity*, *op. cit.*, article 16(I).

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*, article 16(II).

¹²⁰ *Ibid.*, article 16(IV).

¹²¹ *Ibid.*, article 16(1).

manner of judges, yet they must be as free as judges from external pressures and interference.”¹²²

In practice, the *Code of Ethics* for lawyers in Azerbaijan has not become an effective a tool to regulate the professional conduct of lawyers. The ICJ is concerned that the Code may exist more for decorative purposes than as a real everyday guide for the work of Azerbaijani lawyers. The ICJ learned that advocates often engage in corrupt practices, or act in favour of the position of the investigators rather than being guided by the interests of their clients. Corruption may take different forms, including assisting a client by improper payments; co-operating with the investigation against the interests of their client; signing documents in cases where the lawyer had never provided legal advice or even met a client that he or she was engaged to represent.

One reason for this problem may be the very low fees paid to advocates for criminal legal aid cases—only two manats (approximately one Euro) per hour, a level of payment that encourages advocates to take on as many cases as possible, even if they do not in reality discharge their responsibilities in those cases. Another reason mentioned to explain this problem was that advocates have to play by the rules of the current justice system in order to try to assist their clients. It appears that many advocates, for whatever reason, fail to take action necessary to protect the human rights of their clients. For example, although there are very high rates of pre-trial detention in Azerbaijan, it is reported that orders for such detention are only rarely challenged by advocates, despite the fact that under international law and standards, pre-trial detention is an exception and not the rule.¹²³ At the same time, ethical behaviour of advocates who often challenge violations of the rights of their clients may be seen as a failure by the advocate to help their client. Therefore, a client may prefer an advocate who will be able to help him in his or her difficult situation, even by corrupt means, rather than a “truth-seeker” whose actions may aggravate it. Close ties of some advocates with judges, prosecutors and investigators is also likely to be a factor.

The general context in which advocates have to operate makes it extremely difficult for those advocates who have a strong principled position to work successfully. This situation is widely understood but is also widely tolerated, little has been or is being done to address it.

Disciplinary procedure

According to the *UN Basic Principles*, disciplinary proceedings should be heard by an independent and impartial disciplinary body established by the legal profession, by an independent statutory body, or by a court, and should be subject to independent judicial review.¹²⁴ Such proceedings should be determined “in accordance with the code of professional conduct and other recognized

¹²² *Report of the Special Rapporteur on the independence of judges and lawyers*, 28 July 2009, *op. cit.*, A/64/181, para. 12. The Special Rapporteur on the Independence of Judges and Lawyers is an independent expert appointed and mandated by the UN Human Rights Council, to inquire into and report on allegations of attacks on the independence of judges, lawyers and court officials and on progress achieved in protecting such independence, see: <http://www.ohchr.org/EN/Issues/Judiciary/Pages/IDPIndex.aspx>.

¹²³ ICCPR, article 9.3; HRC, General Comment 36, para. 38; ECtHR, *Kaszczynek v. Poland*, Application No. 59526/00, 22 May 2007, para. 57.

¹²⁴ *Basic Principles on the Role of Lawyers*, *op. cit.*, principle 28.

standards and ethics of the legal profession and in the light of these principles”,¹²⁵ and must be processed expeditiously and fairly in accordance with the right to a fair hearing.¹²⁶ *Recommendation No. R (2000) 21* of the Council of Europe Committee of Ministers prohibits arbitrariness of disciplinary action and requires a system which “guarantees the independence of lawyers in the discharge of their professional duties without any improper restriction, influence, inducement, pressure, threats or interference, direct or indirect, from any quarter or for any reason.”¹²⁷

The requirement that the disciplinary body, court or tribunal deciding disciplinary cases be independent, includes elements of both institutional and individual independence. As regards institutional independence, the disciplinary body should be constituted and governed so as to safeguard against inappropriate influence or pressure from the executive or from any other source. As regards individual independence and impartiality, members of the disciplinary body should be both independent in their decision-making and should be seen to be so.¹²⁸

As outlined in Chapter I, disciplinary proceedings are carried out by the Disciplinary Commission, a subsidiary body of the Bar Association that comprises advocates only. Therefore, its institutional independence is guaranteed by law. The Disciplinary Commission receives complaints about alleged disciplinary misconduct by advocates as well as requests to lift disciplinary measures already imposed against advocates.¹²⁹ The complaints are received from the Presidium within one month from the day of opening disciplinary proceedings.¹³⁰ The Disciplinary Commission may through the Presidium of the Bar Association obtain information and documents from courts, the police, prosecutors, justice officers, organizations, entities and other entities specified in the Charter.¹³¹ Through the Presidium, it may request expert opinions.¹³²

Advocates may be subjected to disciplinary penalties in cases of contravention of the following:

- The provisions of the *Law On Advocates and Advocates' Activity*;
- “Other legal acts”;
- The regulations on the rules of advocates' behaviour; and
- Rules of advocates' ethics in the course of exercising advocates' professional duties.¹³³

Such an overbroad list of grounds for disciplinary action is problematic. An important principle in international human rights law is the principle of legality, which requires, *inter alia*, that any measure affecting a person's human rights must be in accordance with law and that the law be expressed clearly and

¹²⁵ *Ibid.*, principle 29.

¹²⁶ *Ibid.*, principle 27.

¹²⁷ *Recommendation No. R (2000) 21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer*, Council of Europe, *op. cit.*, Preamble.

¹²⁸ Human Rights Committee, *General Comment No. 32*, paras. 19–21.

¹²⁹ *Charter on the Disciplinary Commission*, *op. cit.*, article 3.1.

¹³⁰ *Ibid.*, article 6.1.

¹³¹ *Ibid.*, article 3.2.

