



**Permanent Mission
of the Republic of Azerbaijan
to the UN Office and other
International Organizations**

GENEVA

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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 Latter's request dated 12 January 2018 (Ref: OL AZE 1/2018) has the honour to transmit herewith a letter of Mr. Anar Baghirov, Chairman of the Board of the Bar Association of the Republic of Azerbaijan addressed to Mr. Diego Garcia-Sayan, Special Rapporteur on the independence of judges and lawyers.

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: 5 pages



Office of the United Nations
High Commissioner for Human Rights
GENEVA



**AZƏRBAYCAN RESPUBLİKASI
VƏKİLLƏR KOLLEGİYASININ
RƏYASƏT HEYƏTİ**

**BOARD OF THE
BAR ASSOCIATION OF THE
REPUBLIC OF AZERBAIJAN**

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To: Mr Diego Garcia-Sayán,

UN Special Rapporteur on the Independence of judges and lawyers

Dear Mr Garcia-Sayán,

First of all, I would like to convey my thanks to you for your sincere concerns about the situation over legal profession, as well as proper protection of people rights in my country.

Therefore, I would like to take this opportunity that stems from your inquiry and give an enhanced picture of the current situation and of the progress of lawyer profession in Azerbaijan, at the same time to spot a light to the concerns mentioned in your letter in the following sequence:

1. As you know, starting from January 1, 2018, only the members of the Azerbaijan Bar Association are eligible to do court representation, where these changes were stipulated by several amendments to the relevant legal documents that you had already mentioned about in your letter. The changes to the legislation had been adopted by the legislature on October 31, 2017, which were afterwards approved by the Presidential decree on November 7, 2017. In that decree¹ raising the number of lawyers was recommended to the Bar Association. Adoption of these changes was not an accidental decision by the Parliament but the initiative was done by the Supreme Court of Azerbaijan, which also deals with a generalization of court practice, the holds statistics in this field as well. Findings by the Supreme Court revealed that the court representation by the non-bar members who are mainly not jurists by their education had created substantial backlogs in the courts along with unprofessional drafted complaints that had to be reviewed by

¹ <http://e-qanun.az/framework/36867>

the courts that took long time scrutinize. In addition, as the main portion of the lay practitioners are non-bar members and do not have professional liability, as it is attachable to the bar members, there were so many fraudulent cases by those lay practitioners committed. Of course, the victims of those acts were in most of the cases citizens and they used to always address their complaint to the Azerbaijan Bar Association, but as those practitioners were not our members we could not be supportive to those complainants.

2. One of the raised concern was regard to the absence of the pre-consultation measures by the Parliament with the members of the legal profession. However according to the law on "Public participation", any draft law has to be publicly heard by the participation of relevant stakeholder, as well as the text of the draft law has to be uploaded to the web-page of the parliament for any proposals and feedback from the public. In this regard during the October, the public hearings were held in the Parliament with the participation of the stakeholders where relevant NGOs, media, scholars, management of the Bar Association attended².

3. In the letter, it has been precisely indicated that *'according to the newly adopted amendments practising lawyers who are not members of the Azerbaijan Bar Association and other lay practitioners are prohibited from appearing before the courts and representing individuals in lawsuits in any kind of cases'*.

However, the Code of Civil Procedure defines, irrespective their membership to the Bar Association, close relatives' right to represent the parties in the court proceedings (Article 69.1-1), as well as employees of the legal persons may still represent its employer whether the employee is a member to the Bar or not (Article 69.2). That's why, to assert that the practising lawyers have been totally isolated from the courts, it is not correct in the legal sense of the issue. Besides, those practising lawyers or lay lawyers may still render legal services in way of consultations, advising, and compiling written claims, etc.

4. Another concern in your letter was about that non-bar members are composed main portion of the lawyers who lodges most of the applications to the international courts, including the European Court of Human Rights.

Just for your information, in terms of statistics main representatives of the applicants at the ECHR are mainly bar members, whose names, such as Asabali Mustafayev, Fuad Aghayev, Azer Naghiyev's could be easily found in the ECHR database³. Even in worst the scenario, while the

² <http://meclis.gov.az/?/az/news/view/3816/>

³ [https://hudoc.echr.coe.int/eng#{"respondent":\["AZE"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\]}](https://hudoc.echr.coe.int/eng#{)

person is not a member of the bar, the Rules of Court⁴ does not limit the Court representation to only the bar members.

