I. Introduction

1. We are writing to lodge submissions pursuant to Rule 9(2) of the Committee of Ministers’ Rules for the Supervision of the Execution of Judgments in respect of the Namazov group, consisting of three cases:
   - Namazov v Azerbaijan (Appl. no. 74354/13)
   - Aslan Ismayilov v Azerbaijan (Appl. no. 18498/15)
   - Bagirov v Azerbaijan (Appl. no. 81024/12)

2. The signatory organisations, European Human Rights Advocacy Centre (EHRAC), International Partnership of Human Rights (IPHR) and the Baku-based Independent Lawyers Network (ILN) are non-governmental human rights organisations working to advance respect for human rights, including the rights of independent lawyers, in Azerbaijan. ILN is a new organisation established in 2021 by a group of independent Azerbaijani human rights lawyers with the aim to promote and support the independent legal profession in Azerbaijan. EHRAC represented Mr Bagirov, one of the applicants in the Namazov group, in the proceedings before the Court.
II. The Court’s judgments in this group and key findings

3. The three judgments in the Namazov group concern Azerbaijani lawyers who were disbarred from the Azerbaijani Bar Association (ABA) and were deprived of their ability to practise legal profession. Mr. Bagirov’s case also concerns his suspension as a member of the Bar for one year.

4. In summary, the Court established the following violations:

   - In Namazov, it found a violation of Article 8 of the Convention stemming from the applicant’s disbarment in 2011-2012 in absence of adequate procedural standards in disciplinary proceedings against him before the ABA. Article 8 was also found violated with regard to the domestic courts’ failure to give a reasoned decision and to ensure proportionality of the sanction.

   - In Aslan Ismayilov, the Court found a violation of Article 6 of the Convention in that the applicant was denied a right to fair trial during the disbarment proceedings against him in 2013-2014. Similarly to the Namazov case, the domestic courts failed to provide a reasoned decision in this case.

   - In Bagirov, which concerns two events - the applicant’s suspension for one year in 2011 and his disbarment in 2016 - the Court found violations of Articles 8 and 10 of the Convention. As in the above cases, the Court established that the domestic courts failed to provide relevant and sufficient reasons for the applicant’s disbarment and that the sanction was disproportionate, as a result of which his rights to private life and freedom of expression were violated.

5. In Bagirov, the Court also indicated the following under Article 46:

   ‘…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’ (para 110).

6. The Committee of Ministers (CM) has already called upon the Government of Azerbaijan to ensure that ‘the proceedings against the applicants are re-opened with a view to rectifying the shortcomings identified by the Court’ in its decision of 16 September 2021. According to the Government’s report of 5 November 2021 to the CM, however, the proceedings were only re-opened in Mr. Ismayilov’s case. No information was provided on the two other cases in the group, or any explanation as to why the proceedings were not re-opened in respect to these cases.
III. Proposed general measures

7. We consider that the following measures are necessary for the full implementation of the Namazov group of cases:

3.1. Measures aimed to address inadequacy of legislative and other regulatory framework relating to the legal profession and the operation of the Azerbaijani Bar Association

3.2. Measures concerning application of disciplinary measures against ABA members in practice

3.3. Measures to strengthen institutional independence of ABA and its growing control over the legal profession

3.4. Measures relating to reinstatement of disbarred lawyers

3.1. Inadequacy of legislative and regulatory framework

8. The Law on Advocates and Advocacy Activity of 1999 (the Law) is dedicated to the regulation of the legal profession and advocates’ activities in Azerbaijan. The Charter on the rules of conduct of lawyers (*Vəkilərin davranış qaydaları haqqında Əsasnamə, hereinafter – Rules of Conduct*) adopted by the ABA in 2017 and updated on 28 December 2020¹ provides further guidance and principles to ABA members on their professional activities. We propose that both documents should be amended to address the existing deficiencies concerning sanctions against lawyers and to ensure full clarity, foreseeability and adequate legal safeguards against arbitrary application of the Law and the Code of Conduct.

3.1.1. Law on Advocates and Advocacy Activity

9. Disciplinary responsibility of lawyers is regulated in Article 22 of the Law.² It stipulates that lawyers shall be subjected to disciplinary responsibility in the following cases: in


² Article 22 Disciplinary responsibility of lawyers
I. A lawyer is subjected to disciplinary responsibility in the event of disclosure of a breach of the provisions of this Law and other legislative acts, the Statute on the rules of conduct for lawyers (*vəkilərin davranış qaydaları haqqinda Əsasnamə*), and the norms of lawyer ethics (*vakil etikası normaları*) in the exercise of his or her professional duty.

... 

VI. The Presidium of the Bar Association may apply in respect of a lawyer the following disciplinary sanctions on the basis of an opinion of the disciplinary commission:

- admonition;
- reprimand;
- suspension from practising for a period from three months to one year;

...
breach of a) the provisions of the Law and other legislative acts, b) the Code of Conduct for lawyers and c) the norms of lawyer ethics (para I).

