



The Law Society
of England and Wales

Submission to the Committee Against Torture's Consideration of the Fifth Periodic Report of Azerbaijan at its 79th Session

The Law Society of England and Wales (the "Law Society") is the professional body representing more than 200,000 solicitors in England and Wales. Its concerns include upholding the independence of the legal profession, the rule of law and human rights throughout the world. The Law Society holds special consultative status with the Economic and Social Council of the United Nations since 2014.

Contact: Dr Debra Long, International Policy Manager on Rule of Law and Human Rights,
Law Society of England and Wales, Email: debra.long@lawsociety.org.uk

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Introduction

The Law Society of England and Wales (hereinafter 'the Law Society') welcomes the opportunity to submit written information to the Committee against Torture (hereinafter 'the Committee') for its consideration during its examination of the Fifth Periodic Report of Azerbaijan at its 79th Session.

This submission sets out the findings of research conducted by the Law Society as part of its Lawyers at Risk programme,¹ which supports legal professionals worldwide who are hindered in carrying out their profession because of the cases they work on or clients they represent. It also builds on a stakeholder report submitted by the Law Society for the Universal Periodic Review of Azerbaijan in November 2023.²

1. Shortage of Lawyers

The Fifth periodic report submitted by Azerbaijan states that, after the introduction of the Law on Lawyers in 2017, "there arose a need to increase the number of lawyers in the country given that they were small in number. Entrance exams were thus held on 28 January 2018, which resulted in an increase in the number of lawyers in the country since, from 900 to 1,500. ... It should be noted that the number of lawyers is expected to increase to 2,000 by the end of this year. For this reason, the Bar Association has not received complaints from citizens about a shortage of lawyers in the country" (para. 29).

However, Azerbaijan continues to suffer from a severe shortage of lawyers. According to a 2022 report of the Council of Europe European Commission for the Efficiency of Justice³, data from 2020 showed Azerbaijan had the lowest number of lawyers per capita in the Council of Europe area with 20.17 lawyers per 100,000 inhabitants, almost seven times lower than the median of 134.51 per 100,000 inhabitants.

In particular, there is a severe shortage of lawyers in the regions outside of the capital, Baku. The Azerbaijan Bar Association (ABA) reports on its website that the total number of Bar members is 2237, of which 1767 work in the capital and only 470 outside of Baku.⁴ Some lawyers are registered in regions but actually work in Baku.⁵ The Council of Europe Commissioner for Human Rights expressed particular concern for "the low number of practising lawyers in Azerbaijan, and the even smaller number available to represent defendants in the regions outside the capital, as most of the lawyers are concentrated in Baku, thus undermining access to justice".⁶

Reports indicate that the number of human rights lawyers willing and able to accept politically sensitive cases is small. One report estimates that "the number of political

¹ The Law Society of England and Wales, *International rule of law*,

<https://communities.lawsociety.org.uk/international/international-rule-of-law/lawyers-at-risk>.

² The Law Society of England and Wales, *We've submitted a Universal Periodic Review report on Azerbaijan to the UN Human Rights Council*, <https://www.lawsociety.org.uk/campaigns/international-rule-of-law/features/weve-submitted-a-universal-periodic-review-report-on-azerbaijan-to-un-human-rights-council>.

³ Council of Europe European Commission for the Efficiency of Justice, *European Judicial Systems CEPEJ Evaluation Report*, page 23, <https://rm.coe.int/cepej-fiche-pays-2020-22-e-web/1680a86276>.

⁴ Azerbaijani Bar Association, *About Us*, <https://barassociation.az/en/azecollegium>.

⁵ International Bar Association Human Rights Institute, *The Bar and lawyers in Azerbaijan*, page 6, <https://www.ibanet.org/document?id=IBAHRI-The-Bar-and-Lawyers-in-Azerbaijan-English>.

⁶ Commissioner for Human Rights of the Council of Europe, *Report Following Her Visit to Azerbaijan from 8 to 12 July 2019*, para. 63, <https://rm.coe.int/090000168098e108>.

prisoners is over 100, yet the number of lawyers wishing to defend their rights is no more than eight-to-ten".⁷ The U.S. Department of State attributed this to punitive measures by the ABA and other authorities, including "prosecution on charges widely considered as politically motivated, and disciplinary proceedings resulting in censure, suspension, and in some cases, disbarment".⁸ They further noted that: "The majority of the country's human rights defense lawyers were based in Baku, which made it difficult for persons living outside Baku to receive timely and quality legal services".⁹

Reports also indicate that there is a shortage of lawyers specialised in criminal law. Lawyers for Lawyers, in its stakeholder report for the Universal Periodic Review of Azerbaijan in November 2023 stated that: "This is a problem because Azerbaijani law gives a lot of authority to the investigators. This leads to a disproportion as the investigators can invoke their authority anytime whereas lawyers' possibilities for defence are limited."¹⁰

While there has been some increase in the number of lawyers since the submission of the LoIPR, the increase of membership of the ABA should be considered in the context of the monopoly imposed on the representation of individuals before the courts by the Law on Advocates and Advocate's Activity¹¹ (or Law on Lawyers) of 2017, confining court representation of individuals in all cases to members of the ABA.

Article 9 Part I of the Law on Advocates and Advocate's Activity states that: "Persons who are not members of the Bar Association may not deal with legal practice." Likewise, Article 4 Part I states that only a person who is admitted to the membership of the ABA is permitted to engage in legal practice.

Prior to this amendment, non-ABA members could represent clients in civil and administrative cases, while only ABA members could represent clients in criminal cases. Thus, the change to the Law prohibits non-ABA members from representing clients in any court, which has a serious negative impact on access to legal representation. At the end of 2017, there were about 8,000 practising lawyers who were not ABA members, while there were only 934 ABA members.¹² The amendment has a direct impact on the protection of human rights, given that amongst the lawyers particularly affected by this amendment are those litigating human rights cases before the national courts, who previously could represent clients in civil and administrative cases without being ABA members.

This amendment has severely restricted the ability of lawyers that work on human rights or sensitive cases (some of whom have not been admitted to the ABA or have been disbarred) to represent their clients and practise their profession. Principle 1 of the UN Basic Principles on the Role of Lawyers states that: "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings." Principle 2 states that: "Governments shall ensure that efficient

⁷ International Bar Association Human Rights Institute, *The Bar and lawyers in Azerbaijan*, page 28, <https://www.ibanet.org/document?id=IBAHRI-The-Bar-and-Lawyers-in-Azerbaijan-English>.

⁸ U.S. Department of State, *2022 Country Reports on Human Rights Practices: Azerbaijan*, page 11, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/azerbaijan/>.

⁹ *Ibid*, page 11.

¹⁰ Lawyers for Lawyers, *Stakeholder Report for the Universal Periodic Review of Azerbaijan*, page 7, https://www.upr-info.org/sites/default/files/country-document/2023-11/L4L_UPR44_AZE_E_Main.pdf.

¹¹ Azerbaijan Bar Association, *Law on Advocates and Advocate's Activity (1999)*, https://barassociation.az/uploads/attachments/law_of_the_republic_of_azerbaijan_on_lawyers_and_legal_practice.pdf.

¹² Eurasianet, Mike Runey, *Azerbaijan Moves to Drastically Cut Number of Lawyers*, Eurasianet, <https://eurasianet.org/azerbaijan-moves-to-drastically-cut-number-of-lawyers>.

procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction".¹³ Likewise, Principle IV 1. of Recommendation No. R (2000) 21 of the Council of Europe's Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer (hereinafter, 'Recommendation No. R (2000) 21') states that: "All necessary measures should be taken to ensure that all persons have effective access to legal services provided by independent lawyers".¹⁴

It is a matter of course that effective access to lawyers and legal services may not be fully achieved without a sufficient number of legal professionals. The dramatic drop in the number of practising lawyers following the amendment of the Law on Advocates and Advocate's Activity in 2017 has not yet been addressed, exacerbating the lack of access to legal representation, especially in the regions.

Recommendations:

- **The Law should be amended to allow non-ABA members to represent clients in civil and administrative cases once again.**
- **Further measures should be taken to increase the number of lawyers and ensure everyone has equal access to justice.**

2. Access to a Lawyer

In its LoIPR, the Committee requested information on measures adopted to guarantee, in practice, that all detained persons, including juveniles are afforded the right "to have confidential access to a qualified and independent lawyer, including one of the detainee's choice, or to free legal aid when needed" (para. 2(b)). The Committee also asked for "comment on the allegations that authorities have delayed access by detainees to an attorney in certain cases and whether these allegations have been investigated" (para. 2(b)).

