

***Annagi Hajibeyli v. Azerbaijan
and 28 other applications***

Application no. 2204/11

WRITTEN SUBMISSIONS ON BEHALF OF THE INTERNATIONAL COMMISSION OF
JURISTS (ICJ)

INTERVENER

*pursuant to the Section Registrar's notification dated 13 May 2015 that the
President of the Section had granted permission under Rule 44 § 3 of the Rules of
the European Court of Human Rights*

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I. Introduction

These submissions of the International Commission of Jurists (ICJ) address the question of hindrance of the effective exercise of the right of application to the European Court of Human Rights (the Court), under Article 34 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention or ECHR), through searches of lawyers' offices and seizures of documents. It is the submission of the ICJ that the effective exercise of the right to petition the Court, which is central to the Convention system, requires strict scrutiny of the aim and effect of any such actions, in light of international standards on the role and independence of lawyers and of principles established in the Court's jurisprudence, including lawyer-client confidentiality. Respect and protection of the rights of applicants to the effective assistance of independent lawyers and to lawyer-client confidentiality in particular, is essential to the effectiveness of the right of petition to the Court under Article 34.

In these submissions, the ICJ therefore addresses (1) International law and standards on the role and independence of lawyers and on the principle of lawyer-client confidentiality (2) The scope of application of Article 34 ECHR, second sentence, in cases relating to the hindrance of the exercise of the right of petition, in light of the Convention jurisprudence as well as principles of access to justice and confidentiality of correspondence with the Court.

II. International standards on non-interference with the work of lawyers

1. International law and standards on the role of lawyers

A free and independent legal profession is essential to the protection of human rights and the maintenance of the rule of law.¹ By facilitating access to justice and seeking to protect the rights of their clients, lawyers play a crucial role in ensuring respect for human rights² and, as this Court has confirmed, they "are assigned a fundamental role in a democratic society".³ The UN Basic Principles on the Role of Lawyers, adopted in 1990, set out guarantees, which States should respect and ensure to enable lawyers to be able to carry out their roles and functions effectively and in accordance with their special status. They affirm the importance of lawyers in ensuring protection of human rights through the fair administration of justice.⁴ The UN Basic Principles are complemented by other standards on the role of lawyers at a global and regional level, including the Singhvi Declaration, the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, and Recommendation No. R(2000) 21 of the Committee of Ministers on the freedom of exercise of the profession of lawyer.⁵

¹ UN Basic Principles on the Role of Lawyers, preamble; Draft Universal Principles on the Independence of Justice (Singhvi Declaration), para. 74; International Commission of Jurists, Congress of New Delhi, (1959), <http://icj.wpengengine.netdna-cdn.com/wp-content/uploads/1959/01/Rule-of-law-in-a-free-society-conference-report-1959-eng.pdf>, pp. 13, 158 and 311.

² UN Basic Principles on the Role of Lawyers, principles 13 and 14.

³ *Michaud v. France*, ECtHR, Application no. 12323/11, Judgment of 6 December 2012, para. 118.

⁴ UN Basic Principles on the Role of Lawyers, preamble, para.9

⁵ Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"). The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, in understanding lawyers as the primary providers of legal aid (para. 9), highlight their special status in contributing to a legal aid system capable of ensuring

These standards are reflected in the jurisprudence of this Court, as well as of other international human rights tribunals, which recognise the vital role of lawyers in ensuring access to justice and protecting human rights.⁶

In accordance with the UN Basic Principles on the Role of Lawyers, it is the role as well as the duty of lawyers to assist their clients “in every appropriate way, and taking legal action to protect their interests.”⁷ Lawyers should at all times act “freely and diligently in accordance with the law and recognized standards and ethics of the legal profession”⁸ and should “always loyally respect the interests of their clients.”⁹ International standards on the role of lawyers further reaffirm that all persons should have effective access to a lawyer to protect their rights,¹⁰ and that lawyers should, in discharging their duties, “at all times act freely, diligently and fearlessly (...) without any inhibition or pressure from the authorities or the public.”¹¹

