

The Law Society of England and Wales

Stakeholder Submission to the UN Human Rights Council's Universal Periodic Review – AZERBAIJAN

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The Law Society is a professional body representing approximately 200,000 lawyers in England and Wales. Its aims include upholding the independence of the legal profession, the rule of law and human rights around the world. The Law Society was established by Royal Charter (the "Charter of the Society") in 1845 and has consultative status with the Economic and Social Council of the United Nations since 2014. Its activities are established by statute: the Solicitors Act 1974, the Courts and Legal Services Act 1990, the Access to Justice Act 1999, and the Legal Services Act 2007.

Contact details:

Website: <http://www.lawsociety.org.uk/>

Postal address: The Law Society's Hall
113 Chancery Lane
London WC2A 1PL
United Kingdom

Email: international@lawsociety.org.uk

A. Introduction

1. Information contained in this submission is based on evidence gathered by the Law Society of England and Wales (“Law Society”) as part of its Lawyers at Risk programme,¹ which supports legal professionals and human rights defenders worldwide who are hindered in carrying out their profession because of the cases they work on or clients they represent.
2. Azerbaijan underwent its first UPR cycle in 2009, second in 2013, and third in 2018.
3. This submission focuses on the following:
 - (B) Lack of Judicial Independence
 - (C) Lack of Guarantees to Exercise the Legal Profession Independently
 - (i) Inadequacy of Legislative and Regulatory Framework
 - (ii) Lack of Admission to ABA on Political Grounds
 - (iii) Disciplinary Proceedings Brought by ABA Against its Members
 - (iv) Attacks on Lawyers and Lack of Support by ABA
 - (D) Lack of Compliance with ECtHR Judgments
 - (E) Recommendations

B. Lack of Judicial Independence

4. The Azerbaijani Constitution guarantees the separation of powers and provides for judicial independence, but judges are not functionally independent.² Judges and prosecutors regularly take instructions from the Presidential Administration and Justice Ministry, particularly regarding politically sensitive cases and judges routinely accept bribes.³
5. The Justice Ministry controls the Judicial Legal Council, which oversees the selection of judges, their transfer, promotion, and disciplinary proceedings.⁴ The majority of members of that Council are appointed by Government. Professional examinations form part of the selection process for judges, but loyalty to the regime, assessed through background checks and interviews, is a significant factor in selection.⁵ The Constitutional Court is composed of 9 judges appointed by Parliament upon Presidential recommendation, rather than by an independent and impartial body.⁶
6. Judges and courts have hindered citizens’ access to justice.⁷ Issues include delays in providing copies of judgments, summoning parties as required by procedural legislation, violation of the code of conduct by judges during proceedings, arbitrary rejection of evidence, and unreasonable restrictions to the right to appeal.⁸
7. Although the Constitution prescribes equality before the law, judges often give favourable treatment to prosecutors over defence attorneys when assessing motions, arguments, and evidence, without regard to merits.⁹ In *Hasanov and Majidli v Azerbaijan*¹⁰, the ECtHR identified this pattern, noting that first-instance and appeal courts did not consider applicants’ arguments and “merely accepted the police officers’ versions”.¹¹

8. Members of opposition parties and civil society activists are consistently denied counsel of their choice and forced to accept Government appointed lawyers or self-represent, especially in administrative offence cases,¹² as established by the ECtHR in multiple cases against Azerbaijan.¹³

C. Lack of Guarantees to Exercise the Legal Profession Independently

(i) Inadequacy of Legislative and Regulatory Framework

Law on Advocates and Advocacy Activity (Law)

9. Disciplinary action against lawyers is regulated in Article 22 of the Law.¹⁴ It stipulates that lawyers shall be subjected to disciplinary proceedings in cases of breaching: a) the Law and other legislative acts, b) Code of Conduct for lawyers, and c) norms of lawyer ethics.
10. It further lists types of sanctions that the Presidium of the Azerbaijan Bar Association (ABA) may apply, based on an opinion of the ABA Disciplinary *Commission*, with suspension up to one year as most severe sanction. Part VIII of the Law provides that disbarment can only take place after a court judgment, upon request of the ABA Presidium.
11. These provisions are too broad and vague to adequately regulate disciplinary action against lawyers. It provides discretionary powers to the ABA Presidium and the Disciplinary Commission, facilitating arbitrary application of the Law and imposition of disproportionate disciplinary measures. It also undermines legal *certainty* for lawyers, making it almost impossible for them to know what they could be disciplined for.
12. In October 2018, a new regulation was issued by the ABA Presidium on the “organisation and activities of the lawyers’ offices” through which the ABA has extended its control over lawyers’ activities and the establishment, structure, and functioning of so-called “legal bureaus”.

