

THE LEGAL PROFESSION IN MOLDOVA

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I. Basic organization and structure of the legal profession.¹

The legal profession in Moldova is composed of three types of legal practitioners: lawyers, jurisconsults and jurists. A brief description of each of these categories follows.

Lawyers (“*avocat*” in Romanian) are the law graduates qualified, according to the Law on Bar Association (*Law on Bar hereinafter*),² to provide legal advice and representation at any procedural stage, in any court or public authority and on any legal matter. The Law on Bar defines a lawyer as a “free professional, independent consultant and representative on any legal matter. Lawyer’s activity is not an entrepreneurial activity”.³ The Law further adds details about the lawyer, stating that this is “the person that obtained the license according to the law and who has the right to participate at the criminal investigation and court examination, to speak and act on behalf of his/her clients and represent and consult the clients in the legal field”.⁴

Lawyers practice law on the basis of a *license*, issued by the Ministry of Justice according to the Law on Bar. In practice only lawyers represent defendants (suspects, defendants, convicted) in criminal proceedings.⁵ In other types of proceedings, non-lawyers can also act as representatives in court (see below for details). A lawyer represents the client on the basis of a written contract they sign, except in cases where the client is the husband/wife or relatives up to the fourth grade.⁶ In legal aid cases, the lawyer represents the client on the basis of a contract the lawyer signs with the Territorial Office of the National Legal Aid Council and the latter decision to nominate the lawyer to represent the respective client.⁷ The lawyers’ authority, in both private and legal aid cases, is further confirmed by the mandate issued by the lawyers’ office, which indicates the lawyer’s and client’s names, the lawyers’ license number, the date of the contract and the volume of lawyers’ competences in the respective case or information about legal aid representation.⁸

Jurists – the term “jurist” in Moldova refers to any person that has a graduate degree in law. Hence lawyers, jurisconsults, law professors, judges, prosecutors, notaries and other

¹ For the purposes of this assignment the term “legal profession” refers to legal practitioners excluding judges, prosecutors, and notaries. In the Moldovan context, it also excludes court clerks, criminal investigation officers and bailiffs, which usually have legal education.

² Art. 1 of The Law on Bar Association (*The Law on Bar hereinafter*), adopted on 19.07.2002, entered into force on 13.12.2002, with subsequent amendments of 29.05.03, 13.07.06, 28.07.06, 14.02.08 and 24.04.08 (the last amendment entered into force on 01.07.08).

³ Art. 1 para 3 of the Law on Bar.

⁴ Art. 8 para 1 of the Law on Bar.

⁵ This is the current practice in the country, although, according to art. 67 para (1) of the Criminal Procedure Code (*CPC hereinafter*), adopted on 14.03.2003, entered into force on 12.06.03, the defence lawyer can be: (1) the lawyer, (2) other persons authorized by law to act as defence lawyer, and (3) a foreign lawyer, when assisted by a local lawyer. What the legislator means by the phrase “other persons authorized by law to act as defence lawyer” is unclear.

⁶ See art. 9 para (2) and art. 52 para (1) of the Law on Bar.

⁷ See art. 46 para (1) of the Law on Bar, as well as the art. 69 and 70 of the CPC.

⁸ See art. 52 para (2) of the Law on Bar.

legal specialists are all jurists. In a stricter sense, the term “jurists” is also used to refer to the persons that provide legal advice and representation in court in civil or economic proceedings. In this report, the term “jurist” is used in the latter, strict sense. Such jurists provide legal services on the basis of a power of attorney / proxy (“*procură*” in Romanian), issued in each case by the client and certified by a public notary. The respective power of attorney is regulated by the Civil Procedure Code (*CiPC hereinafter*) within the institution of “representation in courts of law”.⁹ A person can be represented in court without such power of attorney, if the person is present in court and declares that s/he is represented by the respective person, declaration that is mentioned in the hearing protocol, or the person submits a written request about this.¹⁰ Jurists represent their clients on similar conditions as any other person, not necessarily a lawyer, because the CiPC does not require specific professional qualification of a representative in civil proceedings, stating that “a representative (the authorized person to act on behalf of the client) in court can be any person with full civil capacity who has the required powers, certified in the prescribed manner, for participating in the proceedings”¹¹ (meaning the power of attorney issued by the client and certified by the notary). The CiPC only states who cannot act as a representative on behalf of a client in court.¹²

Jurisconsults are law graduates that are employed by government or private companies/ organizations / institutions and provide legal services to the respective entity. Usually the jurisconsults also act on behalf of their employing institution in legal proceedings concerning this institution. Their status is regulated by labour law, the employment contracts they sign with the employer and the internal rules of the respective company / organization / institution.

Lawyers are the only category of legal practitioners, in the sense of this report, that are organized in a professional legal organization, the Bar Association of Moldova. Consequently, the lawyers’ activity is regulated, namely the conditions and forms for providing qualified legal assistance, the organizational forms for lawyer’s activity, the guarantees for provision of qualified legal assistance and the admission procedure for the lawyer’s profession are regulated by law and other normative acts. As members of the Bar lawyers pay membership fees to the Bar.

⁹ See art. 75 paras (1) and (4), art. 76 para (1), art. 78, 80 and 81 of the Civil Procedure Code (*CiPC hereinafter*), adopted on 30.05.03, entered into force on 12.06.03.

¹⁰ See art. 80 para (7) of the CiPC.

¹¹ See art. 76 para (1) of the CiPC.

¹² According to the CiPC, art. 78, only the following persons cannot act as representatives in court: judges, prosecutors, criminal investigation officers, police officers, members of Parliament, except when they are authorized to act on behalf of these authorities or act as legal representatives. A representative can also be recused (challenged) if s/he has provided or provides legal assistance to parties with conflicting interests, or has participated in the examination of the case as a judge, prosecutor, criminal investigation officer, expert.

The practice of the jurisconsults is regulated by labour law, procedural rules on representation of companies /organization / institutions and the internal rules of the entities where they are employed.

The practice of jurists is not regulated by the state, except for the minimum conditions provided in the CiPC on “representation in civil proceedings”. The jurists are not licensed and are not bound by any Code of Ethics. The jurists may practice individually or they may create consulting firms. Such firms are usually registered as limited liability companies, which are commercial enterprise whose entrepreneurial activity is provision of legal services. Such firms are not regulated by the Law on Bar since the latter expressly states that the activity of a lawyer is incompatible with any entrepreneurial activity and any paid position (meaning that a lawyer cannot be employed under a contract regulated by labour law), except positions related to academic and didactic activities, or that of an arbitrator.¹³

The current legal status and practice of jurists (no requirement to be registered anywhere, practicing law under entrepreneurial regime, acting in court on the same legal basis as any non-legal specialist representatives) does not allow making any reliable estimation on the number of such jurists, neither about their practice. One note can be made, though, that the percentage of clients represented by jurists and not lawyers in civil proceedings is rather high. For example, according to a statistical study¹⁴ carried out in 2005 in one of the five district courts of Chisinau, 92% of litigants in civil proceedings have been represented by the so-called representatives (jurists, jurisconsults, other persons), while only 8,2% were represented by lawyers. On the other hand, the percentage of represented versus self-represented litigants was also surprisingly high: 82% of litigants were represented, versus 18% of self-represented. In the Economic Court of Appeal, out of 93,8% of represented litigants, 10.7% were represented by lawyers and 88.8% by representatives.

Since relatively reliable data about legal practitioners are only available about the lawyers, they will be the focus of this report, the other two categories being only briefly referred to when information available or when appropriate to emphasize the differences.

The Bar has several times reiterated its position to amend the CiPC to allow representation in court only by lawyers and jurisconsults, with exceptions for representation of relatives up to the fourth grade when representation can be done by anyone chosen by the respective person. There was also a draft law submitted by one of the opposition members to the Parliament in this respect, however it was not accepted. To date the debate about the limitation of the right to represent in court to the professional lawyers and jurisconsults only is still debated in the country’s legal community.

¹³ See art. 9 of the Law on the Bar.

¹⁴ Statistical study regarding the participation of representatives on the basis of mandate or power of attorney/proxy in civil proceedings, Victor Zaharia, Soros Foundation – Moldova, 2005. The study was conducted at the request and with the methodological indications of the Ministry of Justice, Bar Council and the Legal Department of the Tax Administration Office. The study reviewed all case files of the civil cases finished in 2006 by the district court of Botanica, Chisinau and the Economic Court of Appeal.

The structure of the professional organization

The lawyers' professional organization is the Moldovan Bar Association (or the Bar of Moldova), member of which is automatically every lawyer licensed according to the Law on Bar. The Bar Association is a self-governing authority, with a status of a legal entity (person), with its own stamp and symbols.¹⁵ The governing bodies of the Bar are the following: Congress of Lawyers, Bar Council and 3 Commissions: Commission for Licensing of the Legal Profession (*Licensing Commission hereinafter*), Commission for Ethics and Discipline and Audit Commission.¹⁶ Brief details on each of these bodies follow.

