



1/3-LPO

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The Legal Profession Observer

On January 15, 2021, Azerbaijani human rights lawyers Emin Aslanov and Emin Abbasov announced the launch of the Independent Lawyers Network, a non-governmental organization promoting and supporting the independent legal profession.

The organization aims to strengthen and help the legal profession, protect human rights and freedoms, and raise public awareness of the legal field. The organization's activities are based on the legal profession's fundamental values, principles, and ethical standards.

Independent Lawyers Network: Independent Lawyers Network (ILN) is established as a non-profit and non-governmental organization in September 2020. ILN was created in response to the deteriorating situation of the legal profession and human rights in Azerbaijan. Protection of human rights and freedoms through the empowerment of lawyers is the primary goal of ILN.

Legal Profession Observer (LPO): is an initiative to uncover facts about human rights abuses against legal professionals with the mission to defend their rights through documenting, reporting, and advocacy. LPO aims to monitor, document, and report Azerbaijan's and Azerbaijan Bar Association's (ABA) compliance with its own national and international laws regarding legal professionals' rights in Azerbaijan. The lack of an independent professional body of lawyers leaves the lawyers vulnerable to external pressures and prevents the public from having independent and impartial information about the situation of the lawyers. The lack of impartial information about the field hinders public oversight and paves the way for arbitrary government intervention.

This report produced once every two months aims to address the relevant shortcomings in the field.

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(Bimonthly Reports)

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Overall situation: In recent years, there was a severe deterioration of the situation of human rights defenders and lawyers in Azerbaijan. This decline began in 2014 when the government started to enact harsh and restrictive legislation concerning the works of civil society groups, human rights defenders, and lawyers. The legislative amendments in 2017 gave the state to gain full control of the legal profession through the state-controlled Azerbaijani Bar Association. As a result of the total monopoly of ABA, thousands of lawyers who were not members of the bar have been prohibited from representing clients in lower courts in Azerbaijan¹. These new amendments were also used to prevent human rights lawyers from becoming ABA members and effectively neutralize those lawyers who had been disbarred for their legitimate activities.

ABA continued to fail to act as an independent professional body to protect its members against external pressures, particularly against the pressures from state authorities. Institutional weakness and lack of independence prevent ABA from playing its genuine role in protecting lawyers' interests and becoming a tool in the hands of state that systematically obstructs human rights lawyers' professional activities.

According to the local and international human rights organizations, twenty-three human rights lawyers have faced various sanctions from ABA up to now³. The official reasons for sanctions against lawyers were public statements of lawyers about torture in law enforcement bodies, corruption in law enforcement bodies and judiciary, defending politically motivated cases at court, and criticism of the judiciary's and the Bar's activities.

The ABA's official reasoning of the disciplinary proceedings against lawyers were routinely condemned by various international human rights⁵, lawyers-organizations⁶, and international and interstate institutions⁷. Furthermore, disciplinary proceedings against lawyers were found as irrelevant and unjustified in ECtHR's recent judgments, which found a violation of the Convention in the case of disbarred and denied lawyers⁹. The ECtHR have already started communication in two disbarred lawyers' cases¹¹ and about ten cases have been recently submitted to the ECtHR by the disbarred, denied, and sanctioned lawyers.

¹ Azerbaijan Moves to Drastically Cut Number of Lawyers <https://eurasianet.org/azerbaijan-moves-to-drastically-cut-number-of-lawyers>

³ According to the European Human Rights Advocacy Centre (EHRAC)³ twelve lawyers were disbarred (two disbarment cases are pending) pending from the Bar Association, five were suspended for one year or six months, seven lawyers were not allowed to join the Bar Association, and arbitrarily denied access to the Azerbaijani Bar. The rest were subjected to various disciplinary sanctions.

