



Human Rights
Institute



The Bar and lawyers in Azerbaijan

Intigam Aliyev

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About the author

Intigam Aliyev is a prominent human rights lawyer and civil-society activist. He has been actively engaged in challenging human rights violations in Azerbaijan for more than two decades and his work as an attorney, educator and lecturer exemplifies the skills, determination and bravery required to create meaningful change. He represents applicants before the Court in a large number of pending cases.

I. Aliyev has faced serious consequences for his endeavours, including imprisonment and politically motivated judicial persecution. Nevertheless, he remains courageous and indispensable in promoting human rights. His work uncovering large-scale systemic human rights violations did not go unnoticed: he was awarded Norwegian Helsinki Committee's Andrei Sakharov Freedom Award (2014), People in Need's Homo Hominy Award (2012), International Bar Association's Human Rights Award (2015), Council of Bars and Law Societies of Europe's (CCBE) Human Rights Award (2015), Civil Rights Defenders' Defender of the Year Award (2015) and Global Network for Public Interest Law/PILnet Foundation's Publico Award (2016). After being released from prison (2014-2016), where he spent one year and eight months, I. Aliyev wrote two political novels - Square (2016-2017) and Death of a Scoundrel (2018-2019).

Introduction

In countries where democratic institutions are poorly developed and the rule of law not respected, lawyers are often the victims of persecution, as well as of being placed under pressure and restrictions. This especially relates to those involved in politically motivated cases.

As with many countries, in Azerbaijan lawyers continue to be prosecuted for carrying out their professional duties. The authoritarian regime is not interested in either an independent judiciary or a strong and independent legal profession. Such an institution is a threat to the system. Therefore, the authorities do not want to lose control over lawyers and do not allow reforms of the legal profession. Unfortunately, there is currently no effective protection mechanism for lawyers against state interference.

This report touches upon the problematic issues of the institutional independence of the lawyer's office, management of the Azerbaijan Bar Association (ABA), ensuring access to justice, holding examinations for obtaining the qualifications of a lawyer, professional ethics of lawyers, disciplinary proceedings against them, etc. These issues are discussed in the light of international standards for the independence of lawyers and Azerbaijan's compliance with international legal obligations in this regard.

Admission to the profession

The number of lawyers in Azerbaijan remains the lowest among Council of Europe countries. At the international conference in Baku entitled 'The Role and Independence of Lawyers: Comparative Perspectives', organised by the Council of Europe on 15-16 November 2020, Christophe Poirel, the Head of the Directorate of the Council of Europe for Human Rights, stated:

'One of the main long-term problems to be solved in Azerbaijan is that the country has the lowest ratio of lawyers per capita: ten people per 100,000 of the population. This is 15 times lower than the average across Europe (147 per 100,000).'¹

By the end of 2004, there were a mere 370 lawyers (one per every 25,000 people) in a country with a population of more than nine million. For over five years, from 1999 to 2005, no lawyers were admitted to the Azerbaijan Bar Association, as admissions had been illegally been suspended by ABA's management.

After determined efforts by civil society and international organisations, admission to the ABA was restored in 2005, yet the process only developed slowly until 2018.

1 'Christophe Poirel: Azerbaijan has 15 times fewer lawyers than the European average', *Meydan TV*, 16 November 2018, <http://www.contact.az/ext/news/2018/11/free/politics%20news/en/76706.htm>
<https://d9mc3ts4czbpr.cloudfront.net/ru/article/kristof-puarel-v-azerbajdzhane-advokatov-v-15-raz-menshe-chem-v-srednem-po-evrope/?ref=list-news>

151 people were admitted to the ABA in 2005 (after passing the qualifying exams, 126 out of 359 candidates became members of the ABA), 24 in 2006, in 2007 (after passing the qualification exams, 235 out of 441 candidates became members of the ABA), 27 in 2008, 71 in 2009 (after passing the qualification exams, 67 out of 506 candidates became members of the ABA), 15 in 2010, nine in 2011, 121 in 2012 (after passing the qualification exams, 122 out of 531 candidates became members of the Bar), 12 in 2013, 149 in 2014, 12 in 2015, 22 in 2016 and 17 in 2017.²

From 2018 to 2020, there were six test examinations. As the result, the number of lawyers has increased from 931 to 1,844³. In 2020, when there were 16 oral examinations: 159 out of 211 people admitted to the exams became members of the ABA.⁴

Only about half of Azerbaijan's 64 regions have law offices. Apart from this inadequate number of offices, there is also a shortage of practising lawyers in the regions, especially in many rural areas where the number of lawyers remains disproportionately low. Certain areas have no lawyers at all, or only one or two to serve the entire population. Some lawyers are registered in regions but actually work in Azerbaijan's capital city, Baku.

Because of the social and economic disadvantages of many of Azerbaijan's regions, it can be difficult for lawyers to find work in their home area, which is why many have regional registration, yet are forced to move to Baku to earn a living. This problem becomes particularly severe when socially significant processes take place in regions. Due to the shortage of lawyers, citizens have to seek such services in Baku, as happened during the unrest in Quba,⁵ Ismailli⁶ and Ganja⁷ in 2012 and 2013. The small number of regional lawyers refused to get involved because of the intense pressure to which they are exposed by local authorities. The pressure on lawyers in the regions, especially those involved in trials which with a political aspect, gets so intense, that sometimes even well-known Baku lawyers find it difficult to fight. This was the case in Ganja during the criminal trial relating to the assassination attempt on the head of the executive branch.

The roots of these problems lie much deeper, and it is not possible to solve them by administrative means, especially when it comes to association, to which these methods and forms are superfluous.

2 Azerbaijan Bar Association, <https://barassociation.az/en/azecollegium>

3 After this document was already ready, ABA circulated information that the number of lawyers had reached 2025 by June 2021

4 '28 December Lawyers 'Day summit', Azerbaijan Bar Association, 29 December 2020, <https://barassociation.az/news/640>

5 At least 40 people were detained during the unrest in Quba in March 2012, see Shahin Abbasov, 'Is the Guba a new challenge to the Azerbaijani authorities?', *BBC News Russian Service*, 2 March 2012, www.bbc.com/russian/international/2012/03/120302_azeri_riot_guba; 'In Azerbaijan, two accused in riots in Guba sentenced to 4 and 5 years in prison, seven more – on probation', *Caucasian Knot*, 14 December 2012, www.kavkaz-uzel.eu/articles/217247

6 At least 150 people were detained during unrest in Ismailli in January 2013, 'The unrest in Ismayilli', *Caucasian Knot*, 18 March 2018, www.kavkaz-uzel.eu/articles/221571/

7 At least 60 people were detained during the events in Ganja in July 2013, see 'New Report: Azerbaijani government crackdown in Ganja', IPHR, 29 January 2020, www.iphronline.org/new-report-on-azerbaijani-government-crackdown-in-ganja.html

Examinations and low pass rates

International standards establish that states, professional bar associations and educational institutions are required to protect against any discrimination in setting up or continuing a professional legal practice.

Recommendation No R (2000) 21 of the Council of Europe's Committee of Ministers emphasises the importance of the independence of the admission procedure:

'Decisions on issuance of a permit for attorney's practice and on admission to the profession should be made by an independent authority. Such decisions, whether taken by an independent authority or not, should be subject to appeal to an independent and impartial judicial body.'

One of the reasons behind the small number of ABA members is the complicated procedure for joining the Association, as well as subjectivity during the acceptance of documents, the sitting of exams, and particularly during oral interviews.

The Qualification Commission of the ABA admits lawyers to the legal profession in Azerbaijan. No law establishes rules for the qualification examination. These are decided by the Presidium of the ABA.

The Qualification Commission consists of 11 members: five of whom are lawyers, three are judges and three are legal scholars. Lawyer members are appointed by the Presidium of the ABA, judges by the Plenum of the Supreme Court, and legal scholars by the Ministry of Justice. It can be noted that the majority of members are not lawyers, and this raises concern about the independence and objectivity of the admissions procedure itself. It is also unclear how these people are appointed, in that the appointed lawyers are not always trusted by either the general public or the legal community.

The qualification examination rules, which were established by the ABA Presidium, do not contain any instructions establishing the criteria, which shall be followed by the members of the Commission for an objective assessment of candidates' knowledge and skills. This raises claims to the rules in the context of 'quality of law'.

Oral interviews are of particular concern. At this stage of the examination, any arbitrary questions can be asked depending on the proclivities of a particular examiner, a practice which shows these concerns are far from groundless. The range of questions asked is not limited to any established norms or transparent and fair rules. In practice, questions asked sometimes have nothing to do with either law or candidates' skills. The lack of instructions regarding candidate assessment and no clear methodology casts doubt on the objectivity and transparency of the entire oral examination process. As it is not based on any standard and objective criteria, decisions are taken on the basis of personal judgement, and are therefore not always impartial.

This is particularly the case when it comes to opposition lawyers, as criteria, which are not related to their knowledge, skills and other qualities necessary for lawyers, play a crucial role. Cooperation with human rights NGOs or 'opposition lawyers' can be a determining factor to a candidate's membership being turned down.

In 2019, the Council of Europe’s Commissioner for Human Rights, Dunja Mijatovich, published a report criticising the artificial barriers to human rights lawyers attempting to join the ABA.⁸The report was published following her visit to Azerbaijan on 8–12 July of that year. In its response, the Azerbaijan government denied such barriers:

‘In fact, there are several human rights lawyers in Azerbaijan who were accepted to the Bar. For example, Emin Isayev is currently a member of the ABA.’⁹

The Commissioner’s report talks of systemic problems, while the arguments of the Azerbaijan authorities refer to the personality of one human rights lawyer admitted to the ABA. There no mention of numerous other facts of lawlessness reflected in many reports, resolutions, appeals, statements and other documents published by both local and international organisations including European Court of Human Rights (ECHR) judgments.

One of the problems regarding ABA admission procedure is the necessary three-year working experience as a lawyer.¹⁰ This particular stipulation denies access to the Bar for many young lawyers who can bring new views and ideas into its structure. There are few other countries where such a restriction exists.

For many years the ABA has not recognised many types of activities relating to the provision of legal services as a legal practice. These have included the provision of such services individually in a private entrepreneurial activity.

Responding to criticism relating to the ‘three-year barrier’ mentioned in the Council of Europe Commissioner’s report, the Azerbaijan government noted that these requirements result from current law, adding that, at the request of the ABA, the Ministry of Labour and Social Protection of the Population recognised the services provided by practicing lawyers individually as a legal practice in 2017. In fact, the government has admitted that many lawyers have been unlawfully deprived of the right to apply to the Bar for several years, because the ABA has not recognised individual practice as contributing to the three-year work experience required.

