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Advocates 2018

IMPROVING THE QUALITY OF LEGAL SERVICES

JUNE 15-16, 2018
ALMATY, KAZAKHSTAN

Report from the conference

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Introduction

In December 2017 the Republican Collegium of Advocates in Kazakhstan (RCAK) was seeking further development in improvement the quality of legal services in accordance with international good practices. It has been agreed that the European Association of Lawyers AEA-EAL and Bar Issues Commission of the International Bar Association (IBA – BIC) in cooperation with RCAK will organize a conference to elaborate recommendations on standards excersising the profession of lawyer set by the United Nations, Council of Europe, IBA and other professional organizations. Our goal was to promote the concept of the self-regulated profession, independence, necessity of permanent education, full respect for principles of deontology, disciplinary consequences in case of violation of professional duties as well as delivery of legal aid to those who cannot afford themselves paid legal services. In addition, we aimed to boost networking between advocates from Central Asia and Europe and to enhance mutual professional co-operation between legal practitioners from different regions and jurisdictions.

In January and February 2018 other countries of the Region expressed interest in active participation in the conference: Bar Associations from Kyrgyzstan, Tajikistan and Uzbekistan. To facilitate the participation of lawyers from these countries, we initiated talks with the Council of Europe (CoC), Organization for Security and Cooperation in Europe (OSCE) and with the International Bar Association (IBA) to secure means to finance this event for lawyers from the Region. Those talks have been successfully finalized and the conference was organized on June 15 - 16, 2018 in Almaty, Kazakhstan.

This publication includes the description of the event, full version of conference recommendations, summary of responses for questionnaire circulated among attendees as well as speakers' presentations and speeches.

Claudio Visco	**Maria Ślązak**	**Peter Köves**
Chair	President	Vice-Chair
IBA - BIC	AEA-EAL	IBA - BIC

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Conference Recommendations

Session I. Independence of advocates and bars

Moderator: Maria Ślązak

The legal basis for the below recommendations is:

1. Constitution of the Republic of Kazakhstan (further: Constitution)
2. International Covenant on Civil and Political Rights (further: ICCPR)
3. United Nations Basic Principles on the Role of Lawyers (further: UN Basic Principles)
4. International Bar Association Standards for the Independence of the Legal Profession (further: IBA Standards)
5. Recommendation R (2000)21 of the Committee of Ministers of the Council of Europe on the freedom of exercise of the profession of lawyer (further: CoC Recommendation)

With the aim to guarantee the consistence of legal framework and practice of public and professional bodies in Kazakhstan with international standards on independence of Bars and lawyers, following Recommendations has been prepared:

Freedom of lawyers and professional practice

It is recommended to secure in practice full freedom of performing lawyers' duties protected from any improper influence, according to Article 13 and 16 of the Constitution, Article 14 of the ICCPR, Principle 16 of the UN Basic Principles, Principle 1 of the CoC Recommendation, and Principle 12 of the IBA Standards, and in particular:

a. access to the profession, including the licensing process should be conducted by the Republican Collegium of Advocates of Kazakhstan (further: RCAK) or at least by an independent body separated from the executive branch and shall be subject of judicial review;
b. professional activities such as lodging an appeal, request for access to document or any other action performed according to the law and international standards must be free from any threat or any kind of sanctions, harassment or accusation initiated by the court, prosecutor or any public entity against a lawyer;
c. the equality of arms principle should be guaranteed to treat lawyers in criminal proceedings equally with prosecutors; it requires review of rules, bylaws as well as daily practice of courts and state officials, proper judicial and prosecutors' training and wide education of the public;
d. to guarantee lawyers the efficient right to full and unrestricted access to suspected and accused persons, specifically those deprived of their liberty as well as unrestricted access to documents related to those persons;
e. to prevent from the equating of lawyers with their clients, which requires both changes in the practice of administration of Justice as well as education of the public;

f. to introduce effective means of protection of lawyers from harassment and any unlawful actions against them;
g. to secure full independence of defense lawyers appointed within the framework of state legal aid system.

Independence and self-governance of the bar

It is recommended to guarantee full independence and self-regulation for the Republican Collegium of Advocates, according to the Article 5 of the Constitution, Principle 24 of the UN Basic Principles and Principle V of the CoE Recommendation, and in particular:
a. to guarantee that all governing bodies of the Republican Collegium of Advocates will be elected by lawyers or their freely elected representatives without any participation of state entities and without further obligation of confirmation of such election by any entity outside the bar, with the exception for independent judicial review;
b. to guarantee freedom of decision-making process within the bar and introduce internal acts without any improper interference from the state that could compromise the independence of the Republican Collegium of Advocates, with the exception for independence judicial review.
c. to guarantee legal, personal and organizational independence of disciplinary committees from executive branch.

Session II. Improving the qualification of advocates: continuing education
Moderator: Sergey Sizintsev

1. It is recommended to develop a system for improving the qualifications of advocates, taking into account the requirements of paragraph 9 of the Basic Rules on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime in August 1990 in Havana, according to which Governments, professional bar associations and training institutes should ensure that lawyers received appropriate education, training and knowledge as ideals and ethical duties of advocates, as well as human rights and fundamental freedoms recognized by national and international law.

2. It is recommended to develop the system of professional improving increase of the qualification of advocates considering the available historical experience, on the basis of the institution of the Bar.

3. It is recommended that Bar fully implement the performance of the duty assigned to them by law to work to improve the professional skills of advocates and implement training programs for advocates.

4. It is recommended to develop and approve clear and transparent procedures for improving increase of the qualification, including standards and procedures for improving the skills of advocates. These procedures should be the same for all advocates.

5. It is recommended to develop uniform training programs covering both the introduction to the profession and practical knowledge, including the skills of acquiring knowledge and updating their knowledge.

6. It is recommended to ensure the information of advocates about the order of passing the training and the standards of professional development, about the responsibility for failure to fulfill the obligation to upgrade the skills.
It is necessary to pay attention to the provisions of the draft law "On advocacy and legal assistance", according to which the availability of training and periodic qualification are prerequisites for admission of a advocates to legal assistance. Lack of training (refresher training) or denial of his passage are grounds for suspension of the license of an advocate. The inability of an advocate to perform his professional duties due to lack of qualification is the basis for the deprivation of an advocate's license.

7. It is recommended to create an effective system for monitoring and evaluating the quality of in-service training for advocates, based on the established minimum levels of training and the inclusion of scores.
8. It is recommended to organize a system for funding training through the membership fees of lawyers.

9. It is recommended to open Improving increase of the qualification of advocates Centers at all regional Bars and the Center for Advanced Studies under the Republican Collegium of advocates.

Session III. Rules of ethics
Moderator: Jędrzej Klatka

We recommend to Republican Collegium of Advocates to:

1. Add the following guarantees to art. 14 sec. 3 or to art. 17 sec. 1 of Act on Advocate Practice in Kazakhstan:
"Lawyers should enjoy freedom of expression.
Lawyers should not suffer or be threatened with any sanctions.
All parties /lawyers and prosecutors/ acting in the same case should be treated equally by the court."
Freedom of expression is guaranteed by principle I.3, I.4 and I.8 of Council of Europe Committee of Ministers on the Freedom of Exercise of the profession of a lawyer

2. apply to Parliament to add the following words "or in other recordable form" after the words "a written contract" in art. 5 sec. 1 of the Act on Advocate Practice in Kazakhstan, which says:
„The amount of payment for legal assistance rendered by advocates, and the reimbursement of costs linked to the defense and representation, shall be established in a written contract of the advocate with the person seeking assistance."

and also, in art. 14 sec. 2 of the Act on Advocate Practice in Kazakhstan, which says:
„ An advocate on his/her behalf shall conclude a written contract on rendering legal assistance with a person that approached him/her."
because it is not practical to demand contract in writing especially when a client is far away from advocate and they have not and will not meet in person.

3. apply to Parliament to change article 5 sec. 1 item 5 of the Act on Advocate Practice in Kazakhstan, which says now:
„Contracts that makes the amount of payment for legal assistance rendered by advocates conditional on the outcome of the case or the success of the advocate practice, or contracts for which the advocate receives a portion of the sum awarded shall not be allowed except for contracts on cases of property disputes, the parties to which are individuals, non-state legal entities carrying out an entrepreneurial activity."
in such a way, so that "no win no fee" contracts shall be allowed:
- in property disputes – always,
- in other cases – only when such "no win no fee" contract constitutes the only means to ensure the client's access to proper legal assistance.

4. apply to Parliament to delete art. 6 sec. 4 of the Act on Advocate Practice in Kazakhstan, which says:
„If it is impossible to render legal assistance in the form of legal consultation immediately after the request of the applicant, he or she must be notified of the time of appointment, which shall not exceed three working days from the date of the request."
because an advocate should be free to fix together with his/her client when they will meet. Best advocate can be so busy that can meet only after 1 week. Client who has chosen the best advocate can agree to wait longer than 3 working days.

5. apply to Parliament to change art. 15 sec. 1 item 4 of the Act on Advocate Practice in Kazakhstan, which says:
„An advocate shall be obliged:
4) to keep confidential information that became known to him in connection with the rendering of legal assistance, and not to disclose it without the consent of the person seeking assistance."
in such a way that the words "without the consent of the person seeking assistance" shall be deleted because in European Union client may not relieve an advocate from the obligation to keep professional secrets.

6. change item 5 paragraph 5 of the Code of professional ethics of advocates, which says:
"The advocate may not be relieved of the obligation to keep professional secrets by anyone other than the client"
in such a way that the words "other than the client" shall be deleted because confidentiality is both a right and a duty of an advocate, so client may not relieve an advocate from the obligation to keep professional secrets.

7. change item 14 section 2.6 of the Code of professional ethics of advocates, which says:
"The advocate may not provide legal assistance to the client and must refuse to accept an obligation to provide legal assistance or from its further execution in cases where:
6) circumstances may arise that require him to divulge secrets entrusted to him by another client, except in cases when a written consent of the client interested in preserving the secrecy is obtained."
in such a way, that the words "except in cases when a written consent of the client interested in preserving the secrecy is obtained" shall be deleted because client may not relieve an advocate from the obligation to keep professional secrets.

8. change item 5 paragraph 6.2 of the Code of professional ethics of advocates, which says:
"The professional secret applies to:
2) evidence and documents collected by counsel during the execution of the assignment"
in such a way, that information, evidence and documents collected by advocate from client are always covered by confidentiality duty: when they have been collected during the execution of the assignment or during private meeting because evidence and documents collected by advocate from client during private meeting, i. e. not during the execution of the assignment should also be covered by confidentiality duty. Client expects that what he or she tells an advocate during private meeting will also remain confidential.

9. analyze what is the difference between "self-promotion" mentioned in item 8 paragraph 1 of the Code of professional ethics of advocates, which says:
"Self-promotion of the advocate does not correspond to the ethical rules of the advocates' profession."
and information about the advocate mentioned in item 8 paragraph 2 of the Code of professional ethics of advocates, which says:
"Information about the advocate, legal advice, law office, collegium of advocates is permissible if it does not contain:
1) evaluative characteristics of the advocate;
2) comparisons with other advocates and criticism of other advocates;
3) statements, hints, ambiguities that may mislead potential client or cause them to have unreasonable hopes."
because in European Union many self-promotion activities are allowed: giving lectures, writing articles to specialist newspapers, writing books, writing blog, participation in discussion on Internet forum etc. Such activities are something more than information. Such activities are not advertisement but are self-promotion.

10. change item 13 paragraph 2 of the Code of professional ethics of advocates, which says:
"Accepting an order, the advocate must be confident in his competence in resolving issues which are related to the merits of the case. In the cases, that the advocate has reason to

believe that his competence is not sufficient to fulfill the mandate, he must refuse to accept the commission."
in such a way, that when a lawyer does not have all the legal knowledge, skills and resources necessary to carry out the instructions of his or her client, then an advocate should be allowed to seek the cooperation of another lawyer who has the knowledge, skills and resources that he or she does not have. In such situation it is enough if such advocate co--operates with another advocate who is competent.

11. define competence for example in the following provision:
"Competence requires the lawyer to have the legal knowledge, skills and resources reasonably necessary to carry out the instructions of his or her client, as they may evolve over time."

12. change item 14 paragraph 3 of the Code of professional ethics of advocates, which says:
"The date of acceptance of the instruction for conducting the case is the date of full or partial payment of the amount of payment established by the agreement on rendering legal aid to the cash desk of the collegium advocates or advocate's colleague or transfer to the bank account of the advocate.
in such a way, that an advocate is flexible and can both demand downpayment at the moment of receiving instructions or can agree for later payment after the work is done because an advocate should be flexible and free to negotiate with the client the moment of payment: downpayment at the moment of receiving instructions or later payment after the work is done.

13. begin the work on the further improvement of the norms regulating questions of professional ethics of advocates, including in public sphere, in mass-media, the Internet.

Session IV. Structure of legal aid
Moderator: Péter Köves

1. It is recommended to development of a system of state funded and state-guaranteed legal aid system taking into consideration of the "IBA Legal Aid Principles and Guidance in Civil, Administrative and Family Justice Systems" which originates from "UN General Assembly Resolution 67/187 on the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems" in all Central-Asian Countries.
2. It is recommended that following Principle 6; 13 and 22 the legal aid system should be based on the historic experiences of an advocates-based system and the development of it must be done in consultation of the professional bodies of the legal profession.

3. It is recommended that taking into consideration Principle 1 and 4 the legal aid system should cover all areas of the criminal, civil, administrative and family matters where the failure to deliver services results in high social and economic costs.

4. It is recommended that following Principle 8 and 9 the eligibility criteria to receive legal aid shall be clear and transparent and in addition to financial inability it should include all socially vulnerable and disadvantaged groups of the society.

5. It is recommended that following Principle 26 the body administering legal aid should put in place an effective system to measure the quality of work which include using IT systems in allocating the work and financial management.

6. It is recommended that following Principle 27 the advocates providing exclusively, or mainly legal aid services should be properly paid.

Session V. Disciplinary Proceedings

Moderator: Norville Connolly

Recommendations regarding the rules & procedures for lawyer discipline proceedings in Kazakhstan.

1. Generally, to ensure that the legal profession and bar associations are independent as if they aren't then it is unlikely lawyer discipline processes will be independent.
2. Before the draft Law of the Republic of Kazakhstan on the Professional Activities of Advocates & Legal Assistants is enacted ('the draft law') carry out a comprehensive consultation with all stakeholders including the public, the users & providers of legal services and bar associations. Incorporate the results of these consultations into the draft law using international best practice as the measuring standard.
3. A reasonable time after draft law is enacted, carry out an independent, in-depth and on the ground study as to how the new law is working in practice regarding the fairness & effectiveness of disciplinary proceedings against lawyers using international best practice as the measuring standard.
4. Centralize all advocate discipline cases into one disciplinary commission to which all complaints against advocates must be made. Similarly, for a separate complaints body for complaints against legal consultants.
5. To ensure the disciplinary commission operates independently and its members are appointed in an independent and transparent process.
6. Consider having sufficient independent lay (i.e. non-lawyer) representation on the disciplinary commission. Preferably have their selection made after public advertisement with a clear independent selection process in place.
7. Commissioners should serve for a reasonable but limited number of years so that experience & institutional memory is built up and used. Partial periodic rotation of members would help retain this experience & institutional memory.
8. All complaints should be based on breach(es) of a code of ethics & conduct which are to international best practice standards.
9. To expressly provide for the right to a fair hearing in disciplinary proceedings conducted with due process, including the right to be represented by a lawyer of one's choosing and to expressly require that the disciplinary proceedings prosecution process is

properly defined, and the alleged offence(s) are properly defined.

10. Ensure the disciplinary commission has public confidence and has the confidence of lawyers & bar associations and other stakeholders.

11. Provide realistic timeframes and time limits for the lodging and processing of complaints and for any appeals from commission decisions

12. Ensure a proper appeal process from all commission decisions to a court of law (which is fair and independent) or to an independent appeals body properly constituted.

13. Ensure all grounds for warnings fines suspensions, terminations /revocation of an advocate's license are clearly defined and are proportionate.

14. To have clearly defined non-discretionary rules as to when a lawyer should be referred to the relevant authority e.g. police by the commission or for suspected criminal activity.

15. To widely publicize to the public the commission's findings against advocates

16. To introduce rules to allow information on lawyer discipline findings to be shared with other regions or countries where it is known that lawyer practices.

17. Make the lawyer discipline process accessible & known to the public & user friendly

18. Make client engagement letters compulsory so that the lawyer puts into writing what he/she is agreeing to do or not to do.

19. Make lawyer 'inhouse' complaints processes compulsory to help resolve complaints at an early stage.

20. Consider the introduction of an Ombudsman/ Oversight Commissioner who would oversee the process, report defects and make recommendations to improve the process & outcomes.

21. Encourage those in charge of the Disciplinary process to learn from the outcomes so as to continuously improve the process.

22. Consider making the complaints commission structure & processes similar for both advocates and legal professionals.

23. In general terms adhere to all applicable international best practice standards & in particular the UN Basic Principles 26, 27, 28, & 29

Norville Conolly, IBA
Moderator of Disciplinary Proceedings Session

Date, place and structure

It was decided that the conference would take place on June 15 – 16, 2018 in Almaty, the biggest city of Kazakhstan and former capital of this country. In agreement with the RCAK, we organized five sessions:

- **INDEPENDENCE** of Bars and lawyers, chaired by Maria Ślązak, AEA-EAL President,
- **CONTINUING LEGAL EDUCATION** chaired by Sergey Sizintsev, Executive Director of the Republican Collegium of Advocates of Kazakhstan,
- **RULES OF PROFESSIONAL ETHICS** chaired by Jędrzej Klatka, representing the AEA-EAL, chair of the Foreign Affairs Commission of the Polish National Bar of Attorneys-at-law,
- **LEGAL AID**, chaired by Jonathan Goldsmith, former Secretary General of the CCBE, representing the IBA,
- **DISCIPLINARY PROCEEDINGS** chaired by Norville Connolly, former President of The Law Society of Northern Ireland, representing the IBA.

Each session was divided into three parts: introductory remarks of its chair, interventions of speakers from Europe, Central Asia and other jurisdictions as well as a discussion of speakers with participants.

The conference

On Thursday, June 14 the European lawyers met with the President of the Supreme Court of Republic of Kazakhstan in Astana - Mr. Asanov Zhakip Kazhmanovich. The host presented structure and works of the Supreme Court as well as underlined the commitment of the judiciary to improve the rule of law and its functioning according to international standards.

On Friday, June 15, the event started with opening remarks by Gulmira Kuanzhanova, Representative of the OSCE, Anuar Tugel, Chairman of the RCAK and Maria Ślązak, President of the AEA-EAL, which were followed by three sessions: on independence, on continuing legal education and on rules of professional ethics. Long lasting and very vivid discussions were held after each panel; the representative of the Minister of Justice, who was present during the whole event, engaged herself in a lively exchanges of views with speakers and lawyers participating at the conference. The interest of attendees was so intensive that the time of the conference was increased by 2,5 additional hours and there was still a demand to continue it; in consequence further talks were continued during the dinner. The same dynamic discussion was on the second day of the conference , June 16, when sessions on legal aid and disciplinary proceedings were performed. Again, on this day the organizers had to prolong the conference.

At the very end, recommendations prepared by moderator of each session on the basis of speakers' interventions and opinions of participants, were presented to the audience.

Numbers

To document both the success of the event but also huge effort to organize it, some numbers have to be shown:
- 120 participants from 15 countries including not only European (France, Germany, Georgia, Poland, Russia, Spain, The Netherlands, United Kingdom) and Central Asiatic jurisdictions (Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan) but also Azerbaijan, China (continent and Hong Kong) and Turkey.
- 5 moderators representing the AEA-EAL, IBA and RCAK
- 33 speakers including such prominent persons as Marie Aimee Peyron, the Dean of the Paris Bar, Wiebe de Vries, President of the AIJA, Shuhrat Sadikov, Acting Chairman of the Uzbekistan Bar Association, Alexey Sozvaryev, President of the Kaliningrad Bar Association, Christoph von Wilcken, Vice-President of the AEA-EAL, Chak Ming Chan, Vice-President of the Hong Kong Law Society, Professor Kürşat Karacabey, Vice-President of the Association of the Turkish-Speaking Bars TÜRK-AV, Saidalisho Odinayev, Vice-President of the Tajikistan Bar Association, Iain Mitchell QC, Chair of the CCBE Surveillance Working Party, Wenli Xu – partner in Grandall one of the biggest Chinese Law Firm, Zaza Khatiashvili, former President of the Georgian Bar Association, winner of the CCBE Human Rights Award in 2017 and Jonathan Goldsmith, former Secretary General of the CCBE.
- 5 organizations involved in preparation of the event: AEA-EAL, IBA Bar Issues Commission, Republican Collegium of Advocates of Kazakhstan (RCAK), Council of Europe and Organization for Security and Cooperation in Europe (OSCE).

The conference is about to begin

Discussion panel with the speakers and representative of the Minister of Justice

Summary of responses for conference questionnaire

Independence of lawyers and bars

Main Problems/Difficulties	Proposed Solutions
1. interference by state bodies and officials, licensing of advocates activity is carried out by the state, and not by a self-governing organization of advocates, thus Kazakhstan Draft law on advocates activities suppresses the independence of bars and advocates, where the Ministry of Justice controls and monitors advocates activity; 2. lack of development in a jury trial, so the bar does not have the opportunity to reveal its potential; 3. lack of economic independence of advocates, problems with financing: bars and advocates do not have enough financial resources; 4. pressure on advocates activity and independence of advocates from the prosecutor's office, courts, the Ministry of Justice; 5. taxation issues: taxation of advocate activities; 6. judicial system needs to be reformed, advocates do not have mechanisms for implementing its activities, the criminal code and the criminal procedure code need to be further developed, deficiencies in the judicial system.	1. bars should be self-regulated: transfer the licensing of advocates activity to the competence of the organization of advocates, allow bars independently of the state select and admit advocates to the bars; by statutory provision establish status of the independence of bars, not to adopt the draft law or amend by including international standards; to modify and finalize the Draft law by strengthening at the legislative level the independence of advocates and the status of advocates, provide the bars with the right to make decisions, broaden guarantees for legal practice; In general, facilitate understanding between advocates and the government, organize such conferences, in the ministry of justice, inviting judges, state officials; 2. further development of the independence of the court and the jury; 3. independence of advocates and legal profession in general can be built only on financial independence, bars must become commercial institutions, organizations and must have its own financial resources by charging fees, including initial contributions; 4. increase responsibility for obstructing advocates activities, exclusions from the bars should be made through the bars and not the Ministry of Justice; 5. amend the Tax code accordingly under a different tax scheme; 6. amend the judicial system based on the example of European judicial system: where the rule of law is the main rule, prohibit courts from making decisions

motivated by private reasons, reform of the judicial system; detention of the accused pursuant to a court decision, proving the validity of the detention, to adopt laws aimed at resolving the legality of detention that is to be issued only pursuant to the judge's warrant , to strengthen the mechanisms of responsibility of judges for unjust decisions; the government , state itself, should initiate a review of criminal cases for those sentenced to life imprisonment.

Continuing legal education

Main Problems/Difficulties	Proposed Solutions
1. lack of possibilities to finance bars, which makes it impossible to develop a continuous legal education of advocates; 2. not enough centres to upgrade the skills of advocates, lack of centres in the regions, there is no competition; 3. No monitoring and assessment of the quality of the proposed courses for continuing legal education, there is no unified system of professional development of advocates, including programs, procedures and standards. 4. qualification exam should be the result of the training of applicants; 5. insufficient time is dedicated for specialization in selected filed; 6. no programme exists for continuing legal education based on the credit system (CPD programs).	1. financing /funding of the training centre should be made by the bar itself, provision of continuing professional development, continuing legal education should be carried out within the bar, advocates associations, with the purpose of raising financing for such training and not the Ministry of Justice, the fees for the continuing legal education should be paid to the bar and not the government; 2. develop and adopt methods of continuing legal education, further training of advocates, strengthen professional skills; open centres of continuing legal education in all regions (territorial), to develop a unified methodology, distance learning - to increase accessibility for advocates various courses and trainings-online training, need for more qualified and practicing teachers, increase the number of specialized, practicing teachers; 3. increase responsibility for not continuing legal education, in addition to the training centre in the Bar, alternatively, open private training centres to promote competition and the quality of the offered programs; 4. revision of the contents of the

exam, it is necessary to emphasize professional skills;
5. training and continuing legal education should be conducted specifically by practicing teachers, accentuated on specialisations;
6. apply the principles of voluntariness and wide presentation of training opportunities for advocates, coordinate national associations of advocates in the development of CPD-Programs.

Professional ethics

Main Problems/Difficulties	Proposed Solutions
1. ineffective procedure for handling complaints, applications; 2. no standards of professional ethics of advocates; 3. lack of education or low quality in the field of professional ethics; 4. not all regional bars have ethics committees; 5. non-compliance with the professional ethics is reviewed separately from the activities of advocate; 6. different understandings between ethics of advocates and ethics of commercial lawyers, there is no concept of corporate ethics, no existing worthy comments on the rules, the code of ethics, no decent methodology on this issue, the general rules are not specific, not clear rules for advocates' behaviour, issues of professional ethics of advocates - are currently incorrectly understood by the courts, the investigating authorities - bringing advocates to account under the guise of breach of ethics.	1. build, analyse, review practice of the ethics commission, statements should be considered by the commissions at the place in associations, bars; 2. adopt a unified standard of professional ethics; 3. create ethics committees as a structural body in all associations, bars of advocates, divide the powers of the commission on training, continuing legal education and ethics commissions, financial and training , education for members of the ethics commission; to approve ethics standards, the code of ethics should be from two parts: the procedural and material part, education of the ethics code starting from the university level with the introduction of the subject „professional ethics", it is necessary to implement ethics as early as from university, law schools; 4. change the professional ethics code and conduct discussions in the regions, with the regional bars; 5. improve the existing laws and regulations that regulate the activity of the advocate in accordance with the requirements of the law on advocates for the observance of professional ethics by an advo-

cate, implement and improve clear rules for the conduct of advocates in legislative acts and the internal provisions of the bar;
6. study positive experiences of foreign countries and introduce/implement them into the legislation based on the specific country, prepare comments and model rules by experts, develop and adopt new rules of professional ethics based on today's realities, and adopt the rules of corporate ethics in the code of ethics

Structure of legal aid

Main Problems/Difficulties	Proposed Solutions
1. quality of state guaranteed legal aid, monitoring tool for the quality of the state guaranteed legal aid; 2. no precise structure of state guaranteed legal aid; 3. low level of funding, no motivation for advocates to participate in state guaranteed legal aid; 4. payment for legal aid services is calculated by the territorial divisions of justice department, without considering the actual time spent on rendering assistance, consulting, studying the case, drafting requests, petitions, etc .; 5. access of the population to state guaranteed legal aid; 6. legal assistance in court can be exercised by citizens who do not have a legal education, resulting in not qualified, not effective legal aid.	1. create and develop a monitoring system of state guaranteed legal aid in order to improve the quality of services provided, establish quality standards, establish an institution of „legal aid" that is not subject to advocates activity; 2. ensure on the legislative level competencies, powers of the state and of bars, legal assistance submitted at the expense of the state needs to be refined, amended without violating the principles of independence of advocates and bars, not to allow any state of controversy, not to allow any state's influence (its bodies or institution) in any controversial issues; to adopt the experience of European countries and change the structure of legal aid in the Central Asian countries; 3. raise fees, payment to advocates as a motivation to participate in state guaranteed legal aid, the state should adequately pay for the work of advocates; 4. adopt and implement the international experience of payment and calculating the time of providing free legal aid, the structure of payment system that considers every minute of the advocate's time; 5. expand the list of persons to whom

state qualified legal aid should be rendered;
6. ensure on the legislative level that participation in the proceedings for the protection of interests should be carried out by people with at least have a legal education.

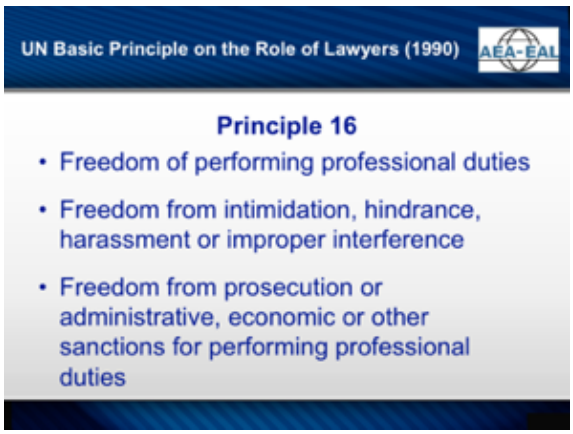
Disciplinary proceedings

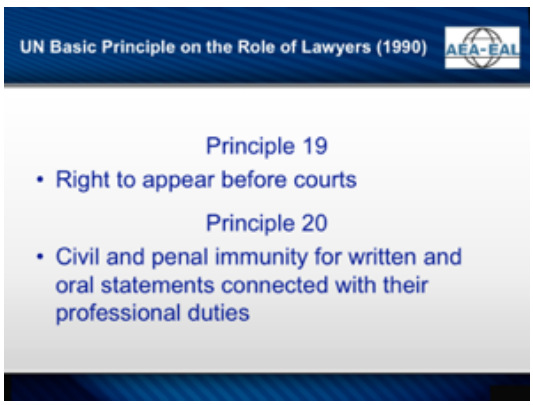
Main Problems/Difficulties	Proposed Solutions
1. types of responsibility of advocates ; 2. influence of the state, the Ministry of Justice, in disciplinary proceedings when adopting decisions, the influence of the government, courts, is not permissible; 3. disciplinary proceedings are not always considered by the presidiums of the Bar objectively, there is no accountability in the bars themselves, there is no disciplinary practice, presidiums are not exempt from subjective assessment of the advocate's actions; 4. procedure of disciplinary proceedings are underdeveloped.	1. expand the norms, the law on advocacy and advocates activities, considering the responsibility of advocates for violating the requirements and norms of laws; 2. not to allow the influence of the state on consideration of disciplinary proceedings; establish at the legislative level that the right to initiate and review disciplinary proceedings must belong to the Bar; 3. disciplinary practice should be brought to members of the Bars, bearing an educational function; 4. develop a new procedural document for the consideration of complaints, appeals; the possibility of appeal in court, in case of disagreement with the decision of disciplinary proceedings.