⁵ Human Rights Watch, Azerbaijan: Events of 2018 <https://www.hrw.org/world-report/2019/country-chapters/azerbaijan>

⁶ Defenceless Defenders: Systemic Problems in the Legal Profession of Azerbaijan, ICI Mission Report 2016: <https://www.ici.org/wp-content/uploads/2016/11/Azerbaijan-Systemic-problems-Legal-Prof-Publications-Reports-Mission-reports-2016-ENG.pdf>

IBAHRI condemns punishment of human rights lawyer by Azerbaijani Bar Association, <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=cc9dbfcb-43b6-4a4f-86ed-201d6efad95a>

⁷ Commissioner for Human Rights of the Council of Europe's Report, 11 December 2019:

https://search.coe.int/commissioner/Pages/result_details.aspx?ObjectId=090000168098e108#_Toc25134299

⁹ CASE OF BAGIROV v. AZERBAIJAN (81024/12 28198/15) (Disbarment): <https://hudoc.echr.coe.int/eng#%7B%22tabview%22%3A%22document%22%2C%22itemid%22%3A%22001-203166%22%7D>, CASE OF NAMAZOV v. AZERBAIJAN (74354/13) (Disbarment): <https://hudoc.echr.coe.int/eng#%7B%22appno%22%3A%2274354%22%2C%22itemid%22%3A%22001-200444%22%7D>, CASE OF HAJIBEYLI AND ALIYEV v. AZERBAIJAN (6477/08 10414/08) (Refusal to admission): <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-182173%22%7D>,

CASE OF ASLAN ISMAYILOV v. AZERBAIJAN (18498/15) (Disbarment): <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-201642%22%7D>

¹¹ CASE OF HASANOV v. AZERBAIJAN (68035/17) (Disbarment) (Communicated on 4 June 2018): <https://hudoc.echr.coe.int/eng#%7B%22appno%22%3A%2268035%22%2C%22itemid%22%3A%22001-184367%22%7D>

MEHDIEV v. AZERBAIJAN (36057/18) (Disbarment) (case communicated on 20.10.2020: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-206137%22%7D>)

Despite all the well-documented findings, the ABA denies the problems associated with advocacy in Azerbaijan. In 17 pages-long statement/letter dated 19 February 2021 (№ 238) of the ABA, which circled among dozens of international organizations, literally denies all the shortcomings and continues to accuse the lawyers based on its own disciplinary proceedings which were found as irrelevant and unjustified by the ECtHR judgments.

The INL expresses concerns that despite the ABA's clear obligations to protect the interests of lawyers and act as a true Bar to address the challenges of the advocacy, the ABA, by not even acknowledging the existence of any problems, makes them long-lasting.

To this background, INL further submits that such an absolute denial provides an important insight into the ABA's failed understanding of lawyers' role. In this connection, it is an utmost concern of the INL that the ABA's striking denial and inaction toward widespread and systematic problems of lawyers are apparently the results of deliberate policy.

Events in January and February

The Endangered Lawyers Day 2021 – Azerbaijan

In 2021, the Coalition for the Endangered Lawyer, an international network of lawyers' organizations, dedicated the Day of the Endangered Lawyers to Azerbaijan¹³. According to petition signed by dozens of international organisations and national Bars, the choice of the country was agreed with all lawyers' associations involved in the organization of this initiative¹⁵.

During those days with multiple events took place in the streets¹⁷ and also virtually in a series of online events where the disbarment, suspension and other kinds of sanctions of Azerbaijani lawyers were discussed freely and publicly. Webinars with the Bar Associations of different countries' participation discussed the situation of human rights and freedoms in Azerbaijan and the problems and difficulties faced by the human rights lawyers.

In the events, lawyers questioned the fairness of the bar examinations, in particular, toward lawyers with human rights and civil society backgrounds. Furthermore, another main concern of lawyers was the abusive application of disciplinary proceedings due to the ECtHR-related activism and critical views on overall human rights situation.

The lawyers further emphasized the issue of independence of the ABA by drawing attention the current model of formation and governance system of the ABA. According to the lawyers, the ABA's formation is undemocratic because of the delegated voting system, which is left to the discretion of the Presidium of the ABA and is not regulated by clear rules, weakens the role of lawyers in the formation of the Bar Association. Lawyers also shared their concern on the new regulation of the Presidium of the Bar Association of 2018, which empowers the ABA with broad discretionary powers over the legal bureaus and individual lawyers.

¹³ 11th DAY OF THE ENDANGERED LAWYER 24th January 2021 - AZERBAIJAN: https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Human_right_portal/Petition-11th-DAY-OF-THE-ENDANGERED-LAWYER-Azerbaijan.pdf

¹⁵ The Day of the Endangered Lawyer – Azerbaijan: <http://www.aeud.org/2021/01/the-day-of-the-endangered-lawyer-azerbaijan/>

¹⁷ For a short list of activities held on this day: <http://www.aeud.org/2021/01/the-day-of-the-endangered-lawyer-azerbaijan/>

Recent events

The State Security Service did not permit the lawyer Elchin Sadiqov to meet with his client

On January 29, Elchin Sadigov, a prominent human rights lawyer, was not allowed to meet with the Baku Steel Company's arrested director, which he represents. Elchin Sadigov said that although he and other lawyers had a warrant (order), the State Security Service did not allow them to meet with their client.¹⁸ ABA did not comment on the issue.