- The Congress of Lawyers is the Bar's supreme body, which is held at least once annually. An extraordinary Congress can be convened at the initiative of the Bar Council, The Licensing Commission, The Ethics and Discipline Commission, The Audit Commission or at the request of 1/3 of the lawyers.¹⁷ The Congress adopts the main decisions regarding the Bar's activity, including the election and dismissal of the members of the Bar Council, Ethics and Discipline and Audit Commissions and 7 members (lawyers) of the Licensing Commission. The Congress also hears and approves the Bar's Council and 3 Commissions' annual activity reports, approves the Bar's annual budget, examines lawyers' petitions on decisions of the Bar Council, Licensing and Ethics and Discipline Commissions, determines the lawyers membership fees, approves the Bar's staff list¹⁸, adopts other decisions and regulations concerning the Bar.¹⁹ The Congress can also delegate some of its competences to the Bar Council.

- The Bar Council is the governing body of the Bar, which regulates and ensures the lawyers' relations with the public authorities, courts, law enforcements and other institutions. The Bar Council convenes the Congress and ensures the implementation of the Congress' decisions, designates two members in the National Legal Aid Council, as well as other persons that represent the Bar in the legal aid field,²⁰ maintains the list of lawyers that have the right to practice the lawyer's profession, registers and maintains the registry of the lawyers' offices, determines

¹⁵ See art. 31 paras (1), (2) and (6) of the Law on Bar.

¹⁶ Art. 31 para (2) of the Law on Bar.

¹⁷ See art. 31 para (3) and art. 32 of the Law on Bar.

¹⁸ Currently the Bar Council has the following permanent staff positions: the president, the vice-president, one accountant and two secretaries (one for the Bar Council and one for two Bar Commissions (on Ethics and Licensing)).

¹⁹ See art. 32 of the Law on Bar.

²⁰ Until July 1, 2008 the Bar Council coordinated the volume and the method of remuneration of lawyers that accept legal aid appointments, the remuneration scheme for which had been approved by the Ministry of Justice in coordination with the Bar Council. From July 1, 2008, when the Law on State Guaranteed Legal Aid entered into force, the National Legal Aid Council establishes the legal aid fees, the Bar taking part in this area through its two members in the National Legal Aid Council.

the form of the lawyer's "mandate",²¹ registers the contracts regarding the professional internship, and performs other functions according to the law or delegated by the Congress.

The Bar Council is elected by secret ballot by the Congress of Lawyers, from among Bar's lawyers with an experience of minimum 5 years as lawyers. The Bar Council is elected for a 4-year term. The Bar Council is led by a President, elected by secret vote by the Council from its members. The President is elected for a 4-year term, for a maximum of two consecutive mandates. The President proposes two vice-presidents and the Bar Council's secretary, from among the Council's members, that are elected by Council members by open vote.

The membership in the Bar Council is considered an honourable activity and is exercised without any payment. The Bar Council is convened by the President when needed, once per month at least.²² The Bar Council's decisions are mandatory for all lawyers,²³ which means these should be public and easily accessible for all lawyers. To date this is ensured only to some extent, as not all of the Bar Council's decisions are made public in the Bar's professional journal - People's Lawyer, nor is there a common archive of all Bar Council's decisions accessible for all lawyers (which could be made public on the Bar's website, for example).

- The Licensing Commission is composed of 11 members, elected or appointed for a 4-year term as follows: 7 members are elected by the Bar Congress and 4 members are appointed by the Minister of Justice, two of which are lawyers and two are professors of law. The Licensing Commission has the following competences: adopts decisions for admission to the lawyer's profession; organizes the qualification examination for admission to the lawyer's profession; approves the results of the qualification examination and adopts the decision on admission to the lawyer's profession.²⁴

The Licensing Commission in its current form was introduced through the amendment to the Law on Bar of 13.07.06, as a result of a lobbying and hard work of the Bar Council since 2002.²⁵

²¹ The mandate serves, alongside the contract with the client, as evidence proving the lawyer's authority to represent the respective client.

²² See for more details art. 35 – 39 of the Law on Bar.

²³ According to art. 38 para (3) of the Law on Bar

²⁴ Art. 40^l of the Law on Bar, introduced by the amendments of 13.07.06 and of 14.02.08.

²⁵ Prior to this amendment, the Commission for the Licensing of the Legal Profession was created by the order of the Minister of Justice for a 4-year mandate, consisting of 11 members: 6 members elected by Lawyers' Congress, 2 representatives of law enforcement bodies, 1 university professor elected by the Senate, and 2 representatives of the Ministry of Justice. This Commission activated on the basis of a regulation adopted by the Ministry of Justice. The Commission had broad competencies, not only regarding admission to the profession, namely: organizing qualification examination; adopting decisions on admission to the profession, suspension of the lawyer's activity and withdrawing the right to exercise the lawyer's profession; registration of the contracts regarding the professional internship; management of conflicts related to the professional internship. The competence and the subordination of the Commission to the Ministry of Justice was a clear interference with the independence of the legal profession and was criticized by many local and international actors, which led to the amendment of the law of 13.07.06

- The Commission for Ethics and Discipline together with other bodies of the Bar, it ensures the access of physical persons and legal entities to qualified legal assistance, provided by the lawyers.²⁶ Commission's main functions are registration, verification and examination of complaints regarding actions of lawyers violating the provisions of the Law on Bar, the Code of Ethics, the decisions of the Congress of Lawyers, the Bar's Council decisions, as well as of other bodies of the Bar, which could damage the honour or prestige of the lawyer's profession; the initiation of disciplinary proceedings against lawyers and the adoption of corresponding decisions on these proceedings. The Commission may exercise other functions as delegated by the Congress of Lawyers.²⁷ The Commission is composed of 11 members, elected by the Congress of Lawyers for a 4-year term. The Commission is assisted by a Secretary, employed by the Bar Council, responsible for secretarial activities of the Commission.²⁸

The Commission "shall take actions with a view of achieving functional disciplinary proceedings by promoting the transparency of its activities, such as through the publishing of the final results of disciplinary proceedings as well as of the activity of the Commission in specialized publications".²⁹ Although the wording of this provision leaves room for improvement, it is an important obligation introduced in the 2007 Commission's Regulation, paving the way towards a more transparent process of reviewing of complaints regarding lawyers' actions, which should in the long term contribute to raising the quality of legal services in Moldova. The decisions of the Commission in the current composition (elected by the Congress of Lawyers on 18.03.2007) have been regularly published in the People's Lawyer journal, compared to the previous practices when decisions of the Commission had been rarely made public, the only means of finding information about its activity being the annual reports, usually very brief, without details on the type of complaints and measures taken.³⁰ While previously the perception among the legal community about the effectiveness of the Bar's disciplinary proceedings was largely negative, it seems to be improving since the adoption of the new regulation and election of the current members of the Commission.

- The Audit Commission is composed of 5 lawyers, who are in charge with verifying the economic and financial activity of the Bar. The commission is elected and subordinated to the Congress of Lawyers.³¹ The Commission should publish the

²⁶ See art. 1 of the Regulation on the Organization of Activities of the Commission for Ethics and Discipline of the Bar Association of the Republic of Moldova, adopted by the Congress of Lawyers of Moldova on 23.03.2007.

²⁷ See art. 41 of the Law on Bar and art. 3 of the Regulation of the Commission for Ethics and Discipline.

²⁸ See for details art. 7 of the Regulation of the Commission for Ethics and Discipline.

²⁹ Art. 3 para (2) of the Regulation of the Commission for Ethics and Discipline.

³⁰ See for example the report of the Commission for Ethics and Discipline for the year of 2004, in People's Lawyer (*Avocatul Poporului*), nr. 3, 2005, p. 7. For 2006 not even a brief report of the Commission for Ethics and Discipline was published in the People's Lawyer.

³¹ See art. 42 of the Law on Bar.

annual reports, to be approved by the Congress of Lawyers. The practice shows that this approval is a rather automatic one, as the Audit Commission's reports are not published for the lawyers participating at the Congress to review them, but only voiced during the Congress, followed by a vote of approval. The reason for this practice is the facts that the Commission depends on the fiscal year, which ends on March 31 in Moldova, for finishing the report, while the Congresses are usually held in March. So far this practice does not seem to raise concerns among lawyers or at least these have not been voiced in specialised publications of the Bar.

The Bar Association of Moldova is the only professional association for practicing lawyers, regulated by the Law on Bar, with a common Code of Ethics, and mechanisms for implementing this Code. There is no official specialization of lawyers, in the sense that all lawyers must meet the same criteria for admission to the lawyer's profession, and receive a license to practice "law", without any specialization. In practice many lawyers tend to specialize on specific areas, for example commercial, criminal, family, property law. There is no official data or information on this specialization, though. From discussions among lawyers, it seems that specialization is more common for younger lawyers.

Ratio of lawyers to the population

There were 1154 lawyers, registered in the Bar Council's list of lawyers that have the right to practice the lawyer's profession in 2008.³² If this number is correlated to the total population³³ of Moldova, the figures show that there are 3,2 lawyers per 10,000 inhabitants. However, this is a very approximate figure, as the ratio of lawyers varies considerably depending on different regions of Moldova. As one would rightly assume, the biggest concentration of lawyers is in Chisinau,³⁴ and there are regions where lack of lawyers is particularly acute, for example some of the southern administrative units. Accurate data on the lawyers' distribution per country's regions (raions) is missing because neither the Bar Council of Moldova,³⁵ nor the Ministry of Justice³⁶ keep such data, the current lists at the Bar Council and the Ministry of Justice only mentioning the name of the lawyer and the

³² The list of lawyers that have the right to practice the lawyers' profession is kept by the Bar Council and is available at the Bar Council or on the Bar's site at <http://www.avocatul.md/files/107.pdf>, last checked on 08.08.08.

