

## **A. Introduction**

1. Lawyers for Lawyers (“**L4L**”) submits this report on the state of human rights in Azerbaijan, particularly in respect of the legal profession, with recommendations for the 44<sup>th</sup> session of the Universal Periodic Review (UPR) Working Group in the UN Human Rights Council in November 2023.
2. L4L is an independent and non-political foundation based in the Netherlands, which was established in 1986 and is funded by lawyers’ donations. L4L promotes the proper functioning of the rule of law through the free and independent exercise of the legal profession around the world. L4L has had special consultative status with ECOSOC since 2013.

## **B. Executive Summary**

3. This submission highlights key concerns regarding Azerbaijan’s compliance with its international human rights obligations to guarantee the right to independent counsel as set out in the UN Basic Principles on the Role of Lawyers<sup>i</sup> (“**Basic Principles**”) and other international rights instruments, focusing on the following issues:
  - 1) Harassment of Lawyers (section D)
  - 2) Disbarment and other disciplinary measures on improper grounds (section E)
  - 3) Access to a lawyer (section F)

## **C. Normative and Institutional Framework of the State**

4. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers, along with judges and prosecutors, are free to carry out their professional duties independently of the government and political pressure. This follows, inter alia, from the Charter of the United Nations, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights (“**ICCPR**”).
5. On 22 June 2017, the Human Rights Council (“**HRC**”) passed a resolution condemning in general “the increasingly frequent attacks on the independence of [lawyers], in particular threats, intimidation and interference in the discharge of their professional functions”. The HRC expressed its deep concern “about the significant number of attacks against lawyers and instances of arbitrary or unlawful interference with or restrictions to the free practice of their profession” and called upon States “to ensure that any attacks or interference of any sort against lawyers are promptly, thoroughly and impartially investigated and that perpetrators are held accountable.”<sup>ii</sup>

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6. In its task of promoting and ensuring the proper role of lawyers, the Government of Azerbaijan should respect the Basic Principles within the framework of its national legislation and practice. The Basic Principles provide a concise description of international standards relating to key aspects of the right to independent counsel. Adherence to the Basic Principles is considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to independent legal assistance.<sup>iii</sup>
7. During the third UPR cycle in 2018, Azerbaijan received and accepted four recommendations relating to lawyers, namely respecting the rights of lawyers (140.70), establishing independent and transparent mechanisms for disciplinary proceedings against lawyers (141.13), ensuring that all defendants have access to appropriate legal representation (141.68) and ensuring the independence, impartiality and transparency of the judicial system (140.73).<sup>iv</sup>
8. L4L and the Law Society of England and Wales, the authors of the mid-term report for the assessment of the implementation of the recommendations made during the UPR of 2018, found that the acceptance from Azerbaijan of the four recommendations relating to lawyers indicated some positive changes. However, they also found that the four recommendations had not been fully implemented at the time of submission of their report in November 2020.<sup>v</sup> Azerbaijan submitted a mid-term report for the assessment on the implementation of recommendations made during the UPR cycle in 2018, but did not include anything relating to lawyers in its report. In its mid-term report, Azerbaijan does mention its commitment to reforms to ensure human rights and the development of justice.
9. However, more recent reports gathered by L4L, including information from lawyers in Azerbaijan, demonstrate that Azerbaijan does not uphold the necessary guarantees for the proper functioning of the legal profession as set out in the Basic Principles. Consequently, lawyers encounter serious difficulties in carrying out their professional duties independently. This undermines the proper functioning of the judicial system, including the right to fair trial and effective access to justice.

### **D. Harassment of lawyers**

10. L4L has long been concerned about attempts to harass and disrupt the work of Azerbaijani lawyers working on human rights cases or representing people perceived to be critics of the Azerbaijani authorities.
11. 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.”
12. Since the mid-term report in 2020, new cases of harassment have come to L4L’s attention. This is illustrated by the following case.

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*Elchin Sadigov*

*Mr. Sadigov is a prominent lawyer at the Bar Association of Azerbaijan. As part of his work, he defended the rights of political prisoners, journalists, media, political figures, activists, and LGBTQ+ persons.*

*Mr. Sadigov was arrested on 10 September 2022 together with the journalist Avaz Zeynalli and charged with “complicity in bribe taking.” At the time of his arrest Mr. Sadigov represented Rasim Mammadov, a prominent businessman accused of embezzlement. Mr. Sadigov is currently under house arrest and could be sentenced to twelve years in prison. On 5 December 2022 L4L and the International Observatory for Lawyers sent a joint letter to the Prosecutor General of Azerbaijan, expressing their concern about Mr. Sadigov’s situation. They called on the authorities to drop all charges against him unless credible evidence was presented in proceedings that respected civil law guarantees and to stop all forms of harassment against him, including at the judicial level.<sup>vi</sup> Although Mr. Sadigov is able to continue his human rights work, he is limited in what he can do as he is still under house arrest. Appeals for his release have to date been rejected. The main concern is not his house arrest, which is legal, but whether the charges are going to continue. If so, he could be sentenced and lose his membership of the Azerbaijan Bar Association ( “ABA”).*

13. In accordance with Principle 16 (c) of the Basic Principles, governments must 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.”
14. However, L4L has received reports about the criminal prosecution of lawyers in Azerbaijan in relation to their legitimate professional activities. This is illustrated by the case of human rights lawyer Elchin Mammad.