The Code of Conduct for Lawyers

13. The Charter on the Rules of Conduct of Lawyers¹⁵ adopted by the Conference of the ABA on 7 December 2017 and updated on 28 December 2020 contains very restrictive provisions, particularly violating lawyers’ right to freedom of expression.
14. Article 2.11 states that the public or political activity of a lawyer, or his affiliation to a public or political association, should not raise doubts that he performs his duties impartially.
15. Article 2.13 of the Code explicitly prohibits the following: “[...] slanderous and misleading information about decisions of the bodies of the Bar Association, which undermines its authority in the media, social networks and public places. An attorney must not allow any dissemination of ungrounded slanderous information about the



state, non-state actors, its officials, and must not participate in unethical statements and behaviour towards these persons in the media, social networks and public statements.”

16. This means that disciplinary action can be taken, and in practice is, against lawyers who criticise the ABA or the State. It is essential for a lawyer to be able to question – for example –lack of effective investigation by the State when their client has been tortured in detention (if in the interest of the client, also publicly).
17. Article 2.14 states that “lawyers must do nothing outside of the realm of the professional functioning to damage the reputation of the profession”.
18. Disciplinary measures are used, often based on these articles, to prevent lawyers from speaking out about the violations of their rights and those of their clients.

(ii) Lack of Admission to ABA on Political Grounds

19. In 2020, a case was submitted to the ECtHR on behalf of 5 lawyers who were not admitted by the ABA in 2018.¹⁶ All worked with other lawyers on human rights related cases. They passed the required examination but were failed in the oral exam where the ABA Admission Commission has discretionary power, in absence of effective safeguards against arbitrary decisions.
20. Four of the five lawyers lodged internal appeals to the ABA Presidium, which were rejected. One of the lawyers met several times with the ABA president, who urged him to publicly support legislative reforms limiting the right of lawyers not admitted by the ABA to represent clients in court, and to promise that he would not become a member of any political movement or party if he were to continue practising as a lawyer.
21. All five lawyers appealed to the court, alleging that the ABA’s oral interviews were unlawful and biased. Their cases were ultimately dismissed by Azerbaijan’s Supreme Court. The ECtHR judgment is pending.
22. Lawyer Intigam Aliyev, who the ABA Presidium continuously and publicly denies is a lawyer because he was not admitted to the ABA, and his colleague Asabali Hajibeyli both appealed to the ECtHR after their lack of admission to the ABA. Aliyev’s most recent submission to the ECtHR dates from February 2021 in which he insists on compliance by Azerbaijan with the ECtHR’s judgment in his case (including his admission to the ABA and revision of domestic court decisions).¹⁷

(iii) Disciplinary Proceedings Brought by ABA Against its Members

23. Lawyer Janna Bagirova was disbarred from the ABA in August 2020. Domestic courts failed to hear her case for 10 months. In the same way in which lawyers are arbitrarily disbarred, they are also arbitrarily reinstated.
24. In May 2021, three lawyers who were previously disbarred on political grounds were reinstated by decision of the ABA Presidium. This decision was welcomed, but shows that - contrary to what the ABA Presidium previously alleged - it is possible to reinstate lawyers who were disbarred through an administrative decision that it itself can take (without necessity of a prior court judgment). Such reinstatement should take effect for all wrongfully disbarred and suspended lawyers.

25. The mentality of the ABA Presidium remains that lawyers are servants of the State and the President, rather than independent professionals who represent their clients and uphold the rule of law.

(iv) Attacks on Lawyers and Lack of Support by ABA

26. Attacks against lawyers constitute human rights violations against these lawyers, but also have systemic consequences for the administration of justice and access to justice in Azerbaijan. Some attacks were carried out by third parties, but the ABA has not supported its members suffering attacks, thereby failing to fulfil its essential function as a legal representative body.