Maria Ślązak, AEA-EAL President
and Anuar Tugel, RCAK Chairman

Conference presentations and speeches

Independence of Advocates and Bars - Maria Ślązak
Poland





UN Basic Principle on the Role of Lawyers (1990)

Principle 23

- Freedom of expression and association

Principle 24

- Freedom of professional self-governing associations (bars)

Council of Europe
Recommendation No. R (2000) 21

Principle I

- Obligation to respect, protect and promote the freedom of exercise of the profession of lawyer
- Access to the profession controlled by an independent body
- Freedom of belief, expression, movement, association and assembly

Council of Europe
Recommendation No. R (2000) 21

- Prohibition of any sanctions or pressure for professional activity
- Lawyers should have access to their clients, including in particular to persons deprived of their liberty
- Right to appear before courts

Council of Europe
Recommendation No. R (2000) 21

Principle V

- Bar associations or other professional lawyers' associations should be selfgoverning bodies, independent of the authorities and the public.
- Freedom of local, national and international associations of lawyers

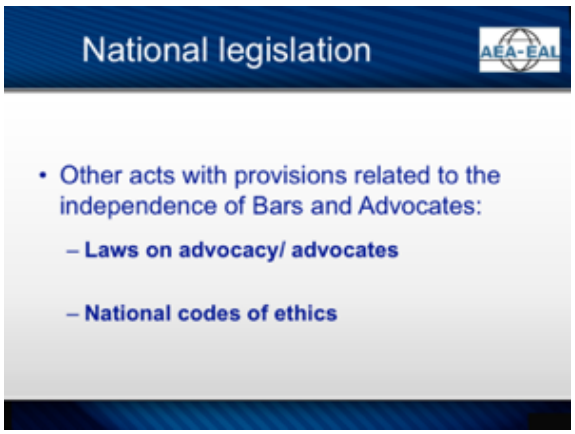
Council of Europe
Recommendation No. R (2000) 21

- **Bars are obliged to defend lawyers, in particular in case of:**
  - Arrest or detention
  - Questioning lawyer's integrity
  - Search of a lawyer or his property
  - Seizure of documents or materials
  - Press reports that require reaction

Council of Europe
Proposal of the lawyers convention

January 24, 2018 - The Parliamentary Assembly of the CoC voted for adoption of the **European Convention on the profession of lawyer**

The Parliamentary Assembly sees *a need to reinforce the legal status of Recommendation (2000)21 into a binding legal instrument with an effective control mechanism.*



Independence of Advocates and Bars - Ph.D. Elisabeth Hoffmann Belgium

Introduction

Lawyers play many vital roles in democratic systems by preserving, protecting and perpetuating the rights of citizens. In order to accomplish their mission, lawyers have essential rights but also significant duties such as.:

- independence of the public authorities
- freedom of speech
- the right not to be identified with their clients or their clients' causes ;
- the right to legal privilege (professional secrecy) and the duty to safeguard it.

A LAWYER'S INDEPENDENCE

I. The principle of independence

In an impartial and balanced judicial system, lawyers play a vital role as a genuine auxiliary of justice. Their independence defined and protected by ethical rules of the profession, is indeed in the heart of an impartial justice. In their position as auxiliary of justice, lawyers do not organically belong to the public service of justice. They need to be independent . This independence has several aspects:

a) it is an intellectual first: lawyers must remain responsible of the legal arguments and the advices they give. They also need the right to refuse cases contrary to their conscience or likely to impair their independence

b) In order to maintain their independence, they have to keep a financial distance from their clients. For this reason, contingency fees are for example prohibited in the EU and there is a ban on participation in commercial activities.

The code of Conduct of European Lawyers enacted by the European Council of Bars and Law Societies (CCBE), formerly presided by Ms. Maria Slazak, describes under article 2.1 as follows the various implications of the principle of independence :

« The many duties to which a lawyer is subject require the lawyer's absolute independence, free from all other influence, especially such as may arise from his or her personal interests or external pressure. Such independence is as necessary to trust in the process of justice as the impartiality of the judge. A lawyer must therefore avoid any impairment of his or her independence and be careful not to compromise his or her professional standards in order to please the client, the court or third parties. ».

II. Lawyer's independence in the European approach

a) Freedom of expression and its limits

There is no justice if the lawyer is not free to speak without constraint and guaranteed by a strong immunity. This freedom of expression is an essential guarantee for the defense of citizen's rights. In the case Morice v / France, the European Court of Human Rights stated that:
,Being the cornerstone of a democratic society, freedom of expression had a particular characteristic as regards lawyers, who had to be able to carry on their profession without hindrance; if the use of their speech were to be censored or restricted, the real and effective defense of the citizen would not be guaranteed [ECHR case Morice v / France, 23 April 2015, application n° 29369/10 of 7 May 2010). If necessary in a democratic society, freedom of expression of the lawyer may only be exceptionally limited, in order namely to impede the disclosure of information received in confidence (professional secrecy), to prevent the attempts to the reputation or rights of other persons or to the authority and impartiality of the judiciary.

b) Independence of the lawyer vis-a-vis his client

A reference to this kind of independence is made in the Code of Conduct for European Lawyers enacted by CCBE when it states that: ‚A lawyer must therefore avoid any impairment of his or her independence and be careful not to compromise his or her professional standards in order to please the client. (Article2.1.).

As qualified and trained professionals, lawyers will first of all advise their clients in consideration of applicable laws and become logically ‚the first judge of the case'. Furthermore, their necessary professional and intellectual independence implies that they should never be identified with their client's causes. This consideration is extremely important due to the tendency, in certain countries, especially in nondemocratic systems, to assimilate clients' causes with their lawyers in order to jeopardize lawyers' independence and freedom of speech.

c) Independence in front of the state authorities

In criminal proceedings, lawyers ensure the balance between defendants' rights and their mission of maintaining public order. They must have the means to oppose the state authorities in order to assure the defense and representation of their clients, without fear for the latter or for themselves. A lawyer should never be subordinated to a political power and may only be controlled by independent self-regulating bodies i.e. Bars and/or the Law Societies. This independence from the State increases indeed substantially the necessary confidence of the client. The client's rights are, of course, much better protected if he his is represented by a qualified professional who is not submitted to public authorities. Moreover, the respect of the ethical rules enacted by Bars and Law Societies independent from States contributes to reinforce the lawyer's relationship of trust with his client. In many Member States of the EU, the legal profession successfully defends its ethical rules by letting them recognize by the States. Indeed, self regulation (fixing freely their professional rules and ability to organize and manage the profession) has to be considered as a corollary to the core value of independence.

d) Professional secrecy, a basic element of client's trust and lawyer's independence

By combining Articles 8 (right to privacy) and 6 (right to a fair trial) of the European Convention on Human Rights, the European Court of Human Rights offers an adequate protection of the duty of confidentiality - a principle which is not defined in the texts.
In the case Michaud v / France (ECHR 6 December 2012, application n° 12323/111 of 19 January 2011) the European Court of Human Rights stated that the licit fight against money laundering may not justify the deletion of the lawyers' right to professional secrecy. It stressed that this right is essential in a democratic system and that the obligation for a lawyer to inform and cooperate with the authorities responsible for the fight against money laundering has to be executed in due consideration of the necessities of the protection of lawyers' professional secrecy. The 4th EU directive No. 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

applies this jurisprudence by providing that the delivery of the concerned information to the public authorities must be previously submitted to the approval of the competent Bar or Law Society which will decide if this disclosure could jeopardize the protection of professional secrecy.

e) The recent jurisprudence of the EHCR

In a judgment rendered on April 4, 2018 (ECHR, Correia de Matos v / Portugal, 4 April 2018, application n° 56402/12 of 4 August 2012), the European Court of Human Rights has resumed its vision of the essential role played by independent and competent lawyers in the administration of justice. „139. The Court reiterates the most important role played by lawyers in the administration of justice. It has frequently referred to the fact that the specific status of lawyers gives them a central position in the administration of justice as intermediaries between the public and the courts and has pointed to the fact that, for members of the public to have confidence in the administration of justice, they must have confidence in the ability of the legal profession to provide effective representation (. . .); 140. That special role of lawyers, as independent professionals, in the administration of justice entails a number of duties, particularly with regard to their conduct, which must be discreet, honest and dignified (. . .) 141 . In Recommendation No. R(2000)21 on the freedom of exercise of the profession of lawyer, the Committee of Ministers of the Council of Europe emphasized that the profession of an advocate must be exercised in such a way that it strengthens the rule of law. Furthermore, the principles applicable to the profession of advocate contain such values as the dignity and honour of the legal profession, the integrity and good standing of the individual advocate, respect towards professional colleagues as well as respect for the fair administration of justice;" Ill No independent lawyer without independent bar. In the context of the legal profession, in addition to „independence of lawyers", the democratic societies necessarily accept the necessity of the establishment of independent bodies self-regulating the legal profession, i.e. of the „independence of the Bar(s)".

In a recommendation to Member States, the Committee of Ministers of the Council of Europe has namely stated that:

« Bar associations or other professional lawyers' associations should be encouraged to ensure the independence of lawyers and, inter alia, to:
a. promote and uphold the cause of justice, without fear;
b. defend the role of lawyers in society and, in particular, to maintain their honour, dignity and integrity;
c. promote the participation by lawyers in schemes to ensure the access to justice of persons in an economically weak position, in particular the provision of legal aid and advice;
d. promote and support law reform and discussion on existing and proposed legislation;
e. promote the welfare of members of the profession and assist them or their families if circumstances so require;
f co-operate with lawyers of other countries in order to promote the role of lawyers, in par-

ticular by considering the work of international organizations of lawyers and international intergovernmental and non-governmental organizations;
g. promote the highest possible standards of competence of lawyers and maintain respect by lawyers for the standards of conduct and discipline. » [Recommendation R(2000)21, art.V § 4].

IV The relations between lawyers and courts

The actual vision of a valuable relationship between lawyers and courts in a democratic society is properly expressed in the Opinion no. (2013) 16 on the relations between judges and lawyers, issued by the Consultative Council of European Judges (CCJE) on 13-15 November 2013 :
7. Judges and lawyers must be independent in the exercise of their duties, and must also be, and be seen to be, independent from each other. This independence is affirmed by the statute and ethical principles adopted by each profession. The CCJE considers such independence vital for the proper functioning of justice.
21. The CCJE considers that the relations between judges and lawyers should be based on the mutual understanding of each other's role, on mutual respect and on independence vis-a-vis each other. The CCJE accordingly considers it necessary to develop dialogues and exchanges between judges and lawyers at a national and European institutional level on the issue of their mutual relations. The ethical principles of both judges and lawyers should be taken into account. In this regard, the CCJE encourages the identification of common ethical principles, such as the duty of independence, the duty to sustain the rule of law at all times, co-operation to ensure a fair and swift conduct of the proceedings and permanent professional training. Professional associations and independent governing bodies of both judges and lawyers should be responsible for this process. »

V Conclusions

Lawyers and their professional organizations have a crucial role in a democratic society founded on the respect of the Rule of the Law and the protection of human rights and fundamental freedoms. Lawyers must be able to work independently and without fear and they deserve therefore special attention by everyone interested in a fair and impartial system of justice. Furthermore, the lawyers' independence is not conceivable without the establishment of professional independent associations. In every country, lawyers should consequently be entitled to form and join self-governing bodies to represent their interests and protect their professional integrity. These bodies shall cooperate closely with governments and courts to ensure that everyone has effective and equal access to legal services. They should also guarantee that the lawyers may counsel and assist their clients in accordance with law and recognized professional standards and ethics, without improper interference of public authorities.

These core values of the profession are strongly linked and interdependent. They are the basic conditions of democratic society where citizens are entitled to confidence in their

political and judicial system in order to ensure their fundamental rights and freedoms.

Independence of Advocates and Bars - Ph.D. Danyar Kanafin
Kazakhstan

The Law of the Republic of Kazakhstan 'On Advocacy', still in force today, allows the Bar to preserve its independence to a certain extent and the lawyers to carry out their activities in a relatively acceptable environment.

Over the years, concrete expression has been given to the legal status of bar associations, powers of the legal profession itself, the procedure for acquiring and forfeiting the lawyer's status, the basis for relations with persons seeking legal aid, advocacy safeguards, and many other fundamental issues. Bar associations have been merged into a single structure authorised to represent legal profession nationwide.

Compared to the Soviet times, the defence attorney's rights in criminal proceedings have been considerably expanded and refined, including collection of evidence, earlier intervention, securing the right to witness immunity, obtaining copies of case files, appealing in court against illegal actions by criminal investigative authorities, interviewing persons allegedly possessing information related to criminal cases, initiation of expert examination, etc.

Generally speaking, the changes in this field, although lacking dynamics or consistency, may be regarded as quite positive. Since all things are known through comparison, it may be stated that the Bar in Kazakhstan has currently become more developed and successful compared to similar institutions in the countries of Central Asia. We have managed to preserve relative independence from the State and certain freedom of self-governance.

Under the law, an attorney today may actively participate in the proceedings; however, one is forced to accept the fact that, despite relatively positive trends in legislation and law enforcement practice in this field, the situation as a whole is far from being perfect.

More often than not, a lawyer remains a democratic prop in still inquisitorial criminal proceedings. Appeals from defence attorneys are often either ignored or given perfunctory responses; both the prosecutor's offices and the courts turn a blind eye to violations of the rights of the defendants and their attorneys. Attorneys themselves sometimes become subject to persecution from their procedural opponents. Safeguards of the Bar's independence are violated. The glaring facts of searches conducted in the lawyers' offices, attempts to seize documents containing information related to the client-attorney privilege are widely known. Lawyers complain of special operational search measures taken against them that violate not only the confidentiality of their work, but also the professional defence attorneys' privacy. There is no proper respect for the legal and social status of a lawyer. The vast majority of sentences handed down by the courts in Kazakhstan are accusatory. In these circumstances, the apt expression that the lawyer remains but a pitiful petitioner in the criminal process is, unfortunately, still relevant.

It is obvious in this regard that the current state of affairs is in need of improvements, while the position of lawyer in society and, accordingly, the role of defence attorney in criminal

process must be elevated to the proper height. This postulate is not merely an expression of corporate interest. In fact, the entire system of criminal proceedings must be radically rebuilt. Obviously, this restructuring must be focused on further implementation of the universally recognised international standards of fair criminal process into the law and its enforcement practice. If this approach is to be applied, it would become clear that abandoning the atavisms of the repressive criminal process, strengthening the principles of the parties' equality and adversarial nature, of objectivity and impartiality in criminal cases unambiguously imply the development of the legal status of the defence attorney as the key entity ensuring the observance of human rights in criminal proceedings.

It is obvious for an unbiased researcher that prosperity of the legal profession is impossible without establishing the true independence for the judiciary. Understandably, this issue, as regards the countries in transition, mostly concerns the political sphere, rather than the legal one. Unless society, people and the state have reached a certain level on the path to social evolution, the judiciary will never take its fitting place in the system of government. Until then, the practice of law and the existence of this professional community itself will be faced with major problems.

Nonetheless, the above-mentioned social evolution requires backing in the form of its legal support; therefore, the process of improving the legislation and developing the defence attorney's legal status must be continued. The political elite is also aware of the fact that the need for reforms has long been overdue. This is evidenced by an attempt of the Ministry of Justice to adopt a new law governing both the advocacy and the work of private legal practitioners. Other speakers at this event will comment on this draft legislation.

In our opinion, discussing the issue of developing the advocacy safeguards would be most pertinent. Article 17 of the Law of the Republic of Kazakhstan 'On Advocacy' contains quite extensive list of such safeguards, such as the prohibition on preventing the lawyers from carrying out their activities, inviolability of the lawyers' records and related materials, the prohibition on denial of visits, and many other things.

Unfortunately, as practice has demonstrated, the efficiency of these mechanisms is inadequate. Indeed, lawyers are sometimes as defenceless against arbitrariness as the persons they represent. As mentioned above, lawyers' offices may be subjected to unauthorised searches, while lawyers themselves, in violation to the statutory right to witness immunity, are sometimes summoned for questioning about the circumstances that have become known to them in connection with the provision of legal aid. Instances of persecution of lawyers for the statements they made about the legality of actions by law enforcement agencies are well known. Lawyers are still unable to enter the premises of the agencies conducting the criminal process, and are sometimes subjected to humiliating searches at their entrances in violation of the lawyers' privacy and inviolability of their documents.

In these circumstances, it is not easy for many lawyers to act as a conscientious, loyal and skilled defence attorney. Regrettably, instances of unlawful cooperation, to the detriment of the defendants' interests, between certain lawyers and criminal prosecution authorities have been identified. One is forced to accept the fact that the Bar is not free from the curse of light-fingered traitors of the profession's moral ideals.

These facts are corroborated by the testimony of the UN Special Rapporteur on torture

who 'received numerous complaints about the role lawyers play in criminal cases. Lawyers are widely perceived as corrupt, ineffective, "part of the system" and unwilling to defend their clients' rights. In particular, "State lawyers" are widely described as being present only during hearings and the trial and do not enjoy any trust. In many cases, interviewees indicated that their lawyers had simply ignored allegations of torture.'

This situation obviously requires amendments, primarily at the legislative level. Efficient mechanisms to ensure free and conscientious advocacy should be developed not only through a special law, but also in the Code of Criminal Procedure and other associated regulations. The following amendments to the legislation are suggested by way of such legal mechanisms.

Direct ban on engaging lawyers in collaboration with law enforcement authorities on a confidential basis should be introduced into the laws on advocacy and operational search activities. Not only such collaboration contravenes ethical standards of the legal profession, is immoral in its nature, but also, by creating a moral conflict, infringes on the principle of the parties' equality and adversarial nature in the criminal proceedings, thereby denying in fact any chance of confidential communication between the lawyer and the client.

Bar associations should be more principled when addressing the matter of admission of new members into the profession. Unfortunately, having free access to this professional community for all licensed individuals, without assessing their moral or business qualities, dilutes the advocacy's capacity, contributes to the formation of negative corrupt ties between certain law enforcement officers and their tainted former co-workers who have joined the lawyers' ranks. The current state of affairs has actually transformed the Bar into a career graveyard for failed prosecutors and investigators, which is not conducive to upholding the ethical standards of the profession.

In order to eliminate abuses during attorneys' intervention ordered by the authorities conducting criminal proceedings, a unified procedure should be stipulated in the laws of criminal procedure for admission to such proceedings only in accordance with a resolution adopted by the bar associations' relevant authorised bodies (praesidia or legal advice offices), thereby precluding the practice of independent intervention by attorneys at their initiative without executing a legal aid contract. Bar associations need to regulate clearly the procedure for the attorneys' intervention ordered by the authorities conducting criminal proceedings.

The bar associations themselves should demonstrate greater openness in their activities and be more proactive and principled when defending lawyers persecuted for the conscientious performance of their professional duties.

Any disciplinary proceedings against lawyers should be referred to the exclusive competence of the legal community's bodies. Regrettably, today this matter is regulated by law ambiguously, without precluding any pressure on lawyers from government authorities. This situation contradicts Clause 28 of the Fundamental Principles of the Lawyers' Role, according to which, 'disciplinary proceedings against lawyers should be vested in impartial disciplinary commissions established by the Bar itself…'

SUGGESTIONS AND RECOMMENDATIONS:

1. Strengthen and improve the safeguards of lawyers' inviolability in connection with their professional work, in particular: ban tapping and recording of lawyers' telephone conversations, ban any intrusion into lawyers' office or residential premises, including public or secret inspections, searches, seizure and other similar investigative or operational activities.
2. Prohibit by law any engagement of lawyers in collaboration with law enforcement authorities on a confidential basis.
3. Prohibit by law any criminal, civil or administrative persecution of lawyers for lawful acts committed by them in connection with the provision of legal aid, including for public statements made by the lawyers in the media or courtrooms.
4. Address the matter of unimpeded admission of lawyers to all categories of proceedings, including in the cases involving state secrets, through execution by the lawyers of non-disclosure statements in respect of these secrets.
5. Address the matter of free access for lawyers to the court and law enforcement premises without discriminatory searches or seizure of computer equipment or individual means of communication from the lawyers.
6. Enshrine in law the procedure for referring to the exclusive competence of the Bar bodies any disciplinary proceedings against lawyers, as well as the matters concerning the acquisition or forfeiture of the lawyer's status.

Independence of Advocates and Bars - Yelena Dvoretskaya
Kazakhstan

The lawyers' right to perform all of their professional functions without intimidation, hindrance, harassment or improper interference

Under Article 1.1 of the Constitution of the Republic of Kazakhstan, this country proclaims itself a democratic, secular, legal and social state whose highest values are an individual, his life, rights and freedoms. By ratifying the International Covenant on Civil and Political Rights in 2005, this country undertook to ensure that any person whose rights or freedoms as recognised in the Covenant are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity (para 2.3(a) of the ICCPR). One of the fundamental and inalienable rights enshrined in the Covenant is the right for everyone to a fair and public hearing by a competent, independent and impartial tribunal established by law (para 14). At the same time, the world community recognises that participation by a lawyer at all stages of a process is a key precondition for observing the fairness of any process, implementing the principle of equality of all before the law and the court, as well as for ensuring the adequate protection of any person accused of a crime.

Obviously, the mere attendance by a lawyer during the proceedings would be not enough. For the lawyer to remain firm, to make all the efforts as may be necessary in his opinion

to protect his client and to remain faithful to him, he must be protected himself in the first place. The defence attorney must be sure that any steps taken by him to uphold the client's rights and interests would not become the grounds for the pressure put on him and his family, that in the event of a conflict between him and law enforcement agencies, the public, the law and his professional association would be able to protect him, and that the principled position taken by him on specific cases would not become the grounds for stripping him of his status. It is precisely with this purpose that the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, Cuba, 27 August to 7 September 1990) adopted the Basic Principles on the Role of Lawyers, under which the Governments shall ensure that the lawyers:

(a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (para 16), and, where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities (para 17).

This international document is one of the key instruments in the field of protection of the lawyers' rights. However, the safeguards enshrined in the domestic laws should not be forgotten. All the existent advocacy safeguards may actually be divided into two major groups – institutional and procedural. The first group comprises such key safeguards as the independence of the legal profession, its self-governance and self-financing, as well as non-interference by the State into the affairs of the lawyers' community, including elections to the presidia and conduct of disciplinary proceedings, as reflected in the Law of the Republic of Kazakhstan 'On Advocacy' currently in force.

Equally important are the procedural guarantees enshrined in Article 17, the Law of the Republic of Kazakhstan 'On Advocacy' currently in force, as well as in the relevant articles of procedural codes. However, we are deeply convinced that the said safeguards cannot be regarded as reasonably efficient. Here is the evidence:

- in 2008, MusinSalimzhan, an Almaty City Bar Association (the 'ACBA') member involved in a high-profile case, apprehended persons spying on him and his family;
- in 2009, officials of the National Security Committee filed submissions with the Praesidia of territorial bar associations for disbarring N. Beysekeyev and D. Kanafin in connection with their public statements concerning violations of their client's rights, as well as international and domestic standards of fair justice;
- on February 24, 2012, an unauthorised search was carried out at the premises of the Legal Advice Office No. 12, Almaty City Bar Association;
- in 2016, an attempt was made to question the lawyer Ayman Umarova as a witness in the cases involving her client as a defendant and a witness in a situation where such summoning for questioning, contrary to the law and common sense, had been declared lawful by the court of first instance;
- in 2017, criminal proceedings were simultaneously initiated against three lawyers of the Astana Bar Association AselTokayeva, ErlanGazymzhanov and AmanzholMukhamedyarov for the alleged 'obstruction of justice' on their behalf;
- in 2017, a groundless attempt was made to bring I. Alimbayev, an ACBA lawyer, to administrative liability.

Besides, one should not forget that the lawyers engaged in the high-profile case of smug-

gling at the Khorgas checkpoint, as well as the attorneys of the well-known journalist Matayev, reported the instances of outdoor surveillance of them.

Would it be possible to regard the existing advocacy safeguards as efficient in these circumstances? Unfortunately, no. In the situation where statutory safeguards, including those based on mandatory prohibition, fail to work, would it be of any use to mention those instances or methods that the law has failed to stipulate?

Under Article 232.8 of the Republic of Kazakhstan's Code of Criminal Procedure, any secret investigative actions in respect of the lawyers providing their professional assistance shall be prohibited, unless there is reason to believe that they are preparing for or have committed a grave or especially grave crime.

Even if the above statutory exception is disregarded, this safeguard, in our opinion, is ephemeral and incapable of protecting adequately any active defence attorneys, since this rule does not apply to special operational search measures. These measures are an entirely separate institution, not subject to judicial review.

Under Article 12.1 of the Law of the Republic of Kazakhstan 'On Operational Search Activities' adopted on September 15, 1994, neither the citizenship, gender, nationality, place of residence, social, official or property status, nor membership in public associations, attitude towards religion, or political beliefs of the citizens may hinder any operational search activities against them within the Republic of Kazakhstan, unless otherwise stipulated by law. Such activities may only be conducted with a public prosecutor's authorisation (Article 12.4).

According to Article 11.3 of the said Law, special operational search activities include:

1) secret audio and/or video monitoring of a person or location;

2) secret monitoring, interception or retrieval of information transmitted via electric (tele) communication networks;

3) secret acquisition of information about connections between subscribers and/or subscriber devices;

4) secret retrieval of information from computers, servers or other devices intended for collection, processing, accumulation and storage of information;

5) secret monitoring of postal or other shipped items;

6) secretly entering and/or surveying a location.

Thus, any of the above six sub-paras or all of them taken together may be applied to any lawyer currently operating in the Republic of Kazakhstan. Moreover, the information collected from any special operational search activities may be used to put pressure on a lawyer defending the interests of his client or, even worse, to coerce him into collaboration with the authority conducting the criminal proceedings. This should not be possible in a democratic law-based state! Furthermore, we regard as unacceptable the entrenched practice of forcing the attorneys involved in the case to sign written undertakings that contain a liability clause for the disclosure of information constituting investigation secrets.

Restrictions of this kind imposed on defence attorneys effectively prevent them from providing adequate and skilled legal aid at the pre-trial investigation stage by depriving them of the opportunity to collect properly the evidence that would prove the innocence of their clients, for example, through requesting promptly an expert opinion on the findings delivered by other professionals/experts in the case. Besides, these undertakings put the

defence attorney in an extremely vulnerable position against the pre-trial investigation authority and the public prosecutor, which is unacceptable from the standpoint of current international standards.

In our opinion, one cannot possibly say in this regard that lawyers in Kazakhstan are adequately protected or able to discharge all their professional duties in an environment free from intimidation, hindrance, harassment or improper interference.
The only way to change the existing situation for the better is to impose a ban on any intrusion into the sphere of client-attorney privilege without any exceptions whatsoever. This ban should be enshrined not only in the Law of the Republic of Kazakhstan 'On Advocacy' (to be replaced with the Law 'On Advocacy and Legal Aid'), but in all the codes of procedure or other legislation, both current or to be adopted in the nearest future.
Furthermore, the client-attorney privilege must become absolute. In this regard, real confidentiality of telephone, electronic or other communications between attorneys and principals, clients or other lawyers should be ensured, a mandatory ban should be introduced on special operational search measures against lawyers and coercing lawyers to confidential collaboration with the agencies that carry out operational search activities; secretly entering lawyers' offices and homes, inspections, searches and seizure of their documentation, personal effects and vehicles must be prohibited. Defence attorneys must be deleted from Article 201.2 of the Code of Criminal Procedure, and statutory ban should be introduced on requesting written non-disclosure undertakings from defence attorneys in criminal proceedings. All government and non-government authorities and institutions in the Republic of Kazakhstan should be made to comply with the statutory duty not only to respond formally to lawyers' requests, but also to provide any information requested by lawyers (abandoning the unlawful practice of linking such information only to the person applying for legal aid).

Independence of Advocates and Bars - Zaza Khatiashvili Georgia

How bar associations could protect lawyers' independence

A year ago, a delegation from Kazakhstan visited Georgia to gain an idea of its ongoing reforms. Representatives of the Ministry of Justice, the judiciary, prosecutor's offices, as well as lawyers had been briefed on the Georgian reforms. The Georgian Bar Association is an independent body with the powers of autonomous decision-making on all matters. Should the Government of Kazakhstan select to be guided by the Law of Georgia 'On Advocacy', Kazakhstan's lawyers will be independent and will conduct their legal practice without any risks. Kazakhstan is a former Soviet republic; therefore, it will take years to form a fair judicial system. With this in mind, the main function of the Republican Bar Association of Kazakhstan should be the protection of lawyers' rights.
A commission to protect lawyers' rights operates in Kazakhstan. This is very good; howe-

ver, the commission for protection of lawyers' rights will not be able to do anything if the Bar Association of Kazakhstan becomes dependent on the Ministry of Justice.