In response, the Fifth periodic report submitted by Azerbaijan enumerates measures to secure the right of access to a lawyer, stating in particular that: "there were no complaints by prisoners of meetings with lawyers being delayed and no inquiries into delays of this kind were made" (para. 27).

Article 61 of the Constitution of the Republic of Azerbaijan¹⁵ states that everyone has the right to receive qualified legal assistance. It adds that, in specific cases envisaged by legislation, legal assistance shall be provided free of charge, at the expense of the state, and that every citizen has the right to receive assistance from a lawyer as from the moment of detention, arrest or accusation of a crime by competent state bodies.

However, there continue to exist several issues regarding the realisation of the right of access to a lawyer in practice, with some being outlined below:

¹³ Office of the United Nations High Commissioner for Human Rights, *Basic Principles on the Role of Lawyers*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>.

¹⁴ Council of Europe, Recommendation No. R(2000)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer, adopted on 25 October 2000, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804d0fc8.

¹⁵ The Constitution of the Republic of Azerbaijan, <https://president.az/en/pages/view/azerbaijan/constitution>.

- 1) Lawyers are often only able to receive a letter of permission from an investigator or judge, which is required to meet with their client, several days after the arrest, preventing lawyers from meeting with their clients from the moment of detention.¹⁶
- 2) In sensitive cases, police investigators and the prosecutor's office have refused to accept these letters of permission from lawyers, preventing lawyers from meeting with their clients from the moment of detention.¹⁷ Human Rights Watch reported that: "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."¹⁸
- 3) In a number of cases, the European Court of Human Rights (hereinafter 'ECtHR' or 'the Court') has found a violation of the right to legal assistance due to the formalistic nature of the representation by a State-funded lawyer.¹⁹
- 4) Members of opposition parties and civil society activists were consistently denied counsel of their choice for days and forced to accept State-funded lawyers.²⁰
- 5) In sensitive cases, State-funded lawyers sometimes cooperate with law enforcement authorities, including by readily signing any document proposed for signature by the investigator or prosecutor.²¹
- 6) There is often a delay in informing lawyers and their clients' families of the location where their clients are detained.²²
- 7) Prison authorities regularly monitored meetings between lawyers and clients and restricted some lawyers from taking documents into and out of detention facilities.²³

It is pertinent to note that reports that authorities have delayed access by detainees to a lawyer have continued.²⁴

Recommendations:

- **Ensure that persons deprived of their liberty have prompt access to a lawyer.**
- **Lawyers must not be obstructed from performing their duties and meeting with their clients.**
- **All persons deprived of their liberty must be able to have confidential access to a qualified and independent lawyer of their choice.**
- **Lawyer-client confidentiality must be respected.**
- **Lawyers must be informed promptly of the exact location of where their clients are being held.**

¹⁶ International Bar Association Human Rights Institute, *The Bar and lawyers in Azerbaijan*, page 24, <https://www.ibanet.org/document?id=IBAHRI-The-Bar-and-Lawyers-in-Azerbaijan-English>.

¹⁷ Ibid, page 25.

¹⁸ Human Rights Watch, *Azerbaijan: Relentless Crackdown on Opposition*, <https://www.hrw.org/news/2020/08/19/azerbaijan-relentless-crackdown-opposition>.

¹⁹ *Huseynli and Others v. Azerbaijan*, App. Nos. 67360/11, 67964/11 and 69379/11 (11 February 2016), para. 132. *Gafgaz Mammadov v. Azerbaijan*, App. No. 60259/11 (15 October 2015), para. 93.

²⁰ U.S. Department of State, *2022 Country Reports on Human Rights Practices: Azerbaijan*, page 11, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/azerbaijan/>.

²¹ International Bar Association Human Rights Institute, *The Bar and lawyers in Azerbaijan*, page 25, <https://www.ibanet.org/document?id=IBAHRI-The-Bar-and-Lawyers-in-Azerbaijan-English>.

²² Ibid, page 25.

²³ U.S. Department of State, *2022 Country Reports on Human Rights Practices: Azerbaijan*, page 6, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/azerbaijan/>.

²⁴ Ibid, page 5.

3. Sanctions against Lawyers

3.1 Criminal Sanctions Against Lawyers

While the Fifth periodic report submitted by Azerbaijan states that: “no executive or judicial authority may prosecute a lawyer through the courts, as no such legal mechanism exists”, the Law Society has received reports about the criminal prosecution of lawyers.

Lawyer Elchin Mammad was arrested by the Sumgayit City Police on 30 March 2020, a few days after he published a critical report on the human rights situation in Azerbaijan. On 15 October 2020, Mr Mammad was sentenced to four years in prison under the charges of “theft causing significant damage” and “illegal purchase and possession of firearm accessories”.²⁵

Lawyer Elchin Sadigov was arrested on 10 September 2022 following a court hearing where his client alleged high-level government corruption.²⁶ He has been charged with “complicity in bribe taking”. Mr Sadigov is currently under house arrest and could be sentenced to twelve years in prison.²⁷ On 6 July 2023, the ABA Presidium suspended Elchin Sadigov’s license and appealed to the court for his disbarment.²⁸ On 1 September 2023, the ABA Presidium cancelled the first decision to suspend his license and restored his right to practise, sending the matter back to the Disciplinary Commission to be reconsidered.²⁹

Recommendations:

- **Ensure that lawyers do not face criminal sanctions as a result of conducting their professional duties.**
- **Cease the prosecution and house of arrest of Elchin Sadigov.**

3.2 Disciplinary Proceedings

a) Grounds for Disciplinary Action

While the Fifth periodic report submitted by Azerbaijan states that “A lawyer may face disciplinary penalties if he or she breaks the law” and “The Bar and Advocacy Act contains no provisions under which a lawyer may be disbarred for political reasons” (para. 67), the grounds for the initiation of disciplinary proceedings may be interpreted and applied broadly, and, in practice, there has been a clear pattern of disciplinary cases, including disbarments, for political reasons.

²⁵ Lawyers for Lawyers, *Stakeholder Report for the Universal Periodic Review of Azerbaijan*, page 3, https://www.upr-info.org/sites/default/files/country-document/2023-11/L4L_UPR44_AZE_E_Main.pdf.

²⁶ U.S. Department of State, *2022 Country Reports on Human Rights Practices: Azerbaijan*, page 9, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/azerbaijan/>.

²⁷ Lawyers for Lawyers, *Stakeholder Report for the Universal Periodic Review of Azerbaijan*, page 3, https://www.upr-info.org/sites/default/files/country-document/2023-11/L4L_UPR44_AZE_E_Main.pdf.

²⁸ Azerbaijan Bar Association, *Bar Association Press Service*, <https://barassociation.az/news/1127>.

²⁹ TURAN, *Lawyer Activity of Elchin Sadigov Restored*, <https://turaz.az/en/social/lawyer-activity-of-elchin-sadigov-restored-768946>.

Article 22 Part I of the Law on Advocates and Advocate's Activity³⁰ (or Bar and Advocacy Act, as referred to in the LolPR) stipulates that lawyers shall be subjected to disciplinary proceedings in cases of breaching: a) the Law on Advocates and Advocate's Activity and other legal acts, b) the Code of Conduct for lawyers, and c) norms of lawyer ethics in the course of the exercise of their professional duties.

The Law on Advocates and Advocate's Activity imposes certain obligations on lawyers, including obligations regarding their ethical duties:

Article 16 Part I states that, during the exercise of their professional activity, lawyers shall be obliged to "refrain from spreading ... information which may cause damage to morality, public order in a democratic society or state security".

Article 18 states that, during the exercise of their professional activity, lawyers shall "perform his/her obligations without fault" and refrain from "rough, insulting actions and words" and from "humiliating the honour and dignity of the person".

The Charter on the Rules of Conduct of Lawyers³¹ (hereafter, the Code of Conduct), adopted by the ABA in 2017 and updated in 2020, introduces the following obligations:

Article 1(3) states that lawyers are guided by the Charter "in their professional activities and in their conduct outside their professional activities". It further states that: "Acting outside of the realm of professional functioning, a lawyer must do nothing to damage the reputation of the profession."

Article 2(4) (titled 'Loyalty') states that lawyers "shall not engage in any actions that may damage the reputation of the profession while performing their professional activities or in their conduct outside of their professional activities. It further states that lawyers should "refrain from critical public comments, speeches, and public assessment of other lawyers' activities (except for illegal activities)."

