

# International Day of Lawyers in danger 2021

AZERBAIJAN

11th Ed.



This year's **World Day of Lawyers in danger** focuses on **Azerbaijan**, where multiple cases of harassment of lawyers in violation of international law and international standards on the independence of the profession have been documented.

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Contact : [avocatsendanger@avocatparis.org](mailto:avocatsendanger@avocatparis.org)

+33 1 44 32 49 43



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## A Bar Association that is not in a position to effectively protect its members

In 1999, the **adoption of the new Law on Lawyers** and the Activity of Lawyers made membership of the National Bar Association an obligation to have the status of a lawyer and to benefit from all the guarantees granted by law.

According to the 1999 Law, the Bar Association is **independent** and has a number of important functions, such as responsibility for the qualification of prospective lawyers, the development of ethical standards and the conduct of disciplinary proceedings against lawyers. This relatively young Bar is officially independent but does not yet have the capacity or willingness to exercise its independence effectively and completely. As a result, the Bar remains under the influence of the executive branch and the use of disciplinary procedures has been one of the most common means of harassment against human rights lawyers, or has been seen as embarrassing. Furthermore, the qualification procedure suffers from a lack of objective criteria, predictability and transparency, which in practice leads to arbitrary and discriminatory practices in accessing the profession.



## Difficulties and retaliatory measures encountered by lawyers in Azerbaijan

The law provides for access to a lawyer from the moment of detention, but **this access is frequently denied to lawyers** even in cases that are not considered sensitive. In some political cases, access to freely chosen lawyer has been denied to accused persons who have been forced to use court-appointed lawyers who have not adequately defended their clients for fear of government reprisals.

In theory and at law, the evidence collected and presented by the accused has the same force as that put forward by the prosecutor. However, it would appear that, in practice, **the assessment of evidence is influenced by its origin**: if it is defence evidence its probative value is considered to be inferior to that of prosecution evidence.

In many cases, convictions are entered on the testimony of police officers and prosecution witnesses, with the testimony of defence witnesses being systematically ignored.

In adversarial proceedings, **these difficulties are a considerable hindrance to defence lawyers in their work** and encourage unfair trials and miscarriages of justice. Furthermore, defence lawyers are often discredited by judges and prosecutors in front of their clients. As a result, more than 99% of the accused in criminal cases are convicted.





## Reprisal measures

Lawyers in Azerbaijan are **subject to harassment** through criminal prosecution, disciplinary action and other administrative measures.

The disbarment of lawyers working for the protection of human rights, criminal prosecution, searches and measures such as the freezing of their assets are part of the broader framework of widespread harassment of human rights defenders, which do not include only lawyers, but also journalists, NGOs, and all those who are equated with opponents.

Nevertheless, with regard to lawyers who are members of the Bar, disciplinary measures are the most widely used means of repression against lawyers defending human rights or politically sensitive cases, such as denunciation of acts of torture by the authorities, defence of political opponents, cases of expropriation or corruption.

In such cases, the Azerbaijan Bar Association can act as a real instrument of reprisals against these lawyers and lead to their disbarment.

Criminal proceedings have also been brought against lawyers in several cases on unfounded accusations, which are followed by disciplinary sanctions.

This situation seriously undermines the independence of lawyers. Extremely few lawyers are willing to take on politically sensitive cases. As a result, lawyers in Azerbaijan are particularly vulnerable and limited in their defence role.



## Azerbaijan and the ECHR

Azerbaijan is a **member of the Council of Europe** and a party to the European Convention on Human Rights (ECHR).

As such, it is subject to Recommendation R(2000) 21 of the Committee of Ministers of the Council of Europe on the freedom of exercise of the legal profession and to the case law of the ECHR protecting lawyers, their professional secrecy and their freedom of expression in particular.

However, in several judgments, the European Court of Human Rights has highlighted a disturbing pattern of arbitrary arrest and detention of government critics, civil society activists and human rights defenders through punitive prosecutions and misuse of criminal law in disregard of the rule of law.

The Council of Europe Commissioner for Human Rights has also recently denounced the use of travel bans on journalists, lawyers, political activists and human rights defenders.



## Portraits of lawyers under threat

Azerbaijan has **the fewest lawyers per 100,000 inhabitants** of any Council of Europe country. This situation compromises access to justice.



## Intigam Aliev

Intigam Aliyev is a human rights lawyer in Azerbaijan, who has dedicated his entire career to the protection of the rights of individuals against the repressive system of the Azerbaijani government. In 2005, he himself was disbarred for his criticism of the bar and its leadership. This did not prevent him from continuing his work of providing legal assistance and representation to people who have been politically persecuted for several decades.

In April 2015, Intigam Aliyev was sentenced to seven and a half years in prison and a three-year ban on certain positions and activities after being found guilty of embezzlement, illegal activities in organised groups, tax evasion, abuse of power and falsification of data in official documents. He was awarded the Council of European Bars and Law Societies (CCBE) Human Rights Prize in 2015.

In 2018, the ECHR condemned Azerbaijan in view of the conditions of detention of our colleague Intigam Aliyev and the lack of plausible grounds to suspect him of having committed a criminal offence to justify his detention.





Yalchin Imanov is a lawyer and human rights defender. He is one of the few lawyers accepting high profile and sensitive cases, particularly cases involving human rights defenders and political prisoners. In November 2017, Yalchin Imanov was suspended from his profession as a lawyer, by decision of the Azerbaijan Bar Association, pending a court decision, following a complaint from the Azerbaijan Prison Service, for "circulating false information through the press". The complaint targets allegations of torture in detention made by two of Yalchin Imanov's clients.

Yalchin Imanov's disbarment was confirmed in February 2019 on the grounds of attacking the honour, dignity and reputation of the prison services.



Khalid Zakir oglu Bagirov is a lawyer suspended for one year in 2011 and disbarred in 2014 for comments he made during a hearing on police brutality and the functioning of the judicial system.

On 25 June 2020, the European Court of Human Rights found that these disciplinary sanctions violated his right to freedom of expression and privacy and condemned Azerbaijan.