

Azerbaijan

Human Rights Committee Consideration of Azerbaijan

Submission on the List of Issues Prior to Reporting by the Lawyers for Lawyers Foundation

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I Introduction

Submitting Party

1. Lawyers for Lawyers ('**L4L**') is an independent, nongovernmental organization, supported by contributions from private individuals and organizations related to the legal profession. Established in 1986, L4L has special consultative status with ECOSOC since 2013.¹
2. L4L promotes and protects the independence of the legal profession through the support and empowerment of lawyers around the world who face reprisals, improper interferences, and undue restrictions, as a result of discharging their professional functions.² In doing so, we advocate for adherence to core values underpinning the legal profession, in conformity with internationally recognized human rights laws, norms and standards, including but not limited to the International Covenant on Civil and Political Rights ('**ICCPR**')³ and the Basic Principles on the Role of Lawyers ('**Basic Principles**').⁴

Concerning

3. In December 2014, Azerbaijan submitted its fourth periodic report on its implementation of the ICCPR.⁵ At its 133th session, the Human Rights Committee ('**the Committee**') will adopt a List of Issues prior to reporting on Azerbaijan ('**State party**'). L4L welcomes the opportunity to contribute to the List of Issues on the State party in preparation for its fifth periodic review by the Committee. Our submission will focus on the situation of lawyers in the State party, particularly the obstacles to the independent exercise of their profession and violations committed against them.

Methodology

4. L4L has been closely following the situation of lawyers in the State party. The information for this submission is collected through ongoing desk-research, interviews and engagement with and reports from lawyers from the State party and other local and international stakeholders.

II Substantive Part – Implementation of the ICCPR and related issues

Issues of concern

5. In this submission, L4L sets out its concerns with regard to the State party's failure to comply with Articles 9,14, and 19 (2) of the ICCPR. Based on first two provisions, the State party is required to uphold the right to equality before courts and tribunals as well as the right to a fair trial, which encompasses the obligation to guarantee effective access to legal services provided by an independent legal profession in accordance with the Basic Principles.⁶

¹ For more information visit our website: <https://lawyersforlawyers.org/en/about-us/>

² For more information visit our website: <https://lawyersforlawyers.org/over-ons/wat-doen-wij/>

³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ('**ICCPR**').

⁴ 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**').

⁵ Fourth Period Report Submitted by Azerbaijan under Article 40 of the Convention, 17 March 2011, CCPR/C/AZE/4.

⁶ Interference in the work of lawyers may lead to violations of the right to a fair trial under article 14 of the ICCPR, as has been recognized by the Committee. Human Rights Committee, General Comment No.32, CCPR/C/GC/32, paragraph 34. In particular, the Committee has stated that "*lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter.*" See also Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, in particular article 12.

6. Adherence to the UN Basic Principles on the Role of Lawyers is considered a fundamental precondition for the adequate protection of the human rights and fundamental freedoms to which all persons are entitled.⁷ In its task of promoting and ensuring the proper role of lawyers, the State party should respect and take into account the Basic Principles within the framework of its national legislation and practice.⁸
7. Consequently, it is the State party's duty under the ICCPR to respect and guarantee that all persons within its jurisdiction have effective and equal access to lawyers of their own choosing, and that lawyers are able to perform their professional functions without intimidation, hindrance, harassment or improper interference from any quarter, or be threatened with sanctions for any action taken in accordance with recognized professional duties, standards and ethics.⁹
8. The State party must also ensure that lawyers are adequately protected when their security is threatened because of carrying out their legitimate professional duties, and that they are not be identified with their clients or their clients' causes.¹⁰ In addition, the State party must recognize and respect that all communications and consultations between lawyers and their clients within their professional relationships are confidential.¹¹ The Basic Principles affirm that lawyers, like other citizens, are entitled to the right to freedom of expression and assembly.¹²
9. During the examination of the previous (fourth) periodic report of the State party at its 118th session (17 October – 4 November 2016), the Committee noted with concern that “many persons arrested and detained have never had the chance to see a lawyer”.¹³ The Committee also expressed concern about “the low number of lawyers (advocates) in the State party”.¹⁴ Furthermore, the Committee stated concern about “reports of physical attacks, politically motivated criminal charges and other adverse repercussions, such as disbarment, against lawyers who make critical statements about State policies and State officials and against lawyers representing victims of torture, human rights defenders, activists and journalists”.¹⁵
10. The Committee called on the State Party to “redouble its efforts to address effectively the shortage of lawyers in the country, including by ensuring that admission to the Bar can only be denied on the basis of objective criteria such as relevant knowledge and qualification”.¹⁶ The Committee also called on the State party to guarantee that “relevant legal provisions are strictly enforced with a view to guaranteeing access to a lawyer from the very outset of a person's deprivation of liberty”.¹⁷ Furthermore, the Committee stated that the State Party “should take immediate measures to ensure that sufficient safeguards are in place, both in law and in practice, to guarantee the full independence and safety of lawyers and their effective protection against any form of retaliation, including violence, in connection with their professional activity”¹⁸, and that it should “refrain from any actions that may constitute harassment, persecution or undue interference in the work of lawyers, including their suspension, disbarment