Article 2(5) (titled 'Public Trust') states that: "A lawyer has a duty to enhance and strengthen the reputation of the legal profession. A lawyer is obliged to eliminate the consequences of his violation of the rules of conduct, including to take measures to restore public trust. A lawyer should not distort the truth in his speeches and correspondence."

Article 2(7) (titled 'Respect towards the law, freedom and legal interests, dignity, honour and business reputation') states that: "Lawyers must abstain from any actions (or omissions) which may violate rights, freedoms and legal interests and damage the dignity, honour, and business reputation of individuals. A lawyer must behave in a respectful manner towards the business reputation of legal entities and avoid any action (or omission) which may damage their business reputation or violate their legal interests."

Article 2(8) (titled 'Ethical behaviour' or 'Cultural behaviour' depending on translation) states that: "A lawyer must be ethical, decent, considerate and patient

³⁰ Azerbaijan Bar Association, *Law on Advocates and Advocate's Activity (1999)*, https://barassociation.az/uploads/attachments/law_of_the_republic_of_azerbaijan_on_lawyers_and_legal_practice.pdf.

³¹ Azerbaijan Bar Association, *Vəkillərin Davranış Qaydaları haqqında Əsasnamə* (Charter on the Rules of Conduct of Lawyers), <https://barassociation.az/documents/27> or https://barassociation.az/uploads/attachments/the_lawyers%27_rules_of_conduct.pdf.

towards all persons he/she is dealing with both when performing his/her professional duties and in daily life.”

Article 2(11) (titled ‘Public and political activity’) states that the public or political activity of a lawyer, or his affiliation to a public or political association, should not raise doubts that he performs his duties impartially.

Article 2(13) (titled ‘Publicity’) prohibits lawyers from “actions and public statements made through media or social networks or in any public domain that may damage the reputation of the profession, as well as statements creating a false and misleading public perception on decisions undertaken by the Bar Association. Lawyers must avoid dissemination via social networks or media or any public domain of false and defamatory information about the state, non-state actors and their officials, and must abstain from using unethical language and acting in an inappropriate way against those actors.”

Article 2(14) requires lawyers to refrain from “activities incompatible with legal practice” without providing further guidance.

The list of grounds for the initiation of disciplinary proceedings, both as outlined in Article 22 Part I of the Law on Advocates and Advocate’s Activity and in the rest of the Law and the Code of Conduct, is too broad and vague to adequately regulate disciplinary action against lawyers. The grounds for the initiation of disciplinary proceedings may be interpreted and applied broadly, facilitating the arbitrary application of disciplinary proceedings, and undermining legal certainty for lawyers. The references to “other legal acts” and “norms of lawyer ethics” are not defined further within the Law, leaving lawyers without guidance as to what actions may lead to disciplinary liability.

In particular, the wording of the Law on Advocates and Advocate’s Activity and the Code of Conduct appear to introduce broad justification for interference with lawyers’ freedom of expression, regardless of whether a statement is made in court or outside of it, for the purposes of the defence of their client or to draw attention to violations of human rights. Disciplinary proceedings can be initiated concerning a lawyer’s statements that are unrelated to their work as a lawyer or their cases. Thus, while the Fifth periodic report submitted by Azerbaijan states that “A lawyer may face disciplinary penalties if he or she breaks the law” (para. 67), there are far broader grounds for the initiation of disciplinary proceedings.

In practice, there has been a clear pattern of disciplinary cases, including disbarments, against human rights lawyers. The UN Special Rapporteur on the situation of human rights defenders stated that, for lawyers, “disciplinary proceedings have been one of the main means of retaliation for their human rights or professional activities”.³² Moreover, the Commissioner for Human Rights of the Council of Europe noted that “most of the lawyers recently disbarred or who had their licenses suspended are those working on cases

³² Office of the United Nations High Commissioner for Human Rights, *End of mission statement by Special Rapporteur on the situation of human rights defenders*, <https://www.ohchr.org/en/statements/2016/09/end-mission-statement-special-rapporteur-situation-human-rights-defenders>.

considered to be politically sensitive, suggesting that disciplinary proceedings are used as a tool for punishing lawyers who take on sensitive cases”.³³

In addition, action has been taken against lawyers who speak out about the violations of their rights or those of their clients or who criticise the ABA or the state. The Commissioner for Human Rights of the Council of Europe noted with concern the numerous reports of “disciplinary proceedings being instituted against lawyers for matters such as: speaking out in public on the topic of the independence of the justice system; making remarks during court hearings about the judicial system; denouncing torture in prison or simply publicising information about torture and other ill-treatment, and more generally exposing human rights violations”.³⁴

Principle 16(c) of the UN Basic Principles on the Role of Lawyers states that governments shall ensure that “lawyers shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics”.³⁵ Meanwhile, Principle 23 of the UN Basic Principles states that: “Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights.”³⁶

In *Bagirov v Azerbaijan*,³⁷ the ECtHR found that Azerbaijan had violated the right to freedom of expression and right to private life of Mr Bagirov. While the domestic court concluded that “it is totally inadmissible to misuse that right [freedom of expression] with a view to casting a shadow over our State and statehood”, the Court concluded that this reason “in support of the applicant’s disbarment is irrelevant for the purposes of Article 10 of the Convention and could not be considered as a reason for restricting the freedom of expression in a democratic society demanding pluralism, tolerance and broadmindedness”.³⁸

In *Hajibeyli and Aliyev v Azerbaijan*,³⁹ the ECtHR reiterated that “the freedom of expression of lawyers is related to the independence of the legal profession, which is crucial for the effective functioning of the fair administration of justice”.⁴⁰ The ECtHR further drew attention to Recommendation No. R (2000) 21, which emphasises that lawyers enjoy the right to freedom of expression.⁴¹

³³ Commissioner for Human Rights of the Council of Europe, *Report Following Her Visit to Azerbaijan from 8 to 12 July 2019*, para. 65, <https://rm.coe.int/090000168098e108>.

³⁴ Commissioner for Human Rights of the Council of Europe, *Report Following Her Visit to Azerbaijan from 8 to 12 July 2019*, paras. 88, <https://rm.coe.int/090000168098e108>.

³⁵ Office of the United Nations High Commissioner for Human Rights, *Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990*, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>.

³⁶ *Ibid.*

³⁷ *Bagirov v Azerbaijan*, ECtHR, App Nos. 81024/12 and 28198/15 (25 June 2020), <https://hudoc.echr.coe.int/eng?i=001-203166>.

³⁸ *Ibid.*, para. 82.

³⁹ *Annaghi Hajibeyli and Intigam Aliyev v Azerbaijan*, ECtHR, App Nos. 6477/08 and 10414/08 (19 April 2018) <https://hudoc.echr.coe.int/fre?i=001-182173>.

⁴⁰ *Ibid.*, para. 60.

⁴¹ *Ibid.*, para. 60.

b) Disciplinary Sanctions

Article 22 Part VI of the Law on Advocates and Advocate's Activity lists the disciplinary sanctions that the ABA Presidium may impose, based on the opinion of the ABA Disciplinary Commission: a) remark, b) reprimand, and c) suspension for a period of three months to one year.

The ABA Presidium can also appeal to a court for disbarment. Articles 22 Part VIII and 23 Part II state that exclusion from the ABA can only take place after a court judgment, upon request of the ABA Presidium. The ABA Presidium may suspend a lawyer until the entry into force of the court decision. Disbarment of a lawyer from the ABA leads to the termination of their professional activities as a lawyer.⁴²

The Law does not include criteria for the imposition of each sanction, facilitating the imposition of disproportionate disciplinary measures. In particular, the threshold for the most serious penalty of disbarment is unclear, creating issues in practice where lawyers may be disbarred on tenuous grounds. The provision relating to disbarment stipulates that a lawyer can be excluded from the ABA "if there were grounds serving as a basis for exclusion" (Article 22 Part VIII) without providing any further details or guidance on such grounds.

Likewise, the Rules of the Disciplinary Commission of Lawyers⁴³, adopted by the ABA in 2022, do not provide detailed guidance as to the imposition of disciplinary actions. Article 7.20 states that: "When adopting an opinion, the Disciplinary Commission is guided by its own internal beliefs and legal thinking based on the study of the legislation and the materials of the disciplinary proceedings."