¹³² *Ibid.*

¹³³ *Law On Advocates and Advocates' Activity*, *op. cit.*, article 22(I).

unambiguously. The requirement that a measure be in accordance with law refers not only to the existence of the law but also to the quality of such law.¹³⁴

In particular, the law must be foreseeable, since “a norm cannot be regarded as ‘law’ unless it is formulated with sufficient precision to enable the citizen to regulate his [or her] conduct: he [or she] must be able — if need be with appropriate advice — to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.”¹³⁵ Disciplinary proceedings against an advocate are likely to affect his or her human rights, including the right to respect for private life and, in some cases, the rights to freedom of expression or association. The grounds for disciplinary action must therefore be sufficiently clear and certain to be in accordance with law. Where a disciplinary offence set out in law or in a code is aimed at “general and innumerate application” it is unlikely to satisfy the requirement of foreseeability.¹³⁶ As seen from the list of grounds for initiation of disciplinary proceedings against advocates (above), there is a very broad scope for initiation of disciplinary proceedings against advocates including violation of “other legal acts”. It should be noted, however, that the *Charter of the Disciplinary Commission* does not mention this as a ground for disciplinary responsibility.¹³⁷ Other grounds may equally be interpreted and applied very broadly, and may not allow lawyers to foresee in which instance disciplinary sanctions may be applied to them.

Disciplinary proceedings are initiated by the Presidium of the Bar Association.¹³⁸ The Disciplinary Commission conducts an enquiry within one month of the initiation of the disciplinary proceedings and presents the relevant report to the presidium.¹³⁹

The Chairperson of the Disciplinary Commission is in charge of the preparation of the disciplinary hearing. He or she identifies the time, location, timetable and the list of persons invited.¹⁴⁰ Members of the Commission are informed about the case at least two days before the hearing, whereas the advocate whose case is discussed is informed three days in advance about the hearing.¹⁴¹ A failure to inform the advocate (or another valid reason for non-appearance of the advocate) leads to postponement of the hearing.¹⁴² The hearing is valid with two-thirds of the Commission present.¹⁴³ The decision is taken by a simple majority, and the chair of the hearing votes last.¹⁴⁴ An opinion is issued, signed by everyone present at the hearing.¹⁴⁵ Any dissenting opinions by members of the Commission are attached to the opinion.¹⁴⁶ The opinion is

¹³⁴ *Malone v. United Kingdom*, ECtHR, Application No. 8691/79, Judgment of 2 August 1984, para. 67.

¹³⁵ *Ibid.*, para 66.

¹³⁶ ECtHR, *Oleksandr Volkov v. Ukraine*, Application No. 55480/00, Judgment of 9 January 2013, para. 178.

¹³⁷ *Charter on of the Disciplinary Commission*, *op. cit.*, article 1.2.

¹³⁸ *Law On Advocates and Advocates' Activity*, *op. cit.*, article 22(IV).

¹³⁹ *Ibid.*, article 22(V).

¹⁴⁰ *Charter on the Disciplinary Commission*, *op. cit.*, article 6.2.

¹⁴¹ *Ibid.*, article 6.3.

¹⁴² *Ibid.*, article 6.4.

¹⁴³ *Ibid.*, article 6.7.

¹⁴⁴ *Ibid.*, article 6.10.

¹⁴⁵ *Ibid.*, article 6.11.

¹⁴⁶ *Ibid.*, article 6.12.

adopted on the day of its announcement and is submitted to the Presidium of the Bar Association.¹⁴⁷

Advocates have the following rights in disciplinary proceedings:

- To “familiarize themselves” with the application, request and other materials;
- To submit explanations and petitions in the case;
- To be informed about the time and location of the meeting of the Disciplinary Commission;
- To object to a member of the Disciplinary Commission if any cases of doubt arise about his or her impartiality;
- To participate in the meeting of the Disciplinary Commission, to submit explanations and petitions and to hand documents;
- To obtain copies of the opinion of the Disciplinary Commission.¹⁴⁸

Disciplinary proceedings can be terminated where there is a lack of evidence or if the limitation period for initiation of proceedings expires.¹⁴⁹ The statute of limitation for disciplinary responsibility is six months from the date of a discovery of the commission of disciplinary misconduct and one year since its commission.¹⁵⁰

Disciplinary penalties are imposed by the Presidium of the Bar Association on the basis of the opinion of the Disciplinary Commission of Advocates.¹⁵¹ The Presidium can impose the following sanctions:

- Rebuke;
- Reprimand;
- A suspension from three to twelve months.¹⁵²

While the rules for the procedure within the Disciplinary Commission are publicly available, the ICJ is not aware of existence of any document regulating the disciplinary procedure within the Presidium itself when this body decides on issuing a final decision on an advocate concerned.

In case “grounds” exist to disbar an advocate from the Bar Association, the Presidium can suspend his or her membership on the basis of an opinion of the Disciplinary Commission by filing an application to the Court.¹⁵³ Therefore, the decision on the matter may be adopted only by the Court. However, it is unclear from the law or other normative acts what those “grounds” for disbarment are and the threshold for this most serious penalty is therefore uncertain. As discussed further in Chapter III, this creates problems in practice where advocates are disbarred on dubious grounds, pointing to a problem of arbitrariness in the application of this penalty.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*, article 5.

¹⁴⁹ *Law On Advocates and Advocates' Activity, op. cit.*, article 22(VI).

¹⁵⁰ *Ibid.*, article 22(III).

¹⁵¹ *Ibid.*, article 22(II).

¹⁵² *Ibid.*, article 22(VI).

¹⁵³ *Ibid.*, article 22(VIII).

Disbarment of a lawyer from the Bar Association leads to termination of his or her professional activity as an advocate.¹⁵⁴ A suspension also disqualifies a lawyer from holding elected positions of the bodies of the Bar Association.¹⁵⁵ An advocate's professional activity is terminated based on the decision of the Presidium of the Bar Association with the exception of cases of "exclusion from the membership in the Bar Association" (i.e. disbarment) and "a failure to pay membership fees without a good reason for more than six months" which are decided on by the courts.¹⁵⁶

Conclusions

The qualification procedure, ethical standards and disciplinary procedures for lawyers in Azerbaijan suffer from a lack of objective criteria, predictability and transparency. There are also concerns regarding the lack of clear criteria in law, practice or guidance, for the imposition of the most severe disciplinary penalty, disbarment. These gaps in standards lead to problems in practice, opening the way for uneven, arbitrary or discriminatory standards in qualification, and for arbitrary victimization of lawyers through disciplinary proceedings.

