ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE
Office for Democratic Institutions and Human Rights

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Expert Workshop
REFORM OF THE LEGAL PROFESSION AND ACCESS TO JUSTICE

Krakow, Poland
13-14 November 2008

Final Report

Background

Lawyers play a special role in defending the right to a fair trial, ensuring access to justice, and more broadly upholding the values of the OSCE's "human dimension". This role has been repeatedly recognized in OSCE commitments[1] and regularly discussed at OSCE human dimension forums.[2] In the last several years the OSCE Office for Democratic Institutions and Human Rights (ODIHR) carried out numerous activities to promote fair trial standards, improve access to justice, and strengthen the capacity of legal practitioners.

Discussions at OSCE human dimension forums and ODIHR-sponsored events in the field highlighted serious challenges that remain in many participating States. Frequently reported problems include insufficient numbers of qualified lawyers, low quality and unaffordable costs of legal services, and the lack of effective legal aid programmes for the poor.

Many of these problems are linked to, or rooted in, systemic shortcomings in the regulation of the legal profession.[3] While some measures to improve access to legal assistance for some groups (such as legal aid programmes for the poor) have been carried out in relative isolation from reform of the legal profession, this project is based on the premise that making long-term and sustainable improvement in access to justice for all requires a comprehensive approach.

Guided by these considerations, the ODIHR organized an Expert Workshop on Reform of the Legal Profession and Access to Justice on 13-14 November 2008 in Krakow, Poland. The Workshop was attended by 30 experts from 19 participating States of the OSCE. All participants took part in the event in their personal capacities.

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[1] See e.g. paragraphs 5.13 and 5.17 of the 1990 Copenhagen Document and Ljubljana Ministerial Council Decision No. 12/2005 on *Upholding Human Rights and the Rule of Law in Criminal Justice Systems*.

[2] Most recently at the Supplementary Human Dimension Meeting on the *Role of Defence Lawyers in Guaranteeing a Fair Trial* (Tbilisi, November 2005), Human Dimension Seminars on *Upholding the Rule of Law and Due Process in Criminal Justice Systems* (Warsaw, May 2006) and *Constitutional Justice* (Warsaw, May 2008), and the annual Human Dimension Implementation Meetings (HDIM) in Warsaw.

[3] For the purposes of this Workshop, the term "legal profession" refers to practicing lawyers who provide legal advice and court representation and excludes judges, prosecutors, law enforcement officers, and notaries.

Introduction and Methodology

After the break-up of the Soviet Union the former Socialist countries took different steps to reform the legal profession. Some countries have disbanded the Soviet *advokatura*[4] structures, while others left them largely intact. Reform of the Bar was complicated by economic hardships and declining living standards. Lawyers resisted changes that ran against their interests. Legal services rapidly became unaffordable for large parts of the population. Dismantling the old Bar left gaps in ensuring statutorily-required legal assistance and representation.

The new economic order also brought with it a demand for providers of legal services for entrepreneurs and businesses. In this – generally lucrative practice area – the *advokatura* competes with other legal practitioners whose practice is frequently unregulated. The relationship between these groups of lawyers is often confrontational.

To obtain more systematic information on these and other relevant issues, the ODIHR commissioned a number of country reports from independent experts in selected OSCE participating States. Expert reports have been completed for the following countries: Armenia, Belarus, Czech Republic, Estonia, Georgia, Germany, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Moldova, Poland, Russian Federation, Sweden, Tajikistan, and Ukraine. These reports were used to develop the Workshop agenda.

The Workshop participants were asked to reflect on the prospects for improving access to justice through legal profession reform. Discussions were aimed at identifying good practices in the CIS[5] and in other OSCE participating States to address the existing challenges. Participants discussed the developments in their countries and shared the successes, failures, and lessons learned.

The Workshop consisted of four consecutive Panels. Each Panel began with introductory reflections by one speaker, then heard and discussed country case studies presented by the participants. The experience of the following countries was presented through case studies (in the order of presentations): Russian Federation, Ukraine, Hungary, Tajikistan, Germany, Czech Republic, Moldova, Poland, Kyrgyzstan, United States, Armenia, Estonia, Georgia, United Kingdom, and Latvia.

The ODIHR chose a limited number of issues for discussion in this Workshop. This choice should not be interpreted to imply that other issues are unimportant to the topic. Rather, the number of issues was limited to ensure a focused and thorough debate. It was also felt that the chosen issues would serve as good entry points to some of the key problems concerning the availability and accessibility of legal services.

[4] The traditional Bar whose members practice all areas of law including criminal, civil, and commercial law and appear in courts.