The disbarment of lawyers should be an exceptional measure, and on clearly specified grounds, since it prevents a lawyer from exercising their profession permanently, thereby severely affecting their private life and ability to financially support themselves and their families. It also prevents their clients from having access to a legal representative of their own choosing. The UN Special Rapporteur on the independence of judges and lawyers has stressed that "disbarment should only be imposed in the most serious cases of misconduct, as provided in the professional code of conduct, and only after a due process in front of an independent and impartial body granting all guarantees to the accused lawyer".⁴⁴

Principle 27 of the UN Basic Principles on the Role of Lawyers stipulates that charges or complaints made against lawyers in their professional capacity shall be processed

⁴² Article 23 Part I states that a lawyer can be disbarred "in case of exclusion from the membership of the Bar Association".

⁴³ Azerbaijan Bar Association, Azərbaycan Respublikası Vəkillər Kollegiyasının Vəkillərin İntizam Komissiyası haqqında ƏSASNAMƏ (Rules of the Disciplinary Commission of Lawyers), <https://barassociation.az/documents/1040>.

⁴⁴ Report of the UN Special Rapporteur on the independence of judges and lawyers, Mónica Pinto, on the independence of lawyers and the legal profession, 22 August 2016, A/71/348, para. 96.

expeditiously and fairly under appropriate procedures.⁴⁵ Likewise, Recommendation No. R (2000) 21 prohibits arbitrariness of disciplinary action.⁴⁶

In *Bagirov v Azerbaijan*⁴⁷, the ECtHR held that “the reasons given by the domestic courts in support of the applicant’s disbarment were not relevant and sufficient, and that the sanction imposed on the applicant was disproportionate to the legitimate aim pursued”.⁴⁸ The Court further noted that “in assessing the proportionality of the interference, the nature and severity of the penalties imposed are also factors to be taken into account ... and it has already found that the disbarment cannot but be regarded as a harsh sanction, capable of having a chilling effect on the performance by lawyers of their duties as defence counsel”.⁴⁹

The same findings were made in the cases of *Namazov v Azerbaijan*⁵⁰ and *Aslan Ismayilov v Azerbaijan*.⁵¹ In the latter case, the Court found that the domestic courts had failed “to provide adequate reasons for their decision [to disbar]”.⁵²

These three judgments rendered against Azerbaijan concerning the disbarment of lawyers from the ABA are known as the *Namazov* group of cases. Their implementation is being reviewed by the Committee of Ministers (COM) of the Council of Europe under an enhanced procedure (meaning that it considers these cases reveal important structural issues requiring enhanced supervision by the COM to monitor their implementation). In its decision of 16 September 2021, the COM called upon the Azerbaijani Government “to consider taking measures to ensure that domestic law provides for specific grounds, which could serve as a basis for exclusion from ABA” and to “put in place sufficient safeguards to prevent undue disciplinary action against lawyers in the exercise of their professional duties and that disciplinary proceedings are carried out in line with ... Recommendation Rec(2000)21 on the freedom of exercise of the profession of lawyer”.⁵³

Reports indicate that there are approximately 15 cases in the proceedings of the European Court of Human Rights relating to the disbarment or suspension of lawyers.⁵⁴ This indicates that, despite the recommendations of the COM, Azerbaijan has not implemented adequate measures “to ensure that no executive or judicial authority initiates criminal or other

⁴⁵ Office of the United Nations High Commissioner for Human Rights, Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>.

⁴⁶ Council of Europe, Recommendation No. R(2000)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer, adopted on 25 October 2000, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804d0fc8.

⁴⁷ *Bagirov v Azerbaijan*, ECtHR, App Nos. 81024/12 and 28198/15 (25 June 2020), <https://hudoc.echr.coe.int/eng?i=001-203166>.

⁴⁸ *Ibid*, para. 84.

⁴⁹ *Ibid*, para. 83.

⁵⁰ *Namazov v Azerbaijan*, ECtHR, App No. 74354/13 (30 January 2020), <https://hudoc.echr.coe.int/fre?i=001-200444>.

⁵¹ *Aslan Ismayilov v Azerbaijan*, ECtHR, App No. 18498/15 (12 March 2020), <https://hudoc.echr.coe.int/fre?i=001-201642>.

⁵² *Ibid*, para. 49.

⁵³ Council of Europe, *H46-4 Namazov group v. Azerbaijan (Application No. 74354/13) Supervision of the execution of the European Court’s judgments* (16 September 2021), https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a3bec4.

⁵⁴ International Bar Association Human Rights Institute, *The Bar and lawyers in Azerbaijan*, page 24, <https://www.ibanet.org/document?id=IBAHRI-The-Bar-and-Lawyers-in-Azerbaijan-English>.

sanctions against lawyers, or threatens to do so, for having taken any action in accordance with their recognised professional duties” (LoIPR, para. 4).

c) Conduct of Disciplinary Proceedings

The Fifth periodic report submitted by Azerbaijan states that: “Regardless of which body submits a complaint, the provisions of the Bar and Advocacy Act, the Code of Ethics for Lawyers and the statute of the Disciplinary Board must be respected” (para. 67). However, in practice, lawyers subject to disciplinary proceedings are denied procedural guarantees, depriving them of the possibility of effectively defending themselves.

I) **Notification to lawyers subjected to disciplinary proceedings**

Article 7.1 of the Rules of the Disciplinary Commission of Lawyers⁵⁵ (hereinafter ‘the Rules’) states that: “Disciplinary proceedings against lawyers are initiated based on the relevant decision of the Presidium of the Bar Association.” The ABA Presidium prepares a preliminary decision for the Disciplinary Commission requesting the initiation of proceedings. The affected lawyers are never informed about the ABA Presidium’s preliminary decision, rather only learn about the proceedings against them upon being summoned by the Disciplinary Commission.⁵⁶

Articles 5.1.2 and 6.1.1 recognise the right of lawyers “to be notified in advance about the time and place of the Disciplinary Commission meeting.” As the Rules do not provide for any specific procedures or means of notification to be used by the Disciplinary Commission, in some instances lawyers are not informed about the hearing in a timely and appropriate manner, which affects their ability to defend themselves properly, or even to attend the hearing. In some instances, lawyers were notified by receiving a phone call or a WhatsApp message from a representative of the Disciplinary Commission, and in cases where they could not answer the phone, if they were abroad, or for any other reasons, the hearings took place without them.⁵⁷

II) **Access to case materials**

Article 5.1.1 recognises the right of lawyers “to get acquainted with the application and other materials related to the disciplinary proceedings, to give explanations and motions, to present evidence (documents and others).” Similarly, Article 7.9 states that it is the duty of the Disciplinary Commission to make the lawyer acquainted with the agenda of the meeting of the Disciplinary Commission. However, the Rules do not clearly recognise the right of lawyers to make a request for a copy of the complaints or any other case materials used against them *before* the meeting of the Disciplinary Commission. In fact, the title of Article 5 refers to the rights and duties of the affected lawyer “at the meeting of the Disciplinary Commission”. The Rules do not provide for any specific procedures or means for the lawyers to access the case files and familiarise themselves with the material at all.

⁵⁵ Azerbaijan Bar Association, Azərbaycan Respublikası Vəkillər Kollegiyasının Vəkillərin İntizam Komissiyası haqqında ƏSASNAMƏ (Rules of the Disciplinary Commission of Lawyers), <https://barassociation.az/documents/1040>.

⁵⁶ EHRAC, Independent Lawyers Network and IPHR, *Rule 9(2) submission to the Committee of Ministers of the Council of Europe concerning the implementation of the Namazov group of cases v Azerbaijan* (Appl. No. 74354/13), page 7, <https://www.iphronline.org/wp-content/uploads/2022/10/Rule-9-submission-Namazov-Group-FINAL-201022.pdf>.

⁵⁷ *Ibid*, page 8.