Even where clear standards are in place, compliance with them is poor. For example, although it is welcome that the rights of lawyers in disciplinary hearings are enshrined in the *Charter on the Disciplinary Commission*, in practice, these rights may be disregarded, contrary to both Azerbaijan's law, and to international human rights law and the *UN Basic Principles on the Role of Lawyers* (principle 27). The application of disciplinary standards and procedures in practice, and their compliance with Azerbaijan's international human rights obligations, are considered in the next chapter.

¹⁵⁴ *Law of the Republic of Azerbaijan On Advocates and Advocates' Activity*, article 23(I); According to the Law the list of grounds for termination of advocate's activity include: submission of written application for termination of activities by own will; conviction by a court, which has entered into force, or court decision on application of forced medical measures; incapability or limited capability of the advocate established by a court; death, or where a court recognizes the lawyer as deceased or missing; exclusion from the Bar Association; identification of his [or her] non-compliance with requirements established under the Law for candidates for membership of the bar association; non-payment of membership fees for the period of more than six months.

¹⁵⁵ *Law On Advocates and Advocates' Activity, op. cit.*, article 22(VII).

¹⁵⁶ *Ibid.*, article 23(II).

CHAPTER III: Abuse of the disciplinary system and other obstacles to lawyers' work in practice

Under international standards on the independence of lawyers, States must guarantee that lawyers can discharge their professional duties and functions, that their role is safeguarded and their rights are protected. The *UN Basic Principles on the role of lawyers* require governments to ensure that lawyers: "(a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics".¹⁵⁷ These protection measures are crucial to providing effective legal assistance to the clients.¹⁵⁸

The State has a duty to ensure that lawyers are not identified with their clients or their clients' causes as a result of discharging their professional functions. *Recommendation R (2000) 21* of the Council of Europe Committee of Ministers identifies the obligations of states to take all necessary measures ". . . to respect, protect and promote the freedom of exercise of profession of lawyer without discrimination and without improper interference from the authorities or the public, in particular in the light of the relevant provisions of the *European Convention on Human Rights*."

As discussed further below, obligations to protect against harassment of lawyers also arise under international human rights law, in regard to the human rights of the people the lawyers represent, as well as the human rights of the lawyers themselves. Harassment of lawyers may lead to violations of the rights of their clients including, among others, the rights to fair trial (ECHR, article 6; ICCPR, article 14), the right to liberty (ECHR, article 5; ICCPR, article 9), or freedom from torture or other ill-treatment (ECHR, article 3; ICCPR, article 7). Disciplinary processes must comply with the rights of the lawyer concerned to a fair hearing and must not lead to sanctions in violation of the lawyer's human rights, including for example their rights to freedom of expression (ECHR, article 10; ICCPR, article 19), freedom of association (ECHR, article 11; ICCPR, article 22) and respect for private life (ECHR, article 8; ICCPR, article 17) as well as rights under the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, which is applicable to lawyers when they defend human rights.

In Azerbaijan, lawyers face harassment through a number of means, including criminal prosecutions, disciplinary action, and other administrative measures. Disbarments of lawyers who work to protect human rights, along with criminal prosecutions, searches and measures such as freezing of assets of such lawyers, are part of a wider picture of harassment of human rights defenders, including not only lawyers, but also journalists, NGO workers and others. Nevertheless, for lawyers who are members of the Bar Association, disciplinary proceedings have been one of the main means of harassment used against lawyers who defend human rights.

¹⁵⁷ *Basic Principles on the Role of Lawyers*, op. cit., principle 16.

¹⁵⁸ *Ibid.*, principles 16(b), 22.

Disciplinary complaints against lawyers are brought on a regular basis in Azerbaijan. It was reported to the ICJ that in ordinary cases, which are not considered to be sensitive or political, the Collegium is able to withstand the pressure of the law enforcement bodies or courts. In these cases, the Collegium demonstrates the tendency to favour lawyers' independence and in some cases was reported to have been able to successfully defend the actions of lawyers against whom disciplinary measures were sought by law enforcement bodies.

Other cases are initiated following complaints from clients, concerning allegations of corrupt practices by lawyers, raising issues of enforcement of ethical standards of lawyers. The ICJ heard consistent allegations that the Collegium tends turn a blind eye to cases of reported corrupt practices by lawyers. It is widely recognized as a problem that there are many lawyers who inappropriately engage with the law enforcement agencies in potential conflict or sometimes detriment of the interests of their clients. This is contrary to the *Law On Advocates and Advocates' Activity*, which stipulates that lawyers should not: ". . . take any actions contradicting the interests and hindering the exercise of the rights of the person who has sought legal assistance"¹⁵⁹ and should ". . . avoid acts/inactions that can violate rights, freedoms and legitimate interests, dignity and self-respect, goodwill of people".¹⁶⁰

The ICJ heard nevertheless that a significant group of lawyers does co-operate with law enforcement officials in ways that contributes to violations of human rights of their clients including torture, ill-treatment, and arbitrary deprivation of liberty. This, however, does not lead to disciplinary responsibility of those lawyers. The Bar Association is either highly tolerant of such behaviour of its members or it fails to assume one of its primary roles which is to uphold the integrity of the legal profession.¹⁶¹

For example, the mission heard from several sources that in some cases one lawyer may be officially recorded as working on dozens of cases at one and the same time, while in practice he or she is not providing effective legal representation in any of them. Having signed the relevant documents for the cases, the lawyers receive honoraria for providing legal aid. Such actions are likely to constitute violations of lawyers' professional ethics, and deprive defendants in criminal cases of effective legal representation, in violation of the right to a fair trial. However, though the phenomenon is widely known among lawyers, it does not lead to disciplinary action against the lawyers who engage in these practices.

A third category of cases, which have been particularly evident in recent years, are those initiated, on various grounds, against the most active and well-known human rights lawyers. Many, though not all, of these cases have been initiated by judges who allege that a lawyer had breached ethical standards due to their behaviour in court. The ICJ heard from many lawyers that in high profile or "politically sensitive" cases the Collegium is unable or unwilling to protect advocates against pressure exerted on them. In the case of lawyers who defend activists, political leaders or human rights defenders, the Bar Association

¹⁵⁹ *Law On Advocates and Advocates' Activity*, *op. cit.*, article 16.I.

¹⁶⁰ *Statute on Conduct Rules of Advocates*, article 8.2.