10. It further lists the types of sanctions that the Presidium may apply on the basis of an opinion of the ABA Disciplinary Commission, with the suspension up to one year being the most severe sanction. Part VIII separately provides that disbarment can only be applied by a domestic court decision, under the request from the ABA Presidium.³

11. These provisions are too broad and too vague to provide adequate regulation of disciplinary responsibility for lawyers in Azerbaijan and provide wide discretionary powers to the Presidium of the ABA and the Disciplinary Commission. As the Namazov group cases demonstrate, they have been used arbitrarily and disproportionately to exclude lawyers from the ABA.

12. For example, the provision relating to disbarment stipulates that a lawyer can be excluded from the ABA ‘if there were grounds serving as a basis for exclusion’. This provision or the Law generally does not provide any further details or guidance on such grounds, leaving full discretion to the ABA to decide if there is a basis to seek for disbarment of a lawyer.

13. For example, in the case of Mr Bagirov, who was disbarred by a domestic court under the request of the ABA, following his critical remarks towards a judge in the domestic proceedings of opposition leader Ilgar Mammadov, the Court concluded that ‘the sanction imposed on the applicant was disproportionate’ and that the reasons given by the domestic courts in support of his disbarment ‘were not relevant and sufficient’.⁴ The same findings were made in the case of Mr Namazov.⁵ Similarly, in the case of Mr Ismayilov, the Court found that the domestic courts have failed ‘to provide adequate reasons for their decisions’.⁶ This suggests that the domestic courts merely referred to these very broad and vague provisions in Article 22 without explaining why it decided there was a basis for disbarment as a disciplinary sanction.

14. In its decision of 16 September 2021, the CM has called upon the Government of Azerbaijan ‘to consider taking measures to ensure that domestic law provides for specific grounds, which could serve as a basis for exclusion from ABA’. Such amendments to the Law should be clear and predictable and respect the principle of proportionality and other principles set out in the Recommendation no. R (2000) 21 of the Committee of Ministers to Member states on the freedom of exercise of the profession of lawyer.

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³ It stipulates that ‘if there were grounds serving as a basis for exclusion’ of a lawyer from the ABA, the Presidium can, on the basis of an opinion of the Disciplinary Commission, ‘apply to a court for resolution of the matter and suspend the lawyer’s activity until the entry into force of the court decision on the issue.’
⁴ Bagirov v. Azerbaijan, para. 84
⁵ Namazov v. Azerbaijan, Para. 51
⁶ Aslan Ismayilov v. Azerbaijan, para. 49
15. It is equally unclear how other sanctions envisaged in Article 22 are applied by the ABA as there is no guidance or legal safeguards against its arbitrary application are in place. It does not specify in which circumstances such sanctions should be applied and, as the practice shows, the ABA enjoys wide discretion to apply such sanctions disproportionately in cases of lawyers who voice their criticism to the ABA, the law enforcement authorities or the state authorities generally (see EHRAC’s list of Azerbaijani human rights lawyers who have been disbarred, suspended or criminally prosecuted). Such broad provisions do not allow lawyers to foresee the possible consequences of their actions as lawyers.7

16. It is also unclear what a violation of ‘other legal acts’ may constitute as there is no list or guidance on what other laws lawyers should be aware of in Azerbaijan so that they can foresee what actions may lead to disciplinary liability.

3.1.2. The Rules of Conduct for Lawyers

Provisions limiting lawyers’ freedom of expression

17. The new Rules of Conduct were adopted by the Conference of the ABA on 7 December 2017 and updated on 28 December 2020.8 Compared to the previous version, these Rules contain more restrictive provisions that significantly affect the lawyers’ ability to freely exercise their right to freedom of expression, as a fundamental element of the legal profession, and interfere with the principle of independence of the legal profession on different accounts (discussed below).

18. In particular, Article 2 of the Rules requires lawyers to be ‘objective’ in their speeches and correspondence (para 5) and to refrain from actions and statements that may misrepresent the ABA and its bodies in the media, on social networks, and in public places (para 13), effectively prohibiting lawyers to criticise the ABA, the state and its officials. 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.’

19. Furthermore, Article 2.14 of the Rules require advocates to refrain from ‘activity that is incompatible with advocacy activities’ without providing any further guidance. The Rules (article 2.4) also require that ‘lawyers must do nothing outside of the realm of the professional functioning to damage the reputation of the profession.’

7 Cantoni v. France, para. 35
8 See footnote 1
20. The latter provision enables the ABA to initiate disciplinary proceedings against lawyers concerning their statements unrelated to their work as advocates and their cases. For example, the ABA initiated disciplinary proceedings against independent Azerbaijani lawyer Agil Layij on this basis following his post on social media expressing his personal views about journalist Vusal Mammadov in relation to involvement in the dissemination and discussion of footages of personal life of investigative journalist Khadija Ismayilova in the media. Following the journalist’s appeal to the ABA that Mr. Layij had allegedly insulted him, the Presidium of the ABA initiated disciplinary proceedings against Layij, following which the lawyer received a verbal warning from the ABA.\(^9\)