Independence of the lawyer is a serious problem facing the Republican Bar Association of Kazakhstan. If independent lawyers are non-existent, if attorneys are intimidated by the Ministry of Justice, the judiciary or another law enforcement agency, lawyers would not be able to function independently for fear of possible pressure. Lawyers should be protected by the law that would ensure their independence.

Current laws impose certain restrictions on the lawyers' independence, but the new draft Law 'On Advocacy and Legal Aid' would completely deprive the lawyers of their independence.

The Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders stipulate in its Paragraph 16 that Governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.

The new draft Law is completely contrary to the Basic Principles on the Role of Lawyers.

The need to seek approval for the Bar's regulations from the Ministry of Justice (under the new draft Law 'On Advocacy and Legal Aid') will completely destroy the independence of the lawyer.

If the Republican Bar Association of Kazakhstan does not fight, and the draft Law's provisions to restrict the independence of lawyers are adopted, the Republican Bar Association will become unable to protect its members. I think that the commission for protection of lawyers' rights will be helpless, unless the laws are changed and the lawyers become independent.

I think that the new draft Law 'On Advocacy and Legal Aid' contains provisions that threaten the institution of lawyers.

Under Article 20, legal assistance shall be delivered by state agencies within the scope of their competence and by legal assistance providers (attorneys, notaries, private court bailiffs, legal advisers).

I cannot understand how precisely the State is going to provide legal services within its competence.

In my opinion, the Ministry of Justice aligns the status of a lawyer with that of a legal adviser. This would bring about the emergence of a 'parallel Bar', minimising the role of the lawyer in Kazakhstan.

In Kazakhstan, any person with a degree in law may practice law. They are not bound by the obligation to comply with the Code of Ethics, while lawyers are required to follow it. They have no duty to keep information secret, thus, they may be questioned as witnesses by law enforcement. In my opinion, following the adoption of the draft Law, the quality of legal assistance will drop significantly. Residents of Kazakhstan would be deprived of quality legal services. In my opinion, a lawyer and a legal adviser may not be governed by the same law.

Under Article 22, the Government of the Republic of Kazakhstan shall develop the state policy guidelines in the field of legal assistance provision and determine the amount of remuneration for the legal assistance rendered by an attorney.

Article 21 provides explanation as to why the Law is titled 'On Advocacy and Legal Aid'.

In Kazakhstan, the Law 'On Advocacy' is currently in force. The new draft Law is titled 'On Advocacy and Legal Aid'. Apart from aligning the status of a lawyer with that of a legal adviser, the draftsmen have also failed to delineate the role of the State in the field of legal assistance.

The State may not charge for legal services. The State may only establish fees for the legal services financed by the State.

According to Article 22, a new authorised body in the sphere of legal assistance is to be set up. Establishment of an authorised body intended to control the Bar is an attempt to intimidate lawyers. This interference is associated with the desire on behalf of the Ministry of Justice to monitor the Bar, making it dependent on the authorised body's decisions.

Under Article 22, the Authorised Body shall develop and approve the auditing procedure for Chambers of Legal Advisers and the Republican Bar Association, approve the rules of remuneration for legal assistance provided by attorneys, control and supervise quality of the delivered State-guaranteed legal assistance. This constitutes unjustified interference in the legal profession. The Republican Bar Association would have to seek approval from the authorised body on basic matters, including the form and description of lawyers' robes or a unified legal information system.

Under Article 34, no government agency or official may deny an attorney the right to represent interests of a person seeking legal assistance, except as otherwise prescribed by legislation of the Republic of Kazakhstan.

Under Article 36.3, it shall be prohibited to question, claim or demand from an attorney, his/her assistant, his/her intern, a person being in labour relationship with the attorney, a legal advice office, a law firm, heads or employees of the council of a bar association, as well as from a person, whose licence to practice law has been revoked or suspended, or to try to obtain by any other way information, materials related to legal assistance provision without the consent of the attorney or his/her client (proxy giver), except as otherwise provided by legislative acts of the Republic of Kazakhstan.

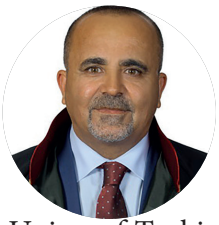
Under international rules, a lawyer may not be questioned because of the information that became known to him in the course of his legal practice. This principle operates in accordance with applicable laws. Under the draft Law, the rights of a lawyer would deteriorate significantly, and the prosecutor's office will be able to interrogate lawyers at its discretion. This paragraph is a kind of platform that would entail changes in other laws. The prosecutor's office will have the right to make a lawyer a witness for the prosecution. This change is contrary to the Code of Ethics that mandates the lawyer not to testify about the circumstances that became known to him in connection with the discharge of his professional duties. This change would destroy the institution of advocacy safeguards.

Under Article 6, the State may not interfere in the lawyer's legal practice. According to the Law 'On Advocacy', any interference in the lawyer's activities is prohibited.

According to Article 40, the commission for certification of applicants for attorney's position (the 'Applicant Certification Commission') shall consist of seven members, including three attorneys. The composition of and regulations on the Applicant Certification Commission is to be approved by orders of the Minister of Justice of the Republic of Kazakhstan.

Under Article 45, a licence to practice law may be terminated through legal action brought

by the licensing authority.
Under Article 74, the Disciplinary Board of Attorneys shall be comprised of 6 attorneys with minimum five-year experience of legal practice, 3 representatives of the authorised body and 2 retired judges.
Any interference in disciplinary procedures by the State constitutes pressure on lawyers, which is unacceptable for the State. According to the Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana in August 1990, disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.
A general review of the new provisions leads me to the conclusion that Kazakhstan's lawyers have no independence. They are under the control of the Ministry of Justice, despite the fact that the lawyers who feel threat from the Ministry of Justice would not be able to protect the interests of their clients.
It is the responsibility of international organisations to assist Kazakhstan in the development of such legislation that would allow lawyers to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.



Independence of Advocates and Bars - Ph. D. Kürşat Karacabey Turkey

Dear participants, I respectfully extend to all of you greetings from the Union of Turkish Bar Associations, which I represent. I would also like to convey to you greetings and wishes for success from Professor Doctor MetinFeyzioğlu, President of the Union of Turkish Bar Associations.

There is a saying: 'Nature abhors a vacuum.' The same applies to those authorities who shape and guide the public life. Societies are necessarily governed by some authority. This is either the authority of law or the law of authority. Where the law has failed to establish its authority, certain non-legal forces would start to act and establish their law of authority. Perhaps, one of the most fundamental problems faced by mankind is the current expanded implementation of this undesirable result.

It is precisely this problem that lies at the core of environmental disasters, especially global warming; this problem also underlies terrorism that threatens social and global peace; likewise, this reality is reflected in the injustice that grows with every passing day and in the imbalance in the distribution of wealth not in favour of the poor.

The way to avoid these negative developments, so that people could feel free and secure, lies in the democratic structure of the State, based on the rule of law and sovereignty.

For a form of government to be called 'democracy', it must be based on the separation of powers; at the very least, 'independence of the judiciary' must be absolutely ensured.

The reason for this is that the courts represent the most important and efficient obstacle against unjustified and arbitrary actions by those who have taken positions to run the country, those who have gained power and authority. Furthermore, the judicial system is the only pillar and refuge for individuals (or the nation in general) who have found themselves in a difficult situation because of the pressure and the standpoint imposed by other forces.

In this regard, the judicial branch is the most important safeguard and support for the law-based State, human safety and welfare.

The judicial branch comprises three basic elements: prosecution, defence, and decision--making authority. In Turkey, prosecution is represented by public prosecutors, decision--making authority — by judges, and defence — by lawyers. Should one of these elements lose its independence and be reduced to the level of government officials, it would be self-deceptive then to regard this form of government as democracy. Over time, transformation of this structure into a despotic or, even worse, into a dictatorial structure, will become inevitable.
For the rule of law and awareness of the law-based state to be efficient, sovereign and functional, certain institutions and rules are required.

One of them is the availability of constitutional and legislative provisions guaranteeing the citizens' rights to justice and fair trial.

However, in the absence of independent and impartial courts, these rights and guarantees will remain on paper and never be implemented.

Similarly, in the absence of an institutional structure engaged in the efficient and duly authorised defence of the people's rights to access to justice and fair trial, providing sufficient guarantees for independent judiciary would become impossible.

It is for these reasons that, since the earliest times, the right to defence has thus been understood and defined as a 'sacred right'.

And it is for the lawyers to represent this sacred right to defence. Where the lawyers are not independent, where they are influenced and guided by the executive, judicial authorities or other powers, there can be no talk of the sufficient exercise of this right.

And for the lawyers to be independent, strong and efficient professional associations are needed, whose independence is ensured by constitutional and legislative provisions and who are vested with public functions. In the absence of such organisations, individual independence of lawyers cannot be sufficiently secured.

If Turkey were taken as an example of recent developments, the following could be said:

The first sentence of Article 1 of the current Law 'On Advocacy' reads as follows: 'Advocacy is a public service and an independent profession.' It is thus emphasised that the profession of a lawyer is of a public nature.

In each province, where the number of lawyers is 30 or more, a province bar association may be established. To practice law, one must become a member of and be registered with a province bar association. Internships and disciplinary proceedings are arranged by the bar association bodies. The bodies of the bar associations and the delegates who will represent the bar association before the Union of Turkish Bar Associations are determined in the process of democratic elections held at the bar associations. The Union of Turkish Bar Associations is a professional organisation comprising bar associations of the country's provinces and ensuring their unity. All this is an indication of a progressive and modern state of the legal profession in Turkey.

At present, about 108,000 lawyers have been registered in all bar associations nationwide and with the Union of Turkish Bar Associations, respectively. Thanks to the professional association model, these lawyers, together with their public obligations, represent a very efficient force of civil society.

The Law 'On Advocacy', apart from professional duties, vested Turkey's bar associations and their Union with an obligation to 'protect and develop the rule of law and human rights'. As a result, bar associations and the Union of Turkish Bar Associations are able to file lawsuits against numerous administrative actions and procedures that may affect the future of the entire nation and/or contradict the understanding of the rule of law, and are entitled to intervene in the ongoing court proceedings.

These strong structure and efficient operation naturally annoy certain influential persons. The existing democratic model of the lawyers' self-organisation has thus recently faced the threat of potential amendments through the use of law-making powers.

Naturally, the lawyers, whose duties include the 'protection of rights', would thoroughly defend their rights in the legal environment. If only they were united, if only they were one… Association and cooperation at the international level, implemented by professional organisations, would further increase and strengthen the contribution by lawyers to the rule of law, justice and democracy.

I regard this event as a step in this direction and wish you successful results. I thank all people and organisations that contributed to the event.

Independence of Advocates and Bars - Saidalishox Odinayev Tajikistan

When it comes to the independence of lawyers and bar associations, the international standards for the independence of lawyers and the legal profession represent the key tool in their assessment. The international standards for the independence of lawyers and the Bar contain references to the basic principles that must be strictly observed to ensure independence and high moral character. The independence of the legal profession is a fundamental principle guaranteeing that the lawyers enjoy all the rights along with other citizens of our States, including the right to education and the support for functioning of independent, self-governed lawyers' organisations. In the opinion of numerous legal scholars, an important element of independence is ensuring that access to the profession is granted solely under such criteria as knowledge, training, and technical skills.

Many believe that more than two decades of the CIS countries' independence have failed to bring about the required changes to their laws or law enforcement practices, which could ensure sufficient independence and strength of the legal profession, while lawyer's associations are still often incapable of efficiently discharging their duty to maintain high moral principles and professionalism of its members. Currently, all countries in the region are in need of reforms, even if some of them are only intended to strengthen the independence of the Bar, since lawyers are still subject to regular persecution, either under formal procedures or in some other form. As you know, despite recent introduction of certain reforms, they were and still are of a regressive nature in some countries, including the Republic of Tajikistan. On March 18, 2015, a new Law of the Republic of Tajikistan 'On Advocacy and the Bar' was adopted in the Republic of Tajikistan, which will be discussed later.

It is well known that human rights are universal, indivisible, interrelated and interdependent; there is no established international organisation to deal exclusively with the protection of lawyers' rights. However, among numerous organisations, certain universally recognised international organisations may be singled out, whose decisions or recommendations are morally and politically significant in the matters of lawyers' role, importance, rights, duties, and protection.

As you know, the International Commission of Jurists, composed of 60 eminent judges and lawyers from all regions of the world, promotes and protects human rights through the rule of law by using its unique legal expertise to develop and strengthen national and international justice systems. The ICJ was established in 1952 and is active on the five continents. The ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realisation of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

In the opinion of the ICJ lawyers, independent and strong associations of lawyers are an indispensable attribute of those societies where the principle of the rule of law is upheld and the judiciary is independent. Along with judges and prosecutors, lawyers constitute the foundation on which the principle of the rule of law and the protection of human

rights is based. These objectives may only be attained if the lawyers are empowered to perform the relevant functions as part of their independent activities, protected by all the guarantees provided for by international instruments. At the same time, lawyers themselves must work independently and diligently to protect the interests of their clients, human rights, and to uphold the principle of the rule of law. According to international standards, duties of the lawyers include 'assisting clients in every appropriate way, and taking legal action to protect their interests,' and each lawyer shall 'always loyally respect the interests of his clients.' Furthermore, the lawyer in discharging his duties shall 'at all times act freely, diligently and fearlessly in accordance with the wishes of his client and subject to the established rules, standards and ethics of his profession without any inhibition or pressure from the authorities or the public.'

As we noted above, the independence of the legal profession is a fundamental principle guaranteeing that the lawyers enjoy all the rights along with other citizens of our States, including the right to education and the support for functioning of independent, self-governed lawyers' organisations. This right must be guaranteed both in law and in practice. Professional associations of lawyers 'have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements.' The ICJ lawyers believe that this is especially true of the States that lack a strong tradition of independent lawyers' associations. According to the international standards, there may be established in each jurisdiction 'one or more independent and self- governing associations of lawyers recognized in law, whose council or other executive body shall be freely elected by all the members without interference of any kind by any other body or person.' Furthermore, the independence of bar associations suggests their powers of decision-making in the matters related to the provision of access to the profession and certification of lawyers, as well as the powers associated with disciplining of lawyers.

Today it has become quite obvious that lawyers require effective help against arbitrariness and abuse, as well as stronger guarantees and independence of their work. Higher prestige and efficiency of advocacy directly depend on a solution to these problems.

However, the current state of legal restrictions, practical implementation of the protection of lawyers' professional rights remain a matter of concern. This is primarily due to the fact that the existing legal immunity does not protect lawyers against arbitrariness and abuse by law enforcement agencies. The interference by law enforcement in advocacy continues. Restrictions on the lawyers' independence greatly reduce the potential for the exercise of the constitutional right to defence and provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Dear colleagues, ladies and gentlemen,

Late in December 2011, a Task Group to develop a draft law on advocacy of the Republic of Tajikistan was set up. In May 2012, the Concept of the Bar Reform in the Republic of Tajikistan was presented by the Task Group in Dushanbe, as well as in the Sughd and Khatlon Regions.

The Concept provided for the following:

- the key goal of the Bar reform in the Republic of Tajikistan is to facilitate the development of the Bar institution in the Republic of Tajikistan in accordance with international stan-

dards and to enhance the role of the Bar in the society;
- establishment of the Bar and its structures in strict compliance with applicable international standards;
- creation of a single independent professional association of lawyers;
- ensuring professional freedoms and advocacy safeguards;
- development of uniform qualification requirements, grounds for acquisition and deprivation of the lawyer's status, procedures for operation of qualification and disciplinary commissions, governed by the lawyer community itself;
- establishment of independent lawyers' self-governance bodies comprising regional organisations and the central republican body (the Union of Lawyers of the Republic of Tajikistan; Regional Offices of the Union of Lawyers in the regions and in Dushanbe).
- setting up the following bodies under the Union of Lawyers' Regional Offices:
1) Qualification Commission (conduct of qualification examinations);
2) Audit Commission (monitoring of financial and economic activities);
3) Disciplinary Commission (consideration of complaints and appeals filed against regional lawyers).
- adoption by the Board of the Union of Lawyers' Regional Office of a decision to confer or terminate the lawyer's status.
- representation by the Union of Lawyers and protection of lawyers' interests before government and local self-government authorities, public associations and other organisations.
Furthermore, the Concept stipulated that the Qualification Commission should be headed by a representative of the Bar and be comprised of seven persons: four lawyers, one representative of the judiciary, one representative of a justice agency, and one academic holding a degree in law.
The Task Group developed the draft Law 'On Advocacy and the Bar', forwarded in March 2013 to the ministries and other agencies to support the approval procedure.
This draft Law had nothing in common with the presented Concept of the Bar Reform in the Republic of Tajikistan, contradicted international standards and deprived Tajikistan's Bar of its institutional independence (independence of lawyers from all non-lawyer organisations and institutions).

According to the draft Law, the Qualification Commission, established under the Ministry of Justice of the Republic of Tajikistan and chaired ex officio by one of the Deputy Ministers of Justice (Article 13), adopts decisions to confer or terminate the lawyer's status.
In this manner, the Bar would become integrated into the executive structure and actually turn into the Ministry of the Bar. This is inconsistent with the international legal standards on the independence of the legal profession and the following principles enshrined in the Law itself:
- the Bar as an independent professional organisation of lawyers (Article 1);
- freedom and independence of advocacy (Article 5);
- the Bar as an institution of civil society, existing beyond the system of government authorities (Article 6).
The decision regarding conferral or termination of the lawyer's status shall be made by the body of the lawyers' self-governance without any interference from the executive au-

thority. The Qualification Commission must function under the Bar and be chaired by a representative of the Bar. The lawyer community itself, upon enactment of the Law, may certificate lawyers to determine their knowledge and professional skills, without any interference by government authorities. Nevertheless, the Law of the Republic of Tajikistan 'On Advocacy and the Bar' was adopted with the above-mentioned innovations that are inconsistent with the international standards of the Bar independence.

Mr Leandro Despouy, the UN Special Rapporteur on the independence of judges and lawyers, following his visit, upon official invitation, to the Republic of Tajikistan in 2005, issued the following recommendations for Tajikistan:

- the establishment of a single, self-governed body with compulsory membership, which would administer issues related to the Bar such as access to the profession, removal from the profession, disciplinary measures, respect for ethical rules and continuing legal education. This body should be independent from the executive branch.

The Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, adopted on June 29, 1990, includes the independence of legal practitioners, in particular as regards conditions for recruitment and practice, into those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings.

The review of the draft Law of the Republic of Tajikistan 'On Advocacy and the Bar' conducted by Daniyar Kanafin, an independent expert from Kazakhstan, with the support from the OSCE Office in Tajikistan, concluded that functioning of the Qualification Commission under the Ministry of Justice and, even worse, under the guidance of a deputy minister, evidenced restrictions on the Bar's independence and the signs of undue interference by the State in its activities.

The UN Committee on Human Rights, in paragraph 18 of its Concluding Observations made at the 108th session held in Geneva in July 2013, upon consideration of reports submitted by States parties to the International Covenant on Civil and Political Rights, stressed that the Committee 'is concerned that lawyers are harassed for carrying out their professional duties and are subject to external interference, particularly from the Ministry of Justice.

The State party should ensure that the procedures and criteria for access to and conditions of membership of the Bar do not compromise the independence of lawyers.'

In its Expert Opinion Regarding the Draft Law of the Republic of Tajikistan on Advocacy and the Bar, the International Bar Association's Human Rights Institute (IBAHRI, London, UK) strongly recommends that the role of the Qualification Commission under the Draft Law be moved away from the auspices of the Ministry of Justice and vested in the new Union of Lawyers.

The IBAHRI recommends that the Draft Law be amended in order to ensure that the new qualification exam is not retrospective, forcing all current and practising lawyers to re-qualify.

Under Paragraph 24 of the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in August 1990 in New York City, 'Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education

and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.'

The independent management by lawyers of their profession would allow for the level of defence of the detainee, suspect or accused to be raised due to the impossibility for the investigating authorities to remove any particular defence attorney at any stage of the proceedings through the use of administrative procedures applied by executive authorities. This enhances the potential for the exercise of the human right to skilled legal assistance.

The Qualification Commission should not function under the Ministry of Justice or chaired by a representative of the government authority either temporarily, transitionally or, even more so, permanently. International legal instruments and laws may not be violated temporarily under any circumstances.

Even the Soviet government had refrained from such an experiment in the past. Even when the Bar of Tajikistan was part of the Ministry of Justice, bar associations addressed the matters of lawyers' admission and dismissal independently, without intrusion by representatives of judicial authorities.

It is the law, and not the Ministry of Justice, that governs legal practice. By itself, independence would not solve the problems faced by the legal profession. The task of ensuring the independence of the legal profession should be vested precisely in the State, if it is interested in skilled legal assistance and a strong Bar.

Dear colleagues, as you know, advocacy safeguards constitute a system of legal rules intended to protect professional and social powers of the legal community and lawyers and to ensure their independence both from the government authorities and from any other local self-government authorities. Guarantees of the lawyer's independence are understood to be a component of the lawyer's legal status and are included into the universally recognised advocacy safeguards.

Guarantees of the Bar's independence are based on the immunities and privileges that apply to lawyers and are included in the provisions of international and domestic laws.

In international law, these guarantees are stipulated in the Basic Principles on the Role of Lawyers, which confer on the national governments the obligation to ensure that the lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.

Similar guarantees are enshrined in the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in August 1990 in New York City, Chapter 'Guarantees for the functioning of lawyers':

16. Governments shall ensure 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.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.
18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.
19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.
20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.
21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.
22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.
The Law of the Republic of Tajikistan 'On Advocacy and the Bar' adopted on March 18, 2015, enshrines the lawyer's independence in its Article 5 that stipulates the following principles of advocacy in the Republic of Tajikistan:
- legitimacy;
- independence of lawyers and advocacy;
- provision of high-quality legal assistance;
- equality of lawyers;
- non-interference with advocacy;
- requirement of the lawyer's membership in the Union of Lawyers;
- respect and protection of client's interests, rights and freedoms by the lawyer.

The guarantees of and support for the independence of the Bar and the lawyers are reflected in the fact that:
The Bar itself, under Article 6 of the Law, is an institution of civil society and not a part of the system of government authorities or local self-government authorities in settlements and villages.
For the purpose of promoting advocacy and ensuring accessibility of legal assistance to the public, government authorities shall provide guarantees with regard to the Bar's independence, finance, in the instances specified by the laws of the Republic of Tajikistan, the lawyers delivering free legal aid to individuals, as well as allocate, where required, office space and means of communication to law firms according to the procedure established by legal regulations of the Republic of Tajikistan.
Article 23 of the Law of the Republic of Tajikistan 'On Advocacy and the Bar' provides for the lawyer's independence guarantees, stipulating that any interference with advocacy conducted in accordance with the laws of the Republic of Tajikistan or any prevention of such activity by any means is prohibited.
No lawyer may be brought to any liability (including upon suspension or termination of the lawyer's status) for any opinion expressed in the course of his professional activities,

unless such opinion constitutes elements of a crime. The above requirements do not apply to the lawyer's obligations before the client under this Law.
Forcible disclosure by a lawyer, law firm personnel and the Union of Lawyers, of any information related to the provision of legal assistance in particular legal cases is not permitted.
Pursuant to the laws of the Republic of Tajikistan, the lawyer, his family members and property are under state protection. In the event of any threat to their life, health and property, the law enforcement authorities shall take necessary measures to ensure the safety of the lawyer, his family members and his property.
It is prohibited to call upon and question the lawyer or his legal assistant as witnesses with regard to their knowledge gained in connection with the provision of legal assistance.
The lawyer may not accept an assignment to provide legal assistance, if:
- it is of known illegal nature;
- he has been providing or has earlier provided such assistance to the persons whose interests contradict those of the person seeking legal assistance in the case;
- he has his own independent interest in the subject of the client's agreement, which is different from this person's interest;
- he has earlier participated in the case in the capacity of a judge, people's assessor, prosecutor, investigator, interrogator, court session secretary, witness, expert, specialist, translator or interpreter, attesting witness;
- he has a family relationship with the judge, people's assessor, prosecutor, investigator, interrogator, court session secretary involved in the consideration of the case.
The lawyer may not withdraw from the assumed obligations concerning defence, except as provided by the laws of the Republic of Tajikistan.
The lawyer may not disclose information communicated by his client in connection with the provision of legal assistance to the client without such client's consent.
The lawyer may not admit his client's guilt as proven, if the client denies it. Admission of guilt by the client shall not prevent the lawyer from challenging such a statement and pleading not guilty due to failure to prove guilt. The lawyer may not make public statements concerning the proof of his client's guilt, if the client denies it.
The lawyer shall always protect the legal interests of his client and may not assume a legal position contradicting the client's interests. The lawyer shall oppose any self-incrimination by the client in the criminal proceedings.
The lawyer shall be held liable, in the manner prescribed by this Law, for any failure to discharge or inadequate discharge of his professional duties.
It should be noted that in many countries the legislation establishes stricter liability for violations of the rights of lawyers and guarantees of their independence.
For example, Article 435 of the Criminal Code of the Republic of Kazakhstan establishes liability for obstructing the lawful activity of lawyers and other persons in protecting the rights, freedoms and legitimate interests of man and citizen in criminal proceedings, including provision of legal assistance to individuals or legal entities, or for otherwise violating the autonomy and independence of such activity.
The Bulgarian legislator aligned advocacy with the functions of a judge and entitled the lawyers to initiate disciplinary proceedings against violators of their professional rights, stipulating a procedure for disciplining those officials who violate professional rights of the

lawyers, as well as a judicial way of protecting these professional rights. Under the Law of Bulgaria 'On Advocacy', lawyers shall enjoy equal respect with the judges.
In Spain, criminal liability is established for violence or intimidation to influence the lawyer directly or indirectly (Article 464 of the Criminal Code of Spain).
France's Penal Code establishes criminal liability for murder committed against an advocate (Article 221-4); subjection of an advocate to torture or to acts of barbarity (Article 222-3); acts of violence committed against a lawyer (Article 222-8); destroying, defacing or damaging property belonging to an advocate (Article 322); any threat or any other act of intimidation committed against an advocate (Article 434).
The laws of the Republic of Tajikistan do not provide for such liability. However, a Commission for the Protection of Social and Professional Rights of Lawyers has been recently established at the Union of Lawyers of the Republic of Tajikistan to deal with violations of social and professional rights.
Thus, despite the lawyer's status being enshrined in international and domestic laws, along with the guarantees aimed to support his professional functions, one should admit that these provisions are often merely declarative. In a situation where the guarantees of the lawyers' independence are only declarative, the rule of law cannot be upheld, and human rights cannot be efficiently protected.

Independence of Advocates and Bars - Assel Tokayeva
Kazakhstan

I would like to talk about the lawyer's independence from a different angle — about equally important things that, in fact, represent a more serious and significant lever of influence on each practicing lawyer and definitely affect his/her independence and professional freedom.
In Kazakhstan, a court practice exists of adopting special resolutions in respect of lawyers not only on disciplinary matters — courts also determine in their judicial acts the elements of criminal offences allegedly committed by lawyers.

Here are some of the most revealing examples.
In 2017, an inconceivable thing occurred — a special resolution was passed by the court in respect of three lawyers (including me), initiating criminal proceedings for obstruction of justice in the form of a complaint of the judge's ethical conduct, which had been submitted to the competent authorities.
This resolution was not revoked by a higher instance court (for reasons unknown to us), though the criminal case against us was subsequently dropped for lack of evidence.
Nevertheless, we had to undergo numerous hardships because of this affair.
At that time, this case was widely covered.
The whole lawyers' community was outraged.
We were supported by our colleagues, international organisations, as well as by Zaza Khatiashvili who, together with Georgian lawyers, held a rally near the Kazakh embassy in

Tbilisi, demanding that the Kazakh authorities refrain from prosecuting lawyers.
Case 2. It concerns our colleague from Karaganda, where a second instance court simultaneously passed two special resolutions on the same facts and requested that measures be taken against the lawyer, both disciplinary and criminal.
It should be noted that a special resolution may not be appealed to the Supreme Court. Only later, in the course of investigation, the criminal proceedings in the case of our colleague, that had been continuing for almost a year, were terminated. All this time he had been under considerable stress.
Case 3. This one has to do with a special resolution issued in respect of KuatDalabayev, a lawyer in the East Kazakhstan Region.
He is accused of exerting pressure on the victim to make her give false testimony, and all this despite the fact that the court has already convicted the defendant based on this testimony.
The judge determined and qualified in a special resolution the nature of the offence allegedly committed by the lawyer, although the lawyer did not participate in the hearing and, therefore, could neither voice his disagreement with the accusations nor provide any clarifications.
In this case, a complex legal technique had been used involving several judicial acts that require independent proceedings and entailing certain legal consequences, which would undoubtedly complicate the matter of upholding Mr Dalabayev's rights.
This case still calls for more investigation and work. Many lawyers from all over Kazakhstan, including members of the Commission for the protection of professional rights of the lawyers of the Republican Bar Association, have supported the colleague, since a lawyer cannot a priori exert any pressure on the opponent to change testimony and may only be engaged to clarify the situation, discuss the matter of damages, reconciliation of the parties, of which such an experienced lawyer as Mr Dalabayev must be perfectly aware. Moreover, everyone always has an opportunity to choose his/her position independently.
At the same time, I would like to emphasise the fact that, despite the courts, under the Kazakh laws, not being criminal prosecution authorities and, therefore, not being entitled to qualify any actions of the lawyers, they still continue to do this by default and for no reasons at all, setting the tone for law enforcement agencies and thus dragging the lawyers into the orbit of criminal proceedings.
It should be noted that any statements or facts that evidence pressure put by law enforcement or supervisory authorities are disregarded by the courts who usually turn a blind eye to them, whereas it is precisely a pre-trial investigation authority that has all the opportunities and administrative resources to assess such statements.

