

**POLICY PAPER
ON THE RESULTS OF
THE ABOLITION OF
THE INSTITUTE OF REPRESENTATION
IN AZERBAIJAN**



Policy Paper on the Results of the Abolition of the Institute of Representation in Azerbaijan

Authors: Altay Ismayil & Sayyad Yusifli

Expert: Yalchin Imanov

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Table of contents

Summary	2
Introduction	3
Methodology	4
Amendments to the legislation.....	5
The problem of staff numbers in the Bar Association - access to legal services	7
Problems arising during the admission to the Bar	11
The legal state of representation and admission to advocacy in the Republic of Georgia. Similarities and differences in the procedure of admission to advocacy in Estonia and Azerbaijan.....	13
a) Norms regulating the participation of representatives in court proceedings in the Georgian legislation	13
b) Regulation of the procedure of admission to the Bar Association in the Georgian legislation.	14
c) The procedure of admission to advocacy in Estonia and its similarities and differences with Azerbaijan	15
Results	18
Recommendations	19
List of references.....	20

Summary

The abolition of the institute of representation in Azerbaijan has created a number of serious problems with the population's access to legal assistance. Some of these problems include a significant weakening of access to effective legal assistance for low-income persons, the deprivation of lawyers and non-lawyers engaged in practical legal activities, and the exclusion of independent persons dealing with the protection of human rights in the country from court proceedings. The purpose of this report is to study these problems and make suggestions for their elimination.

The report consists of 8 sections: Introduction; Methodology; Amendments to the legislation; The problem of staff numbers in the Bar Association - access to legal services; Problems arising during the admission to the Bar; The legal state of representation and admission to advocacy in the Republic of Georgia. Similarities and differences in the procedure of admission to advocacy in Estonia and Azerbaijan; Results; and Recommendations.

The introduction section provides a brief overview of the concept of representation, the history of the institute of representation in Azerbaijan, as well as the Law of October 31, 2017, and its results. That law significantly reduced the rights of representatives and had the representation of individuals in court proceedings monopolized by advocates.

The methodology section shows the methods and tools used in the preparation of the report.

The process of abolishing the representation, its results, and documents of a number of international organizations on Azerbaijan are examined in the section of amendments to the legislation. It is concluded that the bill was adopted without public discussion, which shows that the bill is not aimed at increasing the independence, self-regulation, and integrity of practical legal activity, as well as contradicts international standards.

The problem of staff numbers in the Bar Association and the balance between the population of the country and the number of members of the Bar in terms of access to legal services are studied from the point of view of people's access to legal assistance. It is noted that the very small number of advocates in relation to the population of the country significantly complicates the use of legal services by citizens, and the abolition of the representation has a particularly negative impact on access to legal assistance in the regions.

In the section of problems arising during the admission to the Bar, the analysis of the written and oral stages of the entrance examination to the Bar, the non-objective aspects of the examination, and, in particular, opinions on the purpose of the interview stage are reflected. It is concluded that the interview stage is aimed at preventing the admission of "undesirable" persons to advocacy.

The next section of the report examines the legal state of representation and admission to advocacy in Georgia, as well as the procedure for admission to advocacy in Estonia, one of the former European countries of the USSR, in comparison with Azerbaijan. Since Georgia is located in the Caucasus region and Estonia is a post-Soviet country of the European Union, they were selected for comparative research. During the comparison, it becomes clear that the participation of representatives is more widely established in the Georgian legislation. Furthermore, the process of admission to advocacy in Georgia and Estonia is more transparent.

Introduction

In law, "representatives" means persons who provide legal advice, prepare legal documents, represent people in government bodies and court proceedings, and perform other similar activities. The Bar Association provided legal assistance in Azerbaijan when it was part of the USSR. Article 161 of the Constitution of the USSR of 1977 stated that there were bar associations to provide legal assistance to citizens and organizations.¹ In cases prescribed by law, advocates provided free legal assistance to citizens. According to Article 162 of the Constitution, persons who were not advocates could participate in civil and criminal proceedings as representatives of public organizations or labor collectives. Similar provisions were also reflected in Articles 173 and 174 of the Constitution of the Azerbaijan SSR of 1978.² In addition, according to Article 9 of the Law on the Legal Profession in the USSR of 30 November 1979, advocates carried out representation in court, arbitration, and other state bodies on cases related to civil and administrative offenses.³

Representatives in Azerbaijan had the right to carry out practical activities in the field of law for many years after gaining independence. This played an important role in protecting the rights of citizens in court and increasing their legal literacy. However, on October 31, 2017, amendments were made to the legislation of Azerbaijan and the rights of the representatives were sharply reduced. With these amendments, the representation of people in court proceedings became a monopoly of advocates.

On the above-mentioned date, the Milli Majlis of the Republic of Azerbaijan adopted a Draft Law on Amendments to the Civil Procedural Code, the Administrative Procedural Code, and the Law on Advocates and Advocacy. These amendments prohibited the participation of representatives in court proceedings, allowing only members of the Bar Association (hereinafter referred to as BA) to participate in these proceedings.

These amendments have led to discussions regarding reducing the access of citizens, especially from low-income families, to effective legal assistance, depriving those involved in practical legal activities of their activities, and keeping persons dealing with the protection of human rights in the country out of further court proceedings. A number of international and regional organizations have issued reports and position documents covering legal activities and the abolition of the institute of representation in Azerbaijan.