21. Lawyers’ right to freedom of expression is essential to their primary role to represent their clients’ interests (see the CM Recommendation Rec(2000)21 on the freedom of exercise of the profession of lawyer). It is unclear how such restrictive provisions can be met by lawyers in their work to represent their clients’ (subjective) interests in cases where the client complains about actions of the state authorities or if the authorities fail to uphold their obligations, e.g. to effectively investigate a case. The Namazov group cases and other similar cases pending before the Court well demonstrate this concerning issue.\(^10\) The respective provisions of the new Rules of Conduct should therefore be seen in the wider context of repressive climate for human rights lawyers who criticise the ABA or the state authorities for their wrongdoings, or represent clients, victims of human rights violations, who do so. The respective provisions of the Rules are overly vague and broad, and open to wide interpretation by the ABA, who enjoys wide discretionary powers, as discussed above, without any effective legal safeguards in place. Where a disciplinary offence set out in law or in a code is aimed at “general and innumerate application” it is unlikely to satisfy the requirement of foreseeability.\(^11\)

22. In light of the serious concern and recognition by the international community and the Azerbaijani civil society that disciplinary measures are used as means of pressure on independent lawyers critical of the authorities in Azerbaijan, these provisions should be seen as aiming to further limit the independence of the legal profession and prevent lawyers from speaking out about the violations of their rights or those of their clients.\(^12\)

\(^9\) Politically Motivated Obstacles to the Professional Activity of Advocates - Report prepared by the Young Human Rights Defenders trainings of the Institute for Democratic Initiatives (2021), page 38. Available (in English) at: http://www.idi-aze.org/files/pdf/2021-11-22/wj1sRloyx1c5L85Ek5D5GdVrjih6jX7kjaXdOhi.pdf

\(^10\) See, for example, Imanov v Azerbaijan (Appl.no. 62/20, pending before the Court), concerning a case of a human rights lawyer Yalchin Imanov who was disbarred in 2017, following his statements to the media about the torture allegations made by his client in high security Gobustan prison. The ABA has sought for his disbarment from the court arguing that Mr Imanov defamed the prison officials and damaged the reputation of the law enforcement agencies in the country. https://ehrac.org.uk/en_gb/yalchin-imanov-disbarred/

\(^11\) Oleksandr Volkov v. Ukraine, para. 178

\(^12\) End of Mission Statement by the Special Rapporteur on the situation of human rights defenders, visit to Azerbaijan, 22 September 2016.: “In Azerbaijan, lawyers face harassment through a number of means, including criminal prosecutions, disciplinary action, and other administrative measures. Nevertheless, for lawyers who are members of the Bar Association, disciplinary proceedings have been one of the main means of harassment used against lawyers who defend human rights.” International Commission of Jurists, “Defenseless Defenders: Systematic Problems in the Legal Profession of Azerbaijan”, Mission Report 2016, p 13.

End of Mission Statement by the Special Rapporteur on the situation of human rights defenders, visit to Azerbaijan, 22 September 2016.
3.2. Application of disciplinary measures against lawyers in practice

23. This section identifies a number of deficiencies in disciplinary proceedings in practice that put the affected lawyers in a less favourable position and infringe their right to present their position and defend themselves.

2.1. Procedural unfairness before the ABA Disciplinary Commission

24. In the disciplinary proceedings, lawyers subjected to disciplinary measures are denied basic procedural guarantees depriving them of a possibility to effectively defend themselves and challenge the accusations. Below, we identify a number of such deficiencies both in the existing regulatory framework and in practice.

Notification to lawyers subjected to disciplinary proceedings: a right to be heard

25. Disciplinary proceedings against lawyers are initiated by the ABA Presidium, which prepares a preliminary decision to the Disciplinary Commission requesting to initiate such proceedings. The affected lawyers are never informed about the Presidium’s preliminary decision or invited to get acquainted with it, or present his/her position. They only learn about the proceedings against them upon being summoned to the Disciplinary Commission to provide an explanation in their cases. For example, when disciplinary proceedings were instituted against Adil Ismayilov in 2020, the advocate demanded to be provided with a copy of the decision that formed the legal basis for the proceedings but was provided with it, in response to which he refused to give his explanation." On September 9, 2019, at a meeting of the Presidium of the Bar Association, it was decided to suspend the activities of lawyer Adil Ismayilov for one year for disciplinary violations. In their explanations, the lawyers complaining about Adil Ismayilov said that Adil Ismayilov’s Facebook status contradicted paragraphs 2.4 and 5.3 of the Rules of Conduct. For publicly unknown reasons, on 24 September 2019, the ABA cancelled its own decision and reinstated the Adil Ismayilov to the Bar without any explanation.

26. The proceedings before the Disciplinary Commission are always held behind closed doors and can be held in a very short period of time leaving lawyers with no sufficient time to prepare, and in some instances, lawyers were not properly informed about the hearing at all. The Statute of the Disciplinary Commission (Articles 5.2 and 6.3) recognizes the right to be duly notified for hearings, however, do not specify what ‘duly notified’ means. In practice, as the Statute does not provide for any specific procedures or means of notification to be used by the Commission, in some instances lawyers are not informed about the hearing in a timely and appropriate manner, which in turn affects their ability to defend themselves properly, or even to attend the hearing. In some instances,
lawyers were notified by receiving a phone call or a WhatsApp message from a representative of the Disciplinary Commission, and in cases where they could not answer the phone if they were abroad or for any other reasons, the hearings took place without them.  