I have described three different and revealing cases that give a clear idea of the risks involved in the work of a lawyer in Kazakhstan.
A lawyer never feels safe in this regard. He feels vulnerable and dependent when working on criminal cases and has to look around all the time, is unable to defend his client properly, while the 'sword of Damocles' — the threat of prosecution — is hanging over him, especially as regards major and high-profile cases.
Is the lawyer's independence something that we can actually talk about here?

To what extent is the lawyer independent?

Besides, a practice exists in this country, where a prosecutor, while being an opponent in the proceedings, takes upon himself the power to file submissions against the attorney to judicial authorities. Obviously, the adversarial nature, which is a key principle of the criminal process, is no obstacle for the prosecutor.
The opponent in the person of the prosecutor should not be entitled to submit acts of prosecutorial response related to the lawyer's work in court — this is illogical, wrong, and contrary to the international rules and national legislation; yet the prosecutors still submit them.
It seems that lawyers, to avoid submissions from public prosecutors, should not be too diligent and zealous in the defence of their clients during the proceedings. These facts are not isolated cases.

I think this is also a spectacular example of the influence on the lawyer's independence, but this time exerted by the prosecutor.

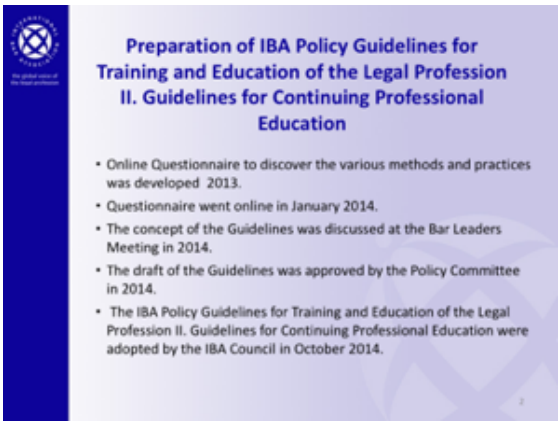
There are indeed instances of offences committed by lawyers, but this is quite a different matter — such cases should be considered under a general procedure to guarantee objectivity and impartiality of the court or of the supervisory authority as represented by the prosecutor's office.
A practicing lawyer should have immunity and safeguards against persecution by the State for his principled position in the course of his professional activities. This also applies to courts and prosecutor's offices, as the above-mentioned special resolutions and submissions issued against lawyers infringe on the principles of independence of legal aid providers, which are guaranteed to us by the relevant law.

Therefore, in the context of this presentation, it is suggested that the following provisions be included in Article 36 on the advocacy safeguards of the new Law 'On Advocacy and Legal Aid':
1. That adoption of special resolutions to prosecute lawyers be prohibited for the courts.
2. That making any submissions related to the lawyers' professional activities be prohibited for the prosecutor's offices.

I am confident that these amendments would significantly improve the lawyer's independence, boost his status, ensure the quality of the legal aid delivery and strengthen the adversarial nature of the proceedings.

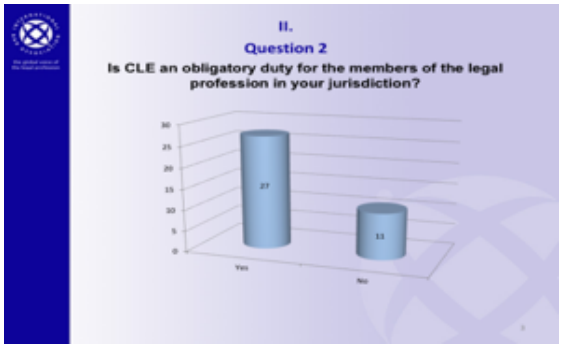
Continuing Legal Education - Ph. D. Peter Köves
Hungary

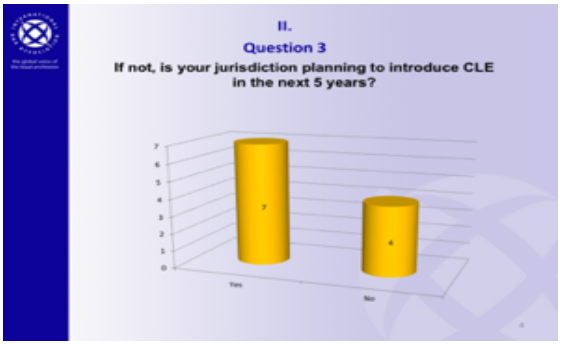
First of all, I would like to thank you for giving me the opportunity to talk about the IBA Policy Guidelines on Continuing Legal Education. As you can see, this was the second "IBA Policy Guidelines for Training and Education of the Legal Profession" after the "I. Training for Future Lawyers".



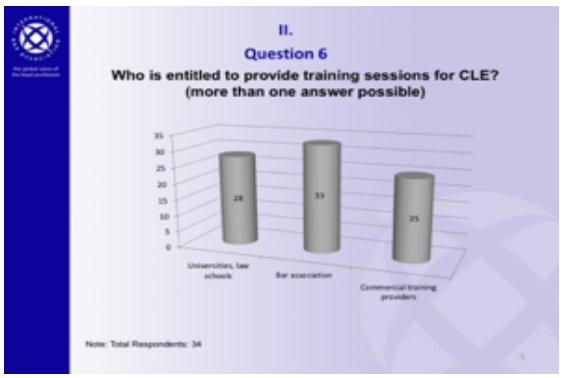
After the first part of the Policy Guidelines were adopted by the IBA Council, the IBA Training Working Group, under my chairmanship started to work the second part of these guidelines "II: Guidelines for Continuing Professional Education". In 2013, the experts and bar representatives coming from various jurisdictions from all over the world aimed at to provide guidelines for bar associations which any of them in any jurisdiction can use when setting up a framework for CLE or for modernizing its already existing CLE system. The Working Group first prepared a questionnaire to find out which methods and practices are used in various jurisdictions for CLE in order to develop the best practices. The questionnaire was sent to the IBA member bars in January 2014 and the answers were processed thereafter. Few questions and responses will be shown later in this presentation. The concept of the Guidelines was discussed at the IBA Bar Leaders' Meeting in May 2014, and then after the approval of the IBA Policy Committee, the "II. Guidelines for Continuing Professional Education" were adopted by the IBA Council in October 2014.

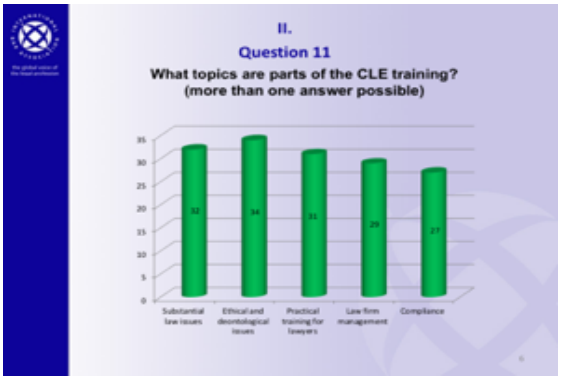
The first questions in the online questionnaire were related to the structure of providing CLE. One of the most important questions is whether the CLE is obligatory for members of the bar association. As you can see, in most of the jurisdictions replied that the CLE is mandatory and where it is not yet obligatory, many of them are planning to introduce a mandatory CLE in the near future.



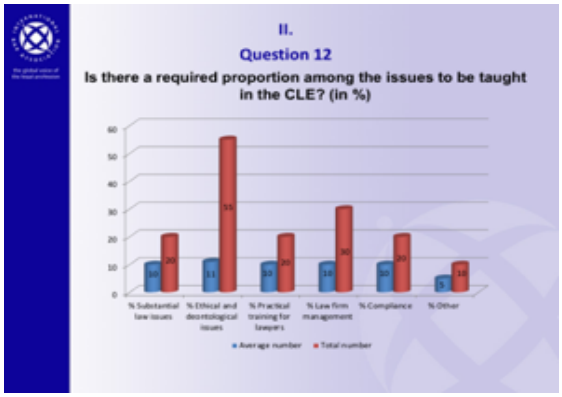


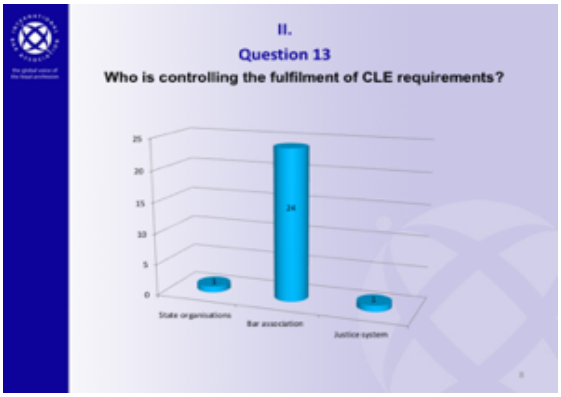
The main providers are the bar associations themselves and universities, law schools, and commercial training providers make training courses available for the rest of the training courses. The next very important question is the content of the CLE training. As you can see in most of the jurisdictions, both substantial law, ethical and deontological issues, practical training for lawyers, law firm management and compliance with regulations are part of the CLE training, and "soft skills" are having a strong presence in the curriculum.

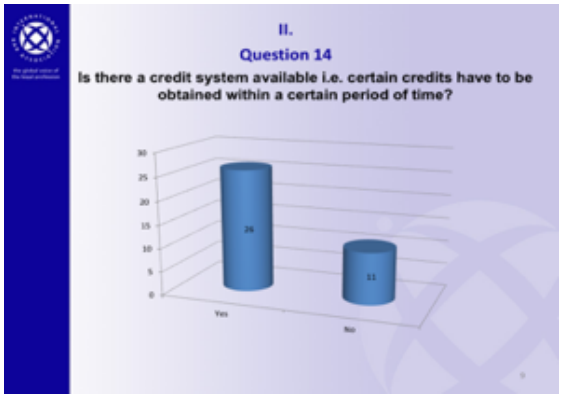


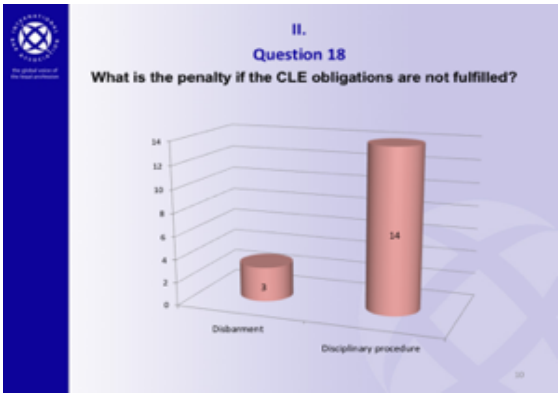


It is also important to mention that the ethical and deontological issues are a strong part of the CLE system in certain jurisdictions, participants should attend a certain number of courses in ethical and deontological issues.

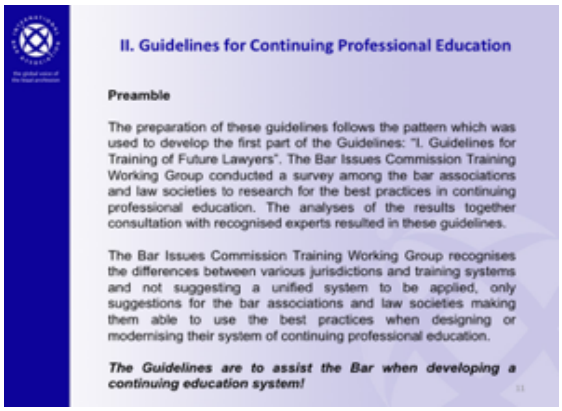




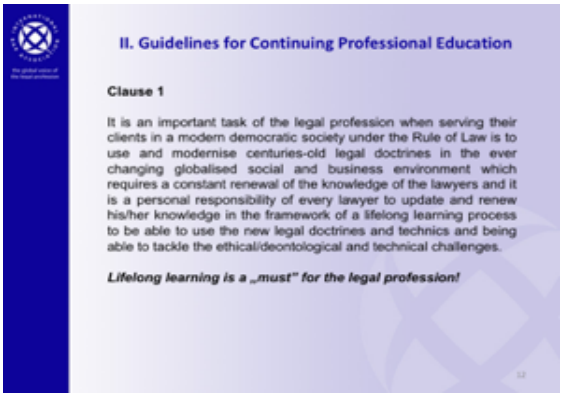




The next important question is the control of the mandatory CLE system. In most jurisdictions, the bar associations are controlling the fulfilment of the requirements, and in most jurisdictions a credit system is used. If a lawyer does not fulfil their obligation under the mandatory CLE system, there are disciplinary measures applicable and in some jurisdictions, even automatic disbarment could be the consequence.



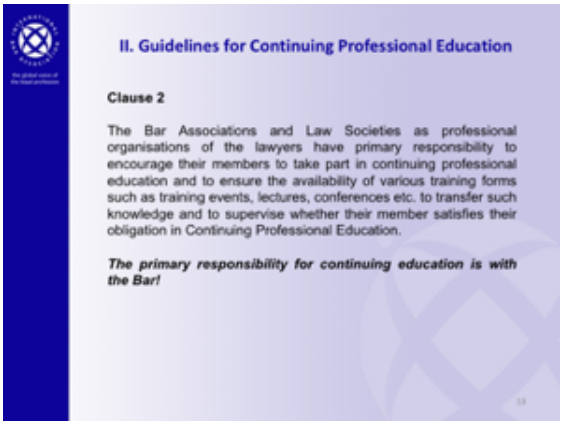
Now let's look at the guidelines themselves:
Preamble
The preparation of these guidelines follows the pattern which was used to develop the first part of the Guidelines: "I. Guidelines for Training of Future Lawyers". The Bar Issues Commission Training Working Group conducted a survey among the bar associations and law societies to research for the best practices in continuing professional education. The analyses of the results together consultation with recognised experts resulted in these guidelines. The Bar Issues Commission Training Working Group recognises the differences between various jurisdictions and training systems and not suggesting a unified system to be applied, only suggestions for the bar associations and law societies making them able to use the best practices when designing or modernising their system of continuing professional education. As I have already mentioned the Guidelines are to assist the Bar when developing a CLE system. It is aiming at to provide them with the best practices.



Clause 1

It is an important task of the legal profession when serving their clients in a modern democratic society under the Rule of Law is to use and modernise centuries-old legal doctrines in the ever changing globalised social and business environment which requires a constant renewal of the knowledge of the lawyers and it is a personal responsibility of every lawyer to update and renew his/her knowledge in the framework of a lifelong learning process to be able to use the new legal doctrines and technics and being able to tackle the ethical/deontological and technical challenges.

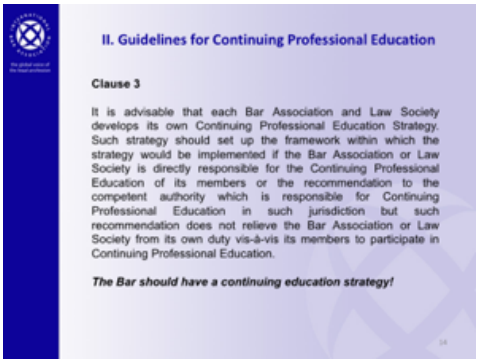
Clause 1 underlines that the legal profession is unable to fulfil its role in a modern democracy governed by the Rule of Law with performing a lifelong learning process.



Clause 2

The Bar Associations and Law Societies as professional organisations of the lawyers have primary responsibility to encourage their members to take part in continuing professional education and to ensure the availability of various training forms such as training events, lectures, conferences etc. to transfer such knowledge and to supervise whether their member satisfies their obligation in Continuing Professional Education.

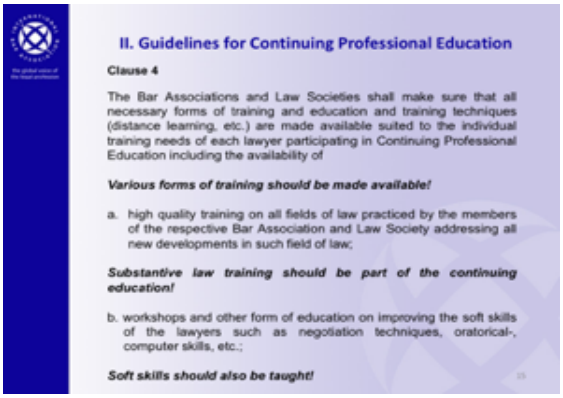
It is always a question who holds the primary responsibility for the CLE system but clause 2 makes it clear that the main responsibility is with the bar associations.



Clause 3

It is advisable that each Bar Association and Law Society develops its own Continuing Professional Education Strategy. Such strategy should set up the framework within which the strategy would be implemented if the Bar Association or Law Society is directly responsible for the Continuing Professional Education of its members or the recommendation to the competent authority which is responsible for Continuing ProfessionalEducation in such jurisdiction but such recommendation does not relieve the Bar Association or Law Society from its own duty vis-à-vis its members to participate in Continuing Professional Education. The CLE system is such an important task of the bar associations that the bar association cannot take a piecemeal approach, it has to develop an education strategy.

Clause 4



The Bar Associations and Law Societies shall make sure that all necessary forms of training and education and training techniques (distance learning, etc.) are made available suited to the individual training needs of each lawyer participating in Continuing Professional Education including the availability of:

a. high quality training on all fields of law practiced by the members of the respective Bar Association and Law Society addressing all new developments in such field of law;

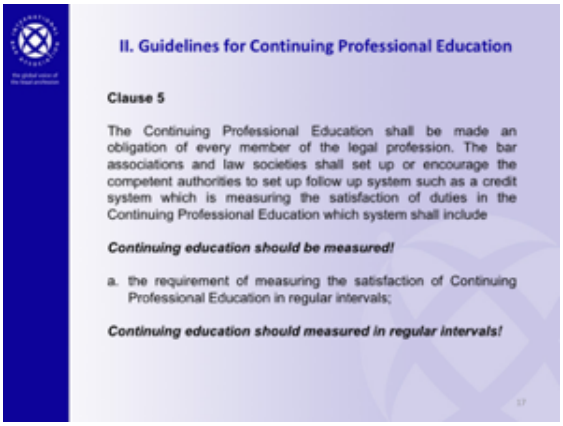
b. workshops and other form of education on improving the soft skills of the lawyers such as negotiation techniques, oratorical-, computer skills, etc.;

c. satisfying the Continuing Professional Education by participating in academic activities such as teaching law students and lawyers in and outside of Continuing Professional Education programs as well as writing legal articles, studies and books. are made available as part of the continuing legal education;

d. training and education in ethical/deontological issues to which the Bar Associations and Law Societies shall pay special attention in order to draw to the attention of their members the old and new ethical/deontological risk.

Clause 4 sets the main principles of the content of the CLE system. It suggest that Various forms of training should be made available to cater all requirement of the legal profession. In addition to substantive law training soft skills should also be taught. It should be encouraged that lawyers should participate in developing the legal sciences therefore, academic work should also be accepted as part of fulfilling CLE requirements. One of the unique feature of the legal profession which differentiates it from other professional services is its own ethical rule therefore, risk-based training of ethics should be part of the CLE system.

Clause 5



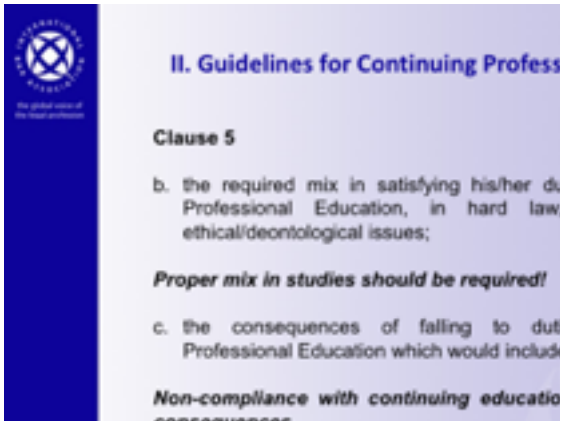
The Continuing Professional Education shall be made an obligation of every member of the legal profession. The bar associations and law societies shall set up or encourage the competent authorities to set up follow up system such as a credit system which is measuring the satisfaction of duties in the Continuing Professional Education which system shall include:

a. the requirement of measuring the satisfaction of Continuing Professional Education in regular intervals;

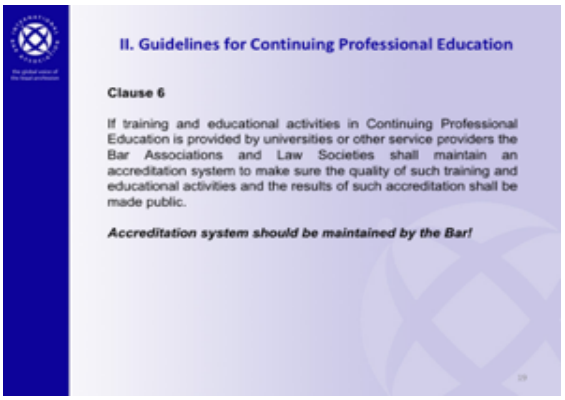
b. the required mix in satisfying his/her duties for Continuing Professional Education, in hard law, soft skills and ethical/deontological issues;

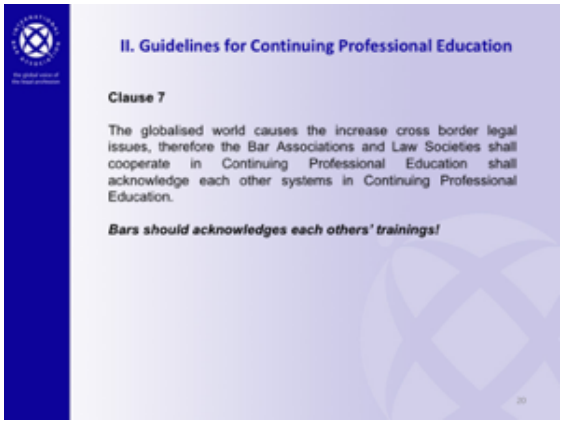
c. the consequences of falling to duties in Continuing Professional Education which

would include disciplinary action.
CLE is an obligation of the legal profession and the quality assurance requires to monitor how members of the legal profession satisfy their obligations. Clause 5 advices to set-up a monitoring system which measures CLE in in regular intervals. It is not enough to require the participation in the CLE programme but a proper mix in various studies from substantial law through soft skills to ethics should be required. The consequences of non-compliance with CLE obligations should also have its consequences.



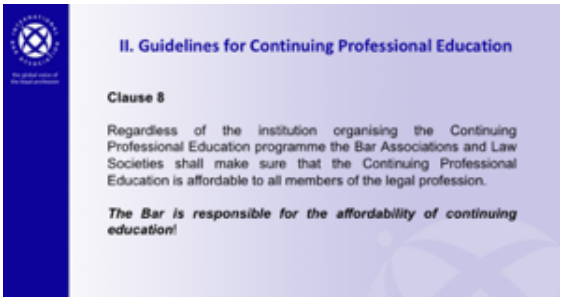
Clause 6
If training and educational activities in Continuing Professional Education is provided by universities or other service providers the Bar Associations and Law Societies shall maintain an accreditation system to make sure the quality of such training and educational activities and the results of such accreditation shall be made public. The quality of the training is key of a CLE system. The bar associations are trusted to keep the accreditation system to assure the quality of the CLE training.





Clause 7
The globalised world causes the increase cross border legal issues, therefore the Bar Associations and Law Societies shall cooperate in Continuing Professional Education shall acknowledge each other systems in Continuing Professional Education. The cross-border elements in legal services are increasing. Clause 7 underlines that it is necessary for bar associations from various countries to cooperate and make it possible to their members to satisfy part of their CLE obligations in another jurisdiction.

Clause 8
Regardless of the institution organising the Continuing Professional Education programme the Bar Associations and Law Societies shall make sure that the Continuing Professional Education is affordable to all members of the legal profession. According to clause 8 the bar associations has a very important task to make CLE affordable to their members.



Continuing Legal Education - Iain Mitchell QC
United Kingdom

Mr. Mitchell stressed the importance of continuing legal education in encouraging the development of a self-confident and vigorous independent bar. With the constant and rapid pace of change both in society in general and in the legal sphere in particular, lawyers who are out of touch with developments in the law cannot operate effectively and cannot play their proper part in maintaining an independent legal profession.

In this regard, Mr. Mitchell looked at the different approaches to legal education by the different bars in the United Kingdom: in Scotland, the Faculty of Advocates and the Law Society of Scotland, in England, the General Council of the Bar and the Law Society and the Northern Ireland Bar and the Law Society of Northern Ireland. This complex structure reflects that each of Scotland, England & Wales and Northern Ireland are separate legal jurisdictions, and in each jurisdiction the profession is divided between Solicitors and Barristers (known in Scotland as Advocates).

However, despite this diversity, all of the bars had in common a stress upon the need for continuing legal education, though correspondingly diverse methods of delivering that education.

The requirements for admission to each bar, though differing in detail, all broadly require a period of academic training (usually at a University) followed by periods of practical legal training, both academic and practical. The academic syllabi are set by the respective Universities, though usually with an eye to the requirements of the profession. The rules and standards for admission to the respective bars are set by the bars themselves without government involvement.

Once admitted there is a mandatory requirement for CPD in all bars, though a spectrum of methods of delivery.

At one end of the spectrum is the Faculty of Advocates, which sets a mandatory requirement of a minimum number of hours of CPD in each year, divided into substantive law,

advocacy and practice development. Training courses and seminars are provided by the Faculty itself, and by professional associations and/or commercial providers. Each talk or seminar requires to be accredited by the Faculty with a given number of hours of CPD.

At the other end of the spectrum is the Law Society of England and Wales, which requires, a solicitor, as part of the annual renewal of his practising certificate, to be able to certify his continuing competence to practice as a solicitor, for which, plainly, CPD is essential. This is not an easy option as making a false declaration would be a serious deontological offence.

Thus, it will be seen that the approach of the Law Society of England and Wales is to define the outcome which should be obtained, whereas the Faculty of Advocates defines and regulates the means used to achieve that outcome.

The other bars and law societies lie somewhere in between. For example, the Bar Standards Board in England though no longer prescribing any minimum hours of CPD and no longer requiring accreditation of courses and training, does require barristers to set and record goals for CPD, maintain a reflective journal and keep evidence of CPD undertaken. These records are subject to random spot checks.

In all jurisdictions, there is a thriving CPD ecosystem, with training coming from the Bars themselves, voluntary organisations (including professional organisations - for example a Family Law Association or the Society for Computers and Law) and commercial providers.

It is fundamental to this process of self regulation that there is no government involvement in it.

In conclusion, there is no single "right way" of providing CPD, but, despite their apparent diversity, all of the approaches outlined above have the objective of ensuring, for the benefit of the public, a self-confident and effective legal profession, fully equipped to meet our changing society and play its part in the upholding of the Rule of Law.

Continuing Legal Education - Navruzshokh Nazarov
Tajikistan

Dear Conference participants, I am happy to attend today's meeting and would like to thank the organisers of this Conference. I am confident that the outcome of this Conference will have a very positive impact on our common cause.
Topic: Skills upgrading for lawyers in the Republic of Tajikistan — problems and solutions.
The Basic Principles on the Role of Lawyers (as adopted in 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Havana,

August 27 to September 7, 1990) include continuing education and continuous improvement of the lawyers' knowledge into the internationally recognised standards of the legal profession, failure to adhere to which may constitute the grounds for disciplining, and urge the lawyers' professional associations (unions) to promote continuing education and training of the lawyers (Paragraphs 24 and 29). One of the duties of a lawyer, as stipulated in Article 10 of the Law of the Republic of Tajikistan 'On Advocacy and the Bar', is to improve knowledge and upgrade skills on a continuing basis. This is due to ongoing changes in the laws and their application practice, along with the developing theory of law.

In order to maintain their professional training at the required level and improve their knowledge of the Republic of Tajikistan's laws and law enforcement practice, lawyers are required to undergo skills upgrading every five years at the educational institutions accredited by the State and to be certified by the Qualification Commission (Article 35.1).

For the purpose of ensuring the necessary level of the lawyers' professional training and skills, the Union of Lawyers, in accordance with the Law of the Republic of Tajikistan 'On Advocacy and the Bar', has set up the Centre for the Professional Development of Lawyers (Article 35.4).

The Union of Lawyers and the Centre for the Professional Development of Lawyers under the Union of Lawyers of the Republic of Tajikistan play a fundamental role in ensuring an appropriate level of the lawyers' training, enabling them to provide competent legal assistance.

The Law of the Republic of Tajikistan 'On Advocacy and the Bar' stipulates that the Union of Lawyers and the Centre for the Professional Development of Lawyers under the Union of Lawyers of the Republic of Tajikistan shall:

– ensure monitoring of professional training of the persons admitted to practice law;

– promote higher professional standards for lawyers, including adoption of lawyers' skills upgrading programmes, training of legal interns and legal assistants, arrange for professional training under these programmes.

The Board of the Union of Lawyers promotes higher professional standards for lawyers, including adoption of lawyers' skills upgrading programmes and training of legal interns, and arranges for professional training.

The Basic Principles on the Role of Lawyers, adopted in 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, point out that 'Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.' Under Article 35 of the Law of the Republic of Tajikistan 'On Advocacy and the Bar', 'lawyers are required to improve their knowledge continuously, to undergo skills upgrading at the educational institutions accredited by the State, and to be certified by the Qualification Commission.'

Despite a number of binding rules that require lawyers to continue studies, the Centre for the Professional Development of Lawyers under the Union of Lawyers of the Republic of Tajikistan, established in 2016, has remained until now virtually the only skills upgrading centre where due regard is given to the specifics of the legal profession. Because of non--compliance of the provisions of the Law of the Republic of Tajikistan 'On Advocacy and

the Bar' with universally recognised domestic and international standards of the lawyers' skills upgrading, the Centre is unable to obtain state accreditation.

