

## **Human Rights Committee Consideration of the Periodic Report of Azerbaijan**

Submission on the List of Issues

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## I Introduction

### *Submitting Party*

1. Lawyers for Lawyers (L4L) is an independent Netherlands foundation, funded by lawyers' donations. The foundation was established in 1986 and has special consultative status with ECOSOC since 2013.<sup>1</sup>
2. L4L promotes the proper functioning of the rule of law through a free and independent exercise of the legal profession, in conformity with international law, including but not limited to the International Covenant on Civil and Political Rights (ICCPR) and the Basic Principles on the Role of Lawyers of the United Nations (Basic Principles).<sup>2</sup> We support lawyers across the world who are threatened or suppressed as a result of discharging their professional functions and we promote the proper role of lawyers.<sup>3</sup>
3. L4L wishes to provide its views to the Human Rights Committee, in advance of the preparation of the list of issues for the Periodic Report of Azerbaijan.

## II Executive Summary

### *Issues*

4. This submission outlines L4L's key areas of concern about the failure of the Azerbaijani government to comply with its international human rights commitments to:
  - 1) Guarantee effective access to legal services provided by an independent legal profession as set out in the Basic Principles, which is required to ensure the right to equality before courts and tribunals and to a fair trial, in accordance with Article 14 of the ICCPR, and
  - 2) Protect the right to freedom of expression of lawyers, in accordance with article 19 of the ICCPR.
5. It highlights, in particular, concerns in relation to the following issues:
  - (i) No effective guarantees for the functioning of lawyers:
    - a. Increasing harassment, intimidation and improper restrictions and infringements of lawyers (Article 14 ICCPR);<sup>4</sup>

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<sup>1</sup>For more information visit our website: <http://www.advocatenvooradvocaten.nl/about-us/>

<sup>2</sup> Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 ('Basic Principles').

<sup>3</sup> For more information visit our website: <http://www.advocatenvooradvocaten.nl/what-we-do/>

<sup>4</sup> See also Basic Principles, Principle 16 (a).

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- b. Increasing legal prosecution of and disciplinary proceedings against lawyers on false charges and/or improper grounds (Article 14 ICCPR);<sup>5</sup>
  - c. Identification of lawyers with their clients or their clients' causes as a result of discharging their functions.<sup>6</sup>
- (ii) No effective protection to the right of freedom of expression of lawyers (Article 19 ICCPR), in particular their right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights, without suffering professional restrictions by reason of their lawful action.<sup>7</sup>
  - (iii) No proper functioning of the Azerbaijan's Bar Association (Article 14 ICCPR).<sup>8</sup>

### *Recommendations*

6. **The Human Rights Committee should address as a matter of priority the lack of effective measures of the government of Azerbaijan to ensure that lawyers are able to carry out their professional functions without threats, harassment or improper interference with their defence of clients, immediately impacting the right to effective legal representation as enshrined in Article 14 of the ICCPR.**
7. **The Human Rights Committee should address as a matter of priority the lack of effective measures of the government of Azerbaijan to prevent that lawyers suffer or be threatened with prosecution, disciplinary action or other sanctions on improper grounds.**
8. **The Human Rights Committee should address as a matter of priority the lack of effective protection to the right of freedom of expression of lawyers as set out in article 19 of the ICCPR, in particular their right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights, without suffering professional restrictions by reason of their lawful action.**
9. **The Human Rights Committee should address as a matter of priority the improper interference of the government of Azerbaijan with the Bar Association of Azerbaijan (BAA), also known as the Collegium of Advocates, preventing it from being an independent institution capable of**

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<sup>5</sup> Idem, Principle 16 (c).

<sup>6</sup> Idem, Principle 18.

<sup>7</sup> Idem, Principle 23.

<sup>8</sup> Idem, Principles 24 and 25.

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**protecting the interests of the legal profession in Azerbaijan.**

**III Effective mechanisms for the protection of human rights**

10. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers, along with judges and prosecutors, are able to carry out their professional activities independently. This follows from – amongst other international instruments - the ICCPR.
11. In its task of promoting and ensuring the proper role of lawyers, the government of Azerbaijan should respect and take into account the Basic Principles within the framework of its national legislation and practice.<sup>9</sup> Adherence to the Basic Principles is considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to independent legal assistance.<sup>10</sup>
12. Professional associations of lawyers also have a vital role to play in upholding professional standards and ethics and protecting their members from persecution and improper restrictions and infringements.<sup>11</sup> The Bar Association of Azerbaijan (BAA) should exercise its functions without external interference and cooperate with the government of Azerbaijan to ensure – amongst others – that lawyers are able, without improper interference, to counsel and assist their clients.<sup>12</sup>
13. In its concluding observations of 13 August 2009, the Human Rights Committee expressed concerns at reports indicating that, despite the reforms undertaken, the judiciary did not appear to be fully independent from the executive branch or from political pressure.<sup>13</sup> The human Rights Committee urged the government of Azerbaijan to strengthen its efforts to ensure a fully independent judiciary, and to increase efforts to combat corruption, in particular within its judiciary, by investigating promptly and thoroughly all incidents of suspected corruption.<sup>14</sup>
14. We welcome the fact that during the interactive dialogue in the Universal Periodic Review cycle of 2013, several recommendations with respect to the role of lawyers were accepted by the government of Azerbaijan.<sup>15</sup> These recommendations called upon the Azerbaijan government to ensure that lawyers are able to carry out their legitimate activities without fear or threat of reprisal.<sup>16</sup>