The report examines the abolition of the institute of representation, its impact on practical legal activity in the country, problems with admission to the BA, the legal state of representation and advocacy in Georgia, differences and similarities of the procedure of admission to advocacy in Estonia and Georgia with Azerbaijan.

¹ Constitution (Fundamental Law) of the Union of Soviet Socialist Republics. <http://www.departments.bucknell.edu/russian/const/1977toc.html>

² Конституция Азербайджанской ССР (The Constitution of the Azerbaijan SSR). <https://nodussr.ru/konstituciya-azerbajdzhanskoj-ssr>

³ Об адвокатуре в СССР (On the legal profession in the USSR). <http://docs.cntd.ru/document/58807185>

Methodology

This document aims to determine the reasons for the abolition of the institute of representation in Azerbaijan, as well as the consequences of the abolition.

Comparative analysis, interpretation, statistics, interviews, and analytical methods were used in the preparation of the report.

In order to collect the information used in the preparation of the document, the previous and existing legislation related to the representation were monitored. In order to follow the processes before and after the abolition of the institute of representation, the media was monitored, in particular, websites that disseminate information about changes in the legal field were consulted. Inquiries have been sent to the Ministry of Justice and the Judicial-Legal Council regarding the total number of lawsuits in the Republic of Azerbaijan in 2019 and 2020 on all types of proceedings (civil, administrative, commercial, and criminal) and the number of proceedings where advocates participated in, as well as to the BA regarding the number of applications for being provided with an advocate at the expense of the state in court disputes and the number of applications that were provided and the total amount of payment to advocates for legal assistance provided at the expense of the state. While the responses to the inquiries sent to the BA were used in the preparation of the document, inquiries sent to the Ministry of Justice and the State Statistical Committee went unanswered.

Interviews were conducted with lawyers who acted as representatives. Reports of international organizations commenting on the abolition of the institute of representation in Azerbaijan have been investigated. The experience of other countries in the field of representation was studied, including reference to international standards. Furthermore, online searches were conducted using keywords and the results were used in the document.

The information obtained was analyzed in connection with Azerbaijani legislation, as well as international legal documents.

The information provided in this document does not fully reflect the current situation in the field of representation. The cases mentioned here are mainly limited to the points, to which attention was drawn by the authors of public research and the experts interviewed, and the information that can be found in the media.

Amendments to the legislation

On October 31, 2017, 3 laws were simultaneously amended - the Civil Procedural Code, the Administrative Procedural Code, and the Law on Advocates and Advocacy. Prior to these amendments, lawyers and non-lawyers who were not members of the Bar Association could represent individuals in court. After the amendments, representation was monopolized by the Bar Association. Now, except for close relatives, only advocates who are members of the Bar Association can carry out representation in court.

It should be noted that these amendments resulted in the abolition of the institute of representation in all types of litigation. Such that Part II of Article 4 of the Law on Advocates and Advocacy was given in the previous wording as “Only advocates may participate as defense counsel in criminal proceedings, preliminary investigations or inquiries in accordance with the procedural legislation of the Republic of Azerbaijan” and established a monopoly of advocates only on criminal cases. However, it was given in the new wording as “The protection of a suspect or accused in criminal cases, the protection of an individual on the case of administrative offense considered by the court in the proceedings, the representation of a person in civil and administrative disputes in the Supreme Court of the Republic of Azerbaijan, as well as the representation of the applicant in the Constitutional Court of the Republic of Azerbaijan who has filed a complaint regarding the violation of his rights and freedoms, are the exclusive scope of advocacy”⁴ and prohibited lawyers who are not members of the BA from acting as representatives in civil and administrative cases, along with these criminal cases.

Amendments made to the legislation have provoked protests from lawyers practicing representation activities. Before the bill was passed, a number of practicing lawyers, who were opposed to the amendment restricting the institution of a legal representation, established an informal association called the Practical Lawyers Group, which operated on a temporary basis, and issued a statement expressing their criticism of the draft amendment.⁵ One of the points of protest was the lack of public discussion of the bill. In the appeal addressed to the Chairman of the Bar Association, by noting that no consultations had been held with members of the legal profession in the process of amending the legislation on representation, the Special Rapporteur of the UN Human Rights Committee on the Independence of Judges and Lawyers stressed that the legislation governing the activities of lawyers and the legal profession should aim to increase the independence, self-regulation, and integrity of the legal profession, be adopted, developed, and implemented in accordance with international standards.⁶

It should be noted that the bill was submitted to parliament by the chairman of the Supreme Court. Speaking during the discussion of the bill in the Milli Majlis, the chairman of the Civil Board of the Supreme Court, Shalala Mammadova, said that recently, civil disputes such as family

⁴ “Vəkillər və vəkillik fəaliyyəti haqqında” Qanun (Law on Advocates and Advocacy). <http://www.e-qanun.az/framework/257>

⁵ Praktik Hüquqsünaslar Qrupunun Bəyanatı (Statement of the Practical Lawyers Group). <https://smdtaz.org/az/praktik-huquqsunaslar-grupunun-b%C9%99yanati/>

