

THE LEGAL PROFESSION IN LATVIA

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1. BASIC ORGANIZATION AND STRUCTURE OF THE LEGAL PROFESSION*

In principle, there is no monopoly on providing legal services in Latvia. Any person who has graduated the law school may offer its services to the public. Furthermore, any individual is allowed to represent another person at civil and administrative proceedings on the basis of power of attorney from the latter.

At the same time historically¹ the system of sworn advocates which renders certain standards of the legal advice and representation has been in the centre of legal services in Latvia. By it the professional skills of a service provider (sworn advocate) are certified. Therefore a legal representation in criminal proceeding is reserved exclusively for a sworn advocate. Second, the independence and impartiality when providing the legal assistance aspire to be safeguarded. Third, thanks to the exceptional provisions the confidentiality of the information related to the assistance provided by the sworn advocate is guaranteed².

Sworn advocate may be engaged in any type of legal assistance. More particular according to the Art.3 of *Law on the Bar*:

An advocate is independent and professional lawyer who provides legal assistance by defending and representing the lawful interests of the person in court proceedings and preliminary investigation, gives legal advice, prepares legal documents and performs other legal actions³.

In its very essence that means the corpus of sworn advocates is not divided into the divisions or branches for fulfilling the different tasks, e.g., the same person may offer its service for preparing the legal documents or representing before the court. Nevertheless in practice most of the advocates have the particular specialisation on certain area of law or on different types of performances.

All sworn advocates practising in Latvia⁴ are united under the umbrella of the Latvian Collegium of Sworn Advocates (the Collegium). Collegium membership is mandatory for sworn advocates and it is granted automatically once the title of sworn advocate is awarded. The law confers exclusive rights and obligations to this corporation of advocates. The Collegium is a self governing autonomous subject of the public law. The institutions of the Collegium are: the General Meeting of Sworn Advocates, the Latvian Council of Sworn Advocates (executive body), the Audit Commission and the Disciplinary Commission.

The total number of the sworn advocates (i.e. members of the Collegium) slightly exceeds 1000 persons⁵ in Latvia. It should be noted that the number of advocates has grown noticeably since year 2000: from about 600 persons to more than 1000 today. The number of lawyers that practice outside the Collegium is almost the same⁶. Approximate ratio of the number of all practising lawyers (including sworn advocates) to the total population is approximately 0,00088 %⁷.

Cogent majority of practices (approximately 80 %) are established in a way of solo practice. However, the fact that huge part of them are registered in the private apartments impels to the assumption that the practice is not active and most probably the person is engaged as in-house lawyer.

About 15 % of the total number of practices is small offices (2 – 3 sworn advocates) and 5% - large offices (more than 3 sworn advocates)⁸. More and more partnership agreements with the foreign offices are concluded especially by large offices what can be explained by the constantly growing application of the private international and European Union law.

2. ADMISSION TO THE LEGAL PROFESSION

A person who wishes to become sworn advocate shall submit its application and supporting documents to the Latvian Council of Sworn Advocates⁹. Art. 14 of *Law on the Bar* stipulates that person may become the sworn advocate if he/she:

- 1) is citizen of the Republic of Latvia¹⁰ and fluent on the official state language;
- 2) has reached at least the age of 25;
- 3) possesses advanced (2nd level) higher legal education and a professional qualification of a lawyer;
- 4) has worked as a lawyer on the basis of the contract or at the civil service at least five years, a member of academic personnel (lecturer) in a high school or an assistant of sworn advocate at least three years, a prosecutor, sworn court bailiff or sworn notary at least two years or a judge;
- 5) has an unblemished reputation.

The list of the names of persons who have submitted documents for admittance into the sworn advocates is regularly displayed in the premises of the Council of Sworn Advocates and at the same time sent to the elders of sworn advocates and the Court Administration of the Republic of Latvia by inviting to submit references on the candidates within a month. Subsequently the Council of Sworn Advocates reviews the application and the supporting documents, decides on conformity of the requirements of *Law on the Bar* and on admission to the exam of sworn advocate¹¹. Person which has obtained a doctoral degree in law is exempted from the obligation to pass the exam according to the provision of the law currently in force¹².

