

## Azerbaijan

**The presidential power regarding appointment and dismissal of judges is a serious threat to the impartiality of the judiciary. Furthermore, the lack of security of tenure for judges constitutes a serious deficiency in the Azeri system. The Minister of Justice decided in December 1998 that the government controlled Collegium of Advocates had a monopoly in criminal cases.**

Azerbaijan has been a republic with a president since it became independent from the Soviet Union on 30 August 1991. President Heydar Aliyev came to power on 18 July 1993 by overthrowing his predecessor. In 1995 the 125-seat parliament (Milli Majlis) was chosen for five years in elections that were widely seen as incoherent. The Constitution was adopted by referendum on 12 November 1995.

President Heydar Aliyev was re-elected in October 1998 for a period of five years. The Organisation for Security and Cooperation in Europe (OSCE), which observed the elections, concluded that they did not meet international standards. Municipal elections took place on 12 December 1999 for the first time in the country. Election committees who supervised the elections, however, were controlled by local authorities.

The President is head of state and the Prime Minister is the head of the government. The Cabinet consists of a Council of Ministers who are appointed by the President and confirmed by the parliament.

Azerbaijan is engaged in a conflict with neighbouring Armenia over the status of the Nagorno-Karabkh region, although a cease-fire has been complied with since 1994. As a result of the conflict there is a very large number of displaced persons, both in Armenia and Azerbaijan.

The Nakhichevan Autonomous Republic, in the south west of the country, is an autonomous state within the Republic of Azerbaijan. Nakhichevan has its own legislative power, a parliament (Ali Majlis); executive power, the Cabinet of Ministers; and its own judiciary. The parliament consists of 45 seats and is elected for five years.

### Human Rights Background

Azerbaijan's human rights record is poor. The country, however, has committed itself to uphold international human rights standards by acceding to six major UN human rights treaties, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Freedom of the press was severely hampered in 1999. Several journalists were subject to harassment, ranging from threats and fines to beatings, arrests and kidnapping. Members from opposition parties are continuously harassed in Azerbaijan as the authoritarian regime does not tolerate criticism and opposition. In 1999, several politicians were arrested, some of whom even sought refuge abroad.

Torture is widespread. The Azerbaijani Criminal Code does not contain a separate offence punishing torture as defined in the UN Convention against Torture and Other Cruel, Inhuman

or Degrading Treatment or Punishment. There are numerous reports of torture of prisoners by the police, especially during arrest, interrogation and pre-trial detention.

Azerbaijan's initial report to the UN Committee against Torture, which monitors the Torture Convention, was considered during the Committee's November 1999 session. The Committee against Torture expressed concern, inter alia, about the following:

- the absence of a definition of torture, as provided for by Article 1 of the Convention, in the penal legislation currently in force in the state party, with the subsequent result that the specific offence of torture is not punishable by appropriate penalties as required by Article 4, paragraph 2 of the Convention;
- the numerous and continuing reports of allegations of torture and other cruel, inhuman and degrading treatment and punishment committed by law enforcement personnel;
- the apparent failure to provide prompt, impartial and full investigation into numerous allegations of torture that were reported to the Committee, as well as the failure to prosecute, where appropriate, the alleged perpetrators;
- the absence of guarantees for independence of the legal profession, particularly with reference to the judiciary, appointed to a limited renewable term of years;
- the use of amnesty laws that might extend to the crime of torture.

### **The Judiciary**

According to Article 125 of the Constitution, judicial power is implemented through the Constitutional Court, the Supreme Court, the Economic Court, ordinary and specialised courts. Courts of general jurisdiction may hear criminal, civil and juvenile cases. Cases at the District Court level are tried before a panel consisting of one judge and two lay men.

The Constitutional Court was established in 1998 and is comprised of nine judges. The Constitutional Court takes decisions, inter alia, regarding conflicting legislation and disputes between the legislative, executive and judicial powers. The Constitutional Court also interprets law.

The Supreme Court is the highest judicial body in civil, criminal and administrative cases. The Economic Court is the highest court regarding the settlement of economic disputes.

#### *Appointment and Dismissal*

The judges of the Constitutional Court, the Supreme Court and the Economic Court are appointed by the parliament on the recommendation of the President. The President directly appoints lower level judges.

The judges of the Constitutional Court, the Supreme Court and the Economic Court can be dismissed on the initiative of the President after the parliament has voted for dismissal with a majority of 83 votes. The lower judges can be dismissed with a majority of 63 votes.

Pro-president members dominate the Azerbaijani parliament and, therefore, the career of judges depends almost entirely on the President. The presidential power regarding appointment and dismissal is a serious threat to the impartiality of judges, especially in politically sensitive cases.

### *Security of Tenure*

Judges in Azerbaijan do not have security of tenure and the government has been criticised by the UN in this regard. The UN Committee against Torture, during the discussion of Azerbaijan's initial report in November 1999, said it was concerned about:

- the absence of guarantees for independence of the legal profession, particularly with reference to the judiciary, appointed to a limited renewable term of years.

### *State of the Judiciary*

According to the Constitution, judges are independent and subordinate only to the Constitution and laws of the Azerbaijan Republic. In reality, however, there are credible reports of the lack of independence in the judiciary and influence by the executive. As described above, the lack of security of tenure and the presidential power regarding appointment and dismissal constitute serious deficiencies in the system.

