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Azerbaijan: Continuing Erosion of the Right to a Fair Trial

The changes to the regulations that govern the legal profession in Azerbaijan, which come into force today, are the latest in the series of restrictive measures introduced and deployed by the government to hinder the work of human rights lawyers and erode further the right to legal defence in Azerbaijan. In a country where government critics are arbitrarily detained and imprisoned, and independent media are silenced, lawyers play an essential role in defending human rights. However, human rights lawyers in Azerbaijan have become a targeted group themselves, facing reprisals unleashed against them by the powerful state machinery. Azerbaijan has a duty to ensure that lawyers are able to perform their professional duties without hindrance and fear of reprisals, and that the right to a fair trial is fully protected and upheld.

For years, lawyers who take up cases of victims of human rights violations in Azerbaijan, and are prepared to confront the authorities in court, have routinely faced harassment. As a result, fair trial guarantees in Azerbaijan, such as the right to access to a lawyer and legal assistance, and representation by a lawyer of own choice, have been further eroded. The new regulation is an additional hurdle for the exercise of these rights and a new instrument at the government's disposal in its relentless persecution of human rights defenders.

There is only a handful of lawyers in the country who are prepared to take up the cases of victims of politically-motivated prosecution and defend their rights in earnest. The authorities have deployed various tactics to obstruct their activities, from denying them access to their clients in detention for days and even weeks, to subjecting lawyers themselves to intimidation and harassment, including through disbarment.

The ability of human rights lawyers in Azerbaijan to effectively defend victims has been steadily restricted by the gradual erosion of the independence of the Bar Association (Collegium of Lawyers) of Azerbaijan. By law, professional standards among practicing lawyers, including matters of qualification and discipline, are upheld by the Bar Association. While in law this professional body is independent of the government, it is widely perceived to be lacking genuine independence and being under the influence of the Ministry of Justice.¹ In recent years, it has repeatedly failed to protect human rights lawyers from government pressure; moreover, its executive body, the Presidium, has repeatedly instigated disciplinary proceedings against human rights lawyers in response to unfounded complaints from members of the criminal justice system, including prosecutors.

Amnesty International has documented numerous instances where lawyers have been suspended or disbarred for taking up cases of victims of human rights violations facing politically-motivated

¹ Amnesty International's interviews with lawyers in Tbilisi, March 2016. See also International Commission of Jurists (ICJ), Mission Report 2016, *Defenceless Defenders: Systemic Problems in the Legal Profession of Azerbaijan*, page 13, available at <https://www.icj.org/azerbaijan-the-independence-and-role-of-lawyers-must-be-respected-icj-report-says/>.

prosecution, or simply for publicizing information about torture and other ill-treatment, or about violations of the right to a fair trial.

As recently as 20 November 2017, the Bar Association suspended the membership of a prominent human rights lawyer, Yalchin Imanov, after he made public allegations about torture and other ill-treatment of one his clients, Abbas Huseynov. Imanov was representing one of his co-defendants in a high-profile case involving dozens of religious believers from the town of Nardaran, a north-western suburb of Baku, Azerbaijan's capital, who were prosecuted in unfair trial proceedings following a security operation that targeted local Muslim activists and resulted in six deaths.²

In August 2017, Imanov reported in the media that Abbas Huseynov had been subjected to torture and other ill-treatment, including beatings, while in custody. Concerns regarding torture and other ill-treatment of Abbas Huseynov, including him being subjected to inhumane conditions of detention, were also raised by the Council of Europe.³ However, the Azerbaijani authorities dismissed those allegations as groundless, and refused to investigate them. Instead, a senior penitentiary administration official accused Yalchin Imanov of libel, and requested his disbarment. At the time of writing, Yalchin Imanov's membership of the Bar Association remains suspended.

Yalchin Imanov's case is the just latest in a series of similar unfounded disciplinary proceedings against human rights lawyers in Azerbaijan resulting in the suspension or disbarment from the Bar Association. Among them are Elchin Namazov, Aslan Ismayilov, Khalid Bagirov and Muzaffar Bakhishov Alaif Hasanov.