Despite numerous appeals from both local and international organisations, the authorities have failed to act, and continue to turn a blind eye to this lawlessness. The same position has been taken in relation to other important issues regarding lawyers and the Bar. This policy continues, with authorities ignoring any criticism on the subject, as well as other problematic issues of human rights, or make accusations, and in the best case, they argue that the critics are biased.

The words of the well-known human rights lawyer Isakhan Ashurov,¹¹ which he made half a jest, half in earnest, have not lost their relevance today: ‘In Azerbaijan, it’s easier to become a president than a lawyer’.

8 The Council of Europe, ‘Report following her visit to Azerbaijan, from 8 to 12 July 2019’, <https://rm.coe.int/report-on-the-visit-to-azerbaijan-from-8-to-12-july-2019-by-dunja-mija/168098e108>

9 ‘Comments of the authorities of Azerbaijan on the report of Ms Dunja Mijatovich’, <https://rm.coe.int/comments-of-the-authorities-of-azerbaijan-on-the-report-by-dunja-mijat/1680993b8b>

10 Law of the Republic of Azerbaijan On advocates and advocate’s activity of 28 December 1999, No. 783-IQ, Article 8

11 I. Ashurov died in 2013, following a serious illness.

Lawyers' associations

Under the Law On advocates and advocate's activity, ABA members have a right to practise law independently or as part of various associations, such as legal clinics, law offices or law firms.¹² Law firms and clinics can be created by one or more lawyers who must be ABA members. Their activities may only be carried out after obtaining state registration from the Ministry of Taxes. Organisation and activities of the clinics are governed by their statutes which must correspond to ABA statutes. Lawyers are required to submit statistical reports to the ABA in a format defined by the Presidium.

The number of lawyers working in the regions of Azerbaijan comprises 395 people, 95 of whom are engaged in individual legal practice. This compares to the 1,396 lawyers who work in Baku, 103 of whom are engaged in an individual legal practice. Of the 93 lawyers' institutions, 56 are located in Baku, 37 in the regions.¹³

The small number of law firms is due to the difficulties in their formation, where the most crucial step is to obtain ABA management permission. This is despite there being no such statutory requirement, it is actually impossible to register a new law firm without ABA permission.

In July 2020, the Presidium of the ABA decided to withdraw well-known lawyer Agil Layic's right to perform his professional activities individually and 'placed' him in the law office No 20 of Baku City.¹⁴ In September 2020, the Presidium also deprived another well-known lawyer Elchin Sadigov of this status, securing him at the law office No 14 of Baku City. These decisions were taken without the consent of the lawyers themselves, as is required by law. The ABA's claim against Sadigov was that he provided services in Baku, while being registered at his place of residence in Goygol district, yet the law does not establish such a restriction.¹⁵

The deprivation of a lawyer's right to practise law individually also robs them of fast concluding contracts with clients, in particular, on non-working days, non-working hours, as well as of providing the population with pro bono services. However, at law offices (the most of them are former legal clinics from the Soviet era), citizens have to pay for a defence lawyer's services at an amount established by that law office. In such a situation, on non-working days and non-working hours, citizens are forced to ask lawyers on duty at law offices for legal assistance, rather than having the freedom to engage defence lawyers of their choice. According to Sadigov, the ABA explains this decision by the desire to close down individual law practices.¹⁶

12 It is difficult to define the difference between legal clinics, law offices or law firms, as it is not mentioned in law or in other regulations, including those adopted by the ABA itself.

13 'A brief summary of the Azerbaijani Bar Association's last 3 years', ABA, 13 January 2021, <https://barassociation.az/en/news/643> 'Azerbaijan celebrates Lawyer's Day', Huquq.az, 28 December 2020, www.e-huquq.az/ru/news/advokatskaya-deyatelnost/23632.html

14 'Agil Layij's personal lawyer activity has been terminated', *Meydan TV*, 18 July 2019 <https://d9mc3ts4czbpr.cloudfront.net/ru/article/aqil-layicin-ferdi-vekil-fealiyyetine-xitam-verilib>

15 'Elchin Sadigov deprived of the opportunity to provide individual legal activities', *Turan*, 18 July 2019 www.turan.az/ext/news/2019/7/free/Social/ru/82439.htm

16 Sadigov's right to individual activity was reinstated following his appeal to the President of Azerbaijan and the intervention of international organisations, according to Sadygov; See 'Decision made on Sadigov', Konkret, 6 October 2020 <https://konkret.az/sadiqovla-bagli-qerar-verildi>

A reason behind ABA management seeking to curb lawyers' individual activities is to do with arrest procedures. To begin their obligations to the client, a lawyer must possess a so-called 'order'. This document is issued at the legal clinic (office), to which they have been 'assigned', after the client has paid for their services. It is difficult to obtain this document on non-working days, which means that meeting with an arrested defendant (client) on a Saturday or a Sunday will be problematic. And without the order, the lawyer will not be permitted to meet their client or participate in investigative or other actions. The practice shows that pressure, torture and other forms of illegal treatment faced by those under arrest occurs most of all on the first days of imprisonment. But lawyers who work independently do not have any problems with the 'order', because they can prepare this document by themselves and submit it where necessary on any day or at any time of the day.

Disciplinary sanctions

One of the ABA's most controversial activities are its disciplinary procedure against lawyers. It is not possible to state the exact number of lawyers who have been subjected to this, as such information is kept secret, not only from the public but from the lawyers themselves. There have been many such incidents recently. In fact, all lawyers involved in the proceedings relating to so-called 'sensitive cases' have been subjected to disciplinary proceedings.¹⁷

The aim is to frighten lawyers, especially those working in the field of human rights, who are involved in high-profile political cases, and to restrain them from their civil stand and forceful public activity.

Regrettably, the tactic works. Many lawyers steer clear of such 'sensitive cases' because they fear exclusion from the ABA and the arrest or persecution of their close relatives.

In most cases, the application of sanctions was based on complaints lodged by court representatives, the prosecutor's office and police. In all cases initiated against lawyers by public authorities and their officials, the ABA has openly been on the side of the state when penalising its members. The state supports the current ABA administration for such a service. Courts reject all complaints relating to the illegal actions of this structure.

Obtaining documents relating to denied ABA admission and exclusions, remain problematic. In all ECHR cases regarding lawyers' complaints, the applicants raised the issue of the impossibility of obtaining documents relating to their case: complaints, decisions, minutes, etc. This harmful practice continues. The requests of lawyers excluded from the ABA or lawyers whose practice of law has been suspended (usually for a year) to provide them with the full text of minutes and decisions of the Disciplinary Commission or the ABA Presidium on imposing sanctions against them are rejected by the ABA. On each occasion it cites the grounds for the unlawful refusal.

In most cases, disciplinary sanctions were imposed on far-fetched grounds, sometimes they simply sound ridiculous.

17 Giorgi Gogia, 'Lawyer Disbarred in Azerbaijan after Filing Torture Complaint', *Human Rights Watch*, 27 November 2017, www.hrw.org/news/2017/11/28/lawyer-disbarred-azerbaijan-after-filing-torture-complaint
'Disbarred, suspended, or criminally prosecuted: Azerbaijani human rights lawyers', *EHRAC*, 25 January 2021, <https://ehrac.org.uk/resources/disbarred-suspended-or-criminally-prosecuted-azerbaijani-human-rights-lawyers>

*Lawyers deprived of practising law*¹⁸

Muzaffar Bakhishov, a well-known human rights lawyer, was excluded from the ABA in April 2016 on the grounds of a complaint from Azerbaijan Supreme Court Judge, Tatyana Goldman. The Judge stated that Bakhishov showed his disrespect to the Judge and Court staff at the hearing with his comments, thereby breaching professional ethics. In his interview with the media, Bakhishov denied the accusations and criticised the Chairman of the Supreme Court for the lawlessness within the system of justice. Bakhishov was not properly informed about his rights at the hearing of the ABA Disciplinary Commission and had no access to the minutes of the corresponding Supreme Court session, only at the Disciplinary Commission hearing. In May 2016, the Narimanov District Court upheld the ABA's decision.¹⁹

Bakhishov's case is currently in the proceedings of the ECHR.

Alayif Hasanov is one of the few human rights lawyers from the regions of Azerbaijan, who has actively participated in high-profile cases and in the social and political life of the country.

In August 2014, when he visited the well-known human rights defender Leyla Yunus at a detention centre, she told him about her physical and psychological harassment by her cellmate and inability of the authorities to protect her. Yunus asked Hasanov to make this information public. As the prison administration ignored his complaints, Hasanov shared the information on a social network, which was later reprinted in the media. Consequently, Yunus's cellmate filed a lawsuit against Hasanov for calling her a criminal, smoker and recidivist. Despite the fact, Hasanov stated that the media had interpreted some of his thoughts, he was convicted on charges of libel. In July 2016, he was disbarred as a result of the sentence passed against him.²⁰

Hasanov's case is currently in the proceedings of the ECHR.

Farkhad Mehtiyev is a well-known Azerbaijan lawyer, professor of law, and author of several legal textbooks in the field of administrative law, human rights law and legal theory.

Mehtiyev had been a member of the ABA since August 2008. In 2012, due to the academic work at the Gafqaz University, where he worked from 1997 to 2017, he applied to the ABA requesting a temporarily suspension of his membership. His request was accepted. In August 2016, he applied to the ABA to renew his licence and, in accordance with the internal legislation, after passing the necessary procedures, he was readmitted on 9 September 2016. Less than a week later, on 15 September, after an appeal by the Prosecutor's Office for Serious Crimes to bring Mehtiyev to a criminal prosecution, the ABA decided to disbar him. The official reason for Mehtiyev's exclusion was the delay in payment of his ABA membership. In 2017, he was also dismissed from his job at the university.

18 Information on the cases of other disbarred human rights lawyers: Aslan Ismayilov, Khalid Bagirov and Elchin Namazov are covered later in this report

19 International Commission of Jurists, *ICJ Mission Report 2016 'Defenceless Defenders: Systemic Problems in the Legal Profession of Azerbaijan'* (ICJ, 2016), www.icj.org/wp-content/uploads/2016/11/Azerbaijan-Systemic-problems-Legal-Prof-Publications-Reports-Mission-reports-2016-ENG.pdf

20 'Human rights lawyer Alayif Hasanov's disbarment violates his Convention rights', EHRAC press release, 5 December 2018, <https://ehrac.org.uk/news/alayif-hasanovs-disbarment-violates-convention/>

Mehtiyev is of the opinion that he was disbarred due to his critical statements regarding the human rights in Azerbaijan, as well as because of the situation with the Bar.