⁶ Amendments to the Act on Bar of 27 January 2000 and other laws undermining access to justice and the independence of the legal profession, Mandate of the Special Rapporteur on the independence of judges and lawyers. <https://www.ohchr.org/Documents/Issues/IJudiciary/Communications/OL-AZE-1-2018.pdf>

disputes, divorce, abducting children abroad, deprivation of parental rights had increased and that there was no need for lawyers to act as representatives, as these disputes were mainly known to those close to the family.⁷ In a response letter sent to the Special Rapporteur of the UN Human Rights Committee on the Independence of Judges and Lawyers, the chairman of the BA said that since the judicial representation of individuals, who did not have a legal education and were not members of the BA, and non-professionally prepared complaints, which were prepared by them and required a significantly longer time to investigate, caused significant delays in the courts, as well as since the majority of practitioners, who were not members of the BA and did not bear professional responsibility, committed a large number of fraudulent acts, the bill was proposed by the Supreme Court.⁸

One of the shortcomings of the amendments was that they did not fully cover the transition period. Such that the transitional provisions of the amendments to the Civil Procedural Code and the Administrative Procedural Code stipulated that the abolition of the institute of representation shall not apply to persons participating as representatives in cases pending before the courts until such cases have been resolved on the merits in the courts of the relevant instance.⁹ However, this instruction did not fully cover the transition period in the context of the number of litigation involving the persons engaged in the representation and the acute shortage of advocates in the country, and could not be considered satisfactory. Many experienced lawyers who did not have a real opportunity to join the BA were concerned that if the process was carried out without a necessary and sufficient transition period before the amendment came into force, their practical legal activity would be terminated.¹⁰

Prior to the adoption of the amendments, lawyers were more protected from any arbitrary interference by the BA. The amendments brought all practicing lawyers under the umbrella of the Bar, which, as practice shows, is often used by the government to periodically take disciplinary action against advocates seeking to expose human rights abuses.¹¹

In general, no research was conducted by government bodies, NGOs, or international organizations to assess the impact of the amendments, and the bill was adopted without proper consultation with lawyers engaged in representation activities on the basis of the institute of representation and without adhering to the principle of transparency. Moreover, the abolition of the institute of representation is incompatible with the positive obligations of the state under Article 61 of the Constitution, entitled "Right to Legal Assistance", and jeopardizes the right of individuals to receive high-quality legal assistance.

⁷ Beşinci çağırış Azərbaycan Respublikası Milli Məclisinin VIII sessiyası iclasının protokolu № 48 (Minutes of the meeting of the VIII session of the Milli Majlis of the Republic of Azerbaijan of the fifth convocation № 48).

<https://meclis.gov.az/?/az/stenoqram/467>

⁸ The letter of Permanent Mission of the Republic of Azerbaijan to the UN Office and other International Organizations to the Special Rapporteur on the independence of judges and lawyers,

<https://www.ohchr.org/Documents/Issues/IJudiciary/Communications/AzerbaijanReply26March2018.pdf>

⁹ <https://president.az/articles/25784/print>, <https://president.az/articles/25786/print>

¹⁰ Azerbaijan: briefing paper on new legislation restricting court representation by lawyers, <https://www.icj.org/wp-content/uploads/2017/12/Azerbaijan-legalsubmission-accessstoalawyer-2017-eng.pdf>

¹¹ What now for lawyers in Azerbaijan?, <http://ehrac.org.uk/wp-content/uploads/2019/08/EHRAC-Summer-2018-Eng.pdf#page=6>

The problem of staff numbers in the Bar Association - access to legal services

The main problem with the amendments to the law was the sharp decline in the number of lawyers involved in litigation. Such that according to some estimates, about 90% of the 250,000 civil and administrative cases heard during the year were conducted by lawyers who were not members of the BA.¹²

Due to easy access to lawyers who were not members of the BA or lack of advocates, judicial representation by lawyers who were not advocates had been a widespread practice since 2000. Until 2014, non-governmental organizations provided legal assistance to victims of human rights violations. After severe restrictions were imposed on the activities of NGOs in the same year, lawyers who were not advocates continued to provide legal services on an individual basis, and they were responsible for most of the legal disputes.¹³

According to the website of the BA, the current number of members of the BA is 1,844.¹⁴ In February 2021, 94 candidates who successfully passed the second stage of the qualification examination - oral interview - are expected to gain the status of an advocate after completing the third stage.¹⁵ The number of advocates operating in the regions is 395, of which 95 are engaged in individual advocacy. The number of advocates operating in the capital is 1,396, of which 103 are engaged in individual advocacy. There are also 56 BA offices in Baku and 37 in the regions.¹⁶ Furthermore, there are advocates who are members of the BA but are not actually engaged in advocacy; however, there is no clear information on their total number. As for the growth dynamics of the number of advocates, the number of those admitted to the BA was 15 in 2010, 9 in 2011, 121 in 2012, 12 in 2013, 149 in 2014, 12 in 2015, 22 in 2016, 17 in 2017, and after the amendments, 553 in 2018.¹⁷ The goal is to increase the number of advocates in the country to 10,000; however, with 500-600 law graduates a year, the process is expected to take a long time.¹⁸ One of the main reasons for this is the state's monopoly on legal education - allowing the teaching of law only in state universities.