These legal rules have not been harmonised in law and are inconsistent. Thus, the professional development requirements imposed on the lawyers are hard to implement practically and, consequently, cannot be applied efficiently.

To address these problems, the following measures should be taken:

1. Apply to the relevant government authorities for a legislative initiative to be submitted to the Parliament of the Republic of Tajikistan concerning updating and harmonising of certain provisions of the Law of the Republic of Tajikistan 'On Advocacy and the Bar', in particular, Article 13 'Qualification Commission' and Article 35 'Retraining and skills upgrading of lawyers'.

2. In Article 13.1, replace the expression 'under the Ministry of Justice of the Republic of Tajikistan' with the expression 'under the Union of Lawyers of the Republic of Tajikistan', while deleting the words 'as well as to certify lawyers,' to restate this provision as follows: 'The Qualification Commission is established under the Union of Lawyers of the Republic of Tajikistan to address the matters of granting and terminating the status of a lawyer […]'

The current wording of Article 13.1 contradicts the fundamental principles of the independence of and non-interference in advocacy, as reflected in Article 5 of the Law of the Republic of Tajikistan 'On Advocacy and the Bar'.

Moreover, this provision is completely inconsistent with Paragraph 24 of the Basic Principles on the Role of Lawyers adopted by the Eighth UN Congress, which stresses inadmissibility of external interference in the formation and election by lawyers of the relevant executive bodies.

The Qualification Commission should thus be established and function only under the Union of Lawyers of the Republic of Tatarstan and be expressly removed from under the government authorities' control.

This change will contribute to the needed positive harmonisation of the country's applicable laws and will support the implementation of one of the fundamental principles of the legal profession's independence.

3. In Article 35.1, restate the sentence 'upgrade their skills at the educational institutions accredited by the State and obtain certification from the qualification commission' to read as follows: 'attend skills upgrading courses at the Union of Lawyers of the Republic of Tajikistan.'

Delete the sentence 'The procedure for certification of lawyers shall be determined by the Union of Lawyers' in Article 35.1.

Deletion of the entire Article 35.2 is also suggested.

In Article 35.4, replace the phrase 'may establish' with the word 'forms', and the word 'special' — with the word 'training'.

This recommendation is intended to make the training more specialised and to upgrade the lawyers' skills, as well as to simplify this process significantly and eliminate a number of clearly unacceptable legal provisions.

Continuing Legal Education - Denis Perevertaylo
Kazakhstan

Continuous improvement of knowledge and skills upgrading is mandatory in advocacy. However, this rule, enshrined in the law, is merely declarative. The law regulates neither the form, procedure, timeline, scope nor other conditions for the lawyers' skills upgrading. Thus, an important component of the guaranteed provision of skilled legal aid by lawyers — their skills upgrading — is both absent in the law and lacking its own methodological basis.

The draft Law 'On Advocacy and Legal Aid' (Article 12) stipulates that, for the purpose of ensuring the quality of legal aid, it may only be provided by the persons having the appropriate professional training and periodically upgrading their skills. Thus, professional training and periodic skills upgrading are becoming mandatory preconditions for the lawyer to practice.

The lack of any detailed regulation of the skills upgrading procedure should be regarded as one of the few positive aspects of the draft Law 'On Advocacy and Legal Aid'. This allows the Bar to arrange this process at its own discretion, with regard to its own historically accumulated experience and by adapting the best world practices.

Various skills upgrading options have been recently proposed by the Republican Bar Association (Paragraph 2 of the Legal Aid Quality Improvement Programme of the Republican Bar Association, adopted by the decision of the Republican Bar Association Praesidium on February 17, 2017). In the process of the draft Law discussion, certain suggestions have also been voiced by the Ministry of Justice (the draft Law of Kazakhstan 'On Advocacy and Legal Aid') and by the Supreme Court of the Republic of Kazakhstan (skills upgrading at the Academy of Justice). The Ministry of Justice has suggested that skills upgrading be carried out at Kazakhstan's universities, motivating its decision, among other things, by more income opportunities for the universities.

These proposals from the Ministry of Justice and the RK Supreme Court have been justly criticised by the lawyer community because of their disregard of the specifics of the lawyer's work, his professional and intellectual needs, and the lack of the relevant university specialisation. It should be noted at the same time that cooperation between the Bar and the universities in the matters of skills upgrading is possible, but on an equal basis, without any mandatory instructions and in accordance with the lawyer community's needs.

Furthermore, given that the Bar currently is and should remain in the future an independent self-governed organisation, the matters of skills upgrading must be addressed by the RBA on the basis of its regulations. According to the current RK Law 'On Advocacy', the praesidium of the bar association shall be in charge of the work and activities associated with the lawyers' skills upgrading (Articles 24.2.7 and 24.2.9). The Praesidium of the Republican Bar Association was also made to arrange for upgrading the lawyers' skills and develop a uniform methodology for professional training of the lawyers and their assistants (Article 33-5.4.9). It should be noted that the RBA Praesidium has so far failed to implement this function.

Obviously, any delays on behalf of the RBA in addressing this matter would be highly undesirable, since the vacuum in regulating the skills upgrading will otherwise be filled by the Ministry of Justice whose actions are clearly intended to establish supervisory and monitoring functions over the Bar.

For example, the draft Law removes from the competence of the RBA Praesidium the matters of skills training and refers them to the Republican Conference of the Bar Association Delegates which should approve the Lawyers' Skills Upgrading Standards and the Procedure for the Lawyers' Skills Upgrading (Articles 69.2.12 and 69.2.13). At the same time, the draft Law stipulates the need to seek approval of the skills upgrading standards and procedure from the authorised agency.

These provisions clearly interfere into the Bar's independence. Besides, the draft Law offers neither procedure nor criteria for such an approval, thereby providing a fertile ground for the expected unjustified rejection of the internal rules developed by the lawyer community and foisting by the Ministry of Justice of its proposals as regards this matter.

By contrast, the available analysis of international experience confirms the need for independent regulation by the Bar of its professional development matters.

According to the foreign practice, the key principles of skills upgrading are based on optionality and flexibility of the learning process and comprise the following.

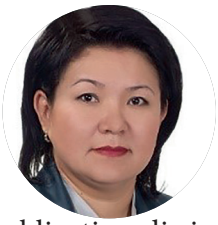
1. Skills upgrading is governed by the lawyer community only pursuant to its internal rules; the Bar adopts the professional development programme and skills upgrading methodology independently, without seeking approval from the government authorities.
2. Skills upgrading is generally provided within the educational framework of the lawyers' associations or at the educational institutions that must be independently accredited by such associations.
3. The skills upgrading forms are diverse — in addition to mandatory training itself, they include publication of academic or theoretical and practical articles, monographs, textbooks, manuals, obtaining academic degrees, professional course studies at higher education institutions, attendance at conferences, workshops, round tables, master classes, training courses, etc., subscription to legal publications, teaching of legal disciplines, development of study guides and so forth. An important point is the opportunity for a lawyer to choose the manner of skills upgrading according to his needs and capabilities. A lawyer should only be required to accumulate a certain number of hours or points in the process of professional development.

Summing up, it may be concluded that the RBA should take the initiative in addressing its task of upgrading the lawyers' skills, which also involves the development and approval, in the shortest possible time, of the professional development standards and procedures. These documents should stipulate the forms of skills upgrading (including the Centres at the RBA or oblast bar associations, self-studies, interregional and international cooperation between lawyers' associations through the exchange of students and teachers, etc.), staffing focused on encouraging the lawyers to engage in academic and teaching activities, as well as the duration and volume of training. The volume of training should be preferably expressed using a point system in view of the expected multiplicity of skills upgrading forms.

Skills upgrading programmes must also be developed and approved. By no means these

programmes should duplicate the higher education institutions' curricula, which are characterised by ingrained formalism. The professional development programmes are envisaged as focused not so much on the study of new laws as on practical knowledge, including skills in acquiring knowledge and updating knowledge.
An important component would be a system for monitoring and assessing the quality of the lawyers' skills upgrading, which should also be developed in great detail and based on the established minimum scope of training and the record of the scores attained.
It should be noted that, in any case, skills upgrading will be funded by the lawyers themselves. The lawyer community would therefore have to address the form of funding, i.e., whether each lawyer would have to pay independently for the skills upgrading, or this should be done from the membership fees.
Finally, it is important to emphasise the awareness of the importance of the problem and its challenges by the lawyers themselves. It is the lawyers who currently represent the driving force behind the skills upgrading initiative; the lawyers are actively seeking opportunities to participate in workshops and conferences. This year's initiative to set up Centres of Excellence in the West Kazakhstan and Atyrau Oblasts is quite significant; our colleagues are already accumulating their first experience in these matters, which, undoubtedly, would come in high demand later, during the adoption of the common standards, procedure and programme for skills upgrading. This initiative should be supported by the lawyers' communities both at the national and regional levels; bar associations should foster intensive sharing of experience. Skills upgrading should become not only a matter for discussion, but also an instrument for better cohesion of the Kazakhstan lawyers.

Continuing Legal Education - Ph.D. Gulnara Sheishekeeva Kyrgyzstan



Lawyer is a profession that entails numerous complex obligations. These obligations lie in the legal, as well as in the moral and ethical plane. An adversarial trial suggests that the parties involved in it are equal in the ability to collect and present evidence in defence of their position. This adversarial nature must be ensured not only by the elements of the legal status or institutional guarantees of professional activity, but also by the personality of the practitioners acting for the defence or prosecution.
Where a prosecutor acts on behalf of the State and is thus provided with a full set of arrangements securing the exercise of his powers, a lawyer looks much less protected in the same situation. Dynamic processes of professional lawyer community's emergence and formation could be observed nowadays. Most lawyers are aware that the existence of such a community is the key to successful professional activities. In addition to the support provided by the self-governed lawyer community, each lawyer, being a member of a professional association, also has to carry a burden of extra responsibilities. Not all lawyers are ready to accept these responsibilities and recognise them as reasonable and justified. I am referring here primarily to such obligations as payment of membership fees, participation in the election of governing bodies and implementation of public control over their acti-

vities, skills upgrading.
Nevertheless, it would be fair to say that no other obligations give rise to so many complaints from the lawyer community as the duty of continuing legal education.
Despite the obvious necessity of this measure, the vast majority of lawyers are inclined to regard this process as formal, difficult and inefficient.
It is hard to say what precisely underlies this attitude. This may be due either to subjective motives of a successful adult confident in his/her professionalism, or to the objective reasons involving the lack of free time and money to be spent on skills upgrading, but the fact remains.
In Kyrgyzstan, a most progressive practice has been established recently, which makes skills upgrading for lawyers a mandatory prerequisite for admission to and subsequent stay in the profession since 2014. Why should this practice be described as progressive? We are aware of a few countries that have just stepped on the path of making skills upgrading mandatory for lawyers.
On March 11, 2015, the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic adopted a ruling on the conformity to the Constitution of the Kyrgyz Republic of certain provisions of the Law 'On Advocacy in the Kyrgyz Republic', including those associated with mandatory skills upgrading for lawyers.
The 'continuing education' requirement does not infringe on the principle of freedom of profession or independence of a lawyer. Skills and expertise of a lawyer are the key guarantee of the fulfilment by the State of its obligation to provide access to efficient legal assistance (including the State-guaranteed legal assistance) for the public.
In all recommendations made to Kyrgyzstan by international organisations, the matter of inadequate skills of some lawyers was raised, which mostly affects the poor and vulnerable segments of the population. For example, among the principal recommendations given by the UN ECOSOC Special Rapporteur on Kyrgyzstan was the need to keep up and verify lawyers' skills.
The Basic Principles on the Role of Lawyers also state directly that 'Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.'
For example, the International Bar Association urges all lawyer communities 'to impose strict requirements on the level of legal education as the key criterion for admission of a lawyer to the professional community, subject to continuing legal education.'
The Council of Europe also emphasises that 'any necessary measures must be taken to ensure a high level of legal education and integrity as a prerequisite for lawyers' admission to the professional community, along with the requirement for continuing legal education by lawyers.'
In the UN Basic Principles and the CAIOOE Code of Conduct, continuing legal education is regarded as the right of every practicing lawyer, while the CAIOOE notes that lawyers are not only entitled but also have a professional duty to keep abreast of all recent changes to the legislation.
Furthermore, in most European countries, as well as in the U.S. and Russia, skills upgra-

ding has also been made a mandatory requirement. In the countries where continuing legal education is mandatory, the requirements on the duration of training courses vary, ranging between four and thirty hours a year, and, as a rule, at least three hours are dedicated to the matters of professional ethics. Mandatory skills upgrading has not become a standard in most CIS countries (except Russia), which puts Kyrgyzstan in the forefront of the Commonwealth countries as a state that follows the European, American and Russian standards of professional activity.

The Lawyers' Training Centre currently operates under the Bar Association of the Kyrgyz Republic, which develops, approves and implements educational programmes for lawyers with different service record, assistant lawyers and applicants for the lawyer's status.

At the Lawyers' Training Centre under the Bar Association of the Kyrgyz Republic, educational programmes have been designed to allow the lawyers with the shortest service record to study introductory subjects, such as basic professional skills of a lawyer. This is followed by a course dedicated to studying the tactics of developing and implementing the lawyer's position in criminal and civil cases. The most experienced lawyers are offered optional training courses, where the most relevant, controversial or problematic topics may be selected for studies, allowing the lawyers to master new skills or address any particular conflict of law. Making video versions of the most popular training courses and introduction of distance learning may be regarded as an important achievement of a present-day continuing legal education system. Meanwhile, it should be noted that all this is done with the utmost regard to the current situation in the country, i.e., the training fees barely cover the costs of educational services and are absolutely accessible to all representatives of the professional community. All the above procedures are conducted according to the Unified Educational Standard adopted by the Lawyers' Board of the Bar Association of the Kyrgyz Republic.

However, despite any achieved success, which may be mostly described as institutional and legislative consolidation of the continuing legal education rule (that does not seem to resonate with the representatives of the profession), Kyrgyzstan is currently facing difficulties with the practical implementation of this rule.

First of all, difficulties associated with the territorial coverage arise. The Bar Association has its local offices in each region of Kyrgyzstan; however, they lack the capacity, including human resources, to carry out a full-fledged, ongoing monitoring of skills upgrading or to arrange for the relevant training events.

Besides, there are difficulties in adapting the lawyers' professional mentality to make them perceive the need for continuing education. In this regard, one may say that the lack of any state support for the functioning of the institution of the Bar in the Kyrgyz Republic affects the development of the continuing legal education system. Centralised and compulsory skills upgrading for doctors and teachers from public institutions may be cited as an example. In the case of lawyers, whose work and competence are no less important than professionalism of a doctor or teacher, the State refrains from involvement.

Obviously, since the lawyers have no vested interest in improving their skills, they cannot and would not allocate, as members of the professional community, at least a portion of their membership fees to support the respective system. This situation makes the functioning of the Lawyers' Training Centre dependent on the support of international program-

mes implemented in Kyrgyzstan as part of the establishment of a democratic law-based state.
As for the possible ways of addressing those problematic matters that we are facing in our practice today, they may include the following:
First, before everything else, the procedure for admission to the profession should be tightened from the standpoint of the professionalism of applicants for the licence to practice law.
A person who, prior to joining the professional community, clearly understands the importance of primary education, will also be aware of the need for continuing education, including self-education and skills upgrading. In this regard, taking the relevant training courses is suggested for the persons applying for the licence to practice law, in addition to passing a qualifying examination and compliance with statutory requirements.
Second, the quality of the skilled legal assistance provided by the lawyers should be continuously monitored, followed by the application of sanctions in the form of compulsory (re-)training to those lawyers who have made certain errors or inaccuracies.
This measure would seem very promising in terms of ensuring the quality of protection of citizens' rights and freedoms. If, among other measures that may be applied in accordance with the Bar Association's by-laws, a lawyer, upon a complaint made of his/her inadequate legal assistance, would be made to attend the relevant training courses to study, revise or consolidate the knowledge of the legal materials whose application was accompanied by errors, this will address both the issue of subsequent provision of high-quality legal assistance and the matter of the lawyer's personal professional growth.
Third, gradually increasing the lawyers' professional awareness through ongoing communication, messaging, informing of the need, importance, and significance of continuing education will be the most necessary, albeit the time-consuming, phase.
Here, any positive images of the lawyers' professional conduct associated with their desire to improve their skills may be formed.
We believe therefore that the current state of the continuing legal education system in Kyrgyzstan may be described as dynamically developing, while prompt adoption of the above-mentioned measures would contribute to strengthening the lawyer's legal status as an efficient participant in the adversarial process.

Continuing Legal Education - Wenli Xu
China

Lawyer is a group of life-long learning in the world. Since the implementation of the reform and opening policy, China's economy had been developing for more than thirty years. Laws and regulations are changing with the development of an economy. So lawyers have to cope up with the changes. with the development of economy. So lawyers have to learn with the change.
In China, continuing legal education is not only required for the career, but it is also the

requirement of rules. The Rule of Continuing Legal Education for Practicing Lawyers (hereinafter referred to as "the Rules") issued by All China Lawyers Association (hereinafter referred to as "ACLA") regulated the method and requirements of continuing legal education in detail. The purpose of the Rules is to strengthen and standardize the continuing legal education of practicing lawyers, improve the professional ethics and professional level, and strive to provide high-quality legal services for the society. According to these Rules, ACLA and Lawyers Association in provincial and city level set-up continuing legal education commission which is responsible for the management and guidance to continuing legal education. It is not only the right but also the duty for all practicing lawyers to take part in continuing legal education regularly. I just introduce the following methods of continuing legal education.

Firstly, a person who passes the bar exam, which we call the National Judicial Examination, shall participate in career training programs of a minimum of 40 hours before applying for the lawyer license. This training program includes: Lawyers' professional ethics and practicing discipline education; laws, regulations and management rules concerning lawyers' work; practice skills in different specialties. I have taught legal practices relating to international business law for more than ten years in such programs in Hebei province.

Secondly, a lawyer who gets lawyer's license should participate in the continuing legal education for not less than 30 hours each year. Failure to complete the 30 hours training shall lead to the withholding of the license for the year. In this stage, the training content will much broader than the program to train the apprentice lawyer and focuses on improving skills in a specialized practice field. For example, to meet the requirements of serving for the increasing international business, especially for the "Belt & Road Initiative" , ACLA launched "China International Legal Professions" program which decided to train 300 lawyers who are familiar with international business rules, customs and cultures in three years. I was lucky to attend the training program in 2015 and was trained for one month in the Tsinghua University and two months in the Temple University of the United States. Of course, the seminar and short-term conference especially, online trainings are also popular ways. Hebei Lawyers Association paid training fee for 13,000 lawyers registered in Hebei province to an online training company. This online training company could provide for more than one hundred courses taught by famous and senior lawyers in one field. All lawyers in our province could choose the courses for free. If a lawyer listens to the courses through this program to reach 80 hours, it deems to meet the requirement of continuing legal education for the year. One of the managing partners in my law firm, Mr. Gu Jingsheng, is a guest lecturer of this online company, and his course--"Lawyer and Culture" is a popular course and gets a high click rate.

Thirdly, some lawyers participate in courses which are held by universities, legal institutions and special training institutions which will be paid by them. This is not connected with the registration review, but it is important for a lawyer who is practicing law.

In conclusion, to be a life-long learner is a compulsory requirement for a lawyer. Continuing legal education is an eternal topic for our lawyers.

The rules of ethics - Jonathan Goldsmith
United Kingdom

Competence

(1) Codes of conduct

Provisions of the Kazakh code of professional ethics of advocates

4. The advocate must constantly maintain a high level of professional qualifications, improve their knowledge, with the aim of possessing information on legislative novels needed to provide qualified legal assistance.

The advocate must ensure the necessary level of competence of his assistants, technical personnel and other persons who are involved with him/her for performing certain tasks in connection with the execution of the assignment.

13. Accepting an order, the advocate must be confident in his competence in resolving issues which are related to the merits of the case. In the cases, that the advocate has reason to believe that his competence is not sufficient to fulfill the mandate, he must refuse to accept the commission

19. The advocate, when accepting a commission in a case in which another advocate is involved, must to notify him of his participation in the case. The advocate may talk with another advocate's client on the same case, only with his client's consent.

IBA International Principles on Conduct for the Legal Profession

9. Competence

9.1 General principle

A lawyer's work shall be carried out in a competent and timely manner. A lawyer shall not take on work that the lawyer does not reasonably believe can be carried out in that manner.

9.2 Explanatory note

As a member of the legal profession, a lawyer is presumed to be knowledgeable, skilled, and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with all legal matters to be undertaken on the client's behalf or to procure that somebody else either in or outside the law firm will do it.

Competence is founded upon both ethical and legal principles. It involves more than an understanding of legal principles: it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied, and includes competent and effective client, file and practice-management strategies.

A lawyer must consider the client's suggestion to obtain other opinions in a complex matter or from a specialist, without deeming such requests to be a lack of trust.

CCBE Charter of Core Principles of the European legal profession

Principle (g) – the lawyer's professional competence:

It is self-evident that the lawyer cannot effectively advise or represent the client unless the lawyer has the appropriate professional education and training. Recently, post-qualification training (continuing professional development) has gained increasing emphasis as a response to rapid rates of change in law and practice and in the technological and economic environment. Professional rules often stress that a lawyer must not take on a case which he or she is not competent to deal with.

CCBE Code of Conduct

3.1.3. A lawyer shall not handle a matter which the lawyer knows or ought to know he or she is not competent to handle, without cooperating with a lawyer who is competent to handle it.

(2) Continuing legal education

IBA Policy Guidelines for Training and Education of the Legal Profession

it is a personal responsibility of every lawyer to update and renew his/her knowledge in the framework of a lifelong learning process to be able to use the new legal doctrines and technics and being able to tackle the ethical/deontological and technical challenges.

The Continuing Professional Education shall be made an obligation of every member of the legal profession. The bar associations and law societies shall set up or encourage the competent authorities to set up follow up system such as a credit system which is measuring the satisfaction of duties in the Continuing Professional Education

CCBE recommendation on continuing training

- that all lawyers have to promote the ideals and ethical standards of their profession and maintain their professional competence in order to fulfil their professional obligations to society

• that lawyers always have to bear in mind their professional training, maintaining and increasing their knowledge in the fields in which they practise, as is recognised in particular by the CCBE Code of Conduct Article 3.1.3. which requires a lawyer not to "… handle a matter which he knows or ought to know he is not competent to handle…"

CCBE policy

Continuing Training is of great importance to lawyers and their clients. For everyone seeking legal advice, it is important that that their lawyer is familiar with the latest developments in the fields in which they practise. The CCBE recognises this importance, and therefore considers that all lawyers in Europe should participate in Continuing (Professional) Training programmes, and that the Bars and Law Societies of the CCBE should all develop, in their own specific way, programmes and/or regulations for Continuing Training.

(3) Association with foreign lawyers

IBA handbook on 'What model for cross-border joint practice?'

• Governments in many parts of the world are seeking to develop their jurisdictions as international or regional hubs for certain types of turnkey business activities (eg, financial services, business support services or arbitration) in order to attract inward investment. Legal services are often part of this equation, and governments sometimes seek to bring in foreign law firms to accelerate this strategic development process.

• International law firms have for some years been experimenting with the way in which they produce their work, recognising that it may be possible to do it more cost-effectively or efficiently by distributing it to different offices in different time zones or cost locations. Collaboration with lawyers in lower cost jurisdictions may therefore not only be about the conduct of local legal work.

• The demands of compliance requirements (eg, for data sharing, anti-money laundering and 'client on-boarding') and needs within certain practice areas may mean that foreign law firms prefer to have a more integrated supply chain, to avoid the lengthy compliance processes that would be required of an external referral law firm operating as a sub-contractor.

• Local law firms in jurisdictions with smaller legal professions may find that opportunities to work on more complex matters or to develop specialisms are limited if they work in isolation. There is growing evidence of interest and willingness among law firms in such jurisdictions to participate in larger commercial groupings in order to access new opportunities beyond their borders.

• Regional trade and integration have also increased the opportunities for collaboration

between law firms and lawyers in countries with smaller legal professions. There are more and more examples of regional 'one-stop' shops, in which law firms in neighbouring countries either merge or jointly ally and market themselves under a common brand to potential clients.

The rules of ethics - Gulniza Kozhomova
Kazakhstan

Professionalism is a combination of such fundamental values as personal irreproachability, competence, propriety of behaviour and independence in decision-making. All these are the distinguishing features of a true lawyer as a defender of the rule of law.
These High Principles of professionalism stem from the Code of Professional Ethics of the Kyrgyz Republic's Lawyers and, to a certain extent, complement it. The innermost meaning of these Principles is well expressed as follows:
'The lawyer shall resort to legal procedures with the sole purpose of ensuring the triumph of law, rather than for the sake of persecution and intimidation of others. The lawyer shall be respectful of applicable laws and to all those who serve him, including judges, fellow lawyers and civil servants.'
The Code of Professional Ethics of the Kyrgyz Republic's Lawyers was approved and adopted by the Constituent Congress of Lawyers on November 26, 2014, under Article 1.6.3(4) of the Law 'On Advocacy in the Kyrgyz Republic'.
The Regulations on the Ethics Commission of the Bar Association of the Kyrgyz Republic are based on the Constitution of the Kyrgyz Republic, the Law of the Kyrgyz Republic 'On Advocacy in the Kyrgyz Republic', the Charter of the Bar Association of the Kyrgyz Republic, and the Code of Professional Ethics of the Kyrgyz Republic's Lawyers. The Regulations on the Ethics Commission is approved by the Lawyers' Board of the Bar Association of the Kyrgyz Republic.
The Ethics Commission operates under the Law of the Kyrgyz Republic 'On Advocacy in the Kyrgyz Republic' and the Regulations on the Ethics Commission of the Bar Association of the Kyrgyz Republic, as approved by the Lawyers' Board of the Bar Association of the Kyrgyz Republic on March 5, 2012.
The Ethics Commission is a peer disciplinary body of the Bar Association of the Kyrgyz Republic for consideration of appeals, complaints and statements from individuals and/or legal entities, submissions from law enforcement agencies, special court resolutions (decisions) (the 'Appeals') concerning violations by the lawyers of the standards of professional ethics.
Nine members of the Bar's Ethics Commission are elected at the Congress of Lawyers of the Kyrgyz Republic for a three-year term from among the lawyers. Each Commission member must have at least five years of work experience as a lawyer. The Chairman of the Ethics Commission is elected for a three-year term from among its members.
Applications are considered subject to the protection of information constituting the appellant's privacy, attorney-client privilege, commercial or other information or data pro-

tected by law. No records of disciplinary proceedings may be disclosed.
The Ethics Commission:
arranges for examination of the Appeals;
institutes disciplinary proceedings;
denies institution of and/or terminates disciplinary proceedings;
takes measures to provide access for the lawyer to the Appeals received against him, as well to any documents attached thereto, as well as to receive written clarifications from him, accepts for verification any factual information or evidence submitted by the lawyer or by the appellants, including through local offices;
is entitled to demand and obtain from government or local self-government authorities, any organisations, irrespective of their patterns of ownership, any necessary information pertaining to the examination of the Appeals;
is familiarised, where necessary, while maintaining the security of the information referred to in Clause 1.3 of the Regulations, with the case files of pre-trial or judicial proceedings relating to the subject matter of examination;
Upon receipt of the Appeals, the Ethics Commission adopts:
a decision referring to the facts that evidence disciplinary offence (if any) in the lawyer's actions.
Where a disciplinary offence has been identified in the lawyer's actions, the Ethics Commission applies the following measures of disciplinary liability to the lawyer: admonition, warning, reprimand.
Where gross violations of the standards of lawyers' professional ethics have been identified, the Ethics Commission adopts a decision to petition the Lawyers' Board for forwarding a submission to the Ministry of Justice of the Kyrgyz Republic to resolve on the suspension or revocation of the licence to practice law.
The Ethics Commission's decision may be appealed to the Lawyers' Board of the Bar Association of the Kyrgyz Republic within 10 days from the receipt, but not later than one month from the adoption thereof.
Decisions of the Ethics Commission to petition the Lawyers' Board to suspend or revoke the licence may be appealed to the Lawyers' Board. Without such appeal to the Lawyers' Board, these decisions may not be appealed to court.

The rules of ethics - Yerzhan Siyubayev
Kazakhstan

The quality of legal services: evaluation problems and opportunities

Quality assurance of the legal aid provided by an advocate is an important and polemical issue. Legislation, as well as ethical norms of the Bar, do not provide specific criteria for estimation of quality level of this assistance. The client who determines for himself the expectations and feelings of quality at the time of receiving assistance and after re-

ceiving it acts as a body of quality assurance. Legal aid is a complex professional service. Its complexity lies in the fact that According to the Law on Advocacy, the bar is meant to contribute the realization of the human right on guaranteed by the state and enshrined by the Constitution of the Republic of Kazakhstan access to courts, freedoms and right on qualified legal assistance, also is meant to contribute a peaceful settlement of the dispute. The duty to provide protection lies on law enforcement, judicial and other government bodies. Consequently "case success" depends on many factors as the availability of relevant legislation, necessary and sufficient evidence of the client's position, qualifications and position of law enforcer, etc.

The determining of the criteria by which quality of legal assistance is to be evaluated is important issue. A fragmented mention in various documents regulating the activities of a advocate requires the systematization of the criteria.