¹⁶¹ *Singhvi Declaration*, *op. cit.*, para. 99(b); *Recommendation No. R (2000) 21 of the Committee of Ministers to Member States on the Freedom of exercise of the profession of lawyer*, *op. cit.*, principle V.4(g).

may in fact act as an instrument of retaliation against such lawyers and this may lead to them being disbarred or otherwise disciplined. Moreover, the disciplinary procedure in such cases may fail to guarantee a fair procedure while an appeal does not appear to be an effective check against arbitrary decisions. Serious concerns have been raised, including by the ICJ, about selective and arbitrary application of such proceedings, which have been used to impede free exercise of lawyers' professional functions rather than to maintain high standards of professionalism amongst lawyers. These concerns were supported by the testimony heard throughout the ICJ's mission.

Criminal proceedings have also been brought against lawyers in several cases, on dubious charges that appear to amount to harassment or reprisals for professional activities. Prosecutions are often linked to or followed by disciplinary proceedings leading to the disbarment of the lawyer concerned.

Individual cases are summarized below to illustrate the problems of harassment of lawyers through various means in practice.

Criminal and disciplinary cases against lawyers

Intigam Aliyev¹⁶²

Intigam Aliyev, a prominent human rights lawyer¹⁶³ and the head of the NGO Legal Education Society, was convicted on 22 April 2015 of tax evasion, illegal entrepreneurship and abuse of power and sentenced to seven and a half years of imprisonment by the Baku Court on Grave Crimes. The charges he was tried on were widely believed to have been politically motivated. The real reason for his prosecution and conviction was said to have been retaliation for his active role in defending clients including opposition leaders and human rights defenders.¹⁶⁴ While Intigam Aliyev was in detention, the case files related to the cases in which he represented clients including before the European Court of Human Rights were seized by investigative bodies during a search of his office, which lead to a violation of article 3 of Protocol No. 1 ECHR and article 34 ECHR.¹⁶⁵ In a closed hearing, the Supreme Court reduced his sentence to five years of imprisonment and suspended its execution, after a request to this effect was made by Azerbaijan's Prosecutor General.¹⁶⁶ The case is currently pending before the European Court of Human Rights.

Gurban Mamedov

In September 2012, lawyer Gurban Mamedov was the driver of a car involved in an accident as a result of which a watchman in a car-park had his leg broken.

¹⁶² Intigam Aliyev was refused to the membership of the Bar Association from the time of its creation following the adoption of the Law in 1999.

¹⁶³ Intigam Aliyev, Annaghi Hajibeyli and Farman Huseynli who worked as an advocate with the licence given by the Ministry of Justice, were never accepted to the Bar Association after the cancellation of their licences in 2004. It was alleged that at the same time others with the licence were accepted to the Bar without passing an exam.

¹⁶⁴ *Azerbaijan: ICJ welcomes release of human rights lawyer Intigam Aliyev*, <http://www.icj.org/azerbaijan-icj-welcomes-release-of-human-rights-lawyer-intigam-aliyev/>; See also: *ICJ submission in Annagi Hajibeyli v. Azerbaijan and 28 other applications*, <http://www.icj.org/icj-submits-annagi-hajibeyli-v-azerbaijan-and-28-other-applications/>.

¹⁶⁵ ECtHR, *Annagi Hajibeyli v. Azerbaijan*, Application No. 2204/11, Judgment, Strasbourg, 22 October 2015, para. 87.

¹⁶⁶ *Azerbaijan: ICJ welcomes release of human rights lawyer Intigam Aliyev*, *op. cit.*; See also: *ICJ submission in Annagi Hajibeyli v. Azerbaijan and 28 other applications*, *op. cit.*

Long after the accident, in June 2013, the lawyer was arrested. He was later sentenced to three years of imprisonment and released in December 2014. Many independent experts suggested that his arrest was politically motivated as he had represented clients in a number of political cases and was a vocal critic of the government.

Alaif Ghasanov

Lawyer Alaif Ghasanov was disbarred on the grounds of having a previous criminal conviction. Mr Ghasanov had represented a number of prominent human rights defenders, including Leyla Yunus, Khadija Ismayil and Ilgar Mammadov. During the period in which his client Leyla Yunus was detained, he posted information on Facebook about alleged abuse of Leyla Yunus in detention by one of her co-detainees. Following a private prosecution brought against Alaif Ghasanov, on 6 November 2014, he was found guilty of slander in relation to these statements (under article 147.1 of the Criminal Code) and sentenced to 240 hours of community service. Based on this conviction, he was disbarred on 3 July 2015. The lawyer alleged that there had been selective application of the ground for disbarment, as there were other lawyers, including members of the Presidium itself, who had a criminal record but who continued to be members of the Collegium. Furthermore, Alaif Ghasanov was not given any official document attesting to his disbarment, and alleges that he only found out about his disbarment from news reports. Following media reports raising doubts about the presence of one member of the Commission at the meeting relating to his case, he contested in court whether the meeting was properly constituted. He claims that he was neither invited to the meeting of the Disciplinary Commission that heard his case, nor questioned about the case. Therefore he stresses that the basis for the disbarment decision was completely unclear to him.¹⁶⁷

These issues were raised at a hearing before the Administrative Court on 23 June 2016, challenging the disbarment, at which ICJ observers were present. At the hearing, the representatives of the Bar Association confirmed that no full minutes of the Disciplinary Commission hearing were available, although summary minutes were available and were presented to Mr Ghasanov and to the court. On this basis, the judge dismissed a motion of the applicant to order the disclosure of further documents of the Bar Association. The judge also dismissed a motion on behalf of the applicant to call members of the Disciplinary Commission as witnesses to testify to the fact that the meeting and vote took place as recorded. The Administrative Court dismissed the challenge to the disbarment.

Namizad Safarov, Hidayat Suleymanov and Latifa Aliyeva

In 2005 and 2006, three members of the Bar Association were disbarred: Namizad Safarov, Hidayat Suleymanov and Latifa Aliyeva. The opinion of the Presidium in the case mentioned violations when carrying out their professional duties as reasons for their disbarment. It is alleged by the lawyers that they were never invited to a hearing and their disbarment was done in a speedy and summary manner. It was alleged by lawyers that the true reason for their disbarment was their critical remarks about the Bar Association and its leadership.¹⁶⁸

¹⁶⁷ ICJ observed a court hearing in Alaif Ghasanov's case on 23 June 2016.