³³ According to the National Bureau for Statistics, the stable population of Moldova (except Transnistria, the self-proclaimed part of the country, separated de-facto since 1992) on January 1, 2008 was of 3,572,700, data available on http://www.statistica.md/statistics/dat/1139/ro/Nr_pop_stab_pr_terit_1_ian_2008.pdf, last checked on 08.08.08.

³⁴ Chisinau, capital city of Moldova, with a population of 785,100 (including the periferial areas), National Bureau for Statistics, http://www.statistica.md/statistics/dat/1139/ro/Nr_pop_stab_pr_terit_1_ian_2008.pdf, last checked on 08.08.08.

³⁵ One would expect the Bar Council to have such data, if not for keeping up-to-date information about its members, at least in view of the fact that it registers individual or associated lawyers' offices, and collects monthly membership fees of its members.

³⁶ One would expect the Ministry of Justice to have such data in view of the fact that it issues licences, and is responsible for state policies in ensuring equal and accessible access to justice of the population.

date the license with no reference to at least the lawyer's registered address, which is usually the locality where the lawyer practices law.³⁷

The Bar Council and previously the Ministry of Justice kept only lists of lawyers that offered legal aid, which indicated lawyers per administrative units of the country. Such a list was published yearly in the Official Gazette (Monitorul Oficial), as it was made available for criminal investigation officers, prosecutors and judges for appointing lawyers in cases where legal representation was mandatory. From July 1st this year the National Legal Aid Council keeps the lists of legal aid lawyers (public defenders and private lawyers accepting legal aid appointments) and the territorial offices of the National Legal Aid Council create the lists of duty lawyers in each administrative unit.³⁸ At the time of writing the present report, the lists are being drafted by the National Legal Aid Council, therefore information is not yet available.

For indicative purposes only, as the distribution of lawyers has not changed dramatically, the list of lawyers that offered legal aid³⁹ in 2006⁴⁰ gives the following picture regarding the ratio of legal aid lawyers to the population in different parts of the country:⁴¹

Nr.	Administrative unit	Nr. of population (1,000s)	Nr. of legal aid lawyers	Legal aid lawyers per 10,000
1.	Chisinau	780,3	174	2.23
2.	Balti	147,1	39	2.65
3.	Anenii Noi	83,2	4	0.48

³⁷ The Bar Council's staff has informed that data are being currently collected about lawyers in order to create a more adequate registry of lawyers, including also data on their address and, consequently, regions where they practice law. It has to be mentioned here that licenses in Moldova are issued allowing practice anywhere in the country, and the address of a lawyer would not necessarily mean that the respective lawyer practices only within that region's jurisdiction. It is very common for lawyers to practice in different regions of the country, especially regarding Courts of Appeal and Supreme Court where lawyers can come from different regions of the country. However, practice in other regions than where the lawyer's office is registered is more an exception than a rule and therefore data about lawyer's registered address would still be the best indication about the distribution of lawyers per regions of the country.

³⁸ Art. 33 of the Law on Stat Guaranteed Legal Aid, adopted on 26.07.07 and entered into force on 01.07.08.

³⁹ Note that legal aid until the new legal aid law that entered into force on 01.07.08 was provided by any private lawyer that was registered on the lists for legal aid kept by the Bar, which included the majority of lawyers, especially in the regions outside Chisinau. Therefore, to some extent, the numbers in this list are quite indicative for the real distribution of lawyers in the country.

⁴⁰ The example of 2006 is presented as it is the most recent available list of legal aid lawyers (the list was available on Bar Association's website www.avocatul.md in the first half of the 2008. The list for 2007 was not available and the one for 2008 was not drafted, according to the Bar Council's staff, who was waiting for the new mechanism to be put in place by the National Legal Aid Council. From discussions with representatives of justice actors in different parts of the country, the legal aid lawyers were appointed in 2007 and 2008, including as late as August, according to the old lists provided to criminal investigation bodies in each raions.

⁴¹ Data regarding the population available from the National Bureau for Statistics, information note on the number of stable population in Moldova as of January 1, 2007, available on http://www.statistica.md/statistics/dat/954/ro/Nr_pop_stab_pr_terit_1_ian_2007.pdf, last checked on 08.08.08.

4.	Basarabeasca	29,6	3	1.01
5.	Briceni	77,0	2	0.25
6.	Cahul	124,1	15	1.21
7.	Cantemir	63,6	6	0.94
8.	Calarasi	80,3	9	1.12
9.	Causeni	93,6	4	0.43
10.	Cimislia	63,8	3	0.47
11.	Criuleni	72,9	6	0.82
12.	Donduseni	46,9	4	0.85
13.	Drochia	92,4	8	0.86
14.	Dubasari	35,4	n/a	n/a
15.	Edinet	84,4	9	1.07
16.	Falesti	94,4	5	0.53
17.	Floresti	92,0	6	0.65
18.	Glodeni	63,6	5	0.78
19.	Hincesti	124,3	4	0.32
20.	Ialoveni	97,5	14	1.43
21.	Leova	54,5	4	0.73
22.	Nisporeni	67,8	3	0.44
23.	Ocnita	57,2	4	0.7
24.	Orhei	126,6	12	0.95
25.	Rezina	53,4	3	0.56
26.	Riscani	72,0	4	0.56
27.	Singerei	94,8	7	0.74
28.	Soroca	101,3	8	0.79
29.	Straseni	91,5	6	0.65
30.	Soldanesti	44,6	4	0.9
31.	Stefan Voda	73,4	2	0.27
32.	Taraclia	44,9	4	0.9
33.	Telenesti	75,6	2	0.26
34.	Ungheni	117,3	n/a (5 in 2003)	~0.43
35.	U.T.A. Gagauzia	159,8	12	0.75
Total		3581,1	395	1

The above data indicate the highest number of lawyers, as expected, in the capital and the second major city of the country, with more than two lawyers per 10,000, few regions with more than one lawyer and the rest of the country with less than one lawyer per 10,000. Such low numbers create practical problems in terms of guaranteeing both the access to lawyers, and the quality of such services as even disciplinary proceedings are useless if there is no lawyer to replace a bad one. Ensuring sufficient lawyers in a few administrative units of the country remains a challenge for the Bar and for the newly created National Legal Aid Council.

Most common forms for organizing practice

Once admitted to the legal profession, the lawyers can organize their activity in two forms: as individual lawyer's office or as an associated lawyers' office.⁴² Individual lawyer's

⁴² See art. 26 of the Law on Bar.

office (or solo practice) consists of one lawyer and such office acts as physical persons in legal rapports (this is an important feature, for example, for determining the status for tax purposes). An associated office can be founded by two or more lawyers whose relations are governed by the contract they sign. An associated lawyers' office acts as a legal entity. However, even in such offices lawyers usually practice as solo practitioners, not as partners, sharing only a common office not the profits, neither working together on cases.⁴³ Both individual and associated lawyers' offices have to be registered with the Bar Council, who keeps the registry of law offices in the country.⁴⁴ A law office can start its activity only upon registration with the Bar Council. A law office can be dissolved according to civil legislation. A lawyer can be the founder of only one office – individual or associated. A lawyer must have an appropriate office for practicing law.

Each law office keeps the registry of the contracts signed by the lawyers with the clients.⁴⁵ The lawyer's profession is exercised according to the regulation of the law office.⁴⁶ In practice, however, few law offices have such regulations.

There is no up-dated and reliable registry at the Bar Council about the number of lawyers in law offices. The only available information is the registry (rather a list) of law offices,⁴⁷ according to which there are 114 law offices registered with the Bar Council, out of which 42 are associated law offices and 72 individual law offices. As the list did not have any information about the number of lawyers practicing in such offices, it is not possible to report on their size.

2. Admission to the legal profession.

General requirements

The law states the following conditions for becoming a lawyer:

- citizenship of the Republic of Moldova,
- full civil capacity,
- university degree in law (the mot-a-mot translation is “licensed in law”),
- good reputation,
- professional internship,
- qualification examination.⁴⁸

⁴³ Art. 28 para (1) of the Law on Bar. See also the Legal Profession Reform Index for Moldova, American Bar Association, April 2004, available at <http://www.abanet.org/rol/publications/moldova-lpri-2004-eng.pdf>, last checked on 08.08.08, which noted that lawyers do not share profits in the office.

⁴⁴ See art. 29 of the Law on Bar, as amended by the Law of 13.07.06. Previously the lawyers' offices were registered by the Ministry of Justice, which maintained the registry of law offices.

⁴⁵ See art. 26 of the Law on Bar.

⁴⁶ Art. 52 para (3) of the Law on Bar.

⁴⁷ The list was available on <http://www.avocatul.md> in the first half of 2008. The staff at the Bar Council informed back in March 2008 that they were compiling information on law offices for a new and more complete registry. As of August, such information was not available.

⁴⁸ Art. 8 para (2) of the Law on Bar.

As the first four conditions are quite straightforward, only the last two ones will be referred below.

Professional internship

The professional internship lasts for one year. The Bar Council can reduce this period, at the request of the apprentice or the supervising lawyer, submitted after having carried out at least three months of professional internship. The professional internship is carried out under the supervision of a lawyer with a minimum experience of 5 years, who can have maxim two apprentices simultaneously.⁴⁹ The Regulation on the conditions for carrying out the professional internship⁵⁰ provides further details on the documents to be submitted for registering the internship contract, the incompatibilities for the apprentices, the fee for registering as an apprentice and the responsibilities of the apprentice and the supervising lawyer.

