

AZERBAIJAN

Despite irregularities during elections in November 2000 and January 2001, Azerbaijan was admitted to the Council of Europe in January 2001. While having adopted several laws aimed at strengthening civic freedoms and acceding to a number of international human rights treaties, Azerbaijan's human rights performance remained poor. Concerns persist about the independence of judges. A new Law on Advocates preserved the monopoly of the Collegium of Advocates in criminal cases.

Azerbaijan has remained a republic since it became independent from the Soviet Union on 30 August 1991. President Heydar Aliyev and his supporters continue to dominate the government and the multi-party 125-member Parliament.

The conduct of parliamentary elections held in November 2000 showed some progress over the flawed 1995 general and 1998 presidential elections. However, numerous serious irregularities were manifest and, according to the Organisation for Security and Cooperation in Europe (OSCE), the election process did not meet international standards. By-elections for seats in the legislature were held on 7 January 2001 in 11 constituencies where results of the November 2000 general election had been declared invalid. Observers from the OSCE and the Parliamentary Assembly of the Council of Europe (PACE) reported that although the elections did not meet international standards, they had constituted an improvement over the flawed November 2000 ballots.

The Constitution, which came into force in November 1996 following a referendum, provides for the protection of a full range of human rights, and for a system of government based on a division of powers among a strong presidency, a legislature with the power *inter alia* to approve the budget and impeach the president, and an independent judiciary.

The President is head-of-state and the Prime Minister is the head of the government. The Cabinet consists of a Council of Ministers who are appointed by the President and confirmed by the Parliament.

Azerbaijan has engaged in prolonged inter-ethnic conflict with neighbouring Armenia over the status of the Nagorno-Karabakh region, although a cease-fire has been complied with since 1994. In the first half of 2001, a number of meetings took place under the auspices of the OSCE Minsk Group, aimed at resolving the dispute over Nagorno-Karabakh. As a result of the conflict, there are a large number of displaced persons both in Armenia and Azerbaijan.

HUMAN RIGHTS BACKGROUND

Azerbaijan has acceded to many of the major UN human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention for the Elimination of All Forms of Racial Discrimination, the Convention for the Elimination of Discrimination Against Women, the Convention Against Torture and the Convention on the Rights of the Child.

On 25 January 2001, Azerbaijan was admitted to the Council of Europe. Reports on the conduct of the recent by-elections (see above) were thought to have influenced Azerbaijan's admission. In June 2000, the Council of Europe's Parliamentary Assembly had recommended membership on the understanding that Azerbaijan would fulfil a number of commitments within a stated time frame. These commitments included ratification of the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment within a year of accession; adoption of a law on an ombudsperson within a year of accession; and adoption, within two years of accession, of a law on an alternative to compulsory military service, in compliance with European standards. Among other commitments, Azerbaijan also undertook to allow unrestricted access to prisoners by the International Committee for the Red Cross; to release or grant a new trial to political prisoners; and to prosecute members of law enforcement bodies suspected of human rights violations, in particular torture. A formal invitation of membership was issued in November 2000, although additional conditions were set in connection with the instances of fraud and irregularities reported during the November parliamentary elections.

Although the Government thus adopted or was in the process of adopting several laws aimed at strengthening civic freedoms, and despite its constitutional human rights provisions and its accession to international human rights treaties, Azerbaijan's human rights record remained poor. Some observers considered as premature the PACE recommendation of accession to the Council of Europe.

Opposition political parties continued to report harassment and intimidation, especially outside the capital and in the run-up to the November parliamentary elections. As the pre-election cycle heated up, the authorities allegedly used arbitrary licensing laws, fines, and trumped-up tax charges to intimidate the opposition media. A new media law from February 2000, although an improvement over the previous law, in many respects fell short of international standards.

On the positive side, President Aliyev issued a decree on 11 March 2000 regarding measures to be taken to address the issue of torture and ill-treatment, following a report by the UN Committee against Torture. Also in March 2000, the Supreme Court provided instructions to lower courts specifying, among other things, that the term "torture" should be understood in accordance with the definition in the UN Convention against Torture; reminding courts of their obligations to initiate investigations whenever defendants allege torture or ill-treatment; reiterating that evidence obtained in violation of the law is inadmissible; and repeating the 1999 decision of the Constitutional Court that those detained under administrative procedures are entitled to a lawyer. The UN Special Rapporteur on torture visited Azerbaijan in May 2000 at the invitation of the government. In spite of these positive moves, however, there were continuing reports of ill-treatment during 2000, not least from opposition parties.