¹⁶⁸ Human Rights House, NGO Report on Civil and Political Rights in Azerbaijan, December 2015, http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AZE/INT_CCPR_ICO_AZE_22692_E.pdf, p. 20.

Osman Kazimov

Osman Kazimov, a lawyer who had represented a number of well-known political leaders, was disbarred in May 2011. Disciplinary proceedings were initiated by the Bar Association following a motion of the First Deputy of the Prosecutor General. The complaint against the lawyer was based on his refusal to sign the record of the interrogation of one of his clients due to an alleged falsification of the testimony. He was accused of a procedural violation in not signing the record, despite the fact that the law does not impose an absolute obligation to sign an interrogation record. He was disbarred by the Bar Association following a recommendation of law enforcement bodies. Osman Kazimov objected to the opinion of the Bar Association, alleging that the language of the opinion was inappropriate and factually inaccurate. He reiterated during the hearing that the opinion was fabricated. Osman Karimov also states that the decision of the Presidium was not provided to him.¹⁶⁹ At a court hearing, Altay Muradov, a representative of the Bar Association, said that by not signing the minutes of the interrogation, Mr Kazimov “violated the professional ethics, having avoided actions on defense of his client”. The failure to sign papers which may unjustly incriminate a client may be an entirely legitimate reaction of a lawyer who considers that signing them would undermine his or her client’s rights. It is therefore surprising that the Bar Association and the Court took this position, which is contrary to the obligations of a lawyer to defend the best interests of his or her clients.¹⁷⁰

Aslan Ismayilov

Aslan Ismayilov, a prominent lawyer and an active critic of the judicial system and the executive, was disbarred on 10 September 2013, by a decision of the Nariman District Cour. This followed a decision of 8 May 2013, by the Presidium to suspend his membership of the Bar Association and file a request to the Nariman District Court to disbar him. The following day his law firm “Aslan and partners” was ordered to be closed down. The ground for the disbarment was a complaint by Elnur Ghasanov, judge of the Sabail District Court in Baku that the lawyer had “insulted” him. Earlier, the lawyer had complained about the judge’s actions to the Ministry of Justice alleging that the judge was biased.¹⁷¹

Khalid Baghirov

Khalid Bagirov, a prominent human rights lawyer, had his license to practice suspended on 10 December 2014 for alleged inappropriate conduct in court, which included a failure to wear a “lawyers’ outfit” in the court room, and use of improper expressions and behaviour incompatible with standards of lawyers’ conduct. Following an application of the Presidium of the Bar Association, on 10 July 2015, the Nizami District Court confirmed his disbarment. The disbarment was based on a complaint issued by the Sheki Court to the Bar Association, which alleged that Khalid Bagirov had breached professional ethics when he questioned the fairness of a court decision in the case against one of his clients, opposition-leader Ilgar Mammadov. Ilgar Mammadov had been convicted and imprisoned in 2013 on charges of inciting a riot.¹⁷² The ICJ, which observed

¹⁶⁹ Osman Kazimov was reinstated as a member of the Bar Association in July 2011.

¹⁷⁰ *Basic Principles on the Role of Lawyers*, *op. cit.*, principle 13(b).

¹⁷¹ In Azerbaijan, Court deprives lawyer Aslan Ismailov of his advocate status, <http://www.eng.kavkaz-uzel.eu/articles/25739/>.

¹⁷² Azerbaijan: disbarment of a lawyer undermines independence of the legal profession, <http://www.icj.org/azerbaijan-disbarment-of-a-lawyer-undermines-independence-of-the-legal-profession-2/>.

the Disciplinary Commission hearing in the case, criticized the disbarment in a statement of 13 July 2015, noting that “there are grounds to believe that Khalid Baghirov’s disbarment is in retaliation for his representation of clients in high profile cases, including prominent human rights defenders.”¹⁷³

Muzaffar Bakhishov

On 1 April 2016, lawyer Muzaffar Bakhishov’s license was suspended by a decision of the Presidium of the Bar Association on the basis of the complaint of Supreme Court Judge Tatiana Goldman. His disbarment was confirmed by the Narimanov District Court in May 2016. It was alleged that Muzaffar Bakhishov had demonstrated “disrespect” to the judge and court staff by comments he made at a Supreme Court hearing and thereby violated professional ethics. Muzaffar Bakhishov denied the allegations relating the reason for the decision to an interview he gave to a news website moderator.az on 17 November in which he pointed out irregularities in the justice system and criticized the chairman of the Supreme Court Ramiz Rzayev.

Muzaffar Bakhishov alleges that he had not been properly informed of his rights at the Disciplinary Commission hearing. He said that he had access to a key document, the minutes of the relevant Supreme Court hearing, for the first time only at the hearing of the Disciplinary Commission. The ICJ has previously expressed concern about the potential of the disbarment to violate Mr Bakhishov’s freedom of expression.¹⁷⁴

Elchin Namazov

Lawyer Elchin Namazov was disbarred on 16 September 2011 on the recommendation of the Presidium of the Bar Association.¹⁷⁵ The recommendation to disbar him was made based on court records and the allegation by a judge who claimed that Elchin Namazov had demonstrated “disrespect” to the judge, violating ethical norms, during a trial. According to Mr Namazov, at the meeting of the Presidium concerning his case, the Presidium only referred to the court records and the allegation made by the judge. The decision of the Presidium was adopted based on these elements alone. He also reiterated that it was clear that the record of the meeting was not accurate and the decision had been altered. At the meeting of the Disciplinary Commission, he had filed motions requesting the questioning of other lawyers who were present at the trial concerned. The Commission had refused to accept this motion. Elchin Namazov claimed that the recommendation for his disbarment was made based solely on the record and the decision sent by the judge who claiming he had “disrespected” the court, violating professional ethical standards, during the trial.