Attacks on lawyer Elchin Sadigov

27. On 3 August 2021, Elchin Sadigov was denied a meeting with another client, whose health had deteriorated while in detention. Personnel of the prison required the lawyer to provide a letter, which is not a legal requirement.¹⁸ The ABA did not comment on these issues and provided no support to the lawyer.
28. On 1 September 2021, lawyer Sadigov was beaten after a court hearing. He defended the father of deceased Elchin Aliyev, who was murdered by Rovshan Akbarov (regarded as a national hero). The latter's son attacked and injured the lawyer in Baku Military Court.
29. The day after, the lawyer lodged a complaint with the President, Prosecutor General, Ministry of Internal Affairs and ABA. State authorities argued that they could not summon the attacker because he was no longer in country. No effective actions were taken following the incident. The ABA provided no support to the lawyer.
30. Lawyer Sadigov was also not permitted to meet his client in September 2021 while there were suspicions of his torture in detention. He could only meet with his client after the latter's release.
31. On 10 September 2022, officials from the Prosecutor's Office and State Security Service searched Mr. Sadigov's office and home, seizing documents and devices. He was charged with "aiding and abetting in large-scale bribery", which carries a penalty of up to 12 years imprisonment. Mr. Sadigov was in pre-trial detention for four months and has been under house arrest since September 2022.

Beating of lawyer Joshgun Isgandarov

32. District police officers beat lawyer Joshgun Isgandarov when he was defending his client in Shirvan Court of Appeal on 13 August 2021. The lawyer had requested a private meeting with his client. The police officers did not agree and ordered him to leave the courtroom. The lawyer objected, saying that he was a defence lawyer and had the right to meet in private with his client. Police officers then forcibly pulled him from the courtroom and beat him in the corridor.
33. The Ministry of Internal Affairs refuted the incident.¹⁹ It alleged that the lawyer had not been robbed, had provoked police officers, and participated in the court hearing of another person. This allegedly compelled police officers to escort him from the



courtroom. The Prosecutor's Office declined to take further action against the police officers arguing that their actions did not constitute a criminal offense.²⁰

34. The ABA President said that he hoped for a fair and objective outcome in the case but failed to provide support to the lawyer.

Beating of lawyer Orkhan Kangarli

35. Lawyer Orkhan Kangarli was beaten by police officers on 1 June 2019. He had gone to the police station to meet his client. He presented his advocacy certificate and warrant, but police officers insulted him and ordered him to leave. When he refused, police officers beat and detained him in a temporary cell along with his client.
36. The Ministry of Internal Affairs issued a statement saying that the lawyer was guilty of unlawful interference with the investigation process. He was charged under for "petty hooliganism" and the case was referred to the district court.
37. The lawyer lodged a complaint with the Prosecutor's Office. Two years passed since the incident, but the Prosecutor's Office did not provide information concerning the investigation into the lawyer's conduct. The lawyer did not receive support from the ABA, which thereby implicitly condones such attacks on its members.

D. Lack of Compliance with ECtHR Judgments

38. In 2020, three European Court of Human Rights (ECtHR) judgments were rendered against Azerbaijan concerning the disbarment of lawyers from the ABA. In all judgments, the ECtHR found violations of the European Convention on Human Rights (ECHR). Their implementation is being reviewed by the Committee of Ministers of the Council of Europe under enhanced procedure (meaning that it considers these cases as representing structural issues requiring enhanced attention). This is known as the Namazov group and consists of the cases of lawyers Ismayilov (see below), Namazov (*Namazov v. Azerbaijan* (74354/13)) – disbarred in 2011, and Bagirov (*Bagirov v. Azerbaijan* ((81024/12 28198/15)) – disbarred in 2015.
39. In Bagirov case, the ECtHR indicated that the following measures be taken by the Azerbaijani Government (the ECtHR rarely does so, signifying the systemic nature of the problem): "...the adoption of measures aimed, among others, at restoring his professional activities. Those measures should be feasible, timely, adequate and sufficient to ensure the maximum possible reparation for the violation found by the Court, and they should put the applicant, as far as possible, in the position in which he had been before his disbarment".²¹
40. Mr Bagirov was disbarred by a domestic court upon request of the ABA Presidium, following his critical remarks towards a judge in domestic proceedings against opposition leader Ilgar Mammadov. The ECtHR concluded that "the sanction imposed on the applicant was disproportionate"²² and that the reasons given by the domestic courts in support of his disbarment "were not relevant and sufficient".²³ Similar findings were made in the case of Mr Namazov and Mr Ismayilov.