⁷ Basic Principles, preamble, paragraph 9.

⁸ Basic Principles, preamble, paragraph 11.

⁹ *Idem*, Principles 1,2 and 16.

¹⁰ *Idem*, Principles 17 and 18.

¹¹ Human Rights Committee, General Comment No.32, CCPR/C/GC/32, paragraph 34. In particular, the Committee has stated that lawyers should also be able to “*meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications.*” See also Principle 22 of the Basic Principles.

¹² Principle 23 of the Basic Principles.

¹³ Human Rights Committee, Concluding observations on the fourth periodic report of Azerbaijan adopted by the Committee at its 118th session (17 October - 4 November 2016), CCPR/C/AZE/CO/4, 12 November 2012, par. 24

¹⁴ *Ibid.*

¹⁵ *Ibid.*, par. 28.

¹⁶ *Ibid.*, par. 25.

¹⁷ *Ibid.*, par. 25(a).

¹⁸ *Ibid.*, par. 29.

or other disciplinary action, or criminal prosecution on improper grounds, such as the expression of critical views or the nature of the cases they are involved in”.¹⁹

11. According to our information, however, the State party fails to fully respect and ensure the guarantees for the proper functioning of lawyers under Articles 9 and 14 of the ICCPR.
12. This submission highlights the following issues that give rise to L4L’s concerns:
 - A. Harassment and criminal prosecution of lawyers
 - B. Disbarment and other disciplinary measures on improper grounds
 - C. Access to a lawyer
 - D. Violations of freedom of expression of lawyers
13. As a result, the professional rights and privileges of lawyers in the State party are violated systematically. This impairs their ability to provide effective legal representation and consequently severely undermines the proper functioning of the rule of law and the adequate protection of rights to which all persons are entitled, including the rights to effective remedy and fair trial. The work of lawyers is indispensable for the public confidence in the administration of justice and to ensure effective justice for all person.
14. In addition to the violations of their professional rights and privileges under article 14 of the ICCPR, these violations also encroach upon other rights that lawyers, like other citizens, are entitled to, including the rights to security of person (article 9), and freedom of expression (article 19).
15. Given the vital role of lawyers in the protection of the rule of law and the protection of rights, and the fact that lawyers in the State party are specifically targeted because of their work as lawyers, L4L would like to recommend the Committee to specifically address the position of lawyers, whenever appropriate, when reviewing the State party’s implementation of the ICCPR.

