

**THE LEGAL PROFESSION IN THE RUSSIAN  
FEDERATION**

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**October 2008**

**Prepared for the workshop *Reform of the Legal Profession and Access to Justice*,  
sponsored by OSCE/ODIHR in November 2008**

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## 1. Background

This report was commissioned by OSCE to be used as a background material for its upcoming workshop *Reform of the Legal Profession and Access to Justice*. OSCE asked the author to provide answers to a particular set of questions regarding the current state of the legal profession (defined as “legal practitioners excluding judges, prosecutors, and notaries”) in the Russian Federation. The author deemed it necessary to expand somewhat the scope of the report in order to provide a broader context and some historical perspective which, in his opinion, will help the reader to grasp the prevailing trends and dynamics in this rapidly changing area.

The author has been working for the last five years as first the Program Manager and then the Country Director for the Moscow office of the Public Interest Law Institute (PILI), an international NGO that advances human rights around the world by stimulating public interest advocacy and developing the institutions necessary to sustain it. PILI’s programs in Russia have been focusing on promoting and facilitating legal aid reform and pro bono practices, as well as legal education reforms.<sup>1</sup>

## 2. Basic Organization and Structure of the Legal Profession in Russia

### 2.1 Historical Background

In the Soviet times, the bar (*advocatura*) was a closed institution, proud of its traditions and arguably maintaining high quality standards and ethical principles. At the same time it was under very broad and tight control of the Ministry of Justice. Lawyers (*advocates*) could be disciplined for an “erroneous” stance in a politically sensitive case and were otherwise governed by the Ministry. They practiced in “juridical consultations”, usually located in court buildings; there was one *collegium* (bar) in each region.

Reforms of the late 1980s and early 1990s brought both liberation of the MoJ’s control and rapidly increasing demand for legal services. In absence of new legislation regulating the legal profession, new *alternative collegia* began to spring up in dozens (City of Moscow had 33 at some point). Some of the new *collegia*, consisting of former police officers, expelled judges and the like, were notorious for alleged non-compliance with ethical standards. Bar exams barely existed in some of the *alternative collegia*, and, more generally, the quality standards and ethical rules became very slack. In addition, there was for several years an institution of “licenced lawyers” who were not members of the *advocatura* but allowed to practice in non-criminal matters (this institution was soon to be abolished).

It became clear to everyone that the situation was becoming dangerous and some organization and consolidation of the legal profession needed to be achieved sooner

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<sup>1</sup> For more information on PILI’s activities in Russia and elsewhere, see <http://www.pili.org>.

rather than later. Long and vehement fights for power ensued; the “alternative” bar leaders lobbied for keeping their roles in the reformed bar.

These turmoil ended with adoption, in May 2002, of a brand-new law *On Legal Practice and the Bar*, which defined an advocate’s status, major responsibilities, rules for joining the bar, a new institutional structure of the bar, forms of law firms and other types of practice, and so forth. It also stipulated that the first All-Russian Convention of Advocates to be conducted, which took place in January 2003. The Convention elected new bar leadership. Perhaps most importantly, all advocates who had this status at the time of the adoption of the law, retained it, and some of the “alternative” leaders gained some of the leading posts in the new structure.

## ***2.2 Current Overall Structure of the Legal Profession***

Lawyers in modern Russia can be easily divided into two large groups: organized bar members (members of the “advokatura” or “advocates”) and lawyers who are not members of any organized body or governed by any professional rules (“unregulated lawyers”). There is one very clear difference between these two types of lawyers: advocates are allowed to represent clients in criminal matters, as well as in any other matters, whereas unregulated lawyers cannot represent clients in criminal cases<sup>2</sup>. The latter (or, in fact any person as long as he or she is retained by a client) can, however, represent clients or provide other forms of legal assistance to clients in any other proceedings (civil, arbitrage<sup>3</sup>, administrative etc.). The only exception, apart from criminal proceedings, is the proceedings between the Constitutional Court of the Russian Federation: one has to either be an advocate or have an academic degree in law<sup>4</sup>.

Every advocate is recorded in special registers maintained by regional bar chambers (see below); for this reason, the number of bar members is known. As of 1 January 2008, there were **61,422 advocates** practicing in Russia. The growth over the last five years was 1,300 bar members on average. The numbers are very different in different regions: for example, there were 7.5 thousand advocates in the city of Moscow and 12 advocates in the Nenetsky Autonomous District (with a population of at least 35,000 people).

To adduce a number of unregulated lawyers is a challenging task – for obvious reasons, no national statistics is available. In practice, there are plenty of such lawyers practicing across Russia in a variety of fields from tax advice to labor law to serving as in-house lawyers. Their numbers and specialization vary greatly depending on the economic

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<sup>2</sup> Art. 49(2) of the Criminal Procedure Code of the Russian Federation (hereinafter CPC RF).

<sup>3</sup> This term is used in Russia to denote special courts with jurisdiction over commercial cases and some other categories of cases involving legal entities rather than private individuals.

<sup>4</sup> Federal Constitutional Law No. 1-FKZ *On the Constitutional Court of the Russian Federation* of 21 July 1994, as amended; Art. 53.

situation in a region and corresponding needs. According to one study<sup>5</sup>, in Tula Oblast, a medium-sized region in European Russia (appr. 1.6 million people), there were 500 bar members and 4,500 unregulated lawyers, working for about 200 companies. Based on this study and using a conservative approach, one can perhaps multiply the number of advocates by at least 7 to arrive at the number of **430,000 unregulated lawyers** for the whole of Russia.

Based on these numbers and on the fact that Russia's population in 2008 was 142 million people, the ratios of the practicing lawyers to the total population are:

- a) Advocates to the total population: 1 to 2,300;
- b) Unregulated lawyers to the total population: 1 to 330;
- c) Combined advocates and unregulated lawyers to the total population: 1 to 289.

