

LAWYERS FOR LAWYERS UPR SUBMISSION – AZERBAIJAN – OCTOBER 2017

A. Introduction

1. Lawyers for Lawyers (hereinafter 'L4L') submits this report on the state of human rights, especially those regarding the legal profession, in Azerbaijan, with recommendations to the OHCHR for the 30th session of the UPR Working Group in the UN Human Rights Council in May 2018.
2. L4L is an independent, non-political foundation, established in 1986 to promote a free and independent exercise of the legal profession around the world, enabling lawyers to effectively fulfil their role in upholding the rule of law and the protection of human rights. L4L has special consultative status with ECOSOC since 2013.

B. Executive Summary

3. This submission highlights L4L's key concerns regarding Azerbaijan's compliance with its international and national human rights commitments to guarantee effective access to legal services provided by an independent legal profession as set out in the UN Basic Principles on the Role of Lawyers¹ ('Basic Principles'), focusing on one main theme: no effective guarantees for the functioning of lawyers. Non-compliance with the Basic Principles undermines the proper functioning of the judicial system and the right to fair trial in particular.
4. Recommendations to Azerbaijan:
Regarding no effective guarantees for the functioning of lawyers:
 - (a) **to take measures to prevent the harassment of lawyers and attempts to impede or interfere on improper grounds with their defence of clients, in accordance with articles 16(a) and 18 of the Basic Principles on the Role of Lawyers.**
 - (b) **to recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential in accordance article 22 of the Basic Principles on the Role of Lawyers and not force lawyers to act as a witness in cases in which they represent their clients.**
 - (c) **take all necessary measures to prevent that lawyers suffer or be threatened with prosecution, disciplinary action or other sanctions on improper grounds, in accordance with article 16(c) of the Basic Principles on the Role of Lawyers.**
 - (d) **to take measures to guarantee the effective protection of the right of freedom of expression of lawyers as set out in article 23 of the Basic Principles on the role of lawyers, in particular their right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights, without suffering professional restrictions by reason of their lawful action.**
 - (e) **to continue to implement in legislation as well as in practice recommendations 109.110 and 109.111 of the UPR cycle in 2013 to ensure the proper functioning of the judicial system and the right to a fair trial.**

1 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.

C. Normative and institutional framework of the State

5. 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. This follows from the Charter of the United Nations, the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights to which Ukraine is a party.
6. In its task of promoting and ensuring the proper role of lawyers, the government of Azerbaijan should respect and take into account the Basic Principles within the framework of its national legislation and practice. 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.²
7. During the interactive dialogue in the UPR cycle of 2013 several recommendations with respect to the protection of lawyers and human rights defenders were accepted by Azerbaijan³, including recommendations 109.110⁴ and 109.111⁵. According to Azerbaijan, *"in relation to the human rights defenders it should be noted that all conditions for their independent activity have been established in the Republic of Azerbaijan. They enjoy all human rights and freedoms, they are not prosecuted for their activities."*⁶
8. However, reports gathered by L4L and information that we received from lawyers in Azerbaijan, demonstrate that Azerbaijan does not always uphold the necessary guarantees for the proper functioning of the legal profession as set out in the Basic Principles. As a consequence, lawyers encounter difficulties in carrying out their profession independently. This also undermines the proper functioning of the judicial system, including the right to fair trial.

² During its 29th session (from 15 June – 3 July 2015), 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, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/L.11

³ Report of the Working Group on the Universal Periodic Review Azerbaijan, 5 July 2013, A/HRC/24/13 and Report of the Working Group on the Universal Periodic Review Azerbaijan, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/24/13/Add.1.

⁴ Recommendation 109.110. Take effective measures to ensure the full realization of the right to freedom of expression, including on the Internet, of assembly and of association as well as to ensure that all human rights defenders, lawyers and other civil society actors are able to carry out their legitimate activities without fear or threat of reprisal (Czech Republic);

⁵ Recommendation 109.111. Ensure that human rights defenders, lawyers and other civil society actors are able to carry out their legitimate activities without fear or threat of reprisal, obstruction or legal and administrative harassment (Sweden);

⁶ Report of the Working Group on the Universal Periodic Review Azerbaijan, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/24/13/Add.1, par. 24.