His complaint against the unlawful disbarment is under consideration by the ECHR.²¹

Yalchin Imanov is one of Azerbaijan's leading human rights lawyers, who has worked on high-profile political cases, many of his clients being current and former political prisoners.²² In August 2017, after visiting his client Abbas Huseynov, Imanov disseminated information to local media about his client's torture, and applied to the relevant public authorities for an investigation. In doing so, he referred to his client who had stated that prison officials had brutally tortured him for several days, and that he himself had witnessed injuries on Huseynov's body. The following day, the Penitentiary Service of the Ministry of Justice asked the ABA to disbar Imanov on the grounds that he had besmirched prison officials and damaged the reputation of law enforcement authorities. In November 2017, the ABA took a decision to disbar him. After long trials and despite the reaction of the local and international community, Imanov was excluded from the ABA in February 2019.

Imanov's case is currently in the proceedings of the ECHR.

Irada Javadova is a human rights lawyer, head of the non-governmental organisation Human Rights Education, and was a member of the ABA Presidium, 2012-2017. After her client's mother asked her to track down the location of her daughter, Javadova in her open letter expressed concerns about the possible unlawful detention of her client. Following the publication of the letter, her client complained to the ABA that Javadova had made her letter public without consent and without any notarised power of attorney. Despite the fact that Javadova stated that she had an agreement with her client and submitted the agreement with her to the ABA, Presidium members expressed doubts about the authenticity of her client's signature and disbarred their colleague in June 2018.²³

Javadova had been the only member of the ABA Presidium to vote against the disbarment of another well-known human rights lawyer Yalchin Imanov.

Javadova was reinstated as a member of the ABA on 5 May 2021.²⁴

Shahla Humbatova is a prominent human rights lawyer, who has defended many well-known political prisoners in Azerbaijan, including representing of several accused in the sensational *Ganja* case.²⁵

21 EHRAC, 'Disbarred, suspended or criminally prosecuted: Azerbaijani human rights lawyers', 11 August 2020, <https://ehrac.org.uk/resources/disbarred-suspended-or-criminally-prosecuted-azerbaijani-human-rights-lawyers>

22 See note 18 above.

23 Front Line Defenders, 'Irada Javadova disbarred', 29 June 2018, www.frontlinedefenders.org/en/case/irada-javadova-disbarred ICJ, 'Azerbaijan: Lawyer Irada Javadova disbarment decided in unfair proceedings', 18 June 2018, www.icj.org/azerbaijan-lawyer-irada-javadova-disbarment-decided-in-unfair-proceedings/

24 www.turan.az/ext/news/2021/5/free/Social/en/3808.htm

25 Following an attack on the head of the Valiyev's administration and the arrest of a suspect in Ganja, in July 2018, about 200 people took part in protests and demanded an investigation into not only the actions of the attackers, but of Valiyev himself. Two policemen were killed during the dispersal of the rally. About 60 people were convicted in the riot case, one of whom died in hospital. Human rights lawyers attributed his death to torture. The punishment of some of those convicted was lessened

Information from her clients of brutal torture, forced confessions and fabricated evidence attracted widespread attention.²⁶

On 28 November 2020, the ABA Presidium took a decision to suspend Humbatova on the grounds of a complaint from a former client, and for non-payment of ABA membership contributions. Humbatova has admitted that she unintentionally delayed but denies the rest of the charges.

Earlier in 2020, the ABA threatened Humbatova with disciplinary proceedings relating to the fact that Azerbaijan's Penitentiary Service had filed a complaint against her for the 'dissemination of false information'. This took place later than January 2019, when Humbatova publicly announced a hunger strike and the poor health of her client, blogger Mehman Huseynov who was in prison at the time²⁷. The Penitentiary Service has also denied Humbatova access to her imprisoned clients on a regular basis.

On 3 March 2020, just a few months after the ABA Presidium had decided to suspend her, the United States Department of State announced that Humbatova was one of 12 laureates of the annual International Women of Courage (IWOC) awards. The following is part of the interview with given by Humbatova after the award ceremony in Washington, DC:

'Question: Information about the awarding of this award to you literally blew up social media in Azerbaijan. I've carefully read the posts on Facebook that mentioned the name of Anar Bagirov.

Humbatova: Yes, this is the Chairman of the Bar Association.

Question: What does he have to do with this case?

Humbatova: He made a *special contribution* to getting me this award [*laughs*] and I have to thank him. He played an exceptional role in bringing the Bar to such a state. Anar Bagirov punished me for the activity, for which I've been awarded today. As people are punished for human rights activities in Azerbaijan, but in democratic states they are rewarded.²⁸

Many international organizations criticized this decision. On 26 March 2021 US Secretary of State Anthony Blinken also criticized the deprivation of Humbatova's status as a lawyer and urged her to return this status:

'I am disturbed that human rights defense lawyer Shahla Humbatova of Azerbaijan was disbarred from the Azerbaijani bar on the eve of International Women's Day, a year after receiving the Secretary of State's International Woman of Courage (IWOC) award. Her work, and the work of other human rights defenders in Azerbaijan, should be celebrated, not punished, and we call on those responsible to expedite her reinstatement to the Azerbaijani bar.'²⁹

A little later, on May 5, 2021, the Presidium of the ABA withdrew the lawsuit against Humbatova (as well as two other well-known lawyers - Irada Javadova and Turkel Suleymanli) and reinstated her in the status of a member of this organization.³⁰

26 Open Letter to the Presidium of the Azerbaijani Bar Association, 4 December 2019, <https://crd.org/2019/12/04/open-letter-to-the-presidium-of-the-azerbaijani-bar-association>

27 www.eng.kavkaz-uzel.eu/articles/46484/

28 'Shahla Humbatova: I will not be silenced by a lawyer's license', Turan, 5 March 2020, www.turan.az/ext/news/2020/3/free/Interview/ru/122088.htm

29 www.state.gov/disbarment-of-2020-iwoc-recipient-shahla-humbatova/

30 www.turan.az/ext/news/2021/5/free/Social/en/3808.htm

Lawyers with suspended practice

In 2012, **Elchin Sadigov**, a well-known lawyer, was brought before disciplinary proceedings on the grounds of an appeal from the Ministry of National Security. It was stated in the letter that Sadigov, in cooperation with the embassies of various foreign states and deputies of opposition parties, having received money from them, was engaged in propaganda against the state in order to ensure that the journalist Eynulla Fatullayev, a former prisoner of conscience released from prison in April 2011, became President of Azerbaijan.

In September 2018, the General Prosecutor's Office removed Elchin Sadigov from the criminal case where he acted as the defence lawyer to citizen Y. Safarov. The highest investigating authority filed a complaint to the ABA stating that he had asked his client to file a false claim that the investigating authorities had tortured him. In February 2019, the ABA reprimanded Sadigov disregarding statements from the defendant's mother that her son had been tortured for more than 25 days in detention, as well as the photographs and videos of Safarov published online in which evidence of torture was clearly visible.

On 14 November 2019, the First Deputy Prosecutor General of Azerbaijan, Rustam Usubov, lodged a complaint against Elchin Sadigov with the ABA. The complaint concerned a Facebook post by Sadigov speculating on the cause of the 29 October car crash that hospitalised the prominent Azerbaijani human rights activist Oktay Gulaliyev. He was in a coma for a long time in a hospital in Istanbul, now he is undergoing treatment at home and his health condition remains difficult. Locals and observers have called for a full and impartial investigation into the incident.³¹

Usubov's complaint argued that the social post sought 'to undermine the work done by the state authorities in investigating the traffic accident, to mislead people and to distrust the state' and asks the ABA to consider taking 'appropriate action.' The complaint does not identify specific concrete legal or ethical violations, request specific punishment, or explain how Sadigov's Facebook post relates to his work as a lawyer.

In a report published on 11 December, Council of Europe Commissioner for Human Rights Dunja Mijatovi expressed her concern for numerous reports of the abuse of disciplinary proceedings against human rights lawyers working on politically sensitive cases, and her call to protect lawyers' freedom of expression is especially relevant in Karimli and Sadigov's cases.³²

In January 2018, disciplinary proceedings were initiated against **Agil Layic**. The ABA argued that Layic had had no right to file an application to court on behalf of the client without his signature. The case did not contain any client's complaint about the lawyer's breach of his rights. There had been a written agreement on the legal representation between them since June 2017. That document granted Layic the right to sign and submit the application himself, without his client's signature. Despite all these facts, the ABA suspended Layic's practice for six months.³³

31 <https://humanrightshouse.org/statements/hrhf-calls-for-investigation-into-crash-involving-azerbaijani-defender/>

32 <https://rm.coe.int/report-on-the-visit-to-azerbaijan-from-8-to-12-july-2019-by-dunja-mija/168098e108>

33 'Azerbaijan 2018 Human Rights Report', US Embassy in Azerbaijan, <https://az.usembassy.gov/azerbaijan-2018-human-rights-report>

The grounds for the suspension of the practice of the well-known lawyer **Fakhraddin Mehtiyev** were his interview with representatives of the media about the course of the trial in the criminal case of his client Jahangir Hajiyeve, the former Chairman of the Board of the International Bank of Azerbaijan. Mehtiyev was accused of disclosing information about the content of the criminal case during the interview, which allegedly contradicted the law. As, at the time of the interview the decision on the case had already been taken, there could be no secret, the disclosure of which was forbidden. Nevertheless, such arguments did not convince the ABA, which revoked the lawyer's licence for a year in January 2018.³⁴

After another well-known lawyer **Javad Javadov** shared information on social media about the alleged abusive treatment of his client while in the police custody, after which the ABA issued him a warning. When visiting his client in detention, the client informed Javadov about the abusive treatment and showed the injuries to his body. Javadov took photographs and shared them on social media. In its press release dated 11 June 2020, the ABA stated that the dissemination of such information creates a misapprehension to the public.³⁵

All these lawyers are socially active and are often involved in 'sensitive cases'. In all of these cases against the lawyers initiated by public authorities and their officials, the management of the ABA unambiguously came down on their side, punishing the principled lawyers at the authorities' request. The state provides the current ABA management for such service, not only with material and technical support, but also with state awards and positions, plus court decisions in the form of support for unlawful decisions in its management.

In April 2018, the ABA suspended the licences of two Azerbaijan human rights lawyers, **Asabali Mustafayev** and **Nemat Karimli**. Disciplinary proceedings were initiated against them on the proposal of the Deputy Prosecutor General, relating to the critical statements the lawyers had made to the media.

In his media interview, Karimli said that his client Afgan Mukhtarli, a journalist convicted of smuggling and sentenced to six years imprisonment, was illegally and forcibly transferred from Georgia to Azerbaijan even though his life could be in danger if he was returned to Azerbaijan. In the interview, the lawyer also complained about the frequent searches in the pretrial detention facility when visiting his client and about the fact that they were not allowed to communicate in private.

The disciplinary proceedings against Asabali Mustafayev relate to statements he made on social media saying that the persecution of the politician Gozal Bayramli, the Deputy Chairman of one of Azerbaijan's opposition parties, who had been found guilty and sentenced to three years in prison for smuggling, was politically motivated.

