



Ref: 0534/12/17/18

The Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights, and with reference to the Joint Appeal by the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights defenders, dated 6 November 2017, has the honor to transmit letter of reply by Mr. Anar Baghirov, the President of Bar Association of Azerbaijan regarding the questions raised in the abovementioned Joint Appeal.

The Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Enclosure: 7 pages

Geneva, 26 December 2017



Office of the United Nations
High Commissioner for Human Rights
GENEVA

To: Mr Michel Forst,

Special Rapporteur on the situation of human rights defenders,

Mr Diego Garcia-Sayan,

Special Rapporteur on the independence of judges and lawyers

Dear Sirs,

We would like to inform you that, on August 10, 2017, the Prison Service of the Ministry of Justice filed a complaint against Mr Yalchin Imanov, a lawyer practising at the Sumgayit City Legal Consultancy Office, where he is a member of Azerbaijan Bar Association as well. The complaint is based on information about Mr Yalchin Imanov acting contrary to rule of law, conduct rules, the principle of honest acting and spreading unjustified information that harms the reputation of the legal profession, creates tension in certain circles and disturbs the public order. According to the complaint, as a result of his actions, he intentionally spread incorrect information that caused damage to the reputation of the Prison Service of the Ministry of Justice and on the grounds of that, Azerbaijan Bar Association has been requested to bring Mr Yalchin Imanov to disciplinary liability.

A complaint has been reviewed by the Disciplinary Commission of Lawyers, matters brought out in the complaint have been investigated in presence of Mr Yalchin Imanov (Law on Lawyers and activity of lawyers, article 22/V) and as a result, respective opinion (reference) of the Commission has been submitted to the Board of Bar Association. The Disciplinary Commission of Lawyers has detected a breach of provisions of "Law on Lawyers and activity of lawyers" and "Statute on lawyers code of conduct" and has brought it out in its opinion (reference).

Mr Yalchin Imanov has been brought to disciplinary liability by the Board of Bar Association on the grounds of breach of provisions of "Statute on lawyers code of conduct", norms of lawyer ethics and other legislative acts. The Board of Bar Association will (extract of minutes of respective meeting of the Board of Bar Association is attached to this letter)¹ lodge request to the court for disbarment of Mr. Yalchin Imanov from the Bar Association and suspended the activity of him until the entry of the court decision on that issue into force.

Mr Yalchin Imanov was regularly invited and provided his testimony upon the investigation of Disciplinary Commission of Lawyers. He was shown the complaint of the Prison Service of the Ministry of Justice and took notes on it. At the end, he attended the meeting of the Board of Bar Association in which the decision about him was made.

Azerbaijan Bar Association would like to bring to your attention the following details upon questions mentioned in your letter:

1. Providing any additional information and any comment on the mentioned allegations:

Mr. Yalchin Imanov has been brought to disciplinary liability on the grounds of him spreading unjustified information through media, causing the agiotage and spreading of

false information among people, stimulating certain group of people to illegal actions and as a result he breached requirements of articles 5, 15, 16, 18 of "Law on Lawyers and activity of lawyers" and articles 1, 4, 6, 8, 10 of "Statute on lawyers code of conduct".

After visiting his clients Abbas Huseynov and Taleh Bagirov in Gobustan high-security prison, on August 8, 2017, Mr Yalchin Imanov gave statements to media that Abbas Huseynov had been subjected to torture, inhuman treatment and was "crucified". He said in his statements that persons who tortured Abbas Huseynov were chief of the prison Aftandil Aghayev, deputy chief Emin Cafarov, employees of prison Ilkin Akhundov, Namig Aghayev, Rovshan, Igbal and others.

Upon statements of Mr Yalchin Imanov to media, relatives and people close to his clients tried to hold illegal strikes in front of the building of the Prison Service of Ministry of Justice on August 9, 2017.

At the same time, Mr Yalchin Imanov made several statements on torture of his clients on different local media outlets, where his statements were on his behalf, rather than on behalf of his clients, which is contradictory to the legislation on lawyer profession. Also, his statements were not proven by any proof or by any conclusion of the medical inquiry. Consecutively his actions lead to diminishing prestige of the state authority mentioned above, which caused to the distract of social confidence. This is also sign of an infringement of right to presumption of innocence.