Despite the international recognition of the role of lawyers as essential agents in the administration of justice,¹² and the duties of states to respect and safeguard their roles and independence,¹³ lawyers in many jurisdictions incur serious risks when carrying out their professional functions.¹⁴ The UN Special Rapporteur on the Independence of Judges and Lawyers, in a recent report, expressed concern: “[...] at cases in which lawyers have been sanctioned because of political activities, advocacy work, confusion between the lawyer’s cause and his/her client’s cause, and involvement in the legal representation of clients in sensitive cases. In that context, she has urged States to refrain from criminally convicting or disbaring lawyers for the purposes of silencing them, preventing them from criticizing public policies or obstructing them in their legal representation of specific clients.”¹⁵

"fundamental fairness and public trust" in the criminal justice system (paras. 1 and 14; see also para. 3). See also, Recommendation no. R(2000)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer; Consultative Council of European Judges (CCJE) Opinion No.(2013)16 on the Relations Between Judges and Lawyers; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa; IBA Standards for the Independence of the Legal Profession.

⁶ *Kyprianou v. Cyprus*, ECtHR, Application no. 73797/01, Judgment of 15 December 2005, para. 58; *Kulikowski v. Poland*, ECtHR, Application no. 18353/03, Judgment of 19 May 2009, para. 32, *André and another v. France*, ECtHR, Application no. 18603/03, Judgment of 24 July 2008, para. 20.

⁷ UN Basic Principles on the Role of Lawyers, principle 13(b).

⁸ UN Basic Principles on the Role of Lawyers, principle 14.

⁹ UN Basic Principles on the Role of Lawyers, principle 15.

¹⁰ UN Basic Principles on the Role of Lawyers, principles 1 and 2; Singhvi Declaration, para. 76.

¹¹ Singhvi Declaration, para. 83; IBA Standards for the Independence of the Legal Profession, para. 6; See also: UN Basic Principles, principle 16 (a) according to which governments should ensure that lawyers “are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference”; UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, principle 36, according to which states should inter alia ensure providers of legal aid can carry out their professional functions free from intimidation, hindrance, harassment or improper interference, including the explicit responsibility of states not to interfere with the independence of the legal aid provider (para. 16).

¹² Basic Principles on the Role of Lawyers, principle 12; Commentary on IBA International Principles on Conduct for the Legal Profession, para. 1; *Sialkowska v. Poland*, ECtHR, Application no. 8932/05, Judgment of 22 March 2007, para. 111; *Morice v. France*, ECtHR, Application no. 29369/10, Judgment of 23 April 2015, para. 135.

¹³ See, for example, UN Basic Principles on the Role of Lawyers, principles 16 to 22; UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, para. 16 and principle 36.

¹⁴ See, for example, Human Rights Council, Communications report of Special Procedures, UN Doc. A/HRC/28/85, 19 February 2015; Human Rights Council, Communications report of Special Procedures, UN Doc. A/HRC/27/72, 20 August 2014; Human Rights Council, Communications report of Special Procedures, UN Doc. A/HRC/26/21, 2 June 2014.

¹⁵ Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc. A/HRC/26/32, 28 April 2014, para. 68.

The ICJ therefore submits that the special role of lawyers “as an indispensable participant in the fair administration of justice”¹⁶ necessitates that States ensure that lawyers enjoy practical and effective guarantees which permit them to carry out their important social function, at both national and international levels, in accordance with the internationally recognised principles on the role of lawyers.

2. Obligations of non-interference with the work of lawyers

Lawyers are impeded in fulfilling their professional roles effectively when their independence is compromised by pressure or harassment of individual lawyers, or through the dependence of the legal profession as a whole on the executive.¹⁷ International standards establish that, for lawyers to be able to fulfil their role and duties effectively and independently, the authorities, including those involved in the administration of justice, must ensure that lawyers are able to discharge their functions “without any restrictions, influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason”.¹⁸ The Inter-American Commission on Human Rights has underscored that “[w]henver criminal proceedings are used as a tool to harass defense attorneys directly, the right of the victim to his or her mental and moral integrity is compromised”.¹⁹

In this regard the UN Basic Principles provide that governments must guarantee that lawyers: “(a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”²⁰ The Basic Principles require the authorities to ensure adequate protection for lawyers threatened as a result of discharging their duties, and stipulate that lawyers shall not be identified with their clients or their clients’ interests as a result of discharging their duties.²¹

As noted in the Recommendation No. R(2000)21 of the Committee of Ministers to member states on the freedom of exercise of the profession of lawyer, States should take all necessary measures “(...) to respect, protect and promote the freedom of exercise of the profession of lawyer without discrimination and without improper interference from the authorities or the public, in particular in the light of the relevant provisions of the European Convention on Human Rights.”²²

¹⁶ Commentary on IBA International Principles on Conduct for the Legal Profession, para. 1.