After registering the professional internship, the apprentice can provide legal assistance in the first instance courts in civil and administrative offences' proceedings, as well as in economic courts and before public authorities.⁵¹ This provision leaves room for improvement as it has no reference regarding apprentice's possibilities to provide any legal assistance in criminal proceedings. Although practically, as of today, the lawyer's license is mostly needed to be able to practice criminal law (in other fields the possibility of representation on the basis of a proxy still being there), the apprentices have no rights to participate in criminal proceedings, besides observing the lawyer. Even the observation is quite limited as apprentices are not allowed to take part at the hearings on pre-trial arrest or visit the detained clients, leaving it each time for negotiation between the supervising lawyer and the competent official to allow the apprentice to observe. Giving some limited rights to participate in criminal proceedings to apprentices would benefit the latter in terms of their preparation for defence work, as well as help the state meet the uncovered needs in legal services for the poor.

The Regulation on conditions for carrying out the professional internship obliges the supervising lawyer to create an individual internship plan, coordinate and create conditions for the apprenticeship, as well as contribute to the creation of professional abilities of the apprentice.⁵² In practice apprentices rarely follow an individual plan under close supervision of the supervising lawyer, more often providing alone legal assistance in order to secure a living or assisting the supervising lawyer with his/her routine cases.

⁴⁹ Some lawyers consider this provision too limited and argue for allowing the supervising lawyer to have more than two apprentices if s/he can handle it. The same opinion is shared by Lenka Eisenbrukova who has provided an expert opinion on the Regulation on conditions for carrying out the professional internship within the framework of the EC/CoE Joint Programme for the Increased Independence, Transparency and Efficiency of the Justice System in the Republic of Moldova, February 2008.

⁵⁰ Adopted by the Congress of Lawyers on 23.03.07

⁵¹ P. 3.1. of the Regulation on conditions for carrying out the professional internship.

⁵² P. 2.6. of the Regulation on conditions for carrying out the professional internship.

Costs and specialized training during the professional internship

The only regulated costs of the professional internship are the fees to be paid by the apprentice to the Bar Council in order to register as an apprentice and receive the identification card as apprentice. These fees are reasonable, e.g. for 2008 the internship registration fee, to be paid to the Bar Council, is 200 MDL (~14€) and 25 MDL (~1,8€) for the apprentice's card. According to the Bar Council's staff, these costs are used for organizing the Licensing Commission's work and the card itself.

What is problematic though is the practical setting in which professional internships are carried out. The apprentices are allowed to provide some legal assistance and get paid for that. In practice it means they have to either find a supervising lawyer willing help them find clients or willing to share some of his/her honorarium with the apprentice, or the apprentices struggle themselves for finding clients. The most common practice, according to many apprentices, is that the apprentice is looking for clients alone rather than learning by observing and assisting the supervising lawyer and providing the permitted legal services under close supervision and mentorship of the supervising lawyer. The legislation could be improved in this sense by providing incentives for the supervising lawyers to hire apprentices (e.g. tax related incentives) or allowing the apprentices to be employed in the legal field while carrying out the professional internship. Currently the Regulation on conditions for carrying out the professional internship expressly mentions that the apprenticeship is incompatible with "any paid position during the professional internship except those related with academic and scientific activity, entrepreneurial activity and the notary activity".⁵³ Moreover, in some law offices there is a practice of the candidates for the professional internship to pay to the office in order to get admitted as an apprentice (e.g. 300€ in one law office). Such a fee is a real burden for the candidate apprentices.

As for specialized training or other means of professional development for the apprentices, there is no course or training program at the Bar Council specifically designed for the apprentices, this issue being left for every apprentice to find ways, individually, of professional development. When the Bar Council and other local or foreign organizations provide trainings for lawyers, the apprentices are also invited or admitted to participate. It would be certainly useful for the Bar Council to develop at least some preparatory courses for the qualification examinations and some courses on lawyers' ethics, topic that is not addressed effectively by law faculties.

The law exempts from fulfilling the professional internship and qualification examination the candidates with at least 10 years of experience as judges or prosecutors if, within 6 months after the dismissal from the respective position, they have requested issuing the license for practicing as a lawyer. The same rights and in the same conditions have the candidates that after the dismissal from the position of a judge or prosecutor have continued to work in the legal field.⁵⁴ The opinion about this exemption is controversial among the

⁵³ P. 1.4. of the Regulation on conditions for carrying out the professional internship.

⁵⁴ Art. 8 para (3) of the Law on Bar.

legal community in Moldova. Some lawyers are of the opinion that this is not a good exemption from the client perspective, especially regarding the prosecutor who has an accusatory mindset. The professional internship and qualification examination requirements would be a minimum period for preparing the prosecutor for a defence job. Others critique this exemption as being an unfair one, as no lawyer after 10 years of experience can become automatically prosecutor or judge. Others, especially prosecutors, critique this exemption as it “takes” away the prosecutors with experience, who can earn much better as lawyers, weakening the prosecution’s human resources.⁵⁵ According to the President of the Bar Council, during the first year and a half after the law was amended, 102 ex-prosecutors and 10 ex-judges became lawyers, out of which 78 were from Chisinau, but the number is diminishing afterwards.⁵⁶

Qualification examination

Once the professional internship is finished, the last step for admission to the legal profession is the qualification examination organized by the Commission for Licensing of the Legal Profession (Licensing Commission), except for the categories mentioned above (judges and prosecutors with a minimum 10 years of experience) that are exempted from carrying out the professional internship and taking the qualification examination.

The Licensing Commission (see the details on its composition in the first section of the report) adopts the decision regarding the admission to take the qualification examination, organizes the qualification examination, approves the results of the examination and adopts the decision on admission to the legal profession.⁵⁷ Qualification examinations are held twice per year: the spring session (March – May) and the fall session (October – November). The questions and topics for the qualification examination are prepared by the members of the Licensing Commission, who can always amend them, except that no amendments are allowed in a period shorter than 30 days prior to the examination.⁵⁸

The qualification examination consists of three stages. At the first stage the candidate shall complete a test of 400 multiple-answer questions out of 1,000 that are published on the Bar’s website. The test should be completed in 3 hours. The required number of correct answers for passing the test is 375. The questions are from various fields of law. The second stage, organized within 15 days from the first one, consists of a written examination. The candidates should write the responses to two theoretical and one practical question, drawn up from 150 topics in the following fields: civil and criminal proceedings, and administrative law (the stage focused on procedural law). Each answer is evaluated

⁵⁵ Concern raised by the representative of the Office of the Prosecutor General at the last Congress of Lawyers, held on 27.03.08.

⁵⁶ See the report of the President of the Bar Council, presented at the Congress of Lawyers, 27.03.08, available in *People’s Lawyer*, nr. 3, 2008, pp. 1-9.

⁵⁷ Art. 40¹ of the Law on Bar.

⁵⁸ The qualification examination procedure is regulated (with quite a detailed description) by the Regulation on the procedure of conducting the qualification examination for admission to the legal profession, adopted by the Lawyers’ Congress on 23.03.2007.

with a mark from 1 to 20 by each member of the Licensing Commission and an average mark is then calculated. The minimum passing grade is 48 points. The third and the last stage is a verbal examination, during which the candidate shall answer three topics drawn up from a pool of 200 questions in the following fields: civil law, criminal law, constitutional law, family law, labour law, legal profession and ethics. The same grading procedure applies as for the second stage.

The results of the qualification examination can be contested within 72 hours, however the grade/points given by a particular member of the Licensing Commission is not subject of the contestation, only the overall mark. The Licensing Commission's decision can be further appealed in the court.

The Licensing Commission adopts the decision about the admission to the legal profession based on the results of the qualification examination. This decision is sent to the Ministry of Justice for issuing the lawyer's license. The candidate that has not passed the examination or has not appeared to the exam without good cause can be admitted repeatedly to the examination only after 6 month. The Ministry of Justice issues the license for exercising the lawyer's profession (lawyer's license) within 10 days from the decision of the Licensing Commission regarding the admission to the legal profession or within 30 days from the request of the candidates exempted from the qualification examination.

The lawyer's license is the only document that confirms the lawyer's status.⁵⁹ The issuance of the license by the Ministry of Justice is, after the amendments of 13.07.08, a rather symbolic function and does not interfere with the lawyers' independence, since the Ministry cannot in any way influence the decision of the Licensing Commission besides through the members it delegates there. However, it would be desirable to give the Bar Council the competence of issuing the lawyers' licenses, which would ensure a more prominent separation from the Ministry.

Statistics and perception about qualification examination

The opinions about the admission procedure are split. Some members of the Bar Council consider the qualification examination procedure a rather cumbersome one, testing theoretical rather than practical skills and abilities of the candidates and seek to change it. Others, on the contrary, consider the procedure an appropriate one and important to keep at this level of difficulty as one of the guarantees for ensuring the quality of legal services in the country.