27. As for the time-limit for notifications, Article 6.3 of the Statute provides that a lawyer shall be notified of the time and place of the meeting no later than 3 days prior to the meeting. The Statute, however, does not provide for the lawyer to have a right to access the case file and familiarize with the material prior to the hearing. While the members of the Disciplinary Commission have a right to get acquainted with the case materials 2 days before the meeting, a lawyer subjected to the disciplinary proceedings is only allowed to get acquainted with the case materials only on the day of the hearing and is only allowed to take notes from it according to article 6.3.2 of the Statute.

28. For example, in Yalchin Imanov's disbarment case, in the court hearing on February 2018, it has been found that copies of a complaint and decisions (the Deputy Chief of the Penitentiary Service and the opinion of the Disciplinary Commission of the ABA and the decision to suspend the activities and the minutes of the meeting) have not been submitted to Imanov. Imanov filed a motion to submit these documents to him. It was revealed during the discussions that the decision of the Presidium dated November 20, 2017 on the suspension of Y. Imanov's advocacy activity and the transcript of that meeting were not submitted to the court either.

Access to case materials

29. The right of the advocates to get acquainted with the application and other materials of disciplinary proceedings (Article 5) and the duty of the Disciplinary Commission to make lawyer acquainted with the agenda of the meeting of the Disciplinary Commission and the documents of the meeting (Article 6.3) is expressed in an unclear way in the Charter of the Disciplinary Commission that it does not effectively provide access to case materials. Despite the fact that the Charter provides that a disciplinary opinion against a lawyer shall be filed in writing by the members of the Commission, in many cases a copy is not provided to lawyers subjected to disciplinary proceedings. Furthermore, the Statute does not clearly recognize the right of lawyers to request for a copy of the complaints or any other case materials used against them until the meeting of the Disciplinary Commission and Court hearings.

No adversarial proceedings, right to defence (witnesses)

14 Interview with Shahla Humbatova, expelled advocate (later reinstated to the Bar in 2021).
15 Namazov v. Azerbaijan, para. 49. “The Court, however, notes that the applicant enjoyed very few safeguards in those disciplinary proceedings. ... the disciplinary commission and the Presidium of the ABA explicitly referred to the Nasimi District Court’s decision of 27 August 2011 and the extracts from the transcripts of the court hearings held on 9, 18 and 27 August 2011 when they decided to impose a disciplinary sanction on the applicant, they refused to provide the applicant with a copy of those documents despite the applicant’s explicit request in that regard.”
30. As outlined in the Statute of the Disciplinary Commission of the Bar Association, a lawyer attending the meeting of the Disciplinary Commission has a right to file an application, a petition, to give an explanation. However, the respective Statute does not envisage a right for a lawyer to invite experts, witnesses, ask for an expert opinion. Although the Statute envisages the rights of the Disciplinary Commission to ask questions from persons invited to the hearing, to request necessary documents and materials, to present their arguments and opinions, which are necessary for the adversarial proceedings, these are not provided for the affected lawyers. In the case of Yalchin Imanov, for example, lawyer’s requests to access the materials, including the ten-pages complaint of the complainant of Ogtay Mammadov, who was the deputy head of the Penitentiary Service and decision of the Disciplinary Commission was not answered. The judge did not grant this request either.16

Lack of independence of the Disciplinary Commission from the ABA Presidium

31. Disciplinary proceedings are carried out by the Disciplinary Commission, a subsidiary body of the Bar Association that comprises of advocates only. Disciplinary proceedings are initiated only by the Presidium of the Bar Association. Although the Disciplinary Commission is formed and its Statute is adopted by the General Assembly of the Bar Association,17 its power to conduct disciplinary investigation is heavily dependent on the Presidium of the Bar Association. The Disciplinary Commission is only able obtain information and documents from courts, the police, prosecutors, justice officers, organizations, entities, and other entities specified in the Charter through the Presidium of the ABA. Through the Presidium, it may request expert opinions.18 Furthermore, pursuant to article 6.2 of the Statute of the Disciplinary Commission, the chairman of the Commission is required through the apparatus of the Presidium of the Bar Association to prepare for the meeting of the commission, determine the time, place, agenda of the meeting, the list of persons invited to the meeting.19 It therefore lacks sufficient independence to operate and conduct disciplinary proceedings as a separate body of the ABA.