¹⁷ As implied by: Singhvi Declaration, paras. 74, 75, , 85 and 90. UN Basic Principles on the Role of Lawyers, principles 14, 16 and 17; Commentary on IBA International Principles on Conduct for the Legal Profession Adopted by the International Bar Association at the Warsaw Council Meeting 28 May 2011, para. 1.2.

¹⁸ Singhvi Declaration, para. 75; see also UN Basic Principles on the Role of Lawyers, principle 16; UN Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32 (2007), para. 34.

¹⁹ Inter-American Commission on Human Rights, Second Report on the Human Rights Situation in Peru, OAS Doc. OEA/Ser.L/V/II.106, Doc. 59 rev., 2 June 2000, para. 149.

²⁰ UN Basic Principles on the Role of Lawyers, principle 16.

²¹ Ibid., principles 17 and 18.

²² Recommendation No. R(2000)21 of the Committee of Ministers to member states on the freedom of exercise of the profession of lawyer, principle I.1.

3. Respect for lawyer-client confidentiality

Confidentiality of communications between lawyers and their clients is a well-established principle of international human rights law, recognised as an element of the right to a fair trial,²³ as well as of the right to respect for private life, the home²⁴ and correspondence.²⁵ Although the Court has found that confidentiality of lawyer-client communications may, in certain circumstances, be restricted, this is permitted only in exceptional cases and on condition that adequate safeguards against abuse are in place.²⁶ It is recognised that, without confidential instructions of a lawyer to his/her client, the lawyer's "assistance would lose much of its usefulness, whereas the Convention is intended to guarantee rights that are practical and effective".²⁷ The Code of Conduct for European Lawyers elaborates on this approach, stating that: "[i]t is of the essence of a lawyer's function that the lawyer should be told by his or her client things which the client would not tell to others, and that the lawyer should be the recipient of other information on a basis of confidence."²⁸

The principle of lawyer-client confidentiality is also upheld by the UN Basic Principles on the Role of Lawyers, principle 22 of which states that "[g]overnments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential." Recommendation No. R(2000)21 of the Committee of Ministers affirms States' obligations in this regard, stressing that: "[a]ll necessary measures should be taken to ensure the respect of the confidentiality of the lawyer-client relationship. Exceptions to this principle should be allowed only if compatible with the rule of law."²⁹

Lawyer-client relationships rest on the trust that client and counsel share,³⁰ with confidentiality being essential to preserving this trust.³¹ The Code of Conduct for European Lawyers underscores this point, stating that "without the certainty of confidentiality there cannot be trust. Confidentiality is therefore a primary and fundamental right and duty of the lawyer".³²

Confidentiality between lawyers and their clients is required not only to protect the rights of the person concerned, but is also "an indispensable feature of the rule of law and another element essential to public trust and confidence in the

²³ UN Human Rights Committee, General Comment No. 32, op cit, para. 34; UN Human Rights Committee, *Gridin v. Russian Federation*, UN Doc. CCPR/69/D/770/1997, Views of 20 July 2000, para. 8.5; *S. v. Switzerland*, ECtHR, Application nos. 12629/87 and 13965/88, Judgment of 28 November 1991, para. 48.

²⁴ *Iordachi and Others v. Moldova*, ECtHR, Application no. 25198/02, Judgment of 10 February 2009, para. 34;

²⁵ *Niemietz v. Germany*, ECtHR, Application no. 13710/88, Judgment of 16 December 1992, paras. 29 to 32;

Wieser and Bicos Beteiligungen GmbH v. Austria, ECtHR, Application no. 74336/01, Judgment of 16 October 2007, paras. 43 to 45; *Campbell v. the United Kingdom*, ECtHR, Judgment of 25 March 1992, para. 46; *Sallinen and Others v. Finland*, ECtHR Application no. 50882/99, Judgment of 27 September 2005, para. 89; *Tamosius v. the United Kingdom*, ECtHR, Application no. 62002/00, decision of 19 September 2002.