A. Harassment and criminal prosecution of lawyers

16. Lawyers for Lawyers has long been concerned about attempts to harass and disrupt the work of lawyers who work on cases that engage human rights or represent persons perceived to be critics of the Azerbaijani authorities and have been targeted solely because they are carrying out their professional activities.
17. In accordance with Principle 16(a) of the Basic Principles, governments must ensure that lawyers “are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference”.
18. The harassment of lawyers in Azerbaijan is illustrated by the following case:

Intigam Aliyev. On 29 December 2019, the Sumgayit City Court imposed a travel ban on Intigam Aliyev as a result of an application from the tax authorities, which alleged that Mr. Aliyev’s NGO, the Legal Education Society (LES), had failed to pay a tax debt from 2011-2014. Mr. Aliyev, who has faced judicial harassment and criminal prosecution from the authorities before – including a prison sentence, is a prominent human rights lawyer who has submitted a

¹⁹ Ibid, par. 29(a).

great number of applications to the European Court of Human Rights (ECtHR) in cases on the right to fair trial, free speech and election rigging.²⁰

19. Moreover, it has been reported that one lawyer was hindered in performing his professional functions by not being allowed to meet his client in detention. One lawyer was also banned by a district judge from participating in the trial of his client.²¹

20. Lawyers in Azerbaijan have also been subjected to criminal prosecution:

Elchin Mammad. 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. It was reported that: “on 31 March 2020, the Sumgait City Court remanded Mr. Elchin Mammad in custody for three months as a criminal suspect under Article 177.2.4 of the Criminal Code of Azerbaijan”.⁸ As a former human rights lawyer, Mr. Mammad is the President of the NGO Social Union of Legal Education of Sumgayit Youth (SULESY), as well as the Editor in Chief of the *Yukselish Namine* newspaper.²² 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”.²³ It has been reported that Mr. Mammad was transferred to the Main Medical Department of the Ministry of Justice on 12 June 2021, after allegedly not having received adequate medical care while in detention.²⁴

B. Disbarment and other disciplinary measures on improper grounds

21. Principle 16 (c) of the Basic Principles states 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”. Furthermore, according to Principle 27 of the Basic Principles, charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures.

22. L4L has received reports from lawyers concerning the fact that several lawyers were suspended or disbarred from practising law on improper grounds. These lawyers – in their role as legal representatives - raised concerns about human rights violations committed by public authorities against their clients or had exercised their freedom of expression by publicly speaking out in cases that can be seen as politically sensitive. This is an issue that has been ongoing for the last few years. Already in 2017, the UN Special Rapporteur on the Situation on Human Rights Defenders stated: *‘For those lawyers who are members of the [Azerbaijani] Bar Association, disciplinary proceedings have been one of the main means of retaliation for their human rights or professional activities. There are cases of several lawyers whose disbarment and sanctioning were unjustified and politically motivated’.*²⁵

²⁰ European Human Rights Advocacy Centre, *EHRAC urges Committee of Ministers to call for end to fresh travel ban imposed on Azerbaijani human rights lawyer Intigam Aliyev* (10 February 2020), <https://ehrac.org.uk/news/ehrac-urges-committee-of-ministers-to-call-for-end-to-fresh-travel-ban-imposed-on-azerbaijani-human-rights-lawyer-intigam-aliyev/>

²¹ The Legal Profession Observer, Independent Lawyers Network, *First Edition* (5 March 2021), https://www.lwoc.org/wp-content/uploads/2021/04/The-Legal-Profession-Observer-ILN-Azerbaijan-Jan_Feb_2021.pdf

²² Lawyers for Lawyers, *Arrest and continued detention of lawyer Elchin Mammad* (10 June 2020), <https://lawyersforlawyers.org/arrest-and-continued-detention-of-lawyer-elchin-mammad/>

²³ Lawyers for Lawyers, *Elchin Mammad sentenced* (16 October 2020), <https://lawyersforlawyers.org/elchin-mammad-sentenced/>

²⁴ Lawyers for Lawyers, *Statement on the Day of profession of lawyers of the Republic of Azerbaijan* (30 July 2021), <https://lawyersforlawyers.org/statement-on-the-day-of-profession-of-lawyers-of-the-republic-of-azerbaijan/>

²⁵ Report of the Special Rapporteur on the situation of human rights defenders on his mission to Azerbaijan, 2017, <http://undocs.org/A/HRC/34/52/Add.3>.