One should keep in mind, on one hand, that there are also other "hidden" providers of legal services, such as various NGOs, legal clinics, real estate agencies, etc.; and that, on the other, only advocatura may be referred to as a proper "legal profession" with its professional responsibility, disciplinary appeal procedures, ethical rules, and other regulatory mechanisms safeguarding, at least in theory, the rights of clients.

Because not much information is available on unregulated lawyers, we will from now on focus on the organized bar, or advocatura.

### ***2.3 Organized Bar: the Institutional Structure***

Under the 2002 law *On Legal Practice and the Bar*, each of the Russian regions has a single bar body called **Bar Chamber**<sup>6</sup>. One has to be a member of one of such Bar Chambers to be recognized as an advocate. A Bar Chamber's decisions are binding for its members.

A Bar Chamber is created "for the purposes of ensuring the provision of qualified legal assistance, access to it for the citizens throughout the territory of a particular region of the Russian Federation, organization of legal aid, representation and protection of advocates' interests before the governmental institutions, local self-government, public associations and other organizations, control over professional capability of those admitted to practice as advocates, and compliance with the advocates' code of professional conduct". Each Bar Chamber is governed by the general meeting of its members and managed by a Council as a collective executive body (elected by the general meeting).

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<sup>5</sup> Yuri Samkov. *Kto Pobedit V Igre Bez Pravil?* / *Novaya Advokatskaya Gazeta*, No. 9 (026), May 2008. P. 6.

<sup>6</sup> There are presently 87 regions ("subjects" of "constituents" of the Russian Federation) in Russia, Cities of Moscow and St. Petersburg being separate regions different from Moscow and Leningrad (*sic*) Oblasts that surround them.

The Council consists of not more than 15 Bar Chamber members and rotates by 1/3 every two years. It elects from among its members a President for a 4-year tenure. The Council performs most of the functions of the Chamber itself, including provision of legal aid, defining fees for civil legal aid (see below), interaction with courts, police and procuracy, continued legal education, making final decisions on disciplinary complaints, etc.

Each Bar Chamber also has a Qualification Board, consisting of 13 persons, 7 of whom are Chamber members with at least 5 years of experience as advocates; two representatives of the local Ministry of Justice office; two representatives of the local legislature; one judge from the local higher instance court and one from local higher instance arbitrage (commercial) court. The Board is presided by the Chamber President. The two powers of the Qualification Board are:

- making decisions on admitting candidates to the Bar Chamber based on the bar examination;
- conducting disciplinary proceedings and preparing draft decisions on disciplinary complaints subject to approval by the Council.

In addition to the 87 Bar Chambers, there is the Federal Bar Chamber (FBC) headquartered in Moscow. It is an association of all regional Chambers (rather than their members, individual advocates); membership is mandatory.

The FBC's purposes are defined in the law as "representation and protection of advocates' interests before the governmental institutions and local self-governments, coordination of bar chambers' activities, ensuring a high level of legal assistance provided by advocates". A later amendment adds: "Federal Bar Chamber is an organization authorized to represent advocates and regional bar chambers in their relationships with federal governmental agencies in decision-making which affects the interests of the advocates' community, including issues related to allocation of federal budget funds for paying advocates representing clients in criminal proceedings *ex officio*, appointed by the investigation authorities, procurator or court".<sup>7</sup>

The law goes on to say that the decisions of the FBC and its bodies "made within the limits of their competence" are binding for all bar chambers and advocates. It is obvious that the FBC's "competence" is defined very vaguely, and in practice its decisions are considered as recommendations rather than orders.

FBC has its President (currently Mr. Semenyako, at the same time President of the St. Petersburg City Bar Chamber), several Vice Presidents, a Council.

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<sup>7</sup> Inclusion of this particular language seems to have been caused by high sensitivity of the issue for several years when the federal authorities consistently failed to allocate enough resources for this purpose; the situation was largely remedied in the last two years or so.

## 2.4 Forms of Organizing Practice

Advocates, unlike unregulated lawyers, are allowed to practice only in four forms:

- Solo practice (*advokatskiy cabinet*);
- Collegium;
- Bureau;
- Juridical consultation.

The main difference between the collegium<sup>8</sup> and the bureau is that a collegium is a loose association of individual lawyers who join and share resources but bear individual responsibility for their cases, whereas bureaus are partnerships providing legal services on behalf of all partners who bear joint responsibility.

Juridical consultations<sup>9</sup> are a very special form introduced by the new law. They are supposed to be created by regional bar chambers based on a decision taken by local authorities in “court districts where the number of advocates is lower than two per one judge”. In other words, they are legal offices which have to appear in underpopulated and economically depressed localities where there are very few lawyers or no lawyers at all. This innovative idea has been barely implemented except for several instances where local governments were able to allocate resources to fund such offices. Initially it was unclear who funds juridical consultations, but later secondary legislation has placed this burden on the local (Federation constituents’) budgets, many of which cannot afford it. As of 1 January 2008, there were 64 such offices located in 12 regions and employing the total of 143 advocates (0.2%).<sup>10</sup>

Apart from these special law offices, the least popular form of organizing practice are bureaus: only about 2,000 advocates practice in 542 bureaus (3.2% - this number did not grow since the new law was adopted). 14,000 advocates (22.6%) practice as solo practitioners, and another 46,000 (75%) in 2,260 collegia. This picture illustrates very well the traditional “individualistic” approach to legal practice (as noted above, collegia are mostly just offices where lawyers can meet with their clients, use equipment and share a secretary, rather than “law firms”). It may be a reason or a consequence (or both) of the fact that the organized bar, for the very few exceptions, does not see its role as serving business, which is used to dealing with law firms, which take advantage of pooled resources and expertise and offer serious liability guarantees. International law firms and most large Russian law firms that are trying to compete with them do not practice under the bar law, even though some of their lawyers may be bar members.

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<sup>8</sup> Not to be confused with the Soviet collegia referred to in Section 1, which were essentially Bars.