²⁶ *Erdem v Germany*, ECtHR, Application no.38321/97, Judgment of 5 July 2001, paras. 65 to 69.

²⁷ *S. v. Switzerland*, ECtHR, Application nos. 12629/87 and 13965/88, Judgment of 28 November 1991, para. 48.

²⁸ The Code of Conduct for European Lawyers, para. 2.3.1.

²⁹ Recommendation No. R (2000) 21 of the Committee of Ministers to member states on the freedom of exercise of the profession of lawyer, para. 6.

³⁰ Code of Professional Conduct for counsel before the International Criminal Court, article 14; *Michaud v. France*, ECtHR, Application no. 12323/11, Judgment of 6 December 2012, para. 118.

³¹ *André and another v. France*, ECtHR, Application no. 18603/03, Judgment of 24 July 2008, para. 41

³² Code of Conduct for European Lawyers, para. 2.3.1.

administration of justice and the independence of the legal profession".³³ In *Campbell v. the United Kingdom*, the Court stated that "[i]t is clearly in the general interest that any person who wishes to consult a lawyer should be free to do so under conditions which favour full and uninhibited discussion. It is for this reason that the lawyer-client relationship is, in principle, privileged."³⁴ Without it, lawyers are not able to carry out their "fundamental role in a democratic society, that of defending litigants".³⁵

Moreover, lawyer-client confidentiality is the corollary of the right, under Article 6 ECHR, not to incriminate oneself, which presupposes "that the authorities seek to prove their case without resorting to evidence obtained through methods of coercion or oppression in defiance of the will of the 'person charged' ".³⁶ Such protection against improper compulsion by the authorities has been recognised as contributing to the avoidance of miscarriages of justice and to securing the aims of Article 6 of the Convention.³⁷

As regards the search of lawyers' premises and seizure of documents, the UN Special Rapporteur on the Independence of Judges and Lawyers has affirmed that in order to guarantee the confidential nature of the lawyer-client relationship, "Lawyers' files and documents should be protected from seizure or inspection by law and in practice".³⁸ This Court has found that "[...] searches and seizures at the premises of a lawyer undoubtedly breach professional secrecy, which is the basis of the relationship of trust existing between a lawyer and his client".³⁹ Applying Article 8 ECHR, it has been held that since "persecution and harassment of members of the legal profession strikes at the very heart of the Convention system",⁴⁰ the search of lawyers' premises should be subject to especially strict scrutiny.⁴¹ In the determination of whether such actions are necessary and proportionate to a legitimate aim, relevant issues include whether there has been judicial authorisation of the search, the scope of the search warrant, the manner in which it was executed and whether it was carried out in the presence of an independent observer to ensure that material subject to legal professional privilege was not removed. The extent of the possible repercussions on the work and reputation of those affected by the search is also taken into account.⁴²

The interveners therefore submit that the significance of lawyer-client confidentiality in any justice system for the effective protection of rights guaranteed under the Convention requires particularly close scrutiny of any interference with such confidentiality.

³³ Commentary on IBA International Principles on Conduct for the Legal Profession, para. 4.2; See also Code of Conduct for European Lawyers, para. 2.3.1.

³⁴ *Campbell v. United Kingdom*, ECtHR, Application no. 13590/88, Judgment of 25 March 1992, para. 46.

³⁵ *Michaud v. France*, ECtHR, Application no. 12323/11, Judgment of 6 December 2012, para. 118.

³⁶ *André and another v. France*, ECtHR, Application no. 18603/03, Judgment of 24 July 2008, para. 41.

³⁷ *J.B. v. Switzerland*, ECtHR, Application no. 31827/96, Judgment of 3 May 2001, para. 64.

³⁸ UN Special Rapporteur on the Independence of Judges and Lawyers, Report to the General Assembly, UN Doc.A/64/181, of 28 July 2009, para. 110(b).

³⁹ *André and another v. France*, ECtHR, Application no. 18603/03, Judgment of 24 July 2008, para. 41.

⁴⁰ *Yuditskaya and Others v. Russia*, ECtHR, Application no. 5678/06, Judgment of 12 February 2015, para. 27.

