

**Mandate of the Special Rapporteur on the independence of judges and lawyers**

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 26/7.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **recent amendments to the Act on Bar of 27 January 2000 and other laws, which could undermine the right of access to justice and jeopardise the right of legal practitioners to carry out their professional activities.**

According to the information received:

The Act on Bar, entered into force on 27 January 2000 and amended in 2013, sets out the framework for regulation of the legal profession in Azerbaijan. According to the Law, only a lawyer who has been admitted to the Bar is authorized to carry out the function of Bar lawyer. Furthermore, the Act stipulates that only lawyers admitted to the Bar Association are allowed to represent defendants and suspects in criminal cases and quasi-criminal regulatory offences and to take part in proceedings before the Supreme Court and the Constitutional Court in any kind of cases.

At the same time, Section 69 of the Code of Civil Procedure, Section 31 of the Code of Administrative Court Procedure and other procedural legislation allowed lawyers who were not members of the Azerbaijani Bar Association (non-Bar Lawyers) and other lay practitioners to represent clients before courts in civil cases and administrative disputes. For such court representation, notarized power of attorney was sufficient.

As a result, there appeared to be three types of legal practitioners in Azerbaijan:

1. Bar lawyers (*vəkil* in Azerbaijani) – lawyers who are members of the Bar Association and have the right to provide legal representation in any type of cases;
2. Non-Bar lawyers (*hüquqşünas* and (or) *nümayəndə* in Azerbaijani) – lawyers who provide legal representation mainly in civil cases and administrative disputes, but are not allowed to represent clients in criminal cases or before the Supreme Court and the Constitutional Court; and

3. Lay (non-lawyer) practitioners (*nümayəndə* in Azerbaijani) – who have the same status as non-Bar lawyers though in practice their assistance is mostly used in regions and rural areas of Azerbaijan where the deficit of lawyers is a great problem.

On 6 October 2017, the Parliament of Azerbaijan reportedly announced its intention to amend several laws, including the Code of Civil Procedure, the Code of Administrative Court Procedure and the Law on Bar. On 31 October, after short deliberations in the Parliament, the legal amendments were adopted by the Parliament. They were signed by the President of Azerbaijan on 7 November, and entered into force on 1 January 2018.

Reportedly, members of the legal profession were not consulted in the process of amending the legislation on legal representation. In this regard, I wish to stress that legislation regulating the role and activities of lawyers and the legal profession should aim at enhancing the independence, self-regulation and integrity of the legal profession, and should be developed, adopted and implemented in accordance with international standards. Furthermore, my predecessor Leandro Despouy clearly stated that “in the process leading to the legislation’s adoption, the legal profession should be effectively consulted at all relevant stages of the legislation process.” (see A/64/181, para. 105 (c)).

According to the newly adopted amendments, practicing lawyers who are not members of the Azerbaijani Bar Association and other lay practitioners are now prohibited from appearing before the courts and representing individuals in lawsuits in any kind of cases. From now onwards, only members of the Bar Association are allowed to represent individuals before the courts.

This new legislation raises a number of concerns from the point of view of my mandate. Not only will it undermine the right of access to justice of thousands of ordinary citizens; it could also affect those legal practitioners that are not members of the Bar, who in less than two months will no longer be able to continue their professional activities.

According to the European Commission for the Efficiency of Justice (CEPEJ), Azerbaijan has the lowest number of Bar lawyers in Europe. The International Bar Association reported that there are around 900 advocates (members of Bar Association) in Azerbaijan, approximately 9-10 lawyers per 100,000 inhabitants. This number is very low in comparison with the European average (165 lawyers and legal advisers per 100,000 inhabitants). Furthermore, it appears that the vast majority of the Bar Association members (approximately 700 out of 900) operate in Baku.

Because of the low number of advocates, Bar members predominantly engage in criminal cases. As a result, the majority of litigants in civil and administrative cases are at present represented by non-Bar lawyers. I have been informed that there are around 250,000 civil and administrative cases pending before the Azerbaijani courts, and that 90 percent of parties to these proceedings are represented by non-Bar lawyers. The percentage of non-Bar lawyers involved in civil and administrative proceedings appears

to be even higher in rural areas, due to the shortage of advocates operating outside Baku (approximately 200 out of 900).

Since 2000, it appears that non-Bar lawyers outnumbered advocates in representing clients before civil and administrative courts. The number of non-Bar lawyers providing legal assistance further increased in 2014, following the adoption of amendments to the NGO and Grants legislation which reportedly prevented NGOs from providing legal assistance to victims of human rights violations. At present, it appears that non-Bar lawyers lodge the bulk part of applications to international courts, including the European Court of Human Rights.

Following the entry into force of the new amendments, the number of available lawyers who could represent litigants before Azerbaijani courts would dramatically drop, and be limited to 900 Bar lawyers, who would be called to provide legal representation to a population of around 9 million people.