16 Media Article “Yalchin Imanov: The Bar Association falsified the opinion. The lawyer representing the Bar Association admitted that the opinion was changed”. Available (in Azerbaijani) at: https://d9mc3ts4czbpr.cloudfront.net/az/article/yalchin-imanov-vekiller-kollegiyasi-reyi-saxtalamasdirib/; Furthermore, during the disciplinary proceedings against Yalchin Imanov, who was expelled from the Bar, he told the media that he could not get a complaint from the Penitentiary Service, which was the basis for the initiation of disciplinary proceedings, the opinion of the Disciplinary Commission of the BAR, and the decision of the Presidium of the Bar to appeal to the court for his dismissal from advocacy. Therefore, he did not know which norm of which law he violated. Also, he was not provided with a copy of the decision and shorthand of the hearing. Politically Motivated Obstacles to the Professional Activity of Advocates - Report prepared by the Young Human Rights Defenders trainings of the Institute for Democratic Initiatives (2021), page 39. Available (in English) at: http://www.idi-aze.org/files/pdf/2021-11-22/wJ1sRloyx1c5L85Ek5D5GdVrjh6jX7kjaXdoHfi.pdf
17 The Law on Advocates and Advocacy Activity, Article 10 (I) “Adoption of the Charter of the Bar Association, Statute of Qualification and Disciplinary Commissions and statute on legal practice ethics their amendment, election of the chairman of Presidium of the Bar Association, deputy chairmen and other members, chairman and members of the Disciplinary Commission, ... shall be an exclusive power of the General meeting (conference) of the Bar Association.”
18 Statute of the Disciplinary Commission, Article 3.2
19 Namazov v. Azerbaijan, para., 49. The disciplinary commission also refused to hear evidence from other lawyers participating in the above-mentioned hearings before the Nasimi District Court in order to clarify the events leading to the disciplinary complaint against the applicant.
3.3. Lack of institutional independence of ABA and its growing control over the legal profession

32. To understand the wider context against which disciplinary proceedings take place, two issues must be taken into consideration: ABA’s lack of institutional and political independence, and the growing control by ABA of activities of individual, independent lawyers and the operation of lawyers’ bureaus, seen as the aim to ensure monopoly of the legal profession by ABA. These deep structural issues have been of particular concern among the international community and independent Azerbaijani lawyers in the past decade when the persecution of independent lawyers taking on human rights cases had intensified.

3.3.1. Undemocratic formation and governance of ABA

ABA General Assembly and a Conference of Delegates

33. The ABA General Meeting that elects the Presidium, including the ABA President, and members of the Disciplinary Commission does not involve the democratic participation of all Bar members but a selected group of members, a Conference of Delegates. The Law on Advocates and Advocacy Activity and the Charter of the ABA provide that when a number of the ABA members exceeds 500, the power of the General Assembly of ABA members is executed by the ABA Conference, which shall be held on the basis of norms of representation. Article 10 (IV) of the Law on Advocates and Advocacy Activity further states that the organisation of the ABA Conference shall be defined by the ABA Charter, which, however, does not explicitly define any rules and procedures for identification of delegated voters in legal bureaus. In practice, therefore, a delegated voter is determined by legal bureaus, in absence of any guidelines or procedures, that operate under strict control of the ABA (see section 3.2. below). As a result, lawyers are unable to effectively participate in the formation process of the Conference, which is largely formed through the "controlled elections", they are often discouraged to oppose the decisions of the Bar and therefore become vulnerable to the influence of the Bar.

ABA Qualification Commission

34. The ABA Qualification Commission that decides on the entry of new members to the ABA and the legal profession is composed of eleven members in which a major part of the members are non-Bar members but are appointed by the Government or the judiciary (whose independence from the executive is often questionable) (i.e. five members of the ABA appointed by the BA Presidium, three judges and three academics appointed by the

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20 Article 10 (I) of the Law on Advocates and Advocacy Activity
21 Article 7(1) of the Charter of the Bar Association
The majority of its members, identified by the judiciary and the executive branch, not by the legal profession, obscures the independence and gives the third party a majority control. It is also unclear how such candidates are appointed as there are no publicly available rules on the selection of members of the Commission.

35. Further concerns relate to ABA’s apparent inability to operate outside the influence of the executive authorities, particularly the Ministry of Justice, consistently expressed by independent lawyers, particularly those who take on politically sensitive cases and often challenge the actions of the executive authorities and the law enforcement. Historically, before the adoption of the Law on Advocates and Advocacy Activity in 1999 that unified the profession, lawyers were licensed by the Ministry of Justice, and its influence in ABA’s control of the legal profession is strongly believed to remain present. ABA’s previous President Azer Tagiyev first became the head of the Collegium of Lawyers in 1994, at a time when lawyers were licensed by the Ministry of Justice until 1999. In 2004, under ABA reforms adopting the Law On Advocates and Advocacy Activity, Tagiyev retained the post of the Chairman at the general meeting of the members of this organisation, a position he held with the somewhat crude violations and interference of public authorities. Tagiyev was again re-elected as Chairman at the ABA conference in 2012, again with crude violations too. Although the new leadership, as described by the CoE Commissioner for Human Rights, ‘has raised the profile of the Bar Association on the international scene and has instilled a new dynamic in its work’, it has played a role in the opening of selective or arbitrary disciplinary proceedings against lawyers who had notably been vocal about alleged human rights violations, particularly those who criticised the courts or law enforcement agencies, questions ABA’s independence and the intention to uphold its very core mission to protect the legal profession. In such cases, disciplinary proceedings were instituted by the Presidium of the ABA and were carried out by the Disciplinary Commission, which adopts an opinion based on which the

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22 Rules for conducting professional exams for admission to the Bar Association] (Original in Azerbaijani), Article 2. The QC members representing the ABA are appointed by the Presidium of the ABA, members of the judiciary are appointed by the Plenum of the Supreme Court and academics by the Ministry of Justice, http://barassociation.az/uploads/attachments/qebul_qaydalari_1320a5c9a3521ee12f2f9f07d2438df4.pdf; Rules for conducting professional exams for admission to the Bar Association] (Original in Azerbaijani), Article 2. http://barassociation.az/uploads/attachments/qebul_qaydalari_1320a5c9a3521ee12f2f9f07d2438df4.pdf and also see Law on Advocates and Advocates’ Activity, article 13 (iii) http://www.e-qanun.az/framework/257.