Shafiga Naghiyeva

On 21 July 2016, lawyer Shafiga Naghiyeva was suspended for six months by a decision of the Presidium of the Bar Association following “multiple complaints”,

¹⁷³ *Ibid.*

¹⁷⁴ *Azerbaijan: ICJ calls for respect of lawyer’s freedom of expression in disbarment case*, <http://www.icj.org/azerbaijan-icj-calls-for-respect-of-lawyers-freedom-of-expression-in-disbarment-case/>.

¹⁷⁵ Protectionline, Elchin Namazov, Human Rights Defender Lawyer: Disbarred and Facing Imprisonment, 9 October 2011, <http://protectionline.org/2011/10/09/elchin-namazov-human-rights-defender-lawyer-disbarred-and-facing-imprisonment/>.

according to one of the members of the Presidium. She was also said to have committed “multiple violations in the legal consultation office where she works”.¹⁷⁶ She claims that she was not invited to the meeting of the Presidium and she only heard of the suspension from the news. Due to health issues, she appears to have been in hospital for a certain period of time, thus the decision was taken in her absence despite her allegedly valid reason not to appear before the disciplinary body.¹⁷⁷

Yalchin Imanov

A member of the Bar Association since 2007, Yalchin Imanov represented high profile dissidents in Azerbaijan including Hadija Ismailova. On 12 February 2016, a judge of the Nariman District Court of Baku filed a complaint against the lawyer requesting disciplinary sanctions for “unethical” behaviour.¹⁷⁸ At the time of this writing, no disciplinary measures had been taken against Yalchin Imanov, but any initiation of disciplinary proceedings against him may amount to harassment.

Other means of interference with independent work of lawyers

In addition to criminal and disciplinary proceedings, lawyers in Azerbaijan face harassment or interference with their work in numerous other ways. Lawyers may face physical attacks or threats in the course of their work, as was the case for example for Aslan Ismayilov, who in May 2013, was invited to a police department, then was taken to a basement, threatened and punched, and told that his treatment was a “warning”.

Lawyers may also face administrative measures such as asset freezing and travel bans. For example, lawyer Asabali Mustafayev, the head of the Democracy and Human Rights Resource Centre, was subject to a travel ban. On 8 July 2016 the Sumgait Administrative Court granted the petition of the Territorial Tax Department 2 of the Ministry of Taxes to ban Asabali Mustafayev from leaving the country. According to the lawyer, this ban is linked to 13 decisions of the European Court of Human Rights in regard to Azerbaijan filed by the lawyer.¹⁷⁹ He was summoned to Sumgait City Court the next day after the decisions of the ECtHR became public.

In certain cases, lawyers may be arbitrarily removed from cases in which they represent clients in accordance with the law.¹⁸⁰ One means of doing this is to name the lawyers as witnesses in cases in which they represent clients. For example, on 30 September 2014, Anar Ghasymly, Fariz Namazly and Alaif Ghasanov, the lawyers who represented Intigam Aliyev (see above), were not allowed to see their client in detention. They later discovered that they had been removed from representing their client, as they were involved as

¹⁷⁶ Report News Agency: A famous lawyers’ activity has been suspended, an appeal to the Prosecutor’s office has been filed, <http://report.az/hadise/meshur-vekilin-fealiyyeti-dayandirilib-onunla-baglibas-prokurorluga-muraciet-gonderilib/>.

¹⁷⁷ Şəfiqə Nağıyeva Kollegiyadan çıxarıldı — Şok ittiham, <http://www.qafqazinfo.az/kriminal-5/sefiqenagiyeva-kollegiyadan-cixarildi-sok-ittiham-154520>.

¹⁷⁸ FIDH, *Azerbaijan: Sport For Rights: Another human rights lawyer at risk of disbarment in Azerbaijan*, <https://www.fidh.org/en/issues/human-rights-defenders/azerbaijan-sport-for-rights-another-human-rights-lawyer-at-risk-of>.

¹⁷⁹ Lawyer Asabali Mustafayev: The court case against me is connected with the cases I won in the ECHR, <http://www.contact.az/docs/2016/Social/070100160843en.htm#.V9-HhJCKRjd>.

¹⁸⁰ For example on 29 October 2013, lawyers Javad Javadov and Khalid Baghirov were removed from representing Leyla Yunus by a decision of the Prosecutor General’s Office.

witnesses in the case. Similarly, on 12 March 2015, Yalchin Imanov (see above) was removed from representing Hadija Ismailova after having been named as a witness in the case. This happened by means of merger of two cases in one of which he was a lawyer and the other one a witness.

Testifying as a witness creates a conflict of interest and the lawyer is prevented from representing a party in the case. This practice whereby lawyers are intentionally made witnesses to be removed from representing clients runs contrary to international standards on the role of lawyers and in particular violates the principle of confidential communication between lawyers and their clients.¹⁸¹

Conclusions

Inappropriate or abusive application of disciplinary proceedings

The cases described above demonstrate that disciplinary as well as criminal proceedings are frequently used against lawyers in ways which are contrary to the independence of the legal profession and which appear to amount to harassment or reprisals for the proper exercise of their professional duties, and to identification with the causes of the lawyers' clients, contrary to international standards on the independence of lawyers. It appears that in many cases lawyers are targeted inappropriately for disciplinary action for defending their clients zealously and for seeking to protect their human rights. In others, they are subjected to sanctions as a result of exercise of their freedom of expression. Abusive disciplinary proceedings undermine the independence of the profession and transform the role of the Bar Association from one of regulating and upholding standards of the profession, into an instrument of intimidation and retaliation against lawyers who defend human rights. The role of the Bar Association in disciplinary proceedings is particularly worrying as it contributes to cleansing the profession of some of its most qualified members whose alleged misconduct is often not only in accordance with professional ethics, but also a necessary exercise of their responsibility to vigorously defend their clients.

In this regard, the ICJ recalls that it is lawyers' duty to "defend their clients' interests zealously" and lawyers may be called upon to make strongly worded or challenging arguments as part of the adversarial process.¹⁸² According to the CCBE *Opinion No. (2013) 16 on the relationship between judges and lawyers*, adopted by the Consultative Council of European Judges on 13–15 November 2013, "A lawyer shall, while maintaining due respect and courtesy towards the court, defend the interests of the client honourably and fearlessly without regard to the lawyer's own interests or to any consequences to him- or herself or to any other person. A lawyer shall never knowingly give false or misleading information to the court."