Attemption of the Ministry of Justice of the Republic of Kazakhstan to regulate this issue by order No. 89 of February 16, 2015 did not introduce necessary clarity. The document contains general concepts that do not allow to define the quality of legal aid in a concrete and measurable way.
Therefore, it will be the following evaluation criteria of legal aid, which can be divided into three groups:

1. Criteria of proficiency are objective: they can be assessed, confirmed or not. If such requirements are optional for lawyers, there are compulsory professional requirements established by the legislation (availability of license, participation in collegium, qualification, etc.) for advocates.

2. Procedural criteria: compliance with the criteria for the implementation of legal procedures, prevents unfair provision of legal aid. It is covered by the legislative documents regulating the advocacy activities, as well as in the rules of professional ethics (compulsion to conclude a contract, compliance with procedural requirements and terms, confidentiality, etc.).

3. The evaluation criteria are subjective as the point of view of the client / appointor. These are the individual requirements of the client for receiving assistance (benefits, term / price, document quality, orderliness, efficiency, confidentiality, trust, etc.).
The balance between these criteria achieves a qualitative provision of legal aid to the client.

The detailed examination of each of the groups of criteria allows us to establish "standard" indicators, which can help us to determine the necessary level, under which we can talk about the lawyer's application of all efforts to protect the interests of the client.

There are restrictions, which is important and directly related to determining the quality of the legal aid providing by attorney together with the permissible and necessary requirements of the above three groups of criteria.

An analysis of compliance with these criteria makes it possible to determine whether the activities of an advocate correspond to the notion of qualitative legal aid.

The rules of ethics - Wiebe de Vries
The Netherlands

Advertisement and self-promotion of an advocate

The allowing of advertisement and self-promotion by lawyers has been and still is a topic of much debate in the legal profession. The development of the debate in my home town has moved from a strict ban on self promotion and advertisement to the lifting of such ban in 1993.
The ban was driven by the belief that the proper conduct of the legal profession as well as the trust in the legal profession are not served by active publication of the work as a lawyer. As time goes by and society has grown more critical on transparency, cost and quality of virtually any good or service one can purchase, also in relation to legal services clients are to be provided with means to select the appropriate lawyer for their case.
Rules that prohibit clear and transparent communication to serve the selection process by clients of the appropriate lawyer do not serve the interest of such client. From a clients perspective it can even be argued that the free choice of a lawyer is frustrated by a ban on self promotion and advertisement.
This has even become more a topic in the digitalized world. How do current rules align with the growing number of digital platforms where:
- lawyers can be found based on their experience;
- lawyers are reviewed/qualified on the basis of client reviews;
- lawyers offer their services through platforms that offer legal services as an intermediary between the legal aid needing client and the lawyer;
Further, lawyers can theoretically demonstrate their achievements on twitter, linkedin, facebook if you wish. In view of these opportunities that were not available until some years ago and certainly since many of the rules currently in place were introduced, the rules disallowing self promotion and advertisement should be viewed in the perspective of the improved means by clients to inform themselves on the kind of lawyer and legal service they need.
Key principles as a starting point to review the means lawyers have to "sell" their services are:
the independence of the lawyer as well as
the free choice of a lawyer as a right for those in need of legal services.
Fundamental starting points could be derived from the CCBE Code of Conduct for European Lawyers:
2.6. Personal Publicity
2.6.1. A lawyer is entitled to inform the public about his services provided that the information is accurate and not misleading, and respectful of the obligation of confidentiality

and other core values of the profession.
2.6.2. Personal publicity by a lawyer in any form of media such as by press, radio, television, by electronic commercial communications or otherwise is permitted to the extent it complies with the requirements of 2.6.1.
Further, in articles 3.6 and 5.4 of the same Code both fee sharing by lawyers with other professionals is not allowed as well as the payment of a provision by lawyers for a referral.
Obviously apart from the rules that regulate the legal profession, lawyers are subject to the general civil law and / or criminal law rules like any other services provider in the market, e.g. on misleading claims. I don't believe if making misleading claims is already sanctioned in the applicable legal system, lawyers should create a "lex specialis" on such matters.
In summary following from the above considerations and framework, it is my observation that:
clients are benefitting from clear and trustworthy communication by lawyers of their services, their field of expertise and specialism, cases they have represented (if not conflicting with their confidentiality duty).

The era of transparency and accessibility of information through internet makes that both clients and lawyers are much better capable to find the right lawyer to handle their legal needs.
Like any other service provider lawyers should refrain from misleading claims. It could be argued that lawyers should refrain from advertisements where services between lawyers are compared. As any mandate differs from other mandates, however, such comparing is likely to be misleading especially in more specialized cases, and therefore it is an open question whether comparing advertisements are needed to be banned in professional ethics codes. Clearly this strongly depends on the domestic legal framework for such matters.
Finally, conflicts may arise where lawyers advertise themselves e.g. in website arrangements where fees are charged in case a client through such website engages with the lawyer. These matters should indeed be reviewed on the basis of the provision and/or fee sharing ban.

The rules of ethics - C.M.Chan
Hong Kong - China

Professional Ethics and Integrity

Mr. C. M. Chan
Council Member
The Law Society of Hong Kong

15 June 2018

- What is "professionalism"?
- Professional ethics and integrity
  - The Law Society of Hong Kong's objectives
  - Related statutory and non-statutory provisions
  - The Hong Kong Solicitors' Guide to Professional Conduct

What is "professionalism"?

The Law Society's objectives

- In summary, they are as follows:
  - to support and protect the character, status and interests of solicitors in Hong Kong
  - to promote good standards of practice and maintain ethical practice
  - to ensure compliance by solicitors with relevant laws, codes, regulations and practice directions
  - to develop and maintain the work of solicitors in all areas of the law, legal practice and procedures
  - to ensure the view of solicitors is accurately and purposefully communicated
  - to provide services to its members
  - to consider all questions affecting the interests of the profession, and to represent the profession to procure changes of law or practice

Commitments for The Law Society's Members

- Cap. 159 Legal Practitioners Ordinance
- Cap. 4A The Rules of the High Courts
- Solicitors and registered foreign lawyers of the Law Society of Hong Kong have to comply with all the rules, regulations, and the Hong Kong Solicitors' Guide to Professional Conduct

- The Standing Committee of Compliance oversees The Law Society's administrative and regulatory function.
- 20 committee members, 10 of which are Council members
- The Conduct Section of the Compliance Department is mainly responsible for investigating allegations of professional misconduct against solicitors, foreign lawyers, trainee solicitors and employees of solicitors and foreign lawyers.
- In 2017, it handled 1,037 complaints, of which 480 complaints were lodged or referred by members of the public and government organisations and 50 complaints were made by solicitors. 893 files were closed during the year; of which 308 were closed without seeking an explanation.

Hong Kong Solicitors' Guide to Professional Conduct

- Related rules include:
  - 1.02 The general principles of professional conduct apply to all solicitors, trainee solicitors and registered foreign lawyers whether employed or not.
  - 1.03 Conduct subject to discipline
  - 6.01 Duty to act competently
  - 8.01 Duty of confidentiality
  - 9.03 Conflict of interest between existing or former client with prospective client
  - 13.01 Fair dealing
- Responsibility for courts and litigation:
  - 10.02 The duty of a solicitor
  - 10.03 Duty to court

Thank You

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Legal aid - Ph. D. Dariusz Gibasiewicz Poland

FREE LEGAL AID IN POLAND (MAIN ISSUES)

DARIUSZ GIBASIEWICZ, PH.D., ATTORNEY AT LAW

FREE LEGAL AID IN POLAND AT THE PRE-LITIGATION STAGE (MAIN ISSUES)

The problem of access to legal aid is of great importance in every country regardless of its location and how wealthy it is. It should be an object of a serious public debate, involving government bodies, legal corporations, and representatives of the non-governmental sector. Such a debate should be aimed at:

– improving the quality and effectiveness of free legal aid,

– increasing access to legal aid for persons who cannot afford to hire a lawyer,

– more efficiently using means assigned by the state for legal aid,

– making better use of, improving and modifying presently functioning procedures, within the existing means,

– introducing, within the existing means, alternative forms of granting free legal aid applied in the world,

– developing forms for granting legal aid to persons that do not burden the state budget (e.g., pro bono work),

– conducting state surveys and collecting statistical data concerning legal aid.

FREE LEGAL AID IN POLAND AT THE PRE-LITIGATION STAGE (MAIN ISSUES)

The question of free legl aid is regulated in Poland in law from August 5, 2015 about free legal aid and legal education.

[Range of free legal assistance]
Free legal aid includes:
1) informing the person entitled about the current legal provisions, about his or her rights or about his obligations or
2) indication to the authorized person of how to solve his/her legal problem, or
3) assistance in preparing a draft of pleading in matters referred to in points 1 and 2 except to procedural documents in pending preparatory or court proceedings and pleading in pending court-administrative proceedings, or
4) preparing a draft of pleading for exemption from court costs or appointing an attorney ex officio in court proceedings or appointing an advocate, attorney at law, tax advisor or patent agent in court-administrative proceedings.

FREE LEGAL AID IN POLAND AT THE PRE-LITIGATION STAGE (MAIN ISSUES)

Free legal aid does not cover the matters of:
1) tax related to running a business;
2) legal aid in the field of customs, foreign exchange and commercial law;
3) related to running a business, except for the preparation for commencement of this activity.

FREE LEGAL AID IN POLAND AT THE PRE-LITIGATION STAGE (MAIN ISSUES)

Free legal aid is granted to a natural person:

1) who during the 12 months preceding the request for free legal aid was granted a social assistance benefit under the Act of 12 March 2004 on Social Welfare and to who during this period, no decision has been issued on the return of the contribution unduly collected or

2) who has a valid Large Family Card, referred to in the Act of 5 December 2014 on the Large Family Card or

3) who obtained the certificate referred to in the Act of 24 January 1991 on vetereans and certain persons who are victims of war and post-war repressions or
4) who has a valid veteran's card or a veteran's identity card, referred to in the Act of 19 August 2011 on veterans operating outside the state,or

5) who is under 26 years of age, or

6) who is over 65 years old, or

7) who, as a result of a natural disaster found himself/herself in a hazardous situation or suffered losses, or

8) who is pregnant.

FREE LEGAL AID IN POLAND AT THE PRE-LITIGATION STAGE (MAIN ISSUES)

- Persons entitled to provide free legal aid are as follows:
  Free legal assistance is provided by an advocate or an attorney-at-law in person, and in particularly justified cases by the advocate trainee or attorney at law trainee.

- Before providing free legal aid, an authorized person may be required to provide a document proving his or her identity. An advocate or attorney-at-law may for important reasons refuse to provide free legal aid, informing the person entitled about other points of free legal aid in the poviat area (the territorial self-government unit).

FREE LEGAL AID IN POLAND AT THE PRE-LITIGATION STAGE (MAIN ISSUES)

The poviat entrusts the administration of half of the points of free legal aid to a non-governmental organization conducting public benefit activity, hereinafter referred to as a "non-governmental organization". If there are not more than three points of free legal aid per poviat, a non-governmental organization is entrusted with running one point of free legal assistance.

Free legal aid in points of free legal aid entrusted to a non-governmental organization may also be provided by:
1) tax advisor - in the field of tax law, excluding tax matters related to running a business;
2) a person who:

a) graduated from law studies and obtained a master's degree or foreign law studies recognized in the Republic of Poland,

b) has at least three years of experience in the performance of duties requiring legal knowledge concerning activities directly related to the provision of legal assistance,

c) enjoys full public rights and has full legal capacity,

d) it has not been sentenced for an intentional offense prosecuted by public indictment or a fiscal offense.

FREE LEGAL AID IN POLAND AT THE PRE-LITIGATION STAGE (MAIN ISSUES)

- The extent of authorised persons to obtain free legal aid is wrongly determined.
- The quality of the free legal aid is ofen not satisfactory. The Bars receives complaints about the actions of attorneys; many clients complain about *ex officio* legal aid provided by advocates and attorneys. There are no standards of professional conduct related to *ex officio* cases. There is also no system of quality control. All responsibility lies within professional bodies that are widely criticized for not fulfilling this task properly.
- The main problems are also as follows [at the litigation stage]:

– dramatic delays in payment for ex officio cases (sometimes almost two years);

– unsatisfactory fees for ex officio cases based on minimum amounts, with no differentiation in payments according to time spent on a case, its complexity, or details of the lawyer's costs.

FREE LEGAL AID IN POLAND AT THE PRE-LITIGATION STAGE (MAIN ISSUES)

- The Ministry of Justice and legal corporations should introduce the element of promoting *pro bono* attitudes into the advocates training system; for example, part of the training could take place in non-governmental organizations providing citizen with legal advice or at university law clinics.
- A comparative survey of costs and effectiveness of free legal aid should be provided.

FREE LEGAL AID IN POLAND AT THE PRE-LITIGATION STAGE (MAIN ISSUES)

Other entities providing free legal aid.

- non-governmental organizations - private not-for-profit organizations created to accomplish a social goals (for example, associations and foundations). Non-governmental organizations do not include political parties. Within their specialization, many non-governmental organizations provide also citizens with legal advice and cooperate with professional lawyers. For example, there are organizations dealing with protection of children, women, single fathers, victims of crimes, victims of doctors' errors, consumers' rights and many other.
- Powiat's consumer rights spokesman (powiatowy rzecznik konsumentów). A body appointed by a Powiat (district) council (may be joint for several Powiats) providing free assistance to consumers. A consumer rights spokesman provides free legal advice within this scope and may also, for example, institute actions on behalf of consumers, participate in pending litigations and also appear as public prosecutor in cases prosecuted as petty offences against consumers.

FREE LEGAL AID IN POLAND AT THE PRE-LITIGATION STAGE (MAIN ISSUES)

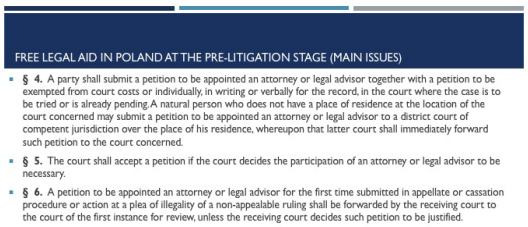
Other examples:

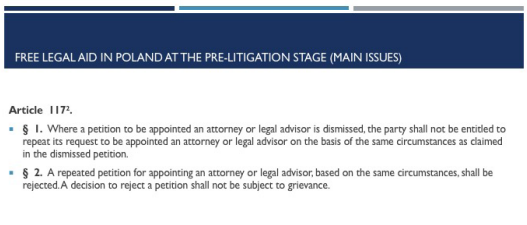
- Prosecutor's Office;
- Consumers` Federation;
- Tax Offices;
- National Labor Inspectorate;
- Center of Assistance for Victims of Crime;
- University Legal Clinics;
- Patient Rights Ombudsman;
- Ombudsman for Patient Rights of Psychiatric Hospitals
- Consumer Rights Ombudsman;
- Insurance Ombudsman;
- Consumer Associations;

FREE LEGAL AID IN POLAND AT THE PRE-LITIGATION STAGE (MAIN ISSUES)

Civil Procedure Code:

- **§ 1.** A party who is exempted by the court from the whole or part of court costs may request to be appointed an attorney or legal advisor.
- **§ 2.** A natural person who is not exempted by the court from court costs may request to be appointed an attorney or legal advisor if he submits a statement to the effect that he is not in a position to bear the costs of an attorney or legal advisor's fee without affecting the support of himself and his family.
- **§ 3.** A legal person or another organisational unit with a capacity granted by this Act to be a party to court proceedings which is not exempted by the court from court costs may request to be appointed an attorney or legal advisor if he is able to prove that he does not have sufficient funds to bear the costs of an attorney or legal advisor's fee.





Legal aid - Aleksandr Giterman
Kazakhstan

Annotation: Systematization and standardizing general rules of providing legal aid. The standard is relevant in the light of the ongoing judicial reform and reform of the legal profession. It is aimed at improving the quality of legal aid, the possibility to assess the quality of the provided services by the advocate, allows for abandoning the subjective criteria for assessing the advocate's work.

Introduction.

The development of the legal profession is, first of all, the provision by the state of the possibility for advocates to provide legal aid under the conditions determined by law.
Now at the legislative level there is a systematic strengthening of the advocate's role. As a consequence, an increase in the means and ways of legal protection and judicial evidence

for citizens and legal entities.
The constitutional and legal task of rendering qualified legal aid to individuals and legal entities is the duty of advocates. Only advocates are assigned with the definition (role) of "qualified legal aid " and the ways to provide it to individuals and legal entities. Intervention in this activity by third parties - not advocates, is unacceptable. It contradicts the norms of international and national law.

However, these provisions do not abolish the self-regulatory nature of the advocate's activities and are not the grounds for preventing the development and improvement of means for rendering qualified legal aid.

The Code of Professional Ethics for Advocates contains the common values of the ethics of positioning the legal profession and the relationship with the Client. The existing methods and rules for providing legal aid in specific cases are fragmented and not systematized. They are not available to a wide range of advocates. Especially for those who are just beginning to practice.

Recently, a very important trend has been observed – more demanding citizens who are the clients of advocates, both in relation to the form and procedure of concluding agreement on the provision of legal aid, as well as in relation to the quality of the advocate's performance and its undertaken obligations.

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The society demands an opportunity to assess the quality of advocate's activity. And understanding of the actions that the advocate performs in the interests of the Client. Even if it is still possible to establish the non-fulfillment of advocate's obligations, a standard is needed to determine if he or she has properly executed them, which determines the proper performance of his or her obligations. Professionalism is built, above all, on the basic principles and rules. The minimum requirements for the advocate's work are reflected in the standard of the "GITTER MANN" Advocate's Office "Qualified Legal Aid". It became a model of actions that an advocate should perform during the course of carrying out Client's mandate on the provision of legal aid. The standard supplements the existing requirements for the advocate's activities.

Standard of qualified legal aid

Introduces the documentation of the advocate's actions related to the analysis of the factual circumstances of the case, the analysis of the legal qualification (evaluation) of the case, the analysis of evidence, the development of a position on the case. Each of the below points are documented:

- Report No.1 "Analysis of initially submitted evidence and information" - a general chronology of events and documents. Assessment of evidence - the admissibility, relevance and sufficiency for achieving the objectives of the position in the case;
- Report No. 2 "Legal norms to be applied" - the rules of law governing the process of evidencing are general, i.e. related to the proof of any case, and special, regulating the

specifics of the evidence for certain categories of cases;

- Report No. 3 "Formation of the evidentiary basis of the case" - establishment of the circle of facts entering into the subject of proof and the determination of the necessary evidence;
- Report No. 4 "Advancing of the version that positively interprets facts, and the formulation of a party's legal claim".

In criminal and administrative cases, one report is prepared No. 1-1. Which contains a list of primary and necessary information for the provision of legal aid, forms and secures the Client's version/position.

Acts No. 1,2 distinguishes responsibility and assignes duties for the performance by an advocate or by the Client of certain actions.

Act No. 1 "Distribution of work on the collection of information and documents." This act establishes the obligation to perform within a deadline certain works and other activities between the Advocate and the Client to collect the necessary information and documents.

Act No. 2 "On the coordination of Client's obligations on the submission of documents and other evidence" This act obliges the Client to submit information and documents within the specified period (within the deadline).

Completed reports demonstrate to the Client a professional approach to fulfilling his or her mandate in provision of legal aid. The analysis of the case through the reports gives the advocate maximum possible information about the events with a detailed study of the legal situation. It prepares advocate for the realization of the Client's position in the court proceedings. The reports provide the advocate with a sufficient information to make decisions on the most beneficial representation of the Client's interests or Client's protection.

Conclusion

Introduction to the general practice as one of the means to provide legal aid as per the standard of organization " Advocate's office" GITTER MANN" "Qualified legal aid " which will provide advocates with a sample of actions in providing legal aid in specific cases, will create the basis for further improvement of the procedure for providing legal aid, will increase the trust of citizens in the advocates' actions, will eliminate unreasonable complaints from the side of the Client in the collegium of advocates, will provide the advocate with a documentary evidence of the executed work, will exclude subjective criteria for evaluating advocate's work and will once again confirm that the advocate is the guarantor

Legal aid - Suhurat Sadikov
Uzbekistan

The right of a suspect or accused to defence is one of the fundamental principles of criminal justice and derives directly from the Constitution of the Republic of Uzbekistan.
Article 116 of the Constitution stipulates:
An accused shall be ensured the right to defence.

The right to legal assistance shall be guaranteed at any stage of investigation and legal proceedings. Legal assistance to citizens, enterprises, institutions and organisations shall be given by the College of Barristers. Organisation and procedure for the work of the College of Barristers shall be specified by law.
The matters of exemption, either in full or in part, from payment for legal assistance have been defined more specifically in:
- Article 50 of the Criminal Procedure Code of the Republic of Uzbekistan, which stipulates that 'the inquiry officer, investigator, prosecutor or the court conducting the proceedings in the case may relieve the suspect, the accused, the defendant from payment, in full or in part, of the legal assistance costs. In such cases, the costs of the lawyer's work shall be met by the State, as prescribed by the Cabinet of Ministers of Uzbekistan';
- Article 11 of the Law of the Republic of Uzbekistan 'On Advocacy', according to which, 'upon relief of a person from the payment of legal assistance costs due to his insolvency, legal assistance by a lawyer appointed to participate in the criminal proceedings shall be provided at the expense of the State';
- Resolution No. 137 of the Cabinet of Ministers of the Republic of Uzbekistan 'On measures to improve the payment mechanism for legal assistance rendered by lawyers at the expense of the State' adopted on June 20, 2008, which establishes the main and only criterion that allows assistance from the State — the average aggregate monthly income per each member of the family of a person entitled to relief from the payment for the legal assistance delivered by the lawyers must not exceed 1.5 times the minimum wage established at the date of the resolution (ruling) to relieve from payment for the legal assistance.
This Resolution also stipulates that the State shall cover the costs of legal assistance in the event of participation by the lawyer in the proceedings related to the waiver by the suspect, accused or defendant of the defence counsel, as well as in the instances where, under Article 52.2 of the Criminal Procedure Code of the Republic of Uzbekistan, participation of a defence counsel in a criminal case has been made mandatory;
- a regulated procedure is established in the Regulation 'On the procedure for charging to the State the costs of legal assistance delivered by lawyers to a suspect, accused or defendant' approved by a joint resolution of the Ministry of Justice and the Ministry of Finance on 26/11/2008.

Furthermore, the laws of the Republic of Uzbekistan define the instances where participation by a defence counsel in the case shall be mandatory.
In particular, under Article 50 of the CPC, participation of the defence council shall be mandatory in the cases involving:
1) minors;
2) mute, deaf, blind or other persons who have difficulties with the exercise of their right to defence because of their physical disabilities or mental illness;
3) persons who have no command of the language of the criminal proceedings;
4) persons suspected or charged of the crimes punishable by life imprisonment;
5) persons with contradicting interests, if at least one of them has a defence council;
6) participation of a state or public prosecutor;
7) participation of a lawyer as a representative of the victim;

8) application of compulsory measures of a medical nature;
9) consideration by the courts of appeal, cassation or supervisory instance.
The inquiry officer, investigator, prosecutor and the court may find participation by the defence council in other cases necessary if they are of the opinion that the complexity of the case or other circumstances may impede the exercise of the right to defence by the suspect, accused or defendant.
Where in the instances referred to in Paragraphs 1 and 2 of this Article the suspect, accused, defendant, or other persons acting at their request or with their consent, have failed to invite the defence counsel, the head of a legal firm determined by the territorial office of the Chamber of Advocates of the Republic of Uzbekistan, under the resolution issued by the inquiry officer, investigator, prosecutor or under the ruling issued by the court to appoint the defence counsel, shall ensure participation of the defence counsel in the criminal proceedings within four hours from the delivery of such resolution or ruling at the territorial office of the Chamber of Advocates of the Republic of Uzbekistan.
For many years, the problem of participation by the 'duty' lawyers in criminal proceedings, or rather at such stages as inquiry and preliminary investigation, has been the most serious and urgent.
This term has become firmly entrenched in the minds of all legal practitioners and is directly associated with dishonest lawyers who, acting to please similarly unscrupulous investigators, put their signature on any procedural papers, thereby attesting — contrary to the truth — that they either allegedly took part in the relevant investigative action or that the investigative action was conducted in full compliance with the law, although in fact deviations from the law occurred.
It is not uncommon for serious procedural violations to be committed during initial investigation involving the 'duty' lawyers, in particular, during interrogations; the appointed lawyers sometimes fail to take measures appropriate to their status of attorney, i.e., to act adequately as defence counsel.
Obviously, the work of such a lawyer will be paid for, regardless of his vigour in defending the interests of his client or the outcome of his participation in the proceedings.
This category of lawyers thus remains passive observers and participates in the process perfunctorily.
It constitutes gross violation of the Rules of Professional Ethics of the Lawyer, which require that each lawyer energetically assert his legal stance and actively defend his clients' rights, freedoms and interests, guided by the law.
It is for good reasons that the Rules of Professional Ethics of the Lawyer stipulate that 'the duties of a lawyer, when providing legal assistance to clients at the expense of the State upon appointment by the inquiry or preliminary investigation authorities, prosecutor or court, do not differ from the duties when providing paid legal assistance under an agreement.'
The Chamber of Advocates combats this negative phenomenon, but, in most cases, only when complaints of poor-quality legal assistance are made by the public.
In this regard, the Chamber of Advocates has developed a draft 'Procedure for appointment of lawyers to provide legal assistance to a suspect, accused, or defendant at the expense of the State', in which a solution to this problem is suggested. It intends to arrange for appointment of lawyers as defence counsels pursuant to the lists compiled by the territorial

offices of the Chamber of Advocates, based on free expression of their will by the lawyers themselves, as reflected in their application for inclusion in the list of appointed defence counsels. Furthermore, this draft has been forwarded to all legal firms for discussion.
It is important to note here that our ideas have been reflected in the Decree No. 5441 of the President of the Republic of Uzbekistan 'On measures for radical improvements to the efficiency of the institution of advocacy and expansion of the lawyers' independence' adopted on May 12, 2018, which, among other tasks, charges the Chamber of Advocates with the establishment of updated procedures and criteria for automatic determination of a legal firm to provide legal assistance to a suspect, accused, or defendant at the expense of the State, at the same time preventing the selection of the same lawyers and third-party interference in the process.
To this end, the Chamber of Advocates is currently working to study international experience in this field. I am grateful to our Russian partners, particularly to Mr Aleksey Sozvariyev, President of the Chamber of Lawyers of the Kaliningrad Oblast, who has shared his experiences and proposals concerning such a system.
By the end of this year, we intend to introduce a dedicated electronic system for automatic selection of lawyers providing legal assistance to a suspect, accused or defendant at the expense of the State.
We hope that this system would allow for the following positive results to be attained:
- elimination of the corruption problem, or rather, the vicious links between investigators, inquiry officers and certain lawyers;
- prompt selection of appointed lawyers;
- access for all lawyers who wish to participate in the provision of appointed legal assistance;
- no need for the court, investigator or inquiry officer to search for the appointed lawyer by themselves;
- quality control of the legal assistance provided by lawyers; the ability to keep statistics of the lawyers engaged in this system, the number and types of the legal assistance delivered, using electronic databases.

The right to effective provision of legal assistance, which is an integral part of the right of access to justice, is enshrined in numerous international instruments establishing human rights and their guarantees.
These documents include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, etc.
It is important to note that each country at a certain stage of its development has to address the problem of public access to free legal aid. Social support for low-income citizens requiring legal aid is therefore also relevant for Uzbekistan.
Under the Constitution of the Republic of Uzbekistan, each citizen has the right to judicial protection.
However, the inability to fund lawyers' engagement in civil or administrative proceedings at the expense of the State results in a situation where a certain number of persons in

need of legal assistance have no access to it and are consequently deprived of the access to justice.

This is due to the fact that the current legislative framework for the provision of free legal aid in Uzbekistan has a number of shortcomings. For example:

- the law provides no clarification of the concept of 'free legal aid', its types or procedures for obtaining it;
- the law lacks clear criteria for determination of persons eligible for free legal aid;
- under domestic laws, free legal aid at the expense of the State is only provided in criminal cases;
- the domestic system for provision of free legal aid to low-income citizens has not been established;
- there is no clearly defined procedure for paying the costs of legal assistance from the State Budget of the Republic of Uzbekistan, including civil or administrative liability of the officials for failure to reimburse lawyers for the delivered free legal aid;
- no necessary legal framework has been developed for the provision of free legal aid to the public by NGOs or civil-society institutions which, as practice shows, greatly contribute to the exercise of the human right to legal protection;
- no alternative framework for the provision of free legal aid has been established.

Unfortunately, this is only a tip of legal problems in the field of free legal aid.

All this suggests that the development and adoption of a separate Law on Free Legal Aid is long overdue.

It may be safely said, following the review of the experience accumulated in the implementation of laws on free legal aid, that only the Bar is capable of becoming an important element in the exercise of the citizens' constitutional right to legal assistance. And it is only thanks to collaboration between the State and the lawyer community that the socially unprotected social groups will be able to get support in exercising their right to free legal aid.

It should be noted in this regard that the Bar is a key institution in a law-based state, focused on the protection of human rights and freedoms. The principle of independence, both of individual lawyers and of the entire lawyer community is the backbone of the lawyers' activities. The lawyer is protected against any influence that may obstruct his activities. The lawyer is independent of government or other authorities. Therefore, where a citizen needs to resolve a dispute with a public entity, the lawyer will be best suited to protect the interests of such a citizen.

The lawyer's status is the sum of such elements as experience, legal education, and, most importantly, the lawyer verifies his expertise by taking qualifying examinations and upgrading his skills.

Moreover, the laws impose on the lawyer the obligation to comply with ethics requirements enshrined in the Code of Professional Ethics of the Lawyer. All these aspects comprise a guarantee of competent and skilled legal assistance provided to the public.