The Board of Bar Association took into consideration the opinion (reference) of Disciplinary Commission of Lawyers and came to the conclusion that actions of Mr Yalchin Imanov had breached provisions of "Law on Lawyers and activity of lawyers" and "Statute on lawyers code of conduct".

Article 24/III of the Constitution of the Republic of Azerbaijan enshrines that rights and liberties envisage also responsibility and obligations of everyone to the society and other persons. Abuse of rights is not allowed.

Article 63/I of the Constitution defines that everyone is entitled to a presumption of innocence. Everyone who is accused of crime shall be considered innocent until his/her guilt is proved legally and if no verdict of law court has been brought into force.

Article 71/II of the Constitution provides that everyone's rights and liberties are subject to the restrictions provided for in the Constitution and the laws as well as to the limits resulting from the rights and liberties of others.

According to Article 1.III of "Law on Lawyers and activity of lawyers", fundamentals of activity of lawyers shall include the compliance with the Constitution of the Republic of Azerbaijan, the present Law, procedural legislation of the Republic of Azerbaijan and other laws of the Republic of Azerbaijan.

Article 5/I defines that activity of lawyers shall be carried out with the observation of activity of lawyers ethics.

Article 15/II provides that lawyers shall be entitled to use all methods and tools in their activities that are not prohibited by the legislation and not contradicting to lawyer ethics.

Article 16/I defines that in the course of exercise of professional activity, the lawyer shall be obliged to comply with the requirements of the law, use all methods provided for in the legislation for protection of interests of the defended person or the person rights of whom are represented, comply with the oath of lawyer and lawyer ethics and comply exclusively with requirements of the law.

Article 18 (lawyer ethics) provides that in the course of exercise of professional activity, the lawyer shall, as provided for in the present Law, perform his/her obligations without fault, ...refrain from commitment of any actions incompatible with defense of human rights, calls for performance of illegal actions, rough, insulting actions and words, humiliating honor and dignity of the person... and comply with other regulations of lawyer ethics referred to in the "Statute on lawyers code of conduct" adopted by the General meeting of the Bar Association.

According to article 1.2 of "Statute on lawyers code of conduct", the lawyer is obliged to comply with provisions of this Statute guided by the rule of law, human rights, democratic principles and rules of conduct.

Article 4.1 (honest conduct) provides that the lawyer is obliged to carry out his activity effectively for the sake of interests of the person, society and state.

Article 6 provides that in the course of the exercise of professional activity, the lawyer shall refrain from the commitment of any actions ruining the reputation of activity of lawyers. The lawyer shall comply with restrictions established on activities of activity of lawyers.

Article 8.2 provides that the lawyer shall refrain from the commitment of any actions incompatible with persons' rights and freedoms, legal interests, honour, dignity and professional reputation.

Article 10 (fairness) provides that ... in the course of the exercise of professional activity, the lawyer shall comply with political neutrality.

Above-mentioned norms show that Mr Yalchin Imanov violated provisions of legislation and lawyers' ethics and as a result, he was brought to disciplinary liability.

Adding to that, after the meeting of Disciplinary Commission of Lawyers, Mr Yalchin Imanov gave false and distorted information about the reference of Commission and made statements that can cause confusion and agiotage among the public about the activity of Azerbaijan Bar Association.

In this regard, on September 20, 2017, Disciplinary Commission of Lawyers addressed the Board of Bar Association asking to take into consideration recent actions of Mr Yalchin Imanov.

2. *Providing detailed information on the legal ground for the complaint filed against Mr Yalchin Imanov and the current status of his disciplinary proceedings.*

We would like to inform you that all the individuals or the entities, whose rights are violated or interests are affected by disciplinary offences committed by the lawyer in the course of the exercise of professional activity, may file a complaint or application to Azerbaijan Bar Association.

Article 21/I of "Law on Lawyers and activity of lawyers" provides that Disciplinary Commission of Lawyers shall be established under the Bar Association for consideration of complaints and applications on disciplinary offences committed by lawyers in connection with the exercise of professional obligations and settlement of issues associated with their bringing to disciplinary liability.

It becomes clear that Disciplinary Commission of Lawyers takes into consideration complaints and applications about lawyers and legislation doesn't set any limits for filing complaints and applications.