23. On 25 June 2020, the European Court of Human Rights ('**ECtHR**') issued its judgment in the case *Bagirov v. Azerbaijan*. The ECtHR stated that the State party had violated Khalid Bagirov's right to freedom of expression and his right to respect for private life. Mr. Bagirov was active as a lawyer in the State party but was disbarred in 2015 for the remarks he had made about a judge in the courtroom when representing his client in another case. The ECtHR noted that 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*".²⁶ Since 2018, the ECtHR has judged in four different cases that the State party has violated the rights of five lawyers. After the ECtHR judgements have become final, applicants in these cases have applied to the Azerbaijani Supreme Court several times but have received no reaction yet.²⁷
24. The following cases illustrate the issue of disbarment and other disciplinary measures on improper grounds:

Shahla Humatova

On 5 March 2021, the Baku Administrative court disbarred Ms. Humatova, after a request for her disbarment by the Azerbaijani Bar Association ('**ABA**'). The ABA already suspended Ms. Humatova's license on 27 November 2019 and sought her disbarment due to non-payment of ABA membership fees and allegedly submitting a false document as evidence to a court.²⁸ However, the public prosecutor found no proof for submission of such a false document and no criminal charges were pressed against Ms. Humatova. Also, Ms. Humatova had already paid off any outstanding membership fees by the ABA before the disbarment proceedings against her started. According to the information received by L4L, Ms. Humatova was reinstated as a member of the ABA after international pressure on 5 May 2021 and is since able to continue her professional activities as a lawyer.²⁹

Ms. Humatova has defended numerous high profile Azerbaijani political prisoners and was representing several defendants in the Ganja Case, where her clients' accounts of brutal torture, forced confessions and fabricated evidence have attracted widespread attention.³⁰

Elchin Sadigov

On 26 September 2020, the Presidium of the ABA reprimanded Mr. Sadigov and prohibited him from engaging in individual advocacy.³¹ Moreover, Mr. Sadigov was ordered to work as part of Law Office number 14 in Baku.³² It is believed that such an order, which seems to take the form of an informal decision by the ABA, constitutes an effort to bring independent lawyers under increased oversight. The disciplinary proceedings against Mr. Sadigov were launched on 15 January 2020. The proceedings were based on an alleged complaint of one of Mr. Sadigov's clients. Mr. Sadigov succeeded in repealing the deportation order of his client on 15 July 2019. On 8 January 2020, Mr. Sadigov achieved issuing an Azerbaijani residence permit for his client for one year.

²⁶ Bagirov v. Azerbaijan, no. 81024/12 and 28198/15, paragraph 84, ECHR, 25 June 2020; L4L, *Judgement of the EctHR in the case of Bagirov v. Azerbaijan* (29 June 2020), <https://lawyersforlawyers.org/judgement-of-the-ecthr-in-the-case-of-bagirov-v-azerbaijan/>.

²⁷ The Legal Profession Observer, Independent Lawyers Network, *First Edition* (5 March 2021), <https://www.lwco.org/wp-content/uploads/2021/04/The-Legal-Profession-Observer-ILN-Azerbaijan-Jan.-Feb.-2021.pdf>

²⁸ Lawyers for Lawyers, *Open letter on disciplinary measures against Shahla Humatova* (14 December 2019), <https://lawyersforlawyers.org/en/open-letter-on-disciplinary-measures-against-shahla-humatova/>.

²⁹ Lawyers for Lawyers, *Disbarment of Shahla Humatova and Irada Javadova overturned* (6 May 2021), <https://lawyersforlawyers.org/disbarment-of-shahla-humatova-and-irada-javadova-overturned/>

³⁰ *Ibid.*

³¹ Turan News Agency, *Elchin Sadigov banned from Engaging in Individual Advocacy* (26 September 2020), <https://www.turan.az/ext/news/2020/9/free/Social/en/127975.htm/001>

³² *Ibid.*

The client filed a complaint against him with the ABA for alleged falsification of lawyer documents. Elchen Sadigov is a human rights lawyer and has taken on many politically sensitive cases over the year, including the cases of political prisoners. Before the reprimand, Mr. Sadigov represented prisoner of conscience Tofiq Yagublu, a member of the Coordination Center of the Musavat Party and the National Council, and several opposition activists who were arrested in connection with the 14 July incident in Yasamal district of Baku where police used excessive force against residents.