According to the 2014 report of the CEPEJ (Council of Europe, European Commission for the Efficiency of Justice) before amendments, Azerbaijan ranked last among the countries of the Council of Europe in terms of the number of advocates per capita: 139 per 100,000 persons in Europe and 10 per 100,000 persons in Azerbaijan.¹⁹ Following the amendments, a number of measures were taken to increase the number of advocates, and according to the 2020 report of CEPEJ, Azerbaijan was one of the countries that achieved an increase in the number of advocates

¹² Azerbaijan: briefing paper on new legislation restricting court representation by lawyers, <https://www.icj.org/wp-content/uploads/2017/12/Azerbaijan-legalsubmission-accessstoalawyer-2017-eng.pdf>

¹³ Azerbaijan: Legislative proposal restricting activities of independent lawyers. https://www.humanrightsclub.net/wp-content/uploads/2017/11/Azerbaijan_Legislative_Proposal.pdf

¹⁴ <https://barassociation.az/news/643>

¹⁵ <https://barassociation.az/news/657>

¹⁶ <https://barassociation.az/azecollegium>

¹⁷ Ibid

¹⁸ Commissioner for Human Rights of the Council of Europe, Dunja Mijatovic, Report following her visit to Azerbaijan from 8 to 12 July 2019. <https://rm.coe.int/report-on-the-visit-to-azerbaijan-from-8-to-12-july-2019-by-dunja-mija/168098e108>

¹⁹ CEPEJ Report. "European judicial systems—Edition 2014 (2012 data): Efficiency and quality of justice"

by 50%-100% between 2010-2018, together with Cyprus, Georgia, and Moldova.²⁰ However, while the increase in the number of advocates is, in itself, a positive development, this increase should be seen in the context of the monopolistic nature of the amendments limiting the representation of individuals in the courts with members of the BA (and close relatives) and the access of citizens, especially low-income families, to effective legal assistance.

By the Order of the President of the Republic of Azerbaijan dated February 22, 2018, on additional measures for the development of advocacy in the Republic of Azerbaijan, necessary measures were planned to be taken in connection with taking measures to address issues related to the material and technical support of the BA, creating conditions for the admission of new members to the BA, especially young lawyers, by organizing regular qualification examinations, and developing the professional training and specialization of advocates in order to constantly improve the quality of legal services provided.²¹ Following the adoption of the order, regional offices of the BA were opened to ensure access to legal services for all citizens. However, the difference between the number of members of the BA in the capital and in the regions is still significantly higher. In addition, some of the advocates registered in the regions actually work in Baku.

According to the UN Basic Principles on the Role of Lawyers, governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction.²² This principle also includes having enough advocates in the country. If there is a shortage of advocates in the country, states must ensure that all persons within their territory and subject to their jurisdiction have effective access to legal services provided by an independent legal profession or that persons engaged in practical legal activities are admitted to the BA on fair, objective, and clear criteria.

The amendments have also had a number of negative consequences in the field of the protection of human rights. Such that the protection of human rights largely depends on the ability of lawyers to provide flexible and unhindered legal services. However, in Azerbaijan, the very small number of advocates compared to the population has had a negative impact on the effective representation and protection of individuals.²³ Among the lawyers who were left out of the representation as a result of the amendments were lawyers who filed petitions on human rights with national courts to appeal to the European Court of Human Rights (hereinafter referred to as ECtHR). For this reason, even the increase in the number of members of the BA by 50%-100% did not alleviate the negative consequences of the abolition of the institute of representation.

Deficiencies in legal representation were not only a matter of quantity but also of quality. Such that some advocates did not effectively represent their clients. As the ECtHR noted in its cases regarding Article 6 § 3 of the European Convention on Human Rights, the accused is entitled to

²⁰ European Judicial Systems. CEPEJ Evaluation Report. <https://rm.coe.int/rapport-evaluation-partie-1-francais/16809fc058>

²¹ “Azərbaycan Respublikasında vəkilliyin inkişafı ilə bağlı əlavə tədbirlər haqqında” Azərbaycan Respublikası Prezidentinin Sərəncamı (Order of the President of the Republic of Azerbaijan on additional measures for the development of advocacy in the Republic of Azerbaijan). <https://president.az/articles/27127>

²² Basic Principles on the Role of Lawyers. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>

²³ Commissioner for Human Rights of the Council of Europe, Dunja Mijatovic, Report following her visit to Azerbaijan from 8 to 12 July 2019, <https://rm.coe.int/report-on-the-visit-to-azerbaijan-from-8-to-12-july-2019-by-dunja-mija/168098e108>

legal assistance that is practical and effective, not theoretical or imaginary. The court found that the right to effective legal assistance was violated in a number of cases due to the formal nature of the representation by a state-appointed advocate.²⁴ In several cases, violations were recognized at the pre-trial stage due to a lack of legal assistance.²⁵

The amendments also affected legal services provided by civil society representatives to certain vulnerable groups of the population, such as victims of human trafficking, victims of domestic violence, persons with disabilities, and IDPs. Such that many young lawyers worked with local NGOs to support these groups, and these groups benefited from the services of young lawyers because it was expensive to contract with advocates. The amendments made judicial representation almost impossible for such vulnerable and low-income groups.²⁶