Presidium imposes sanctions. Disbarment of a lawyer from the Bar Association, as the most severe sanction, leads to termination of his or her professional activity as an advocate. Once disbarred, lawyers are unable to represent clients in cases domestically. In Bagirov v Azerbaijan, for example, the Court has ruled that ‘the reasons given by the domestic courts in support of the applicant’s disbarment were not relevant and sufficient, and that the sanction imposed on the applicant was disproportionate to the legitimate aim pursued’ (para 84).

36. International human rights organizations and intergovernmental organizations also emphasized the lack of institutional and political independence of ABA. Christophe Poirel, Director of Human Rights, Council of Europe referred to ‘a number of serious challenges’ that the Bar Association has, including such ‘core issues as the independence and qualification of lawyers’. He noted that ‘much remains to be done’, in particular that the ‘national legislation and practice need to be aligned with European standards and best practice to fully uphold the role of lawyers in society’.

37. The Commissioner for Human Rights of the Council of Europe refers to ‘a deficit of institutional independence’ of the ABA in the context of the role that the ABA has played in both disciplinary proceedings against lawyers in politically sensitive cases and the non-admission to the Bar of certain categories of persons. The UN Special Rapporteur noted that ‘the Bar Association suffers from significant institutional weaknesses, which raises serious questions about its legitimacy and puts the ability of the body to effectively regulate the profession in severe doubt’.

38. The International Commission of Jurists referred to the ABA as being institutionally weak, with ‘a lack of either capacity or will to defend the independence of the legal profession’. In its 2014 report on the legal profession in Azerbaijan, the International Bar Association Human Rights Institute concluded that the ABA ‘is not an independent institution capable of protecting the interests of the legal profession’ but instead it ‘seems to act as an arm of government’.

3.3.2. ABA’s strong powers: control of individual lawyers and legal bureaus

39. The domestic regulation of the legal profession in Azerbaijan underwent a significant reform in 2017, which effectively deprived individual non-Bar member lawyers from...

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representing clients in domestic courts. The Law on Advocates and Advocacy Activity of 1999 was amended in November 2017 and changes to the Code of Civil Procedure and the Code of Administrative Procedure were made to exclude lawyers from civil and administrative proceedings before courts unless they are members of the Azerbaijani Bar Association.\textsuperscript{34}

40. Although the regulation of the profession is in itself desirable, there are serious concerns by affected individual Azerbaijani lawyers, including a significant number of lawyers taking on sensitive human rights cases, that, due to the lack of independence and legitimacy of the Bar Association, this reform was used to not only exclude lawyers taking on 'unfavourable' cases against the authorities but also deprive citizens whose rights were violated by the authorities of access to domestic courts.

\textsuperscript{34} Until 2017, lawyers who did not belong to the Bar Association were authorised to represent clients in non-criminal cases (i.e. civil and administrative law cases) before national courts.
41. Another concern relating to ABA’s growing control over the operation of the legal profession concerns legal bureaus. According to the Law on Advocates and Advocacy Activity, the legal profession can be executed individually or by the lawyers’ offices (legal consulting offices, lawyers’ bureaus, law firms etc.) formed by the lawyer(s) in line with the law.\(^{35}\) Although, according to the same law, the organizational and legal forms of the legal profession are decided by lawyers on a voluntary basis, the new regulation on the Organization and Activities of the Lawyers’ Offices adopted by the Presidium of the Bar Association on October 29, 2018 requires that lawyers shall apply to the Presidium of the Bar Association and obtain the consent, opinion and recommendations on all the decisions related to the establishment, restructuration and termination of the lawyers’ offices (bureau), the selection of the place and area of such offices, the adoption of the charter of the newly founded office and the acceptance and dismissal of its founders, director and members, as well as new members after the establishment.\(^{36}\)

42. Apart from that, the lawyers’ offices shall also receive the opinion of the Presidium of the Bar Association before changing its organizational structure, acceptance of new lawyers to the office, the selection of the director of the office and terminating the membership of their members.\(^{37}\) Another issue to be agreed with the Bar Association occurs when an individual lawyer or the lawyer who works in the lawyers’ office aims to make a contract with the legal assistant (assistant lawyer).\(^{38}\) Also, when a lawyers’ office wants to establish and terminate a lawyer’s cabinet or bureau affiliates within the lawyers’ office but out of the office, they shall obtain a positive opinion of the Bar Association.

43. These rules remove independence of the lawyers’ office and clearly indicate the growing control of the Bar Association over the lawyers’ offices in all the stages of their activities from their establishment till the selection of their directors and members.\(^{39}\) Such a strong control over the lawyers and their offices by the ABA limits the independence of the lawyers and their influence to the formation, composition and governance of their professional association.