Lawyers are also required to observe the attorney-client privilege, i.e., not to disclose the information that came to their knowledge in the course of their activities. This secrecy creates trust-based communication between a lawyer and a citizen requesting his assistance.

It is also important to note that the lawyer community possesses a mechanism of discipli-

nary liability. In other words, efficient measures are in place to discipline a lawyer in the event of violation of the laws on advocacy.

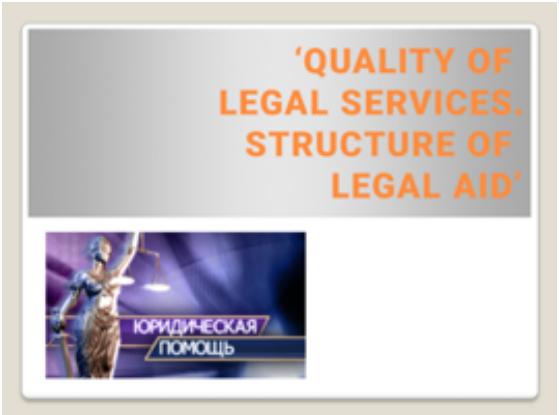
In order to secure the Bar's leading role in the provision of free legal aid to the public, a whole range of measures is proposed to be implemented under the control of the Chamber of Advocates of the Republic of Uzbekistan, rather than government authorities. They include the development and implementation of legal assistance standards, creation of a free legal aid statistical accounting system to keep records of each lawyer and legal firm; creation of databases of specialist lawyers and legal firms, along with their mandatory posting on the Chamber of Advocates' website, including for the purposes of informing low-income citizens who require specialised legal assistance; summarising and reviewing the Chamber of Advocates' disciplinary practice related to the disciplinary proceedings instituted against the lawyers providing free legal aid, in order to identify and eliminate any errors in the rules of its provision.

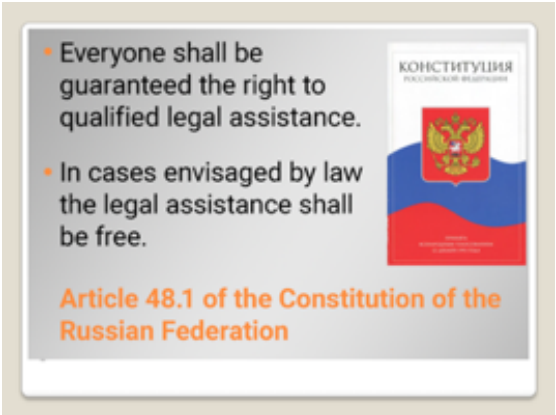
It would seem advisable to introduce a unified procedure for registration of low-income citizens with social welfare authorities, involving the issuance of relevant documents that, upon presentation, would require the lawyer to provide free legal aid to any particular citizen. This procedure would allow for the red tape to be cut in the applicable rules for provision of documentary evidence of the status of a low-income citizen requiring free legal aid.

Thus, serious reforms are required to the free legal aid institution, including defence by appointed lawyers. One way of reforming this institution would be to set up dedicated legal firms at the expense of the State to provide free legal aid to socially vulnerable segments of the population.

Step by step, one may thus achieve elimination of all major problems in the matters of the State-appointed defence, along with any infringements on the rights to skilled legal assistance for all those who receive legal assistance from a lawyer at the expense of the State.

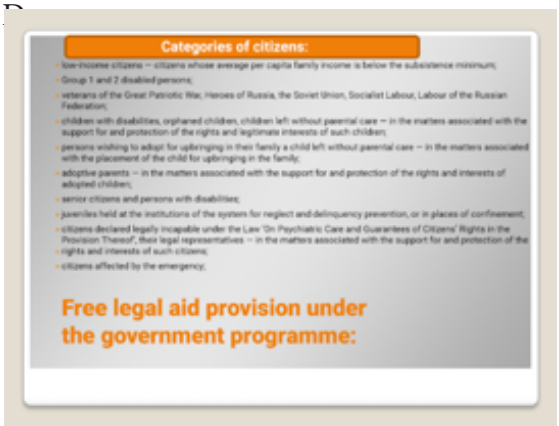
Legal aid - Aleksey Sozvaryev
Russian Federation

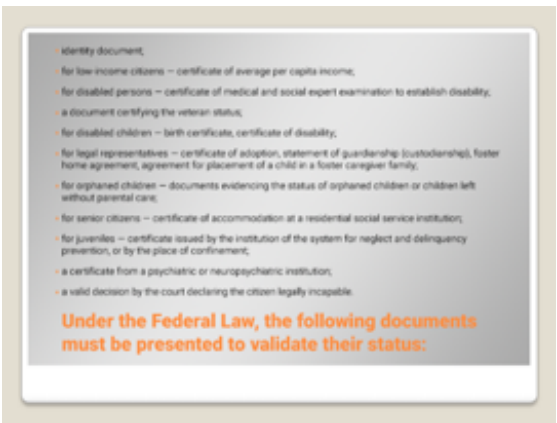




References to the Constitution of Russian Federation – section 1 article 48 guarantees every citizen right to qualified legal aid.

Federal Law No. 63- May 31, 2002, "On Advocacy-legal profession in the RF
Article 44. Lawyers are responsible for ensuring the provision of legal aid to citizens of the Russian Federation free of charge, as well as legal aid for appointment in criminal and civil proceedings. The provision of free legal aid is regulated by Federal Law No. 324-FZ of November 21, 2011 "On Free Legal Aid in the Russian Federation", as well as regional laws. In particular, on the territory of the Kaliningrad region, the Law No. 194 of December 26, 2012 "On Free Legal Aid in the Kaliningrad Region" (adopted by the Kaliningrad Regional



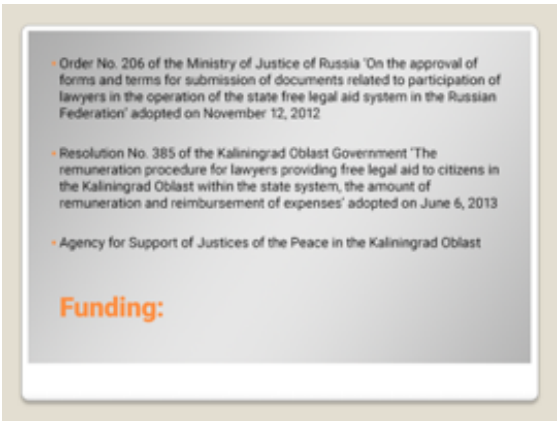


By which it is determined that citizens have the right to receive free legal aid in cases and in the manner prescribed by these laws.

The following categories of citizens have the right to receive free legal aid:
citizens whose average per capita income is lower than the subsistence level-poor citizens;

- invalids of I and II groups;
- veterans of the Great Patriotic War, Heroes of Russia, the Soviet Union, Socialist Labor, Labor of the Russian Federation;
- children with disabilities, orphans, children left without parental care, on issues related to the provision and protection of the rights and legitimate interests of such children;
- persons wishing to adopt for the upbringing in their family of a child left without parental care, on issues related to the placement of the child for upbringing in the family;

- parents who adopt children, on issues related to the provision and protection of the rights and interests of adopted children;
- citizens of the elderly and disabled ";
- minors held in institutions of the system of prevention of neglect and delinquency, in places of deprivation of liberty;
- citizens, in accordance with the Law "On psychiatric care and guarantees of the rights of citizens in its provision";
-incapacitated, their legal representatives, on issues related to the provision and protection of the rights and interests of such citizens;
- Citizens affected due to the emergency situations;

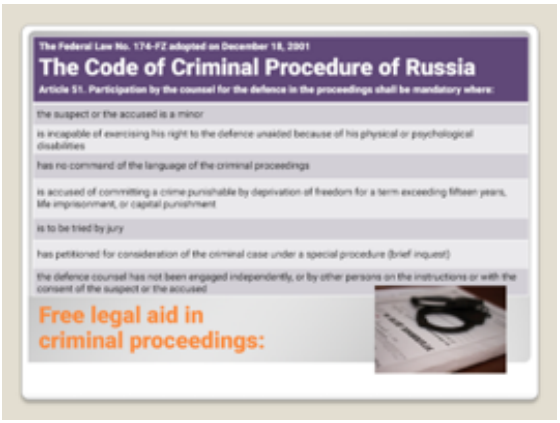


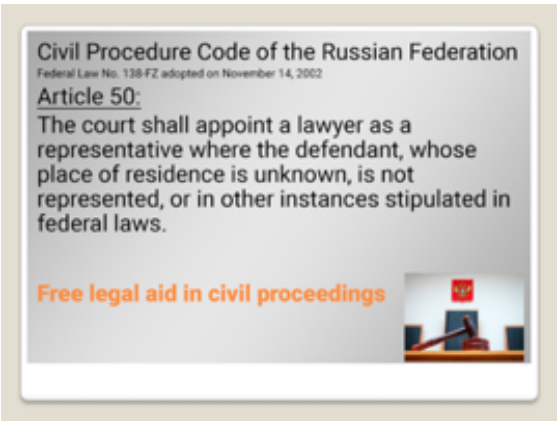
In order to receive free legal aid under the Federal Law, citizens must submit the following documents to confirm their status:
- Identity document;
- Poor - a certificate of per capita income;
- To the disabled - a certificate of medical and social expertise on the determination of disability;
- a document confirming the status of a veteran;
- children with disabilities - birth certificate, certificate of disability;
- to legal representatives - a certificate of adoption, an act on the establishment of guardianship (trusteeship), an agreement on a foster family, an agreement on the placement of a child in the family of a foster parent;
- orphans - documents confirming the status of orphans and children left without parental care;
- citizens of the elderly - a certificate of residence in a stationary social service institution;
- a minor - a certificate from the establishment of the system for the prevention of child neglect and juvenile delinquency or from places of deprivation of liberty;
- certificate from a psychiatric or psycho-neurological institution;
- The court's decision to recognize a citizen as legally incompetent.

The above laws and its functionality is ensured by the Order of the Ministry of Justice of Russia No. 206 of November 12, 2012 "On the approval of forms and deadlines for the submission of documents related to the participation of lawyers in the activities of the state

system of free legal assistance in the Russian Federation."

And also, the Decree of the Government of the Kaliningrad Region No. 385 of June 6, 2013, which establishes the procedure for payment of lawyers who provide free legal aid to citizens in the Kaliningrad region within the state system, the amount of payment and compensation for expenses. The main administrator of the budget funds for the purposes is entrusted on to the Agency for Ensuring the Activity of Justices of the Peace in the Kaliningrad Region. Goes on listing the types of services and the prices thereof.

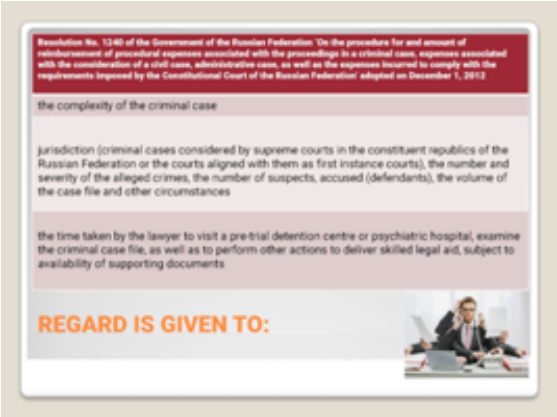




The next type of provision of free legal aid is provided for the participation of lawyers in criminal cases on the appointment of the bodies of inquiry, investigation and trial in criminal cases, as well as the participation of advocates on the appointment of the court in the civil process.

This procedure is defined by the Federal Law of the Russian Federation of December 18, 2001 N 174-FZ Criminal Procedure Code of Russia - Article 51. It is provided that participation of an advocate is obligatory if:
Suspect, the accused is a minor;
The suspect, accused of physical or mental disability, cannot exercise his right to defense on his own;
The suspect, the accused, does not know the language in which the criminal case is being conducted;
A person is accused of committing a crime for which punishment may be imposed in the form of imprisonment for more than fifteen years, life imprisonment or death penalty;
The criminal case is subject to review by a court with the participation of jurors;
The accused filed a petition to review the criminal case in a special order;
The suspect stated the petition for the criminal investigation of the inquiry in abbreviated form in order;
If, in the cases provided for in part one of this article, the defender is not invited by the suspect himself, the accused, his legal representative, or other persons on the instructions or with the consent of the suspect or accused.
Article 50 "Civil Procedure Code of the Russian Federation" Federal Law of Russia No. 138-FZ of November 14, 2002 established that the court appoints an advocate as a repre-

sentative in the absence of a representative from the defendant whose place of residence is unknown, as well as in other cases provided for by the federal law cases.



Decree of the Government of the Russian Federation of December 1, 2012 No. 1240 "On the procedure and amount of compensation for procedural costs related to the criminal proceeding, costs in connection with the consideration of a civil case, administrative matter, as well as expenses with the fulfillment of the requirements of the Constitutional Court of the Russian Federation"

This decision adopted the regulation according to which the amount of remuneration of the advocate participating in the criminal case on the appointment of the investigator, investigator or court is set at a rate of at least 550 rubles and not more than 1200 rubles per night, and at least 825 rubles at night and no more than 1800 rubles.

In non-working holidays or weekends, including night time, not less than 1100 rubles and not more than 2400 rubles.

When determining the size of a advocate 's remuneration, the complexity of the criminal case is taken into account.

When determining the complexity of a criminal case, jurisdiction is taken into account (criminal cases considered by the supreme courts that make up the Russian Federation and the courts equated to them as courts of first instance), the number and severity of the alleged crimes, the number of suspects, defendants (defendants) cases and other circumstances.

Also what is paid are the following services: visiting the suspect, accused, defendant, convicted person, against whom the proceedings are conducted on the application of compulsory medical measures, which are respectively in the temporary detention isolator or in the psychiatric hospital, to study the materials of the criminal case, and also to perform other actions of an advocate for the provision of qualified legal aid provided, they are confirmed by documents.

Legal aid - Svetlana Vitkovskaya
Kazakhstan

A summary of intervention based on speaking notes provided in Russian.

The Constitution of the Republic of Kazakhstan guarantees all citizens

- the right to recognition as a person before the law and to protection of its rights and freedoms by all means that do not contradict the law, including necessary defense;
- the right to judicial protection of their rights and freedoms;
- the right to receive qualified legal aid In cases provided for by law, legal aid is provided free of charge.

In fact, the right to receive qualified legal aid it is the right to seek the assistance of an advocate within the framework of the right to defend one's rights and freedoms, including the judicial one.

Why only an advocate? Because the key word here is the word "qualified." An advocate is not just an expert with a higher legal education, in addition he must have a special qualification, having obtained a license to practice law.

Licensing is provided by the state, and the bar, as an independent institution, whose membership is a prerequisite for the provision of qualified legal aid, which organizes the work of advocates and supports the quality of such assistance.

Advocacy-legal profession- is a self-governing, self-financing, professional organization of advocates – where its main value consists of independence from the state. The independence of the advocate from the executive, judicial or other branches of power guarantees the citizen a truly qualified legal aid, a full protection of his rights and freedoms from any violations, including from the state authorities.

Thus, it is through the institution of legal profession that the state guarantees citizens the qualified legal aid.

State-guaranteed legal aid provided free of charge is the assistance provided by advocates which is paid from the state budget.

From here the main questions arise:
Who is providing this assistance? To whom?
Who and how performs the quality control?

Obviously, such assistance must be provided through the bar, a professional organization independent of the state. This institution has long been established, strengthened, has its

own history, structures, training centers, internship programs and so on.

Periodically, the question of creating a "state legal profession -advocacy" is raised. In this case, the positions of "qualification of legal aid" and "the quality of this assistance" still remain relevant. But also with a reservation on how the state represents "qualification" and "quality". However, forget about the independence of advocates. and in this case it is better off to chose independence

In the long term, it is necessary to raise the issue of expanding the range of persons entitled to receive free legal aid by including the following categories of citizens:

- victims of domestic and social violence;
- victims of torture;
- persons who are in places deprived of liberty;
- minor children suspected of committing a crime, under the age of criminal responsibility.

Of course, the quality of legal aid provided is one of the most important questions.

Given that its is public money, you need to create quality control mechanisms, but without undermining the principle of independence of the bar.

It is impossible not to mention the remuneration of advocates. The payment should correspond to the level of qualification, time spent and many other factors. We live in a state with a market economy, where good specialists are well paid. Where a free state-guaranteed legal aid is required, the state acts as the customer(contractor) of such aid, and it must pay for this to advocates accordingly. In this case, the right to demand the quality of legal aid will be justified.

Prospects for the development of state guaranteed legal aid on the basis of the legal profession in Kazakhstan would have preferred to see in the following ways: a strong independent legal profession, a decent payment for legal aid provided by advocates at the expense of the state, a reliable mechanism for monitoring the quality of this aid and broadening the circle of persons to whom such aid is provided.

Legal aid - Wenli Xu
China

The legal aid system is a judicial remedy system commonly used in many countries. It is a legal safeguard system which provides legal aid to vulnerable people who cannot protect their fundamental social rights through ordinary legal remedies, due to financial hardships or other factors, during every stage and every level in the operation of the judicial

system. It often takes the form of providing legal advice and assistance with discount or without remuneration. As a state action that realizes social and judicial justice and protects the fundamental rights of citizens, the legal aid system occupies a very important position in the judicial system of a country. Here I'd like to take this opportunity to introduce the legal aid system in China.

China's legal aid system originated in the mid-late 1990s. In March 1996, Criminal Procedure Law first wrote "legal aid" into the law, which stipulates that the courts may designate lawyers who are obligated to provide legal aid service to defend those who face financial difficulties in public prosecution cases.

In May, 1996, the Law of PRC on Lawyers provided legal aid obligations of lawyers in a separate Chapter. It specifies that besides criminal procedures, people who are in need of lawyers but unable to pay them when it comes to alimony, injury at work, claims for state compensation and pensions, are available to provide legal aid to the subject according to specified procedures. In addition, it specifies that it is a duty for a lawyer and law firm to provide legal aid.

The 2003 Legal Aid Regulations opened a new period in the development of legal aid in China. This administrative regulation set out the scope, application, review procedures and conditions, implementation, and legal responsibilities of legal aid. This was a significant step in creating an institutionalized legal aid system.

Over the following ten years, the Chinese legal aid system has seen significant development. Not only have extended the scope of legal aid, but also created many legal aid centers and legal aid foundations, programs.

The Ministry of Justice established the Legal Aid Center on December 18th, 1996 and the Legal Aid Foundation in 1997. Subsequently, each of the Provincial Departments of Justice began establishing legal aid centers, and financial allocation was granted for legal aid.

ACLA cooperated with the Legal Aid Center of the Ministry of Justice and the Legal Aid Foundation to launch "1+1" Legal Aid Volunteer Program since 2009. In this Program, one volunteer lawyer in addition to one volunteer law school student would go to impoverished areas in mid-west China to provide legal aid services. This Program mitigated, to some extent, the geographical imbalance of legal aid. In 2017, a lawyer from my law firm volunteered to take part in the Program in Qinghai Province, a county with no lawyers, to provide legal aid service to its residents. Such initiatives are currently recruiting volunteers again. Hebei Province will recruit dozens of volunteers this year to go to areas where there is a lack of lawyer resources, such as Qinghai, Tibet, Xinjiang, and Hainan.

In 2016, the "1+1" Program delegated a total of 109 lawyer volunteers, 64 college student volunteers and several grassroots legal service workers to 111 counties and districts in 13 provinces in the mid-west regions. According to the statistics of the Legal Aid Department of the Ministry of Justice, in the ten years since the Legal Aid Regulation was first introduced, the number of Chinese legal aid institutions, legal aid cases, recipients of legal aid, and governmental financial support have all made a qualitative leap. In the overall growth, the number of legal aid cases and number of recipients of legal aid saw the greatest development, with the numbers doubling within the decade.

Disciplinary Proceedings - Norville Conolly
United Kingdom

In the first session yesterday morning you heard about the critical importance of the independence of the legal profession, the independence of advocates and the independence of bar associations. Such independence is the hallmark of a free society. An independent Bar is key to the protection of the rule of law and to the protection of human rights. Indeed without an independent and accountable legal profession, faith in the entire justice system would be undermined. Central to this independence is the ability to self-regulate and self-govern without undue interference from the State or elsewhere. Self-regulation includes Bars maintaining professional standards which are upheld by establishing & maintaining a proper code of ethics, by supervising entry requirements to the profession , by providing continuing legal education and by having effective disciplinary mechanisms in place for the disciplining of lawyers who have breached the code of ethics or code of professional conduct. Self- regulation only works if lawyers adhere to the high standards of professionalism expected of them as agents of the administration of justice and are, where appropriate, held accountable. The legal profession's right to self-govern, as stipulated in United Nations Basic Principle 24, goes hand in hand with the obligation to also self-regulate effectively and in a manner which will achieve public confidence. While some jurisdictions allow for certain regulatory functions to be assigned to the judiciary or executive these should be limited in order to avoid unnecessary interference in the legal profession. In each instance however the balance between independence, integrity, confidentiality and the public interest has to be struck while balancing these with the aim of attracting public confidence.

This morning our speakers will look at disciplinary process against lawyers in Kazakhstan and the position in neighbouring regions and elsewhere and look at how these processes compare against best international practice. We hope that what we say this morning and in particular our recommendations will be carefully considered and included in the present draft law " On Advocacy and Legal Assistance" is finalised.

Clearly once a proper code of ethics is in place for lawyers, it follows that there will be complaints of breaches of this code by lawyer members. So how should these breaches be dealt with ?

United Nations Basic Principle 26 states that: Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.

But what if there is a breach of these codes?

United Nations Basic Principle 27 states that : Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

United Nations Basic Principle 28 states that : Disciplinary proceedings against lawyers

shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.
United Nations Basic Principle 29 states; All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.
It follows that any disciplinary proceedings should be expeditious, fair, independent and must guarantee due process in the course of proceedings. In relation to independence where the executive or state has a role to play in disciplining lawyers the independence of the legal profession can be undermined. There has to be a fair balance between the rights of the client and the right of the lawyer to a fair hearing and so the disciplinary system will usually include an important role for the Bar. As provided in the UN Basic Principles, the system for dealing with complaints must be independent of the state and transparent. As well as securing its fairness, impartiality and independence, the Bar also must weigh up aspects such as trustworthiness, image and respect and consider what reasonable expectations those outside the profession could or should have.
There should also be the right to an independent review or appeal by either the accused lawyer or the complainant.
Police Referral: The disciplinary body may from time to time receive a complaint which contains prima facie evidence of criminality by a lawyer. To deal with these instances the disciplinary body needs a non-discretionary policy that all allegations of criminal activity of a certain level should be passed to the relevant authority for criminal investigation.
Models: There isn't one model which fits all jurisdictions or one which is used by most jurisdictions. There are a range of different models which are used in disciplinary proceedings in different jurisdictions. There are some where the judiciary take the lead role. The regulation of the legal profession by the judicial branch of government is consistent with the doctrine of separation of powers and maintains the necessary balance between the three branches of government. Alternatively an ombudsman sometimes is used or another body independent from the Bar. Alternatively discipline can fall within the remit of the Bar itself and often does particularly for smaller or developing Bars which may not yet have sophisticated regulatory structures in place.. Where they don't, the Bar's independence is not necessarily undermined provided the regulatory body carrying it out is also truly independent. However the risk of dealing with lawyer discipline within the Bar itself is that the public may view this as a cosy arrangement which is not transparent and will appear as the lawyers judging themselves. For this reason some jurisdictions in this position have sought to increase public confidence by making the disciplinary body functionally separate from the Bar organisation with a separate chair perhaps being a lay person and having a mix of lawyers & law membership, the latter perhaps selected after public advertisement. Again in some jurisdictions the bar association itself will deal with less serious complaints but will send the more serious ones to an independent tribunal for adjudication. In most jurisdictions there will be a right of appeal, quite often to a court or to an independent appeals body.
In regard to Outcomes, these should include the ability to admonish, reprimand, censure, suspension, disbar, put on probation, to fine, to order restitution or to impose conditions

on practice.
In regard to the Disciplinary Process itself lots could be said with regard to this but in summary I'd emphasise the following points;

1. The process must have the confidence of the public & lawyers
2. It must be a transparent process therefore the body responsible should engage, explain & respond with all stakeholders
3. All potential complainants must have knowledge that a process exists, be user friendly & have easy access to it.
4. The process must be thorough but time efficient. Not too fast and certainly not too slow. Have clear and fair times for the lodging & processing of claims against a lawyer and also have clear & fair time limits after which complaints can't be lodged. The exception to this may be where serious criminality is involved.
5. Those in charge of the process must themselves continuously learn from it so as to improve it and be able to respond to criticism.
6. It must be an objective and independent process.

Publication:
For more serious offences, publication of the outcome of disciplinary proceedings should be considered in order to protect the public. While some jurisdictions do not publish minor disciplinary findings, other jurisdictions will do so. In the case of more serious findings, publication perhaps should be widely read journals or newspapers, not just law journals which the public would not normally read. In many jurisdictions information about disciplined lawyers is available on line.
Consideration should also be given to sharing disciplinary information with other regions or jurisdictions where the offending lawyer is known to practice. Guidelines, dealing with this position, called 'Guidelines For An International Regulatory Information Exchange Regarding Disciplinary Sanctions Against Lawyers' were recently approved by the IBA.

Two steps which might be considered:
Aside from proper & continuing training on matters such as ethics very many complaints against lawyers can be resolved at a very early stage if the following 2 steps are taken by regulatory authorities.

1. Persuade or make it compulsory for all lawyers to have an inhouse complaints resolution process. Very many complaints will be resolved if they are faced and dealt with at an early stage. Early Mediation/Arbitration be part of this and can substantially help here
2. Make letters of engagement compulsory. These will contain detail of what exactly the lawyer is saying he will do or not do and details what he exactly he is charging.

In summary, societies function best where there is strict adherence to the Rule of Law. In these societies lawyers fulfil a special role by being watchdogs of a just society based on the Rule of Law. It follows that lawyers themselves must operate to the highest standards and accordingly there must be a codes of ethics & conduct which not only reflects this but which also disciplines those lawyers who break this code. This disciplinary process must be effective, be expeditious, be fair, be independent and have the confidence of all stakeholders including the public and the lawyers themselves.

Disciplinary Proceedings - Mukhtar Mustafayev
Azerbaijan

I convey greetings from Mr Anar Bagirov, Chairman of the Bar Association of the Republic of Azerbaijan. He is unable to attend this event due to his participation in the events to be held at the Council of Europe. I express my deep gratitude for the warm hospitality extended to us in the brotherly Kazakh land. I have visited Kazakhstan many times and it always felt like home during these trips.

The policy of brotherhood and friendship laid down by Mr Nursultan Nazarbayev, President of the Republic of Kazakhstan, and Heydar Aliyev, National Leader of the Azerbaijani People, constantly remains in the focus of attention of our esteemed President Ilham Aliyev.

The Azerbaijani and Kazakh peoples are linked by the bonds of brotherhood and friendship that have lasted for millennia. Upon gaining independence, our countries have also been linked by constantly developing economic and political relations. In the Republic of Azerbaijan, there is a district named Gazakh, as well as a few villages in a number of the Respublic's districts, named Gazakhlar or Gasakh. This is not accidental, since our nations have a common history.

Earlier this year, on May 28, the Republic of Azerbaijan celebrated the 100th anniversary of its independence.

We are proud of the fact that Fatali Khan Khoyski, Alimardan bey Topchubashov, and Ismail bey Ziyadkhanov — one of the founders of the Republic of Azerbaijan — were lawyers. In the first years of the Republic's existence, they made efforts, for the first time in the Muslim world, to establish the Bar. During the Russian Empire, Alimardan bey Topchubashov had been elected to the State Duma from the Syr-Darya region of Turkestan, along with Mammad Amin Rasulzadeh, elected from the Fergana region.

Most recently, we have obtained historical documents dating to the period of the Republic and related to the establishment of the Bar on June 30, 1919. Therefore, we intend to hold events in 2019 dedicated to the 100th anniversary of the establishment of the Bar in the Republic of Azerbaijan.

I would like to present to you the information concerning the matter of disciplining the lawyers in the Republic of Azerbaijan.

Disciplining requires individual and balanced approaches. Disciplinary liability is necessary as an instrument that guarantees proper professional conduct by lawyers and conformity to minimum quality standards in the provision of services.

At the same time, one should be aware of the fact that lawyers are among the key participants in the administration of justice and perform one of the critical functions in defending fundamental rights and freedoms. In this regard, it should be borne in mind that, for this key role to be performed efficiently, lawyers, similar to other parties in the administration of justice, must be protected against any undue pressure.