In regard of disciplinary proceedings of Mr Yalchin Imanov, we note that the Prison Service of Ministry of Justice filed a complaint against him on August 10, 2017, after consideration of complaint by Disciplinary Commission of Lawyers respective opinion (reference) was sent to the Board of Bar Association on 20 September 2017. The Board of Bar Association took into consideration the opinion (reference) of Disciplinary Commission of Lawyers and addressed to the court for the disbarment of Mr Yalchin Imanov from the Bar Association and suspended the activity of him until the entry of the court decision on that issue into force (November 20, 2017).

As of now, the activity of Mr Yalchin Imanov is suspended and the case is investigated by the court.

3. Elaborating on the substance of the disciplinary proceedings brought against Mr Yalchin Imanov, specifically, how the proceedings comply with the Basic Principles on the Role of Lawyers, in particular principles 27, 28 and 29.

Disciplinary proceedings brought against Mr Yalchin Imanov comply with the legislation of the Republic of Azerbaijan, specifically, "Law on Lawyers and activity of lawyers", "Statute on Disciplinary Commission of Lawyers", "Statute on lawyers code of conduct" and also principles of international law. Disciplinary proceedings brought against him was in-detail, fair, transparent.

As article 21/1 of "Law on Lawyers and activity of lawyers" says Disciplinary Commission of Lawyers shall be established under the Bar Association for consideration of complaints and applications on disciplinary offences committed by lawyers in connection with the exercise of professional obligations and settlement of issues associated with their bringing to disciplinary liability.

Article 22 of that Law is as follows:

Article 22. Disciplinary liability of lawyers

I. A lawyer shall be brought to disciplinary liability in case of detection of a breach of provisions of the present Law and other legislative acts, Statute on lawyers code of conduct as well as of cases of breach of norms of lawyer ethics in the course of the exercise of professional duties.

II. A lawyer shall be brought to disciplinary liability exclusively by the Board of the Bar Association on the basis of reference of the Disciplinary Commission of lawyers.

III. The disciplinary sanction may be applied to the lawyer within the period of six months from the day of detection of disciplinary offence and within the period of one year from the day of its commitment.

IV. Disciplinary proceedings in respect of the lawyer shall commence at the Board of the Bar Association of lawyers.

V. Disciplinary Commission, within the period of one month from the day of commencement, shall institute an investigation, as a rule, in presence of the lawyer and shall submit a respective opinion to the Board.

VI. Board of the Bar Association, on the basis of reference of the Disciplinary Commission, may apply the following disciplinary measures in respect of the lawyer:

- remark;*
- reprimand;*

- prohibition to deal with the activity of lawyers for the period from three months to one year;

- disbarment from the membership of the Bar Association.

Disciplinary proceedings shall be terminated in case of absence of offensive actions of the lawyer or expiry of the term of the beginning of the proceedings.

VII. A person, in respect of whom decision on suspension of his/her activity of lawyers is taken, may not be elected to the position at elected bodies of the Bar Association. A decision on the suspension of activity of lawyers for the period from three months to one year may be appealed to the court.

VIII. In case of the existence of grounds for disbarment from the Bar Association, Board of the Bar Association addressed to the court for the settlement of the issue on the basis of reference of the Disciplinary Commission, may suspend the activity of the lawyer until the entry of the court decision on that issue into force.

Article 14 of "Statute on lawyers code of conduct" provides that the lawyer shall be brought to disciplinary liability in case of breach of conduct rules.

Respective provisions of "Statute on Disciplinary Commission of Lawyers" which regulates the procedure of disciplinary proceedings provide that the lawyer shall be brought to disciplinary liability in case of detection of breach of provisions of legislative acts, Statute on lawyers code of conduct as well as of cases of breach of norms of lawyer ethics in the course of exercise of professional duties (1.2). Members of Azerbaijan Bar Association shall be brought to disciplinary liability exclusively by the Board of the Bar Association on the basis of reference of the Disciplinary Commission of lawyers (1.2).

Article 5 of this Statute provides that the lawyer brought to disciplinary liability has rights to become familiar with application, complaint and other documents, to provide testimony and petition, to be informed about the time and place of the meeting of Commission, to give objection to member of Commission if there is a suspicion of fairness, to attend the meeting of Commission and to get a copy of reference of Commission.

Respective principles of "Basic Principles on the Role of Lawyers" provides that charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice (principle 27). Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review (principle 28). All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles (principle 29).

Analyzing these principles together with above-mentioned norms of Azerbaijan legislation, it becomes clear that bringing of a member of Azerbaijan Bar Association to disciplinary liability and procedures following that absolutely comply with norms and principles of international law.