<sup>9</sup> Again, not to be confused with the Soviet term, which basically denoted the only form of a lawyers’ practice that existed at that time.

<sup>10</sup> Yuri Samkov, op. cit., p. 6.

There are at least two more obstacles that make it difficult for advocates to compete with large international and domestic law firms. First, advocates are considered to be “non-entrepreneurs”, which in practice means that they cannot set up commercial entities regulated by the Civil Code as done in other businesses; in fact, law practice is explicitly described in the law on the bar as “not an entrepreneurial activity”.<sup>11</sup> Second, an advocate cannot be employed by anyone except for the purposes of “academic, teaching or other creative activities”.<sup>12</sup> There is a growing disagreement with these principles among a significant part of the advocates’ community, and it appears likely that they will be abolished in the nearest future, perhaps with some qualifications and in a package with other reforms (see below).

### ***2.5 Other Regulation of the Bar and Law Practice***

Apart from the law cited above, advocates are regulated by procedural codes (criminal procedure, civil procedure, arbitration procedure) and the Code of Ethics, adopted by the First All-Russian Convention of Advocates in 2003 (amended in 2005 and in 2007).

The Code of Ethics is a short document consisting of two sections: one describes “general principles and norms” of professional conduct and one covers the basic rules for disciplinary proceedings.

The first section deals with such principles as independence; diligence; conflict of interest; lawyer/client relationships, including confidentiality, imposing legal services, using a lawyer’s personal connections with courts or law enforcement agencies. It expressly states that “an advocate’s obligations, set forth by the legislation on legal practice and the bar, when performed in the course of providing legal aid for free... or in the course of *ex officio* appointment by an... investigation authority, prosecutor or court, do not differ from [such] obligations in the course of providing legal assistance for a fee”<sup>13</sup>. It goes on to say that “[a]n advocate who has undertaken, *ex officio* or by contract, to defend a client in criminal proceedings, cannot discontinue his legal assistance except in cases stipulated by law, and must discharge a defense lawyer’s responsibilities, including, if necessary, the preparation and filing of a cassational complaint... An advocate who has undertaken, *ex officio* or by contract, to defend a client at the stage of preliminary investigation, cannot refuse to represent the client in trial court without good reasons”<sup>14</sup>.

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<sup>11</sup> Art. 1(2).

<sup>12</sup> Art. 2(1).

<sup>13</sup> Art. 10.8.

<sup>14</sup> Art. 13.2.



Art. 18 states that if an advocate violates either the law *On Legal Practice and the Bar* or the Code of Ethics (or both), such an advocate is subject to disciplinary sanctions.

The second section defines who can appeal to a bar chamber to instigate disciplinary proceedings against an advocate:<sup>15</sup>

- another advocate;
- client or his/her representative;
- person who applied for civil legal aid and was denied such aid;
- vice president of the bar chamber;
- governmental agency supervising the bar (i.e. the Ministry of Justice);
- a court or a judge in certain cases.

If an appeal is filed by any of such persons and all the required documents are provided, the president of a bar chamber has to initiate the proceedings. An oral and adversary hearing is conducted by the bar chamber's qualification board; the board may find a violation by the advocate – or recommend to discontinue the proceedings for procedural reasons or on the merit (if no violation is found). Then the final decision is taken by the Bar Chamber Council. If the Council finds against an advocate, one of the following penalties may be applied:

- reprimand;
- warning;
- disbarment.

### ***2.6 Admission to the Legal Profession: Obtaining the Status of an Advocate***

Advocate is tautologically defined in the law on the bar as “a person who has obtained the status of an advocate in the manner established by this law and the right to practice as an advocate”. As mentioned before, advocates are considered self-employed and are not allowed to enter into employment contracts, except “academic, teaching, and other creative activities” as well as to hold government/public service offices.

To obtain the advocate's status, one is required to have a law degree obtained in an officially recognized Russian higher education institution.<sup>16</sup> One is also required to:

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<sup>15</sup> Art. 20.1.1.

<sup>16</sup> Russia currently has a complicated mixed higher education system: most law schools use the old system where a student studies for five years (which may begin as early as in the age of 16-17) and gets a title of a “jurist”; some a switching to the “bachelor/master” system, inspired by the so-called European Bologna process – four years and then two. In any event, the youngest fresh law school graduates are 21-22 years old.

- either have two years of experience of a “legal” job (e.g., judge, public servant in a position requiring a law degree, notary, etc.); or
- have completed an internship with a bar member.

The two-years period only begins after graduation, i.e. one cannot meet the two-year requirement while attending law school. The internship lasts “from one to two years”; an intern enters into contract with a law office or a solo practitioner.

Finally, a candidate must pass a bar exam conducted by a regional bar chamber, theoretically consisting of a written exam and an interview. In 2005, FBC developed a list of 588 questions, updated annually, which is used by many bar chambers. To the best of our knowledge, in most chambers the exam is oral<sup>17</sup> and reported to be very difficult (even though a candidate is usually allowed to use the texts of legislative acts). It covers all areas of law.

In case of a failure, one can try again in one year.

A new advocate’s name is then entered into a publicly available register maintained by the local MoJ office. He or she receives a special ID, necessary to represent a client in a criminal case. One can only be included in one local register, but practice everywhere in Russia (at the same time, the results of a bar exam taken in one region usually are not recognized in another regions, and one has to pass the local exam if he or she desires to be included in the local register).

We were unable to locate any national statistics on passing rate. In Novosibirsk Oblast it was approximately 60% in 2004-2006.<sup>18</sup> In the Republic of Chuvashia in 2005-2006 – 30%<sup>19</sup>. In Samara Oblast in 2006-2007 – 75%.<sup>20</sup> Such disparities may suggest that the bar exam is not always objective, and the passing rate may depend on a variety of factors such as demand for legal services, attitude of a particular qualification board, or level of legal education in a particular region.

