



TOPICAL
DIALOGUES

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One topic - Four Interviews

This is a series of interviews with Armenian and Azerbaijani specialists on issues that concern every single one of us: that is, the right to defense and access to courts, the right to property, the situation in healthcare and education sectors. Every expert shares the situation in his/her country

The materials were prepared within the framework of the “Public Dialogues for Communication between Armenian and Azerbaijani Specialists” project, implemented by the “Region” Research Center.

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TOPIC - THE RIGHT TO DEFENSE IN ARMENIA AND AZERBAIJAN

Interviews with two lawyers from Armenia were held at the beginning of a scandal that arose on May 19, 2019 due to the first instance court ruling to change the preventive measure applied against the ex-president of the RA R. Kocharyan. R. Kocharyan is accused of overthrowing the constitutional system in Armenia in March 2008. The preventive measure against Kocharyan, who was arrested in July 2018, was changed for the second time. On May 20, 2019, Armenian Prime Minister N. Pashinyan made a statement on the need for radical reforms in the country's judicial system. Now there is a broad debate in the media and on other platforms about the fourth power in the country. The topic of introducing vetting is particularly discussed, and hearings on mechanisms for implementing transitional justice were simultaneously organized in the National Assembly.



NARINE RSHTUNI,
lawyer (Armenia)

The Right to Defense: Legal Services in Armenia

- According to RA legislation, how can a citizen of the Republic of Armenia defend his/her rights in court? Who defends (represents the interests) citizens under the criminal and civil codes?

As in almost all countries in the world, the Constitution of the Republic of Armenia, as well as the sixth article of the European Convention on Human Rights, guarantee the citizens' right to access to court. Any citizen of Armenia, who believes that his/her rights have been violated, can defend them in civil or criminal proceedings. Of course, there is a difference in the procedural plan. In criminal cases, defense is provided by attorneys only. In civil cases, the representative of the plaintiff or defendant may also be their close relative, and in administrative cases, these can be other persons, too, in addition to the involved advocates. In Armenia, all advocates are members of one Chamber of Advocates, which issues a license for the right to practice law. The concept of a professional lawyer-

advocate is not there among us. Either an advocate is a member of the House, or he or she is just a lawyer.

According to law, every citizen has the right to defense in criminal proceedings. And if a citizen has no financial means to hire a lawyer, the state guarantees his/her right to defense. Armenia has a Public Defenders' Office, the advocates of which provide free legal advice and protect the rights of citizens during the investigation and in court. (*Editor - All members of the public defender's office are members of the Chamber of Advocates. But in order to become a member of the Public Defender's Office, one needs to receive additional license, having taken additional qualification courses. The members of the Public Defenders' Office can enter into agreements with clients and receive fees and act as hired lawyers, if the Public Defenders' Office employs them part-time*).

Every suspect or accused, if expressing a desire to have an advocate, must be provided with a public defender, unless he/she is able to conclude an agreement with a private attorney. Citizens have the opportunity to make use of the services of Public Defenders' Office in civil cases. However, the law provides for such an opportunity for only a certain category of citizens. To enjoy this service, the citizen will need to prove against some criteria that he/she is poor.

At the same time, all the mentioned provisions on free legal assistance also apply to foreign citizens. The Minsk Convention regulates the matter for the citizens of CIS countries. And if, for example, a citizen of Azerbaijan is suddenly detained on the territory of Armenia, this person will be provided with the services of a lawyer for gratis. I think that in such cases it would rather be within the domain of the criminal code. Accordingly, the Criminal Procedure Code provides for the mandatory participation of an advocate in the process. If the accused does not speak Armenian, foreign citizens are also required to provide an interpreter who translates the entire process to them. I now have a defendant – a citizen of the Russian Federation, a Muslim Armenian, with all implications thereof, i.e. prayers at set times during the day and so on. And at the hours of prayer even the investigator does not come to him. It is ok, we have got used to it, we somehow cope with this situation.

