



# SOUTH CAUCASUS

A r m e n i a

A z e r b a i j a n

G e o r g i a

**November 14<sup>th</sup>, 2012 from 8 am till 5 pm**

**Maison du barreau - room Gaston Monnerville**



## Observations and Recommendations

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The Paris Bar participated in several international missions to the South Caucasus in 2010, 2011 and 2012.

On November the 14<sup>th</sup> 2012 the Paris Bar convened an international conference to appraise the difficulties faced by the legal profession in the South Caucasus where the efforts which the governments of Armenia, Azerbaijan and Georgia have made to improve the structural independence of the judiciary and to guarantee its effective functioning, were recognised.

However, challenges remain with respect to guaranteeing lawyers the ability to freely practice their profession without any improper interference.

The Paris Bar is concerned that at present the conduct of judicial proceedings does not sufficiently conform to the principle of ‘equality of arms’ and that the Prosecutor currently exercises improper control over those proceedings at both the pre-trial and trial stages. It appears that lawyers encounter significant difficulties in gathering evidence and that the probative value of the defence evidence is as a matter of routine considered less reliable than evidence adduced on behalf of the Prosecution.

In the three States under consideration, lawyers acting on behalf of the Defence are often treated with disrespect. They are routinely shown a lack of consideration and are often unjustifiably discredited by Judges and Prosecutors.

The Paris Bar submits the following Recommendations and it does so with the single aim of assisting in the development and strengthening of a) the independence of the Bar Association, b) the independence of the legal profession and c) the effective functioning of the justice system as a whole, in the South Caucasus.

It is hoped that the following Recommendations will be received in a positive light and that they will be adopted on the basis that an Independent Bar is intrinsic to the Rule of Law.

# Armenia

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***The Paris Bar respectfully submits the following recommendations to the authorities and Collegium of Advocates of Armenia:***

## **1. Organization of the profession**

### **• Program of free legal aid services**

The system of legal aid should be improved to ensure that:

- Public defenders receive adequate remuneration for legal aid;
- Legal aid should include civil, family and administrative cases, as well as cases before the Constitutional Court and the European Court of Human Rights (ECHR).

Lawyers providing *pro bono* services should be entitled to tax relief equivalent to the value of the *pro-bono* services provided.

### **• Support to the profession**

The legal profession and the Chamber of Advocates should be officially supported by the authorities and the President of the Republic.

### **• Role of Lawyers in financial transactions**

Lawyers should not be obliged to be agent reporters concerning suspicious financial transactions.

## **2. Right to a fair trial**

### **• Judges**

The appointment, promotion and dismissal of Judges upon the proposal of the Council of Justice should not be left to the absolute discretion of the President of the Republic.

Disciplinary procedures should be amended to strictly limit the power of the Minister of Justice and to ensure that he does not act arbitrarily in such matters.

All Judgments purported to be approved by a panel of Judges should include an expression of their individual position and their view regarding the case, that is to say whether they adopt or dissent from the decision of the majority.

This is important so as to ensure that not only is justice done but that it is also seen to be done.

- **Equality of arms**

The Criminal Code of Procedure should be amended so as to ensure that Lawyers acting for the Defense are treated on an equal footing with Prosecutors, from the commencement of the investigation stage of the case up to the completion of the trial process, including appeals process, where such is availed of. Equal treatment in this regard ought to include parity of fees paid where Prosecutors are paid on a case by case basis.

- **The right of the accused to counsel of his own choosing**

Any person, arrested or detained, should be granted the assistance of a lawyer of their own choosing, without interference in any way by the authorities. Therefore, the practice of investigators having the authority to approve the assignment of a lawyer as legal counsel for suspects / accused persons should cease.

It ought to be made a criminal offence for any Public Official to impede a lawyer in the exercise of his/her professional duties and where such offences occur they should be prosecuted.

- **Collection, presentation and evaluation of evidence**

In order to provide effective legal assistance Lawyers should be entitled, as of right, to free access to all relevant information, material, exhibits, files and documents (whether stored electronically or otherwise) which in the opinion of the Lawyer are relevant to the Defence of the Client and any delays in providing such access or denials of such access should be judicially decided upon and where such delay or denial is deemed to be a failure to provide a fair trial in due course of law, such trials, including trials on detention, should be prohibited.

### **3. Lawyers and penitentiary institutions**

- **Confidentiality of communication and correspondence**

In all circumstances, there ought to be respect for the privacy of written and oral communications between Lawyers and their Clients and this right to privileged communications should be ensured at all times and stages of legal procedure including when applications are being brought before the European Court of Human Rights or the Constitutional Court.