⁴¹ *Ibid.*, para. 27; *Elci and Others v. Turkey*, ECtHR, Application nos. 23145/93 and 25091/94, Judgment of 13 November 2003, para. 669; *Kolesnichenko v. Russia* ECtHR, Application no. 19856/04, Judgment of 9 April 2009, para. 31.

⁴² *Kolesnichenko v. Russia*, ECtHR, Application no. 19856/04, Judgment of 9 April 2009, para.31.

III. Application of article 34 to the hindrance of the exercise of the right of petition through interference with lawyers' activities

1. The ability to communicate freely with the Court

As this Court has emphasised, the provision concerning the right of individual application is one of the fundamental guarantees of the effectiveness of the Convention system of human rights protection. The right of individual application under Article 34 provides the primary framework within the Convention system for ensuring an effective remedy for violations of the Convention rights, in accordance with the Court's supervisory function under Article 19. It has been held that "[i]n interpreting such a key provision, the Court must have regard to the special character of the Convention as a treaty for the collective enforcement of human rights and fundamental freedoms."⁴³

In light of this, and in order to ensure effective access to the Court, Article 34 requires that States must "refrain from any act or omission that may hinder the effective exercise of the right to individual application".⁴⁴

This obligation precludes any interference with the individual's right to effectively present and pursue his or her complaint before the Court. In this context, it has been affirmed that it is "of the utmost importance for the effective operation of the system of individual application (...) that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints."⁴⁵ The importance of free communication with the Court has been acknowledged on numerous occasions, including in instances of interference with letters sent to detained applicants by the Commission or Court,⁴⁶ or interference through inquiries by public officials as to whether an applicant had lodged a complaint before the Commission.⁴⁷

2. Acts or omissions leading to a hindrance of the right of petition in the meaning of Article 34, second sentence

It is well established that, in accordance with Article 34, communication with the Court must be free from pressure from national authorities; with 'pressure' including "not only direct coercion and flagrant acts of intimidation against actual or potential applicants, members of their family or their legal representatives, but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy".⁴⁸

⁴³ *Mamatkulov and Askarov v. Turkey*, ECtHR [GC], Application nos. 46827/99 and 46951/99, Judgment of 4 February 2005, para. 100.

⁴⁴ *Khloyev v. Russia*, ECtHR, Application no. 46404/13, Judgment of 5 February 2015, para. 59.

⁴⁵ *Mamatkulov and Askarov v. Turkey*, op cit, para 102; see also *Akdivar and Others v. Turkey*, op cit, para 105.

⁴⁶ *Campbell and Others v. UK*, ECtHR, Application no. 13590/88, Judgment of 25 March 1992, paras. 55;

⁴⁷ *Akdivar and Others v. Turkey*, ECtHR, Application no. 21893/93, Judgment of 16 September 1996, para. 101, where applicants were approached in absence of their legal representatives, questioned as to the status or their filing of a complaint and made sign respective declarations.

⁴⁸ *Mamatkulov and Askarov v. Turkey*, op cit, para 102; *Kurt v. Turkey*, ECtHR, Application no. 24276/94, Judgment of 25 May 1998 paras. 159; *Akdivar and Others v. Turkey*, ECtHR, Application no. 21893/93, Judgment of 16 September 1996, para. 105.

As highlighted above, lawyers or legal representatives play a crucial role in facilitating an individual's access to an effective remedy on the national and international level. The UN Basic Principles on the Role of Lawyers reaffirm that the adequate protection of human rights "requires that all persons have effective access to legal services provided by an independent legal profession".⁴⁹ Although these principles are formulated with national legal systems principally in mind, they are also relevant to adjudication in international courts. Indeed, the Rules of Court of the European Court of Human Rights recognise the importance of legal representation in cases before it.⁵⁰