*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.” 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.” Since the mid-term report L4L has written in 2020, several appeals have been filed for his release but to date none have been successful.*

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Furthermore, L4L was informed by Azerbaijani lawyers that human rights lawyers who are not members of the ABA are more vulnerable than those lawyers who are a member of the ABA as they can more easily be subject to online slander, physical attack, or detention. Lawyers who are members of the ABA are more likely to be a subject of (disciplinary) actions if they cross the red-lines set by the ABA, such as negative expressions about the ABA and the Azerbaijani authorities. Under the Code of Ethics, the ABA is allowed to sanction lawyers for such expressions.

15. Additionally, L4L received information that the Azerbaijani government has used Pegasus spyware. The Pegasus spyware, once present in a phone, surveilles everything ranging from messages to contacts to conversations. At least six lawyers have been subjected to surveillance through the Pegasus spyware, namely Rasul Jafarov, Elchin Sadigov, Aslam Ismayilov, Adil Ismayilov, Asabali Mustafayev, and Fariz Namazli.<sup>vii</sup>
16. The unlawful surveillance of lawyers by the government is not only violating basic human rights, such as the right to privacy as enshrined in Article 12 of the Universal Declaration of Human Rights, but is also a breach of attorney-client privilege, and herewith in violation of the above mentioned Articles 8 and 22 of the Basic Principles on the Role of Lawyers.

### **E. Disbarment and other disciplinary measures on improper grounds**

17. Principle 16 (c) of the Basic Principles states: “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.

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.”<sup>viii</sup> In fact, all lawyers involved in proceedings related to so-called sensitive cases have been subjected to disciplinary proceedings.<sup>ix</sup> These concerns were also raised during Azerbaijan’s UPR of 2018. The problem is illustrated by the following case.

*Khalid Bagirov*

*Lawyer Khalid Bagirov’s license to practice law was already suspended, when he was disbarred in 2015 for remarks he made about a judge in a courtroom where he was representing a client in another case. On 25 June 2020 the European Court of Human Rights (“ECtHR”) ruled that these actions had violated Mr.*

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*Bagirov's rights to freedom of expression and to respect for private life, laid down in Articles 10 and 8 of the European Convention on Human Rights. The ECtHR ruled that the domestic courts reasons for supporting Mr Bagirov's disbarment were not "relevant and sufficient, and that the sanction imposed on the applicant was disproportionate to the legitimate aim pursued. The ECtHR also 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. Mr Bagirov's remains disbarred to this date."*

18. Azerbaijan has the worst record of countries which fail to enforce ECtHR judgments. According to the [latest] statistical data only 16 percent of the Court's judgments have been enforced by the Government.<sup>x</sup>
19. The following cases illustrate the issue of disbarment and other disciplinary measures on improper grounds.

*Elchin Sadigov*

*Disciplinary proceedings against Elchin Sadigov were based on a client's complaint about alleged falsification of legal documents. Previous disciplinary proceedings related to his post on Facebook regarding the possible cause of the car crash involving Oktay Gulaliyev and to his allegedly encouraging clients to make false claims of torture against the Azerbaijani authorities.<sup>xi</sup>*

*Yalchin Imanov's*

*Mr. Imanov's disbarment was based on a complaint from the Penitentiary Services accusing him of spreading false information.<sup>xii</sup> Currently Mr. Imanov is awaiting judgment from the ECtHR.*

20. The disbarment of lawyers is a harsh sanction and, when improperly used, has a chilling effect on the legal profession. It 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 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."
21. Despite Ms. Humbatova's reinstatement, 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 in their professional functions. This affects lawyers by prohibiting them from exercising their

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profession and from financially supporting themselves and their families, and also prevents their clients from having access to a legal representative of their choosing.