Another issue of concern is the fact that the law on free legal assistance in Azerbaijan has not yet been adopted and the fee for lawyers providing free legal assistance is not enough. Such that although the 2017 amendments to the legislation abolished the institute of representation, there is no norm on the provision of advocacy at the expense of the state in the first and appellate instances on civil and administrative cases. In response to our inquiry sent to the BA, it stated that some of the unenforced decisions to pay advocates for legal assistance provided at the expense of the state in 2019 were implemented by the BA in 2020, of which 3,732 were court decisions, 425 were decisions made by other bodies conducting criminal proceedings. Payments to advocates for legal assistance provided at the expense of the state until December 31, 2019, were made by local executive authorities. Due to the fact that such payments were made by local executive authorities before the mentioned date, centralized accounting for that period was not possible in full. The BA paid a total of 630,948.17 manats (including banking services) on 3,732 court decisions made in 2019 and 425 decisions made by other bodies conducting criminal proceedings (investigation, inquiry, and prosecutor's office). Execution of 17,471 court decisions and 285 decisions made by other bodies conducting criminal proceedings in 2020, which provided for the amount paid to advocates for legal assistance at the expense of the state, was provided by the BA, and on these decisions, it paid a total of 2,033,219.06 manats (including banking services) to advocates working in the BA offices and individual advocates. Thus, in 2020, a total of 2,664,167 manats was spent on the implementation of 21,913 decisions providing for the amount paid to advocates working in 62 BA offices and 43 individual advocates for legal assistance at the expense of the state.

The amount paid by the state to advocates for free legal assistance to low-income people was tripled by the Presidential Order dated February 22, 2018, and the fee for legal assistance was set at 6 manats per hour (before the order, it was set at 2 manats per hour for legal assistance). However, advocates pay a tax from this amount, which, in itself, leads to a further reduction of the lower amount. As a result, advocates often try to avoid accepting unpaid work or try to get as many

²⁴“ Hüseynli və digərləri Azərbaycanca qarşı”, “Qafqaz Məmmədov Azərbaycanca qarşı” və s. işlər (Cases of Huseynli and Others v. Azerbaijan, Gafgaz Mammadov v. Azerbaijan, etc.)

²⁵“ Hüseyn və digərləri Azərbaycanca qarşı”, “İbrahimov və digərləri Azərbaycanca qarşı”, “Əsədbəyli və digərləri Azərbaycanca qarşı” və s. işlər (Cases of Huseyn and Others v. Azerbaijan, Ibrahimov and Others v. Azerbaijan, Asadbeyli and Others v. Azerbaijan, etc.)

²⁶ What now for lawyers in Azerbaijan?, <http://ehrac.org.uk/wp-content/uploads/2019/08/EHRAC-Summer-2018-Eng.pdf#page=6>

lawsuits as possible, and consequently, they fudge the issue, which contradicts their obligation to protect the interests of the person they represent in the best possible way.²⁷

In general, the amendments abolishing the institute of representation in Azerbaijan were adopted without sufficient transitional regulations, in the face of an acute shortage of advocates and the existence of problems in the field of the protection of human rights, problems with human rights protection; furthermore, access of vulnerable and low-income groups to legal services and the workload of advocates who were not properly paid were also not taken into account.

²⁷ Commissioner for Human Rights of the Council of Europe, Dunja Mijatovic, Report following her visit to Azerbaijan from 8 to 12 July 2019, <https://rm.coe.int/report-on-the-visit-to-azerbaijan-from-8-to-12-july-2019-by-dunja-mija/168098e108>

Problems arising during the admission to the Bar

According to Article 8.1 of the Law on Advocates and Advocacy²⁸, the qualification examination for admission to the BA consists of a written test and an oral interview. Candidates who successfully pass the written test stage of the qualification examination gain the right to participate in the interview stage by submitting certain documents to the document acceptance commission of the BA.²⁹ Candidates who successfully complete these two stages of the exam must also successfully complete the compulsory training at the Academy of the Ministry of Justice to become an advocate.

Although the rules³⁰ of conducting qualification examinations for admission to the BA membership specify the total number of tests related to the written test stage of the exam, the number of correct answers required to pass to the second stage, the number of points for each correct answer, etc., it is clear from the text of the rules that these issues are not clearly specified related to the oral stage. First, the exact number of questions to be asked to the candidates is not specified. Second, the topics covered in the questions ("... questions that determine the ability to draw logical conclusions, general worldview, and level of knowledge...") are not specific but are very general. Third, for the answers given by the candidate, an evaluation system was defined as "acceptable" and "unacceptable", which is inaccurate and completely dependent on the subjective opinion of the commission members. In addition, the qualification examinations are conducted by the Lawyers Qualification Commission, which consists of five advocates, three judges, and three legal scholars. In order for a candidate to pass the interview, he/she must be given an "acceptable" grade by a majority of the commission members. Advocates of the commission are appointed by the Presidium of the Bar Association, judges are appointed by the Plenum of the Supreme Court of the Republic of Azerbaijan, and legal scholars are appointed by the Ministry of Justice of the Republic of Azerbaijan. In other words, more than half of the members are elected by public authorities, such as the executive and the judiciary. All this, in turn, raises reasonable doubts about the bias of the interview phase of the exam.