Sanctions against lawyers for exercising their freedom of expression have been imposed in a number of cases, and constitute not only a human rights violation, but an undermining of the administration and rule of law. Under international law and standards, lawyers, like other individuals, enjoy the

¹⁸¹ Among other documents see: *UN HRC General Comment 32, op. cit.*, para. 34; *Basic Principles on the Role of Lawyers, op. cit.*, principles 8 and 22.

¹⁸² See: ECtHR, *Nikula v. Finland*, Application No. 31611/96 of 21 March 2002, para. 54.

right to freedom of expression, including in regard to their professional role.¹⁸³ Protection of lawyers' right to freedom of expression safeguards the important public function played by lawyers in a democratic society to comment on matters related to the rule of law and the administration of justice. The *UN Basic Principles on the Role of Lawyers* specify that lawyers ". . . shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights . . ." The European Court of Human Rights has emphasized that lawyers are entitled to comment in public on the administration of justice, provided that their criticism does not overstep certain bounds, based on principles of dignity, honour, integrity, and respect for the fair administration of justice.¹⁸⁴ In light of this, disbarment of lawyers for remarks made both in court and in other venues, regarding matters of public interest such as human rights in detention, fair trial, or the independence of the judiciary, are likely to violate the lawyers' freedom of expression.

Procedural fairness in disciplinary proceedings

In accordance with international standards on the role of lawyers, disciplinary cases against lawyers must be processed expeditiously and fairly in proceedings in which lawyers have the right to a fair hearing.¹⁸⁵ Such proceedings against lawyers must comply with the international obligations of Azerbaijan in regard to the right to a fair hearing, protected, *inter alia*, under article 6 of the ECHR and article 14 of the ICCPR. In particular, disciplinary proceedings against lawyers must be heard in public by an independent and impartial tribunal established by law, and must be subject to an independent judicial review.¹⁸⁶ The proceedings must be adversarial in nature and must respect the principle of equality of arms between the parties to the case, according to which each party must have a reasonable opportunity to present his or her case, and to contest the evidence and arguments put forward by the other side, under conditions which do not place him or her at a substantial disadvantage to the other party.¹⁸⁷

In accordance with these principles, lawyers subject to disciplinary proceedings should be informed of the nature of the charges against them and have access to all relevant documents in the case; they and their legal representatives should have adequate time and facilities to prepare and present their case;¹⁸⁸ and they should have the opportunity to present evidence and to challenge the allegations and evidence against them, including by calling and questioning witnesses.¹⁸⁹ The right to a fair hearing must be guaranteed in a way that is practical and effective. This requires that the court or tribunal must conduct a proper examination of the case, and that submissions and evidence

¹⁸³ ICCPR, article 19; ECHR, article 10.

¹⁸⁴ ECtHR, *Morice v. France*, Application No. 29369/10, 23 April 2015, paras. 132–139.

¹⁸⁵ *Basic Principles on the Role of Lawyers*, *op. cit.*, principle 27.

¹⁸⁶ *Ibid.*, principle 28; ECHR, article 6; ICCPR, article 14.

¹⁸⁷ UN HRC, *General Comment 32*, para. 13; ECtHR, *Dombo Beheer v. the Netherlands*, Application No. 14448/88, Judgment of 27 October 1993, para. 33.

¹⁸⁸ ECtHR, *Kracmar and Others v. the Czech Republic*, Application No. 35376/97, Judgment of 3 March 2000, para. 42.

¹⁸⁹ ECtHR, *Dombo Beheer v. the Netherlands*, Application No. 14448/88, 27 October 1993, paras 31–35; See generally: IBA, *Guide for Establishing and Maintaining Complaints and Discipline Procedures*, paras. 7 and 8.

of both parties must be duly considered by the court or tribunal.¹⁹⁰ Finally, in accordance with the right to a fair hearing, a decision must include reasoning which demonstrates that the case was considered in light of the main issues presented by the parties.¹⁹¹

In light of the experience of lawyers in the cases described earlier in this chapter, proceedings before the Disciplinary Commission and Presidium of the Bar Association do not meet international standards on the right to a fair hearing consistently in practice. Particularly worrying are reports that lawyers are disbarred without being notified about the hearing and that they are not afforded access to relevant documents in the possession of the Bar Association. There is also evidence of disregard for the equality of arms principle. Another common problem is that lawyers are often not provided with the decision, which could allow them to appeal against it before the courts.

It is clear from recent cases of disbarments that in high profile cases or “politically sensitive cases” the Bar Association is unable or unwilling to protect advocates against pressure or threats. In case of lawyers who defend activists, political leaders or human rights defenders, the disciplinary process may in fact act as an instrument of retaliation against such lawyers. Moreover, the disciplinary procedure in such cases fails to guarantee a fair procedure while an appeal to the courts does not appear to be an effective check against arbitrary decisions which undermine the independence of the legal profession.

¹⁹⁰ ECtHR, *Perez v. France* [GC], Application No. 47287/99, Judgment of 12 February 2004, para. 80.

¹⁹¹ ECtHR, *Boldea v. Romania*, Application No. 19997/02, 15 February 2007, para. 29; ECtHR, *Helle v. Finland*, 19 December 1997, Reports 1997-VIII, para. 60, p. 2930.

CHAPTER V: Conclusions and recommendations

The self-governing legal profession in Azerbaijan is relatively young, but nonetheless remains strikingly underdeveloped, with the result that lawyers have not yet collectively been able to effectively regulate the profession to optimize the fair administration of justice in the country. This includes discharging their proper role in the protection of human rights through the justice system. The Bar Association's institutional weaknesses are exacerbated by the very small number of advocates in the country, which is insufficient to guarantee access to justice and effective protection of human rights. While it is clear that the profession operates in a difficult environment, it is also evident that the Bar Association's internal problems and deficiencies have undermined its independence for many years. The leadership of the Bar Association has not striven to support the legal profession, and it does not appear to hold ambitions to strengthen its institutions, so that it becomes capable of acting as a worthy counterpart to other actors within the justice system.

In practice, the Bar Association has not implemented key elements of the legislative framework that governs it, and has struggled, for example, with electing members of subsidiary bodies in a timely manner or adopting the documents which should regulate the profession. While in some States the legal profession may struggle to obtain these functions of self-regulation, in Azerbaijan the Bar Association does not seem to make full use of the tools of self-regulation which it already has at its disposal.