The role of the advocate is very important in the fair trial process. The advocate must be the “shield” that protects private interest from the arbitrariness and mistakes of the justice system. To achieve the goal of implementing JUSTICE and for delivering a fair ruling, it is extremely important to have an independent judicial system that is free from corruption. Unfortunately, I cannot say that our judicial system is perfect. Armenian lawyers have long expressed their concern about the qualifications of some judges and the state of the judicial system as a whole. Back in 2013, the advocates went on a strike, protesting against the actions, or rather inaction and arbitrariness of the Court of Cassation of Armenia. In the same year, a relatively tough report was published by the Ombudsman on the state of the judicial system. So, the need for change and resuscitation of the judicial system has risen long before. And it should be noted that the judicial system should first of

all be independent, also from the executive branch, and it is not acceptable to allow for any interference in the activities of judges and their decision-making process.

Now they speak a lot about the need for the so-called “transitional justice.” First of all, we need to understand the term. In theory, “transitional justice” (transitional justice) is justice that is adjusted to a society that is in the state of transition from a time when infringements upon human rights were a systemic and permanent phenomenon by the time an independent judiciary and the rule of law are established.

International experience shows that “transitional justice” is used in those cases when the ordinary justice system is not able to fully protect all the victims.

Despite the serious problems in the judicial system, I think Armenia can find optimum methods for improving the system. In any case, it should be borne in mind that if the use of “transitional justice” is carried out by people who do not possess appropriate qualifications and necessary human qualities, the situation may lead to a new round of arbitrariness and repression.

- How large is the population of Armenia and how many current members of the Chamber of Advocates are currently there?

According to the latest data of the National Statistical Service of Armenia, as of January 1, 2019, the recorded population in the country amounts to 2.965 million people, more than a million of whom live in Yerevan. At the same time, the number of experts in Armenia is increasing from year to year. An exam to verify qualification for practicing advocacy have not been held in Armenia for years now, however, after the School of Advocates launched its operations, licensing examinations were regularly held, the situation changed (*Editor* - obtaining a license gives the right to membership to the Chamber of Advocates).

As of April 1, 2019, there are 2,017 active advocates in Armenia, that is – 2,017 people 43% of which are women.

In reality, there are even more lawyers, however, those who are not directly engaged in advocacy work have their license suspended. For example, these are our colleagues who occupy government positions. Thus, the current ratio in Armenia is 1.470 potential defendants per advocate. Some people think that we have too many lawyers, but, as you can see, this is far from being the case. Another thing is that, unfortunately, most of our citizens do not have financial capacity to pay for a lawyer’s services.

- How much do legal services cost?

Quality legal services are often quite expensive. At the same time, with 2.017 lawyers, it is impossible to guarantee the desired quality of everyone’s work, without exception, as you can understand. I am very pleased when lawyers opposing me in court demonstrate a high level of professional competence. However, unfortunately, sometimes you bump into

illiteracy. I highly appreciate the aspirations of my young colleagues for career growth. This is due to the understanding of the demand for quality and competence to be competitive in the legal community, where one has 2.016 competitors. I think of this phenomenon very positively, since competition contributes to the quality of our work and the services we provide.

At the same time, I find it difficult to answer your question about the cost of our services unequivocally. The fact is that the range of the lawyer's services cost can be quite big. Someone can write a claim for 5 thousand drams (*Editor*. - a little more than 10 US dollars), of course, with commensurate quality. Whereas someone else may charge sums for their own services, which can be considered exorbitant in Armenia. In various cases we can talk about millions of drams (*Editor*- \$ 1 - 480 drams). It all depends on the amount of work, the duration of the process, the value of suit. When you win a property worth millions of dollars in a civil case, it is clear that the sum charged for the services will be commensurate. At the same time, it should be borne in mind that all attorney expenses, ranging from office supplies to paying rent for the office, are borne by the advocates themselves. And, of course, taxes on turnover and social benefits shall be considered, too. I can also say that the misperception present in our society that lawyers do not pay taxes, does not reflect the truth, if I put it mildly.