The International Commission of Jurists's report on the examination procedure noted that there was no clear methodology for the examination process and that it appeared to be unsystematic. The questions asked during the exam can be random and depend on the examiner's choices. The interview is not limited to asking questions in accordance with established standards and transparent and fair examination rules.³¹ In the 2017 report of the commission, it expressed particular concern that law enforcement officials had warned lawyers who were not members of the BA that continuing their activities could lead to prosecution, just a few days after the amendments made by parliament.³²

²⁸ <http://www.e-qanun.az/framework/257>

²⁹ <https://barassociation.az/recruitment>

³⁰ Vəkillər Kollegiyası üzvlüyünə qəbulla bağlı ixtisas imtahanlarının keçirilməsi Qaydaları (Rules for conducting qualification examinations for admission to the Bar Association). http://barassociation.az/uploads/attachments/qebul_qaydalari.pdf

³¹ Defenseless Defenders: Systemic Problems in the Legal Profession in Azerbaijan. <https://www.icj.org/wp-content/uploads/2016/11/Azerbaijan-Systemic-problems-Legal-Prof>

³² Azerbaijan: briefing paper on new legislation restricting court representation by lawyers. <https://www.icj.org/wp-content/uploads/2017/12/Azerbaijan-legalsubmission-accessstoalawyer-2017-eng.pdf>

From the rules of the exam, as well as from international documents, it can be concluded that the second stage, i.e. the interview stage, has been designed to prevent the admission of "undesirable" persons to the BA. Comparing the results of the test and interview stages, it is clear that independent lawyers working in the field of human rights successfully passed the written test stage of the exam, but failed to pass the interview stage due to their activities and public criticism of the BA.³³ Candidates are also required to provide personal information³⁴, such as biographies and information on close relatives (father, mother, wife (husband), children, father-in-law, mother-in-law, brothers, sisters, brothers-in-law and sisters-in-law, their husbands and wives), in order to participate in the interview phase. It raises serious doubts that the interview was conducted not to measure knowledge but to examine the candidate's personal life and his critical attitude to political power.

³³ Left without a defence: Azerbaijan's purge of human rights lawyers. <https://oc-media.org/features/left-without-a-defence-azerbajjans-purge-of-human-rights-lawyers/>

³⁴ https://barassociation.az/web/uploads/files/Kardlarin_ucotu_vereqi.pdf

The legal state of representation and admission to advocacy in the Republic of Georgia. Similarities and differences in the procedure of admission to advocacy in Estonia and Azerbaijan

a) Norms regulating the participation of representatives in court proceedings in the Georgian legislation

According to the legislation of Azerbaijan, only close relatives of individuals, employees or duly authorized persons of legal entities, and advocates may act as representatives in civil and administrative proceedings. The legislation of the neighboring state of Georgia provides for a wider range of cases in which representatives are allowed to participate in such proceedings.

According to Article 31 of the Constitution of Georgia, everyone has the right to defend his/her rights before a court in person or through a lawyer, or through a representative in cases defined by law.³⁵ The participation of representatives in court proceedings is regulated by the Civil Procedure Code and the Administrative Procedure Code.

According to Article 93.1 of the Civil Procedure Code of Georgia (hereinafter referred to as CPCG), citizens may pursue proceedings in court personally, and legal persons or other organisations – through an official who is authorised to act on behalf of the legal person or organisation under the respective regulations or statute.³⁶ According to paragraph 2 of this article, parties also may pursue proceedings in court through an attorney-in-fact. Article 94 of the CPCG defines persons who may act as representatives in court.

The following persons may act as representatives of the parties in court:

- advocates;
- employees of state and local authorities, employees of organisations – for the cases concerning those authorities and organisations;
- one of the joined parties – under the authorization of the other joined parties;
- other persons having legal capacity – only in a court of first instance.

According to Article 97.1 of the CPCG, a court may refuse to accept as a representative in the proceedings a person who is not an advocate if it finds that the representative does not have sufficient qualification to represent a party and protect its interests. According to paragraph 3 of this article, a court judgement refusing to accept a person who is not an advocate as a representative may be appealed with a complaint subject to a time limit.

According to Article 86.1 of the General Administrative Code of Georgia (hereinafter referred to as GACG), everyone has the right to conduct relations with an administrative body through a representative, as well as to enjoy the assistance of a defence attorney.³⁷ According to Article 87.1 of this Code, entitled "Representatives in administrative proceedings", if an applicant or other interested party has appointed a representative, an administrative body shall forward all

³⁵ Constitution of Georgia. <https://matsne.gov.ge/en/document/view/30346?publication=36>

³⁶ Civil Procedure Code of Georgia. <https://matsne.gov.ge/en/document/view/29962>

³⁷ Law of Georgia General Administrative Code of Georgia. <https://matsne.gov.ge/en/document/view/16270>

documents for the interested party to the representative. Paragraph 2 of this article states that unless otherwise provided for by law, an administrative body shall refer to the representative for all issues on administrative proceedings.