As far as the costs of admission and membership are concerned, in the St. Petersburg Bar Chamber candidates were required to pay RUR 1,500 (50 euro) registration fee and then a one-time contribution for the Chamber’s needs RUR 10,000 or 15,000 (between 300 and 500 euro); then every lawyer is required to pay an annual membership fee in the amount of approximately 130 euro, unless it is reduced for individual reasons<sup>21</sup>. In the Samara

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<sup>17</sup> Some chambers are experimenting with computerized testing but there is still an oral part (consisting, e.g. in Samara Oblast, of four questions from the list). For a sample list of questions see:

<http://www.paso.ru/people/perechen5/>; for a sample bar exam procedure and requirements see:

<http://www.paso.ru/people/perechen3/> (both documents in Russian only).

<sup>18</sup> [http://just.siberia.net/uniwersal\\_m.php?urla=kom\\_adv\\_pal.htm](http://just.siberia.net/uniwersal_m.php?urla=kom_adv_pal.htm)

<sup>19</sup> [http://www.rosreg21.ru/analytycheskyi\\_obzor](http://www.rosreg21.ru/analytycheskyi_obzor)

<sup>20</sup> Vestnik Palaty Advokatov Samarskoy Oblasti. No. 1(13), 2008. P. 12.

<sup>21</sup> [http://www.apspb.ru/sois\\_status.php](http://www.apspb.ru/sois_status.php)

Oblast Bar Chamber, the initial fee is approximately 800 euro, and the annual fee is approximately 270 euro. Similar practices exist in other regional bar chambers with differences depending on a region's and its lawyers' affluence.

Generally speaking, it would be fair to say that admission to the organized bar is not excessively restrictive, especially in the light of the fact that those lawyers who are not interested in practicing criminal law are free to choose to practice as unregulated lawyers. This is illustrated by the 12% growth of the advocatura over the last five years.

### 3. Cost of Services and Legal Aid

#### 3.1 Cost of Legal Services

There is no available data on average costs or tariffs for legal services. Setting a lawyer's fee is governed by the principle of freedom of contract; advocates very rarely publicize their actual rates. The Code of Professional Ethics only stipulates that "an advocate's fee is defined by agreement of the parties and may take into account the volume and complexity of the work, time needed for its completion, the lawyer's experience and qualifications, deadlines and other circumstances".<sup>22</sup>

In practice, hourly rates are mostly used by large offices or law firms in big cities, serving businesses<sup>23</sup>. Fixed fees for either a case or certain stages of the case (preliminary investigation, trial, appeal in a criminal case; a consultation or drafting a legal document) are far more common, especially in the regions. Contingency fee (*pactum de quota litis*) is a very controversial issue; this form of fee is generally not allowed by the Code of Professional Ethics, which makes an exception for property disputes<sup>24</sup>. This position was recently confirmed by a judgment of the Constitutional Court.<sup>25</sup>

However, some regional bar chambers adopted the practice of setting minimum fees, mostly for the purposes of having a guidance for courts awarding costs and expenses to losing parties but also to discourage avoidance of taxes and other payments by their lawyers. The following three examples may give the reader a general idea (fees in euro):

	Voronezh <sup>26</sup>	Chuvashia <sup>27</sup>	Udmurtia <sup>28</sup>
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<sup>22</sup> Art. 16(2).

<sup>23</sup> An interesting survey conducted in 2006 by a group LegalStudies.RU showed that although business-oriented law firms prefer hourly or other time-bound rates, the majority of their clients prefer fixed rates, and most of the firms use both with a significant inclination towards fixed rates:

[http://www.legalstudies.ru/survey2006\\_fees1.htm](http://www.legalstudies.ru/survey2006_fees1.htm)

<sup>24</sup> Art. 16(3).

<sup>25</sup> No. 1-II, 23 January 2007.

<sup>26</sup> [http://www.advpalata.vrn.ru/d\\_workb.html](http://www.advpalata.vrn.ru/d_workb.html)

<sup>27</sup> <http://www.advokpalata-21.ru/page642088>

Oral consultation or legal advice	10	12	8
Written consultation	40	16	13.5
Drafting complaints and other simple documents	40	54	13.5
Drafting statutes, contracts and other complex documents	108	54	27
Drafting of appeal	122	137	27
Civil or criminal court proceedings, investigation, etc. (per day)	81	81	30
Arbitrage/arbitration (per day)	135 or 5% of award	135 or 5% of award	30 or 5% of award
Appellate proceedings (per day)	108	n/a	40

According to the data quoted by the Russian Ministry of Justice in its progress report on the experiment involving state legal bureaus (see section 4.3.2 below for more detail), even a very basic oral consultation provided by private lawyers costs “several hundred rubles” (i.e. at least 10 euro), whereas court representation on average costs at least 10,000 rubles (270 euro).<sup>29</sup>

Finally, one of the biggest Russian law firms was recently quoted in an article in a daily newspaper as estimating an advocate’s average hourly rate (referring to Moscow) as 135 euro; the newspaper also quoted unnamed lawyers estimating hourly rate as anywhere between 80 and 1,000 euro (again, obviously referring to Moscow lawyers).<sup>30</sup>

Are these (and also the minimum ones described above) rates affordable? They may seem very low for a Western reader (except for the unproven extreme numbers immediately above), but one should take into account the socio-economic situation in Russia. According to 2007 data, 20% of the Russian population lived beyond the poverty line, defines at the level of the income of 122 euro per month (cost of drafting an appeal in Voronezh). Another 26% live on the income between 122 and 216 euro per month. Obviously, both these figures and the minimum rates vary from region to region, and correlate with each other, but it would be fair to say that for a very large section of Russian citizens legal services are not affordable.

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<sup>28</sup> [http://www.apur.ru/index.php?option=com\\_content&task=view&id=41&Itemid=1](http://www.apur.ru/index.php?option=com_content&task=view&id=41&Itemid=1)

<sup>29</sup> Order of the RF Ministry of Justice No. 129 of 22 June 2007.