Respective legislative acts of the Republic of Azerbaijan, as well as mentioned regulations of Azerbaijan Bar Association, establish fair, democratic and effective rules on disciplinary proceeding in the light of respective principles of "Basic Principles on the Role of Lawyers".

Given that, Disciplinary Commission of Lawyers is impartial, an independent body which is established by "Law on Lawyers and activity of lawyers" and consists of lawyers. It fairly investigates the issue with attendance of lawyer brought to disciplinary liability and gives its reference to the Board of Bar Association within a month. It is necessary to hold a meeting and to make a decision for the Board of Bar Association about applying disciplinary sanctions to the lawyer. The Board of Bar Association ensures the presence of the lawyer in its meeting. All these factors show that disciplinary proceedings brought to the lawyer is in compliance with "Basic Principles on the Role of Lawyers".

We would also like to bring to your attention that disbarment of the lawyer from the Bar Association is the competence of neither Disciplinary Commission of Lawyers nor the Board of Bar Association. Above-mentioned norms establish that to exclude the lawyer from the Bar Association it is necessary to address the court. The lawyer can be excluded from Bar Association only by the entry of the court decision on that issue into force.

This procedure is the appearance of "an independent judicial review" established by mentioned principles in the legislation of the Republic of Azerbaijan.

4. *Providing the basis for refusing Mr Yalchin Imanov a copy of the initial complaint filed against him and a copy of the reference of the Disciplinary Commission of Lawyers to refer his case to the Board of Bar Association.*

Article 5 of "Statute on Disciplinary Commission of Lawyers" provides that the lawyer brought to disciplinary liability has rights to become familiar with application, complaint and other documents, to provide testimony and petition, to be informed about the time and place of the meeting of Commission, to give objection to member of Commission if there is a suspicion of fairness, to attend the meeting of Commission and to get a copy of reference of Commission.

It becomes clear that the lawyer brought to disciplinary liability has a right to get a copy of the reference of Commission, but not the complaint, application and other documents addressed to Bar Association. The lawyer can only become familiar with these documents.

We would like to inform you that Mr Yalchin Imanov was shown the complaint filed against him and took notes from it. However, to this day Azerbaijan Bar Association has not received any verbal or written request on giving a copy of the respective reference of Disciplinary Commission of Lawyers.

5. *Providing information on the measures that Government of Azerbaijan has taken or intends to take, to ensure the independence of the legal profession and to enable lawyers and human rights defenders to perform their professional functions freely and without any intimidation, threat, harassment or improper interference.*

In this regard, we would like to inform you that from its foundation Azerbaijan Bar Association has taken progressive steps forward to ensure the high quality of legal assistance to the public and legal profession has been a subject of legal-judicial reforms carried out in Azerbaijan.

In 2003, 2004, 2009 and 2010, several important amendments have been made to "Law on Lawyers and activity of lawyers". The main legislative act regulating the legal profession was made more complying with European experience by these amendments.

Order of the President of the Republic of Azerbaijan on "State Program on anti-corruption" envisioned to increase the amount of payment for legal aid and to take respective actions to fulfil the duties based on "Law on Lawyers and activity of lawyers".

Order of the President of the Republic of Azerbaijan on "improvement of the pecuniary and technical base of Azerbaijan Bar Association" was signed in 2005. This Order envisioned settling issues about administrative building and pecuniary and technical base of Bar Association, allocating funds to buy cars and to order a special dress for lawyers. Also, this Order addressed issues about the amount of money paid for legal aid and education of lawyers.

The General Meeting of members of Bar Association held in 2012 adopted the "Statute on lawyers code of conduct". This Statute regulated the radius of rules of conduct of Lawyers and defined disciplinary liability of them more precisely. In this regard, the adoption of the Statute was an important step for ensuring the independence of Lawyers.

The most recent amendments made to civil procedure and administrative procedure laws, as well as to "Law on Lawyers and activity of lawyers" increased the importance of the role of lawyers a lot more in the legal system. It was decided that rendering professional and high-quality legal assistance and representation in courts are in exclusive competence of lawyers who are members of Azerbaijan Bar Association. Bar Association envisions increasing the number of lawyers and settling other issues in this regard.

Azerbaijan Bar Association endeavours to improve the reputation of the legal profession, to ensure the independence of it and the high quality of legal assistance.

Sincerely,

Anar Baghirov

The President of Azerbaijan Bar Association