### **Lawyers**

Three types of professionals provide legal services in Azerbaijan: attorneys or barristers who can represent clients in criminal court; jurists or solicitors who can represent clients in civil proceedings; notaries who can authenticate signatures and prepare contracts in family law and real estate law.

Until recently, lawyers could only practice if they were a member of the Collegium of Advocates. This Collegium has a monopoly on criminal defence cases. Lawyers are obliged to turn their fees over to the Collegium and get back a percentage. Through the monopoly, lawyers are dependent on the Collegium for a living as the majority of cases in Azerbaijan are criminal cases. The Collegium has approximately 500 members out of a population of around 8 million Azeris. Needless to say there is an enormous shortage of lawyers.

Formally, the Collegium is independent from the Ministry of Justice and other state authorities. The political climate in Azerbaijan, however, does not allow an institution as the Collegium to operate autonomously.

President Aliyev issued Presidential Decree No. 637 'On Confirming the List of Activities which Required Special Permission (Licenses) in October 1997 which lists all the types of fee-paid services that require a licence. The decree was implemented in May 1998 by regulations of the Cabinet of Ministers and lawyers could apply for licenses. According to information from the International League for Human Rights, an international human rights organisation based in New York, as of June 1999, 122 individuals and 13 firms had applied for licenses from which only 2 were rejected because the applicants did not have a higher education.

In July 1998, however, the Minister of Justice publicly announced that the regulations did not apply to lawyers in the Collegium. In December 1998 the Minister issued a letter prohibiting lawyers with a license who were not members of the Collegium to represent clients in criminal cases.

Seventy independent lawyers then complained to the Cabinet of Ministers about the order of the Minister of Justice to ban them from criminal practice. The complaint was referred to the Supreme Court which referred the case to a lower court where it was pending at the time of writing. The order of the Minister of Justice has enormous consequences for civil society in Azerbaijan as dissenters are often charged with criminal offences. If independent criminal defence lawyers are barred from taking criminal cases those charged will have to rely on the lawyers from the Collegium who are controlled by the government.

On 27 January 2000 the 1980 Law on Advocates was replaced by the Law on the Legal Profession. At the time of writing no copy of the law was available in English to the CIJL. The International League for Human Rights, however, reported that the new law decided in favour of the Minister of Justice and that the Collegium indeed has a monopoly on criminal cases. Furthermore, the new law prescribes that the founder of a law firm should be a member of the Collegium, which can have consequences for already existing law firms.

Another major problem is the lack of access that detained persons have to a lawyer. In Azerbaijan persons are often detained arbitrarily, without a warrant or without being told what they are charged with, and often family members are not informed of their arrest. Although the Constitutional Court ruled in July 1999 that a lawyer should have access to a detained person from the time of arrest rather than from the time he is officially charged with a crime, access to lawyers remains poor. When a detainee is denied access to a lawyer and is also kept from seeing family members the risk of torture mounts, especially in a legal system that relies heavily on confessions, as is the case in Azerbaijan.

#### *The Association of Lawyers of Azerbaijan and the Azerbaijan Bar Association*

The Azerbaijan Bar Association is a non-governmental organisation (NGO) in Baku which aims to promote the Rule of Law and the independence of the Bar. The organisation has applied twice for registration but these requests were denied by the Ministry of Justice. The official reason for denial was that the Law on the Legal Profession had yet to be passed. The Azerbaijan Bar Association applied again for registration in February 2000, after the law came into force.

The Association of Lawyers of Azerbaijan, another non-governmental organisation, applied three times for registration which was three times denied by the Ministry of Justice. The organisation is currently contesting the rejection in court.

The denial to register these organisations, that apparently live up to requirements as prescribed by law, is in clear violation with Article 24 of the UN Basic Principles on the Role of Lawyers which states:

Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

#### **Cases**

About one hundred lawyers have been barred from taking up criminal cases after the order of the Minister of Justice in December 1998.

Aslan Ismailov (lawyer): Mr. Ismailov, a respected lawyer, was a member of the Collegium until his dismissal in 1999. He has served repeatedly, pro bono, or for a nominal fee, as legal counsel in human rights cases that have met with government resistance, particularly cases involving freedom of the media.

Mr. Ismailov is believed to have been punished for a trip he made from 21 February to 5 March 1999 to the United States. Mr. Ismailov and two other Azerbaijani lawyers went on a training and advocacy trip sponsored by the International League for Human Rights. During their stay, they met with judges, lawyers, journalists, scholars, congressional staff and government officials. Their trip overlapped with a working visit by the Minister of Justice and the President's legal advisor, who were meeting with many of the same policy-makers as the lawyers. Within days of his return, on 18 March 1999, Mr. Ismailov was informed that he had been expelled from the Collegium.

The official reasons for his expulsion are that Mr. Ismailov failed to obtain permission from the Collegium for his trip to the US and to provide a formal explanation for his trip after he returned, and that his work as a privately licensed lawyer constitutes entrepreneurial activity which the Collegium argued is forbidden for its members under the 1980 Law on Advocates.

The International League for Human Rights reported that despite the fact that Mr. Ismailov could contest the accusations with legal arguments, the District Court ruled against Mr. Ismailov. He appealed the decision in higher courts, yet in September 1999 his appeal to the Supreme Court was rejected, and he has exhausted all existing local remedies for his right to practice his profession.

In September 1999, the International League for Human Rights published a report "Restrictions on the independent legal professions in Azerbaijan", inter alia, analysing in detail the case of Aslan Ismailov.