<sup>30</sup> “*Advokatam okazhut yuridicheskuyu uslugu* // Kommersant Daily, No. 173 (3990), 25 September 2008: <http://www.kommersant.ru/doc.aspx?DocsID=1031019>

### 3.2 Legal Aid

Art. 48 of the Russian Constitution guarantees to everyone “qualified legal assistance”. In cases defined by law legal assistance “shall be provided free of charge”.

It must be noted at the outset that there is no special act on legal aid on the federal level in Russia; there is also no entity responsible for running the legal aid system as a whole. Legal aid is regulated by a number of laws and regulations, most notably the Criminal Procedure Code (CPC) and the law *On Legal Practice and the Bar*. Historically, legal aid has been divided, in terms of legal regulation as well as providers, into two major areas – criminal (funded from the federal budget and administered by the bar) and non-criminal (non-funded or, since recently and in some regions, funded from local budgets).

#### 3.2.1 Criminal Cases

As mentioned above, advocates have a monopoly in representing criminal defendants, hence only advocates can provide legal aid in such cases. Moreover, **the only method used for legal aid in criminal cases is *ex officio* appointment**. In theory, *ex officio* representation is every advocate’s duty. However, the law *On Legal Practice and the Bar* includes a small remark: “An advocate shall participate personally *or materially* in...*ex officio* cases.” So in practice a lawyer or a law office may choose between paying a small monthly amount to their Bar Chamber or representing clients *ex officio* (this is not the case everywhere, but a common practice, e.g., in Moscow, the justification being that this levy is used to supplement very modest fees paid by the government to *ex officio* lawyers).

The CPC (Art. 51) enumerates mandatory defense categories, which are standard for most East European countries (minors, incapable, non-Russian speakers, facing imprisonment for more than 15 years, life sentence or death penalty<sup>31</sup>, jury trial). But more importantly, defense is mandatory if a suspect/defendant asks for a lawyer (of his own choosing or, if he does not wish to, appointed) or does not refuse one. Moreover, such a **waiver is not binding** for an investigator, prosecutor, or court; in other words, a lawyer may be appointed even if the suspect/defendant does not want a lawyer. Art. 75 further states that any testimony given at pre-trial stage by a suspect or defendant, in case it is denied by the suspect/defendant in court, is inadmissible if given in the absence of a lawyer.

Although no representative research is available, this combination seems to make representation, at least at pre-trial interrogations and indictment, almost 100%. Investigators are very much interested in having their paperwork “legalized” by a lawyer.

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<sup>31</sup> Death penalty is still in the Penal Code, although there is a moratorium and it is usually replaced with life sentence (and has not been used for about 15 years).

In practice, this often makes representation very formalistic and does not prevent procedural violations or worse.

An accused/suspect's right to retain a lawyer arises at the time of instigating criminal proceedings against him, actual arrest<sup>32</sup>, or "the beginning of other coercive measures of procedural nature or other measures affecting his rights and liberties".<sup>33</sup> It is not clearly regulated if a person is entitled to legal aid in the latter case – rather than just to right to defense.

There is **no means test** for criminal cases, i.e. an appointment of an *ex officio* lawyer is based solely on the suspect/defendant's request (or even simply on the fact that there is a criminal defendant). In theory, legal costs borne by the Government *may be* levied from the defendant if he is convicted. If a convict is "financially incapable", or if the levy would "significantly affect the convict's dependants", all the costs should be borne by the government, but there is no procedure for establishing "incapability" (i.e. indigence).<sup>34</sup> Therefore, in essence, criminal legal aid is *de facto* mandatory and, for most convicts, *not* free of charge.

**No legal aid is provided to "administrative offenders"**<sup>35</sup> even though they sometimes face up to 15 days of "administrative arrest". Same applies to refugees, asylum-seekers, deportees etc., who in some cases may be held in detention centers even without a court decision.

**Scope:** As mentioned before, an advocate's responsibilities in providing representation once it is undertaken are the same, whether it is an *ex officio* appointment or services for a paying client. But because there are numerous exclusions from what the government pays an *ex officio* lawyer for, this declaration does not often work in practice. Lawyers are not paid for counseling, visitation in a pre-trial facility, drafting motions, appeals (including cassational appeal), other documents, or evidence gathering. See more on fees below.

In short, a lawyer is required to provide all representation pre-trial and at trial, and draft a cassational appeal if the client so wishes. No representation in cassation is required<sup>36</sup>;

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<sup>32</sup> As opposed to an official record of the arrest.

<sup>33</sup> Art. 49(3)(5) of the CPC. This provision is based on a Constitutional Court ruling recognizing the right to defense to those actually suspected of a crime but lacking the procedural status of a suspect; investigators still practice questioning of "witnesses" which is devoid of all the procedural guarantees and them turning them into official suspects after a confession is obtained.

<sup>34</sup> Art. 132 of the CPC RF.

<sup>35</sup> I.e. petty crimes or misdemeanors, which in the Russian system are considered non-criminal.

<sup>36</sup> This practice has been found in breach of Article 6 of the European Convention on Human Rights in a recent judgment of the European Court against Russia: *Timergaliyev v. Russia*, no. 40631/02, 14 October 2008.

drafting a “supervisory” appeal or appearing before a “supervisory” tribunal is not required.<sup>37</sup>

**Fees:** Fees for criminal legal aid and procedures for their payment are regulated by a Regulation by the Government and a joint Order by the Ministry of Justice and Ministry of Finance (both passed in 2003 and then amended in 2007).<sup>38</sup>

Initially, these documents established flat fees **from one quarter to one minimum monthly wage (MMW) for one day of “participation” depending on case complicity.** The amount of MMW in September 2007 was 2,300 rubles, or almost 62 euro.<sup>39</sup>

The Order defined the “complicity” criterion:

- Full MMW per day: Supreme and regional court cases; jury trial.
- 75% MMW: three or more defendants; three or more charges; three or more casefile volumes.
- 50% MMW: “closed” (non-public) or distant hearings; cases involving minors, non-Russian speakers, physically or mentally incapable defendants.
- 25% MMW: all other cases.