The examination is organized by the Council of Sworn Advocates¹³ and commissioned by three doctors of law, three senators from the Supreme Court of the Republic of Latvia, three

sworn advocates and a representative of the Ministry of Justice of the Republic of Latvia. According to the law the examination should be held at least once in every six months¹⁴. The high interest of lawyers to get the title as well as the capacity to deal with small groups of applicants to ensure the proper conduction of the exam has provoked the necessity to organize it more frequently. For example, eight groups (each up to ten persons) for the examination within the first half of 2008 are formed.

The exam consists of two parts: written and oral. Firstly, *casus* should be solved by proposing necessary legal steps to be taken and drafting appropriate legal document. The legal problematic of the issue may cover any of the law disciplines: civil law, labour law, commercial law, tax and finance law, administrative law, criminal law or even constitutional law and the timing for drafting is two hours. The legislative texts may be consulted except their commentaries. Then the break is announced during which the drafts are evaluated by the examination commission. Those who are successful are invited to proceed for the oral part, which takes place at the same day i.e. after couple of hours.

Secondly, the paper, which includes two questions on legal theory in abovementioned areas of law and one on legislation of advocacy, ethics, rules on practicing abroad and documentation of practice, should be chosen by the candidate. The timing for the preparation is half of an hour and answering to each question should exceed ten minutes. During this part of examination the questions related to the answers may and are posed. The evaluation of this part as well as the final result is announced to the candidate within the next couple of weeks.

Since the results of the examination are more often positive than negative the appeals are rare. The procedure and content of the exams are perceived as being well balanced and appropriate; at least it gives all the preconditions for the objective and fair selection.

If the applicant passes the exam, the Council of Sworn Advocates admits him/her to sworn advocates and invites to give the oath. Since the official statistics on exam passing rate is not available according to the approximate data the exam is passed by 90 – 95 % applicants.

Admission fee that should be paid before the exam to cover its expenses is 150 LVL (nearly 214 EUR). Discounted fee for practising assistants of sworn advocates is offered - 50 LVL¹⁵ (nearly 71 EUR). The fees have remained the same since July, 2004. Taking into account the high (more than 10 %) average inflation during the last years the fee may not be perceived as being excessive. At least at the moment draft amendments to up the fee have not been announced.

3. COST OF SERVICES AND LEGAL AID

Cost for the legal service provided by a sworn advocate usually is agreed between the advocate and the client following the rate offered by the advocate. Art. 57 of *Law on the Bar* requires a written form for this part of the agreement. If there is no such agreement the compensation should be determined according to the rate¹⁶ which is stated by the

Government (Cabinet of Ministers) regulations¹⁷. Interestingly that such regulations have not been issued. Thus despite to the fact that formally there should be indicative costs set by the Government in reality the rate agreed between the parties or offered by the service provider is the final one. For the sake of truth it must be added that draft amendments of *Law on the Bar* with regard to the issue of costs are before the Parliament¹⁸. It is proposed to solve the problem of unclear costs by linking it to the rates in force on state ensured legal aid. In other words in a case if the client and advocate have not expressly agreed on the rate of a service the payment should be equal to the double rate approved for the state ensured legal aid.

Due to the abovementioned fact that costs of legal services are not indicated by the Government and that there are no recent official researches on the objective costs one may guess that the service providers feel much comfortable to set and update their freely chosen rates. Currently at least LVL 25 - 30 (nearly EUR 36 - 43) per one hour may be requested at the bulk of legal offices for a basic consultation, drafting a legal document or representation before court. However it should be taken into account that the average rates are lower outside the capital and they may vary substantially (sometimes even 2 – 3 times) depending on the qualification of the service provider, the specific place of consultation (e.g. prison), complexity of the case, form of consultation etc.

Situation is different as regards the costs of the legal aid. The respective regulations of the Cabinet of Ministers on payment rates and procedure¹⁹ are in place and thus the amount of payment from the state budget for state ensured legal aid – fixed. The amount of compensation for consultation of state ensured legal aid is set much lower than it appears to be usually agreed between the parties. This has raised the extensive public debate between the service providers²⁰. Indeed the rate for legal consultation in terms of legal aid is set only LVL 7 (EUR 10) per one hour²¹, drafting a basic legal document – LVL 10²² (nearly EUR 14), drafting a complex legal document – LVL 20 – 30²³ (nearly EUR 29 - 43) and representation before court - LVL 10²⁴ (nearly EUR 14). Moreover, the limits on maximum charges are set. If we entrust the information spread by sworn advocates an average benefit for the similar legal service according to the free market price may be LVL 100 – 200 (nearly EUR 143 – 286) whilst according to the rate for the state ensured legal aid – LVL 30 (nearly EUR 43)²⁵.