The court banned Nemat Karimli from participating in the trial

On January 28, a judge in the Binagadi District Court banned human rights lawyer Nemat Karimli from participating in the trial of Mustafa Hajibeyli, a member of the opposition Musavat party.¹⁹ According to the lawyer, the judge literally asked him (without any legal reasons) that the trial was closed, and he had to leave the courtroom alone. Nemat Karimli said that "as soon as the trial began, the secretary told me that the judge would not allow me to sit in the courtroom because the trial is closed. The judge sent a message that if I do not leave the courtroom, the hearing will not start. However, the prosecutor was in the courtroom. This was the first case in the history of the Azerbaijani court." The ABA preferred to be silent on this issue too.

The Shahla Humbatova's disbarment hearing: Baku Administrative Court

The ABA launched the disbarment process of Shahla Humbatova²⁰ in November 2019. The ABA appealed to the court, and the process is ongoing. The next trial of Shahla Humbatova took place on 2 February 2021.

The ABA accused Humbatova of submitting a fake document as evidence during a civil case she was litigating, a criminal offence. Humbatova was also accused of owing AZN 460 (\$270) in membership fees to the Bar. Humbatova insisted the accusations were politically motivated and the allegation that she submitted fake documents was baseless, and that her defence had submitted evidence proving this.²¹

The ABA (chairman Anar Baghirov) filed a request to the Prosecutor's Office asking for an investigation and open a criminal case against Shahla Humbatova. On 7 August 2020, Azerbaijani Prosecutor General's Office's Anticorruption Department issued a decision and dismissed the ABA complaint and concluded that there are not any unlawful acts in this case. Despite the Prosecutor's Office's decision concluding that no criminal offence was found, the ABA continues to accuse the lawyer of committing the crime of falsification of the document and even keeps the accusation on its website.²²

¹⁸ The director of Baku Steel Company has been detained, 29 January 2021- <https://www.turan.az/ext/news/2021/1/free/Social/az/859.htm>

¹⁹ The judge did not allow Nemat Karimli into the courtroom, 29 January 2021: <https://arqument.az/az/nemet-kerimli-yeqin-osman-kazimovun-meselesi-genis-muzakireye-cixarilacaq/>

²⁰ Shahla Humbatova is a recipient of the annual International Women of Courage (IWOC) Award, also referred to as the U.S. Secretary of State's International Women of Courage Award.^[13] She has defended human rights defenders, journalists, bloggers, youth activists, members of the political opposition, and others. She is one of only two female lawyers to take these cases on in a difficult environment in which human rights lawyers have regularly been harassed and threatened in social media.

²¹ Azerbaijani rights lawyer vows to fight on despite disbarment proceedings <https://oc-media.org/azerbaijani-rights-lawyer-vows-to-fight-on-despite-disbarment-proceedings/>

²² The ABA decision: <https://barassociation.az/en/news/500>

In the next court hearing held on 5th March 2021, the Baku Administrative Court has upheld the ABA's request to disbar Humbatova and disbarred her based on the ABA's allegations of the failure to pay membership fees for six months and deliberate submission of the fake document to the Court. Shahla Humbatova rejects all the allegations.

The INL also notes that at the time of disciplinary proceedings, membership fees had been paid by Humbatova. Shahla Humbatova. Furthermore, in regard to the allegations about the submission, the fake document to the Court is baseless as the similar request of the ABA to the General Prosecutor's Office's Anti-Corruption Department was rejected by the latter with the view that allegations are baseless for opening a criminal case in August 2020.

The INL condemns the ABA's disproportionate sanction against the lawyer and considers it the next case of politically motivated harassment of only a handful of human rights lawyers in Azerbaijan.