- How does the quality work by an attorney hired by a citizen differ from the services paid by a lawyer provided by the state?

De jure, the services of an advocate hired by the citizen himself should not differ from those of an attorney provided by the state. Lawyers who have their own private practice and lawyers from the Public Defender's Office have the same rights and obligations. And I cannot say that an advocate provided by the state works worse than a hired advocate. I had to work in criminal cases with public defenders whose work I enjoyed. At the same time, I also see the workload of advocates working in the Public Defender's Office. They have an incredible number of cases which they sometimes simply physically fail to keep up with.

For example, we often hear complaints from defendants about advocates provided by the state that the latter do not come to the pre-trial detention center. At the same time, I know perfectly well that this lawyer simply does not have time for this, because they spend all of their time in court sessions. So, the point here is not in the absence of desire. Lawyers do not go to the pre-trial detention centers not because they do not want to, but because they cannot. A way to the pre-trial detention center, waiting for a meeting with a client, the meeting itself, the time spent on return will take at least 2 hours of the attorney's time. Unfortunately, this is very often an unaffordable luxury for a lawyer who does public work.

It is clear that the number of advocates working in the Public Defender's Office is rather limited. For example, in the whole Aragatsotn region there are only three advocates: two for criminal cases and one for others. There are only five state lawyers in the largest

territory with the largest population in the republic – Syunik region. In total, in nine regions of Armenia the rights of citizens are protected by 43 public defenders. Of course, the situation is different in Yerevan. 28 state lawyers work in Yerevan, of which 21 deal with criminal cases and 7 deal with civil cases.

In any case, citizens dissatisfied with the work of any lawyer have the right to complain about it. To this end, the Chamber of Advocates has an appropriate Disciplinary Commission. Any complaints by citizens against advocates are dealt with and examined by the Commission carefully enough within the framework of the law and the corresponding code of attorney ethics.

You know, it is very difficult for me to speak for everyone. I can speak for myself. Lawyers, in some sense, are in a very similar situation with doctors: you live through every case, making it part of yourself. The problem of each client becomes your own problem, and you constantly think about it. It seems to me that most of our advocates work quite well and, most importantly, they work honestly. In any case, I based my assessments on my communicating with my colleagues, whom I have to face on a daily basis. And the adequate level of such colleagues' training always makes me happy. In civil cases, this allows for settling suits in the interests of both clients. The main thing for a lawyer is to think and care about the interests of his/her client, and not just about his/her own pocket. I think everyone will be happy if this is the case.



**SAMIRA AGHAYEVA,
lawyer (Azerbaijan)**

The Right to Defense: Legal Services

- What are the ways of defending rights provided for citizens by the legislation of the Republic of Azerbaijan? Who shall defend (represents the interests of) a citizen of Azerbaijan according to the criminal and civil codes?

According to the legislation of the Republic of Azerbaijan, citizens can either defend their rights in court directly or enjoy legal support. Previously, a representative could represent citizens in civil and administrative courts. The institution of representation was provided for in civil procedure, administrative procedure and criminal procedure legislation. However, the parliament adopted amendments to the legislation that were enforced starting January 1, 2018, according to which the institution of representation in the courts was limited. Thus, now citizens' representatives in courts for civil and administrative cases can be either close relatives (spouses, parents, children, adopted children, adopting parents), or members of the Bar Association. In criminal cases, as before, only members of the Bar Association can act as defenders.

After the institution of representation was limited in the country, about 10,000 practicing lawyers became jobless. That is, the changes in the law affected not only ordinary citizens who acted as representatives in civil and administrative courts, but also the group of practicing lawyers who were not members of the Bar Association, but used to represent citizens in local and international courts for years. Thus, the state deprived 10,000 practicing lawyers of their jobs. This caused their discontent. A group of practicing lawyers strongly protested, even held a press conference to which lawyers, advocates, representatives of diplomatic missions, and the press were invited. The administration of Baku city did not authorize a rally to be held by lawyers scheduled for November 8, 2017, which was appealed first in the courts of Azerbaijan, and then a complaint was sent to the European Court of Human Rights (ECHR).