As concerns the right to legal aid it is guaranteed by law for anyone who resides legally in Latvia (citizens, non-citizens, stateless persons, other European Union member states citizens, other states citizens with a permanent residence permit, asylum seekers etc.) if they have obtained the official status of a low-income or needy person or if they are unable to provide partly or fully for the protection of their rights then taking into account their special situation, state of property and income level²⁶. Regarding the latter i.e. special cases the criteria for their determination have been approved by the Cabinet of Ministers²⁷. For example, to be in a special situation means to face the force majeure, natural calamity or other circumstances which the person can not influence. As concerns the special state of property and income level the precise levels are defined. At the moment the minimum income threshold to qualify for the aid is the minimum pay i.e. LVL 160 (nearly EUR 229) per person / per month. The reiterative examination of the situation of the recipient of the

aid is envisaged after a year from the date of granting the aid. If the situation has been changed and the person no more qualifies for the aid the refund may be requested. In a case of litigation unfortunately there is no obligation for the another party if it has lost the case to refund to the state the costs for legal aid related to the case.

In Latvia the concept of the legal aid is relatively new – it was introduced in 2006. According to the law the legal aid may be granted both in extrajudicial and judicial proceedings. The state will ensure extrajudicial legal aid if:

- 1) a person needs legal aid in matters of the right of dwelling, labour law, children's rights or the state social guarantees;
- 2) a person who has suffered a criminal offence needs legal aid for the clarification of his or her rights and duties, for drawing up an application and the receipt of compensation;
- 3) a person needs to prepare an application regarding securing of claims in a civil matter;
- 4) a person is involved in a dispute of a legal nature, in which judicial proceedings are possible, and such person needs legal aid for the clarification of his or her procedural rights and duties in order to prepare a claim for a court;
- 5) a person is involved in a dispute of a legal nature, which is to be settled out-of-court, and such person needs legal aid in order to clarify his or her rights and duties in solving such dispute, or in order to prepare the relevant documents; or
- 6) a person has the right to legal aid for the implementation of defense or representation and it is provided for in the law²⁸.

The aid on litigation may be requested in any stage of proceedings and in any area of law (civil, administrative and criminal proceedings) until the court adjudication is not completed and it may comprise the drafting of documentation, advice and, if necessary, the representation before the court. Not surprisingly that according to the data published by the Legal Aid Administration, institution subordinated to the Ministry of Justice of the Republic of Latvia, so far more than half of the legal aid requests were submitted to solve the issues related to immovable property rights²⁹. Only then follows the divorce and subsistence claims as well the claims on restitution. Similar proportion may remain while the reform on property will be completed.

The aid is provided by the sworn advocates and their assistants, sworn notaries, sworn court bailiffs or other lawyers who have practised at least five years if they have concluded especial agreements with the Legal Aid Administration on the state ensured legal assistance. As well it may be carried out by a legal aid centre attached to the law school and leaded by the person who possesses a doctoral degree. Currently 114 legal aid providers, dominantly sworn advocates, are ready to provide these services³⁰.

As it was already mentioned their performances are paid from the state budget. Thus the legal aid system in Latvia belongs to so called *Judicare* system³¹ where the state compensates the legal aid for low income and needy persons. And its strengths and weaknesses are the same as for any system rooted into the same principles:

pros - the service providers may be chosen from the list which is available in advance; the criterions to receive the aid are clear;

cons – the solution of a problem may require an especially trained lawyer who has not concluded the necessary agreement on providing the legal aid; the rates are fixed and usually lower than an average market rates.

4. REFORM AGENDA

This contribution allows concluding at least on two points. First, the system of advocacy in Latvia is well rooted. However, there are gaps on the rate system as well as on clear difference between the rights and duties of the sworn advocate when providing legal services and any other person who offers the same. Second, the experience already gained when providing the state ensured legal aid allows to address the issue on its first possible amendments, for example, related to the management of legal aid system and the rates.