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<sup>9</sup> Basic Principles, Preamble, paragraph 11.

<sup>10</sup> Basic Principles, Preamble, paragraph 9.

<sup>11</sup> Basic Principles, Preamble, paragraph 10.

<sup>12</sup> Basic Principles, Principles 24 and 25.

<sup>13</sup> Concluding observations of the Human Rights Committee AZERBAIJAN, 13 August 2009, CCPR/C/AZE/CO/3, par. 12

<sup>14</sup> Id.

<sup>15</sup> Addendum to the 2013 Report of the Working Group on the Universal Periodic Review, 19 September 2013, A/HRC/24/13/Add.1, p 2.

<sup>16</sup> Recommendations 110 and 111, Report of the Working Group on the Universal Periodic Review of 5 July 2013, A/HRC/24/13, p. 21.

Recommendation 110: 'Take effective measures to ensure the full realization of the right to freedom of expression, including on the

15. Reports gathered by L4L and information received from lawyers in Azerbaijan show that the government of Azerbaijan does not always uphold the necessary guarantees and human rights for the proper functioning of the legal profession in practice. As a consequence, lawyers encounter difficulties in carrying out their profession freely and independently, immediately impacting the rights to effective legal representation and freedom of expression as enshrined in Articles 14 and 19 of the ICCPR.

#### IV No effective guarantees for the functioning of lawyers

##### a. Increasing harassment, intimidation and improper restrictions and infringements of lawyers (Article 14)

16. The crackdown on journalists, bloggers, political opponents and human rights defenders in Azerbaijan has escalated over the past years. Many of them have been arrested and convicted on politically motivated charges. L4L has been informed that the lawyers representing these human rights defenders have been regularly threatened, harassed and/ or removed from working on these cases by the authorities as a result of discharging their functions.<sup>17</sup>

17. A number of lawyers, representing journalists, political opponents and human rights defenders have been called as witnesses in their own clients' cases and subsequently informed that they were removed from these cases. This appears to be a strategy designed to frustrate the client-attorney confidentiality and thus the lawyers' ability to represent their clients and constitutes a form of improper interference with their legitimate activities as attorneys. Other lawyers have been removed from cases without any reasons communicated to them. This is demonstrated by the following cases:

###### Cases on harassment

*Aslan Ismayilov is a lawyer who has worked on many human rights and politically sensitive cases. In May 2013, he was detained, slapped, and threatened by the police after he had publicly claimed that Rashad Ramazanov, an acquaintance, had been beaten in custody.<sup>18</sup>*

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Internet, of assembly and of association as well as to ensure that all human rights defenders, lawyers and other civil society actors are able to carry out their legitimate activities without fear or threat of reprisal'.

Recommendation 111: 'Ensure that human rights defenders, lawyers and other civil society actors are able to carry out their legitimate activities without fear or threat of reprisal, obstruction or legal and administrative harassment'.

<sup>17</sup> Principle 17 of the Basic Principles requires that where the security of lawyers is threatened as a result of discharging their functions, they should be adequately safeguarded by the authorities.

<sup>18</sup> See also Human Rights Watch Report: Tightening the Screws Azerbaijan's Crackdown on Civil Society and Dissent, 2013, ISBN: 978-1-62313-0473, available at: [https://www.hrw.org/sites/default/files/reports/azerbaijan0913\\_ForUpload\\_0.pdf](https://www.hrw.org/sites/default/files/reports/azerbaijan0913_ForUpload_0.pdf). This report states: On May 17 Ismayilov organized a press conference to publicize concern about Ramazanov's treatment in custody. Several hours after the press conference, together with several journalists, Ismayilov went to the Ministry of Interior's Organized Crime Unit to find out more about Ramazanov's situation. In front of the Organized Crime Unit, several policemen approached him on the street and asked him to come to the station. Police drove him to the Narimanov district police station where the district police chief politely warned him to be more careful, told him that he was too vocal and too "involved with things that are not your business," and released him. In the following days Ismayilov continued to publicize his concerns about Ramazanov. On May 30 an investigator with the Organized Crime Unit phoned Ismayilov several times, asking him to come to the station. When Ismayilov arrived, he was taken to the basement, where the investigator threatened Ismayilov that he would be imprisoned if he did not "behave," and slapped him on the ear. Before releasing Ismayilov at the end of their 30- minute conversation, the investigator warned him, "[I]f you value your life, you'll be quiet." Ismayilov immediately filed a complaint