The state of the execution of the ECtHR judgments in the cases of disbarred/denied lawyers

The ECtHR ruled in four judgments that there has been a violation of the rights of five lawyers since 2018. ILN finds out that the government continues to disregard to comply with the ECtHR judgments where the Court found violations of the Convention in respect to five lawyers. In particular, the Court's recent judgments, in the cases of *Namazov v. Azerbaijan* (74354/13), *Bagirov v. Azerbaijan* (81024/12 28198/15), *Aslan Ismayilov v. Azerbaijan* (18498/15), and *Hajibeyli and Aliyev v. Azerbaijan* (6477/08 10414/08) were not re-examined by the Azerbaijan Supreme Court yet. According to Article 431-3.1 of the Civil Procedural Code, no later than three months after the decision of the European Court of Human Rights is referred to the Supreme Court of the Republic of Azerbaijan, the Plenum of the Supreme Court shall consider domestic judicial acts on new cases of violation of rights and freedoms.

In the case of *Hajibeyli and Aliyev v. Azerbaijan*, the ECtHR judgment became final in 2018, and applicants several times applied to the Supreme Court since then, but no response was received. Applicants, in this case, sent a request to the Supreme Court in October 2020, which no reaction noticed yet.

The INL submits that the state's failure to comply with the ECtHR judgments remains a serious indication of the state's neglect which is not an episodic phenomenon but a systematic issue in the lawyer profession.

The proper execution of the European Court's decisions in the disbarred and denied lawyers' case would be a new decision of the Plenum of the Supreme Court of Azerbaijan that rejecting the disbarment request of the Azerbaijan Bar Association and the reinstatement of the disbarred lawyers to the ABA. In denied lawyers case, (Intigam Aliyev and Annagi Hajibeyli) as far as, they had to become a member of the Bar according to the transitional provisions of the Law on Advocates and Advocate Activities (2004), their membership to the ABA must be ensured.

The INL submits that restoring the professional activities of the lawyers in these cases is the essential putting an end to continuing violations in order to achieve *restitutio in integrum*.

INL calls the ABA to reinstate the lawyers to the Bar

According to the law on Advocate and Advocate Activities (Article 22 and 23), lawyers shall be disbarred by a court decision but only based on the request (decision) of the Presidium of the ABA. In other words, the disbarment of a lawyer is possible only if there is a decision of the Presidium of the Azerbaijan Bar Association²³.

It should be noted that according to national legislation, as well as the precedent of the domestic courts, the decisions of the ABA on lawyers are an administrative act, and administrative proceeding legislation is applied in its proceedings. Therefore, the ABA proceedings on admission or disbarment from the Bar are essentially administrative case and are subject to the general principles of administrative proceedings provided for in the Law on Administrative Proceedings.

In the meantime, it becomes clear from the national legislation that the disbarred lawyers are entitled to re-apply to the Bar following the general rules for the admission as the lawyers are not deprived of the profession for a life term, and there are no certain restrictive provisions in the legislation. So, there is no legal impediment to the disbarred lawyers' *return* to the Bar association, even if the court decisions on disbarment remain valid. In the meantime, INL acknowledges that there are no clear procedures for the reinstatement of the disbarred lawyers to the Bar.

Nevertheless, it is an understanding of the ILN that the domestic legislation does not prevent ABA from reinstating the disbarred lawyers to the Bar, considering that the ECtHR found a clear violation of the Convention in lawyers' cases disbarred or denied unjustifiably and with irrelevant reasons.

Thus, as the European Court has found a violation of rights of lawyers and the lawyers are continuing to suffer from the unjust and unlawful acts of the national authorities, the ILN calls the ABA to repeal its own decisions on seeking the disbarment (before courts) or denying admitting lawyers based on the rules for annulment of the illegal acts envisaged in the Law on Administrative Proceedings²⁴.

In considering the current state of the legal profession, the ILN further urges the ABA to stop systematic abuse of disciplinary proceedings, acknowledge the existing challenges, and seek real solutions.

²³ Article 22 (VII) of the Law on Advocate and Advocate Activities provides that the Presidium of the Bar Association applies to the court to disqualify the lawyer based on the Disciplinary Commission's opinion. In other words, the ABA's decision on lawyer's disbarment are administrative acts, and the domestic courts disqualify the lawyers based on the ABA's decisions.

²⁴ According to the Law on Administrative Proceeding, an administrative act adopted by an administrative body resulting from the violation or improper application of legal norms shall be considered illegal (Article 67.1) and an unlawful administrative act may be annulled by the administrative body that adopted the act.