In *Namazov v Azerbaijan*⁵⁸, the ECtHR noted that “the applicant enjoyed very few safeguards in those disciplinary proceedings”.⁵⁹ In particular, the Court highlighted that the Disciplinary Commission and ABA Presidium “refused to provide the applicant with a copy of those documents [the Nasimi District Court’s decision of 27 August 2011 and the extracts from the transcripts of the court hearings held on 9, 18 and 27 August 2011] despite the applicant’s explicit request in that regard”.⁶⁰

Article 5.1.4 recognises the right of lawyers “to receive a copy of the opinion of the Disciplinary Commission.” Article 7.18 sets out that the opinion of the Disciplinary Commission is to be drawn up in written form and the necessary information that is to be included, while Article 7.26 states that “the reasoned opinion is drawn up within 5 (five) working days after its acceptance. Taking into account the complexity or volume of the case, the opinion can be drawn up in no more than 10 (ten) working days.” Despite the fact that the Rules provide that a disciplinary opinion against a lawyer shall be filed in writing by the members of the Disciplinary Commission, in many cases a copy is not provided to lawyers subjected to disciplinary proceedings.⁶¹ In other cases, lawyers reported that the Disciplinary Commission had failed to “provide detailed and substantiated reasons for decisions rather than mere indication of the relevant articles of the code of ethics”.⁶²

In all the cases that have been before the ECtHR regarding the disbarment of lawyers, the applicants have raised the issue of access to documents relating to their case, including complaints, decisions, and minutes.⁶³ Lawyers excluded from the ABA or suspended from practise reported that the ABA rejected their requests for the “full texts of minutes and decisions of the Disciplinary Commission or the ABA Presidium on imposing sanctions against them”.⁶⁴

III) **No adversarial proceedings, right to defence (witnesses)**

Articles 5.1.1, 5.2.1 and 6.1.3 recognise the right of lawyers to give explanations and motions on the matter under consideration and “present evidence (documents and others).” However, in some cases, lawyers report that they were “unable to present their evidence to the Disciplinary Commission or the Commission did not take evidence presented into account.”⁶⁵

⁵⁸ *Namazov v Azerbaijan*, ECtHR, App No. 74354/13 (30 January 2020), <https://hudoc.echr.coe.int/fre?i=001-200444>.

⁵⁹ *Ibid*, para. 49.

⁶⁰ *Ibid*, para. 49.

⁶¹ EHRAC, Independent Lawyers Network and IPHR, Rule 9(2) submission to the Committee of Ministers of the Council of Europe concerning the implementation of the *Namazov* group of cases v Azerbaijan (Appl. No. 74354/13), page 8, <https://www.iphronline.org/wp-content/uploads/2022/10/Rule-9-submission-Namazov-Group-FINAL-201022.pdf>.

⁶² International Commission of Jurists, *ICJ Recommendations to the Azerbaijan Bar Association on the Role and Independence of Lawyers*, page 9, <https://www.icj.org/wp-content/uploads/2019/05/Azerbaijan-ICJ-Recommendations-Bar-Ass-Advocacy-Analysis-Brief-2019-ENG.pdf>.

⁶³ International Bar Association Human Rights Institute, *The Bar and lawyers in Azerbaijan*, page 10, <https://www.ibanet.org/document?id=IBAHRI-The-Bar-and-Lawyers-in-Azerbaijan-English>.

⁶⁴ *Ibid*, page 10.

⁶⁵ International Commission of Jurists, *ICJ Recommendations to the Azerbaijan Bar Association on the Role and Independence of Lawyers*, page 9, <https://www.icj.org/wp-content/uploads/2019/05/Azerbaijan-ICJ-Recommendations-Bar-Ass-Advocacy-Analysis-Brief-2019-ENG.pdf>.

The Rules do not explicitly envisage the right for an affected lawyer to invite experts or witnesses. Article 4.1.5. states that members of the Disciplinary Commission have the right to ask questions from persons invited to the hearing, request necessary documents and materials, and present their arguments and opinions. However, these rights are not mirrored in the rights of the affected lawyers outlined in Articles 5 and 6.

In *Namazov v Azerbaijan*⁶⁶, the ECtHR noted that: “The disciplinary commission also refused to hear evidence from other lawyers participating in the above-mentioned hearings before the Nasimi District Court [witnesses] in order to clarify the events leading to the disciplinary complaint against the applicant.”⁶⁷

IV) **Lack of independence of the Disciplinary Commission from the ABA Presidium**

Disciplinary proceedings are carried out by the Disciplinary Commission, a subsidiary body of the ABA that comprises of advocates only. Disciplinary proceedings are initiated only by the Presidium of the Bar Association. Although the Disciplinary Commission is formed and its Rules adopted by the General Meeting of the ABA (Article 10 Part I of the Law on Advocates and Advocate’s Activity), its power to conduct disciplinary investigations is heavily dependent on the ABA Presidium.

The Disciplinary Commission is only able to obtain information and documents from the courts, judiciary, prosecutor's office, police bodies, and other entities through the Presidium of the ABA.⁶⁸ Article 3.2.4 of the Rules states that the Disciplinary Commission can request an expert or expert opinion through the ABA Presidium. Article 7.2.7 dictates that the opinion of the Disciplinary Commission is to be submitted to the ABA Presidium for review. Finally, Article 9.1 states that the “organizational, financial and material-technical support of the activities of the Disciplinary Commission is carried out by the Presidium.” Thus, the Disciplinary Commission lacks sufficient independence to operate and conduct disciplinary proceedings as a separate body of the ABA.

The Disciplinary Commission has demonstrated its lack of independence in practice as well. In *Namazov v Azerbaijan*⁶⁹, 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.

It is pertinent to note that, in *Namazov v Azerbaijan*⁷⁰, the ECtHR held that the national courts had failed to eliminate all the above shortcomings in the disciplinary proceedings.⁷¹

These concerns regarding the conduct of disciplinary proceedings are echoed by the Commissioner for Human Rights of the Council of Europe, who reported on “consistent

⁶⁶ *Namazov v Azerbaijan*, ECtHR, App No. 74354/13 (30 January 2020), <https://hudoc.echr.coe.int/fre?i=001-200444>.

⁶⁷ *Ibid*, para. 49.

⁶⁸ EHRAC, Independent Lawyers Network and IPHR, Rule 9(2) submission to the Committee of Ministers of the Council of Europe concerning the implementation of the *Namazov* group of cases v Azerbaijan (Appl. No. 74354/13), page 9, <https://www.iphronline.org/wp-content/uploads/2022/10/Rule-9-submission-Namazov-Group-FINAL-201022.pdf>.

⁶⁹ *Namazov v Azerbaijan*, ECtHR, App No. 74354/13 (30 January 2020), <https://hudoc.echr.coe.int/fre?i=001-200444>.

⁷⁰ *Ibid*, para. 49.

⁷¹ *Ibid*, para. 50.

allegations, [...] of procedural shortcomings in such proceedings, as some lawyers were not served with the complaint at the origin of the disciplinary procedure against them, were not notified about the disciplinary hearing or did not receive a copy of the opinion of the Disciplinary Commission; evidences are collected by the Disciplinary Commission against the lawyers (à charge) only; and lawyers are not given access to relevant documents, in contradiction with the principle of equality of arms".⁷² The Commissioner called on the ABA to "strengthen the procedural safeguards to ensure that proceedings against lawyers are transparent and fair."⁷³

Principle 27 of the UN Basic Principles on the Role of Lawyers states that: "Charges or complaints made against lawyers in their professional capacity should be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice."⁷⁴

Likewise, Recommendation No. R (2000) 21 states that "disciplinary proceedings should be conducted with full respect of the principles and rules laid down in the European Convention on Human Rights, including the right of the lawyer concerned to participate in the proceedings and to apply for judicial review of the decision".⁷⁵

Recommendations:

- **Ensure that lawyers do not face disciplinary or other sanctions for exercising their freedom of expression and association.**
- **Ensure that lawyers do not face disciplinary or other sanctions for any action taken in accordance with recognized professional duties, standards, and ethics.**
- **The Law on Advocates and Advocate's Activity should be amended to include clear standards on the forms of behaviour that will lead to disciplinary measures.**
- **The Law on Advocates and Advocate's Activity should be amended to include standards clarifying the thresholds for different forms of disciplinary sanction.**
- **The Law on Advocates and Advocate's Activity should be amended to include sufficient procedural safeguards to ensure that lawyers, who are the subject of disciplinary proceedings are:**
 - **Entitled to have transparency in relation to the allegations against them and the evidence being considered in relation to those allegations;**
 - **Given sufficient notice of any hearings and provided with copies or all relevant documents to be considered when the allegations against them are being adjudicated; and,**
 - **Given sufficient time to prepare for hearings of the allegations made against them, so that they have an effective right of defence to the charges made against them.**

⁷² Commissioner for Human Rights of the Council of Europe, *Report Following Her Visit to Azerbaijan from 8 to 12 July 2019*, para. 85, <https://rm.coe.int/090000168098e108>.

⁷³ *Ibid*, para. 93.

⁷⁴ Office of the United Nations High Commissioner for Human Rights, *Basic Principles on the Role of Lawyers*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>.

⁷⁵ Council of Europe, Recommendation No. R (2000)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer, adopted on 25 October 2000, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804d0fc8.