The important role of lawyers in ensuring the effective exercise of the right of petition to the Court is reflected in the Court's jurisprudence on acts directed at the lawyers or legal representatives of applicants, that were found to discourage or impair the pursuance of an individual's right of petition. Examples of actions found to breach Article 34 include the institution of criminal proceedings against a lawyer involved in the preparation of an application to the Commission⁵¹ as well as the threat of the institution of criminal proceedings against an applicant's lawyer.⁵² The same finding has been made where disciplinary proceedings were instituted against applicants' lawyers with regard to the submission of information to the Court.⁵³ The Court also found a police inquiry into disbursements made from the applicant to her representative before the Court and the translator of her correspondence with the Court, to amount to a hindrance to the exercise of the right of petition.⁵⁴ In *Khodorkovsky and Lebedev*, the Court found a violation of Article 34 as a result of several actions against the applicant's legal team, including the denial of a visa, expulsion of foreign lawyers, disbarment proceedings against Russian lawyers, as well as the search and seizure of documents of one of the applicant's lawyers.⁵⁵

This jurisprudence is re-enforced by international standards, in particular the UN Declaration on Human Rights Defenders which assigns to everyone who acts in the exercise of human rights and fundamental freedoms, including their promotion and protection, the right to "unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms."⁵⁶

3. Nature of the acts directed at the lawyer or legal representative of an applicant

The fact that an application has been successfully brought before the Court does not in itself mean that the Article 34 obligation not to hinder an application has

⁴⁹ UN Basic Principles on the Role of Lawyers, preamble and principles 1 and 2.

⁵⁰ European Court of Human Rights, Rules of Court, 1 July 2014, Rule 36.

⁵¹ *Sarli v. Turkey*, ECtHR, Application no. 24490/94, Judgment of 22 May 2001, paras. 85-86.

⁵² *Kurt v. Turkey*, op cit, paras. 158, 164 and 165.

⁵³ *McShane v. UK*, ECtHR, Application no. 43290/98, Judgment of 28 May 2002, para. 151.

⁵⁴ *Fedotova v. Russia*, ECtHR, Application no. 73225/01, Judgment of 13 April 2006, paras. 45-51.

⁵⁵ *Khodorkovsky and Lebedev v. Russia*, ECtHR, Application nos.11082/06 and 13772/05, Judgment of 25 July 2013, paras. 916-923.

⁵⁶ UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders), Doc. No. A/RES/53/144 of 8 March 1999, article 9, paras. 1 and 4.

been met. For example, the violation of Article 34 in *Khodorkovsky and Lebedev*, in which an application to the Court had been filed, was found to be rooted in two acts: first, the hindrance of the preparation of the application form and subsequent submissions through the denial of access of the lawyers to the applicant; and second the harassing of the applicant's lawyers in connection with proceedings before the Court.⁵⁷

Violations of Article 34 may arise from cases of indirect as well as direct coercion.⁵⁸ To determine whether acts that are not directly related "to [a lawyer's] role in the Strasbourg proceedings, at least not formally",⁵⁹ fall within the scope of Article 34, relevant factors include an assessment of the "real intent of the authorities in the situation complained of".⁶⁰ To determine the real intent of the authorities' acts, the Court has considered "the specific role played" by the lawyers, especially those active in the proceedings before the Court itself.⁶¹ In *Khodorkovsky and Lebedev*, it was found sufficient to establish a violation of Article 34 that the measures taken were primarily, even if not exclusively, directed at intimidating the first applicant's lawyers. This points toward the high level of scrutiny that is appropriate when examining the harassment or intimidation of lawyers.⁶²

In addition to the authorities' intent, the effects such measures have on an applicant's case before the Court have to be taken into account.⁶³ Any impact which is not "negligible" is likely to lead to interference with the right of individual petition, in violation of Article 34.⁶⁴

4. Relevance of the National Context

In assessing the impact of any acts by the authorities which may hinder the applicant's effective exercise of the right to individual application, including by restricting their access to independent and effective legal representation, account should be taken of the national context. The Court has recognised the importance of the factual situation at national level in making such assessments. In *Akdivar and Others*, it was held that, in light of the "vulnerable position of the applicant villagers and the reality that in South-East Turkey complaints against the authorities might well give rise to a legitimate fear of reprisals, the matters complained of amount to a form of illicit and unacceptable pressure".⁶⁵ The importance of the contextual situation as pointed to in *Akdivar and Others* was more recently reiterated in *Sisojeva and Others*, where the Court observed that a violation of Article 34 also depends on "the vulnerability of the complainant and his or her susceptibility to influence exerted by the authorities".⁶⁶ In *Khodorkovsky and Lebedev*, the Court referred to the wider national context,

⁵⁷ *Khodorkovsky and Lebedev v. Russia*, op cit, para. 926.