Mr. Sadigov has been subjected to disciplinary measures in the past. On 14 November 2019, The First Deputy Prosecutor General of Azerbaijan, lodged a complaint against him with the ABA. The complaint was related to a Facebook post by Mr. Sadigov, in which he discussed the possible cause of the car crash that hospitalised Azerbaijani human rights defender Oktay Gulaliyev in October 2019. Earlier that year, in February 2019, Mr. Sadigov was formally reprimanded. It was also alleged that Mr. Sadigov encouraged his client, Yunus Safarov, to make false claims of torture against the Azerbaijani authorities.³³

Yalchin Imanov

On 22 February 2019, human rights lawyer Yalchin Imanov was indefinitely disbarred by the Ganja Administrative Economic Court. The ABA sought his disbarment from court in November 2017. On 8 August 2017, Mr. Imanov was informed by his client Abbas Huseynov that Mr. Huseynov had been tortured by prison officials. Mr. Imanov witnessed the injuries to Mr. Huseynov himself. Consequently, Mr. Imanov informed the local media about the torture allegations and filed a complaint with the relevant state institutions. One day later, the Penitentiary Service filed a complaint with the ABA, accusing Mr. Imanov of spreading false information and requesting Mr. Imanov's disbarment. Mr. Imanov worked on a number of high-profile and politically-sensitive cases, involving political prisoners and human rights defenders. In July, 2019, Mr. Imanov submitted a complaint to the ECtHR.³⁴

Irada Javadova

On 11 June 2018, the Presidium of the ABA announced the impending disbarment of Irada Javadova. Ms. Javadova appealed the decision of the Presidium of the ABA to disbar her. The Presidium of the ABA decided to disbar Ms. Javadova based on information provided by a person who sought her legal assistance. This person claimed that Ms. Javadova made a statement in the media about her case, without having a notarised power of attorney and without her consent. After having received a request from her clients' mother to enquire about the whereabouts of her daughter, Ms. Javadova raised concerns about the possible arbitrary detention of her client. Ms. Javadova raised concerns in an open letter. This resulted in disciplinary action against Ms. Javadova. L4L has been informed that Ms. Javadova was reinstated as a member of the ABA on 5 May 2021.³⁵

As a lawyer, Ms. Javadova was involved in many high-profile cases of human rights defenders and political activists. From 2012 to 2017, Ms. Javadova served as a member of the ABA

³³ Lawyers for Lawyers, *UPR mid-term report* (24 November 2020), <https://lawyersforlawyers.org/upr-mid-term-report/>.

³⁴ Human Rights Watch, *Lawyer disbarred in Azerbaijan after filing torture complaint* (27 November 2017), <https://www.hrw.org/news/2017/11/27/lawyer-disbarred-azerbaijan-after-filing-torture-complaint>; European Human Rights Advocacy Centre, *Azerbaijani human rights lawyers who have been disbarred, suspended or criminally prosecuted* (July 2019), <http://ehrac.org.uk/wp-content/uploads/2019/07/List-of-disbarred-lawyers-in-Azerbaijan.pdf>; L4L, *UPR mid-term report* (24 November 2020), <https://lawyersforlawyers.org/upr-mid-term-report/>.

³⁵ Lawyers for Lawyers, *Open letter on disciplinary measures against Shahla Humatova* (14 December 2019), <https://lawyersforlawyers.org/en/open-letter-on-disciplinary-measures-against-shahla-humatova/>.