#### • **Complaints against physical violence in the prison system**

Public authorities should ensure prompt, impartial and full investigations into all allegations of torture, cruel, inhuman or degrading treatment or punishment, and where such allegations are made the relevant authorities should ensure that all appropriate steps are taken to render those responsible for the commission of such offences amenable to justice.

#### **4. Practicing as a lawyer in a “sensitive” case**

Lawyers providing legal advice and acting as counsel in the defense of persons, perceived to be opposition activists, people expressing criticism towards public authorities, cases of expropriation, members of minority groups (based on gender, sexual orientation or religious criteria), should be able to perform all of their professional functions without intimidation, hindrance, harassment or interference.

Lawyers should not be labelled or otherwise identified with their clients or their clients’ causes as a result of discharging their professional functions.

Lawyers should never be subject to criminal prosecution solely on account of their representing clients in cases that are perceived by the authorities to be inappropriate or somehow improper.

#### **5. Capacity building**

Programs to inform all citizens of the fundamental role advocates and lawyers play in the protection of fundamental freedoms and human, economic, social, cultural, religious and political rights should be promoted.

The training of Lawyer’s should be implemented and made accessible to all those in practice without distinction. Their training should be directed towards continuous professional education so that the highest standards are maintained in the practice of law.

# Azerbaijan

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***The Paris Bar respectfully submits the following recommendations to the authorities and Collegium of Advocates of Azerbaijan:***

## **1. Organization of the profession**

Advocates and lawyers should be able to carry out their activities without any improper interference.

A series of steps should be taken to strengthen the *Collegium of Advocates of Azerbaijan*, so as to ensure that it can play its fundamental role in protecting the human rights of clients and their Counsel.

- **Bar Association**

The independence, as well as respect for the principles of self government of the Collegium of Advocates in Azerbaijan should be ensured.

- **Entry to the profession**

Entry to the profession should not depend on subjective criteria. The organization of the bar exam should be improved by giving a clear definition of the oral examination.

An independent body should be responsible for authorizing entrance to the profession on an objective basis.

- **Disciplinary procedure**

Disciplinary procedures should be administrated by a bar association which is independent from the executive.

Disciplinary procedures should not be used as a means of pressure against advocates.

The disciplinary procedure should be clearly defined by a code of professional conduct and ethics in order to protect advocates against arbitrary measures as well as to ensure that they practice with the highest standards of professional conduct.

Efforts should be made to train and increase awareness and understanding of professional ethics.

- **Program of free legal aid services**

The system of legal aid should be improved so as to ensure that:

- any person who is accused of a criminal offence has access to an independent and competent advocate, (this need appears to be greatest where they are located outside of Baku).
- the right of the accused to choose Counsel of his/her own choice is respected.
- advocates should receive adequate remuneration at professional rates which are on parity with their prosecuting colleagues for all work undertaken under the legal aid scheme.

- **Training of the legal profession/continuing legal education**

Organize training so that advocates are brought up to date with all the legal reform that has been legislated for over the last few years.

## **2. Right to a fair trial**

The legal framework should be properly equipped so as to ensure the full independence of all judges and advocates and also so that international human rights principles are fully respected, enhanced and upheld.

Advocates / Lawyers must be treated on an equal footing with those acting for the Prosecution, so as to fully conform with the principle of 'equality of arms'.

- **Collection, presentation and evaluation of evidence**

Defence Counsel should be granted powers to have full access to all of the evidence and time to properly prepare their case for trial. Their role during the trial should be reinforced, so that they are in a position to properly challenge the case being made by the Prosecution.

The assessment of the evidence should be impartial and ought not to be given less weight or credence just because it is being adduced on behalf of the Defence.

## **3. Practicing as a lawyer in a "sensitive" case**

Advocates providing legal defence for activists of the opposition, journalists, and cases linked to the freedom of expression or cases in which the State is concerned or exposed to the risk of adverse publicity should be able to

perform all their professional functions without intimidation, hindrance, harassment or improper interference.

Lawyers should not be identified with their clients or their clients' causes as a result of discharging their professional functions and duties as Counsel.

#### **4. Freedom of expression**

Freedom of expression is a fundamental human right and ought to be granted to Advocates and Lawyers who should have the unfettered right to take part in public discussion on matters concerning the law, the administration of justice and the promotion and protection of human rights.

#### **5. Right of Association and Assembly**

Lawyers and Advocates should be able to join or form local, national or international organizations and attend their meetings.

#### **6. The key role of the Advocate for the progression of law: Advocates contribution to the evolution of domestic law**

Lawyers should be given the opportunity of continuing education in European human rights standards, norms and jurisprudence.