In general, the role of the Bar Association as an independent self-governing institution of lawyers who establish it to protect the independence of their profession and uphold high ethical standards, is not currently fulfilled. The current Bar Association too often acts as a top-down bureaucracy whose interests are not those of its members. There are serious failings in regard to transparency of the budget, accountability before its members, democratic participation of lawyers and their protection in instances of harassment and persecution of lawyers. In this environment, the Bar Association tends to function, in practice, to repress the independence of lawyers rather than to defend it.

A key issue is who joins the legal profession and how. The Qualification Commission is not composed—and is not required to be composed—predominantly of advocates, a situation which cannot ensure an independent qualification process. The qualification procedure requires strengthening, greater transparency and a more systematic approach. The end result of the work of the Qualification Commission following the adoption of the law in 1999 is a dramatic shortage of advocates in the country. The qualification process itself suffers from a lack of objective criteria for evaluation of candidates and arbitrariness in its application. Appropriate rules and guidelines both for the members of the Qualification Commission and candidates seeking to join the profession are key in ensuring a greater level of objectivity and fairness of the system of qualification.

The disciplinary procedure is a particularly weak point for the legal profession. Many recent disciplinary cases against advocates raise serious concerns of lack of independence or due process, and the disciplinary process appears to be abused as a means of harassment of lawyers, in particular of human

rights lawyers and lawyers who undertake sensitive political cases. The cases raise doubts in regard to what the real-life Code of Ethics is being imposed on independent advocates: whether the Code is enforced to ensure a zealous, honest and principled position in regard to their clients' cause and remedying violations of human rights of their clients, including through making those violations known to the public; or rather whether the de facto utility of the Code is to serve as an instrument against those advocates who meet internationally recognized standards of lawyers' ethics. Whatever position is chosen by the Bar Association it will have an impact on the profession's shape and its ability to serve as an instrument in the fair and effective administration of justice and defence of human rights.

Recommendations

Based on the findings of the report the ICJ recommends that the Bar Association and relevant State bodies take the following steps:

Harassment of lawyers

- The independence and role of lawyers must be respected by all institutions of government: executive, legislative and judicial, and by all public authorities. No executive or judicial authority should initiate or threaten lawyers with criminal, administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.
- The role and duty of lawyers to represent their clients must be respected; lawyers should never be identified with their clients or their clients' causes as a result of representing clients whose political positions are opposed to those of the government.
- The executive authorities of government, in co-operation and consultation with the Bar Association and with lawyers themselves, should take steps to ensure that lawyers are protected from intimidation, hindrance, harassment or other improper interference in their work.

The role and independence of the Bar Association

- The Bar Association should reconsider the role it plays in the governance of the legal profession. It should initiate, through a consultative process, an internal reform based on the principles of independence of the profession, high standards of legal practice, the protection of lawyers from threats, harassment and hindrance in their work, and the democratic participation of its members. This process should involve its members, and other relevant national and international actors, including experts, academics, members of the judiciary and the Ministry of Justice as well as other justice professionals, national and international civil society actors engaged with matters of human rights and administration of justice, and intergovernmental organizations.
- The Bar Association should increase transparency and accountability before its members and the general public. This should include establishment of a well-functioning website where the work of the Bar Association, as well rules and, regulations governing the profession, including those related to the qualification and disciplinary proceedings, are made visible

and where reports on the activity, and key documents on the standards and procedures applicable to members of the Bar Association are made accessible.

- The Bar Association should strive to ensure, through promotion of the profession and the qualification process for lawyers, that there is a sufficient number of advocates providing legal advice in all regions in Azerbaijan to uphold the principle of access to justice and the right to an effective remedy for violations of human rights and to ensure that defendants in criminal cases enjoy the right to independent legal advice and an effective defence, in accordance with their right to a fair trial.
- Elections to all the elected positions within the Bar Association should be held in a timely manner in accordance with the *Law On Advocates and Advocates' Activity*; No official position should be occupied after the expiry of the term of office prescribed by law.
- The requirements of the law regarding holding sessions of the bodies of the Bar Association, in particular the General Meeting and Conference, should be strictly adhered to, so as not to undermine the legitimacy of these bodies.
- The Bar Association and its relevant constituent bodies should adopt all rules and procedures necessary for the governance of the profession, in accordance with the Law; These rules and procedures, which should be widely accessible, should be in line with international law and standards on the role of lawyers.

Entry to the Profession

- The legislative framework for the Qualification Commission should be reformed to ensure its institutional independence; in particular, while it may include some members who are not advocates, the majority of members of the Qualification Commission should be members of the Bar Association, in accordance with international standards.
- Detailed rules or guidelines for the qualification examination should be developed and made public and the exam should be developed and administered in a non-discriminatory manner and to ensure that persons with high competence will accede to the Bar. Members of the Qualification Commission should strictly adhere to these rules in the conduct of examinations. The examination should be credible and transparent to leave no doubt about its fairness and objectivity.
- A system of grading of candidates' performance should be developed. Such rules should serve both to inform advocates and prospective advocates who take the examination about what type and level of knowledge is required to pass the examination.

Disciplinary procedure

- The disciplinary procedure must be fair, objective and should aim to support the independence of lawyers in Azerbaijan; its use for any purposes other than ensuring high professional standards, integrity and independence of lawyers should be excluded in practice.

To this end, the disciplinary bodies should develop standards which provide

clear guidance to advocates about the forms of unethical behaviour that will lead to disciplinary measures, and in particular those that constitute sufficient grounds for disbarment. Such standards should be in line with international law and standards and should be applied rigorously in practice.

- The procedural rights of advocates subject to disciplinary proceedings should always be guaranteed, through a full, independent and impartial assessment of the facts that takes into account the submissions of the advocate concerned on the basis of the principle of equality of arms. Advocates in particular should be made aware of the hearing of their case in sufficient time to allow for their participation and adequate preparation of their defence.
- Decisions imposing disciplinary sanctions should be reasoned and made public so that they may be scrutinized by appeal bodies and inform the development of principled application of the Code of Ethics.

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