Both lawyers were accused of disseminating false data and slanderous information about the investigating authorities. In the statement from the Prosecutor's Office provided to the ABA in October 2017, both were accused of politicising their clients' criminal cases, disseminating false data and slanderous information

34 IBAHRI, *IBAHRI calls for Azerbaijan Bar Association to revoke suspension of human rights lawyer's licence*, 22 March 2018, www.ibanet.org/Article/NewDetail.aspx?ArticleUid=468F15C6-F397-43EA-8796-86583B43287E; Human Rights Watch, *World Report 2019 – Azerbaijan*, 17 January 2019, www.ecoi.net/en/document/2002242.html

35 'Lawyer of beaten Yasamal residents cautioned', *Turan*, 11 June 2020, www.turan.az/ext/news/2020/6/free/Social/en/124806.htm

about the investigating authorities, and thereby misleading the public. The ABA took the side of the General Prosecutor's Office and suspended the lawyers' licences for a year.³⁶

In September 2016, after his visit to Azerbaijan, Michel Forst, UN Special Rapporteur on the situation with human rights defenders, made a statement on the completion of his mission noting that:

'[...] disbarments of human rights lawyers, together with criminal prosecutions, searches and freezing of their assets are part of the broader harassment facing human rights defenders in the country [...] For those lawyers who are members of the bar association, disciplinary proceedings have been one of the main means of retaliation for their human rights or professional activities.'

The disciplinary sanctions fit into the general picture of the suppression of any dissent in Azerbaijan: the country's authorities fight civil society, persecuting political activists, public figures, human rights lawyers and journalists. Principled lawyers seeking respect for human rights and defending the independence of their profession have been at the forefront of this undeclared war. Despite numerous appeals, statements, campaigns of both local and international organisations, including resolutions of the Organization for Security and Co-operation in Europe (OSCE), UN, Council of Europe, decisions of the ECHR, the difficult situation remains unchanged.

Code of Ethics

A new Code of Conduct of the Members of the Azerbaijan Bar Association was adopted by Conference of the ABA on 7 December 2017, which regulates the professional ethics of lawyers. Compared to its predecessor, it contains more recommendations and details. But it also contains many provisions contradicting the principles of the independence of the Bar. In particular, Article 2.13 of the Code, which bans lawyers from dissemination of:

'[...] slanderous and misleading information about decisions of the bodies of the Bar Association, which undermines its authority in the media, social networks and public places. An attorney must not allow any dissemination of ungrounded slanderous information about the state, non-state actors, its officials, and must not participate in unethical statements and behaviour towards these persons in the media, social networks and public statements.'

The Code's obscure wording raises a possibility for a fairly broad arbitrary interpretation. This is what happens in practice – an unjustified interference with lawyers' freedom of expression, when there is no distinction between the situations how and where the statement is made – in court or outside it, in order to protect a client and attract attention to violations, or it is made due to unscrupulous motives.

Most human rights lawyers subjected to disciplinary punishment have made such public statements with the intention of defending the rights of their defendants (clients). Furthermore, those violations were too crude and other means (complaints to law enforcement authorities, courts, appeals to the Ombudsman and relevant public authorities) did not lead to their elimination, as frequently the highest political will was behind such violations and lawlessness.

³⁶ Human Rights Watch, 'Azerbaijan events of 2018', www.hrw.org/world-report/2019/country-chapters/azerbaijan

International standards relating to the role of lawyers require that they are honest in their cases and must not consciously mislead the judge or other participants to the proceedings. But at the same time, the protection of the rights and interests of their clients shall be one of the lawyer's main duties.

‘Attorneys defending the rights of their clients and promoting the cause of justice must strive to protect human rights and fundamental freedoms recognised by national and international law, and must always act freely and diligently in accordance with the law and recognised standards and ethics of the Bar.’

Article 2.5 of the Code of Ethics requires lawyers to be ‘objective’. A lawyer’s political, social and other affiliations should in no way call into question their objectivity. Again, there are no comments what the term ‘objectivity’ actually means. The Article also requires a lawyer not to ‘abuse the position for political or religious purposes.’

Such too general a requirement of ‘objectivity’ is incompatible with the important role of a lawyer as a defender of their client’s interests and a promoter of human rights values. It also creates the risk that its use leads to the punishment of lawyers for acting in a principled and rigorous manner when representing clients, thereby also promoting the cause of justice and human rights. The obscure terms of the Code and the possible risks from their consequences keep many lawyers from undertaking the strict fulfilment of their duties, as important players of justice acting in accordance with internationally recognised rules of professional ethics.

ECHR judgments in the cases of Azerbaijani lawyers

There have been four ECHR judgments on cases regarding Azerbaijani lawyers, one of them relates to the refusal to be admitted to the ABA, three relate to disbarment. The cases are:

- Hajibeyli and Aliyev v. Azerbaijan (application numbers 6477/08 and 10414/08, judgment, 19 April 2018),³⁷
- Aslan Ismayilov v. Azerbaijan (application number 18498/15, judgment, 12 March 2020),³⁸
- Bagirov v. Azerbaijan (application numbers 81024/12 and 28198/15, judgment 25 June 2020),³⁹
- Namazov v. Azerbaijan (application number 74354/13, judgment 30 January 2020).⁴⁰

Refusal to be admitted to the ABA

According to unofficial data, there are about ten complaints relating to unjustified refusal to be admitted to the ABA in the proceedings of the ECHR. To date, there has only been one decision.

37 *Hajibeyli and Aliyev v Azerbaijan* (application nos. 6477/08 and 10414/08), judgment of 19 April 2018, <http://hudoc.echr.coe.int/eng?i=001-182173>

38 *Aslan Ismayilov v Azerbaijan* (application no. 18498/15), judgment of 12 July 2020, <http://hudoc.echr.coe.int/eng?i=001-201642>

39 *Bagirov v Azerbaijan* (application nos 81024/12 and 28198/15), judgment of 25 June 2020, <http://hudoc.echr.coe.int/eng?i=001-203166>

40 *Namazov v Azerbaijan* (application no 74354/13), judgment of 30 May 2020, <http://hudoc.echr.coe.int/eng?i=001-200444>

Hajibeyli and Aliyev v Azerbaijan

In the case of *Hajibeyli and Aliyev v Azerbaijan*, the applicants were civil society activists and lawyers specialising in the protection of human rights in Azerbaijan. In 2005, they were refused admission to the ABA despite the fact that national legislation at the time provided that licensed lawyers would undergo a simplified procedure for readmission without needing to pass the qualifying examination.

The Court noted in this case that Article VI of the Transitional Provisions of the Law clearly provides that lawyers having a licence (special permit) to practice law must be admitted by the ABA Presidium without the need to pass the qualifying examination, provided that they comply with the requirements for candidates for admission to legal practice. Article 11 of the Law has authorised the Presidium to consider questions relating to admission to the ABA. Notwithstanding the fact that according to the Law, the only condition for the admission of lawyers having the special permit is that they should meet the requirements for candidates for admission to the legal practice provided for in Article 8 of the Law. Presidium members only asked applicants about their critical position regarding the functioning of the ABA and the state of the legal profession in Azerbaijan without a single comment on admission requirements for candidates. The Presidium did not indicate any official reason for the refusal in its decision, referring to the fact that the decision to satisfy or reject the application for ABA admission is the exclusive competence of the Presidium. The national courts rejected the applicants' complaints to the ABA on the same grounds.

The ECHR came to the conclusion that the ABA's refusal 'was caused by the views and criticism, which the applicants publicly expressed in their professional capacity as lawyers having the special permit.' The Court also found that both the ABA and the national courts had not presented any reason for refusing the admission of applicants to the ABA, and the national courts had come to the conclusion that 'this was a matter within the exclusive competence of the Presidium.' As a result, confirming the importance of the 'freedom of expression' of lawyers, the ECHR found that such interference with the applicants' right to the freedom of expression was not provided for by law within the meaning of Article 10 of the European Convention on Human Rights.

Disbarment or suspension

In all of its decisions in the cases of lawyers, the ECHR also referred to Recommendation R(2000)21 of the Committee of Ministers of the Council of Europe to the Member States regarding the freedom to exercise the legal profession, which clearly states that:

'lawyers should enjoy the freedom of expression and that decisions regarding the access to the profession should be subject to review by an independent and impartial judicial authority.'

The Court especially noted that the proper functioning of courts would not have been possible without relationships based on the consideration and mutual respect between different persons in the legal system at the forefront, including judges and lawyers.⁴¹

41 *Bono v France*, No 29024/11, judgment of 15 December 2015; *Ottan v France*, no. 41841/12, judgment of 19 April 2018

‘The special status of lawyers gives them a central place in the execution of justice as intermediaries between the public and courts. This special role of lawyers as independent professionals in the execution of justice entails a number of responsibilities, especially with regard to their conduct.

Although they are subject to restrictions on their professional conduct, which must be restrained, honest and dignified, they also enjoy exclusive rights and privileges that can vary from one jurisdiction to another – among them, as a rule, there is some freedom in relation to the arguments used in court (*Maurice v France*). In addition, professional associations of lawyers play a fundamental role in ensuring of the protection of human rights and, therefore, they must have a possibility to act independently, and the respect to colleagues in the profession and the self-regulation of the Bar are of fundamental importance (*Jankauskas v Lithuania* 27 June 2017)’.

The ECHR noted that the national courts had failed to assess sufficiently the adequacy of the interference, taking into account that the disbarment constituted the most severe disciplinary sanction in the legal profession having irreversible consequences for the professional life of a lawyer. The Court drew attention to the Recommendation R(2000)21 of the Committee of Ministers of the Council of Europe to the Member States regarding the freedom to exercise the legal profession, which clearly states that the principle of adequacy must be respected in determining the sanction for disciplinary offences committed by lawyers.

The Special Rapporteur of the Human Rights Council on the independence of judges and lawyers also stated in its annual report (A/71/348) to the UN General Assembly that the disbarment ‘constitutes the extreme penalty for the most serious violations of the code of ethics and professional standards’ and ‘should be applied only in the most serious cases of misconduct, in cases provided for in the professional code of conduct, and only after a due legal procedure before an independent and impartial body that provides the accused lawyer with all guarantees’.

The Court considered that the national courts had not assessed the adequacy and lawfulness related to human rights lawyers, as well as noting that the disbarment of the applicants was irrelevant and insufficient, and that the sanctions imposed on the applicants had been disproportionate to the legitimate purpose.

The disbarment cannot be considered as not a severe sanction, which can have a deterrent effect on the performance of the duties by attorneys as defence lawyers.