Presidium. In 2017, Ms. Javadova was the only member of the ABA Presidium to vote against the disbarment of human rights lawyer Yalchin Imanov.³⁶

25. As stated by the ECtHR, the disbarment of lawyers is a harsh sanction and, when improperly used, has a chilling effect on the legal profession as a whole. Therefore, the disbarment of lawyers should be an exceptional measure, only applied in very serious circumstances and through an independent and impartial disciplinary committee. Principles 24 and 25 of the Basic Principles state respectively that lawyers have a right to organise themselves in an independent association, and that these professional organisations shall ensure that “lawyers are able, without improper interference, to counsel and assist their clients”.
26. Despite the two reinstatements of Ms. Humbatova and Ms. Javadova, the ABA does not seem to uphold these standards and the continuing disciplinary actions brought by the ABA against its own members are a worrying trend. In the State party, lawyers who are critical of the ABA itself or of the Azerbaijani government are targeted by disciplinary procedures by the very professional representative body that is supposed to support them and their professional functions. This affects lawyers by prohibiting them from exercising their profession and thereby financially supporting themselves and their families, and also prevents their clients from having access to a legal representatives of their choosing.

C. Access to a lawyer

i. Low number of lawyers in the State party

27. The right of access to a lawyer has been enshrined in international human rights instruments. The Preamble of the Basic Principles for example states that lawyers have a vital role to play in providing legal services to all-in need of them. Moreover, Principle 1 of the Basic Principles lays down that everyone has the right to call upon the assistance of an independent lawyer of their own choice.
28. On 31 October 2017, the Azerbaijan Parliament adopted amendments to the Civil and Administrative Codes of Azerbaijan and the law “on lawyers and lawyers’ activity” that restrict representation in court to lawyers who are members of the Bar Association. The amendments were signed into law on 7 November and entered into force on 1 January 2018.
29. Until this reform, non-members of the ABA could carry out representation before the courts in civil and administrative cases. However, only ABA members (‘advocates’) could represent individuals in criminal cases. The new provisions, exclude a large number of lawyers who are not members of the ABA from representing clients in courts with an exception allowed for those representing close relatives such as parents, siblings and children, grandparents and grandchildren. This legislative reform has made a significant negative impact on the access to legal representation for current and future litigants.
30. Before 2018, the ABA did not organise regular qualifications examinations. The ABA held more frequent qualification examinations in 2018 and 2019, which saw membership of the ABA increase by one third.³⁷ In July 2019, however, the Commissioner for Human Rights of the

³⁶ ICJ, *Azerbaijan: Lawyer Irada Javadova disbarment decided in unfair proceedings* (18 June 2018)

<https://www.icj.org/azerbaijan-lawyer-irada-javadova-disbarment-decided-in-unfair-proceedings/>; L4L, *Disbarment of Shahla Humbatova and Irada Javadova overturned* (6 May 2021), <https://lawyersforlawyers.org/disbarment-of-shahla-humbatova-and-irada-javadova-overturned/>; L4L, *UPR mid-term report* (24 November 2020), <https://lawyersforlawyers.org/upr-mid-term-report/>.

³⁷ International Commission of Jurists, *ICJ recommendations to the Azerbaijan Bar Association on the Role and Independence of Lawyers* (8 May 2019), <https://www.icj.org/wp-content/uploads/2019/05/Azerbaijan-ICJ-Recommendations-Bar-Ass-Avocacy-Analysis-Brief-2019-ENG.pdf>, p. 2.

Council of Europe stated that Azerbaijan had the lowest number of lawyers per 100,000 inhabitants in the Council of Europe area.³⁸

31. More recently, the ABA reported that from 2018 to 2020, the number of lawyers increased from 913 to 1.844.³⁹ While the more frequent qualification examinations are a welcome development, it should be noted that Azerbaijan is still falling behind among European countries with regards to the number of lawyers for every 100,000 inhabitants.⁴⁰