4. Attacks on Lawyers

4.1 Attacks on lawyer Elchin Sadigov

On 3 August 2021, Elchin Sadigov was denied a meeting with another client, whose health had deteriorated while in detention. Personnel of the prison required the lawyer to provide a letter, which is not a legal requirement.⁷⁶

On 1 September 2021, lawyer Sadigov was beaten after a court hearing. He defended the father of deceased Elchin Aliyev, who was murdered by Rovshan Akbarov (regarded as a national hero). The latter's son attacked and injured the lawyer in Baku Military Court.

The day after, the lawyer lodged a complaint with the President, Prosecutor General, Ministry of Internal Affairs and ABA. State authorities argued that they could not summon the attacker because he was no longer in country. No effective actions were taken following the incident.

Lawyer Sadigov was also not permitted to meet his client in September 2021 while there were suspicions of his torture in detention. He could only meet with his client after the latter's release.

On 10 September 2022, officials from the Prosecutor's Office and State Security Service searched Mr. Sadigov's office and home, seizing documents and devices. He was charged with "aiding and abetting in large-scale bribery," which carries a penalty of up to 12 years imprisonment. Mr. Sadigov was in pre-trial detention for four months and has been under house arrest since September 2022.

4.2 Beating of lawyer Joshgun Isgandarov

District police officers beat lawyer Joshgun Isgandarov when he was defending his client in Shirvan Court of Appeal on 13 August 2021. The lawyer had requested a private meeting with his client. The police officers did not agree and ordered him to leave the courtroom. The lawyer objected, saying that he was a defence lawyer and had the right to meet in private with his client. Police officers then forcibly pulled him from the courtroom and beat him in the corridor.

The Ministry of Internal Affairs refuted the incident.⁷⁷ It alleged that the lawyer had not been robed, had provoked police officers, and participated in the court hearing of another person. This allegedly compelled police officers to escort him from the courtroom. The Prosecutor's Office declined to take further action against the police officers arguing that their actions did not constitute a criminal offense.⁷⁸

4.3 Beating of lawyer Orkhan Kangarli

Lawyer Orkhan Kangarli was beaten by police officers on 1 June 2019. He had gone to the police station to meet his client. He presented his advocacy certificate and warrant, but police officers insulted him and ordered him to leave. When he refused, police officers beat and detained him in a temporary cell along with his client.

⁷⁶ Azadlıq Radiosu, *Həbsdəki AXCP fəalının yanına vəkili buraxmadılar* (4 August 2021), <https://www.azadliq.org/a/zamin-salayev/31392845.html>.

⁷⁷ Meydan TV, *Polis tərəfindən döyüldüyünü deyən vəkil prokurorluğa şikayət edib* (17 August 2021), www.mtv.re/az/b/z10.

⁷⁸ Azadlıq Radiosu, *Polisin onu döyüldüyünü deyən vəkilə prokurorluqdan rədd* (23 September 2021), <https://www.azadliq.org/a/cosqun-i-%CC%87sgenderov-polis/31474829.html>.

The Ministry of Internal Affairs issued a statement saying that the lawyer was guilty of unlawful interference with the investigation process. He was charged with “petty hooliganism” and the case was referred to the district court.

The lawyer lodged a complaint with the Prosecutor’s Office. Two years passed since the incident, but the Prosecutor’s Office did not provide information concerning the investigation into the lawyer’s conduct.

Principle 16 of the UN Basic Principles on the Role of Lawyers states that: “Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference”.⁷⁹ Furthermore, Principle 17 states that: “Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities”.⁸⁰

Recommendations:

- **Ensure that all lawyers can practice their profession without undue interference in compliance with international standards on the independence of the legal profession.**
- **Carry out effective, independent investigations into the physical and verbal assaults of lawyers without undue delay, to bring the perpetrators to justice in proceedings that respect international fair trial guarantees, and to ensure effective redress.**

5. Surveillance of Lawyers

The available evidence strongly indicates that illegal surveillance of lawyers in Azerbaijan has occurred through the use of the Pegasus phone hacking product, created by the Israeli surveillance company, NSO Group.⁸¹ Reports indicate that at least six lawyers have been subjected to surveillance through the Pegasus software.⁸² This spyware product can be secretly installed onto mobile phones and other devices, often without the knowledge of the target and requiring no action from the user of the target device. Once installed, it gives full access to the target phone, and gives complete control over the device.⁸³

Recommendations:

- **Cease the misuse of the Pegasus software to conduct surveillance of lawyers and interfere with their professional duties and the principle of lawyer/client confidentiality.**

⁷⁹ Office of the United Nations High Commissioner for Human Rights, Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>.

⁸⁰ Ibid.

⁸¹ Access Now and EHRAC, *Access Now and EHRAC Joint Submission to the United Nations Human Rights Council on the Universal Periodic Review 44th Session Fourth Cycle for Azerbaijan*, page 2, https://www.upr-info.org/sites/default/files/country-document/2023-11/JS1_UPR44_AZE_E_Main.pdf.

⁸² Lawyers for Lawyers, *Stakeholder Report for the Universal Periodic Review of Azerbaijan*, page 4, https://www.upr-info.org/sites/default/files/country-document/2023-11/L4L_UPR44_AZE_E_Main.pdf.

⁸³ Access Now and EHRAC, *Access Now and EHRAC Joint Submission to the United Nations Human Rights Council on the Universal Periodic Review 44th Session Fourth Cycle for Azerbaijan*, page 2, https://www.upr-info.org/sites/default/files/country-document/2023-11/JS1_UPR44_AZE_E_Main.pdf.

6. Responses to the Persecution of Lawyers

In its LolPR, the Committee requested information on “the number of investigations carried out during the period under review regarding the reported harassment and unjustified prosecution of and disciplinary action against lawyers who have represented clients in politically sensitive cases” (para. 4). The Fifth periodic report submitted by Azerbaijan did not outline any responses taken by the executive or judicial authorities or the ABA in response to reported harassment and unjustified prosecution of and disciplinary action against lawyers.

Azerbaijan has failed to comply with ECtHR judgments relating to unjustified disciplinary action against lawyers, despite there being domestic legal grounds to enable this.

In *Bagirov v Azerbaijan*⁸⁴, the Court indicated under Article 46 that the following measures be taken by the Azerbaijani Government: “the adoption of measures aimed, among others, at restoring his professional activities. Those measures should be feasible, timely, adequate and sufficient to ensure the maximum possible reparation for the violation found by the Court, and they should put the applicant, as far as possible, in the position in which he had been before his disbarment”.⁸⁵ Similar findings were made in the cases of *Namazov v Azerbaijan*⁸⁶ and *Aslan Ismayilov v Azerbaijan*.⁸⁷

As mentioned above, the Committee of Ministers (COM) of the Council of Europe is reviewing the implementation of the *Namazov* group of cases under enhanced procedure. In September 2021, the COM adopted a decision on the reinstatement of these three lawyers.⁸⁸

The Plenum of the Supreme Court of Azerbaijan implemented the judgment related to Mr Aslan Ismayilov. He was reinstated based on the ECtHR judgment in his case on 8 April 2022, and was provided with his bar membership ID by the ABA Presidium.⁸⁹ The two other applicants, Mr Bagirov and Mr Namazov, remain disbarred and have not had their domestic proceedings reopened by the Supreme Court. Appeals to the ABA and other national institutions, whose responsibilities include, directly or indirectly, issues relating to the implementation of ECtHR decisions, have been unsuccessful.⁹⁰

⁸⁴ *Bagirov v Azerbaijan*, ECtHR, App Nos. 81024/12 and 28198/15 (25 June 2020), <https://hudoc.echr.coe.int/eng?i=001-203166>.

⁸⁵ *Ibid*, para. 110.

⁸⁶ *Namazov v Azerbaijan*, ECtHR, App No. 74354/13 (30 January 2020), <https://hudoc.echr.coe.int/fre?i=001-200444>.

⁸⁷ *Aslan Ismayilov v Azerbaijan*, ECtHR, App No. 18498/15 (12 March 2020), <https://hudoc.echr.coe.int/fre?i=001-201642>.

⁸⁸ Council of Europe, *H46-4 Namazov group v. Azerbaijan (Application No. 74354/13) Supervision of the execution of the European Court's judgments* (16 September 2021), https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a3bec4.

⁸⁹ Aslan Ismayilov's membership in the Bar Association was restored (media report), <https://www.e-huquq.az/az/news/vekillik/46868.html>.