Thus, the amendments made by the Parliament to the legislation deprived citizens of professional legal protection in civil and administrative cases, as well as deprived about 10,000 practicing lawyers of their jobs.

- How large is the population of Azerbaijan and how many current members of the Bar Association are there in the country?

Currently, there are 1,503 lawyers in the Bar Association of Azerbaijan. There are 393 lawyers in the regions of Azerbaijan, of which 143 lawyers lead private practice. In the capital, the number of active lawyers is 1,110, of which 105 lawyers have private practices. There are 27 law firms in Baku, there are 15 in the regions. In 2018, 553 people were admitted to the Bar Association.

It should be noted that the population of Azerbaijan according to the latest statistical data is 10 million people. The total number of lawyers is 1503. This means that there is 1 lawyer per six and a half thousand people. Terrifying reality.

Thus, given the lawyers' excessive workload, one cannot count on the effective work of Bar Association members in the protection of citizens' rights.

- How is the admission held and who is admitted to the Bar Association?

Independent lawyers with a certain social status, who participate in international conferences, training sessions, seminars, act as experts on a number of legal issues in international structures, file complaints with the ECHR on political matters, and most importantly, have an opinion on the activities of the current Bar Association and in particular, its leader Anar Bagirov are not admitted. Among the lawyers not admitted to the College are those who are members of one or another oppositional political organization. Ever since the first day after the amendment to the legislation, I was convinced that restricting the institution of representation was a political decision. Even the speed with which the parliament adopted these changes caused doubts about the positive effect of the adopted changes.

Appealing to the European Court of Human Rights (ECHR) for many illegally convicted persons is the only chance to achieve justice. Currently, citizens themselves, their representatives, or lawyers can apply to the ECHR. However, the Chairman of the Bar Association - Anar Bagirov repeatedly spoke at international conferences about the fact that only members of the Bar should be representatives to the ECHR. This approach is supported by the government. During the period of communication on a concrete case between the ECHR and the government, the government constantly indicates that only members of the Bar Association can apply to the ECHR.

However, according to the regulations of the ECHR, it is not necessary to be a member of the Bar Association for appeal, and the ECHR considers our appeals. I regularly appeal to the ECHR, and my applications are considered.

- How much do a lawyer's services cost?

A lawyer's services are paid for in accordance with the concluded contract for the provision of legal services. This contract specifies payment for servicing case at each stage of trial (in the court of first, appeal and cassation instances), as well as during investigation. Taxes are paid in accordance with the contract for the provision of legal services. No specific amount is designated by law. Everything is determined on the basis of voluntary negotiations between the lawyer and the client. According to Article 19 (III) of the Law of the Republic of Azerbaijan on Advocates and Advocacy, law firms or lawyers leading

private practice are prohibited to limit the amount of payment for the provision of legal assistance. That is to say, as it was already mentioned above, the client and the lawyer conclude a contract whereby they determine the amount on a voluntary basis.

- What distinguishes the work of a lawyer hired by a citizen from the services of a lawyer provided by the state?

By law, the work of a lawyer hired by a citizen and the work of a lawyer provided by the state, in principle, should be no different, since, according to the law, both have the same rights and duties. They differ from each other only by the fact of appointment: one is chosen by the client (citizen), the other is appointed by the state in case the citizen does not have the financial means to involve the lawyer of their preference. Once again, I will emphasize – if a citizen has no financial means. According to the criminal procedural code, the detainee is provided with a list of lawyers from a law firm, located in the same area as the law enforcement agency that detained the citizen. This detainee himself/herself chooses a lawyer who proceeds to defend him/her at the expense of the state. Previously, payment for 1 hour of work of a state-appointed lawyer was 2 manats (about 1 euro), now this cost has increased to 6 manats (about 3 euros). In principle, the activity of both a lawyer provided by the state and hired by the citizen himself/herself must be quality and effective work.