Compared with the period when qualification examination was administered by the Licensing Commission organized by the Ministry of Justice during 2002 – 2006, the current procedure is quite unanimously viewed as a more transparent one. For example, it is appreciated that the questions for the first stage are currently published together with the correct answers, while previously the answers were not published and there were many

⁵⁹ Art.17 of the Law on Bar.

complaints about different interpretations of the correct answers. At the same time, even its supporters agree that the examination procedure can be improved. The first – “test” - stage is mostly criticized by many lawyers as not being an appropriate tool for assessing the lawyers’ readiness for practicing law but rather testing the memorizing abilities.⁶⁰ The third stage is also criticized from the perspective that it can be too subjective, members of the Commission being able to ask whatever they find appropriate. It is also an unfair one as in a way it prevails over the first two, for example if a candidate passes the first two stages, but fails the last one, there is no provision allowing to take into account the previous stages at evaluating the candidate. There is also no provision on the procedure for suspending the examination, e.g. if a stage has already been passed, to be able to continue with the next one at the next session of examination. Criticism lies also with the impossibility to access the voting results of the each of the members of the commission, including the given points (the candidate has access only to the overall grade of the Commission), and the impossibility to contest the grade given by a certain member of the Commission.

According to the Law on Bar the regulation of the qualification examination for admission to the legal profession is approved by the Congress of Lawyers,⁶¹ however, the latter can delegate some of its attributions to the Bar Council. At the last Congress of Lawyers, held on 27.03.08, the participants supported the President’s proposal for delegating the Bar Council the competence to amend the current regulations of the lawyer’s profession, including of the one on qualification examination. Thus, changes might indeed occur in the admission procedure before the next Congress of Lawyers, to be held in 2009.

Perhaps the passing rates could be an appropriate indication as to the level of complexity of the qualification examination. Compiled data for the period when the examination was administered by the Licensing Commission by the Ministry of Justice (2002 – 2006) are missing or at least not publicly available at the moment. From the registry of the issued licenses by the Ministry of Justice one could get only an impression of the number of issued licenses as there are no data on the number of candidates that applied, neither a differentiation in the registry between the licenses issued as a result of the exam or licenses issued as a result of the experience as judge or prosecutor. Notwithstanding these limitations, the below numbers can still indicate that the number of licensed lawyers during these years is considerably lower than the number of licensed lawyers in the periods when the qualification examination is carried out by the Licensing Commission under the Bar Association:

- ✚ Licences issued by the Licensing Commission organized by the Ministry of Justice: in 2003 – 42 licenses, in 2004 – 35;⁶²

⁶⁰ See also the expert opinion of Lenka Eisenbrukova who has provided an expert opinion on the regulation on qualification examination within the framework of the EC/CoE Joint Programme for the Increased Independence, Transparency and Efficiency of the Justice System in the Republic of Moldova, February 2008.

⁶¹ Art. 18 para (2) of the Law on Bar.

⁶² Note please that these data might not be very accurate as these were gathered from the registry of the Ministry of Justice, kindly offered by the department responsible for legal profession.

- ✚ In 2006 – 80 (most of the issued licenses were after the fall session of the qualification examination that was already administered by the new Licensing Commission of the Bar)
- ✚ Licenses issued by the Licensing Commission of the Bar: in 2007, fall session: out of 147 candidates included on the list for the first stage, 97 candidates were admitted,⁶³ making a total of 60% out of all candidates. For the 2008 spring session, 154 candidates⁶⁴ were admitted to take the examination,⁶⁵ out of which 89 took successfully all three stages of the qualification examination and were admitted to the profession, or 57% of the candidates.⁶⁶

As far as the costs of admission are concerned, each candidate should pay a fee of 500 MDL (~35€) for being admitted to take the qualification examination. This fee is a reasonable one if compared to the living standards, however is rightly considered by many apprentices and lawyers as not a justified one, given the fact that the apprentices are being left to take care by themselves about the professional internship and get very little support during the professional internship from the Bar Council.

3. Cost of services and legal aid.

Who sets costs for legal services and how affordable they are

According to the Law on Bar,⁶⁷ the amount of lawyer's fee is established by agreement between the parties and cannot be changed by public authorities or by court. Consequently the cost of legal services is set by the market and varies considerably depending on lawyer's reputation/qualification, as well as location (lawyers in Chisinau are more expensive than in outside regions).

There are also Bar Council's recommendations for the amount of fees charged for different categories of cases.⁶⁸ The Bar Council's recommendations provide for the minimum and maximum amounts of fees per the following categories of cases:

1. Civil/pecuniary cases – the amount of the fee is determined depending on the value of the claim. The minimum fee is 2,500 MDL (~178€) for claims with the value under 50,000 MDL (~3,570€) and the maximum fee for a claim of the same value is 17% of the value of the claim. Further a scale of different values is given, with minimum and maximum percentage from that claim's value;

⁶³ Decision of the Licensing Commission of 28.11.07.

⁶⁴ There is no data about the total number of submitted requests for the examination, but the assumption is that almost everyone that submit a request is admitted to take the examination

⁶⁵ Decision of the Licensing Commission of 04.04.08.

⁶⁶ Decision of the Licensing Commission of 23.05.08.

⁶⁷ At. 54 para (2) of the Law on Bar.

⁶⁸ Adopted by the Bar Council on 29.12.2005, published in the *Avocatul Poporului* (People's lawyer), nr. 1, 2006.

2. Non-pecuniary cases: the minimum amount of the fee is 2,000 MDL (~143€) + fee per court hearing, and the maximum amount of the fee is 50,000 MDL (~3,570€) plus fee charged per court hearing. The minimum amount of the fee charged per court hearing is 200 MDL (~14€) and the maximum is 1,500 MDL (~107€);
3. Administrative cases – the same principles and amounts as for non-pecuniary cases are provided;
4. Criminal cases – the minimum amount of the fee is 5,000 MDL (~357€) plus the fee charged per court hearing and the maximum amount of the fee is 150,000 MDL (~10,714€). The minimum amount charged per court hearing is 200 MDL (~14€) and the maximum is 3,000 MDL (~214€);
5. Administrative offence cases – the minimum amount of the fee is 2,000 MDL (~143€) plus the fee charged per court hearing and the maximum amount of the fee is 30,000 MDL (~2,143€). The minimum amount charged per court hearing is 200 MDL (~14€) and the maximum is 1,500 MDL (~107€);
6. Legal consultation should be charged: oral consultation under 15 minutes – minimum amount of the fee 50 MDL (~3,5€) and maximum amount 500 MDL (~36€); oral consultation from 15 to 60 minutes – minimum fee is 100 MDL (~7€) and maximum 2,500 MDL (~178€); oral consultation exceeding one hour – minimum fee of 250 MDL (~18€) and maximum fee of 2,000 MDL (~143€) per hour; written consultation – minimum fee of 250 MDL (~18€) and maximum fee of 2,300 MDL (~164€) per hour;
7. Representation before international courts or international investigation organization (not applicable to arbitration proceedings) – minimum amount of fee of 1,000€ and maximum amount of 15,000€ or minimum amount charged per hour - 40€ and maximum 150€.

Since no other data about the actual costs of legal services exists, one could assess the affordability of legal services based on the current Bar Council's recommendations as compared with the average monthly gross salary in economy, which for example in 2007 was 2,065 MDL⁶⁹ (~147€). The average monthly gross salary is approximately of the same value as the minimum fee for any sort of case, for a criminal case the minimum fee being more than 50% of the average monthly gross salary. Judging from this very basic and superficial comparison, one could conclude that legal services are not affordable for the population, and is not affordable for rural communities given in the agricultural sector the average monthly gross salary is 1,098 MDL (~78€).

But legal services are still provided in the country and the statistics referred to before show that non-represented clients are of a small percentage. This situation is explained by a variety of factors. Firstly, the population is used to rely on a representative to go to court; consequently the demand for legal services is high, although often the people turn to jurists

⁶⁹ According to data on average monthly gross salary of an employee in Moldova in 2007, National Bureau for Statistics, available at http://www.statistica.md/statistics/dat/1124/ro/Sal_med_lunar_al_unui_ang_2007.pdf, last checked on 08.08.08.

rather than lawyers. On the other hand, the high poverty rates in the country determine the legal services to be valued accordingly. While there is no reliable information whether the Bar Council's recommendations on the amount of fees are followed or not in practice, anecdotal evidence suggests these recommendations are not very much relied on by lawyers, at least not as far as the amounts are concerned. According to some lawyers these recommendations were developed in a haste (to respond to the European Court of Human Rights' request) and do not reflect the realities in the country. Thus, for example, clients often pay their lawyer in kind or considerably lower fees than indicated in the respective recommendations, especially in regions outside Chisinau. At the same time, in Chisinau some lawyers charge higher than the maximum amounts provided by the recommendations regarding the fee. Some members of the Bar Council mentioned that it is preparing new recommendations on the costs of legal services.

Legal aid: perceptions and reform

The legal aid system was suffering from various shortcomings, attested in many reports and studies.⁷⁰ The unsatisfactory perception of legal aid and empirical data confirming it led to a major legal aid reform, which started back in 2005 - 2006, culminating with the adoption of a new legal aid law – the Law on State Guaranteed Legal Aid – on 26.07.07, which entered into force on 01.07.08, and that is currently still unfolding. For the sake of brevity, below briefly the main shortcomings of the legal aid system will be noted, namely the low quality of services and the low budget for legal aid. Both are expected to be improved with the implementation of the new law.

Firstly, the legal aid services were of a low quality. This was due to different reasons, mainly the tradition of poor performance by lawyers when providing legal aid, the legal and institutional framework that was not conducive for providing qualitative services, the Bar poor mechanisms for ensuring qualitative services.

