

**12 March 2019**

**Azerbaijan: Lawyer Sadigov should be applauded, not sanctioned, for acting professionally**

Today, the ICJ expressed concern at the disciplinary proceedings against lawyer Elchin Sadigov who was sanctioned with a reprimand on 25 February 2019 by the Presidium of the Bar Association of Azerbaijan. The ICJ called on the Bar Association to reverse this sanction and take measures to end interference with the independent exercise of the representation of victims of human rights violations.

The decision to hold the lawyer accountable for actions taken in accordance with professional ethics and responsibilities jeopardises the independence of lawyers and their capacity to protect human rights, and is likely to have a chilling effect on the independent exercise of lawyers' duties in Azerbaijan, the ICJ said.

Elchin Sadigov represented Yunis Safarov, who was charged with the murder of Elmar Valiyev, former mayor of Ganja City in Azerbaijan. According to Sadigov, he informed his client in a confidential conversation in detention, of the right to complain about torture or ill treatment. Shortly afterwards, he was told that he had violated the law by persuading his client to complain about the ill-treatment which, the Prosecutor General's Office officials "decided" in an official document, never took place.

On 5 September 2018, the Prosecutor General's Office removed Elchin Sadigov as Safarov's representative and complained to the Bar Association, seeking disciplinary action against the lawyer, among others, on the basis of "[...] creating false grounds to file a complaint to the European Court of Human Rights [...], clearly knowing that it is not true, proposed his client to complain about torture inflicted by the police and investigative authorities, despite the fact that the accused told him that he had not been tortured, Sadigov continued psychological influence on his client again – as if he had been tortured – to refuse giving testimony, to refuse services of the State appointed lawyer [...]" . The complaint referred to the confidential conversation between the lawyer and his client, which was apparently overheard and possibly recorded by law enforcement officials. It also refers to a letter which appeared during the disciplinary proceedings, in which Sadigov's client complained that his lawyer had tried to convince him to complain about use of torture in custody. According to Elchin Sadigov, however, this letter may have been signed by his former client under pressure from the detention authorities.

The ICJ recalls that according to the UN Basic Principles on the Role of Lawyers, it is indispensable that lawyers "always loyally respect the interests of their clients." The Principles specify that they assist their clients "in every appropriate way, and taking legal action to protect their interests": In the present case, as submitted by Elchin Sadigov and evident from the publicly available materials including photos and videos of Safarov with clear and multiple signs of severe beatings, the lawyer had every reason to believe that his client had been subjected to torture and ill treatment in custody. Therefore, he had not only the right, but an affirmative professional duty to advise his client to use available remedies for this violation of human rights through procedural means such as a complaint. A failure to do this would be a breach of professional ethics and duties on the part of the lawyer as a trusted representative of his client. The ICJ is concerned that in this case a lawyer was held accountable for attempting to discuss with his client, in a confidential manner, issues related to the human rights of his client.

The ICJ is furthermore concerned that the principle of lawyer-client confidentiality has been violated in this case. This principle is a fundamental component of the right to a fair trial, as protected under the International Covenant on Civil and Political Rights and the European Convention of Human Rights, to both of which Azerbaijan is a party. According to the UN Basic Principles on the role of lawyers "[a]ll arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality..." As stressed by the European Court of Human Rights:

"[o]ne key element in lawyer's effective representation of a client's interests is the principle that confidentiality of information exchanged between them must be protected. This privilege encourages open and honest communication between clients and lawyers ... confidential communication with one's lawyer is protected by the Convention as an important safeguard of one's right to defence ... Indeed, if a lawyer were unable to confer with his client and receive confidential instructions from him without surveillance, his assistance would lose much of its usefulness ..." (ECtHR, *Castravet v Moldova*, Application no. 23393/05, judgement of 13 March 2007, paras 49-50).

Indeed, while confidential communication is an element of the right of access to a lawyer, particular weight is attached to the risk of impingement on the lawyer's right to professional secrecy, "since it may have repercussions on the proper administration of justice" (ECtHR, *Wieser and Bicos Beteiligungen GmbH v Austria*, Application no. 74336/01, judgement, 16 October 2007, para. 65).

The ICJ is concerned that lawyer Sadigov's conversations may have been monitored in violation of the guarantees of professional secrecy with his client and contrary to international law and national procedure. While, as confirmed by the Draft Universal Declaration on the Independence of Justice ("Sighnvi Declaration"), it is an important function of the lawyers' association "to maintain the honour, dignity, integrity, competence, ethics, standards of conduct and discipline of the profession," it equally has the function "[t]o defend the role of lawyers in society and preserve the independence of the profession". In this way, the role of a lawyer's association is particularly important where he or she acts in the best interest of his client and in accordance with professional duty and in the interests of fair administration of justice.

The ICJ considers it essential that the Bar Association send a strong signal in support of independent lawyers by lifting the sanction against lawyer Sadigov and consider legislative and practical improvements to ensure that confidentiality of lawyers and their clients in detention is effectively guaranteed in practice.