However, the low cost of a state-appointed lawyer affects effective case management. If we look at the statistics you will see that specifically lawyers by appointment fail to take 90 percent of the decisions on the choice of preventive measures in the form of arrest to the Appeal Court. And of course, in this case we rule out all probability that illegal arrest orders will be appealed in the European Court of Human Rights.

Over many years, I have been following trials of politically motivated cases. When a member of an opposition party or a public activist, a “difficult” journalist is detained, the lawyers selected and demanded by the detainees are not allowed at the initial stage of investigation. The investigation invites an “easy” lawyer (in most cases, they are appointed in violation of the criminal procedure code), who signs under whatever he/she is said to, without paying attention to the signs of torture (political activists have repeatedly told about this during an open court session), and, of course, does not file complaints on torture and inhuman treatment. In courts, the work of state-appointed lawyers in most cases is limited to their physical presence.

Lawyers who publicize the facts of torture and inhuman treatment of their clients are excluded from the Bar Association. Among vivid examples are the expulsion of Alaif Hasanov, political prisoner Leyla Yunusova’s defender and that of Yalchin Imanov, political prisoner Abbas Huseynov’s defender.



**ARA GHAZARYAN,
lawyer (Armenia)**

A Large Part of the Society Identifies the Lawyer with the Client

- Is the right of citizens of Armenia to defense in court guaranteed? Who represents their interests under the criminal and civil law? Are legal services available to citizens, if we judge by the number of advocates and their fees?

I can say that access to court, the right to turn to court is guaranteed in Armenia. It is a different question whether a citizen will win the trial or not, and whether the conditions in which the trial takes place in are adequate or not. A citizen can go to court with a lawyer or independently. The only exception is those cases when the court finds that the interests of justice prevail over private interests and necessarily appoints a lawyer (*Editor* - In accordance with their licenses, Armenian lawyers practice both criminal and civil cases. And among public defenders, there are specialists who engage only with civil and administrative cases, and professionals who practice only in criminal cases). It goes without saying that access to court is guaranteed to foreigners in Armenia.

- How effective is the work of advocates hired by citizens and public defenders provided to clients in modern Armenia? In what proceedings (criminal, administrative) and how often do citizens succeed in court with advocates' help?

For obvious reasons one way or another, only one of the parties achieves success in civil cases, or the success rate is 50%. As for efficiency as a whole, the pool of advocates in Armenia is growing rather steadily. At the same time, I would not say that the professional qualities of our lawyers are generally at the required level. We still have a long way to go in this direction and we have a considerable amount of work to be done. Lawyers regularly participate in advanced training. However, significantly less than other professional groups, such as judges, prosecutors and investigators.

In any case, the Chamber of Advocates, the School of Advocates and the Office of the Public Defender ensure that lawyers' knowledge is updated to meet modern requirements. I cannot evaluate the effectiveness of the three institutions, mentioned above: I do not have any data on monitoring their activities. Nevertheless, my observations help me

conclude that in any case trends are developmental. The number of law school applicants is growing annually.

It is noteworthy that today successful investigators, prosecutors and even judges intend to become advocates. Thus, out of the four categories listed above, the most demanded specialization today is that of the advocate. This can be accounted for by the revival of legal services market in recent years. Today a good lawyer can earn quite a decent amount in Armenia, even by European and American standards. More and more lawyers pay taxes, which gives them additional confidence.

In their turn, citizens have begun to turn to lawyers much more often now. And if 15 years ago citizens tried to resolve conflicts through “necessary acquaintances and networks”, they prefer to act by law now. Any contract, as a rule, involves the participation and consultation of lawyers. We even had recent cases of journalists appealing against editors who violated their labor rights. Unfortunately, such actions in terms of labor relations in Armenia, in general, is not a common practice.

- What is the attitude of the society towards legal services? Are there any examples of successful lawyers in cases generating great public interest? And in general, what are the conditions they operate in when the cases are of great public interest?