⁷⁰ See for example See the Assessment report on the provision of free legal aid and legal assistance in Moldova, prepared by the Council of Europe experts Ms. Nadine Benichou (France), Ms. Alison Macnair (United Kingdom) and Mr. Karel Cermak (Czech Republic), within the framework of the Joint Programme between the European Commission and the Council of Europe for Moldova for the year 2003. See also the study undertaken by the Soros Foundation Moldova in 2003 on legal aid cases, which showed the significantly less actions taken by legal aid lawyers as compared with private lawyers, as well as differences in outcomes (the study is available upon request). The monitoring of prisoners' rights, carried out by the Institute for Penal Reform in Moldova in 2000 - 2004, has found that 80% of the respondents were unsatisfied with the services delivered by ex-officio appointed lawyers (source: http://www.irp.md/Reforma/monitorizare_en.html , last accessed on 08.08.08). The 2007 6-month preliminary report and the Analytic Report: Observance of Fair Trial Standards and Corresponding Rights of Parties during Court Proceedings, carried out by OSCE Trial Monitoring Programme for the Republic of Moldova, observing all courts of Chisinau during April 2006 – May 2007, have noted the poor and passive performance of ex-officio defence lawyers (lawyers accepting legal aid appointments), the widespread practice of their appointment on the spot prior to the hearing not allowing sufficient time for preparing the defence, instances when legal aid lawyers were asking for payments from the client (the reports is available on http://www.osce.org/documents/mm/2006/11/24340_en.pdf and http://www.osce.org/documents/mm/2008/06/31833_en.pdf, last accessed on 08.08.08).

- Tradition of poor performance of lawyers when acting on legal aid appointments - usually lawyers appointed to provide legal aid were not interested in providing qualitative services and therefore they rarely acted diligently in the client's interests. For example, the study mentioned above has found that the number of complaints, requests, motions submitted by contracted lawyers was higher than the ones submitted by legal aid lawyers.⁷¹ Another study has indicated that only 21,4% of the convicted persons serving the prison term in 2004 were satisfied with the quality of legal aid defence they received.⁷² The new legal aid law has diversified the system of legal aid providers (see details below) and instituted a mechanism for quality control by the National Legal Aid Council, which are expected to increase the quality of legal aid services. The National Legal Aid Council is also set to undertake a continuous campaign for raising the awareness of the right to qualitative legal assistance by the population, which should also contribute to raising the lawyers' performance. Irrespective of all these efforts, only if the lawyers themselves will be motivated enough, will the stereotype of bad legal aid services be broken.
- Institutional arrangements on legal aid also caused the quality of legal aid to be that low. Firstly, the arrangements on appointing legal aid lawyers were not conducive for providing qualitative services, but rather put the lawyers in dependence of the criminal investigation bodies and investigative judges. For example, any lawyer that wished to provide legal aid was included on the list of legal aid lawyers that was published annually by the Bar Council (previously by the Ministry of Justice). When a client requested or the circumstance of the case required the participation of a legal aid lawyer, the criminal investigation body or the investigative judge should have contacted the head of the associated law office in the given region, who was appointing the lawyer on duty from the respective list. However, in practice the schedules were not always made or the criminal investigation officers had their acquaintances who they were called to sign the interviewing protocols or other procedural documents, often after the interrogating the client first. The 2004 studies mentioned above both confirm these allegations, finding that 79,6% of interviewed defendants did not have a lawyer during the first interrogation. In one of the regional courts where the 2004 study was carried out, only in 12% (with legal aid lawyers) and 18,% (with private lawyers) of cases was a lawyer provided before the first 24 hours of detention / apprehension. A series of other vague provisions on appointment were causing problems in practice. The new legal aid law has charged the territorial offices of the National Legal Aid Council with drafting the list of lawyers and ensuring a

⁷¹ The statistical study of closed criminal cases examined in 2003 by four courts of Moldova, Soros Foundation – Moldova, 2004, which showed that in 82% of cases during the criminal investigation phase there no request / complaint / motion submitted by legal aid lawyers (as compared with 50% of private lawyers), and only in 2,3% of cases at first instance there were some complaints /requests/ motions submitted by lawyers (7,3% for private lawyers). The latter figure in fact indicates a dangerous trend regarding private lawyers too, but clear conclusions cannot be drawn regarding quality of legal services since this was not the main purpose of the study, additional research being needed for assessing the quality of legal services in the country.

⁷² See for details the study on Criminal Justice and Human Rights, carried out by the Institute for Penal Reform in Moldova, Chisinau, 2004.

prompt and effective appointment procedure. The same offices will be in charge of paying the legal aid lawyers (see details below), which should take the lawyers out of criminal investigation bodies' dependence and increase their abilities to actively defend the clients. The law also provides for the authority of the National Legal Aid Council, a legal aid management authority created to oversee the implementation of legal aid policies in the country, to ensure the quality of legal aid in the country. It is hoped that with the creation of a management body, as well as with diversification of legal aid providers and increase of legal aid budget, the quality of legal aid will also increase.

- Ineffective mechanisms within the Bar itself of ensuring the quality of legal services. The Bar does not have a set of standards for legal services, neither for legal aid services. The only quality control method is the disciplinary proceedings, conducted by the Bar Commission for Ethics and Discipline. However, these proceedings are only initiated if the client is well-informed about the right to complain about quality. The disciplinary proceedings until 2007 in Moldova were quite ineffective, since there was no clear proceeding set up, no decisions were made public, the annual reports of the Commission only mentioning the total number of submitted complaints against the lawyers' actions and the number of admitted ones, with no reference to the merit and motivation of the decisions. As such, these proceedings did not play any preventive role for other similar violations by lawyers and with time they became quite ineffective. In March 2007 a new Commission for Ethics and Discipline of the Bar was set up, which took its tasks more seriously and took a more active and methodical approach regarding the disciplinary proceedings. Thus, the decisions of the Commission are currently published in the People's Lawyer journal, which is read by all lawyers and hence it is expected that the disciplinary proceedings will have an effect on the quality by preventing similar violations. These proceedings alone are not sufficient for ensuring quality of legal services and other methods for quality insurance should be developed. It is expected that the Commission for Ethics and Discipline of the Bar and the National Legal Aid Council will work together in that respect. In addition, changes regarding the right of representation in court are also expected. As long as the institution of representation in the Civil Procedure Code, allowing anyone to represent the party, will not be changed, the disciplinary proceedings will not have the desired impact on the market of legal services as the practice shows that the lawyers that get the license withdrawn simply continue to offer the same legal services as representatives.

Secondly, a major, if not the biggest, problem of the legal aid system was, and still is, the inadequate budget, which is far too low to ensure a proper management and sufficient motivation for the legal aid lawyers. Thus, for example the allocated budget for legal aid in 2006⁷³ was 1,888,307 MDL (~114,443€), which means 0,03€ per capita. Given the quite broad eligibility criteria (see below for details), the budget is spread and scarcely is sufficient for covering the needs. The payment for lawyers who provided legal aid was

⁷³ The year of 2006 is used to illustrate the budget, as analysis for 2007 is not yet ready.

determined depending on the actual time spent on legal aid, calculated for certain procedural actions covered by the state, but not more than 160 MDL (~11€) per day. In order to receive the payment the lawyer had to submit to the head of the associated law office the following documents: the decision of the criminal investigation body or the court, issued after the lawyer has participated in the relevant proceedings and the report on the case where the lawyer indicates all the cases where s/he participated, the time consumed and the requested remuneration. Among other issues, the decision of the criminal investigation body and the court indicated the remuneration that should be reimbursed to the lawyer.⁷⁴ Both the amount and the procedure of payment were considered inappropriate, rightly, by the legal community and many lawyers were entering the case as legal aid lawyers, while afterwards were continuing representing the client only if the latter was able to pay. With the adoption of the new legal aid law, the Government undertook the commitment to increase the legal aid budget and instituted the National Legal Aid Council and its territorial offices to see to the proper management of this budget. The expected budget for 2009 is double the budget allocated for 2008, which is already a significant improvement. However, the estimations show that more is needed. For example, the payment for legal aid lawyers is not improved significantly since the budget is too low for 2008 (the payment rules are detailed below). The amounts set by the Ministry of Justice for the staff of the territorial offices of the National Legal Aid Council and the monthly honorarium for the public defenders is also considered inadequate to attract and maintain qualified personnel for a longer period of time. There are also fears that the budget will not be sufficient to cover all legal aid needs, especially the duty lawyers for providing urgent legal aid to all persons detained under criminal and administrative offence proceedings. But these are all only speculations, due to the lack of reliable data, and only in a few months we can see if the budget is adequate or not and make more accurate prognosis.

Who and when can receive legal aid?

The Law on State Guaranteed Legal Aid⁷⁵ introduced new criteria for legal aid eligibility and new types of legal aid providers, as well as created a body in charge with organizing and managing the legal aid delivery in the country – the National Legal Aid Council and its territorial offices.

The respective law provides for the following categories of legal aid:

- 1) primary legal aid, which is defined as provision of information on legal issues and consultation on any legal matter, provided to any person by paralegals or non-governmental organizations;⁷⁶ and
- 2) qualified legal aid, which is defined as provision of consultation, representation and/or defence in any criminal investigation body, in courts in criminal, civil, administrative

⁷⁴ See p. 3 of the Regulation on remuneration, issued by the Ministry of Justice in coordination with the Bar Council, 31.03.03, with subsequent amendments of 31.01.07. The regulation was abolished and replaced with a provisional regulation of the National Legal Aid Council on payment for legal aid, adopted on 18.07.08.