The Court referred to the practice of unlawful arrests, detention or other measures taken against government critics, civil society activists and human rights lawyers (*Aliyev v Azerbaijan*, 20 September 2018, and *Natig Jafarov v Azerbaijan*, 7 November 2019). Against this background, the Court emphasised that, despite the obligations, in particular with regard to their conduct, which shall be respected by all lawyers, in a democratic society the assumed necessity in the sanctions related to the disbarment in such circumstances will need support for particularly important reasons.

Aslan Ismayilov v Azerbaijan

The prominent lawyer Aslan Ismayilov is the founder of the law firm VIZA, and one of the founders of the law firm Aslan Ismayilov and Partners. He often appears in the media, and in his speeches raises various social problems, criticising the position relating to the legal system of Azerbaijan and the functioning of various public authorities. In March 1999, the applicant was excluded from the ABA, but, according to him, his membership was reinstated following the President of Azerbaijan’s intervention.

After the applicant's incident with a judge of one of the district courts in February 2013, the judge asked the ABA to consider the applicant's alleged illegal actions. In particular, he noted that the applicant had illegally asked to return the documents submitted to the court after the end of the trial, had illegally entered his office, had insulted and threatened him saying that 'he would dismiss him', had compared him with the officers of former Soviet's NKVD⁴², and made a false statement that he had not been able to leave the judge's office.

In his application to the Court, Ismayilov stated that the national proceedings had violated the requirements of the right to a fair trial. In particular, the decisions of the national courts ordering his dismissal were unsubstantiated and just repeated the conclusions set out in the opinion of the ABA's Disciplinary Commission. The national courts did not properly assess the relevant evidence presented to them, which clearly contradicted the Disciplinary Commission's conclusions, and did not take into account the statement of the only witness to the incident.

The Court concluded that the national courts had failed to perform their obligation according to Article 6 of the European Convention on Human Rights in the substantiation of their decisions.

Namazov v Azerbaijan

On 16 September 2011, Elchin Namazov was disbarred on the grounds of the minutes of court hearings, and the statement of the judge that he had shown 'disrespect' to the court having violated ethical norms during the trial. The legal proceedings related to a criminal case brought against several activists for participating in a demonstration organised by the opposition. Namazov was a representative of one of the opposition activists. For insulting the judge and other participants in the proceedings, the judge decided to dismiss the applicant from the case having informed the ABA of the applicant's alleged violation of legal ethics. Neither the decision, nor the minutes of the court hearings were presented to him. According to the applicant, during those hearings he and other participating lawyers provided written comments to the official minutes of the court hearings which challenged their content. Despite the explicit request of the court to the government to provide it with the copies of all documents relating to the disciplinary proceedings against the applicant, the court was not provided with any copies of the official minutes.

The Court noted that the applicant had used very few guarantees during the disciplinary proceedings. In particular, although the Disciplinary Commission and the ABA Presidium directly referred to the district court's decision and extracts from the court hearing's minutes, he was refused a copy of the documents. The Disciplinary Commission also refused to hear statements from other lawyers who had participated in the district court hearings, in order to clarify the events, which had led to the disciplinary complaint against the applicant. Moreover, the Chairs of the Disciplinary Commission and the ABA openly criticised the applicant for his frequent appearances in the media and his membership of the opposition political party, which had nothing to do with the subject of the disciplinary proceedings against him.

As for the trials relating to the disbarment of the applicant, the ECHR noted that the national courts had not only had failed to eliminate the above shortcomings in the disciplinary proceedings, but also failed to assess adequately the proportionality of the interference. The Court came to the conclusion that the

42 The People's Commissariat for Internal Affairs, abbreviated NKVD (listen), was the interior ministry of the Soviet Union. During this period, the NKVD included both ordinary public order activities, as well as secret police activities. The NKVD is known for its role in political repression and for carrying out the Great Purge under Joseph Stalin

reasons given by the national courts in support of the applicant's disbarment had not been relevant and sufficient, and that the sanction imposed on the applicant was disproportionate to the legitimate purpose. Correspondingly, there had been a violation of Article 8 of the Convention.

Bagirov v Azerbaijan

A letter from a high-ranking official of the Ministry of Internal Affairs, accusing the lawyer of insulting the honour and dignity of the police authorities and their officers, was used as the basis for initiating disciplinary proceedings against another prominent lawyer Khalid Bagirov. The person, who was defended by the lawyer, had been beaten to death by police at a police station, and those responsible for the murder have not yet been brought to justice. The lawyer's statement to the media about the patronage of the police at a high level irritated the management of the Ministry of Internal Affairs. The head of one of the Ministry units appealed to court with a requirement to initiate a criminal case against Bagirov, and at the same time sent a complaint to the ABA, demanding it punished him. The ABA was satisfied and this human rights lawyer was suspended from practising law for a year.

During the period of repression against civil society in 2014, Bagirov represented human rights lawyers, activists and legal experts. The disciplinary proceedings were initiated against him after his comments made during a trial in September 2014, which related to the failure of a domestic court to comply with the ECHR's judgment in the case of Ilgar Mammadov (application no. 15172/13, judgment of 22 May 2014)⁴³, one of the opposition leaders, whose arrest was considered by the Court as politically motivated. The ABA decided that he had violated the ethical code of conduct by commenting on the system of justice at the hearing. The application of the ABA concerning the disbarment of Bagirov, dated 18 December 2014, was satisfied by the district court's decision of 10 July 2015. It stated that the disputed statement had cast 'a shadow on the state and statehood' and 'tarnished the reputation of the system of justice'.

The Court made a clear distinction between the criticism and insult. If the only intention of any form of expression of opinion is to offend a court or the members of that court, the corresponding sanction, in principle, will not constitute a violation of Article 10 of the Convention. In that case, the impugned statement was not only a general criticism of the functioning of the system of justice in Azerbaijan, but also it was directly addressed to the judge of the court of first instance, who had already sat as a judge in the trial of Ilgar Mammadov. The Court recognised that the comments accusing the judge in the incapacity to act as a judge reflect a disrespect for the judge and can be offensive, but, nevertheless, it is necessary to establish whether the sanction imposed on the applicant by national courts retained a fair balance between the necessity to protect the authority of the judicial authorities and the necessity to protect the applicant's right to freedom of expression. The national courts did not take into account the fact that the applicant's comments had been made during the trial where he acted as a lawyer and the comments had been limited to the courtroom, in contrast to the criticism of the judicial authorities expressed outside of the courtroom by other means, for example, via the media.

The Court specifically noted that in the courtroom, the principle of fairness favours a free and even convincing exchange of arguments between parties; and the disputed comments had not been repeated outside of the courtroom (para 80). Moreover, although the applicant's comments about the judge could have been offensive, in general they expressed the applicant's objections to the decisions made by the

43 <http://hudoc.echr.coe.int/eng?i=001-144124>

national courts in the criminal case against Mammadov. In this regard, the Court cannot ignore the fact that at the time when the comments were made in the Sheki Court of Appeal, it (the Court) had already made its decision in the case of *Ilgar Mammadov v Azerbaijan*, having found that there had been a violation of the Articles 5 and 18 of the Convention and that the restriction of Mammadov's freedom had been imposed for the purposes other than those provided for by the Convention. The Court also found that there had been a number of serious shortcomings in the criminal proceedings against Mammadov (para 81).

The national courts did not explain why the applicant's comments in the courtroom had been such a serious offence that they had justified the most severe disciplinary sanctions.

The Court noted the conclusion of the Nizami District Court that 'it is completely unacceptable to abuse this right [freedom of expression] in order to cast a shadow on our state and statehood'. This reason given by the Court in support of disbarring the applicant is irrelevant to the objectives of Article 10 of the Convention, and cannot be regarded as the reason for restricting the freedom of expression in a democratic society requiring pluralism, tolerance and breadth of views (para 82).

In addition to the violation of Article 10, the Court also found the violation of Article 8 of the Convention in relation to the disbarment of the applicant.

The comments made to the Court by the Council of Europe Commissioner for Human Rights, Nils Muižnieks, as the third party, relating to the position of human rights lawyers in Azerbaijan. In particular, the Commissioner drew attention to the obstacles to lawyers in their work, stating that the disbarment or such a threat could, in particular, be used as an instrument to punish lawyers taking on sensitive cases, or to force them to refuse to do so. The disbarment in such cases was a retaliation for actions, which a lawyer could perform during the lawful performance of their professional duties.⁴⁴

Also, as the third party, which entered the proceedings in the cases of three lawyers: Annagi Hajibeyli, Intigam Aliyev and Khalid Bagirov, the International Court of Justice (ICJ) in its comments to the Court emphasised that, although lawyers should perform their professional functions in accordance with the ethical standards, the system of admission and discipline in the legal profession should not impose such obligations on them, which would prevent them from effective representation of their clients.⁴⁵

In this case, the Court referred to the statement of the President of the Parliamentary Assembly of the Council of Europe, who, touching on this ABA decision, stated that

'against the background of the increasing intimidation of human rights lawyers in Azerbaijan, such obvious pressure on independent lawyers defending civil activists is unacceptable'.

The Court, both in this case and in other cases of Azerbaijan lawyers who were unreasonably disbarred, also referred to the statement of Michel Forst, UN Special Rapporteur on the situation with human rights lawyers, made by him at the end of the mission after the visit to Azerbaijan⁴⁶. In his statement, Forst noted:

44 Council of Europe, 'Azerbaijan: Repression of lawyers who defend human rights must stop', 28 November 2016, www.coe.int/en/web/commissioner/-/azerbaijan-repression-of-lawyers-who-defend-human-rights-must-stop
Council of Europe, Commissioner for Human Rights, 'Application No 28198/15, Bagirov v Azerbaijan', <https://rm.coe.int/16806da74c>.

45 www.icj.org/azerbaijan-icj-intervenes-before-european-court-of-human-rights-in-defence-of-human-rights-lawyers/

46 www.kavkaz-uzel.eu/articles/289729/, <https://news.un.org/ru/story/2016/09/1292001>

‘In Azerbaijan, human rights lawyers increasingly face challenges through a number of means, including criminal prosecutions, disciplinary action, and other administrative measures. This is despite the State’s obligation to guarantee that lawyers can discharge their professional duties and functions and their rights are protected. In my view, disbarments of human rights lawyers, together with criminal prosecutions, searches and freezing of their assets are part of the broader harassment facing human rights lawyers in the country. The well-known cases of Intigam Aliyev, Aslan Ismayilov and Alayif Hasanov demonstrate the intimidation of independent lawyers through detention and lawsuits. The removal of lawyers from sensitive cases and holding them as witnesses in the same case was used against Yalchin Imanov, for example, when he was defending employees of Radio Azadliq/Liberty in December 2014.