In June 2000, President Aliyev issued a decree providing amnesty to many political prisoners, and, in October, dozens were released by presidential pardon. However, human rights groups claimed that hundreds of political prisoners remained in custody, chiefly those convicted on charges related to terrorism, alleged coup attempts, and abuse of office. At the end of September, prison authorities reportedly charged many of these prisoners with disciplinary offenses in what prisoners said were trumped up accusations intended to justify arbitrary confinement in punishment cells or transfers to harsher prison regimes. Significantly, under a new penal code, many prisoners with good records would have been eligible for early release.

THE JUDICIARY

The Constitution stipulates that judicial power is implemented through the Constitutional Court, the Supreme Court, the Economic Court and general and specialized courts. Courts of general jurisdiction may hear criminal, civil and juvenile cases. The Supreme Court also may act as the court of first instance, depending on the nature and seriousness of the crime. District and municipal courts try the overwhelming majority of cases.

Azerbaijani citizens over 30 years of age, who have a university degree in law and a 5-year working experience in the sphere of law may become judges. Judges cannot hold another elected or appointed position and cannot be engaged in business or any other paid activity. In April 2000, qualifying exams for judges were administered for the first time. Over half of the approximately 1,000 persons tested passed the written portion of the exam, which international legal observers said was conducted fairly. However, there were numerous reports of fraud during the oral portion of the test, where many positions were allegedly bought and sold.

Appointment and dismissal

While the Constitution provides for an independent judiciary subordinate only to the Constitution and the laws of the Azerbaijan Republic, judges do not in practice function independently of the executive branch. The President appoints Supreme, Economic and Constitutional Court judges, subject to confirmation by the Parliament. The President directly appoints lower level judges with no requirement for confirmation.

The judges of the Constitutional Court, the Supreme Court and the Economic Court have immunity, but can be dismissed "upon commitment...of crimes" on the initiative of the President, and after the parliament has voted for dismissal with a majority of 83 votes. The lower judges can be dismissed with a majority of 63 votes.

Pro-President members dominate the Parliament and, therefore, the career of judges depends almost entirely on the President. The presidential power regarding appointment and dismissal constitutes a serious threat to the impartiality of judges, especially in politically sensitive cases. Additionally, it is reported that the judiciary is widely perceived to be corrupt and inefficient.

Security of tenure

Judges in Azerbaijan do not have security of tenure and, as reported in *Attacks on Justice 1999*, the Government has been criticised by the UN in this regard. The UN Committee against Torture, during the discussion of Azerbaijan's initial report in November 1999, expressed concern about "[t]he absence of guarantees for independence of the legal profession, particularly with reference to the judiciary, appointed to a limited renewable term of years."

Recent developments

During the year 2000, the Constitutional Court (formed in 1998) issued a number of decisions, which demonstrated a more independent body. In February, it re-registered the opposition Azerbaijan Democratic Party, following a long and drawn-out appeal by the party. In August, it decided to declare unconstitutional the retroactive application of a clause in the election law that required parties to be registered six months in advance of the announcement of the elections. In November, it voided the results of the Parliamentary elections in four additional districts.

LAWYERS

Azerbaijan has traditionally had three types of professionals who provide legal services: 1) attorneys or barristers, known as "advocates", who may represent clients in criminal court and who are members of the Collegium of Advocates, (which bears rough equivalence to a bar association); 2) jurists or solicitors, persons with legal training who may represent clients in civil proceedings only and can provide legal advice, but who cannot act as a defense lawyer in criminal cases; and 3) notaries, who authenticate signatures and prepare contracts in family and real estate law.

Also relevant to the protection of human rights is a fourth type of legal practitioner, not necessarily legally trained, known as the public defender, who makes statements on behalf of a client. A public defender can attend a court proceeding on behalf of an NGO, but he or she cannot represent defendants during pre-trial investigation or visit them in detention.