The involvement of the *Collegium of Advocates* in such training modules should be encouraged.

#### **7. Capacity building**

All lawyers, judges and prosecutors need to be specifically trained on issues of freedom of expression in order to acquire a better understanding of the extent and exercise of this right by the press, political opponents and NGOs.

Programs to inform all citizens of the fundamental role advocates and lawyers play in the protection of fundamental liberties and rights should be promoted.

# Georgia

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***The Paris Bar respectfully submits the following recommendations to the authorities and the Georgian Bar Association:***

## **1. Organization of the profession**

### **• Disciplinary**

The settling of any disputes between a lawyer and his/her client before disciplinary bodies, without any undue external interference, should be encouraged.

The widespread use of article 180 of the Georgian Criminal Code in order to activate professional responsibilities of a lawyer should be stopped.

### **• Entry to the profession**

The bar exam should be improved in order to ensure an adequate level of professional competence for lawyers seeking to be permitted to practice at the bar.

### **• Program of free legal aid services**

Equality between lawyers and state attorneys, especially in penal matters, should be ensured.

The Legal Aid scheme available to Lawyers and which should guarantee their independence and impartiality needs to be reassessed so as to ensure that it meets the necessary requirements.

The State legal aid service should not be part of the executive branch of the government.

## **2. Right to a fair trial**

The Judicial system should fully respect all human rights provisions and international norms that have been adopted and ratified by the Georgian State and especially the right to a defence and equality of arms between the prosecution and the defence.

Lawyers acting for the Defence need to be treated on an equal footing with Lawyers acting for the Prosecution, with due respect being shown and a parity in payment for work undertaken so that there is adherence to and

respect for the fundamental legal principle of ‘equality of arms’.

- **The right of the accused to counsel of his own choosing.**

Any person, arrested or detained, should be granted the assistance of a Lawyer of their own choosing and where such person is indigent and unable to pay for legal representation then such should be provided free of charge and at a rate commensurate with fees earned by Lawyers acting for the Prosecution.

- **Collection, presentation and evaluation of evidence**

In order to provide effective legal assistance Lawyers should be entitled, as of right, to free access to all relevant information, material, exhibits, files and documents (whether stored electronically or otherwise) which in the opinion of the Lawyer are relevant to the Defence of the Client and any delays in providing such access or denials of such access should be judicially decided upon and where such delay or denial is deemed to be a failure to provide a fair trial in due course of law, such trials should be prohibited.

- **Plea Bargaining**

The system of plea bargaining should be improved so as to guarantee:

- the complete independence of Judges in their effective control over the legality and fairness of negotiations,
- the strict compliance with the principle of equality between all lawyers (state lawyers and private lawyers),
- the respect for the choice of a private defense attorney by the accused
- the balance between the defense and prosecution during negotiations

- **Right of appeal of a lawyer fined or removed from the Courtroom by the Court**

There should be an automatic right of appeal against all Court Orders that are made concerning Lawyers and their participation in proceedings before the courts, where such orders relate to the imposition of a fine or order their removal from the courtroom thereby preventing them from representing their clients. The corresponding articles in criminal, civil and administrative procedure should be amended.

### **3. Lawyers and penitentiary institutions**

- **Confidentiality of communications and correspondence.**

The access of lawyers to any client, arrested or detained, the privation of liberty being in a penal or administrative procedural context, should be facilitated.

In all circumstances, respect for the privacy of all written and oral communications between lawyers and their clients should be ensured.

- **Pressure placed on detainees and prisoners because of the legal action taken by their lawyers**

Inmates who wish to make application to the E.C.H.R. should not be exposed to pressure of any sort by the prison authorities.

- **Complaints against physical violence in the prison system**

It is imperative that prompt, impartial and full investigations into allegations of torture, cruel, inhuman or degrading treatment or punishment are carried out and that where any such complaint has been validated that immediate steps are taken to prosecute the alleged perpetrators.

#### **4. Practicing as a lawyer in a “sensitive” case**

Lawyers providing legal defense in which the State is concerned or when the State has an interest such as for example property cases, or in labour law, should be able to perform all their professional functions without intimidation, hindrance, harassment or improper interference.

The failure or supposed failure on the part of a lawyer to fulfil his professional responsibilities should not be subject to criminal prosecution with the prospect of heavy prison sentences, as such opens the door to the easy manipulation / intimidation of lawyers in sensitive cases in which the State or some public bodies have a vested interest.

#### **5. Capacity building**

Programs to inform all citizens of the fundamental role lawyers play in the protection of fundamental liberties and rights should be promoted.

Lawyers training should be implemented and made accessible to all without distinction.

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