For those lawyers who are members of the Bar Association, disciplinary proceedings have been one of the main means of retaliation for their human rights or professional activities. I have reviewed the cases of at least four lawyers (Khalid Bagirov, Muzaffar Bakhsiyev, Alayif Hasanov and Aslan Ismayilov), who have been unjustifiably disbarred from the Bar Association. This is despite the fact that, in practice, the Bar Association suffers from significant institutional weaknesses, which raises serious questions about its legitimacy and puts the ability of the body to effectively regulate the profession in severe doubt.’⁴⁷

Enforcement of the ECHR’s judgments in lawyers’ cases

Azerbaijan has the worst record of countries which fail to enforce ECHR judgments. According to the latest statistical data,⁴⁸ it remains one of the countries that actually refuses to enforce the decisions of the ECHR: only 16 percent of the Court’s judgments have been enforced by the Government.

Among the non-enforced ECHR decisions are all four decisions relating to the complaints of lawyers who have been illegally disbarred: Annagi Hajibeyli, Intigam Aliyev, Aslan Ismayilov, Elchin Namazov and Khalid Bagirov. The three-month deadline for the enforcement of ECHR decisions has expired in all these cases. Despite the decisions of the Court which found that their disbarment is inconsistent with the national legislation and the European Convention, none of these lawyers has been reinstated by the ABA.

Article 431 of the Civil Procedure Code of Azerbaijan provides that the decisions of the ECHR serve as ‘newly discovered circumstances’, on the basis of which the internal proceedings are subject to reconsideration by the Plenum of the Supreme Court of Azerbaijan.

Any appeals to the ABA, as well as to other national institutions, whose responsibilities include, directly or indirectly, issues relating to the implementation of ECHR decisions, have been unsuccessful. For example, in the case of *Hajibeyli and Aliyev*, the applicants applied to the Plenum of the Supreme Court twice (in March 2019 and October 2020), with a request to reconsider their case due to newly discovered circumstances, although the law does not oblige the applicants to do so. Nevertheless, in both cases the Plenum refused to consider the applications and did not provide the applicants with any documentation on the reasons for refusal. The appeal of the applicants to the Representation of Azerbaijan in the ECHR (an authorised authority under the Presidential Administration), whose competence also includes the

47 UNHR Officer of the High Commissioner, ‘End of mission statement by Special Rapporteur on the situation of human rights defenders’, Visit to Azerbaijan, 22 September 2016, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20544&LangID=E

48 Council of Europe, Country Factsheet: Azerbaijan, <https://rm.coe.int/168070973e>

enforcement of the decisions of the Court, also failed to bring a positive result, as the applicants were unable to receive any response from this authority.

Anar Bagirov, Chair of the ABA, in a media interview, when asked about the reasons behind the failure to enforce the ECHR *Hajibeyli and Aliyev* judgment, replied:

‘This decision does not oblige us to automatically admit these lawyers to the ABA; they, like all other candidates, can become lawyers having successfully passed examinations and other procedures.’⁴⁹

The ABA management takes a similar position on the restoration of rights of lawyers excluded from the ABA on the basis of ECHR judgments. It does not intend to readmit them to the Bar. And the Plenum of the Supreme Court refuses to reconsider their cases on the basis of the ECHR judgment as required by law. Consequently, the ECHR decisions remain unfulfilled, and the lawyers are out of business. This affects not only the lawyers themselves and people who need their help including political prisoners and other sensitive sections of society such as journalists, opposition activists, LGBT+ activists, etc, but also the entire system of justice.

According to rough estimates, there are about 15 cases in the proceedings of the ECHR relating to the illegal disbarment or suspension. These are about the same grounds, the same approaches and violations both on the part of the ABA and the national courts. As the rights of the applicants in the above ECHR cases have not yet been restored, there is no evidence that the government will take the necessary measures as to ensure that that such violations will not recur in future.

When the government not only categorically violates its laws, refuses to fulfil its international obligations, including non-fulfilment of the ECHR decisions, this is a bad signal for society, including those people whose professional duties are to protect the rights and freedoms of the members of society.

Access to a lawyer

The laws of Azerbaijan provide for the right of access to a lawyer from the moment of detention. Such the right is guaranteed by the European Convention. But in practice, this legal provision is not respected.

According to the current practice, a lawyer may meet with their client only after receiving a letter of permission from an investigator or judge. In practice, a lawyer usually only manages to receive such the letter only in several days after the arrest.

For example, in March, April and July 2020 alone, several hundred people were arrested for participating in unauthorised rallies in Baku, several dozens of them prosecuted, and more than 100 of them subject to disciplinary action. In none of these cases did lawyers get the opportunity to meet with their clients from the moment of detention as required by law.

The following is an extract from the report of the international human rights organisation Human Rights Watch, ‘Azerbaijan: Relentless Crackdown on Opposition’, published in August 2020:

49 ‘Winning a job in the European Court of Justice is not the basis for admission to colleges - Anar Bagirov Reported’, 11 May 2018, <https://barassociation.az/frompress/90>

'[...] At least three detainees' lawyers tried to access their clients from the early hours of detention and presented the required official documents. However, several investigators refused to accept them and demanded sending them by registered mail. As a result, the initial interrogations and the remand hearings took place in the presence of state-appointed lawyers who are not regarded as independent in Azerbaijan. The police also did not allow most detainees to inform their families of their whereabouts.'⁵⁰

This has already become practice, when a case smells of 'politics', police investigators and the prosecutor's office either refuse to accept the documents from the lawyers necessary to access their clients on unreasonable grounds or hide from them. Lawyers often only manage to meet with their clients only after a few days: three or five days, a week or even longer. Whereas a representative of the prosecution can meet with the arrested person at any time and in any number of times. During this period when the arrested person is hidden from their lawyer, illegal physical and psychological pressure is put on them in order to obtain a confession, often fabricated by the authorities or not committed by such person. All complaints of the defence about illegal actions of the investigating authorities or the police, their officials have been rejected by the courts.

For a long time, local and international organisations have raised the issue of inconsistency of this practice with national and international legislation, but to no effect.

The legal provision which provides for a defendant's right to be represented by a lawyer of their choice, also relates to the legal provisions which are difficult to implement. The prosecution often refuses such requests from arrested persons. In such cases, a lawyer is assigned to the defendant at the expense of the state against the defendant's will. It often happens that there are so-called 'pocket' or 'allowance' lawyers,⁵¹ who cooperate with law enforcement authorities – sometimes with judges – on 'mutually beneficial grounds'.

Such lawyers will readily sign any document proposed for signature by the investigator or prosecutor, in return for a sort of 'allowance' from the investigating authorities. In the US, incidentally, there are also many lawyers who prefer not to argue, but to negotiate with the investigating authorities. This is done not only by lawyers appointed by the state, among those, who cooperate with colleagues from the investigating authorities and courts in such way, there are many lawyers working for a fee.⁵²

Lawyers and defendants' relatives are often have to wait some time before they are able to receive information about where their clients are retained, as there is no specific legislation in Azerbaijan which regulates issues relating to temporary detention facilities. This leads to lawlessness, as an arrested person can be kept either in pre-trial detention facilities under the Ministry of Justice, or in a similar detention facility under the Ministry of Security, or in places of temporary detention under the Ministry of Internal Affairs.

Civil society does not have any access to pre-trial detention facilities and places of temporary detention, as well as to prisons. Only representatives of the Ombudsman and members of the Public Committee under the Ministry have access. But usually, these visits are formal. In their reports, these organisations do not

50 'HRW demands release of arrested opposition activists in Azerbaijan', *Caucasian Knot*, 19 August 2020, www.kavkaz-uzel.eu/articles/353223. Human Rights Watch, 'Azerbaijan events of 2020', www.hrw.org/world-report/2021/country-chapters/azerbaijan#

51 'Human rights activists say obstacles to lawyers' work in Azerbaijan', *Caucasian Knot*, 22 November 2018, www.kavkaz-uzel.eu/articles/328224

52 *Ibid*; 'Opposition considers too lenient criticism of Azerbaijan in Myatovich report', *Caucasian Knot*, 11 December 2019, www.kavkaz-uzel.eu/articles/343424

reflect any evidence of torture, beatings and other types of abusive treatment, reported to them by prisoners or defendants, because of the fear that they will not be allowed to access these institutions in future. As a result, numerous facts of lawlessness in penal institutions are not made public.

The State Bar Association's legal services monopoly

Although in all countries with a developed legal culture, the practice of law is not monopolised and, as a rule, there are regional bar associations, there is only one bar association in Azerbaijan. The authorities are not interested in changing the situation, as taking away the monopoly on practising the law would lead to certain political consequences which the same authorities would find undesirable. And a monopoly, both in the economy and in other areas, lowers quality.

Not only is there only one bar association but there is also a monopoly of the ABA on legal services in Azerbaijan.

The Law of 31 October 2017⁵³ introduced amendments to the legislation, which only allow ABA members to act as representatives in courts. Prior to these amendments, this monopoly was only applicable in criminal cases, and many lawyers, who were not ABA members, practiced law representing clients in civil and administrative cases. Because of the bureaucracy and problems of illegality relating to admission to the ABA, many lawyers, especially those not specialising in criminal law, preferred to act independently. Nevertheless, through a series of changes, many legal professionals were gradually deprived of the right to practise law, among them those who have devoted many years to their work, several of whom were well-known lawyers not only in Azerbaijan.

Similar amendments had been introduced to the Criminal Code relating to the accused party in 2000. Since 2013 the injured party has also been deprived of the right to be represented in court by a non-ABA member.

According to the Group of Practising Lawyers, the number of practicing lawyers who were not ABA members was several times higher than the number of officially recognised lawyers. At the end of 2017, there were about 8,000 practicing lawyers in Azerbaijan who were not members of the ABA, while there were only 934 official lawyers.⁵⁴

There has been no reasonable official explanation for those amendments on the part of the authorities. All amendments were presented without offering any proof as one of the important stages of the advocacy reform, the purpose of which is to improve the quality of legal services and to remove non-professionals from this environment.⁵⁵ But, when there is an acute shortage of lawyers, such a monopoly, which deprives a large number of lawyers of the right to represent clients in court, has a significant negative impact on the population's access to legal services.

53 The amendments introduced by this Law, the Administrative Procedure Code and the Law On advocates and advocate's activity came into force on 1 January 2018

54 See note 8 above; Mike Runey 'Azerbaijan Moves to Drastically Cut Number of Lawyers', *Eurasianet*, 7 November 2017, <https://eurasianet.org/azerbaijan-moves-to-drastically-cut-number-of-lawyers>

55 A few more amendments to the Civil Procedure and Administrative Procedure Codes of Azerbaijan, adopted by the parliaments in July 2021, are again associated by the authorities with the unprofessionalism of lawyers. According to these amendments, a lawyer faces a fine of 500 manats (approximately 250 euros) for an unfounded motion.