22. On 7 December 2017 a new Code of Ethics (“**Code of Ethics**”) was adopted by the ABA. Compared to its predecessor, the Code of Ethics contains more recommendations and details as well as sanctions in cases where the ABA determines a violation of the Code of Ethics. Lawyers also need to follow more principles which have increased from [approximately] 3 to 15. These principles are being used to target lawyers working on politically sensitive cases. The obscure wording in the Code of Ethics<sup>xiii</sup> allows for a broad arbitrary interpretation. As a result, the principles have been misused to interfere with lawyers’ legitimate freedom of expression. During the interviews conducted by L4L, several lawyers pointed out that the freedom of expression of lawyers is now very restricted.
23. Azerbaijani laws and regulations state that members of the ABA must be independent, but this is not the case in practice. L4L received reports that members of the ABA who have expressed negative views about the ABA or Azerbaijani government can be summoned by the ABA and sanctioned. With the adoption of the Code of Ethics, lawyers experience increased pressure both from the Azerbaijani government and the ABA to refrain from expressing critical views.

### **F. Access to a lawyer**

#### **i. Low numbers of lawyers**

24. The right of access to a lawyer is enshrined in international human rights instruments. The Preamble to the Basic Principles states that lawyers have a vital role to play in providing legal services to all-in need of them. In addition, Principle 1 of the Basic Principles determines that everyone has the right to call upon the assistance of an independent lawyer of their own choice.
25. Amendments to the civil and administrative Codes of Azerbaijan and the law “on lawyers and lawyers’ activity” which came into force on 1 January 2018<sup>xiv</sup>, restricted representation in court to lawyers who are not ABA members. These amendments meant that lawyers who are not members of the ABA can no longer represent clients in court, unless they are representing close relatives. This reform has had a significant negative impact on access to legal representation in Azerbaijan especially as Azerbaijan has one of the lowest number of lawyers per capita in Europe.<sup>xv</sup> Some lawyers therefore believe that access to a lawyer is restricted. On the other hand, there are lawyers who believe that this development can lead to an increased number of members of the ABA and prevents fraud.
26. Furthermore, it was pointed out that there is a shortage of lawyers specialized in criminal law. This is a problem because Azerbaijani law gives a lot of authority to the

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investigators. This leads to a disproportion as the investigators can invoke their authority anytime whereas lawyers' possibilities for defence are limited. Two main issues were mentioned, namely (1) the gathering of evidence and (2) corruption.

### **ii. Restrictions on access to the legal profession**

27. As expressed in L4L's mid-term report, L4L has serious concerns with regards to the regulations on access to the legal profession. Since the mid-term report no progress has been made in this area. The qualification examination rules contain no criteria that members of the Examination Commission have to follow to ensure an objective assessment of candidates' knowledge and skills. This is particularly concerning with the oral examinations. The lack of instructions regarding candidate assessment and lack of a clear methodology casts doubts on the objectivity and transparency of the entire oral examination process. As it is not based on any standard and objective criteria, decisions are taken on the basis of personal judgement, and are therefore not always impartial.<sup>xvi</sup>

28. L4L was informed by several lawyers that lawyers critical of the ABA or the Azerbaijani government, have not been admitted to the ABA after the oral examination, and no reasons were given for their rejection. Currently there are some cases pending before the ECtHR in which lawyers are challenging these decisions.

### **G. Recommendations to the Government of Azerbaijan**

- **Take immediate action to ensure sufficient safeguards are in place, both in law and in practice, to guarantee that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.**
- **Guarantee that lawyers are not subject to disbarment or other disciplinary measures on improper grounds, and guarantee the full independence and safety of lawyers and their effective protection against any form of retaliation in connection with their professional activities;**
- **Uphold the right to a fair trial and guarantee that every citizen has effective access to justice and legal assistance of their choice.**

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<sup>i</sup> The UN Basic Principles provide a concise description of international norms relating to the key aspects of the right to independent counsel. The Basic Principles were unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on 7 September 1990. Subsequently, the UN General Assembly “welcomed” the Basic Principles in their ‘Human rights in the administration of justice’ resolution, which was adopted without a vote on 18 December 1990 in both the session of the Third Committee and the plenary session of the General Assembly. Source: <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>.

<sup>ii</sup> UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/35/12, 22 June 2017. Digitally available at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/35/L.20](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/L.20).

<sup>iii</sup> During its 25th session (from 2 – 13 May 2016), the Human Rights Council adopted without a vote a resolution on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers. While recalling the Basic Principles on the Role of Lawyers and condemning the increasingly frequent attacks on the independence of lawyers, in particular threats, intimidation and interference in the discharge of their professional functions, the Human Rights Council reminded all States of their duty “to uphold the integrity of [lawyers] and to protect them, as well as their families and professional associates, against all forms of violence, threat, retaliation, intimidation and harassment resulting from the discharging of their functions, and to condemn such acts and bring the perpetrators to justice.” See UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/29/6, 30 June 2015. Digitally available at [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/29/L.11](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/L.11)

<sup>iv</sup> Report of the Working Group on the Universal Periodic Review of Azerbaijan, A/HRC/39/14, 11 July 2018, p. 14, and Addendum 1: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review.