Here we face quite a major problem. Unfortunately, most of the Armenian society automatically identifies the lawyer with his/her client. And if the defendant does not enjoy prestige and respect in the society and, for example, is a former politician or oligarch, the attitude to the defendant in the form of curses, swear words, various manifestations of hatred, including the most vulgar ones, e.g., spitting on a car, is inevitably projected onto a lawyer. All this hatred against advocates who work with fairly subtle and complex political affairs is massive in its scope. And it is quite natural that all such manifestations introduce certain rigidity into lawyers' actions, and this inevitably affects the overall quality of justice.

Sometimes lawyers are openly threatened. The Chamber of Advocates and the Police work well here. Thanks to the relevant agreement between them, such cases are processed very promptly. In any case, our society must understand that a lawyer cannot refuse to protect the interests of, for example, an oligarch, just as a doctor cannot refuse medical assistance even to a war criminal. There was a case when the opponents of General Manvel Grigoryan (*Editor*- former chairman of “Yerkrapah” Volunteer Union, after being deprived of parliamentary immunity in June 2018, was arrested on charges of illegal possession of weapons and misappropriation of food for the army) blocked the street and attacked his advocate who was in the car. In principle, a criminal case should have followed, at least according to Clause 1 of Article 258 of the RA Criminal Code - “hooliganism.” But there was no follow up.

The pressure, however, is not put on lawyers only. If we speak about the judges leading, for example, the case of the Sasna Tsrer group, words of hatred, insults and even curses

were voiced intensively and massively (*Editor* - In July 2016, the Sasna Tsrer group seized a regiment of the patrol police in Yerevan which they sieged for two weeks. Subsequently, the group surrendered to the authorities, voluntarily laying down their arms).

And naturally, all this also has brought some restraints to the work of judges. Judges do not live and work in a vacuum, they are part of the community, too, and they see what is happening in the street. This restraint accounts for a series of self-withdrawals by the judges in the case of ex-President Robert Kocharyan (*Editor* – Ex-President R. Kocharyan was arrested in July 2018 on charges of overthrowing the constitutional order in Armenia in March 2008. 10 casualties were caused when dispersing a protest rally with thousands of supporters for the presidential candidate Levon Ter-Petrosyan). Judges simply do not want to be pointed as persons a public stigma is put on, they do not want to hear: “Look, this is the judge who investigated Robert Kocharyan’s case.” Judges do not want to be threatened on social networks and even in the street.

Thus, here we have quite a deeply rooted problem that cannot be resolved by any law. It can be resolved only by raising the general level of education and legal awareness in Armenia. It takes time and, by the way, considerable time for people to understand that it is wrong and impossible to identify the lawyer with his/her client. As for the general attitude of the society towards lawyers, it is identical to the situation in all countries. People treat us with suspicion, toxic jokes, stories, etc. So in this sense, we are no exception.

-How often do lawyers have to apply to the European Court of Human Rights (ECHR)? What is the attitude of the authorities to the decisions of the ECHR on Armenia, is there a differentiated attitude to these decisions? And what follows if these decisions are not complied with? Are there any examples?

According to the latest statistics, Armenia and Azerbaijan have already appeared in the list of countries who turn to the ECHR most frequently. There used to be four such countries: Turkey, Romania, Italy, and Russia. Subsequently, Ukraine was added to the list. In the past two years, all three countries of the South Caucasus, namely Armenia, Azerbaijan and Georgia, have become leaders in the number of appeals to the ECHR.

This means that there are or were serious problems with justice in our countries (the past tense is due to the lengthy procedures before the ECHR decisions). For example, I am currently waiting for the decision of the ECHR on a case I filed in 2011. The growing number of appeals from Armenia to the ECHR indicates the presence of serious systemic problems with human rights in our country. At the same time, in my opinion, the number of lawsuits in the ECHR suggests that our citizens significantly overestimate the role and possibilities of this institution. As a rule, the issue of appealing to the ECHR simply is not on the agenda of a British or French lawyer. All issues are resolved in national courts.