D. Promotion and protection of human rights

(i) No effective guarantees for the functioning of lawyers⁷

9. L4L has been informed that lawyers in Azerbaijan who work on sensitive cases have been threatened, physically attacked and harassed as a result of discharging their functions. In certain cases, lawyers may be arbitrarily removed from cases in which they represent clients in accordance with the law. One means of doing this is to name the lawyers as witnesses in cases in which they represent clients. Testifying as a witness creates a conflict of interest and the lawyer is prevented from representing a party in the case. This practice whereby lawyers are intentionally made witnesses to be removed from representing clients runs contrary to international standards on the role of lawyers and in particular violates the principle of confidential communication between lawyers and their clients.

Cases on harassment:

- a. **Elchin Sadigov.** Since 2007, Elchin Sadigov has been a defender of the rights of the journalists of Azadliq newspaper and Azadliq radio, amongst which Fikrat Faramazoglu, meydan.tv journalists, human rights activists such as Leyla Yunus, political activists and young activists, who allegedly have been subject to persecution, threats, torture and criminal charges. Elchin Sadigov (and his family) has been subjected to continuous threats and dangers because of his professional work.⁸ Some of the threats were allegedly related to an interview he gave about the torture of the wife of one of his clients by the authorities. Furthermore, in May 2016, Elchin Sadigov was invited to a police department, then was taken to a basement, threatened and punched, and told that his treatment was a "warning".

Cases on removal of lawyers from cases:

- b. On 30 July 2014, Leyla Yunus, a prominent human rights defender, was arrested. Two of Yunus' lawyers, Javad Javadov and Khalid Bagirov, were both disqualified from representing her after being called as witnesses in the case by the prosecution, on account of their prior professional acquaintance. Javadov was summoned for questioning and named as witness on 29 October 2014, shortly after publicising procedural and fair trial violations in the case against his client. Bagirov was disqualified from representing Yunus on 5 November 2014.⁹
- c. Four of the five lawyers representing Intigam Aliyev were, like in the case of Leyla Yunus, barred from representing Aliyev.¹⁰ Fariz Namazli, Alayif Hasanov, Khalid Bagirov and Adil Ismayilov were removed from the case on 30 September 2014, after they were being called as witnesses in the case by the prosecution (for more information see below).
- d. Lawyer Yalchin Imanov represented the employees of "Radio Liberty". On 28 December 2014, following a decision of the First Deputy General Prosecutor, Imanov was held as a witness and therefore excluded from the defense by the prosecution. Furthermore, on 12 March 2015, Yalchin Imanov was removed from representing Khadija Ismailova after having been named as a witness in the case. This happened by means of merger of two cases in one of which he was a lawyer and the other one a witness.
10. Governments must protect lawyers from unfair or arbitrary disciplinary proceedings. Disciplinary action against lawyers must be based solely upon a code of professional

⁷ Basic Principles on the Role of Lawyers, principles 16, 17, 18, 19, 20, 21, 22.

⁸ For further information, please see <http://www.advocatenvooradvocaten.nl/11996/azerbaidjan-harassment-of-lawyer/>.

⁹ See also the Amnesty International report: GUILTY OF DEFENDING RIGHTS: AZERBAIJAN'S HUMAN RIGHTS DEFENDERS AND ACTIVISTS BEHIND BARS, available at: <https://www.amnestyusa.org/reports/quilty-of-defending-rights-azerbaidjans-human-rights-defenders-and-activists-behind-bars/>, page 14

¹⁰ See also the Amnesty International report: GUILTY OF DEFENDING RIGHTS: AZERBAIJAN'S HUMAN RIGHTS DEFENDERS AND ACTIVISTS BEHIND BARS, available at: <https://www.amnestyusa.org/reports/quilty-of-defending-rights-azerbaidjans-human-rights-defenders-and-activists-behind-bars/>, page 18

conduct, which is consistent with recognized ethical and professional standards including the Basic Principles. L4L has been informed that several lawyers in Azerbaijan have been disbarred, or are facing disbarment or other disciplinary actions on improper grounds. This is demonstrated by the following cases:

a. Alaif Hasanov. *In September 2014, Alaif Hasanov disseminated information about the threats against and beatings of his client Leyla Yunus in prison. Alaif Hasanov was the first one to speak about the condition and physical pressure against his client by her cell-mate, Nuriya Huseynova. Shortly thereafter, Hasanov has been subjected to a lawsuit by Yunus' cell-mate, who accused him of passing information to mass media. Hasanov believes that the authorities used Huseynova to deprive him of the opportunity to defend Leyla Yunus. On 6 November 2014, the court sentenced the lawyer to 240 hours of community service.*¹¹