However, amendments introduced in September 2008 replaced the MMW unit with fixed tariffs in rubles, so that the fee for one “day” now varied from the minimum of 275 rubles to the maximum of 1,100 rubles; these amounts were indexed in 2008 by the coefficient of 1,085. In other words, as of today these fees are from approximately 300 to approximately 1,200 rubles, or from 8.1 to 32.5 euro per “day”. While these changes were a part of overall reform in social services and other legislation which replaced the use of MMW unit for calculating various fees, tariffs, levies, and so forth, with setting them in rubles, they were very much deplored by the bar as effectively lowering criminal legal aid fees which were already perceived as extremely low.

Obviously, the vast majority of cases fall under the lowest fee category. However, a “day” is not really a calendar day but rather another unit. No matter how much time a lawyer spent on a particular case, it constitutes a “day” - i.e. the “day” may last from 10 minutes to 10 hours or more. This clearly works against a lawyer in a long and complicated trial – but may be used to advantage by a lawyer “hunting” for clients in court or at a police station and signing an investigator’s paperwork (some lawyers are reported to have hundreds of “days” every month).

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<sup>37</sup> The “supervisory review” procedure is a leftover from the Soviet times, when the Supreme Court could review cases “in exceptional cases”. The ECtHR found this remedy ineffective due to its selectiveness.

<sup>38</sup> Government of the Russian Federation Regulation No. 400 of 4 July 2003 as amended on 28 September 2007 and 22 July 2008; Order of the Ministry of Justice of the Russian Federation (No. 199) and Ministry of Finance of the Russian Federation (No. 87n) of 15 October 2007.

<sup>39</sup> It must be noted that the “MMW” unit is only used for defining various rates rather than denotes the *actual* minimum monthly wage.

It must be noted that bar chambers may make additional payments to their *ex officio* lawyers, and many do so using the funds generated by those lawyers who chose not to represent clients *ex officio*.

The **payment procedure** looks as follows: whoever appoints an *ex officio* lawyer (investigator, prosecutor, judge) signs a form which then goes to a financial unit of the respective agency. The agency transmits the money to the lawyer's firm within 30 days, which pays the lawyer once a month. Due to the low amount of fees, many lawyers often do not bother claiming them. In addition, although most agencies are now paying their bills, there still are some problems with payments, which is clearly related to the budgeting issues (see below).

The Government regulations do not stipulate any payment for:

- travel expenses,
- expenses incurred for payment of the services of experts/specialists, or
- costs of making copies of case materials.<sup>40</sup>

**Budgeting:** Although the law expressly requires that there be a separate line item in Russia's annual budget for criminal legal aid, this has not been the case in 2002-2006. Legal aid budget is dispersed among various agencies (police, prosecutor's offices, courts, etc.), and legal aid expenses are hidden in these budgets. Information on legal aid budget is virtually unavailable, and no one knows how much is actually spent on criminal legal aid nationally. This is not surprising:

Almost no **statistical information** is being gathered or analyzed on the national or local level. Some very basic statistics, however, has been recently made public on the FBC's website: in 2007, 58% of advocates were appointed to represent a criminal defendant before the investigative authorities or in court once or more; their average monthly fee for this work was approximately 150 euro (compared to approximately 120 euro in 2006).<sup>41</sup>

**Access to legal assistance:** One of Russia's problems is its distances and poor communications. There are many underpopulated and distant areas (even in European Russia) where there are no lawyers at all. The law *On Legal Practice and the Bar* attempts to resolve this problem by providing that "in judicial districts where... the total number of advocates is less than two per federal judge", bar chambers set up "juridical consultations" based on a request by regional authorities<sup>42</sup>. This law office is supposed to be funded and equipped by the regional authorities, while the bar chamber "assigns"

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<sup>40</sup> In this connection, one must additionally take into account the existing limitations on access to pre-trial detention facilities, meetings with clients, and copying facilities on the premises of courts and law enforcement agencies.

<sup>41</sup> [http://www.fparf.ru/lawyers/number\\_and\\_fact.htm](http://www.fparf.ru/lawyers/number_and_fact.htm)

<sup>42</sup> Art. 24(1) of the law *On Legal Practice and the Bar*.



advocates for such offices. So far, only a few dozens of such offices were created in regions where the local governments were able and willing to fund them.

### 3.2.2 *Non-Criminal Cases*

As noticed earlier, advocates do not have monopoly in non-criminal cases, and civil legal assistance may be provided basically by anyone having a power of attorney from the client. However, apart from NGOs, law clinics or individual lawyers providing legal assistance on their own (and never funded by the Government), as little civil legal aid as provided at all is provided by the advocates (for the exception of the government's new experimental civil legal aid scheme, see section 4.3.2 below).

Under the law *On Legal Practice and the Bar*, free legal assistance is provided by advocates to Russian Federation citizens<sup>43</sup>, whose family members' average household income is lower than "subsistence minimum" (poverty line), or single citizens with the same level of income. The figure for this level is defined by each of 89 Russian regions quarterly, but the average national figure in 2007 was a little over 100 euro per month.

According to official statistics, in 2007 the total number of citizens falling under this category was a little less than 15% of the total population. This percentage has been decreasing, but still constitutes a significant portion of the population. Moreover, a vast percentage lives on incomes slightly higher (and is not entitled to non-criminal legal aid). Only 10% of the population has income which is higher than 675 euro per month.<sup>44</sup>

More importantly, even this category is entitled to legal aid in very few types of cases, namely:

- plaintiffs in cases involving enforcement of alimony, compensation for damages caused by death of the only income maker or for injury in the workplace;
- drafting applications for pensions or other benefits;
- rehabilitation cases for those who suffered from repression in the Soviet times.