Apparently, there is no norm in Georgian procedural legislation that requires a representative to be only a close relative or employee of the relevant institution. Furthermore, Allowing "other persons having legal capacity" to represent only in the court of first instance should not be understood that individuals must use the services of an advocate for a certain fee in order to be able to defend their rights effectively and efficiently in the next instances. Such that Georgia has a Law on Legal Aid dated June 19, 2007, and Article 1 of that law states that the goal of the Law is to create a sustainable and reliable legal aid system oriented to social requirements which is necessary to ensure the right of protection guaranteed by the Constitution of Georgia and international agreements.³⁸ This law regulates the provision of legal assistance at the expense of the state in civil, administrative, and criminal cases. One of the most noteworthy aspects of the law is that the legal aid beneficiaries are not only citizens of Georgia but also stateless persons or foreign citizens (Article 2.f).

b) Regulation of the procedure of admission to the Bar Association in the Georgian legislation

According to Article 10.1 of the Law of Georgia on Lawyers (hereinafter referred to as LGL), a person wishing to become an advocate must meet the following requirements:³⁹

- must be a citizen of Georgia who;
- has a higher legal education;
- has passed a bar exam or a judicial qualification exam (for employees of the Prosecutor's Office);
- has at least one year's experience of working as a legal professional or as an intern of a lawyer.

Only a test exam is required for admission to the Bar Association of Georgia. Article 11 of the LGL regulates the written test examinations of advocates. According to this article, any person with higher legal education has the right to take the bar exam. The bar exam shall be conducted biannually. The exam covers either general subjects (covering several law subjects) or specific subjects (civil law or criminal law).

A lawyer who has passed a specialisation exam shall be granted the right to practise the profession of lawyer in the relevant field. In the case of successfully passing the exam, the person shall receive a certificate confirming the passing of the bar exam. A certificate confirming the passing of the bar exam shall become void unless the person concerned commences practising the profession of lawyer within seven years after passing the bar exam.

³⁸ Law of Georgia on Legal Aid. <https://matsne.gov.ge/en/document/view/21604?publication=16>

³⁹ Law of Georgia on Lawyers. <https://matsne.gov.ge/en/document/download/15472/15/en/pdf>

According to Article 21 of the LGL, in order to join the Bar Association, a person shall submit an application thereto. The application must contain information about the first name, surname, date of birth, the address of a place of residence, a contact phone number, specialization, and exam result. The Executive Board of the Bar Association shall, within one month after the submission of an application, make a decision to admit or to refuse to admit the applicant to the Bar Association.

According to paragraph 3 of this article, a person shall be denied membership of the Bar Association if:

- he/she is not a citizen of Georgia;
- he/she has not passed a bar exam or a judicial qualification exam;
- he/she has been convicted for an intentional grave crime, unless the conviction has been removed or expunged in the manner established by legislation.
- seven years have elapsed since he/she passed the bar exam;

If we compare the conditions of admission to advocacy in the legislation of Azerbaijan and Georgia, the main differences are as follows:

- a) Minimum duration of legal work experience required before becoming an advocate: 3 years in Azerbaijan, 1 year in Georgia;
- b) Number of entrance exams per year: at least once in Azerbaijan, twice in Georgia;
- c) Form of entrance exams: two-stage (test and oral) in Azerbaijan, only test in Georgia;
- d) Candidates who pass the entrance exam in Azerbaijan are involved in compulsory training and must successfully complete that training. In Georgia, no such procedure is stipulated;
- e) Personal information required for membership in the Bar: biography and information on close relatives (father, mother, wife (husband), children, father-in-law, mother-in-law, brothers, sisters, brothers-in-law and sisters-in-law, their husbands and wives) in Azerbaijan, ID card and biography (CV) in Georgia;
- f) Refusal to admit to the Bar in connection with committing a crime: persons who have been convicted for an intentional less grave, grave, or especially grave crime, unless the conviction has been removed or expunged in the manner established by legislation in Azerbaijan, persons who have been convicted for an intentional grave crime, unless the conviction has been removed or expunged in the manner established by legislation in Georgia.

c) The procedure of admission to advocacy in Estonia and its similarities and differences with Azerbaijan

According to Article 22.3 of the Bar Association Act of Estonia, In Estonia, only members of the Estonian Bar Association (hereinafter referred to as EBA) may provide legal services as

advocates, unless otherwise provided in this Act.⁴⁰ According to Article 23.1 of the law, a person may be admitted to the Bar Association, if he or she:

- has active legal capacity;
- resides in Estonia or is a citizen of the Republic of Estonia or of a member state of the European Union;
- has oral and written proficiency in Estonian;
- is honest and of high moral character and with the abilities and personal characteristics necessary for work as an advocate.

Article 27 of the Law defines the grounds for refusal of membership in EBA. So a person shall not be admitted to the EBA if he or she:

- does not comply with the requirements for advocates;
- has been disbarred or removed from the position of a notary;
- has been punished pursuant to criminal procedure for an intentionally committed criminal offence;
- is in public service, is employed under an employment contract or a contract of service (except being employed in the field of teaching or research);
- is a bankrupt;
- operates in a profession which is contrary to the requirements for the professional ethics of advocates or the principle of independence;
- has been deprived of the right to be an advocate, judge, prosecutor, notary or operate as an undertaking by a court judgment.

Advocate's examinations shall be organised as necessary but not less frequently than once a year. An advocate's examination may consist of an oral and a written part. Advocate's examinations and evaluation of examination results are carried out by the Professional Suitability Assessment Committee. The committee shall consist of 11 members. 6 sworn advocates are appointed by the Board of the EBA. Of the other 5 members, 2 are judges, 1 is a representative of the Ministry of Justice, 1 is a public prosecutor, and 1 is a jurist appointed by the Council of the Law Faculty of the University of Tartu.