⁷⁵ Adopted on 26.07.07, entered into force on 01.07.08.

⁷⁶ See art. 2 and 15 of the Law on State Guaranteed Legal Aid.

offence and administrative proceedings and representation before public authorities. Qualified legal aid is provided by lawyers, public defenders or private, and public associations.⁷⁷

Qualified legal aid is provided to any person in need for legal assistance in the following categories of cases and under the following conditions:

1. in any criminal case where the interests of justice so require and the person does not have sufficient means to pay for the legal services;
2. in any civil, administrative offence or administrative case, when the person does not have sufficient financial means to pay for these services and the case is complex legally or procedurally,⁷⁸
3. irrespective of the financial situation of the person, if s/he:
 - a. is detained in a criminal or administrative offence proceeding,
 - b. has the right to mandatory representation in a criminal case according to art. 69 para (1) p.2) – 12) of the Criminal Procedure Code,⁷⁹
 - c. has the right to mandatory representation according to art. 304 and 316 of the Civil Procedure Code.⁸⁰

The above eligibility criteria differ from the previous regime, mainly in the following ways. Firstly, the eligibility is reduced for criminal cases where mandatory representation is not

⁷⁷ See art. 2, 29 and 35 of the Law on State Guaranteed Legal Aid.

⁷⁸ These provisions will enter into force only on January 1, 2012.

⁷⁹ Art. 69 para (1) p. 2) – 12) states the following circumstances when defendant's representation is mandatory:

- 2) the suspect, accused, defendant has difficulties in defending him/herself, being dumb, deaf or has any other essential problems of speech, hearing, seeing as well as physical or mental problems that impede him/her to exercise the rights;
- 3) the suspect, accused, defendant does not speak the language or does not speak well enough the language in which the criminal proceeding is carried out;
- 4) the suspect, accused, defendant is a minor;
- 5) the suspect, accused, defendant is in compulsory military service;
- 6) the suspect, accused, defendant is being accused of having committed a serious, extremely serious or exceptionally serious crime;
- 7) the suspect, accused, defendant is under arrest as a preventive measure or is sent to undergo a judicial psychiatric expertise examination in stationary conditions;
- 8) the interests of the suspects, accused, defendants in the case are contradictory and at least one of them is assisted by a defender;
- 9) a defender of the injured party or the civil party participates in the case;
- 10) the interests of justice require the participation of the defendant in the court hearing at first instance, appeal, cassation, as well as at the examination of the case in extraordinary appeal proceedings;
- 11) the criminal proceedings are carried out regarding a person without civil capacity (irresponsible), who is accused of committing dangerous actions or who got mentally ill after committing such actions;
- 12) the criminal proceedings are carried out regarding the rehabilitation of a person who is dead at the moment of examination of the case.

⁸⁰ Art 304 refers to the proceedings of limiting the civil capacity of a person or declaring incapable and art 316 refers to proceedings for approving a psychiatric examination or holding a person in a psychiatric institution.

required to only those persons that can prove the financial need for state subsidized legal aid. This requirement is valid also for the cases when the defendant requests legal assistance, which makes it immediately mandatory for the competent bodies to ensure access to a lawyer. This limitation was introduced in the new law in a hope to reduce the circle of cases eligible for legal aid in order to make it possible for the state to ensure an adequate remuneration and extend legal aid to other cases that were not eligible under the previous legislation.⁸¹ Secondly, eligibility for legal aid was extended to any person that is detained under a criminal or administrative offence proceeding, up to the decision on the pre-trial hearing. This provision is meant to ensure a prompt access to a lawyer and, consequently, a better protection for any detained person. Thirdly, the new legal aid law extended the eligibility for legal aid for civil, administrative offence and administrative cases, where a person is financially in need and the case is of a certain complexity. This provision, due to budgetary restraints, will only be implemented starting with 2012. Lastly, the legal aid law has provided for a new type of legal aid for Moldova, namely primary legal aid, which means provision of basic information and/or consultation on any legal issue that does not require a qualified lawyer's advice. This type of legal aid is meant to increase the population's awareness about rights and help solve issues with legal connotation at the community level and at earlier stages, aiming also to prevent escalation of conflicts and in the long term decrease the caseload handled by court. Since the new legal aid law entered into force only on July 1, 2008, the implementation regulations being still drafted at the moment of writing of the current report, conclusions about the new eligibility criteria cannot be made yet. The intentions of the drafters of the new law are good, but the intended implementation will depend to a big extent on the available budget and the commitment of people involved in the legal aid system.

Legal aid providers

The new legal aid law introduces innovations regarding the legal aid providers too. Primary legal aid will be delivered by paralegals and public associations. A paralegal is a person highly respected in the local community, with complete or incomplete legal studies, that does not practice the lawyer's activity and that has qualified, after a special training, to provide primary legal aid to members of the community, and is remunerated from the legal aid budget.⁸²

⁸¹ The perception about the previous regime for legal aid was that eligibility for legal aid was very broad, practically everyone could have, at least theoretically, get legal aid for a criminal case. Besides the legal analysis of the relevant provisions, empirical studies also proved the high rates of legal aid appointments. For example, a study of closed criminal files in 2004 has shown that legal aid lawyers were appointed in 77,6% of closed files at a first instance court. The percentage decreased at appeal court, where only in 30% of cases legal aid lawyers were appointed. At the same time, the payment for legal aid was very low and unattractive to lawyers. In practice this lead to either poor quality of legal aid, or registration of the case a legal aid on paper, while in practice the client was paying the lawyer (See for details the statistical study of closed criminal cases examined in 2003 by four courts of Moldova, from different regions. The findings of the study, carried out by Victor Munteanu, Victor Zaharia și Ion Jigău, Soros Foundation – Moldova, 2004, are available upon request).

⁸² See art. 2 and 15 of the Law on State Guaranteed Legal Aid.

Qualified legal aid is delivered by lawyers and public associations. The latter cannot participate in criminal and administrative offence proceedings. The lawyers providing legal aid are of two categories: public defenders and private lawyers that agree to accept legal aid appointments (legal aid lawyers on request). The public defenders and the legal aid lawyers on request are the same lawyers, differing only in the following. The public defenders are specialized in delivering only legal aid, with minor exceptions for certain private cases, while legal aid lawyers on request participate in the legal aid scheme to the extent they are interested. The public defenders are obliged to participate in the duty lawyer scheme (providing of urgent legal aid to detained persons), while private lawyers participate in this scheme only if willing so. Public defenders are paid a fixed monthly remuneration for their work, while legal aid lawyers on request are paid per case, for the actual time spent on delivering legal aid, and for being on duty, when part of the legal aid scheme.⁸³ Public defenders should be organized in associated law offices to allow for a better impact, while legal aid lawyers on request can be organized in individual or associated law offices. Lastly, public defenders have an in-house mechanism for quality control.

The introduction of the public defenders as a new type of legal aid providers was done with the purpose of diversifying the system of legal aid provision, which is expected to increase the quality of legal aid as a result of: specialization of public defenders, competition of the public defenders and private lawyers participating in the legal aid scheme, ensuring a minimum coverage of legal aid needs by public defenders in regions with insufficient legal services offer. Again, it is too early to be able to make any conclusions on the effectiveness of the new system of legal aid providers. A pilot office of public defenders has been operating in Chisinau since April 2006, the performance of which denotes that it is a good model for the Moldovan context, able to provide qualitative legal aid and able to influence the other justice actors to respect the defendants' rights. However, it can only continue playing this role if the funding is kept at least at the current level. So far the state budget is not able to ensure it and is financially supported by the Soros Foundation – Moldova. The amendment to the state budget law for 2008 was prepared by the Ministry of Justice, providing for a smaller remuneration than the one provided by the foundation. At the moment the report was written, the public defenders were only being selected for the new public defender offices, to be set up and funded by the National Legal Aid Council, and is not yet clear if there are sufficient interested candidates for these offices.

Payment for legal aid

The National Legal Aid Council has approved a provisional regulation on payment for legal aid lawyers,⁸⁴ in the hope that after some time after the new legal aid law is implemented and reliable data on legal aid needs are collected, it will be able to make more accurate estimations and improve the remuneration scheme for the legal aid lawyers. The

⁸³ See art. 2 and 30 -32 of the Law on State Guaranteed Legal Aid; the Regulation on selection criteria for legal aid lawyers, adopted by the National Legal Aid Council on 05.06.08; the provisional Regulation on payment for legal aid, adopted by the National Legal Aid Council on 18.07.08

⁸⁴ The regulation was approved on 18.07.08, at the time of writing of the present report the regulation had not yet been published.

provisional regulation is a compromise between the desire to change the payment rules and the scarce budgetary resources.

The public defenders are paid a fixed monthly remuneration, currently in the amount of 4,900 MDL (~350€) gross.