Cases on removal of lawyers from cases:

*On 30 July 2014, Leyla Yunus, a prominent human rights defender, was arrested. Two of Leyla Yunus' lawyers, Javad Javadov and Khalid Bagirov, were both disqualified from representing her after being called as witnesses in the case by the prosecution, on account of their prior professional acquaintance. Javad Javadov was summoned for questioning and named as witness on 29 October 2014, shortly after publicising procedural and fair trial violations in the case against his client. Khalid Bagirov was disqualified from representing Leyla Yunus on 5 November 2014.*

*Four of the five lawyers representing (lawyer, for more information see below) Intigam Aliyev were, like in the case of Leyla Yunus, barred from representing Aliyev. Fariz Namazli, Alayif Hasanov, Khalid Bagirov and Adil Ismayilov were removed from the case on 30 September 2014, after they were being called as witnesses in the case by the prosecution.*

*Lawyer Yalcin Imanov represented the employees of "Radio Liberty". On 28 December 2014, following a decision of the First Deputy General Prosecutor, Yalcin Imanov was held as a witness and therefore excluded from the defense by the prosecution.*

**b. Increasing prosecution of and disciplinary proceedings against lawyers on improper grounds (Article 14)**

18. Governments must protect lawyers from unfair or arbitrary disciplinary proceedings.<sup>19</sup> Disciplinary action against lawyers must be based solely upon a code of professional conduct which is consistent with recognized ethical and professional standards including the Basic Principles.
19. L4L has been informed that several lawyers in Azerbaijan have been disbarred, or are facing disbarment or other disciplinary actions on improper grounds. This is demonstrated by the following cases:

Aslan Ismayilov

*On 8 May 2013, following a decision of the BAA, Aslan Ismayilov, a prominent lawyer engaged in the pursuit of several cases of human rights violations in Azerbaijan, was disbarred. This decision is allegedly closely connected with critical remarks made by Ismayilov towards the authorities of Azerbaijan and with his legitimate professional activity in defence of human rights.*

Khalid Bagirov

*On 10 July 2015, the Nizami District Court decided to order the disbarment of lawyer Khalid Bagirov for alleged inappropriate conduct in court.*

*Khalid Bagirov's license to practise law was already suspended on 10 December 2014, one day after he agreed to represent journalist Khadija Ismayilova. The*

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with the district prosecutor's office hotline. A first deputy interior minister received Ismayilov on May 31 and apologized for the incident. However, in a media interview an Interior Ministry official denied the investigator used any violence against Ismayilov.

<sup>19</sup> This follows from article 16(c) of the Basic Principles in combination with articles 26, 27, 28 and 29 thereof.

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*Presidium of the Bar Association at that time also filed an application to court to exclude him from the Collegium of Advocates (BAA).*

*The submission was reportedly based on a complaint issued by the Sheki Court to the Bar Azerbaijan. Khalid Bagirov should have breached professional ethics when he questioned the fairness of a court decision in the case against one of his clients, opposition-leader Ilgar Mammadov. In 2013, Mammadov was sentenced to jail on charges of inciting a riot.*

*Khalid Bagirov has been involved in a number of key human rights cases concerning prisoners of conscience. His disbarment means that he is no longer entitled to represent his clients in criminal cases and that they are deprived from his legal defense<sup>20</sup>.*

*Alaif Hasanov*

*In July 2015, the Presidium of the Bar Association decided to disbar lawyer Alaif Hasanov. Alaif Hasanov stated that he was not invited to the discussion on this issue, and was not even informed that it was taking place. He learned about the Bar Association's decision through the organisation's website. Alaif Hasanov stated that the official reason for the disbarment was the court decision dated 6 November 2014, sentencing him to community service based on the lawsuit brought by Nuriyya Huseynov, the former cellmate of Leyla Yunus (see above).*

20. The cases of lawyers Intigam Aliyev and Alaif Hasanov show that lawyers are even subjected to criminal proceedings.

*Intigam Aliyev*

*On April 22, 2015, the Baku Grave Crimes Court sentenced Intigam Aliyev to seven and-a-half year imprisonment on trumped-up charges of "tax evasion", "abuse of authority", "illegal entrepreneurship", and "appropriation". Aliyev denies all the charges and says they are politically motivated.*