[5] "CIS" and "CIS region" for the purposes of this Workshop refers to all countries of the former Soviet Union with the exception of Latvia, Lithuania, and Estonia (member States of the European Union), regardless of their current status in the Commonwealth of Independent States.

Selected Findings and Recommendations

- To perform its regulatory function effectively, the Bar must enjoy public trust. It should act in the interests of the public, be open, inclusive, and responsive to change.

- Where proposals are put forward to improve the quality of legal services and the professionalism of lawyers by broadening the Bar's monopoly on legal advice and representation, appropriate consideration should be given to the public interests of availability and accessibility of the legal assistance. Such steps should be accompanied by a significant enlargement of the Bar to incorporate all *de facto* practicing lawyers, and conditional on the Bar's ability to maintain fair admission practices.

- To address the lack of legal assistance in remote and rural areas, state regulators should adopt a flexible approach and allow for different local solutions, including provision of limited legal services by people who are not fully qualified lawyers and regular travel to such areas by legal aid lawyers.

- The legal profession should be open to all on equal terms. Bar examinations should be prepared by professionals and administered by independent bodies. These examinations should objectively and fairly assess the relevant qualities for Bar membership.

- If an apprenticeship is a pre-condition for Bar membership, equal opportunities for an apprenticeship should be created for all qualified applicants. This may be accomplished through state-funded apprenticeships, or alternatives to mandatory Bar apprenticeships, such as special courses and training organized by other institutions.

Summary of the Discussions

Day I, 13 November 2008

Carsten Weber, Chief of the ODIHR Rule of Law Unit, welcomed the participants. He explained the rationale of the Workshop and emphasized the need for a comprehensive approach in addressing institutional shortcomings of the legal profession. International assistance tends to focus on training of individual lawyers, often without due consideration for the regulatory framework and organization of the Bar. Access to the legal profession was chosen as a central theme for this Workshop – an issue of particular relevance in many participating States, especially in the CIS.

Panel I: The Bar and access to legal services

Martin Solc, a practising lawyer and former President of the Czech Bar, focused his introductory remarks on the **regulation of the legal profession**. He first pointed out that the legal profession requires more regulation than a "simple trade", and that this regulation should cover all lawyers, regardless of their area of practice. He then addressed the issue of an **appropriate regulator** for the legal profession. He pointed out that the need for independence of the legal profession makes any governmental body unfit for the role of such a regulator. Some regulation by the judiciary may be considered, but it could be problematic in absence of a tradition of co-operative relationship between the lawyers and

the judges. Mr Solc suggested that **self-regulation by the Bar** is the best solution, especially in the context of transition countries. He then expressed an opinion that the legal profession should be united and submitted to one single regulator, and that doing it otherwise generates an unhealthy competition between the different Bars for the benefit of their members and potentially to the detriment of consumers.

The introducer suggested that to perform its regulatory function effectively, the Bar must **enjoy public trust** – and in order to do so it should act as a regulator, not as a lobby group. It must act in the interests of consumers, be reasonable, open, flexible and ready to cope with modern challenges. If the regulator complies with these criteria, practice outside the Bar should not be allowed.

In the discussion that followed, the **scope of the Bar's monopoly** in the provision of legal services was extensively debated. It was pointed out that a large number of European countries reserve only limited areas of the legal practice for the Bar members (typically criminal law), while in some other countries any practice of law outside the Bar is prohibited.

This issue is particularly relevant for the countries where large numbers of **"unregulated"** lawyers practice outside the Bar (for example, in the Russian Federation and Moldova). Proposals are put forward in these countries to improve the quality of legal services and the professionalism of their providers by broadening the Bar's monopoly – for example, by restricting court representation in all cases to Bar members only. Participants noted that such steps should be accompanied by a significant enlargement of the Bar to incorporate all *de facto* practicing lawyers, and conditional on the Bar's ability to maintain fair admission practices.

Examples from several countries illustrated shortcomings of the legislation with regard to ***pro bono*** **representation** by practicing lawyers. It was agreed that while sufficient safeguards should be put in place to prevent concealment of income, the law should generally support *pro bono* legal work, including the provision of appropriate tax incentives. On the issue of **taxation** more generally, it was pointed out that taxation should not be used by the government to undermine professional independence of the legal profession.

Case study presentations highlighted a number of problems with the provision of **legal aid**. In particular, putting the appointment of *ex officio* counsel in criminal cases into the hands of investigators creates ample opportunities for corruption and abuse. It was suggested that appointment of defence counsel by judges or specialised legal aid management bodies would be more appropriate. Low remuneration for legal aid lawyers and cumbersome procedures for receiving this remuneration were also mentioned as obstacles to effective legal aid representation.