*In July 2015, Alaif Hasanov was disbarred on the grounds of having a previous criminal conviction. Alaif Hasanov stated that the official reason for the disbarment was the court decision dated 6 November 2014, sentencing him to community service based on the lawsuit brought by Nuriyya Huseynov, the former cellmate of Leyla Yunus. All motions to challenge the disbarment were dismissed. In February 2017, the Azerbaijani Highest Court rejected the appeal and upheld the disbarment.*¹²

b. Khalid Bagirov. *Khalid Bagirov, a prominent human rights lawyer, had his license to practice suspended on 10 December 2014 for alleged inappropriate conduct in court, which included a failure to wear a "lawyers' outfit" in the court room, and use of improper expressions and behaviour incompatible with standards of lawyers' conduct. The disbarment was based on a complaint issued by the Sheki Court to the Bar Association, which alleged that Bagirov had breached professional ethics when he questioned the fairness of a court decision in the case against one of his clients, opposition-leader Ilgar Mammadov. Mammadov had been convicted and imprisoned in 2013 on charges of inciting a riot. The ICJ, which observed the Disciplinary Commission hearing in the case, criticized the disbarment, noting that "there are grounds to believe that Khalid Bagirov's disbarment is in retaliation for his representation of clients in high profile cases, including prominent human rights defenders".*¹³

11. Some lawyers were subjected to criminal proceedings in connection to their legitimate activities as lawyers:

a. Intigam Aliyev. *On April 22, 2015, the Baku Grave Crimes Court sentenced Intigam Aliyev to seven and-a-half year imprisonment on charges of "tax evasion", "abuse of authority", "illegal entrepreneurship", and "appropriation". Aliyev denies all the charges and stated they were politically motivated. Aliyev was arrested in August 2014 and sent to pre-trial detention. His arrest and conviction appear to be related to his work. His arrest coincided with the European Court starting to address new complaints with Aliyev's assistance.¹⁴ On 28 March 2016, the Supreme Court of Baku converted Intigam Aliyev's seven-and-a-half year prison sentence to a five-year suspended term. He is still under a travel ban.*¹⁵

12. Lawyers, like any other individuals, 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. The freedom of expression that lawyers enjoy in connection to their professional functions should not only be guaranteed in light of the rights of the lawyer, but also in protection of the rights of their clients. The lawyer should be

¹¹ For further information, please see <http://www.advocatenvooradvocaten.nl/10777/azerbaijan-lawyer-sentenced-to-community-service/>.

¹² <http://humanrightshouse.org/Articles/21864.html>

¹³ For further information, please see <http://www.advocatenvooradvocaten.nl/10899/azerbaijan-disbarment-of-lawyer-for-breaching-professionaethics-2/>.

¹⁴ For further information, please see <http://www.advocatenvooradvocaten.nl/10479/azerbaijan-intigam-aliyev-sentenced-to-75-years-of-jail/>.

¹⁵ For further information, please see <http://www.advocatenvooradvocaten.nl/11487/azerbaijan-lawyer-intigam-aliyev-released/>

enabled to effectively protect the rights and interests of his or her client. The disbarment of lawyer Khalid Bagirov (see above), for example, therefore also constitutes a violation of his right to freedom of expression.

13. The examples mentioned above show that the authorities of Azerbaijan have not fully and adequately implemented recommendations 109.110 and 109.111 of the UPR cycle in 2013.

Recommendations to Azerbaijan:

- (a) to take measures to prevent the harassment of lawyers and attempts to impede or interfere on improper grounds with their defence of clients, in accordance with article 16(a) of the Basic Principles on the Role of Lawyers.**
- (b) to recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential in accordance article 22 of the Basic Principles on the Role of Lawyers and not force lawyers to act as a witness in cases in which they represent their clients.**
- (c) take all necessary measures to prevent that lawyers suffer or be threatened with prosecution, disciplinary action or other sanctions on improper grounds, in accordance with article 16(c) of the Basic Principles on the Role of Lawyers.**
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- (e) to continue to implement in legislation as well as in practice recommendations 109.110 and 109.111 of the UPR cycle in 2013 to ensure the proper functioning of the judicial system and the right to a fair trial.**