41. In September 2021, the Committee of Ministers adopted a decision on reinstatement of these three lawyers, calling upon the Azerbaijani Government “to consider taking measures to ensure that domestic law provides for specific grounds, which could serve as a basis for exclusion from ABA”.²⁴
42. In October 2021, a Council of Europe delegation officially visited Baku. Implementation of judgments in the “Namazov Group” of cases was discussed with high-level officials.²⁵
43. The Plenum of Azerbaijan’s Supreme Court implemented the ECtHR judgment related to Aslan Ismayilov but has not re-examined the two other lawyers’ cases. There is no justifiable basis why the latter should not also be reinstated. Reinstatement seems arbitrary (in response to external political pressure or, for example, when a lawyer publicly praises the President of Azerbaijan).
44. It is also noteworthy that the first ever proceedings under Art 46(4) ECHR - to refer non-compliance with an ECtHR judgment back to that court - was in a case against Azerbaijan. That case concerned the persecution of a political opponent of the Government whose lawyers were also persecuted. It is unlikely to be the last Art 46(4) ECHR proceeding brought against Azerbaijan, which could jeopardise its Council of Europe membership.

E. Recommendations

1. **Ensure that legislation and regulation is amended so that: (i) admission to the legal profession follows due process with objective and transparent criteria, (ii) decisions on admission are reasoned and made available to applicants, (iii) the qualification commission consists mainly of lawyers, representing different practice areas including human rights law, and (iv) any disciplinary proceeding is follows due process, is decided by an independent and impartial body, with possibility of appeal.**
2. **Ensure that provisions of the lawyers’ code of conduct that interfere with lawyers’ right to freedom of expression or other rights - or can be interpreted as such in practice - especially articles 2.11 and 2.13, are amended and brought into line with international standards.**
3. **Ensure that the ABA’s independence from Government is strengthened through amendments to its governance.**
4. **Ensure that disbarment and suspension remain ultimate measures, only reserved for the most serious breaches, and that the grounds for such actions are established by law or regulation.**
5. **Ensure the compliance with ECtHR judgments and decisions of other international bodies, including the reinstatement or admission of lawyers previously disbarred or not admitted to the ABA on political grounds.**

We can provide technical assistance, as needed, to facilitate Azerbaijan’s compliance with these recommendations, specifically with review of legislation and regulations to bring them into conformity with international human rights standards.