Finally, many participants expressed an opinion that a so called **order** issued to lawyers in many former Soviet countries (including Belarus, Kazakhstan, Moldova, the Russian Federation, and Ukraine) as proof of their mandate to handle cases is an obsolete instrument that creates additional red tape. It was suggested that these "orders" should be abolished and their fiscal function replaced by purely fiscal documentation. An identity card issued by the Bar should serve as sufficient proof of the lawyers' credentials, while any potential misrepresentation by lawyers should be addressed by the Bar through effective disciplinary proceedings.

Panel II: Admission to the legal profession

Julian Lonbay of the University Birmingham and the Council of Bars and Law Societies of Europe (CCBE) began his introduction with a remark that while much effort had gone into assisting judges, prosecutors, and the police in transition countries, lawyers have been largely left out. He emphasised that lawyers are expected to protect certain public interests, including the rule of law and administration of justice. Prof. Lonbay drew attention to the **Charter of core principles of the European legal profession** developed by the CCBE that enumerates core essences of being a lawyer, including, *inter alia*, independence, high moral character, professional competence and loyalty to the client.

He emphasized that the **profession of lawyer should be open to all on equal terms**. In his opinion, admission to the profession should be controlled by the Bar, to maintain independence. The state may set up entry standards for the legal profession, but the Bar usually plays a role in formulating them. The CCBE also formulated **Training Outcomes for European Lawyers** which define lawyers and distinguish them from other providers of legal services, and describe what lawyers do and how they should carry out their profession. These outcomes form a common basis for different jurisdictions and legal traditions in Europe.

In addition to the necessary education and training, a **good moral character** is typically required for admission to the Bar. This is seen as vital to uphold ethical standards of the profession. Normally this good character is proven by an absence of a criminal record and through references by people unrelated to the applicant.

Prof. Lonbay also pointed out that in order to perform their regulatory function properly the Bars need **sufficient funding**. They should also have **rigorous disciplinary proceedings** to maintain high professional standards.

In subsequent discussion, the issue of maintaining **ethical standards** was raised by several participants. Especially in countries that suffer from widespread corruption, upholding the integrity of the legal profession is difficult. It was suggested that one of the contributing factors was a nearly automatic access to the Bar for former law enforcement officers, investigators, and prosecutors. Their values and practices are influenced by their past careers and are often incompatible with the principles that should guide members of the Bar. Potential solutions may include an exclusion of any preferential treatment for such Bar applicants (i.e. putting them on equal footing with all other candidates) or a temporary restriction on their Bar membership – allowing a certain period of time to lapse from their previous employment before they may be allowed to apply for Bar membership.

Admission to the legal profession is typically carried out by **examination bodies**. Most participants agreed that these bodies should include not only practicing lawyers but also academics and other legal professionals. Such mixed composition works as a safeguard to maintain fairness and contributes to building trust between the different legal professions in the systems where such trust is lacking.

On the issue of **quotas for entry** to the Bar – whether established by the government or the Bar itself – many participants expressed an opinion that such quotas would not only be problematic from an anti-trust point of view, but may also create additional incentives for corruption.

Participants also discussed the shortage of **legal assistance in remote and rural areas**. Many pointed out that the state regulators should adopt a flexible approach that would allow for different local solutions to address this shortage. Examples of such solutions include provision of limited legal services by people who are not fully qualified lawyers (“paralegals”); regular travel to such areas by legal aid lawyers; and raising private funds for legal aid programmes in addition to state funding.

Employment of advocates emerged as another issue of debate. Legislation of many countries (for example, Poland and Moldova) prohibits employment for lawyers on the basis of labour contracts. The rationale behind this prohibition is the need to preserve the independence of lawyers as a free profession. Many participants pointed out that the need for professional independence relates first and foremost to independence from the state authorities. They emphasized that employment as such is not incompatible with professional independence, whereas the prohibition of employment puts lawyers in a difficult position, especially if competition in the legal market is high.

Day II, 14 November 2008

Panel III: Bar examinations – ensuring objectivity, fairness, and transparency

Mihai Selegean, a practising lawyer and former director of the Romanian National Institute of Magistracy, shared his reflections and experience on the subject of organizing objective, fair, transparent, and relevant legal examinations.