In addition, WWII veterans are entitled to legal aid on any matters except business-related; and minors detained in juvenile delinquents' centers – on any matters.

To **prove their indigence** citizens are usually required to produce a certificate from social security authorities.

Initially the law did not have any reference as to who funds this legal aid advocates and their firms were supposed to do this *pro bono*. Obviously, it was not very popular or, in fact, in high demand, as very few people knew about this entitlement; if they did come to

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<sup>43</sup> Which means it is *not* provided to citizens of other countries or apatrydes, even residing in Russia.

<sup>44</sup> [http://www.gks.ru/bgd/regl/b08\\_11/IssWWW.exe/Stg/d01/07-09.htm](http://www.gks.ru/bgd/regl/b08_11/IssWWW.exe/Stg/d01/07-09.htm)

law offices, legal aid was usually provided even without requiring certificates as it was easier to provide services than to ask for all the paperwork. Recently, most regional budgets began allocating funds for this purpose. In some regions local initiatives sought to expand the scope and coverage of civil legal aid (see section 4.3.1 below for more details).

The scope of civil legal aid is not defined, but court representation is reported to be not very common for obvious reasons.

According to the FBC statistics, 42% of all advocates provided non-criminal legal aid in 2007, having provided almost 1,000,000 “services”, 90% of which was oral legal advice. They drafted 147,000 legal documents and provided representation in approximately 50,000 cases. Non-criminal legal aid was provided to 110,000 indigent citizens<sup>45</sup>. Reliability of these statistics gives rise to certain doubts (they suggest that, on average, every recipient received, on average, about 9 different “services”).

Deplorable situation with non-criminal legal aid has led to several new developments and reform initiatives described in section 4.3 below.

## **4. Reform Agenda**

### ***4.1 Regulation of the Legal Profession***

The first attempt to address the problem of the “unregulated lawyers” (see section 2.2 above) was made in September 2008, when the Joint Commission on Issues of Qualified Legal Assistance, headed by the First Vice-Speaker of the Federation Council (Russian Parliament’s upper house) made public its draft law *On the Provision of Qualified Legal Assistance*. In short, the draft seeks to introduce total monopoly of advocates (with notaries and patent agents) on all and any legal services, including legal advice. The only express exceptions are made for state legal bureaus (see section 4.3.1 below) and in-house counsels, who can only provide legal assistance to their employers. The draft defines “qualified legal assistance” (language borrowed from the Russian Constitution cited above) as “any independent activity involving provision, on a permanent basis, of legal services in the Russian Federation”. It goes on to enumerate types of legal assistance and, notably, states that qualified legal assistance can be either provided for a fee or, in cases provided for by federal law, free of charge for the recipient but compensated by the state budget, thus excluding any possibility for pro bono assistance even by advocates. Then the draft defines the “subjects” of qualified legal assistance as advocates, notaries or patent agents (or their organizations), as well as those holding an advanced academic degree in law; according to the drafters, no other (than qualified) legal assistance can be provided, “unless provided for by federal law”. Foreign citizens who have not been admitted to the Russian bar can only provide legal assistance on issues

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<sup>45</sup> [http://www.fparf.ru/lawyers/number\\_and\\_fact.htm](http://www.fparf.ru/lawyers/number_and_fact.htm)

of their respective countries' law and only in cases provided for by federal law and international covenants. In practical terms, the draft allows those who have been providing legal services for no less than two years as either individual entrepreneurs or heads of law firms to apply to bar chambers for an advocate's status without passing the bar examination within six month after the law's entry into force.

As of this writing, the draft has not yet been submitted for the Parliament's consideration. It has received mixed reactions – not surprisingly, very negative on the part of “unregulated lawyers”; it was also criticized by the Presidential Administration, which, in the context of modern Russia's political realities, makes its chances quite slim.

In practical terms, it appears to be unrealistic to expect that the vast majority of “unregulated lawyers” with their own traditions and significant lobbying powers, will easily accept such imposed regulation. The drafters' concerns are understandable, but a real solution will require broad public debate and consensus-building. It seems likely that the real purpose of the drafters was to initiate such debate.

#### ***4.2 Association of Lawyers of Russia and Pro Bono Memorandum***

In late 2005, a new organization was created in Russia – Association of Lawyers of Russia (ALR). ALR is a voluntary membership-based association open for individuals and organizations engaged in study and practice of law in a very broad sense – practicing lawyers, justice officials, legal academics, politicians (including the former and current Presidents of the Russian federation), and so forth. ALR aims to represent the legal community as a whole, contribute to building a rule-of-law state, cooperate with other countries and their legal professions, improve legal education, engage in legal awareness and legal assistance programs (ALR has set up a number of legal advice offices in a number of Russian regions), and pursue other noble goals.

ALR has set up 20 commissions, including commissions on justice sector improvement, legal education, legal research, human rights, and so forth. In July 2007, one such commission, Commission on Legal [Professional] Standards, organized a working group to develop a standard for the lawyer's social responsibility practices (in other words, pro bono principles). In September 2008, the working group, mostly driven by PILI, drafted a Memorandum on Social Responsibility of the Russian Lawyer, which was then approved by ALR's Presidium. It is expected that the Memorandum will be adopted by ALR's Supreme Council in November 2008. The document declares the Russian legal community's dedication to the principles of social responsibility and goes beyond that, establishing minimum numbers of billable hours that joining lawyers or their organizations undertake to spend on pro bono services annually (24 hours for individual lawyers and 96 hours for law firms and other organizations). If and when finalized and

adopted, the document will be binding for ALR's members but also open for joining by other lawyers.<sup>46</sup>

### **4.3 Legal Aid**

#### *4.3.1 Expanded Regional Non-Criminal Legal Aid Programs*

Starting as long ago as 2002, governments of some Russian regions realized the huge demand for legal aid among vulnerable groups of their populations and began expanding the eligibility criteria for receiving non-criminal legal aid and, most importantly, allocating comparatively significant budgets for it. The two regions that stand out as most pioneering in this area are St. Petersburg City and Samara Region. In both instances the local governments tendered the procurement of legal aid services, and in both instances these tenders were won by local bar chambers as the only organizations with a region-wide network of law offices.