⁹⁰ The Law Society of England and Wales, *We've submitted a Universal Periodic Review report on Azerbaijan to the UN Human Rights Council*, <https://www.lawsociety.org.uk/campaigns/international-rule-of-law/features/weve-submitted-a-universal-periodic-review-report-on-azerbaijan-to-un-human-rights-council>.

There is no justifiable basis for Mr Bagirov and Mr Namazov to not also be reinstated. Reinstatement seems arbitrary (in response to external political pressure or, for example, when a lawyer publicly praises the President of Azerbaijan).⁹¹

6.1 Domestic Legal Grounds for the Reinstatement of Disbarred Lawyers

a) Reconsideration of domestic court decisions by the Plenum of the Supreme Court

Article 431-1.2.2 of the Code of Civil Procedure⁹² (hereinafter 'CCP') of Azerbaijan provides that ECtHR judgments serve as a ground for reconsideration of cases by the Plenum of the Supreme Court as a 'new circumstance' related to a violation of rights and freedoms. According to Article 431-3.1 of the CCP, the Supreme Court shall consider a case within three months since the receipt of the judgment of the ECtHR. In the cases of Mr Bagirov and Mr Namazov, the three-month deadline has long passed, as both judgments became final in 2020. The applicants have not been informed if their cases have been referred to the Supreme Court and if any decisions have been made.⁹³

b) ABA's ability to reinstate disbarred lawyers upon consideration of ECtHR judgments

Article 432 of the CCP provides for "proceedings on the revision of legal acts in force on newly discovered circumstances". Article 432.2.4 sets out the grounds for the reconsideration of court acts based upon newly discovered facts, including the cancellation of resolution, verdict, ruling or decision of a court or decision of other body serving as a ground for adoption of the court act. If a resolution, verdict, ruling or decision of a court or a decision of other body serving as a ground for the adoption of the court's act is being cancelled, a petition on newly discovered facts concerning a valid court act should be forwarded to the Plenum of the Supreme Court for its consideration.⁹⁴

Article 67.1 of the Law on Administrative Proceedings,⁹⁵ which is applicable in disbarment proceedings, states that "an administrative act that has been adopted by an administrative body as a result of a violation or improper application of legal norms or material law norms on administrative proceedings is considered to be unlawful." Article 67.2 of the Law states that an unlawful administrative act may be repealed by the administrative body that has adopted it or by a higher administrative body in terms of subordination as well as in court. Article 67.3 of the Law further notes that "unlawful and unfavourable administrative acts must be repealed in any case. If the relevant laws of the Republic of Azerbaijan do not stipulate otherwise, the annulment of an unlawful administrative act eliminates the legal consequences arising from the moment of the entry into force of that act."

In the cases of Mr Bagirov and Mr Namazov, court decisions to disbar them were made based on decisions of the ABA to seek for their disbarment under the Law on Advocates and Advocate's Activity. Thus, the ABA Presidium is obliged by the domestic law above to revoke its decisions to disbar the applicants and seek for reconsideration of their domestic

⁹¹ Ibid.

⁹² Code of Civil Procedure of Azerbaijan, <https://e-qanun.az/framework/46945>.

⁹³ EHRAC, Independent Lawyers Network and IPHR, Rule 9(2) submission to the Committee of Ministers of the Council of Europe concerning the implementation of the Namazov group of cases v Azerbaijan (Appl. No. 74354/13), page 15, <https://www.iphronline.org/wp-content/uploads/2022/10/Rule-9-submission-Namazov-Group-FINAL-201022.pdf>.

⁹⁴ Ibid, pages 15-16.

⁹⁵ The Law on Administrative Proceedings, <https://www.e-qanun.az/framework/11254>.

cases by the Plenum of the Supreme Court. It is pertinent to note that the ABA has reconsidered its decisions in this way in the past.⁹⁶

ABA representatives have previously suggested that disbarred lawyers are invited to apply for a new membership and sit the admissions exams. However, this cannot be considered as *restitutio in integrum* in the cases of unjustly disbarred lawyers, particularly considering reports of disbarred lawyers applying to the Qualification Commission of the ABA and then being rejected.⁹⁷

As the rights of the applicants in the above cases have not yet been restored, there is no evidence that the government will take the necessary measures to ensure that such violations will not recur in future.

Recommendations:

- **The disciplinary sanction of disbarment should only be imposed in response to the most serious misconduct and after a due process in front of an independent and impartial body granting all guarantees to the accused lawyer.**
- **The Law on Advocates and Advocate’s Activity and provisions of the Code of Conduct set out above should be amended in line with international law and standards.**
- **Provisions, which, due to their vague or overly broad wording, may lead to arbitrary interpretations in violation of human rights, including freedom of expression, should be removed, amended, or clarified in line with international law and standards on the independence of lawyers.**

7. Governance of the Azerbaijan Bar Association

In its LoIPR, the Committee requested information on “measures taken to encourage the reform of the internal governance of the Bar Association, so that it can be relied on to protect lawyers from threats, and to respect the independence of the profession” (para. 5).

In response, the Fifth periodic report submitted by Azerbaijan states that: “The Bar association ensures that the interests of its members are protected in the course of their professional activities, where necessary. This is one of the Bar association’s obligations under its statute” (para. 68).

7.1 Azerbaijan Bar Association General Meeting

The ABA General Meeting that elects the Presidium, including the ABA President, and the members of the Disciplinary Commission, should be run with the direct participation of all members of the ABA, rather than through the Conference of Delegates; a representative system which is unregulated by law or other rules.

Article 10 Part I of the Law states that the General Meeting (Conference) of the members of the ABA has the exclusive authority to adopt and amend “the Charter of the Bar Association,

⁹⁶ EHRAC, Independent Lawyers Network and IPHR, Rule 9(2) submission to the Committee of Ministers of the Council of Europe concerning the implementation of the Namazov group of cases v Azerbaijan (Appl. No. 74354/13), page 16, <https://www.iphronline.org/wp-content/uploads/2022/10/Rule-9-submission-Namazov-Group-FINAL-201022.pdf>.

⁹⁷ Ibid, page 16.

Statute of the Qualification and Disciplinary Commissions and Rules of Conduct of Lawyers” and “to elect the chairman, vice-chairmen and other members of the Presidium of the Bar Association, [and] the chairman and members of the Disciplinary Commission”. It further states, however, that “if the number of members of the Bar Association exceeds five hundred, the powers of the general meeting of members of the Bar Association may be exercised by the Conference of Bar Association members.”

Article 10 Part IV states that: “The Conference of the members of the Bar Association shall be held on the basis of norms of representation and within the powers provided for in Part I of this Article. The procedure for convening and holding a Conference of the members of the Bar Association shall be defined by the Charter of the Bar Association.”

The Charter of the Bar Association⁹⁸ likewise states that, when the number of the members of the ABA exceeds 500, the power of the General Meeting of ABA members will be executed by the ABA Conference (Article 7(1)).

However, the Charter does not explicitly define any rules or procedures for the selection of delegated voters. In practice, delegated voters are selected by legal bureaus in the absence of any guidelines or procedures.⁹⁹

Thus, the ABA General Meeting does not involve the democratic participation of all ABA members, but a selected group of members, a Conference of Delegates. The absence of any rules, guidelines, or procedures for the selection of delegated voters leaves lawyers unable to effectively participate in the formation process of the Conference, as well as the subsequent decision making of the Conference.

7.2 Composition of the Qualification Commission

The composition of the Qualification Commission, which conducts the qualification examinations of candidates, should be reformed to ensure that most of its members are members of the legal profession.

Article 13 Part II of the Law requires that the Qualification Commission have eleven members, including five lawyers, three judges and three academics. Article 13 Part III states that the lawyer members of the Qualification Commission will be appointed by the ABA Presidium, the judge members will be appointed by the Presidium of the Supreme Court of the Republic of Azerbaijan, and the academic members will be appointed by the relevant body of executive power (in practice, the Ministry of Justice).

Thus, most of the members of the Qualification Commission are not appointed by the legal profession itself, but by the judicial and executive branches of the government. It is unclear how such candidates are appointed as there are no publicly available rules on the selection of members of the Commission.

The UN Special Rapporteur on the Independence of Judges and Lawyers recommended that entry to the legal profession should not be influenced by the judicial or executive

⁹⁸ Azerbaijan Bar Association, *Azərbaycan Respublikası Vəkillər Kollegiyasının Nizamnaməsi (Charter of the Bar Association of the Republic of Azerbaijan)*, <https://barassociation.az/documents/1250>.