<sup>v</sup> Mid-term Report of Lawyers for Lawyers and the Law Society of England and Wales – Review of the implementation of recommendations with respect to the rule of law and the role of lawyers accepted by Azerbaijan during the UPR 2018. Hereafter: ‘Mid-term Report 2018’. Available at: <https://lawyersforlawyers.org/wp-content/uploads/2020/11/FINAL-AZERBAIJAN-mid-term-review-L4L-Law-Society.pdf>.

<sup>vi</sup> Joint letter of Lawyers for Lawyers and the International Observatory for Lawyers on 5 December 2022, ‘Joint letter: arrest and house arrest of Elchin Sadigov.’ Full letter available at: <https://lawyersforlawyers.org/wp-content/uploads/2022/12/joint-letter-Elchin-Sadigov.pdf>.

<sup>vii</sup> The Pegasus Project. Available at: [https://www.occrp.org/en/the-pegasus-project/?\\_gl=1\\*1v0kq6m\\*\\_ga\\*MTQ2MDc3NDI2NS4xNjc5NDAwNzly\\*\\_ga\\_NHCZV5EYYY\\*MTY3OTQwMDcyMi4xLjAuMTY3OTQwMDcyMi42MC4wLjA](https://www.occrp.org/en/the-pegasus-project/?_gl=1*1v0kq6m*_ga*MTQ2MDc3NDI2NS4xNjc5NDAwNzly*_ga_NHCZV5EYYY*MTY3OTQwMDcyMi4xLjAuMTY3OTQwMDcyMi42MC4wLjA).

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

<sup>ix</sup> Georgia Gogia, ‘Lawyer Disbarred in Azerbaijan after filing torture complaint,’ *Human Rights Watch* 27 November 2017. Available at: [www.hrw.org/news/2017/11/28/lawyer-disbarred-azerbaijan-after-filing-torture-complaint](http://www.hrw.org/news/2017/11/28/lawyer-disbarred-azerbaijan-after-filing-torture-complaint); ‘Disbarred, suspended, or criminally prosecuted: Azerbaijani human rights lawyers’, EHRAC 25 January 2021. Available at: <https://ehrac.org.uk/resources/disbarred-suspended-or-criminally-prosecuted-azerbaijani-human-rights-lawyers>.

<sup>x</sup> Council of Europe – Department for the execution of judgements of the ECHR, ‘Country Factsheet: Azerbaijan’. Available at: <https://rm.coe.int/168070973e>.

<sup>xi</sup> Mid-term Report 2018, p. 6.

<sup>xii</sup> *Ibid.*

<sup>xiii</sup> The wording of Article 2:13 of the Code of Ethics illustrates this. It bans lawyers from dissemination of “[...] slanderous and misleading information about decisions of the bodies of the Bar Association, which undermines its authority in the media, social networks and public places. An attorney must not allow any dissemination of ungrounded slanderous information about the state, non-state actors, its officials, and must not participate in unethical statements and behaviour towards these persons in the media, social networks and public statements.” See IBARHI Azerbaijan report: ‘The Bar and Lawyers in Azerbaijan’, August 2021. Available at: <https://www.ibanet.org/document?id=IBARHI-The-Bar-and-Lawyers-in-Azerbaijan-English>.

<sup>xiv</sup> Report of the Working Group on the Universal Periodic Review of Azerbaijan, A/HRC/39/14, 11 July 2018.

<sup>xv</sup> “One of the main long-term problems to be solved in Azerbaijan is that the country has the lowest ratio of lawyers per capita: ten people per 100,000 of the population. This is 15 times lower than the average across Europe (147 per 100,000)” in ‘Christophe Poirer: Azerbaijan has 15 times fewer lawyers than the European average’, Meydan TV, 16 November 2018. Available at: <http://www.contact.az/ext/news/2018/11/free/politics%20news/en/76706.htm> [https://d9mc3ts4czbpr.cloudfront.net/ru/article/kristof-puarel-v-azerbajdzhane-advokatov-v-15-raz-menshe-chem-v-srednem\[1\]po-evrope/?ref=lis](https://d9mc3ts4czbpr.cloudfront.net/ru/article/kristof-puarel-v-azerbajdzhane-advokatov-v-15-raz-menshe-chem-v-srednem[1]po-evrope/?ref=lis).

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<sup>xvi</sup> IBARHI Azerbaijan report: ‘The Bar and Lawyers in Azerbaijan’, August 2021. Available at: <https://www.ibanet.org/document?id=IBARHI->

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