*Aliyev was arrested in August 2014 and sent to pre-trial detention. Intigam Aliyev's arrest and conviction appear to be related to his work. As a lawyer, he has submitted more than 200 applications to the European Court of Human Rights, 16 of which have resulted in rulings in favour of his clients. His arrest coincided with the European Court starting to address new complaints with Intigam Aliyev's assistance.<sup>21</sup>*

*Alaif Hasanov*

*In September 2014, Alaif Hasanov disseminated information about the threats against and beatings of his client Leyla Yunus in prison. Alaif Hasanov was the first one to speak about the condition and physical pressure against his client by her cell-mate, Nuriya Huseynova. Shortly thereafter, Hasanov has been subjected to a lawsuit by Yunus' cell-mate, who accused him of passing information to mass media. Hasanov believes that the authorities used Huseynova to deprive him of the opportunity to defend Leyla Yunus. On 6 November 2014, the court sentenced the*

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<sup>20</sup> <http://www.advocatenvooradvocaten.nl/10899/azerbaijan-disbarment-of-lawyer-for-breaching-professional-ethics-2/>

<sup>21</sup> <http://www.advocatenvooradvocaten.nl/10479/azerbaijan-intigam-aliyev-sentenced-to-75-years-of-jail/>

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lawyer to 240 hours of community service.<sup>22</sup>

**c. Identification of lawyers with their clients or their clients' causes as a result of discharging their functions**

21. The United Nations Basic Principles on the Role of Lawyers, state that "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions." In recent months, many human rights defenders were arrested on politically motivated charges. As set out above, lawyers dealing with these sensitive cases are subjected to harassment, criminal conviction, or disbarment on improper grounds, presumably, to prevent them from doing their work, depriving their clients from legal defense. Moreover, identification of lawyers with their clients may have a chilling effect as lawyers may be reluctant to defend persons in cases they would consider sensitive.

*Recommendations:*

22. **The Human Rights Committee should address as a matter of priority the lack of effective measures of the government of Azerbaijan to ensure that lawyers are able to carry out their professional functions without threats, harassment or improper interference with their defence of clients, immediately impacting the right to effective legal representation as enshrined in Article 14 of the ICCPR.**

23. **The Human Rights Committee should address as a matter of priority the lack of effective measures of the government of Azerbaijan to prevent that lawyers suffer or be threatened with prosecution, disciplinary action or other sanctions on improper grounds.**

**V Freedom of expression and assembly of Lawyers**

24. Lawyers, like any other individuals, have the right to freedom of expression. This right is guaranteed under article 19 of the International Covenant on Civil and Political Rights. The freedom of expression that lawyers enjoy in connection to their professional functions should not only be guaranteed in light of the rights of the lawyer, but also in protection of the rights of their clients. The lawyer should be enabled to effectively protect the rights and interests of his or her client.

25. As this Committee stated in General Comment No.34 on Article 19:  
"States Parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. [...] Journalists are frequently subjected to such threats, intimidation and attacks

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<sup>22</sup> <http://www.advocatenvooradvocaten.nl/10777/azerbaijan-lawyer-sentenced-to-community-service/>

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*because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including [...] lawyers".<sup>23</sup>*

26. The disbarment of Aslan Ismayilov (see above) is therefore in contradiction with his right to freedom of expression.

27. *Recommendation*

**The Human Rights Committee should address as a matter of priority the lack of effective protection to the right of freedom of expression of lawyers as set out in article 19 of the ICCPR, in particular their right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights, without suffering professional restrictions by reason of their lawful action.**

## **VI Bar Association of Azerbaijan**

28. As demonstrated by the above mentioned cases under paragraph 19, the BAA is not an independent institution capable of protecting the interests of the legal profession in Azerbaijan. Instead, as documented in a report of the International Bar Association's Human Rights Institute 'it seems to act as an arm of government, frequently subjecting members involved in politically motivated trials to biased disciplinary proceedings resulting in disbarment'.<sup>24</sup>

*Recommendation*

29. **The Human Rights Committee should address as a matter of priority the improper interference of the government of Azerbaijan with the Bar Association of Azerbaijan (BAA), also known as the Collegium of Advocates, preventing it from being an independent institution capable of protecting the interests of the legal profession in Azerbaijan.**

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<sup>23</sup> Human Rights Committee General comment No. 34 Article 19: Freedoms of opinion and expression, 102nd session Geneva, 11-29 July 2011, CCPR/C/GC/34, available on:

<http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

<sup>24</sup> International Bar Association's Human Rights Institute Report entitled: Azerbaijan: Freedom of Expression on Trial, May 2013, p 32-40. <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=e1192b49-6a7c-410d-a833-a17f5fd4bcbb>