ii. Restrictions on access to the legal profession

32. In accordance with Basic Principle 24 governments, professional associations of lawyers and educational institutions must ensure “that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status”. In relation to this, the Council of Europe’s Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer has noted that “all necessary measures should be taken to respect, protect and promote the freedom of exercise of the profession of lawyer without discrimination and without improper interference from the authorities or the public”.⁴¹ Their recommendation also notes that decisions about the authorisation to practice as a lawyer or to accede to this profession should be taken by an independent body. The UN Special Rapporteur on the Independence of Judges and Lawyers recommended that the entry to the legal profession should not be under the influence of the judicial or executive branches of governments.⁴²
33. The law on “lawyers and lawyers’ activity” requires that all individuals wishing to qualify as a lawyer with the ABA, should go through an examination procedure. This examination procedure consists of two stages, namely a written stage and an oral stage. The first stage of the procedure, which is the written stage, is automatised and conducted by the State Examination of the Centre of the Republic of Azerbaijan.⁴³ The second and oral stage of the programme is conducted by members of the Lawyers Qualification Commission.⁴⁴ According to our information, there are no objective criteria in place for this stage of the examination. The Lawyers Qualification Commission consists of 11 members from the ABA (5), judges (3) and academics (3). Only the five members who are representing the ABA (advocates) are appointed by the Presidium of the ABA. The judges are appointed by the Plenum of the Supreme Court and the academics are appointed by the Ministry of Justice. This demonstrates that the majority of the members of the Lawyers Qualification Commission are appointed by the judicial and executive branches of the government and not by the legal profession itself.

³⁸ Council of Europe, *Azerbaijan needs more freedom of speech, more lawyers and more jobs for refugees* (12 July 2019), <https://www.coe.int/en/web/portal/-/azerbaijan-needs-more-freedom-of-speech-more-lawyers-and-more-jobs-for-refugees>

³⁹ Azerbaijani Bar Association, *Azerbaijani Bar Association within the last three years – a brief summary* (13 January 2021), <https://barassociation.az/news/643>

⁴⁰ Turan News Agency reports that “in Azerbaijan there are 18.4 lawyers per 100 thousand inhabitants, which is 8.8 times less than the European average (162 lawyers per 100 thousand people)”. Turan News Agency, “Numbers of lawyers grows, but they are still in short supply (19 January 2021), <https://www.turan.az/ext/news/2021/1/free/Social/en/492.htm>

⁴¹ Recommendation No. R (2000) 21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer, Council of Europe, Adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers’ Deputies, Principle I.1.

⁴² Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc No A/73/365 (5 Sept. 2018), paras. 60-61.

⁴³ Azerbaijani Bar Association, http://barassociation.az/uploads/attachments/vekillerin_davranish_qaydalari_haqqinda_asasname_2245c0c648bbfbdacc5ff171bd0a691.pdf

⁴⁴ Azerbaijani Bar Association, VƏKİLLƏRİN DAVRANIŞ QAYDALARI HAQQINDA ƏSASNAMƏ, <https://barassociation.az/en/specialization>

34. Lawyers from the State party have stated that the abovementioned examination procedure allows for arbitrary decisions to be taken when examining candidates. It was reported that some lawyers face bias from the examiners and “the oral part of the examination can be used as a barrier to prevent highly qualified and independent lawyers especially those working on human rights issues from joining the Bar Association”.⁴⁵ We were, for example, informed that lawyers from the “Group of Practising Lawyers”, who are not ABA members and work on cases that engage human rights, passed the written stage of the examination procedure, but failed the oral stage of the examination procedure between March and June 2018.⁴⁶ It should be noted that the great majority of all other lawyers who sat the examination at that time passed the examination. It was brought to our attention that the “Group of Practising Lawyers” did not pass the oral stage of the examination procedure because of their critical views of the ABA and their human rights related work.
35. In connection with independent lawyers who are working on human rights cases being refused admission to the ABA, the Council of Europe Commissioner for Human Rights noted that she believes that “the role played lately by the Bar Association in the non-admission to the Bar of certain categories of persons as well as in the context of disciplinary proceedings points to a deficit of institutional independence”.⁴⁷