⁹⁹ EHRAC, Independent Lawyers Network and IPHR, Rule 9(2) submission to the Committee of Ministers of the Council of Europe concerning the implementation of the Namazov group of cases v Azerbaijan (Appl. No. 74354/13), page 10, <https://www.iphronline.org/wp-content/uploads/2022/10/Rule-9-submission-Namazov-Group-FINAL-201022.pdf>.

branches of government including “[i]n those situations [where] State authorities may use their prerogatives to prevent certain individuals from entering the legal profession or to exclude the lawyers who they deem problematic (for example those who represented “political opponents” or worked for human-rights NGOs)”.¹⁰⁰

7.3 Functioning of the Disciplinary Commission

The functioning of the Disciplinary Commission should be reformed to secure its independence as a separate body of the ABA. This is due to the fact that, as demonstrated above, the power of the Disciplinary Commission to conduct disciplinary investigations is heavily dependent on the ABA Presidium.

Recommendation:

- **The Charter of the ABA should be amended to ensure that clear rules or procedures are established for the selection of delegated voters and that lawyers are able to effectively participate in the formation of the process of the Conference of Delegates, as well as the subsequent decision making of the Conference.**
- **The Law on Advocates and Advocates Activity should be amended to ensure that entry to the legal profession is independent from the state and is free from influence from the judicial or executive branches of government.**

8. Protection of Lawyers against Reprisals

In its LoIPR, the Committee requested information on “measures taken to protect lawyers against reprisals for having complained about their clients’ ill-treatment in detention” (para. 23(b)). The Fifth periodic report submitted by Azerbaijan failed to outline any such measures.

As mentioned above, the Commissioner for Human Rights of the Council of Europe noted with concern the numerous reports of “disciplinary proceedings being instituted against lawyers for matters such as: ... denouncing torture in prison or simply publicising information about torture and other ill-treatment, and more generally exposing human rights violations.”¹⁰¹

There have also been reports of a number of cases where lawyers have been disbarred or their licenses to practice suspended following their reporting about their clients’ ill-treatment in detention.¹⁰² In some of these cases, the Penitentiary Service of the Ministry of Justice filed complaints against the lawyers with the ABA for besmirching prison officials, damaging the reputation of law enforcement authorities or dissemination of false information.¹⁰³ In another case, the ABA stated that the dissemination of information on their client’s ill-treatment in custody creates a misapprehension among the public.¹⁰⁴

¹⁰⁰ Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc No A/73/365 (5 Sept. 2018), paras. 60-61.

¹⁰¹ Commissioner for Human Rights of the Council of Europe, *Report Following Her Visit to Azerbaijan from 8 to 12 July 2019*, para. 88, <https://rm.coe.int/090000168098e108>.

¹⁰² International Bar Association Human Rights Institute, *The Bar and lawyers in Azerbaijan*, pages 11-16, <https://www.ibanet.org/document?id=IBAHRI-The-Bar-and-Lawyers-in-Azerbaijan-English>.

¹⁰³ *Ibid*, pages 11-16.

¹⁰⁴ *Ibid*, page 15.

In most of these cases, the lawyers had made public statements with the intention of defending the rights of their clients, where appeals to the relevant public authorities had not remedied the situation. For example, in *Bagirov v Azerbaijan*¹⁰⁵, the ECtHR found violations of Articles 8 and 10, as Mr Bagirov was suspended for public criticism of police brutality.¹⁰⁶

It is pertinent to note that, in *Morice v France*¹⁰⁷, the ECtHR affirmed that the defence of a client may be pursued by means of an appearance on the television news or a statement in the press, and through such channels the lawyer may inform the public about shortcomings that are likely to undermine pre-trial proceedings.¹⁰⁸ The Court noted that even the lightest sanction, such as imposition of a fine, can have a chilling effect on other lawyers with regard to bringing dysfunctions within the administration of justice to the public's attention.¹⁰⁹

Recommendations:

- **Ensure that lawyers do not face reprisals as a result of carrying out their professional duties.**
- **Ensure that lawyers are free to exercise their freedom of expression in accordance with international law and standards.**
- **Provisions of the Law on Advocates and Advocate's Activity and provisions of the Code of Conduct which are vague or overly broad should be removed, amended, or clarified in line with international law and standards on the independence of lawyers to guarantee freedom of expression.**

9. Summary of Recommendations

Shortage of lawyers:

- The Law should be amended to allow non-ABA members to represent clients in civil and administrative cases once again.
- Further measures should be taken to increase the number of lawyers and ensure everyone has equal access to justice.

Access to lawyers:

- Ensure that persons deprived of their liberty have prompt access to a lawyer.
- Lawyers must not be obstructed from performing their duties and meeting with their clients.
- All persons deprived of their liberty must be able to have confidential access to a qualified and independent lawyer of their choice.
- Lawyer-client confidentiality must be respected.
- Lawyers must be informed promptly of the exact location of where their clients are being held.

¹⁰⁵ *Bagirov v Azerbaijan*, ECtHR, App Nos. 81024/12 and 28198/15 (25 June 2020), <https://hudoc.echr.coe.int/eng?i=001-203166>.

¹⁰⁶ Mr Bagirov was later disbarred for disrespectful remarks about a judge made in a courtroom while representing his client.

¹⁰⁷ *Morice v France*, ECtHR, App. No. 29369/10 (23 April 2015), <https://hudoc.echr.coe.int/fre?i=001-154265>.

¹⁰⁸ *Ibid*, para. 138.

¹⁰⁹ *Ibid*, para. 176.

Sanctions against Lawyers:

- Ensure that lawyers do not face criminal sanctions as a result of conducting their professional duties.
- Cease the prosecution and house of arrest of Elchin Sadigov.

Disciplinary Sanctions:

- Ensure that lawyers do not face disciplinary or other sanctions for exercising their freedom of expression and association.
- Ensure that Lawyers do face disciplinary or other sanctions for any action taken in accordance with recognized professional duties, standards, and ethics.
- The Law on Advocates and Advocate's Activity should be amended to include clear standards on the forms of behaviour that will lead to disciplinary measures.
- The Law on Advocates and Advocate's Activity should be amended to include standards clarifying the thresholds for different forms of disciplinary sanction.
- The Law on Advocates and Advocate's Activity should be amended to include sufficient procedural safeguards to ensure that lawyers, who are the subject of disciplinary proceedings are:
 - Entitled to have transparency in relation to the allegations against them and the evidence being considered in relation to those allegations;
 - Given sufficient notice of any hearings and provided with copies or all relevant documents to be considered when the allegations against them are being adjudicated; and,
 - Given sufficient time to prepare for hearings of the allegations made against them, so that they have an effective right of defence to the charges made against them.

Attacks on Lawyers:

- Ensure that all lawyers can practice their profession without undue interference in compliance with international standards on the independence of the legal profession.
- Carry out effective, independent investigations into the physical and verbal assaults of lawyers without undue delay, to bring the perpetrators to justice in proceedings that respect international fair trial guarantees, and to ensure effective redress.

Surveillance of Lawyers:

- Cease the misuse of the Pegasus software to conduct surveillance of lawyers and interfere with their professional duties and the principle of lawyer/client confidentiality.

Responses to the Persecution of Lawyers:

- The disciplinary sanction of disbarment should only be imposed in response to the most serious misconduct and after a due process in front of an independent and impartial body granting all guarantees to the accused lawyer.
- The Law on Advocates and Advocate's Activity and provisions of the Code of Conduct set out above should be amended in line with international law and standards.

- Provisions; which, due to their vague or overly broad wording, may lead to arbitrary interpretations in violation of human rights, including freedom of expression, should be removed, amended, or clarified in line with international law and standards on the independence of lawyers.

Governance of the Azerbaijan Bar Association:

- The Charter of the ABA should be amended to ensure that clear rules or procedures are established for the selection of delegated voters and that lawyers are able to effectively participate in the formation of the process of the Conference of Delegates, as well as the subsequent decision making of the Conference.
- The Law on Advocates and Advocate's Activity should be amended to ensure that entry to the legal profession is independent from the state and is free from influence from the judicial or executive branches of government.

Protection of Lawyers against Reprisals:

- Ensure that lawyers do not face reprisals as a result of carrying out their professional duties.
- Ensure that lawyers are free to exercise their freedom of expression in accordance with international law and standards.
- Provisions of the Law on Advocates and Advocate's Activity and provisions of the Code of Conduct which are vague or overly broad should be removed, amended, or clarified in line with international law and standards on the independence of lawyers to guarantee freedom of expression.