It seems that the similar strand of considerations leads the Latvian Ministry of Justice, which is responsible for the policy in the area. Thus its updated draft strategy for 2007 – 2009³² recognizes that there is no single comprehension on the role of the Council of Sworn Advocates, particularly as concerns its supervisory powers and selection of new sworn advocates. The quality of the services provided by the advocates may be evaluated as being comparatively poor. Moreover, the discussions on the professional ethics of sworn advocates are at stake. Currently any person with a law degree and even without it may offer the legal services and as a result the quality of the service is not predictable³³. Following notice that there is widespread practice in other countries to examine regularly the legal professionals gives a guess that the ministry sees this as a direction for further work on the field³⁴. Last, there is a remark that existing legal regime does not provide a qualitative and economically effective state ensured legal representation.

The abovementioned strategy briefly indicates the mid-term activities to eliminate these imperfections. Thus quite ambitiously the ministry undertakes in a mid-term to:

- 1) Draft the concept paper on the role and functions of advocacy and the new law *On the Bar*³⁵;
- 2) To provide research on the options to regulate the legal profession³⁶ (obviously meaning the profession in general i.e. broader than sole advocacy);
- 3) To establish an optimal and economically effective state ensured legal aid system in criminal cases aiming to ensure the right to defense as well as to draft the necessary legislative amendments³⁷.

It is not clear why alongside with the last activity the perfection of the economic effectiveness of the whole legal aid system is not envisaged, however, it may not be excluded that the experts will find the general solutions.

So far the preliminary results of these tasks are not publicly available. According to the information provided by the responsible institution the wide scope research on the system of advocacy is expected to be completed until September, 2008. More particular, it would comprise the analysis and recommendations on:

- 1) the current legal regime, its strengths and weaknesses;
- 2) qualification requirements for sworn advocates (candidates, exams, improvement of professional skills etc.);
- 3) the functions of the Collegium;
- 4) accountancy, tax, record keeping and the place of practice related details for the sworn advocate;
- 5) role of the advocacy within the terms of state ensured legal aid system;
- 6) necessary level of state intervention into the functioning of advocacy;
- 7) alternative options for the system of state ensured legal aid;
- 8) opinions of legal practitioners and field related officials with regard to the most important problems and their possible solutions.

Since the research is on the way one may guess that the substantive public and professionals debate will raise only once it will be completed and accessible.

What appears still not to be addressed within the policy planning papers is the issue of (mandatory) insurance of the civil liability of the sworn advocate. This would allow to solve partially the quality consequent problems as well as to encourage applications for the status of sworn advocate thus strengthening its role.

* Besides judges and prosecutors there are three other justice related legal professions in Latvia: notaries, advocates and court bailiffs. For the purposes of this report only the system of legal advice which is based on system of advocacy will be examined.

¹ Advocacy in Latvia celebrates its 87th anniversary this year (2008).

² Further see e.g., O. Rode, K. Pastille, *Neatkarīgā advokatūra Eiropā: vēsture un nākotnes perspektīvas*, <http://www.politika.lv> (accessed : 27/04/2008).

³ *Law On the Bar*, adopted: 27/04/1993; last amendments: 27/05/2004; unofficial translation available at <http://www.advokatura.lv/?open=eng&it=bar&lang=eng> (accessed : 25/04/2008).

⁴ Excluding the advocates from another European Member States who are admitted in different way and on different legal basis; see Chapter Seven “Activity of the Advocates of the European Union Member States in Latvia” of *Law on the Bar*.

⁵ See the list of sworn advocates at <http://www.advokatura.lv/?open=advokati&lang=lat> (accessed : 26/04/2008).

⁶ Since there is no official data available the value is based on the number of officially registered law offices in comparison with the registered attorneys-at-law offices.

⁷ According to the data published by the Central Statistical Bureau of the Republic of Latvia the population is 2 269 400 in March, 2007; <http://www.csb.gov.lv/csp/content/?cat=2269> (accessed : 26/04/2008).

⁸ Analysis on the number of and structure of practices is carried out on the basis of information available at the Internet site of the Collegium (<http://www.advokatura.lv/?open=advokati&lang=lat>), the updates are published by the Collegium at the official journal *Latvijas Vēstnesis* as well.

⁹ *Law on the Bar*, Art. 39.

¹⁰ See supra. 4. The advocate of the European Union member state is entitled to practice in Latvia if his/her professional qualification has been recognized by the Latvian Council of Sworn Advocates and if he/she has certified the knowledge of the official state language. Nine advocates of the other European Union member states (five from Germany, two from Estonia, *per* one from the United Kingdom and Finland) are admitted at the time being. (source: <http://www.advokatura.lv/?open=advokati&lang=eng>).