In another similar case, on 17 November 2017, a Deputy Prosecutor General of Azerbaijan requested the Bar Association to take disciplinary action against other four human rights lawyers, Nimat Karimli, Asabali Mustafayev, Agil Layich and Fakhraddin Mehdiyev. All four are prominent lawyers representing victims of politically motivated prosecutions in Azerbaijan, including investigative journalist and prisoner of conscience Afgan Mukhtarli,⁴ and former prisoner of conscience Tofiq Yagoubly.⁵ The prosecution claimed the lawyers were "politicized" and that they had publicized confidential information. In fact, the lawyers publicly exposed violations of their clients' right to a fair trial, and claimed that the authorities' response was intended as reprisal for this.⁶

While the authorities in Azerbaijan have effectively co-opted the Bar Association and used it as a tool to take reprisals against human rights lawyers, they have also introduced a number of legislative changes in recent years to impose more restrictive regulations on the legal profession, which have been used these to hinder the work of human rights lawyers specifically. Thus, following the amendments to the Criminal Procedural Code introduced in October 2014, lawyers can no longer merely present their legal credentials to enter a case on behalf of their clients, but are also required to present a notarized power of attorney. This requirement has since been

² The events and details of the police operation are still heavily disputed. For details of violations of the co-defendants' right to a fair trial see Amnesty International, "Azerbaijan: torture and travesty of justice in Nardaran case", 6 February 2017, EUR 55/5633/2017, available at: <https://www.amnesty.org/en/documents/eur55/5633/2017/en/>.

³ Parliamentary Assembly of Council of Europe (PACE). Report by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), *The functioning of democratic institutions in Azerbaijan*, 10 October 2017, Doc. 14403 Add, available at: https://www.ecoi.net/file_upload/1830_1507807664_2017-10-10-the-functioning-of-democratic-institutions-in-azerbaijan-doc-14403-add.pdf.

⁴ Amnesty International, "Georgia/Azerbaijan: Exiled Azerbaijani journalist at risk of torture after cross-border abduction", 30 May 2017, available at: <https://www.amnesty.org/en/latest/news/2017/05/georgia-azerbaijan-exiled-azerbaijani-journalist-at-risk-of-torture/>.

⁵ Amnesty International, "Azerbaijan: Political activists held on fabricated charges must be released", 14 March 2014, available at: <https://www.amnesty.org/en/latest/news/2014/03/azerbaijan-political-activists-held-fabricated-charges-must-be-released/>.

⁶ Meydan TV, "Prosecutor General's Office issues complaint against four lawyers", 17 November 2017, available at <https://www.meydan.tv/en/site/news/26173/>.

regularly used by the authorities to refuse meetings between lawyers and their clients held in custody.

Moreover, details of numerous cases reviewed by Amnesty International suggest that police are often deliberately conducting arrests after working hours and on weekends, when notary services are unavailable, to further obstruct and delay the first meeting between the detainee and the lawyer of their choice. Reports of torture and other ill-treatment are common in Azerbaijan, and it has been documented by Amnesty International that detainees are at a heightened risk during the first hours and days of detention. Access to a lawyer of their choice is an essential safeguard against torture and ill treatment, as detainees are most commonly and most intensely subjected to such practices during that time.

The new regulations, introduced as amendments to the Code of Civil and Administrative Procedure and the Bar Act that came into effect on 1 December, risk further limiting human rights lawyers' ability to provide effective legal advice and representation to victims of human rights violations in Azerbaijan. They prohibit lawyers who are not members of the Bar Association to represent any individual in any kind of lawsuit. Previously, practising lawyers who were not members of the Bar Association, including suspended or disbarred members, could still provide legal representation in civil and administrative proceedings.

Amnesty International is concerned that in the present climate and given the history of reprisals against human rights defenders in Azerbaijan, newly adopted regulations are part of the government's attempts to target human rights lawyers and other human rights defenders and ultimately leave victims of human rights violations without adequate legal assistance and representation.

These newly adopted regulations will also have a further chilling effect on the professional legal community, sending a clear signal to lawyers who still hold the Bar Association membership that should they take human rights cases they should be prepared to be precluded from practicing law altogether.

The UN Basic Principles on the Role of Lawyers make clear the importance of lawyers being able to speak freely about human rights. Principle 14 states: "Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession." Principle 23 states: "Lawyers like other citizens are entitled to freedom of expression....In particular, they shall 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."

Furthermore, as provided by the UN Declaration on Human Rights Defenders, everyone has the right to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights.

The Azerbaijani authorities must end the reprisals and any form of harassment of human rights lawyers, and ensure that lawyers are able to effectively represent victims of human rights violations and perform all of their professional functions without intimidation, hindrance, harassment or improper interference as provided by the UN Basic Principles on the Role of Lawyers. The government of Azerbaijan must also ensure effective independence of the Bar Association (Collegium of Lawyers) of Azerbaijan, and abstain from introducing any further regulations that could be used to limit the independence of the legal profession.

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For more information please call Amnesty International's press office in London, UK, on +44 20 7413 5566 or email: press@amnesty.org

International Secretariat, Amnesty International, 1 Easton St., London WC1X 0DW, UK
www.amnesty.org