A much-anticipated Law on Advocates and Advocate Activity (the Law) entered into force on 27 January 2000. The Law sets out the framework for the functioning of the legal profession. The dominant feature of the Law is the entity called the Collegium of Advocates, or official bar association, a remnant of the Soviet legal system that continues to maintain control over the legal profession, leaving little if any room for independent lawyers and legal associations.

Article 4 of the Law separates lawyers into two categories, roughly corresponding to the first two categories listed above. The first class of "advocate" or attorney provides the full spectrum of legal services, including criminal defense work. Members of this class must belong to the Collegium of Advocates. The second class consists of all those who do not have status of "advocate" or attorney and, importantly, are not members of the Collegium of Advocates. Members of this group are therefore only permitted to deal with "other matters of attorneys", precluding the defense of the accused in criminal cases, meaning access to clients in pre-trial detention and defense of them before criminal courts of law. Thus, the first class of advocates, who are all members of the Collegium, maintains a monopoly on criminal cases.

Article 9 of the Law provides that the Collegium is independent of the Ministry of Justice and any other state control, and Article 1 prohibits any interference with, or influence on, advocates or their professional associations by any governmental bodies. However, it has been alleged that like most semi-public institutions in Azerbaijan, the Collegium is *de facto* under the influence of the executive branch. Although the Ministry of Justice does not micromanage the day-to-day operations, the Collegium leadership is said to give high consideration to what is politically acceptable to the Presidential Administration and the Ministry of Justice.

Despite the apparent formal independence of the Collegium, other branches of Government retain influence over the membership through the Qualification Commission of Advocates. This Commission is formed pursuant to Article 13 of the Law in order to "determine the professional preparedness of candidates to become advocates". Six of the nine members of the Qualification Commission, which selects Collegium members, are chosen by the executive branch and by the judicial branch respectively, which in turn, is reportedly influenced substantially by the executive authorities.

Advocates working within the Collegium are influenced by the organisation's direct control over their work and pay. The Collegium controls the flow of casework from the criminal justice system. It requires lawyers to turn their fees over to the Collegium's accounting offices, from which they are then returned a percentage. Through its monopoly on criminal cases, advocates are dependent on the Collegium for their livelihood, as the majority of cases in Azerbaijan are criminal cases.

Lawyers report that the Collegium presidium rarely interferes directly in an individual advocate's work, but that typically a lawyer's Collegium supervisor monitors the lawyers under him or her and exerts pressure through more subtle means, such as failing to secure cases to assign to a lawyer who shows too much independence.

The Collegium's monopoly on defending criminal cases deprives defendants of the opportunity to file suits or defend themselves independently, which is a violation of the UN Basic Principles on the Role of Lawyers. Moreover, attempts to practice as a non-member have been all but unthinkable. Article 158 of the Criminal Code of Azerbaijan punishes performance of services without a license by up to five years of imprisonment. It is not known if this article has ever been invoked, but lawyers are intimidated by believing it could apply to them.

The Law only allows members of the Collegium to found private law firms (Article 5). This provision adds to the Collegium's monopoly on the main parts of the legal profession. The part of Article 5 that restricts the founding of law firms to members of the Collegium was apparently not included in the draft version of the law, but was instead added just prior to adoption.

While until 1998 advocates practiced law exclusively through the Collegium of Advocates, there was a period prior to the January 2001 Law, during which there was some uncertainty as to whether other lawyers could take on criminal cases as defense lawyers. A 1997 presidential decree and a 1998 Council of Ministers' resolution gave licensed lawyers the right to engage in some of the same activities as their advocate counterparts, including taking on criminal cases. Presidential Decree No. 637 "On Confirming the List of Activities which Require Special Permission (Licenses)" from October 1997 listed all the types of fee-paid services for which license would be required, and among the activities was provision of paid legal services. The process of applying for and receiving a license was relatively routine, although the cost of some 350 dollars (one Million Mantas, an amount equivalent to many months of a typical lawyer's salary) could be prohibitive. Thus, an independent, private, fee-paid bar operating outside of the Collegium was suddenly a possibility. However, Article 4 of the Law now unequivocally states that only individuals who have been accepted as a member of the Collegium can be defense lawyers in criminal cases. Some human rights observers have called the monopoly of Collegium members on criminal cases a "significant step backwards".