Disciplinary proceedings must be conducted in compliance with the principles and rules developed by international institutions, entitling lawyers to participation in di-

sciplinary proceedings and appeals against disciplinary decisions.
Any sanctions applied to a lawyer must be proportionate to the severity of the committed offence.
The provisions on the lawyers' disciplinary liability are enshrined in the Law of the Republic of Azerbaijan 'On Advocacy'. A lawyer shall be brought to disciplinary liability upon detection of violation of the said Law, other legislation, or the Regulations on the Rules of the Lawyers' Conduct, as well as in the event of violation of the standards of lawyers' ethics in the performance of professional duty.
A lawyer may only be disciplined by the Praesidium of the Bar Association pursuant to the decision of the Lawyers' Disciplinary Commission. A disciplinary sanction may be applied to a lawyer within six months from the detection of a disciplinary offence and within a year from the date of such offence. Disciplinary proceedings against a lawyer are initiated at the Praesidium of the Bar Association. Within one month from the commencement of disciplinary proceedings, the Disciplinary Commission shall conduct an investigation, in which the lawyer is usually engaged, and submit a respective opinion to the Praesidium.
On the basis of this opinion submitted by the Disciplinary Commission, the following disciplinary sanctions may be applied to the lawyer by the Praesidium of the Bar Association: admonition; reprimand; ban on legal practice for a period between three months and one year.
Disciplinary proceedings shall be terminated if no violations have been discovered in the lawyer's actions or upon expiry of the date established for the institution of the proceedings. A decision to ban legal practice for a period between three months and one year may be appealed to court.
Where grounds exist for disbarring, and on the basis of the Disciplinary Commission's opinion, the Praesidium of the Bar Association shall be entitled to take legal action in the matter and ban legal practice for the lawyer until the court ruling has become effective.
As noted above, the grounds for disciplining a lawyer include the established violation of the Regulations on the Rules of the Lawyers' Conduct. These Regulations are adopted by the Conference (supreme body) of the Bar Association. The requirements of the Regulations are focused on improving the reputation of lawyers and lawyers' associations, strengthening the public's trust, and making the operation of lawyers and lawyers' associations more efficient.
I believe that adherence to such principles as good faith conduct, high professionalism and personal accountability, loyalty, public trust, respect for the rights, freedoms and legitimate interests, honour, dignity and business reputation of citizens, respect for business reputation of legal entities, and cultured behaviour must be the qualities that each lawyer should display in his/her day-to-day work.
To achieve this, incentive measures should be widely applied, particularly to young lawyers, in addition to administrative penalties.
I hope that the Conference will be held at top level, representing an important step forward in improving the quality of legal aid.
I would like to greet once again the organisers and participants of the Conference and wish it every success.

Disciplinary Proceedings - Marie-Aimée Peyron
France

Disciplinary procedure is governed by Articles 17(2), 22 to 25 of Law No. 71-1131 of 31 December 1971 and Articles 180 to 199 and 204 of Decree No. 91-1127 of 27 November 1991 and is defined very precisely in the texts.
The separation of the bodies in the procedure governs the spirit of the texts.
The prosecution service, the investigation panel and the ruling panel are separate.
The prosecution service is ensured by the president of the bar, and it is in charge:

- Of the opening of disciplinary cases;
- Of conclusions at the disciplinary hearing.

The investigation panel prepares, through its rapporteurs, the disciplinary files so that they can be ruled upon.
The ruling panel ensures the performance of disciplinary hearings and the pronouncement of decisions.
The president of the bar therefore ensures the prosecution service. They share the ability to refer matters to the disciplinary board with the attorney general.
Filter of the ethics inquiry:
Nevertheless, before referring matters to the disciplinary board, the president of the bar may, either on their own initiative, or at the request of the attorney general, or based on a complaint from any person concerned, initiate an inquiry regarding the behaviour of a barrister who is a member of their bar. To that end, they may appoint a delegate, among the members or former members of the bar association (Article 187 of the decree).
When they decide not to initiate an inquiry, they shall inform the author of the request or complaint.
It is worth noting that no text imposes the adversarial principle during this inquiry. It has no particular form.
Nevertheless, in Paris, Article P 72.2 of the Rules of Procedure of the Paris Bar (RIBP) states that a period should be set for the investigator to perform their task in compliance with the rights of the defence:

- Access to the case-file and assistance of a barrister.

The delegate will not be bound to draw up reports of the hearings that they may have initiated. Likewise, they shall not be bound to hear the barrister concerned subject to the adversarial principle. In light of the information collected during the ethical inquiry, a report is drawn up. The president of the bar then decides if there is reason to take disciplinary action. They inform the attorney general and, if necessary, the complainant of their decision. Appealing against a decision by the president of the bar to close the case is not open to the complainant but only to the attorney general. When the president of the bar in office is implicated by the facts, the most senior president on the bar association roll, member of the bar association, launches the inquiry.

Referral information:
In the instances set out in Article 183 of the decree, directly or after an ethics inquiry, the president of the bar to whom the implicated barrister reports or the attorney general refers the matter to the disciplinary body by means of a reasoned act (Article 188 of the decree). They shall notify in advance the authority which did not initiate the disciplinary action.
The barrister being prosecuted is notified of the notice of referral by the authority which initiated the disciplinary action by registered letter with request for confirmation of receipt.
Referral to bar association and appointment of the disciplinary rapporteur:
The bar association to which the barrister being prosecuted reports is sent a copy of the notice of referral for the purposes of appointing a rapporteur.
Within fifteen days, the bar association appoints one of its members to investigate the case. If a rapporteur is not appointed, the authority which opened disciplinary action refers the matter to the First President of the Court of Appeal who shall then appoint someone among the members of the bar association.

The disciplinary investigation:
A period is set for the investigator to perform their task in compliance with the rights of the defence: access to the case-file and assistance of a barrister. The appointed rapporteur initiates any necessary investigative measures. Any person capable of enlightening the investigation may be heard subject to the adversarial principle. The barrister being prosecuted may ask to be heard and may arrange to be assisted by a colleague. Any invitation is sent to the barrister by registered letter with request for confirmation of receipt. If the latter does not answer an invitation by registered letter with confirmation of receipt, the rapporteur draws up a report of failure to attend. The acts of investigation, unless practically impossible, or in case of greater convenience for the parties, take place in the premises of the bar association. A report of these is always drawn up and duly signed and dated by the person being heard. The rapporteur sends the investigation report to the most senior president of the disciplinary panels of the bar association no later than four months after their appointment. This period may, at the rapporteur's request, be extended by no more than two months by reasoned decision of the most senior president of the disciplinary panels of the bar association. A copy is sent to the president of the bar and the attorney general if the latter has initiated the disciplinary action.

Conduct of the hearing:
The date of the hearing is set by the most senior of the presidents of the disciplinary panels of the bar association. The disciplinary hearing is held before one of the ruling panels according to the referral of the president of the bar or the attorney general by direct summons. The barrister is invited by registered letter with request for confirmation of receipt or by summons from a bailiff. The invitation or the summons must include, on penalty of invalidity, precise indication of the facts behind the proceedings and reference to legislative or regulatory provisions setting out the obligations which the barrister being prosecuted is being accused of having contravened, and if, necessary, a reference to revocation of suspension of the sentence.

If the president of a disciplinary ruling panel is unable to attend, this panel is presided over by one of the former presidents of the bar, member of said panel or, if necessary, the most senior member of the panel on the bar association roll. The president ensures the lawfulness of the procedure. They ensure that the number of members present is odd and that the quorum is achieved:

- Two thirds of members for the plenary panel;
- Five members for small panels.

The disciplinary decree must mention the name of the members present. The member of the investigation panel does not attend the hearing. A member of the prosecution service may be present. If they make written observations, they shall supply these to the ruling panel and the barrister being prosecuted before the hearing. Proceedings before the association's disciplinary bodies are public. Nevertheless, the disciplinary panel may decide that the proceedings shall take place or continue in chambers at the request of one of the parties or if their public nature may result in an infringement of privacy. The barrister being prosecuted shall appear in court dress. They must appear in person and may be assisted by a barrister. In case of absence, the disciplinary panel must ensure that the notice of referral was duly delivered. If it appears that the summons was not duly delivered, the disciplinary panel must deliver a summons from a bailiff for a subsequent hearing. If the person concerned still does not appear, or no longer has a known address, they are judged in their absence. At any point in the proceedings, the ruling panel may decide, after having heard the representative of the prosecution service and the barrister who appears, to refer the matter to the plenary panel. They may also decide by means of a provisional decision, after having heard the representative of the prosecution service and the barrister being prosecuted:

- On further information (of which a member of the ruling panel or a member of the investigation panel shall take charge);
- On postponement to a subsequent hearing, potentially for witnesses to be heard.

After the barrister being prosecuted has their final word, the proceedings are declared closed. They may be reopened at any time, at any point of the deliberation, if a new fact is cited and if the disciplinary panel is informed of this by means of a standard letter.
In that event, the barrister being prosecuted is notified by means of a new summons. The deliberation is secret. If, within eight months of the referral to the disciplinary body, the latter has not ruled on the merits of the case or by means of a provisional decision, the application is deemed rejected and the authority which opened the disciplinary action may refer the matter to the Court of Appeal. When the case is not fit for judgement or when a referral is pronounced at the request of one of the parties, the disciplinary body may decide to extend this period by no longer than four months. The request for referral, written, reasoned and accompanied by any evidence, is sent, in Paris, to the president of the disciplinary panel of the bar association. The matter is referred to the Court of Appeal and it rules, the attorney general being heard, subject to the conditions set out in Article 197 of the decree of 27 November 1991. The barrister being prosecuted, the attorney general and the president of the bar are informed of any decision taken with regard to discipline within eight days of its pronouncement by registered letter with request for confirmation of receipt. The complainant is informed of the operative part of the decision when this has

acquired the force of res judicata.

Sanctions:
The disciplinary penalties are:
1. Caution;
2. Censure;
3. Temporary ban which may not exceed three years;
4. Being struck off the roll of barristers or withdrawal of honorary title.

Caution, censure and the temporary ban may involve the withdrawal, by means of the decision pronouncing the disciplinary penalty, of the right to be part of the bar association, the French National Bar Council, other organisations or professional bodies and to carry out the functions of the president of the bar for a period of no longer than ten years.
The disciplinary body may also, as an additional sanction, order that any disciplinary penalty be made public. The temporary ban may be suspended. The suspension of the penalty does not extend to additional measures taken in accordance with the second and third paragraphs. If, within a period of five years of the penalty being pronounced, the barrister has committed an offence or an error having entailed the pronouncement of a new disciplinary penalty, this, barring any reasoned decision, shall entail execution of the first penalty without being combined with the second penalty. Finally, the disciplinary panel may order the barrister who is the subject of a disciplinary penalty to pay costs. The amount of the costs may be fixed as a lump sum and, in Paris, this amount is currently set at €250.

Appeal:
The barrister who is the subject of a disciplinary decision, the attorney general and the president of the bar may lodge an appeal against the decision. The matter is referred to the Court of Appeal, which rules subject to the conditions set out in Article 16 of the decree of 27 November 1991, the attorney general having stated their views. The proceedings are made public in line with the provisions of Article 194 of the decree of 27 November 1991. The chief court clerk of the Court of Appeal informs all parties of the appeal by registered letter with request for confirmation of receipt, indicating the date on which the case will be called. The time limit for the main appeal is one month. The time limit for the incidental appeal is fifteen days from the notification of the main appeal. The attorney general ensures and supervises the performance of the disciplinary penalties.

Further information:
Pursuant to the provisions of Article 204 of the decree of 27 November 1991, the disciplinary procedure envisaged for French barristers is applicable to barristers who are nationals of any of the Member States of the EU, permanently established in one of these States other than France and coming to France to perform an occasional professional activity as defined by the provisions of Article 200 of the decree of 27 November 1991.

Disciplinary Proceedings - Christoph von Wilcken
Germany

I. The status of a lawyer in Germany

A lawyer (Rechtsanwalt) is pursuant to Section 1 of the Federal Code of the Legal Profession an independent agent in the administration of justice.
The lawyer has an equal role as a judge or a state attorney in the quest for justice. This was not always the case. Until the 19th century in court proceedings all was left to the judge. In criminal cases he would represent the state attorney, who did not exist at the time, as well as the defender. The inquisitorial system also applied to civil cases. The profession under influence of the roman – canon law was split into solicitors (Advokaten) and barristers (Prokuristen). On the imperial level, the Reichskammergerichtsordnung of 1555 regulated the functions of both parts of the profession in detail. The Prokurist was subject to the supervision and disciplinary authority of the respective court, he appeared as an agent of his client.

The local laws of the different German states, where partly even stricter. In particular this was the case during the time of absolutism. Access to the profession was strongly regulated and lawyers were not only under control of the court but also state agencies. This changed with the introduction of the Lawyers Act in 1878. The disciplinary authority was displayed by Courts of Honour, which were staffed by members of the chambers of lawyers, which were also introduced by the 1878 law. Lawyers were removed from the disciplinary authority of the courts. Between 1933 und 1945 the Nazi-regime concentrated the existing chambers to only one national bar, which was easier to control. The regime regulated access to the profession heavily. Lawyers were no longer allowed to practice on political and racial grounds. The self-governing body was dominated by the party organisation.

In principal the present Federal Code of the Legal Profession in Germany bears much resemblance with the 1878 legislation. However, when it comes to disciplinary proceedings the Courts of Honour have been abolished and have given way to benches where judges sit with lawyers to decide on the cases.

II. How do disciplinary proceedings work?

a. Reprimand
There are 29 chambers of lawyers in Germany nowadays. In minor cases the president of the respective chamber may issue a reprimand. These might be cases in which the lawyer has not behaved according to the professional standards but the culpability is deemed to be minor, e.g. has not committed a criminal offence. As soon as a proceeding in front of the Lawyers´ Court is initiated with respect to the same act, the proceeding in front of the president of the chamber is interrupted. The defendant may appeal against a reprimand of

the president before the Lawyers´ Court.

b. Lawyers Court proceedings

Proceedings in front of the Lawyers´ Courts are reserved for heavier cases, which will mostly involve criminal offences by the lawyer. These will be broad in front of the court by the state attorney, who might be acting on initiative of the president of a chamber. Depending on the nature of the offence the consequences can range from reprimand to being excluded from the profession of the lawyer. A particular chamber of the Federal Court of Justice may be appealed to.

Sanctions (§ 114 BRAGO)
Warning
Caution
Fine up to Euro 25.000
Temporary ban on acting as a representative and counsel in certain fields of the law
Exclusion from the profession

Appeal is possible in all cases, however, an appeal to the Federal Court of Justice (third instance) only with respect to the last two sanctions.

III. Conclusion

As the history of disciplinary proceedings in Germany may show, the relation to the rule of law can be twisted. While the Nazi-regime obviously disrespected the right of the individual and can certainly not be regarded as an example for the rule of law, it took much effort to appear legalistic. The regime was careful in producing laws in order to section its actions. At the same time it made sure to have people in place, who shared the ideology and did not refrain from brutal and unjust action against individuals. On the other hand, even during the time of absolutism, the judiciary enjoyed a degree of independence that limited the power of absolute rule by the monarch. The rule of law depended always on the watchfulness of the citizens and the self-confidence of those involved in the struggle for justice, namely the judges and lawyers.

Disciplinary Proceedings - Murat Zhanbayev Kazakhstan

In the course of this speech, I would like to address the matter of amendments to be introduced to the disciplinary practice in connection with the consideration of the draft Law 'On Advocacy and Legal Aid'.

Background

However, to be able to talk about the coming changes, a brief overview of the current disciplinary procedures should be necessary.

To begin with, there are 16 territorial bar associations in Kazakhstan that comprise all local lawyers without exception. All these 16 territorial bar associations are, in turn, members of the Republican Bar Association.

Disciplinary procedures are currently carried out directly at the territorial bar associations. The Republican Bar Association is not vested with any disciplinary functions or relevant powers.

Given the fact that each territorial bar association develops its disciplinary practice independently, let us use the Almaty City Bar Association (the 'ACBA') to review the existing disciplinary procedures.

The ACBA currently unites 800 lawyers of the approximately 4,700 lawyers nationwide, being the largest territorial bar association in Kazakhstan.

In the ACBA, two bodies are involved in the disciplinary proceedings:

1. the Lawyers' Ethics Commission comprising 15 lawyers elected from among the ACBA members at the Bar Asociation's General Meeting every four years.
2. the ACBA Praesidium also comprising 15 lawyers elected from among the ACBA members at the Bar Asociation's General Meeting every four years.

The disciplinary proceedings consist of two stages:

At the first stage, a complaint (statement) from an individual, as well as a special resolution or appeal from government authorities is submitted to the Lawyers' Ethics Commission. The Commission Chairman, elected from among the Commission members, appoints an examiner to investigate the complaint (appeal, resolution).

The examiner then summons the lawyer against whom the complaint has been lodged, provides him with the text of the complaint, obtains clarifications, investigates the circumstances, and studies the supervisory proceedings in the case. Where necessary, the examiner requests clarifications from the complainant on any questions that may arise, and makes inquiries. The investigation lasts one month.

Upon consideration of the complaint, the examiner prepares a report consisting of a preamble, descriptive and reasoning parts.

Where the arguments contained in the complaint (appeal) could not have been verified, or where the deadline for the appeal (6 months from the date of the offence) or for disciplining the lawyer (1 year from the detection of the offence) has expired, the examiner prepares a written response to the applicant.

However, where the examiner has established the facts evidencing a disciplinary offence committed by the lawyer, the examiner, along with the report, prepares and forwards to the ACBA Praesidium a petition to institute disciplinary proceedings against such lawyer.

The petition to institute disciplinary proceedings is considered by the Chairman of the ACBA Praesidium, who, in the event that the petition is granted, convenes the meeting of the Praesidium. The lawyer against whom the complaint (appeal) has been lodged, and the complainant are invited to attend the Praesidium meeting.

Following the disciplinary proceedings, the Praesidium is entitled to impose one of the following disciplinary sanctions on the lawyer:

1. admonition;
2. reprimand;
3. severe reprimand;

4. disbarring, and filing a petition with the licensor to prepare a statement of claim to terminate the licence to practice law.

This is a brief overview of the current procedure for instituting disciplinary proceedings.

Review of the draft Law

Provisions of the draft Law 'On Advocacy and Legal Aid' (the 'Draft Law') are intended to reform, among others, the institution of the legal profession in the Republic of Kazakhstan, certain fundamental elements of which evidently fail to conform to universally recognised international standards. Within the framework of this reform, the Bar's disciplinary proceedings are also being transformed.

Here, provisions of Articles 72 and 73 of the Draft Law are noteworthy.

The Draft Law introduces a two-tier system of disciplinary commissions:

1. the Lawyers' Disciplinary Commissions.
2. the Bar Disciplinary Commission.

The Lawyers' Disciplinary Commission is established as an independent body of the territorial bar association. The Commission disciplines the territorial bar association's lawyers. It comprises six lawyers, three representatives of the public nominated by judicial authorities, and two retired judges. The term of office is 2 years. The Commission is chaired by a lawyer. The tenure in the Commission is limited to one term.

The grounds for instituting disciplinary proceedings include the availability of sufficient data indicating the violation by the lawyer of the requirements of this Law, the laws of the Republic of Kazakhstan on advocacy and legal aid, the Lawyers' Code of Professional Ethics, the bar association charter, decisions of the Republican Bar Association or bar associations

The Lawyers' Disciplinary Commission is entitled to apply the following disciplinary sanctions to the lawyers:

1) admonition;
2) reprimand;
3) severe reprimand;
4) disbarring on the grounds and according to the procedure stipulated by Article 60 of this Law.

The Bar Disciplinary Commission is established as an independent body of the Republican Bar Association. It comprises six lawyers, three representatives of the public nominated by judicial authorities, and two retired judges. The term of office is 2 years. The Commission is chaired by a lawyer. The tenure in the Commission is limited to one term.

Unlike the previous one, the Bar Disciplinary Commission is charged with bringing to disciplinary liability only the members of the bar associations' management or of governing bodies of the Republican Bar Association, and also with considering complaints against decisions adopted by the Lawyers' Disciplinary Commissions. This is a sort of 'appeals court' for the Bar.

The Bar Disciplinary Commission, upon considering complaints against decisions or actions (omissions) of the Lawyers' Disciplinary Commission, is thus entitled to the following:

1) dismiss the complaint and uphold the decision of the Lawyers' Disciplinary Commission;
2) amend the decision of the Lawyers' Disciplinary Commission;
3) revoke the decision of the Lawyers' Disciplinary Commission and adopt a new decision;
4) refer the case to the relevant Lawyers' Disciplinary Commission for reconsideration and compel the Lawyers' Disciplinary Commission to take certain actions.
Decisions of Disciplinary Commissions may be challenged in court.
One cannot but notice an overall positive trend in the development of provisions that govern the structure of bodies and the manner of disciplinary proceedings.
An important distinctive feature of the innovations is the establishment of a system of the Bar's disciplinary bodies, vested with their own competence and operating independently of the bar associations' governing bodies. The Bar Disciplinary Commission is being established for the first time, providing a nationwide coverage.
However, a number of topical issues remain that cannot but cause serious concern.
Outstanding issues
First. We believe that nomination of three members of the public to the Disciplinary Commissions by judicial authorities represents a form of undue interference into the lawyers' activities by the State. This provision is inconsistent with the fundamental international principles, in particular, the Basic Principles on the Role of Lawyers, as adopted in 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Havana (Cuba), which stipulate that the Governments shall ensure that the lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.
It is therefore proposed that the words 'nominated by judicial authorities' and 'nominated by the authorised body' be deleted from Articles 72 and 73 of the Draft Law.
Second. Another matter of principle is that Article 72.5 of the Draft Law gives the powers to the Disciplinary Commission to disbar a lawyer. Yes, we are aware of the existence of the provision referring to Article 60 of the Draft Law.
We believe, however, that the matter of expulsion from the bar association should not be referred to the Disciplinary Commission's competence. Otherwise, this would result in violations of the governance principles, 'nullification' of the competence of the bar associations' praesidia, with all the ensuing negative consequences and imbalance in the Bar system.
We believe therefore that the current version of Article 72.5.4 requires major revisions or should be deleted from the Draft Law.
Third. Another matter of importance is a one-term restriction on the tenure of elected members in the Disciplinary Commission. We believe that one should be guided here by the need to preserve the so-called 'institutional memory'. A one-term tenure for any professional member of the Disciplinary Commission would prevent sharing the accumulated experience, knowledge and skills with newly elected professionals.
In this respect, examining the options for introduction of partial membership rotation in the Disciplinary Commissions, following each tenure, would be advisable.
Fourth. In connection with Article 73, establishment of the Bar Disciplinary Commission as an independent body of the Republican Bar Association is suggested. There was no pre-

cedent of such a body in the past. Given the current amount of complaints received by the Republican Bar Association, this body should operate on a permanent basis.
In this connection, questions arise concerning the funding of this innovation, as well as the sources from which the operation of this body would be financed. Given the fact that the bar associations, including the Republican Bar Association, are funded from the lawyers' membership fees, will the establishment and operation of this new body entail a significant increase in the membership fees for the lawyers?
This matter is quite sensitive for each lawyer and should be thoroughly discussed.
Fifth. The Draft Law abolishes the attorney authorisation form. This document, currently intended to ascertain the attorney's powers to defend a specific case and/or a particular person, is to be replaced with a so-called 'declaration of defence'. It is assumed that the lawyers would complete their declarations independently, thereby eliminating their dependence on the territorial bar associations.
When looking at this innovation in the light of the discussed topic, certain important points come into focus.
For example, the attorney authorisation form, among other things, allows for the lawyer's intervention into any particular case to be clearly traced. Instances of bad faith access to defence have been occasionally observed when using this procedure. Cancelling the authorisation form and replacing it with the declaration might result in more similar instances of bad faith access by lawyers to the defence of a particular person.
It should be noted in this regard that this circumstance represents a challenge for the newly established Disciplinary Commissions, requiring an efficient and principled response.

Disciplinary Proceedings - Ph. D. Leonid Khvan
Uzbekistan

Advocacy in Uzbekistan: Statistics

(as of January 1, 2018; http://www.minjust.uz/uz/about/statistics/)

Total issued licences to practice law	**5876**
Active lawyers	4245
Registered lawyer entities, incl.	**2416**
Bar associations	78
Law firms	633
Law offices	1703
Legal advice offices	2
Active lawyer entities, incl.	**1741**
Bar associations	68
Law firms	433
Law offices	1240
Legal advice offices	0

Data on disciplinary proceedings

(the RUz Chamber of Advocates' website; http://www.paruz.uz)

Complaints against lawyers submitted to the bodies of lawyers' self-governance	N/A
Disciplinary proceedings initiated	N/A
Statistics on the disciplinary sanctions applied. Incl.:	
warning	N/A
suspension of licence up to 6 months	N/A
termination of licence	N/A
Information on denial of disciplinary sanctions and termination of disciplinary proceedings	N/A

Disciplinary bodies: Current regulation in the RUz

Qualification commissions are established to:
conduct disciplinary proceedings in the cases of violation by lawyers of statutory requirements, Rules of lawyers' professional ethics, attorney-to-client privilege, or oath of attorney.

2. Qualification commissions shall be established under joint resolutions adopted by territorial offices of the Chamber of Advocates of Uzbekistan and territorial offices of the RUz Ministry of Justice and shall comprise an equal number of lawyers and judicial employees.

3. The powers and the procedure for managing the operation of the Qualification Commissions shall be determined by the RUz Ministry of Justice.

Source: Order No. 1921 of the RUz Ministry of Justice adopted on 14/03/2009
Source: Article 13 of the RUz Law 'On Advocacy' adopted on 27/12/1996

The Law of the Republic of Uzbekistan 'On Advocacy' adopted on 27/12/1996

The President of the Chamber of Advocates may be recalled early by the Conference of the Chamber of Advocates, upon the submission from the Ministry of Justice of the Republic of Uzbekistan in the instances stipulated by the Charter of the Chamber of Advocates.

[revision dated 31/12/2008]

Resolution No. 112 of the RUz Cabinet of Ministers 'On Managing the Activities of the Chamber of Advocates of the Republic of Uzbekistan' adopted on May 27, 2008

the Chairman of the Chamber of Advocates and his Deputies shall be elected for a five-year term by the Conference of the Chamber of Advocates, upon the submission from the Ministry of Justice of the Republic of Uzbekistan, from among the members of the Board of the Chamber of Advocates of the Republic of Uzbekistan, elected by the Conference;

heads of territorial offices of the Chamber of Advocates of the Republic of Uzbekistan shall be appointed (from among the lawyers operating within the relevant territory) and dismissed by the Chairman of the Chamber of Advocates of the Republic of Uzbekistan.

Strictly speaking, the Chamber of Advocates of the Republic of Uzbekistan may not be regarded as an independent self-governing organisation (since its management will be 'elected' upon the submission from the Ministry of Justice) and, consequently, all the Chamber of Advocates' bodies would not meet the criteria of independence and self-governance.

Source:
The Legal Opinion of the Academy of Advocacy of Ukraine and the Expert Opinion of the Department of Advocacy, MGIMO University

38. [...] the head of the relevant territorial office or judicial authority institutes disciplinary proceedings against the lawyer by filing a submission with the Qualification Commission to initiate disciplinary proceedings against such lawyer [...]

Disciplinary proceedings may not be initiated by a government authority!

Its submissions, complaints, etc., may only serve as a pretext for instituting proceedings by a specialised disciplinary body of the advocacy self-governance.

From the Legal Opinion of the Academy of Advocacy of Ukraine

Conclusion 1.

[...] in the context of the situation in Uzbekistan, it should be noted that the existing procedure for issuing licences to practice law by judicial authorities, along with the establishment of the qualification commission on an equal footing [between the lawyers' association and the Ministry of Justice], appears as a gross infringement on the principle of the Bar's independence, which should be remedied legislatively.

Conclusion 2.

- To ensure actual independence of the Bar, representatives of government authorities should be excluded from the qualification [disciplinary] commissions which, in turn, according to their status, should be the bodies of self-governance of the professional association or the Chamber of Advocates.

Conclusion 3.

Disciplinary liability represents a powerful lever of influence on the lawyers and, therefore, its implementation should never be left in the hands of other authorities beyond the system of the lawyers' self-governance – with an opportunity, of course, for the lawyers to appeal to court the decisions adopted by the Bar's disciplinary bodies.

Disciplinary Proceedings - C.M. Chan
Hong Kong - China

Hong Kong Solicitors Disciplinary Tribunal Proceedings Rules

Mr. C. M. Chan
Council Member
The Law Society of Hong Kong

16 June 2018

- The Standing Committee of Compliance oversees The Law Society's administrative and regulatory function.
- 20 committee members, 10 of which are Council members
- The Investigation Committee (Disciplinary Matters) of the Compliance Department is the only Investigation Committee with a fixed membership drawn from senior members of the Standing Committee.
- The Committee's work includes monitoring the progress of disciplinary proceedings, appeals and court proceedings (including bankruptcy petitions), giving instructions to prosecutors and The Law Society's legal representatives, and authorising the payments of fees incurred in disciplinary proceedings, appeals and court proceedings.

- The Standing Committee of Compliance oversees The Law Society's administrative and regulatory function.
- A Solicitors Disciplinary Tribunal is a statutory tribunal established by the Legal Practitioners Ordinance, Cap. 159.
- Independent of The Law Society which is the prosecuting body
- Members of the Solicitors Disciplinary Tribunal Panel are appointed by the Chief Justice. The Chief Justice also appoints the Tribunal Convenor and the Deputy Tribunal Convenors who have the responsibility to appoint a panel of three or four members to sit as a Tribunal to determine applications, and who have the power to dispose of certain classes of complaint on a summary basis.

- Under the Hong Kong Solicitors' Guide to Professional Conduct Vol.2 Chapter 16 detailed solicitors Disciplinary Tribunal Proceedings Rules
  - Part II Applications against solicitors, solicitors' employees and trainee solicitors
    - Applications to Society to consider complaints
    - Transmission of documents
    - Further information
    - Dismissal without answer by respondent
    - Parties
    - Notice of date of hearing
    - Forms of notice

- Inspection of documents
- Failure to appear
- Representation
- Re-hearing after failure to appear
- Evidence
- Findings and order
- Suspension of order pending appeal
- Service of findings and order

- Part IV General
  - Reference to Council of Society
  - Withdrawal of proceedings
  - Adjournments
  - Order of hearing proceedings
  - Amending and additional affidavits
  - Shorthand notes

- Service
- Power of Solicitors Disciplinary Tribunal to dispense with requirements of rules
- Extension or abridgement of time
- Retention of documents pending appeal
- Evidence
- Admission
- Summons

Thank You

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