As we see, the situation is completely different in Armenia. This indicates a high level of trust among our citizens in this institution and a lack of trust in our judicial system. At the same time, there is quite a large number of lawyers and human rights defenders in Armenia who are able to execute lawsuits very competently and at an appropriately high level to be submitted to the ECHR. And finally, the main reason for the large number of appeals to the ECHR from Armenia is the high number of human rights violations by state bodies and government institutions. At the same time, I will reiterate myself, we cannot estimate the situation with violations of citizens' rights in Armenia, since we currently receive decisions on cases filed for ECHR proceedings 7 – 8 years ago.

In its turn, the Armenian authorities take the decisions of the ECHR quite seriously. According to my information, the government of Armenia has made considerable achievements in the implementation of these decisions. As a rule, the compensations to the plaintiffs are paid on time. Though at a slow pace, practical measures are implemented to raise public awareness, and the amendments requested by the ECHR are being made to the legislation. Thus, in general, the perception of the ECHR is quite positive, both among the society and the Armenian authorities.

Certainly, there is a group of citizens in the Armenian society who believe that Armenia does not need the ECHR at all, that this institution distorts our jurisprudence and imposes values on us that are incompatible with our national mentality. However, the number of such people is extremely small. Such citizens, as a rule, look towards the North (*Editor – Russia*), forgetting that the North also works with the ECHR, while, for the last 10 years, it has been accompanying such work with threats to leave the Council of Europe. As for the non-implementation of ECHR decisions, there has been such a practice, but this happened in Azerbaijan, if I remember correctly, and it was Mammedov's case. The authorities of Azerbaijan have long been delaying the implementation of the ECHR's decision, which forced the Committee of Ministers of the Council of Europe to use the mechanism for initiating legal proceedings on behalf of ECHR against Azerbaijan for the first time. With regard to Armenia, such proceedings have not been instituted yet.



**YALCHIN IMANOV,
lawyer, former member of the
Bar Association (Azerbaijan)**

Azerbaijan takes one of the first three places by the number of annual complaints to the ECHR

- Is the right of Azerbaijani citizens to protection in court guaranteed? Who represents their interests in criminal and civil cases? Are legal services available to citizens in terms of the sufficient number of lawyers and their fees?

According to the Constitution of the Republic of Azerbaijan, the state is obliged to provide quality legal assistance to citizens. According to the legislation of the Republic of Azerbaijan, only its citizens who are members of the Bar Association can provide legal assistance. According to the amendments to the legislation, on January 1, 2018, the institute of representation was liquidated and after that only members of the Bar Association can act as defenders. According to the criminal procedural law, only advocates can be defenders in criminal proceedings. For civil cases, the citizen whose rights has been violated can defend himself/herself in the first instance and appeal courts, and only in the court of cassation (in the Supreme Court) lawyer's participation is mandatory.

After the liquidation of the institution of representation, the rates for legal service increased multiply. This led to the fact that the protection of poor citizens has been reduced to almost zero. The situation is aggravated also because there is no legislation in Azerbaijan, according to which poor citizens would receive legal assistance in matters other than criminal ones. In the media, we often see questions asked by citizens in connection with self-defense in courts. I often get information that because of high fees for lawyers, citizens cannot defend themselves in the courts even on such simple issues as family disputes.

This gives us reason to believe that the fees for legal services do not correspond to people's financial capacity.

- How effective is the work of attorneys on representation and that of lawyers hired by citizens in modern Azerbaijan? In what proceedings (criminal, administrative) and how often do citizens succeed in court with the lawyers' help?

Naturally, the work of a hired lawyer is considerably different from that of an appointed one. We can observe this difference when reading the judicial and investigation documents.

For example, if you take the administrative case of a political activist, an administrative protocol is drawn up for administrative arrests. As a rule, the participation of a hired lawyer or attorney on representation in the police is not ensured. A lawyer provided by the state is invited to the court of first instance. When reading the documents, it becomes clear that the participation of the attorney on representation is a mere formality. These advocates usually do not ask the witnesses any questions to, do not bring forth motions against ineffective investigation by investigative authorities, and do not appeal against the rulings.