He listed some of the key elements to ensure **transparency** before the examination takes place, such as making the examination rules public (when and where the examination will be held, who may apply, the rules of procedure, testing methods, fees, etc.), and publishing examples of previously used test items to enable candidates to prepare. After the examination, examination items and evaluation grids should be disclosed to permit appeals.

Division of responsibilities helps ensure **objectivity** in the examination process. Different boards should prepare the examination items, evaluate the grid, carry out the examination, and deal with appeals. Each examination should have its own board and no person should have access to all exam items prior to the examination. Items should be randomized for the exam-takers. Examinations should be independently graded by different board members. If two graders significantly differ in opinion, a third person should review the results.

Mr Selegean stressed not only the need to preserve **confidentiality** of exam items but also the **protection of identity and personal data**. Protection of the candidates' identity reduces the risk of biased grading by the examiners. Candidates should be allotted codes and their names should not be disclosed with the results. In case of combining oral and written examinations, the results of written tests should not be known to the oral examiners. Mr Selegean suggested that at least 50% of the total grade of the examination should be carried out on an anonymous basis.

With regard to **fairness**, examinations should not discriminate against any groups. If different boards are involved in one examination, they should apply the same standards. Parallelism across exam forms should be ensured, i.e. the examination should be consistent in complexity and not yield dramatically different results every time it is offered.

Relevance should be a guiding principle for Bar examinations. Does the examination serve its purpose – i.e. selects the best candidates for the job? To answer this question, examination organizers should have a **profile of a successful candidate**. If a good lawyer should have knowledge of the law, legal skills, and proper ethical values, the examination should test all these elements.

Mr Selegean pointed out that the principles discussed above need to be balanced. For example, a multiple-choice test may be the most objective method of testing knowledge,

but using only this way of examination may jeopardize relevance, i.e. not result in the choice of the most suitable candidates for the legal profession.

The introducer concluded that a good examination requires **professionalism of item-writing**. This is best achieved by creating teams of professionals to write examination items and pre-test them for flaws.

In the subsequent discussion, some participants expressed scepticism about the **use of multiple-choice tests** for Bar examinations, especially to test the knowledge of law. They argued that a successful completion of legal studies proves that candidates already have the necessary knowledge. However, other participants pointed out that testing of legal knowledge serves as a "common denominator" in countries where the quality of legal education may vary greatly. They also gave examples of skills that may be tested through multiple-choice tests, such as logical reasoning and reading comprehension.

It emerged that a **single examination for different legal professions** – including judges, lawyers, and prosecutors that exists in some countries (for example, in Germany, Hungary, and the United States) is also discussed in other states. The proponents of this model believe that it works to ensure fairer access to all legal professions and facilitates freer movement between them. Such movement contributes to building greater trust and collegiate spirit within the legal community.

Participants also heard about a Bar model where the lawyers have **varying access to the legal practice**, depending on their experience. Junior lawyers are entitled to provide legal advice but not court representation, more experienced lawyers may represent clients in courts but the most complex cases in highest courts may be handled only by fully qualified Bar members. Each level of admission is subject to a separate examination. This model is practiced in some counties (Estonia and Latvia) and actively discussed as a possible direction of reform in others.

The comparative advantages of **oral and written examinations** were discussed at some length. It was noted that an exclusive reliance on written examinations may leave out important elements of a candidate's profile – such as speaking skills, attitudes, and values. Many participants remarked that while oral examinations may be inherently more subjective, they give a better opportunity to test these other elements. Recognizing this, some countries hold a combined examination (with an oral and written part). Practices differ on the weight attributed to the oral part in the overall examination grade (e.g. from nearly 50% in Germany to 10% for judicial examinations in Romania).

Questions about the extent of **appeals of Bar admission results** to courts were raised and the utility of such appeals was discussed. It was pointed out that judges normally review only the procedural aspects of the examination, not the item content or the examiners' judgement. Their main task is to prevent abuse and arbitrary decision-making, and this form of appeal serves as a guarantee of due process.

Panel IV: Apprenticeship and initial training

Daniyar Kanafin, a practising lawyer and member of the Presiding Board of the Almaty City Collegium of Advocates, shared the experience of Kazakhstan's largest Bar in organizing apprenticeship programmes.

He emphasized that an apprenticeship, lasting from three months to one year, is meant to introduce Bar candidates to the essential skills of lawyers, but also develop a proper

understanding of the role of advocates and their values. This is especially relevant for Bar applicants who had a prior career in law enforcement, prosecution, and in the judiciary.