D. Violations of freedom of expression of lawyers

36. Lawyers, like any other individual, have the right to freedom of expression. In particular they 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.⁴⁸ This right is guaranteed under Article 19 of the ICCPR. 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 lawyers, but also in protection of the rights of their clients. The lawyer should be enabled by the State party to effectively protect the rights and interests of their client.
37. The cases of lawyers who have faced or are facing disbarment or other disciplinary measures on improper grounds show that freedom of expression and opinion remains under pressure in the State party. Some lawyers from the State Party have been subjected to disciplinary measures after having exercised their right to freedom of expression by sharing their concerns on, for example, social media or via interviews.
38. Moreover, it was brought to the attention of L4L that the ABA actively monitors social media activity of its members for any type of criticism expressed against the ABA or the Azerbaijani Government. It has also been reported that “some candidates had been asked to refrain from online critical statements towards the Bar Association or law enforcement institutions as a condition for their membership”.⁴⁹

⁴⁵ International Commission of Jurists, *ICJ Recommendations to the Azerbaijan Bar Association on the Role and Independence of Lawyers* (8 May 2019), <https://www.ici.org/wp-content/uploads/2019/05/Azerbaijan-ICJ-Recommendations-Bar-Ass-Advocacy-Analysis-Brief-2019-ENG.pdf>, p. 4.

⁴⁶ OC Media, *Left without a defence: Azerbaijan’s purge of human rights lawyers* (30 August 2018) <https://oc-media.org/left-without-a-defence-azerbajians-purge-of-human-rights-lawyers>

⁴⁷ Council of Europe, *Commissioner for Human Rights of the Council of Europe Dunja Mijatović, Report following her visit to Azerbaijan from 8 to 12 July 2019* (11 December 2019) <https://rm.coe.int/report-on-the-visit-to-azerbaijan-from-8-to-12-july-2019-by-dunja-mijal/168098e108>, para. 55.

⁴⁸ Principle 23 of the UN Basic Principles on the Role of Lawyers.

⁴⁹ International Commission of Jurists, *ICJ Recommendations to the Azerbaijan Bar Association on the Role and Independence of Lawyers* (8 May 2019) <https://www.ici.org/wp-content/uploads/2019/05/Azerbaijan-ICJ-Recommendations-Bar-Ass-Advocacy-Analysis-Brief-2019-ENG.pdf>, p. 5.

VIII. Conclusion and recommended questions

39. According to our information, the State party fails to fully respect and ensure the guarantees for the proper functioning of lawyers under Article 14 of the ICCPR. As a result, the lawyers' professional rights and privileges are violated. These violations impair the ability of lawyers to

provide effective legal representation and makes them increasingly wary of working on sensitive cases. It also severely undermines the proper functioning of the rule of law and the adequate protection of rights to which all persons are entitled, such as the right to effective remedy and fair trial. The work of lawyers is indispensable for the public confidence in the administration of justice and to ensure effective justice for all persons in the State party.

40. In addition to the violations of their professional rights and privileges under article 14 of the ICCPR, these violations also encroach on other rights that lawyers, like any other citizens, are entitled to, including the rights to security of person (article 9), and freedom of expression (article 19). Given the vital role of lawyers in the protection of the rule of law, the protection of rights, and the fact that lawyers in the State party are specifically targeted because of their work as a lawyer, L4L recommends the Committee to specifically address the position of lawyers, whenever appropriate, when reviewing the State party's implementation of the ICCPR.

Recommended Questions to State Party

Please provide information on what measures the State party has taken to ensure that lawyers are able to carry out their professional functions safely and independently without fear of threat, intimidation, hindrance, harassment, improper interference, reprisals, or criminal prosecution.

Please respond to the reports of the improper interference and disciplinary measures on improper grounds in relation to lawyers who have exercised their right to freedom of expression.

Please provide information on what measures the State party will take to ensure that the number of lawyers in the State party will increase to ensure that everyone has effective and equal access to a lawyer.

Please respond to reports of non-admission to the Azerbaijani Bar Association for certain categories of lawyers, including lawyers who work on cases that engage human rights or have a critical view of the Azerbaijani Bar Association.

Please provide information on what measures the State Party has taken to ensure that admission to the Azerbaijani Bar Association can only be denied on the basis of objective criteria such as relevant knowledge and qualification.