The work of lawyers provided by the state is not effective. Therefore, citizens who have financial means, prefer to hire attorneys, who will fix the violations of procedural norms and can apply to higher instance courts. Thus, the defense by hired and appointed attorneys is significantly different, and the state-appointed legal assistance in Azerbaijan is a mere formality. One of the reasons is the relatively low payment for state-appointed lawyers' services. According to a Decree passed by the Cabinet of Ministers, the rate for legal assistance is 6 manats (2 euros) per hour. I consider this is a major and most decisive factor.

If we are talking specifically about criminal cases, regardless of whether this is a political matter or a non-political matter, the courts, as a rule, pass convictions based on indictments. That is why the number of acquittals in one year does not exceed 30. This is the highest figure for Azerbaijan. This means that it is very difficult to achieve justice in criminal courts, and in some cases it is merely impossible. Despite the legal equality of the parties as defense and prosecution, in reality this equality is no more than an illusion. Judges rewrite the conclusions of the investigation as verdicts and pass convictions on the basis of the conclusions of the investigation, thus considering that their work is completed.

In civil cases, success can be achieved in such cases as divorce, minor property disputes, alimony disputes, minor disputes about debts, etc. However, it makes no sense to speak about justice should one of suchlike cases contain an expression of the interests of an official or public entity. In such cases, it makes no sense to talk about the effective protection of citizens.

That is the reason why the number of appeals to the European Court of Human Rights (ECHR) is growing every year. According to the latest data I have read, Azerbaijan occupies one of the first three places in the number of complaints per year. This is due to the disagreement of citizens with decisions made by domestic courts, which once again confirms the ineffectiveness of the legal practice in the country.

- What is the attitude of the society towards legal services? Are there any examples of successful lawyers in cases generating great public interest? And in general, what are the conditions they operate in when the cases are of great public interest?

The absence of an independent judiciary and the corruption of the judiciary determine the society's attitude towards lawyers. This means that citizens turn to lawyers when it is not possible to resolve the matter in any other way.

As for cases generating great public interest, the opportunity to get a positive result in the management of such cases is practically reduced to nil. The main reason for this is the issuance of custom-made decisions by the courts. In cases of great public resonance, a lawyer is under pressure from law enforcement agencies, the Bar Association, and other bodies that have an interest in a particular case. Lawyers are constantly under pressure and persecution. All this adversely affects the effectiveness of the bar.

- How often do lawyers have to apply to the European Court of Human Rights (ECHR)? What is the attitude of the authorities to the decisions of the ECHR on Azerbaijan, is there a differentiated attitude to these decisions? And what follows if these decisions are not complied with? Are there any examples?

As far as I know, the number of lawyers who file complaints with the ECHR is insignificant - no more than 10 people. But despite this, Azerbaijan is among the leaders in terms of the number of appeals to the ECHR. This is an indication that it is almost impossible to achieve a fair court decision in the country. That is why citizens believe that the only body that can recognize a violation is the European Court.

Despite the insignificantly small number of lawyers applying to the ECHR, constant pressure is put onto them. In the absence of this pressure, Azerbaijan would not be among the leaders, but rather it would become the absolute leader by the number of appeals to the ECHR.

As for the execution of decisions made by the ECHR for Azerbaijan, in the recent years many problems have arisen in connection with the implementation of these decisions. One of the problems is the failure to pay the compensation. Compensations for decisions that were made several years ago are either not paid or are paid only partially, especially in high-profile politically motivated cases.

After the ECHR has passed a decision on a particular case, apart from the payment of the compensation, certain measures should be taken that would further eliminate the violations recorded in the ECHR decision. This is not happening at all. The implementation of the decisions of the ECHR in Azerbaijan is not satisfactory. In my opinion, the non-execution of decisions is intended to weaken the faith of citizens in the European Court of Human Rights.

The execution of ECHR decisions is monitored by the Committee of Ministers of the Council of Europe. In cases of great public resonance, the Committee of Ministers adopts resolutions. However, there is no clear mechanism of responsibility for the non-execution of decisions made by the ECHR.