There does not appear to be a coherent rationale for limiting other licensed lawyers from engaging in criminal defense. In fact, the requirements for obtaining a license are very similar to those required for Collegium members, as set out in Article 8 of the law. (Candidates must have a higher

legal education and two years legal experience, and must pass an exam offered by a body to be determined by the Ministry of Justice). In the absence of any apparent reason for the distinction, there may be political motivations behind the decision to retain complete control over advocates, who differ from licensed lawyers only in that they take on criminal cases.

The Association of Lawyers of Azerbaijan

As reported in *Attacks on Justice 1999*, the Association of Lawyers of Azerbaijan (ALA), a non-profit, non-governmental organisation which sought to unite primarily jurists, applied three times for registration as an organisation, and each time was refused registration by the Ministry of Justice. The ALA, which in the meantime had managed to attract more than 40 members and set up a modest operation, finally did obtain official registration on 15 February 2000, nearly three years after it first applied. The reason for this success was likely twofold. First, the Council of Europe had been applying pressure on the Government to register a series of organisations, including the ALA. Second, just days before the ALA obtained registration, Aslan Ismailov, one of the founders of the organisation, was told by an official from the Ministry of Justice that the ALA would continue to have difficulty as long as he remained one of the founders. He thus withdrew his name from among the list of founders, and the organisation was registered shortly thereafter.

The Azerbaijani Association of Advocates

The Azerbaijani Association of Advocates (AAA) was created with the intention of bringing together advocates. The organisation unites about 40 lawyers, who had previously been engaged in advocate activities on the basis of a license from the Ministry of Justice. Since the adoption of the Law on Advocates and Advocate Activity, they have no longer been able to practice law on the basis of a license. Two original members, who were also Collegium members, have since withdrawn, fearful of their own status in the Collegium. Shortly after the entry into force of the Law on Advocates, the AAA submitted its registration documents for the third time, although it has yet to receive a response from the Ministry of Justice.

CASES

Aslan Ismailov

The situation of Aslan Ismailov, a respected lawyer who had served repeatedly pro bono or for a nominal fee as legal counsel in human rights cases that had met with government resistance, was reported in some detail in the 1999 edition of *Attacks on Justice*. He was a member of the Collegium of Advocates until his dismissal in 1999, following a ten-day visit to the United States on invitation from the International League for Human Rights. Since then he has been unable to practice criminal law.

The Collegium provided two reasons for his dismissal: 1) he had failed to notify the Collegium of his trip to the United States and 2) he had engaged in illegal entrepreneurial activity which violated

the 1980 Provisions on the Advokatura by establishing a law firm which provided paid legal services and which obtained the Ministry of Justice's license in June 1998. In subsequent correspondence with the CIJL, the Government of Azerbaijan insisted that Mr. Ismailov's dismissal from the Collegium was not related to his trip to the United States.

With the passing of the Law on Advocates and Advocate Activity in January 2000, Mr. Ismailov is prone to further difficulties. Now that he is no longer a member of the Collegium, his law firm Viza could potentially be closed by the authorities. This could also be the case for nearly a dozen other law firms which were founded by licensed lawyers (not Collegium members), who had practiced advocate activity on the basis of a license. It seems unlikely that the authorities would take such a drastic step, although the fact that the current legislation puts these law firms at potential risk is a matter of concern.

Vidadi Mahmudiv

On 30 August 2000, Vidadi Mahmudov, a member of the Collegium of Advocates of Azerbaijan and one of the three attorneys representing the recently arrested editor-in chief of *Yeni Musavat*, Rauf Arifoglu, was issued a stern warning in the General Prosecutor's office not to disseminate any information affirming his client's innocence. The following day, 31 August 2000, the warning was repeated in written form. Mr. Mahmudov was also accused of "divulging information concerning the investigation", although the prosecutor provided no details about this claim and Mr. Mahmudov had not violated his client's confidentiality nor revealed any information about the course of the investigation other than to claim his client's innocence. The fact that the lawyer represents the editor of an opposition magazine suggests the political nature of the harassment. The treatment of Mr. Mahmudov is a violation of international standards of civil and political rights as well as on the protection of human rights defenders established by the United Nations. These standards are found in the 1998 Defenders Declaration of the General Assembly and the 1990 UN Basic Principles on the Role of Lawyers. As of this writing, Mr. Makhmudov has been able to practice law as a result of the postponement of the lawyers' re-qualification exam.