I have also been informed that the procedures to be admitted to the Bar Association are allegedly restrictive and arbitrary.

First of all, Bar admission exams are reportedly held seldom, once in 2-3 years: according to the information I have received, the last Bar exam took place in 2014.

Secondly, admission requirements appear to be restrictive and discriminatory: only lawyers who have worked under labour contracts for three years are reportedly allowed to participate in the Bar exam, while lawyers who have been working for the same period of time under service contracts (registered as entrepreneurs) are de facto not allowed to apply to take the Bar exam.

Thirdly, the whole examination process – which consists of a written test and an oral interview – appears to be based on a procedure that lacks fair, objective and clearly formulated criteria: there seems to be a general lack of information about the order, format and content of the exam, and applicants are allegedly not able to get information on how and what to prepare, the preparation materials, methodology of exam, or samples of past questions.

Finally, particular concerns have been raised with regard to the oral interviews, since it seems that it is at this stage that the most ‘problematic’ candidates – for example, persons who have previously worked with human rights NGOs or with lawyers identified with political groups opposed to the Government (opposition lawyers) – are dismissed during the interview part.

In a spirit of co-operation and dialogue, and in line with the mandate entrusted to me by the Human Rights Council, I would like to refer to Article 14 of the International Covenant on Civil and Political Rights, which your Excellency’s Government acceded on 13 August 1992. Article 14 encompasses the right of access to the courts in cases of determination of criminal charges and rights and obligations in a suit at law. It includes a

number of procedural guarantees that aim at ensuring the no individual is deprived, in procedural terms, of his/her right of access to justice. Such minimum guarantees include, inter alia, the right to communicate with a lawyer of one's choosing (article 14, para. 3 (b)) and the right to defend oneself in person or through legal assistance of his/her own choosing (article 14, para. 3 (d)). In its General Comment No. 32 (2007), the Human Rights Committee stressed that the availability or absence of legal assistance "often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way." (CCPR/C/GC/32, para. 10).

The preamble of the Basic Principles on the Role of Lawyers recognises that "adequate protection of the human rights and fundamental freedoms to which all persons are entitled (...) requires that all persons have effective access to legal services provided by an independent legal profession." The Basic Principles also provide that all persons "are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings" (Principle 1), and that "Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction" (Principle 2).

The latter principle implies that in any given country there should be a sufficient number of lawyers to provide legal services.

In many countries, registration with the competent authority of the State, usually the Bar which has jurisdiction in the area of the lawyer's residence, constitutes a necessary pre-condition to represent clients before national judicial authorities. Requiring lawyers to become members of the Bar in order to exercise their professional activities with the Bar is fully consistent with international standards relating to access to legal services.

However, in countries where there is a shortage of qualified lawyers, States are under an obligation to adopt all appropriate measures to ensure that (1) all persons within the territory and under the jurisdiction of the State concerned have effective access to legal services provided by an independent legal profession, and (2) legal practitioners can have equal and effective access to the Bar on the basis of fair, objective and clearly formulated criteria.

In many jurisdictions, access to the exercise of the legal profession is subject to a number of basic requirements, which vary from a country to another and include, for example, a certain age and competence, obtaining a law degree, passing the Bar exam and/or a training period in a law firm or other legal institution. With regard to the admission to the Bar, the Basic Principles on the Role of Lawyers provide that there should be no discrimination against a person with respect to entry into or continued practices within the legal profession (Principle 10).

In light of the above, I would like to recommend that your Excellency's Government:

1. reconsider the aforementioned legislative changes entered into force on 1 January 2018 with a view to ensuring their compliance with existing international human rights standards, and ensure that any such review be carried out in consultation with practicing lawyers to address their legitimate expectations and concerns;
2. adopt all appropriate measures to ensure that the current shortage of qualified legal professionals do not undermine access to justice for persons within the territory and under the jurisdiction of Azerbaijan. Such measures could include, for example, providing access to legal aid and services in areas where there is a shortage of qualified lawyers and authorizing non-Bar lawyers to continue to provide legal assistance to their clients in relation to cases that are already pending before civil and administrative courts and.
3. adopt all appropriate measures to facilitate access to the Bar of legal practitioners that meet the criteria provided for by national legislation. These include, for example, the review of the procedure and the criteria for the admission to the Bar, in consultation with the legal profession, with a view to developing fair, objective and clearly formulated criteria for the assessment of candidates and the holding of Bar exams on a regular basis.

It is also my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. Therefore, I would be grateful for any additional information and any comment you may have on the above mentioned allegations. I also welcome any clarifications on measures taken to ensure the compliance of the aforementioned legislation with Azerbaijan's obligations under the aforementioned international human rights law and standards.

I would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Diego García-Sayán  
Special Rapporteur on the independence of judges and lawyers