In its statement, the ABA presented a somewhat jingoistic tone:

‘The mentioned changes and additions are a continuation of progressive judicial and legal reforms in our country. These changes will have a positive impact on improving the quality of legal services provided to the population in our country.’⁵⁶

Neither lawmakers nor the ABA itself have conducted corresponding studies to assess the impact of these changes. Neither have any adequate transitional mechanisms been provided which would help to alleviate their consequences. Regrettably, there has been no adequate response to these changes, both locally and internationally.

Other reasons for the changes have also been cited. Many experts, both domestic and foreign, believe these changes are aimed at reducing the number of appeals to both local courts and the ECHR. In particular, before these amendments, many practicing non-ABA-member lawyers had often provided pro bono legal assistance to the civil society activists and citizens in recent years, particularly regarding illegal interference in citizens’ property rights which has been massive, and in ‘sensitive cases’ both separately and in cooperation with human rights NGOs. Thanks to them and several active members of the ABA (many of them have already been disbarred), the Court had made many important decisions on fundamental rights in recent years. These included judgments on right to liberty and security, fair trial, prohibition of torture, freedom of expression, assembly and association, free election, etc, and levels of compensations have grown. In this context, the logic of the authorities is clear: the fewer independent lawyers, the fewer complaints. – this is a positive statistic and proof that violations are not of a systemic, but of a private nature. On the one hand, these ECHR’s judgments have a serious impact on the image of Azerbaijan, as well as on its finances, which has become tense because of recent sharp declines in oil revenue.

During the public consultation on the draft of this legislation, a group of practicing human rights lawyers joined the discussions in order to oppose these legislative changes. Although eight of nine members of the group successfully passed their written tests, none of them passed the second round of the process.

Many are prominent human rights lawyers, known for their critical views both against the ABA and the authorities.

On 13 March 2018 several members of the European Parliament submitted a written request to then Vice-President of the European Commission, Federica Mogherini whose brief included human rights. Having specially noted that in authoritarian Azerbaijan the guarantees and rights of political prisoners and their lawyers have been severely disregarded, they also referred to ‘an alarming law enacted in Azerbaijan that restricts citizens’ access to basic legal assistance and the right of defence’. The MEPs asked whether Mogherini intended ‘to inform the Azerbaijani authorities that such practices will negatively affect the country’s relations with the EU’.⁵⁷

56 ‘One in 10,000: lawyers in Azerbaijan have become a monopoly’, *BBC Russian Service*, Baku, 8 November 2017, www.bbc.com/russian/features-41916767

57 ODF ‘MEPs write to the EU VP/HR concerned with lawyers endangered in Azerbaijan’, 19 April 2018, <https://en.odfoundation.eu/a/8617,meps-write-to-the-eu-vp-hr-concerned-with-lawyers-endangered-in-azerbaijan>

Refuting such statements, the government also disagreed with the conclusions of the Council of Europe Commissioner for Human Rights, Dunja Mijatovich, published in her report⁵⁸ following her visit to Azerbaijan, in which the Commissioner, inter alia, also expressed concerns about access to legal assistance in connection with the 2017 amendments. The Government stated:

‘The statement that reforms affecting the legal profession have left many people without access to legal assistance is inaccurate. In fact, the citizens of Azerbaijan do not suffer from a lack of lawyers or lack of access to legal assistance.’⁵⁹

In the same document, the government acknowledges that:

‘Admittedly, it is a fact that the number of lawyers per capita in Azerbaijan is low compared to other member states [...]’.

Therefore, on the one hand, the authorities acknowledge the low number of lawyers, yet on the other, they state that there are no problems with gaining access to a lawyer in Azerbaijan.

Despite the number ABA members increasing several folds, the problem of the lack of lawyers has not been resolved. The shortage is especially critical for sensitive cases. In Azerbaijan, the number of political prisoners is over 100, yet the number of lawyers wishing to defend their rights is no more than eight-to-ten.

Legal services at the expense of the state

An illegitimate monopoly on legal services negatively affects its quality.

In particular, in criminal cases and sometimes also in civil and administrative cases too, if a citizen does not have any prospect of paying for a lawyer’s services, it is done at the state’s expense. The shortage of lawyers leads to a situation where most ABA members are overloaded with such cases. Furthermore, we should also take into account the fact that the lawyer’s hourly state-paid fee for services rendered to the poor amounts to AZN 6⁶⁰ (approximately US 3.5); before it was AZN 2 per hour (US 1.18). Of course, such low payments are realistic for producing high quality services.

According to the Council of Europe’s European Commission for the Efficiency of Justice (CEPEJ), Azerbaijan has the lowest state budget allocated to the judicial system per capita in 2016 (7.8) among all the countries examined. This was more than eight times lower than the average (64.5) and 28 times lower than the maximum (Switzerland at 214.8 per capita). Moreover, Azerbaijan has the lowest legal assistance budget per capita (0.07) among Council of Europe states. This value is more than 100 times lower than the European average of 6.96.⁶¹

58 Council of Europe ‘Commissioner Mijatovich urges the Azerbaijani authorities to respect freedom of expression, improve access to lawyers and uphold the rights of internally displaced persons’, Country visit report, 11 December 2019, www.coe.int/ru/web/commissioner/-/commissioner-mijatovic-urges-the-azerbaijani-authorities-to-respect-freedom-of-expression-improve-access-to-lawyers-and-uphold-the-rights-of-internall

59 See note 8 above

60 By the Decree of the Cabinet of Ministers of the Republic of Azerbaijan, dated 3 May 2018, on the amounts to be paid to defence lawyers, translators, specialists and experts, the remuneration paid to a defence lawyer for providing legal assistance in cases, stipulated by the Criminal Procedure Code of the Republic of Azerbaijan is established at AZN 6 per hour

61 Council of Europe, ‘European judicial systems CEPEJ Evaluation Report’, 2020 Evaluation cycle (2018 data), <https://rm.coe.int/rapport-evaluation-partie-1-francais/16809fc058>

One more fact should be mentioned to confirm the low pay a lawyer's work in this rich former Soviet country. In communications with the ECHR relating to the complaints against Azerbaijan, challenging the reasonableness of the claims put forward for legal fees (usually claims are in the range of 1,500-2,000). In recent years however, the government has begun to argue that they are too high and do not represent the average market price of the remuneration paid to lawyers in Azerbaijan. To support this, a letter from the ABA, prepared at the request of a government representative, regarding the average fees paid to lawyers was submitted to the Court. According to this ABA document, in 2018-2019 the average fee for representing the interests of a client in the courts of the first instance, courts of appeal and courts of cassation amounted to AZN 75, 85 and 95, respectively (US 44, 50 and 56).

Generally, the quality of service from a lawyer is related to their costs. The above statements from the authorities and ABA are a recognition of this fact, as well as the bitter truth that, unless real reform is undertaken, the ABA monopoly and the increase in the number of its lawyers will be unable to lead to an improvement in the quality of Azerbaijan's legal services.

Furthermore, in January 2021, the ABA has disseminated information that the organisation returned more than half last year's allocated budget for the payment of state-paid legal assistance to the state. For these purposes, AZN 5.5 (US 3.2) were allocated from the 2020 state budget, but 52 per cent of this amount was returned.⁶² This might appear something of a selfless act, but in fact, is another indication of the sad state of legal assistance in Azerbaijan.

ABA transparency

After the change in management in 2017,⁶³ there was a something of a revival in the ABA: its number of members and events has noticeably increased and the organisation became more open. Previously, even information about lawyers was kept secret, referring to lawyer privilege, not the ABA's website contains much more information.

But any real openness and transparency is still some way off. It has always been extremely difficult to obtain information or documents from the ABA relating to its activities, including its finances. The ABA refuses to publish such information, referring to its confidentiality. Until recent years, information regarding the number of lawyers, legal offices, including data about the lawyers themselves, was considered as private to the lawyer. But following the change in the ABA management, some of this information has become public. The ABA website now contains considerably more information compared to the period of its former management. But financial information and in particular, its income and expenses, remain 'classified'.

The reason behind the ABA initiating disciplinary proceedings against Adil Ismayilov⁶⁴ was because he had criticised its management for its lack of transparency, having demanded answers to a number of questions, including ones relating to its financial activity.⁶⁵ In particular, the lawyer asked about the amount of funds received by the ABA in the previous five years and their sources. He also asked about the amounts in ABA

62 'Lawyers saved and returned to the state more than half of the allocated money', *Haqqin.az*, 19 January 2021, <https://haqqin.az/news/199168>

63 Anar Bagirov became the new Chair of the ABA Presidium in December 2017

64 A. Ismayilov died in December 2020

65 'How does the Bar Association spend its budget?', <https://m.zerkalo.az/kak-kollegiya-advokatov-rashoduet-svoj-byudzheth>

accounts, how these sums were allocated to the ABA by the state to support the Bar,⁶⁶ and how they were spent.

ABA Chair Anar Bagirov, in turn, called the messages ‘spread via social networks’ ‘lies and slander’. ‘Turning topics into shows on social media is the goal and desire of the slanderers,’ he wrote. According to Bagirov, ‘the purpose of these people’ is to cast a shadow on the work of the management of the Bar, ‘to tarnish the Presidium’, ‘to present themselves as ‘fighters’, to create a conflict at the Bar’, adding ‘the slanderers will answer before the law’. In the interview with the Azerbaijani Service of the Voice of America, Bagirov stated that the disciplinary proceedings against Ismayilov were initiated with regard to the ‘dissemination of insults, fabrications and lies’, ‘accusations of a crime’, ‘insulting lawyers’, and that they had commenced as a result of ‘complaints from lawyers’. According to Bagirov, Ismayilov should have addressed his questions to the Presidium before speaking on social networks. To justify his position, he argued:

‘Would a Voice of America reporter address their editor-in-chief via Facebook with questions about squandering their organisation’s budget and demand a report from him?’

Ismayilov responded, telling the Azerbaijani Service of the Voice of America that he had not received any answers to the questions addressed to ABA management, although, as well as publishing them on Facebook, he had also made an official appeal. The lawyer noted that as a member and co-founder of the ABA he has the right to know how the membership fees, insurance and other payments charged to him are spent. In addition, the Decree of the President of Azerbaijan dated 23 February 2018 provided for measures on improvement of the material and technical base of the Bar.

‘Funds have been allocated for these purposes. It was reported that one million manats (approximately US 588,000) was allocated for the repair of buildings where lawyers are located, for the purchase of appropriate equipment, etc. I wanted to know how this money has been spent.’

Ismayilov has yet to receive answers to his questions.

In January 2021, the media informed that Ramiz Rzayev, the Chair of the Supreme Court of Azerbaijan, appealed to the ABA Presidium with an official letter, in which he expressed dissatisfaction with lawyers’ poor-quality work, noting that they ‘increase the load on the panels of judges of the Supreme Court by ungrounded and incorrectly executed appeals’.⁶⁷

Following Rzayev’s intervention, the ABA Chair sent the letter to law firms recommending that they learn from the words of the country’s chief judge. The information leaked to the media became subject of much discussion on social networks where there was much criticism from both the courts and the ABA.