¹¹ *Law on the Bar*, Art. 40 and Art. 41.

¹² *Ibid.*, Art. 14.

¹³ The process of examination and standards of evaluation is set by the *Government Rules No. 160 of 27 February, 2007 on procedure of examination of advocate and minimum standards of knowledge* (auth. translation) (Ministru kabineta 2007.gada 27.februāra noteikumi Nr. 160 “Noteikumi par advokāta eksāmena kārtību un minimālo zināšanu apjomu”), *Latvijas Vēstnesis*, No 45, 15/03/2007.

¹⁴ *Law on the Bar*, Art. 41¹.

¹⁵ *Government Rules No. 609 of 20 July, 2004 on the fee for exam of advocate* (auth. translation), (Ministru kabineta 2004.gada 20.jūlija noteikumi Nr. 609 “Noteikumi par advokāta eksāmena maksu”), *Latvijas Vēstnesis*, No 116, 23/07/2004.

¹⁶ *Law on the Bar*, Art. 57.

¹⁷ *Ibid.*, Art. 58.

¹⁸ See

<http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/D94A2C42B40EAA8AC22573FD004A8ECA?OpenDocument> (accessed : 30/04/2008).

¹⁹ *Government Rules No. 920 of 6 November, 2006 on areas of state ensured legal aid as well as on maximum hours, payment amount and procedure* (auth. translation), (Ministru kabineta 2006. gada 6. novembra noteikumi Nr. 920 „Noteikumi par valsts nodrošinātās juridiskās palīdzības veidiem, maksimālo stundu skaitu, samaksas apmēru un kārtību”), *Latvijas Vēstnesis*, No 181, 10/11/2006.

²⁰ See e.g., J. Zemītis, *Bezmaksas juridiskā palīdzība – vai valstij izdevīga*, *Diena*, 18/04/2008; also R. Siliņa, *Vai valsts apmaksāts advokāts spēj palīdzēt*, *Jurista Vārds*, 22/04/2008.

²¹ *Supra* 18, Art. 7.1.

²² *Ibid.* Art. 7.2.

²³ *Ibid.* Art. 7.3.-7.4.

²⁴ *Ibid.* Art. 7.5.

²⁵ J. Zemītis, *Bezmaksas juridiskā palīdzība – vai valstij izdevīga*, *Diena*, 18/04/2008.

²⁶ Art. 3 of *State Ensured Legal Aid Law* (Valsts nodrošinātās juridiskās palīdzības likums), *Latvijas Vēstnesis*, Nr. 52, 01/04/2005.

²⁷ *Government Rules No. 558 of 4 July, 2006 on compliance of special situation, state of property and income level of a person to be considered appropriate for the granting of legal aid* (aut. translation), (Ministru kabineta 2006. gada 4. jūlija noteikumi Nr. 558 “Noteikumi par personas īpašās situācijas, īpašuma stāvokļa un ienākumu līmeņa atbilstību valsts nodrošinātās juridiskās palīdzības piešķiršanai”), *Latvijas Vēstnesis*, Nr. 111, 14/07/2006.

²⁸ Art. 9 of *State Ensured Legal Aid Law* (Valsts nodrošinātās juridiskās palīdzības likums), *Latvijas Vēstnesis*, Nr. 52, 01/04/2005.

²⁹ R. Siliņa, *Vai valsts apmaksāts advokāts spēj palīdzēt*, *Jurista Vārds*, 22/04/2008.

³⁰ See http://www.jpa.gov.lv/lat/informacija_juridiskas_palidzibas_sniedzeji_advokatu_saraksts/ (accessed : 30/04/2008).

³¹ See K. Ekonomidiss (K. Economides), *Salīdzinošā juridiskā palīdzība: pārskats par Eiropas modeļiem*, <http://petijumi.mk.gov.lv/ui/DocumentContent.aspx?ID=2282> (accessed : 30/04/2008).

³² Available at <http://www.mk.gov.lv/lv/mk/tap/?dateFrom=2007-05-14&dateTo=2008-05-13&text=darb%C4%ABbas+strat%C4%93%C4%A3ija&org=0&area=0&type=0>.

³³ *Ibid.*, p.37.

³⁴ *Ibid.*

³⁵ *Ibid.*, p.39.

³⁶ *Ibid.*

³⁷ *Ibid.*