3.4. Reinstatement of disbarred lawyers

44. Reinstatement of unjustly disbarred applicants is a fundamental part of restitution integrum in these cases. It is recalled that in Bagirov, the Court has indicated under Article 46 of the Convention that the adoption of measures should be aimed ‘at restoring his professional activities’ (see para 5 above). The CM has already called upon the

\(^{35}\) Article 5(5) of the Law on Advocates and Advocacy Activity.

\(^{36}\) In this regard, according to the Regulations on the State Registration of Non-commercial Institutions No 2-N adopted by the Board of the Ministry of Justice on March 19, 2012, on the establishment of lawyers’ offices, these offices shall first obtain the opinion of the Presidium of the Bar Association before applying to the Ministry of Justice for registration. According to Article 2(10) of the Regulations on the Organization and Activities of the Lawyers’ Offices, in order to establish a lawyer’s office, the founders shall submit a letter to the Presidium of the Bar Association and obtain a positive response. Following the positive response, the founders may start the establishment of the office. Regulated by the Regulations on the Organization and Activities of the Lawyers’ Offices adopted by the Presidium of the Bar Association on October 29, 2018. See Article 2(4) of the Regulations.

\(^{37}\) See Article 3(6) of the Regulations.

\(^{38}\) Article 8(1) of the Law on Advocates and Advocacy Activity

\(^{39}\) “The next meeting of the Presidium of the Bar Association was held” – Azerbaijan Bar Association, http://barassociation.az/news/92
Government to ensure that ‘the proceedings against the applicants are re-opened with a view to rectifying the shortcomings identified by the Court’ (see para 6 above). As noted above, so far, only one applicant, Aslan Ismayilov, in this group had his proceedings reopened by the Supreme Court and has been reinstated on the basis of the ECtHR judgment in his respective case on 8 April 2022 and was provided with the bar membership ID by the Presidium of the ABA. 40 Two other applicants, Mr Bagirov and Mr Namazov, remain disbarred and have not had their domestic proceedings reopened by the Supreme Court without any justifiable reason. It is noted that a similar unjustified selective approach in observed with regard to some of the applicants in the Mammadli group case.

3.4.1. Domestic legal grounds for reinstatement of disbarred lawyers

A) reconsideration of domestic court decisions by the Plenum of the Supreme Court on the basis of ECtHR judgments as a ‘new circumstance’

45. It is recalled that the domestic law allows for reconsideration of domestic court proceedings on the basis of the findings of ECtHR judgments. With regard to civil proceedings, it is stipulated in Article 431-1.2.2 of the Code of Civil Procedure (henceforth “CCP”) of Azerbaijan, which provides that ECtHR judgments serve as a ground for reconsideration of cases by the Plenum of the Supreme Court as a ‘new circumstance’ related to a violation of rights and freedoms.41 According to Article 431-3.1 of the Civil Procedural Code, the Supreme Court shall consider a case within three months since the receipt of the judgment of the ECtHR. In the cases of Bagirov and Namazov, the three month deadline has passed as both judgments became final in 2020. The applicants have not been informed if their cases have been referred to the Supreme Court and if any decisions have been made.

B) The ABA’s role to reinstate disbarred lawyers before Supreme Court’s overturn of domestic courts’ decision upon the consideration of ECHR judgment

46. Article 432 of the CPC provides for 'proceedings on the revision of legal acts in force on newly discovered circumstances'. it sets out grounds for re-consideration of court acts based upon newly discovered facts, which includes cancelation of resolution, verdict, ruling or decision of court or decision of other body serving as a ground for adoption of the court act (Article 432.2.4). In other words, if a resolution, verdict, ruling or decision of court or a decision of other body serving was a ground for adoption of the court’s act

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40 Aslan Ismayilov’s membership in the Bar Association was restored (media report). https://www.e-hugug.az/az/news/vekillik/46868.html
is being cancelled, a petition on newly discovered facts concerning a valid court act should be forwarded to the Plenum of the Supreme Court for its consideration.

47. Disbarment proceedings are governed by the Law on Advocates and Advocacy Activity (discussed in section 1.1 above). Furthermore, Article 67.1 of the Law on Administrative Proceedings, which is applicable in disbarment proceedings, states that “an administrative act that has been adopted by the administrative body as a result of a violation or improper application of legal norms or material law norms on administrative proceeding is considered to be unlawful”. Unlawful administrative act may be repealed by the administrative body that has adopted it or by a higher administrative body in terms of subordination as well as in court. (Article 67.2.) The Law further notes (Article 67.3) that unlawful unfavourable administrative act must be repealed in any case. If any other rule is not stipulated by the relevant laws of the Republic of Azerbaijan, the annulment of the unlawful unfavorable Administrative Act eliminates the legal consequences arising from the moment of the act. Furthermore, in its decision of 16 July 2013, the Constitutional Court of Azerbaijan has noted that "Impossibility of re-consideration of incorrect court act is not in conformity with universal order of effective restoration of rights through justice; it infringes and limits such law. Institutional and procedural provisions of re-consideration of incorrect court acts should meet requirements of use of procedural effective court protection means and transparent realization of justice and exclude the prolongation of court investigation." 43