⁵⁸ *Mamatkulov and Askarov v. Turkey*, op cit, para. 102; *Kurt v. Turkey*, op cit, paras. 159f; *Akdivar and Others v. Turkey*, op cit, para. 105.

⁵⁹ *Khodorkovsky and Lebedev v. Russia*, op cit, para. 929.

⁶⁰ *Khodorkovsky and Lebedev v. Russia*, op cit, para. 929.

⁶¹ *Khodorkovsky and Lebedev v. Russia*, op cit, para. 930 to 933.

⁶² *Yuditskaya and Others v. Russia*, ECtHR, Application no. 5678/06, Judgment of 12 February 2015, para. 27.

⁶³ *Khodorkovsky and Lebedev v. Russia*, op cit, para. 933.

⁶⁴ *Khodorkovsky and Lebedev v. Russia*, op cit, para. 933.

⁶⁵ *Akdivar and Others v. Turkey*, op cit, para. 105; *Kurt v. Turkey*, op cit, para. 160.

⁶⁶ *Sisojeva and Others v. Latvia*, ECtHR [GC], Application no. 60654/00, Judgment (striking out) of 15 January 2007, para. 116.

finding a violation of Article 34 in light of the fact that the particular difficulties faced by the “applicant’s Strasbourg lawyers were to be seen in the broader context of the consistent harassment of the first applicant’s lawyers and the manifest disregard the authorities had shown for lawyer/client confidentiality.”⁶⁷ In this light, the interveners wish to draw the Court’s attention to the current situation in Azerbaijan identified by various recognised bodies and NGOs who have expressed their growing concern at the treatment of human rights defenders.⁶⁸

It has also been recognised that action by national authorities that affects individual petition, including action against the applicant’s lawyer, may also have a wider impact on access to the European Court of Human Rights by applicants in the country concerned. For example, disciplinary proceedings against an applicant’s lawyer who had disclosed information to the Court⁶⁹ were found to potentially “have a chilling effect on the exercise of the right of individual petition by applicants and their representatives.”⁷⁰ It is submitted that this chilling effect should be considered in light of the particular national context in every case.

5. Conclusion

The ICJ therefore submits that, in the light of international standards on the role of lawyers as well as of the Court’s jurisprudence and taking into account the central role of lawyers in ensuring access to justice and effective remedies for violations of the Convention rights at national and international levels, application of Article 34 should entail especially strict scrutiny of any interference with the work of an applicant’s representatives. Consideration of any interference with the work of lawyers representing applicants to the Court should be informed by the particular national context in the relevant Contracting Party in the case before the Court, as well as the chilling effect which the action may have on application to the Court in respect of the relevant Member State.

⁶⁷ *Khodorkovsky and Lebedev v. Russia*, op cit, para. 923.

⁶⁸ See for example, PACE Monitoring Committee, draft resolution ‘The functioning of democratic institutions in Azerbaijan’ to be discussed at the Assembly on 22-26 June 2015 (accessible via <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5631&lang=2&cat=3>), paras. 8 and 10, inter alia; See further concerns voiced by Council of Europe Commissioner for Human Rights, Nils Muižnieks, in his third party intervention before the Court in the case of *Aliyev v. Azerbaijan* (Application no. 68762/14), of 16 March 2015; Statement of UN Special rapporteur on the situation of human rights defenders, Michel Forst, ‘Azerbaijani activists must be freed before the Baku 2015 games’, on 2 June 2015; Joint statement of UN Special Rapporteur on the situation of human rights defenders, Michel Forst, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, and the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, ‘Persecution of rights activists must stop – UN experts call on the Government of Azerbaijan’, on 19 August 2014; Amnesty International, ‘Azerbaijan: Guilty of defending rights: Azerbaijan’s human rights defenders and activists behind bars’, report of March 2015.

⁶⁹ *McShane v. UK*, ECtHR, Application no. 43290/98, Judgment of 28 May 2002, para. 151.

⁷⁰ *McShane v. UK*, op cit, para. 151; see also *Sarli v. Turkey*, op cit, para. 85.