Thus, if we compare the procedures for admission to advocacy in Azerbaijan and Estonia, we can see that main similarities and differences are as follows:

- 1) Representation activities in both countries (except for close relatives and authorized persons of organizations) may be carried out only by members of the Bar;
- 2) Estonian legislation does not specify the minimum duration of legal work experience required to become an advocate;

⁴⁰ Bar Association Act of the Republic of Estonia.

[https://www.riigiteataja.ee/en/eli/ee/530102013022/consolide#:~:text=\(1\)%20Estonian%20Bar%20Association%2C,legal%20person%20in%20public%20law.](https://www.riigiteataja.ee/en/eli/ee/530102013022/consolide#:~:text=(1)%20Estonian%20Bar%20Association%2C,legal%20person%20in%20public%20law.)

- 3) Entrance exams in both countries consist of written and oral parts;
- 4) Persons who have been convicted for an intentional less grave, grave, or especially grave crime, unless the conviction has been removed or expunged in the manner established by legislation, may not be lawyers in Azerbaijan, and persons convicted in accordance with the procedure of criminal proceedings for an intentional crime may not be lawyers in Estonia;
- 5) The number of entrance exams during the year is determined at least once a year in both countries;
- 6) In Estonia, civil servants are not admitted to the Bar. In Azerbaijan, on the other hand, civil servants may engage in advocacy only after they have been relieved of their posts and obtained the status of an advocate in accordance with the law;
- 7) Persons who are employed under an employment contract or a contract of service are not admitted to the Bar in Estonia. However, there is no such ban on advocacy in Azerbaijan;
- 8) Persons who are bankrupt in Estonia are not admitted to the Bar. However, there is no such ban on advocacy in Azerbaijan;
- 9) In both countries, the body carrying out the admission process to the Bar consists of 11 members. More than half of the members (6 members) of this body are appointed by the Bar in Estonia, and by the state authorities in Azerbaijan.

Results

The amendments of October 31, 2017, significantly reduced the rights of representatives and had the representation of individuals in court proceedings monopolized by advocates. Adoption of amendments significantly weakened the access to effective legal assistance for low-income persons and resulted in the deprivation of lawyers and non-lawyers engaged in practical legal activities and the exclusion of independent persons dealing with the protection of human rights in the country from court proceedings.

The bill was adopted without public discussion. This shows that the bill is not aimed at increasing the independence, self-regulation, and integrity of practical legal activity, as well as was adopted in violation of international standards.

As for the number of advocates, we can say that the presence of a total of 1,844 advocates in a country with a population of about 10 million significantly complicates the use of legal services by citizens. The abolition of the representation had a particularly negative impact on the access of the population in the regions to legal assistance. Such that only 395 members of the Bar operate in the regions.

Furthermore, many young lawyers used to cooperate with local organizations to support certain vulnerable groups of the population, and these groups used to benefit from the services of young lawyers, as it was costly to contract with advocates. Thus, the abolition of the representation also affected the legal services provided by civil society representatives to certain vulnerable groups of the population, such as victims of human trafficking, domestic violence, persons with disabilities, and IDPs.

Looking at the rules for organizing the interview stage of the process of admission to the BA, it is clear that this stage is aimed at preventing those who are considered "undesirable" by the government from becoming advocates. Such that the non-disclosure of specific topics related to the questions for the participants, the biased assessment of the answers (based on personal considerations), and the fact that more than half of the interviewees are government officials who are not members of the Bar raise the possibility of the existence of that aim.

The main purpose of the study of the legislation of foreign countries on advocacy and representation was to identify similarities and differences in comparison with Azerbaijan, as well as to obtain examples for recommendations on changing the rules of regulation of these activities. The reason for choosing Georgia was its location in the Caucasus region like Azerbaijan, and the reason for choosing Estonia was the study of the legislation of one of the members of the European Union, which is a post-Soviet country like Azerbaijan. During the comparison, it was found that the institute of representation is more widely established in the legislation of Georgia. It was also found that admission to the Bar Association in Georgia and Estonia is more transparent. Moreover, the experience of both countries was used in the preparation of recommendations.

Recommendations

1. The institute of representation must be restored with the permission of only persons with higher legal education (registered with the tax authority with the relevant code of activity).
2. The interview process in the admission procedure to the Bar Association must be transparent and objective. For this:
 - the topics on which questions will be asked during the interview should be specific, not as general as they are now, and should be made public;
 - the points given to the candidates' answers should be defined clearly (for example, in the range of 1-10 points and verbal equivalent of each point - good, very good, average, etc.), not abstractly as "acceptable" and "unacceptable", and should be shared openly with the public;
 - more than half of the members of the Qualification Commission should be advocates who are members of the BA, not public authorities;
 - the interview process should be videotaped and video material should be provided as evidence to those who wish to object to the results of the interview.
3. A law should be adopted to provide legal assistance at the expense of the state in civil, administrative, and commercial cases.
4. The amount paid to lawyers for legal assistance at the expense of the state should be increased.
5. The number of Bar entrance exams for each year should be increased and specified in the law in a concrete form.
6. The minimum duration of legal work experience required for admission to the Bar should be reduced from 3 to 1 year.

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Contact information:

Phone: +99455 234 76 76

Web: www.idi-aze.org

Email: idi.azerbaijan@gmail.com

Facebook: www.facebook.com/DTI.IDI