The private lawyers providing legal aid on request will be paid according to the following rules. The remuneration is set based on the actual time spent on providing qualified legal aid, but that cannot be more than 160 MDL per day (~11€). The actual remuneration is calculated in conventional units equal to 20 lei (~1.4€) and are calculated as follows:

- a) up to 8 conventional units for participating in each court proceeding or in each procedural action at criminal investigation stage;
- b) up to 3 conventional units for each undertaken action: getting acquainted with the case file at the stage of preparing for the court hearing, reviewing the court hearing protocol after it is finished;
- c) depending on the volume and gravity of the case – up to 8 conventional units for drafting the claim or the response to the claim, drafting of the appeal or recourse by the lawyer that participated at the first instance, up to 10 conventional units – to the lawyer that did not take part at the examining of the criminal case at earlier stages, in such a way that the minimum remuneration is not lower than 5 conventional units;
- d) for representing or defending two or more persons in the same case, the remuneration stated at p. a) is increased with 59%.⁸⁵

These provisions are a copy of the previous regulation and naturally are not very welcome by the lawyers, who expected an increase of the fees. In fact the National Legal Aid Council itself has reviewed a draft version of the payment rules providing a more attractive remuneration scheme for the lawyers, but had to stick to the current version because of the overall budget limits.

The provisional regulation does, however, provide two major improvements in terms of remuneration. Firstly, the regulation provides for a fixed fee, equalling 2 conventional units, for the lawyers on duty and 8 conventional units for provision of legal aid during the detention period (up to the first pre-trial hearing). This remuneration is increased with 25% for the duty periods that fall on weekends or public holidays. These are innovations in the payment scheme, meant to motivate the early entry of lawyers in cases when the person is detained.

Secondly, the procedure for receiving the payment is eased for the lawyers. The lawyers providing legal aid on request have to submit a report about the cases in which they provided legal aid to the territorial office of the National Legal Aid Council, which can request supporting documents about the claimed work. The respective office issues a decision about payment within 10 days from the moment it received the lawyer's report and further the payment should be done no later than 10 days from the moment the decision about payment was taken. At least on paper this procedure seems more straightforward than

⁸⁵ The respective provision does not mention expressly the exclusion of cases that involve conflict of interests cases, which should be handled by different lawyers for each client with conflicting interest.

the previous one.⁸⁶ Another new provision, friendly for lawyers, is the possibility of lawyers to claim advanced payment before the case is finished, if the examination of the case lasts longer than three months (which is usually the case in Moldova). At the final presentation of the report on the case, the payment will be made minus the advanced amount. The payment of duty lawyers for provision of urgent legal aid is done on a monthly basis following the reports presented by the lawyers.

Again, it is too early to make any conclusions about the effectiveness of the new payment rules, but they are certainly a step forward to make the legal aid provision more attractive for lawyers. Besides the actual fees of the lawyers, the rules also provide for the reimbursement of transportation expenses if provision of legal aid involves travel to other localities than the lawyer's registered activity.

4. Reform agenda

The most recent reforms related to the legal profession have been the following (references to all have been made above, here will be only briefly referred to):

- The amendments to the Law on Bar of 13.07.06 that have changed the rules on admission to the profession and set clear rules for the Commission for Ethics and Discipline.

The admission to the profession since the end of 2006 is entirely administered by the Bar, the issuance of licenses by the Ministry of Justice remaining only as a purely administrative procedure. From 2002 to 2006 the Licensing Commission was organized by the Ministry of Justice, who was practically in charge of admission to the profession. This has been a period when fewer lawyers than usually had been admitted to the profession, accurate information about the number of applicants and the ones that passed the exam was largely missing. The current Licensing Commission held the first exams in the fall of 2006. Although there is room for improvement, the new Commission has been so far regularly publishing the lists of candidates and its decisions on each stage of the qualification examinations. It also usually publishes the decisions for admitting to the profession of candidates that are

⁸⁶ Previously the lawyer, after providing legal aid, had to present to the head of the lawyer's office two documents: the copy of the decision of the criminal investigation office or the judge, issued after the case where the lawyer provided legal aid was finished, indicating besides the data about the case also the amount of remuneration due to the lawyer (why the criminal investigation body and the judge had anything to do with the lawyer's due amount was never logically explained) and the report about cases in which the lawyers provided legal aid. The Head of the office compiled the reports from all lawyers that providing legal aid in the respective office and further sent the requests for payments to the Ministry of Justice. The Ministry staff was reviewing the requests for payment and the attached documents and were issuing the payment to each law office, which later was due to pay the lawyers. The Ministry staff could reduce the payment if they found that the requested amounts were not duly supported by the documents or were exaggerated. This procedure has been harshly criticised by lawyers as being ineffective.

exempt from the qualifying exam. The tests are public, including the correct answers to the multiple questions. Hence the perception of the admission procedure has improved considerably, the legal community welcoming particularly the transparency of the new Licensing Commission. Criticisms remain regarding the content of the examination topics, particularly the test stage, and the need of three-stage versus two-stage procedure.

The adoption of new rules for the disciplinary proceedings and the regulation of the Commission for Ethics and Discipline have also been welcomed by the legal community. The decisions of the Commission are regularly published and its work is more visible, which should lead to improvements of the quality of legal services in the country. It is important to note that the decisions of the Commission are motivated, which is also an important improvement as compared to the previous commission. Criticisms remain regarding the need for the Commission to adopt standards and additional mechanisms for raising the quality of legal services, besides the disciplinary proceedings.

- The amendments of 14.02.08 to the Law on Bar that have expressly provided the lawyers' possibility to appear in court only on the basis of a contract and a mandate issued by the law office, prohibiting in such a way the practice when lawyers appeared in court as representatives using the power of attorney / proxy provided by the Civil Procedure Code.

The amendment had another goal initially, namely to exclude the institution of representation in court by non-lawyers, except in cases of representation of close relatives and representation of institutions by the jurisconsults. However, that proposal was not accepted. In turn the Ministry of Justice introduced the above mentioned draft law, which was accepted by the Parliament, prohibiting the representation by lawyers on the basis of a power of attorney / proxy. The Ministry of Justice's main argument for that prohibition was to cut the tax evasion of lawyers that used the institution of representation by proxy instead of lawyers' mandates (the latter are registered in the law office and consequently taxed, while the proxy on paper means pro bono representation and the actual honorarium is not declared, while in fact the lawyers or non-lawyers who act as representatives usually get paid similarly to lawyers' fees). This amendment is viewed differently by the legal community. While the President of the Bar, the Ministry of Justice and many lawyers have saluted the amendments, arguing that these will contribute to raising the quality of legal services by making the lawyers more accountable to their clients, others have viewed them only as a means for ensuring that lawyers pay the due taxes. This amendment did not curtail the legal possibilities and the practice of representation by non-lawyers, which is the biggest criticism to the amendment.

- The legal aid reform, which started in 2005 -2006 and is currently still unfolding, with the main changes concerning lawyers introduced by the Law on State Guaranteed Legal Aid of 26.07.07, which entered into force on 01.07.08.

The legal aid reform is also viewed differently by the legal community. Although the reform benefits the lawyers interested in participating in the legal aid scheme, as it improves to some extent the payment rules and takes out the management functions from the Bar, easing their job by limiting to provision of legal assistance, the Bar and many lawyers do not see these benefits yet. On the contrary, they seem sceptical of the new legal aid management body, the National Legal Aid Council and its territorial offices, of the introduction of the new types of legal aid providers (public defenders and paralegals), seeing them as competitors. Many criminal investigators and prosecutors are sceptical that duty lawyers will appear promptly when requested, according to the new rules, others worry that the new rules will “make their job more difficult” as they will not be able to call the “lawyers they usually work with at any time of the day or night”. The judges, especially at the Court of Appeal and the Supreme Court of Justice, worry that lawyers will not be there to represent all the clients that have no lawyer (even if many of such lawyers get appointed 5-10 minutes before the hearing to represent the client), which will “only tergiversate unduly” the examination of the case. But the new rules are exactly intended to ensure that poor defendants also get adequate defence, and are not meant to simply fit the justice actors’ schedules and priorities. The National Legal Aid Council has a very difficult task of both changing the ways of delivering legal aid to the poor, as well as fight with the Government for ensuring a proper funding and reduce the bureaucracy that is so far a major obstacle in implementing the legal aid reform. It is hoped that this initial scepticism is mostly due to low awareness about the reform and the delay of implementation regulations, and that it will disappear as the National Legal Aid Council takes ground.

As for the planned reforms plans in the field, currently there are two major issues on the table for the Bar – the clarification of the representation by non-lawyers in court and the strengthening of the Bar management capacity:

- Representation by non-lawyers in court, as explained above, is widespread in the country and it is viewed by the Bar negatively as it cannot control the quality of services provided by jurists that belong to no professional organization. The Ministry of Justice is also concerned with the issue, being interested in having only lawyers representing in court as a guarantee of the quality of services, on one hand, and as a guarantee that all due taxes for the fees will be paid. At the same time, the Ministry is concerned that by limiting the right to be represented in court only to lawyers it will significantly affect the right of access to justice of the people, especially the poor ones. This concern may be overcome as the new legal aid system is properly put in place. Review of who may act as a representative in court is a highly debatable topic at the moment and particularly high on the Bar’s agenda.

- Bar management capacity has been criticised for several years both by representatives of the legal profession itself and the state institutions. In the past two years the Bar Council is taking visible steps for improving its work, especially through an improved work of its Commission, however there is still much to do in this respect. Currently the Council of Bars and Law Societies of Europe (CCBE) has a twinning project with the Moldovan Bar to help the latter improve its management. Of special importance to the Bar Council is to regain the credibility before the lawyers and prove itself as a professional and well-organized organization in the country's legal system.