5. It is remaining and a sad fact that the number of lawyers in Azerbaijan is one of the lowest in the region and one may think that how the Parliament dared to change the laws that could harm people need in access to justice. Actually, the proposal to change laws was made by the Supreme Court which carries out statistics in all instance courts made clear that the peoples' apply a number of lawyers are not so high. For instance, today any bar member may for sure tell you that after changes in laws their clientele has not been increased. This is partly connected with peoples' lower level of legal awareness, partly the courts' loading with small claims (by bank loan disputes, etc.) where the court delivers its decision without the participation of the parties as per requirements of the laws. Increase in number of small claims had been conditioned by the financial crisis, where people were indebted before the credit institutions.

6. Other concern referenced in the letter is connected to problems accessing to the profession.

As you may know, in past December the board of the Azerbaijan Bar Association was renewed, where I was elected to the Chairman position for following 5 years. 2 days after the election the new board of the Association delivered its decision on announcing application process for one month period, as we saw that new changes to the laws might challenge us. By the deadline, January 11 the total number of the applicants was close to 2.000, which was the record number in the history of entrance examination for law professionals in Azerbaijan.

7. One of the concerns regarding application procedure was related to the 3-year work experience (under employment agreement) where many non-bar members were practising their profession without being employed anywhere by registered themselves as individual taxpayers. The 3-year work experience issue is stipulated by the Law on Advocates (Article 8.1.). In order to give those legal practitioners to take part in the exam, we applied for getting the opinion of the Ministry of Labor whether the individual legal practising could be considered as a work experience. The response of the Ministry was affirmative, that's why we even accepted the applications of the legal practitioners who are individual taxpayers and practise the legal profession.

On January 28 more than 1873 lawyer candidates out of 1966 applicants took the exam and at the result, 607 candidates were successful in passing the examination. Also starting from April we are planning to launch non-stop application process on regular basis. Henceforth anyone who

⁴ https://www.echr.coe.int/Documents/Rules_Court_ENG.pdf

wishes to become a lawyer may submit its applications electronically and once 100 candidates are completed their application process, they will be taken test examination.

By the mid-summer, we plan completely finalize the verbal exams and mandatory training for the current 607 lawyer candidates. All stages of the examination are strictly carried out according to the Rules on Holding Examination with the Lawyer Candidates⁵, which had already been uploaded to the Bar Association web-page.

In comparison with the previous examinations this time the program (curricula) for the exam preparation had been disseminated in the media outlets, as well as on the web-page⁶ of the Azerbaijan Bar Association.

The aforementioned Rules on exams also covers almost all aspects of the examination process starting from the methodology of examination, observers attendance in test and verbal phases, as well as holding of the verbal examination, etc. For instance, currently, we are holding ongoing verbal examinations with 607 lawyer candidates, where every day the Lawyers Qualification Committee holds interviews with 12 candidates. For the sake of the transparency each day all candidates should present in the premises of the Association at the same time, in the same waiting room in order to be called to Committee's interview. There are 11 members of the Committee, where only 5 questions (on the legal field) are asked to a candidate. Once the interview is completed the candidate leaves the premises without contacting the other candidates. All following candidates are asked the same questions for eliminating any doubt about the fairness of the interview process, as the verbal stage is also observed by the observers from international and local organizations. In that sense, we welcome any observer who wishes to observe the verbal interviews.

I would like to also draw your attention to a recent decree⁷ by the President from 22.02.2018 on additional measures regarding the improvement of advocacy activity. This decree supposes one-time material support to the Bar Association for development of free legal aid system for low-income strata of people, as well as triple raising hourly rate for rendering free legal aid and it covers the measures on increasing the number of the lawyer, technologically equipping regional law consultancy offices with IT equipments, etc.

To sum up, I would like to express my hope that all done and ongoing works will at the end facilitate peoples need in the qualified legal aid, eliminate the shortage in lawyers number that will

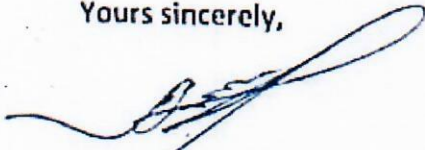
⁵ http://barassociation.az/uploads/attachments/qebul_qaydalari.pdf

⁶ <http://barassociation.az/recruitment#prog>

⁷ The English version of the decree has been enclosed.

increase the prestige of lawyer profession. And I fully conceive that in order to reach this goal we need support of the respective international community, where UN and its treaty bodies would be perfect means for it. As well as in our daily activity we always observe international standards starting from essentials defined in UN Basic Principles on the Role of Lawyers to CCBE Code of Conduct, and other related model documents.

Yours sincerely,



Apar R. Baghirov

Chairman