St. Petersburg started in 2002, when no local law on legal aid existed. Initially, legal aid was provided to all indigent citizens (defined in the same manner as in the law *On Legal Practice and the Bar*) in all categories of non-criminal cases. In 2007 a local law on legal aid was passed which to a large extent narrowed the eligible categories to those defined in the federal law but raised the indigence level to twice the subsistence minimum (thus doubling the number of potential recipients). At the same time a budget of 20 million rubles (540,000 euro) was allocated to cover lawyers' fees. Local legislation established fees for lawyers' services, which are at least somewhat comparable to private lawyers' fees (e.g., 13.5 euro for oral consultation, between 7 and 32 euro for drafting legal documents, 35 euro for one day of court representation, 17.5 euro for preparation to trial, etc.). Even more importantly, the city government in collaboration with the St. Petersburg City Bar Chamber has developed a sophisticated (including electronic) system for proving eligibility and referring clients to particular lawyers.<sup>47</sup>

Samara Region introduced its own non-criminal legal aid system in 2005 and, as of now, remains the only region where legal aid is provided to all citizens whose income does not exceed the subsistence minimum on all categories of cases. The system is funded on a level similar to St. Petersburg; lawyers' fees are similar.<sup>48</sup>

#### *4.3.2 Federal Non-Criminal Legal Aid Experiment*

In 2006, the Russian Ministry of Justice and the Russian Government launched a non-criminal legal aid experiment organized and funded at the federal level.

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<sup>46</sup> Current draft in Russian is available at ALR's website: <http://www.alrf.ru/obj/file/doc/memorandum.doc>

<sup>47</sup> For local legislation and additional information see the St. Petersburg City Bar Chamber's website at: [http://www.apspb.ru/bespl\\_pom.php](http://www.apspb.ru/bespl_pom.php)

<sup>48</sup> For local legislation and additional information see the Samara Region Bar Chamber's website at: [http://www.paso.ru/lawers/gos\\_kontract/](http://www.paso.ru/lawyers/gos_kontract/)

The Government Decree<sup>49</sup> was passed in 2005 and introduced the experiment in 10 Russian regions. “State legal bureaus” were set up in 10 out of then 89 Russian regions. A budget of approximately 50 million rubles (1,350,000 euro) was allocated for the first year of operations. Roughly the same amount of funding was allocated for each of the regions, but the economic situation is different in different regions, so there are, for example, four bureaus in Samara Region, five in Karelia and only one in Moscow Region. Bureaus are staffed with lawyers (most of them non-advocates; law degree is the only requirement) who provide legal assistance to the indigent on any non-criminal matters.

The scope of legal aid provided by bureaus is defined very broadly; they can refer clients to advocates (compensating the latter’s fees) but there are no criteria or procedures for this (except sample contracts). In addition, because expenses related to contracting advocates are not singled out in the bureaus’ overall budgets, there have been very few instances when advocates were actually contracted (only four cases in Samara in 2006 and a similar figure in Karelia).

In 2006, the first year of the new system’s operation, there were many refusals to provide legal aid due to the clients not meeting the requirements to prove their indigence, which involves obtaining a special certificate from social security authorities (valid only for three months). This is why when the experiment was extended for one more year (2007) in the same 10 regions, these requirements were made softer: for instance, pensioners do not need to produce such certificate in order to receive oral consultation.

In July 2007, the Ministry of Justice produced a progress report and recommended gradual introduction of state legal bureaus across Russia. At the same time, the Ministry recognized that non-criminal legal aid cannot be guaranteed to all eligible recipients alone, and funding and provision of legal aid should be divided between federal and regional governments and state legal bureaus and bar chambers respectively.

However, no concrete decisions were made by the Government on the status and future of the experimental system, which was simply extended through the end of 2008.

It seems that the experimental system has potential for a workable national civil legal aid system, but it has to become more sophisticated in management, professional capacity, quality assurance and many other aspects. Even more importantly, what lacks in Russia is a comprehensive and unified legal aid system managed by a single structure and taking into account the interests of various stakeholders. There is a growing understanding, however, that legal aid reform is a pressing priority.

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<sup>49</sup> No. 534 of 22 August 2005.

### *4.3.3. Legal Aid Act Working Group*

It is this understanding that seems to have led, in October 2008, to setting up a working group tasked with developing a concept for a comprehensive non-criminal legal aid act in 2009 (following a roundtable discussion sponsored by the Federal Bar Chamber and PILI). Currently the working group includes high-ranking representatives from the Ministry of Justice, Federal Bar Chamber and regional bar chambers, and PILI staff members. At its first meeting, the working group managed to formulate a number of guiding principles which will become the basis for this concept:

- Division into primary (provided by state legal bureaus and possibly other providers, such as NGOs, university law clinics, etc.) and secondary (provided by advocates) legal aid;
- Flexibility in organizing legal aid delivery in each region depending on the local context;
- Principle of minimum guarantees provided by federal government (which may be expanded by regional governments);
- Provision of primary (basic, such as simple legal advice) legal aid to everyone regardless of the level of income;
- Significantly higher income level for secondary legal aid;
- Creation of legal aid coordination bodies at both federal and regional levels, responsible for all aspects of organization and management of the legal aid system.

With consensus reached on these principal points, the Russian legal aid system seems on its way to a major improvement, provided, of course, that the Russian government will be prepared to significantly increase funding for it and assume responsibility for effectively securing access to justice for all.