The ABA management reacted immediately. Addressing to the media, Anar Bagirov reproached them for the ‘distortion of business correspondence and professional conversation’ which ‘does not correspond to professional journalism’. ‘I urge my colleagues who sent this information to the media to be more

66 Based on the Decree of the President of the Republic of Azerbaijan, dated 22 February 2018 ‘On additional measures to develop the Bar in the Republic of Azerbaijan’

67 ‘Ramiz Rzayev dissatisfied with lawyers – ‘They can’t write the right complaint’, *Qafqazinfo*, 11 January 2021, <https://qafqazinfo.az/news/detail/ramiz-rzayev-vekillerden-narazidir-duzgun-sikayet-yaza-bilmirler-311065>

responsible, not to sacrifice the interests of the profession in favour of personal interests, and to be serious,' he added.⁶⁸

This correspondence, as well as Bagirov's letter to media representatives and ABA members, is yet further confirmation of not only the quality of legal services and the situation of the entire justice system in Azerbaijan, but also the level of the undemocratic nature of the ABA and its lack of openness to public discussion.

The independence of the ABA

As a result of uncontrolled oil revenues, a large part of which went into the pockets of the ruling family, authoritarian power grew significantly, and the country was gradually built on the principles of democracy, the rule of law and human rights. Now there is actually one-party system in the country, the civil society has been disabled, the media has lost its independence. Many international organisations have been expelled from Azerbaijan, and the legislative and judicial power is completely under the control of the executive

Human rights activity in such countries is not easy, and even dangerous.

The ABA is often referred to as a 'government organisation'. Although this irritates not only its management, but also the lawyers themselves, as it should be noted that there are many independent, principled and dedicated lawyers among them. In its current form, the ABA hardly meets the standards of independence. The main problems of the ABA are not in people (good or bad management), they have systemic roots.

The authorities of Azerbaijan are not interested in there being of an independent judicial system and, accordingly, an independent Bar. The existence of a strong organisation consisting of thousands of independent, professional, forward-thinking, human rights lawyers with a thorough knowledge of law is dangerous for the authorities, even more than political parties. As it would be very difficult for the authorities to resist such power, the authorities do not want to lose control over the ABA and therefore support its conservative management and prevent reforms at the Bar. The authorities well understand that with a strong, independent Bar there would be no massive human rights breaches, no flourishing of corruption or bribery in court.

Contrary to legislation, the admission to the ABA was illegally suspended for a long time, and general meetings were not held. There were many critical speeches, reports and appeals at both local and international level, but the government ignored them, and did not interfere as a controlling body to ensure legitimacy. Instead it supported ABA management and encouraged them.

Azer Tagiyev was the head of the ABA, which remained from the times of the USSR since 1995. In 2004, under ABA reforms adopting the Law On advocates and advocate's activity, Tagiyev retained the post of the Chairman at the general meeting of the members of this organisation, a position he

68 'Anar Bagirov addresses the media', *Huquq.az*, 11 January 2021, www.e-huquq.az/ru/news/advokatskaya-deyatelnost/24397.html

held with the somewhat crude violations and interference of public authorities. Tagiyev was again re-elected as Chairman at the ABA conference in 2012, again with crude violations too.

Despite the fact that the law bans ABA managers from holding public office, its former head (A. Tagiyev) and another ABA Presidium member simultaneously held public office for many years (from 1995 to 2017). Tagiyev was a member of Azerbaijan's Central Election Commission, receiving a salary from the state. It should be noted that the EHCR recognised a breach of the right to free elections during the 2005, 2010 and 2015 parliamentary elections in more than 50 applications (21 judgments),⁶⁹ and there has yet to be any Court decisions on the 2020 applications. These cases point to numerous facts of falsification and other crude violations during the election period. The name of the Central Election Commission was frequently mentioned in regard to these violations, the ABA Chairman supported all illegal decisions. Later at the ECHR, they were recognised as contradicting Article 3 of Protocol 1 of the Convention.

The ABA and international organisations

In October 2019, a group of well-known Azerbaijan lawyers appealed to the Council of Bars and Law Societies (CCBE). Their document expressed concerns about the possible consequences of the admission of Azerbaijan's ABA to the organisation, as it would give an additional reason to the ABA to continue its repressive policy. In a more comprehensive sense, any positive response to the ABA's membership application under current conditions would not only reinforce the problems and shortcomings of the profession in Azerbaijan, but strengthen the discourse of the ABA in continuing its current policies.

Sharing the common understanding that the problem relates to the political will of the Azerbaijan government, which seeks to retain control over lawyers, the 'self-initiatives' of the ABA aimed at undermining of the independence of the legal profession should not be ignored.

While understanding and recognising the importance of communication and cooperation as an essential tool of international organisations, it is necessary to take into account that communication should offer an approach aimed at increasing a common understanding of the regulation of the profession, upholding the rule of law, protecting human rights and democratic values, which are the most important undertaking of international authorities, including the CCBE.

Therefore, without any indication of common understanding in this regard, the ABA's acceptance by the CCBE and other international organisations as a full member will not be an influential factor or motivation for the ABA to respond to the challenges it faces. The open-door policy with no preconditions would strengthen public recognition of the ABA which, after gaining new management, is seeking to rehabilitate its image and positive acceptance, and even popularity, both at home and abroad, in order to continue its repressive policy against the independence lawyers.

For several years, the Council of Europe has undertaken a project with the ABA to study the European Convention on Human Rights. This has included many training sessions, workshops and other events (including visits to Strasbourg) focussed on various articles of the Convention, including 3 (prohibition of

69 ECHR, Azerbaijan decisions, [https://hudoc.echr.coe.int/eng#{%22languageisocode%22:\[%22ENG%22\],%22respondent%22:\[%22AZE%22\],%22documentcollectionid%22:\[%22JUDGMENTS%22\],%22violation%22:\[%22P1-3%22\]}](https://hudoc.echr.coe.int/eng#{%22languageisocode%22:[%22ENG%22],%22respondent%22:[%22AZE%22],%22documentcollectionid%22:[%22JUDGMENTS%22],%22violation%22:[%22P1-3%22]})

torture), 5 (right to liberty and security), 6 (right to fair trial), 10 (freedom of expression), 11 (freedom of assembly and association) and etc.; as well as the precedents of the ECHR. We can judge how effective these projects are, and what large funds have been allocated to them are paid by the number of cases sent from the participants to the ECHR of these numerous trainings, workshops and visits. It is rare to find their names under these complaints to the Strasbourg. These are mainly the same lawyers which the ABA have dismissed from its ranks, or those who the ABA management does not want to see among its membership. Moreover, not only the ABA keeps away from them.

At the international conference ‘The Role and Independence of Lawyers: Comparative Perspectives’ organised by the Council of Europe within the framework of a joint project of the EU and the Council of Europe within the Partnership for Good Governance,⁷⁰ held in Baku on 15-16 November 2020, Christophe Poirel, the Head of the Directorate of the Council of Europe for Human Rights, announced:

‘The Bar Association has a number of serious challenges to address as the country goes through a major reform of the advocacy. We have engaged in an open dialogue on those matters, including such core issues as the independence and qualification of lawyers [...] Much remains to be done in Azerbaijan. National legislation and practice needs to be aligned with European standards and best practices as many others to fully uphold the role of the lawyers in society.’⁷¹

Many independent lawyers, including internationally recognised lawyers, whose names are considered unacceptable to ABA management (including the authorities), were not invited to this event. They have also not been invited to other events organised in Azerbaijan under the aegis of these and other international organisations.

Recommendations

- Fully supporting the recommendations of international organisations⁷² on reforming the ABA and strengthening its independence.
- The ABA should be run with the direct participation of all its members, and not on the basis of a representative system which is unregulated by law or other rules, which has allowed ABA management to control the entire process with illegitimate purposes.
- The ABA’s managing and supervisory bodies should be elected by a general meeting of all the organisation’s members.

70 The project is intended to help strengthen the application of the European Convention on Human Rights and the case law of the Strasbourg Court in Azerbaijan.

71 See note 1 above.

72 ICJ, *Defenceless Defenders: Systemic Problems in the Legal Profession of Azerbaijan*, ICJ Mission Report 2016, https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AZE/INT_CAT_ICJ_AZE_30120_E.pdf
ICJ, *Recommendations to the Azerbaijan Bar Association on the Role and Independence of Lawyers*, 2019, www.icj.org/wp-content/uploads/2019/05/Azerbaijan-ICJ-Recommendations-Bar-Ass-Advocacy-Analysis-Brief-2019-ENG.pdf
Human Rights House Network, *Human rights lawyers at risk*, 10 September 2015, <https://humanrightshouse.org/noop-media/documents/21177.pdf>
Human Rights House Foundation, *Bias and disbarment leave handful of lawyers to take sensitive cases*, 26 February 2019, <https://humanrightshouse.org/articles/bias-and-disbarment-leave-handful-of-lawyers-to-take-sensitive-cases>

- The ABA management approval procedure, currently required for establishing law offices, firms and other forms of legal associations, should be abolished.
- Any documents relating to the ABA's activities (including its financial) should be available to all ABA members and the general public.
- The practice of disbarring or suspending the licences of lawyers involved in 'sensitive' (politically motivated) cases should be terminated.
- Lawyers subjected to disciplinary proceedings should have access to all documents (complaints against them, decisions, minutes, transcripts, etc.) relating to their case.
- All ABA decisions relating to disbarment should be annulled, and lawyers' rights restored.
- The results of oral interview examinations relating to human rights lawyers not admitted to the ABA should be cancelled.
- The decisions of the European Court of Human Rights on the cases of Azerbaijani lawyers should be enforced both from individual cases and in general.
- The practice of the compulsory assignment of lawyers to legal offices or firms should be stopped.
- The freedom of ABA members to choose forms of legal structures should be guaranteed.
- The ABA's admission process and disciplinary procedures should comply with international standards.
- The three-year work experience requirement as a compulsory condition for admission to examinations should be ended. If this option is unacceptable, it should be reduced by one year.
- Provisions banning any criticism of ABA decisions, including criticism of the state and judicial system, should be removed from the Code of Conduct for Lawyers.
- A new Code of Ethics should be adopted following consultation and discussion with lawyers and civil society, as well as involvement from international organisations.
- Access to the legal profession should be independent, transparent and non-discriminatory. Oral interviews with candidates, including the examination (interview) after compulsory training at the Academy of Justice, should be abolished.
- If the ABA fails to move forward and fix its serious systematic problems, and the repressive policy against human rights lawyers continues, the EU and the Council of Europe, including other international organisations, should cease their cooperation with ABA management. The CCBE and other international professional organisations should reject the ABA's application for membership but this should not exclude any cooperation with its individual members.



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