48. In the applicants’ respective cases, court decisions to disbar them were made on the basis of decisions of the ABA to seek for their disbarment, under the Law on Advocates and Advocacy Activity. The ABA Presidium is therefore obliged by the legal principles set out in the domestic law above to revoke its decisions to disbar the applicants and seek for reconsideration of their domestic cases by the Plenum of the Supreme Court. This would also be in line with the spirit and mandate of the ABA to protect its members. We note that ABA’s reconsideration of its decisions has been in it’s recent practice.44

49. No other legal routes exist in the domestic law for reinstatement of disbarred lawyers. On several occasions in the past, the ABA representatives have suggested that disbarred lawyers are invited to apply for a new membership and take on admission exams. Such an option however cannot be considered as a restitutio in integrum in the cases of unjustly disbarred lawyers. Furthermore, disbarred lawyers, such as Alaif Hasanov who applied to the Qualification Commission of the Bar Association three times (in 2017, 2018, and

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44 In recent case of lawyer Shahla Humbatova where the ABA was seeking her disbarment in front of the domestic courts, the ABA took back its request – in other words repealed its decision seeking Shahla Humbatova’s disbarment. In this case, the Baku Appeal Court refused to uphold the decision of the Bar association to disbar the law and noted that “ABA’s annulment of its own decision seeking the lawyer’s disbarment does not violate others’ rights and freedoms, and it does not contradict the laws. However, this is substantively different from current cases where the judgments on disbarments are final and legally effective, the respective approach (to repeal its decisions seeking lawyers’ disbarment) would not contradicts with the domestic legislation and in contrary would be good faith act and would send message to the government and courts to act immediately to quash the supreme court judgments. “The advocacy of Shahla Gumbatova and Irada Javadova has been restored” http://www.turan.az/ext/news/2021/5/free/Social/en/3808.htm
2019) for an oral interview and who was rejected each time, cannot be guaranteed a fair process. Finally, in 2020, he was summoned by the Bar Association after he had asked to explain why his appeals had been ignored when the ABA Qualification Commission considered him "unfit" for advocacy without providing any explanation to its decision.45

IV. Recommendations:

On the basis of the above, we provide the following recommendations aimed at the Government of Azerbaijan and/or the Azerbaijani Bar Association:

Re inadequacy of legislative and other regulatory framework relating to the legal profession and the operation of the Azerbaijani Bar Association

1. The Law on Advocates and Advocacy Activity should be amended to include specific grounds as a basis for exclusion of lawyers from the ABA and to ensure that the Law is clear, foreseeable and that adequate legal safeguards against arbitrary application are introduced. The legislative process should be conducted with the involvement of the civil society and the legal community in Azerbaijan;

2. The ABA should repeal and significantly improve the Rules of Conduct for Lawyers as they currently contradict the international standards and limit lawyers’ freedom of expression;

Regarding application of disciplinary measures against ABA members in practice

3. The ABA should put an end to violations of procedural guarantees of lawyers subjected to disciplinary proceedings and ensure that their rights, such as the right to be heard, access to case materials and a right to defence, are clearly established and ensured in laws and in practice. Strong legal safeguards against arbitrary denial of such rights should be introduced.

Regarding the need to strengthen institutional independence of ABA and its growing control over the legal profession

4. The Law on Advocates and Advocacy Activity should be amended to ensure that the ABA and its governing bodies are formed with the direct participation of all its members and not the representative voting system, which is underregulated and under strong control of the Presidium of the ABA;

5. The Law on Advocates and Advocacy Activity should be amended to ensure that the governing and disciplinary bodies of the ABA are elected by the General Assembly of the ABA and not appointed by the executive body of the ABA;
6. The Law on Advocates and Advocacy Activity should be amended to ensure that the Qualification Commission is consisted of a majority of members of the legal profession appointed by the Bar Association;
7. The ABA should ensure transparency by publication of minutes and agendas of the ABA Presidium meetings and financial reports, in particular with regard to disciplinary decisions.
8. The ABA should amend its rules to remove the non-transparent and biased permission system for the establishment of legal bureaus and apply the notification system;

 Regarding reinstatement of disbarred lawyers

9. The Government should take feasible measures to ensure timely and adequate execution of the ECtHR’s judgments concerning lawyers’ disbarment, and ensure the maximum possible reparation for the violation found by the Court;
10. The Plenum of the Supreme Court should reconsider the domestic court decisions regarding disbarment of lawyers on the basis of ECtHR judgments as a ‘new circumstance’ in line with the domestic law and its established timeframe;
11. The ABA should demonstrate its commitment to protect its members and the independence of legal profession by revoking its decisions to seek for disbarment of lawyers in cases where ECtHR has found violations of the affected lawyers’ rights, and seek for reopening of the cases by the Plenum of the Supreme Court;
12. The ABA must demonstrate that it has ended the practice of disbarment and other disciplinary sanctions of lawyers on politically motivated grounds.

On behalf of all the signatory organizations,

Ramute Remezaite
Implementation Lead
EHRAC