- ¹ The Law Society, *International rule of law*, <https://communities.lawsociety.org.uk/international/international-rule-of-law/lawyers-at-risk>.
- ² U.S. Department of State, *Azerbaijan 2021 Human Rights Report*, https://www.state.gov/wp-content/uploads/2022/03/313615_AZERBAIJAN-2021-HUMAN-RIGHTS-REPORT.pdf.
- ³ U.S. Department of State, *Azerbaijan 2021 Human Rights Report*, https://www.state.gov/wp-content/uploads/2022/03/313615_AZERBAIJAN-2021-HUMAN-RIGHTS-REPORT.pdf.
- ⁴ U.S. Department of State, *Azerbaijan 2021 Human Rights Report*, https://www.state.gov/wp-content/uploads/2022/03/313615_AZERBAIJAN-2021-HUMAN-RIGHTS-REPORT.pdf.
- ⁵ BTI Transformation Index, *Azerbaijan Country Report 2022*, <https://bti-project.org/en/reports/country-report/AZE>.
- ⁶ Freedom House, *Freedom in the World 2021 Azerbaijan*, <https://freedomhouse.org/country/azerbaijan/freedom-world/2021>.
- ⁷ ENNHRI, *Azerbaijan* (4 July 2021), <http://ennhri.org/rule-of-law-report-2021/azerbaijan/>.
- ⁸ ENNHRI, *Azerbaijan* (4 July 2021), <http://ennhri.org/rule-of-law-report-2021/azerbaijan/>.
- ⁹ U.S. Department of State, *Azerbaijan 2021 Human Rights Report*, https://www.state.gov/wp-content/uploads/2022/03/313615_AZERBAIJAN-2021-HUMAN-RIGHTS-REPORT.pdf.
- ¹⁰ *Hasanov and Majidli v Azerbaijan* (Applications nos. 9626/14 and 9717/14), 7 October 2021, <https://hudoc.echr.coe.int/eng?i=001-212032>.
- ¹¹ *Hasanov and Majidli v Azerbaijan* (Applications nos. 9626/14 and 9717/14) [40], 7 October 2021, <https://hudoc.echr.coe.int/eng?i=001-212032>.
- ¹² U.S. Department of State, *Azerbaijan 2021 Human Rights Report*, https://www.state.gov/wp-content/uploads/2022/03/313615_AZERBAIJAN-2021-HUMAN-RIGHTS-REPORT.pdf.
- ¹³ *Hasanov and Majidli v Azerbaijan* (Applications nos. 9626/14 and 9717/14) [36], 7 October 2021, <https://hudoc.echr.coe.int/eng?i=001-212032>.
- ¹⁴ Azerbaijan Bar Association, *Law of the Republic of Azerbaijan on lawyers and legal practice*, https://barassociation.az/uploads/attachments/law_of_the_republic_of_azerbaijan_on_lawyers_and_legal_practice.pdf.
- ¹⁵ Azerbaijan Bar Association, *Vəkillərin davranış qaydaları haqqında ƏSASNAMƏ* (28 December 2020), https://barassociation.az/uploads/attachments/vekillerin_davranish_qaydalari_haqqinda_asasname_86dd01fefec16480879e6fec56fa5cc9.pdf.
- ¹⁶ European Human Rights Advocacy Centre, *Human Rights Lawyers Denied Access to the Azerbaijani Bar Submit Case to European Court of Human Rights* (16 December 2020), https://ehrac.org.uk/en_gb/human-rights-lawyers-denied-access-to-the-azerbaijani-bar-submit-case-to-european-court-of-human-rights/.
- ¹⁷ Council of Europe, *Communication from the applicant (05/02/2021) in the case of Hajibeyli and Aliyev v. Azerbaijan (Application No. 6477/08)* (23 March 2021), [https://hudoc.exec.coe.int/ENG?i=DH-DD\(2021\)317E](https://hudoc.exec.coe.int/ENG?i=DH-DD(2021)317E).
- ¹⁸ Azadlıq Radiosu, *Həbsdəki AXCP fəalının yanına vəkili buraxmadılar* (4 August 2021), <https://www.azadliq.org/a/zamin-salayev/31392845.html>.
- ¹⁹ Meydan TV, *Polis tərəfindən döyüldüyünü deyən vəkil prokurorluğa şikayət edib* (17 August 2021), www.mtv.re/az/b/z10.
- ²⁰ Azadlıq Radiosu, *Polisin onu döyüldüyünü deyən vəkilə prokurorluqdan rədd* (23 September 2021), <https://www.azadliq.org/a/cosqun-i%CC%87sgenderov-polis/31474829.html>.
- ²¹ *Bagirov v Azerbaijan* (Applications nos. 81024/12 and 28198/15) [110], 25 June 2020, <https://hudoc.echr.coe.int/eng?i=001-203166>.
- ²² *Bagirov v Azerbaijan* (Applications nos. 81024/12 and 28198/15) [102], 25 June 2020, <https://hudoc.echr.coe.int/eng?i=001-203166>.
- ²³ *Bagirov v Azerbaijan* (Applications nos. 81024/12 and 28198/15) [102], 25 June 2020, <https://hudoc.echr.coe.int/eng?i=001-203166>.
- ²⁴ Council of Europe, *H46-4 Nazarov group v. Azerbaijan (Application No. 74354/13) Supervision of the execution of the European Court's judgments* (16 September 2021), https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a3bec4.
- ²⁵ Council of Europe, *Official visit to Azerbaijan focuses on execution of ECHR judgments* (9 November 2021), <https://go.coe.int/EEcF0>.