Mr Kanafin suggested that an apprenticeship would be more logical if it **preceded a Bar examination**, to facilitate the applicants' better preparation for this examination. He also suggested that the **duration** of an apprenticeship should not be overly long and the Bar have some discretion in determining the appropriate duration of the apprenticeship for applicants, depending on their prior experience. An apprenticeship that lasts longer than one year, in the introducer's opinion, raises questions about undue barriers in accessing the profession, if the costs of the apprenticeship are borne by the applicant.

An apprenticeship should be **open to all on equal terms**. The introducer suggested that selection procedures for apprenticeships should prevent arbitrary decisions and not discriminate against any applicants.

Finally, one of the ways to assist applicants meet the **financial burden** of an apprenticeship, according to the introducer, may be to grant them a degree of admission to the legal practice and allow apprentices to provide some legal advice and representation for remuneration.

In the discussion that followed, different models of apprenticeships were considered. It was noted that an apprenticeship may be a **pre-condition for admission** to the legal profession. In this regard, concerns were expressed about the systems where Bar applicants must complete an apprenticeship with current Bar members in order to be admitted to the profession. If selection for an apprenticeship is left entirely at the discretion of individual lawyers or the Bar, this may easily result in **bottlenecks** for otherwise qualified applicants. Examples of current or recent problems in this regard were cited, among others, from the UK, Poland, and Belarus.

Participants emphasized that **equal opportunities** for apprenticeships should be created for all qualified applicants. This may be accomplished through organizing state-funded apprenticeships, as in Germany. Other measures may include creating alternatives to mandatory Bar apprenticeships, such as special courses and training organized by other institutions.

A practical **initial training** course delivered by the Bar for all new members who passed the Bar examination may be considered a viable alternative to a mandatory Bar apprenticeship.

The **contents** of apprenticeships in different jurisdictions were discussed at some length. Participants agreed that apprentices should get practical experience in their planned field of practice. For that purpose, legislation should allow apprentices to perform, to a limited extent, legal advice and representation under the guidance of supervisors, and facilitate their learning. A prohibition of paid employment (for example, in Kazakhstan and Moldova) for apprentices was criticized by many participants.

The **role of the Bar in setting educational standards** for lawyers was raised repeatedly. There are considerable differences between the systems – from the Bar's accreditation of law schools (as in the United States) to little or no influence on legal education. It was suggested that the Bar's co-operation with universities generally and involvement in legal education standard-setting in particular facilitate better preparation of students for the practice of law. The positive role of **legal clinics** was also noted in this regard.

Finally, the benefits of **continuing education and training** for all members of the Bar were discussed. These include updated information on recent legal developments, as well

as additional opportunities to share experiences with colleagues. Some Bar associations require their members to complete a certain number of hours of continuing training periodically (e.g. annually). Bar associations that institute such requirements should normally offer a range of courses that lawyers may attend, and maintain flexibility in recognizing educational activities – such as participation in conferences – as continuing training.

Conclusion

The Workshop participants noted the importance and relevance of the issues discussed at the meeting. Reform of the legal profession continues to be on the agenda of many OSCE participating States. As they search for solutions that ensure better public access to legal services, policy-makers who deal with these issues benefit from the experiences of other countries.

Differences between the legal cultures and traditions warrant a careful approach to quantitative comparisons: numbers of practising lawyers in some countries may reflect a cultural disinclination to resort to litigation, or a well-functioning public sector that reduces the need for legal advice and representation. However, these numbers at the very least serve as one of the indicators of the legal system's capacity to provide legal services to the people. In this regard, former Soviet countries in general average below their European neighbours.[6] Among these countries, Azerbaijan holds a record of only 6 lawyers per 100,000 inhabitants.

Workshop participants called on the ODIHR to continue its activities in this area and keep the issues of legal profession on the OSCE agenda. It was requested to make available all background reports for the Workshop in English and in Russian. A number of topics for potential follow-up activities were suggested for particular countries, as well as for regional events. The ODIHR will also continue its advice and assistance to the participating States in the development of relevant legislation.

Annexes

1. Annotated Agenda
2. Short Biographies of the Participants

[6] See e.g. Report on European Judicial Systems Edition 2008 (data 2006) by the European Commission for the Efficiency of Justice (CEPEJ), Council of Europe Publishing, September 2008.

Annex 1

Expert Workshop

REFORM OF THE LEGAL PROFESSION AND ACCESS TO JUSTICE

Krakow, Poland
13-14 November 2008

Annotated Agenda

Introduction

Lawyers play a special role in defending the right to a fair trial, ensuring access to justice, and more broadly upholding the values of the OSCE's "human dimension". This role has been repeatedly recognized in OSCE commitments[7] and regularly discussed at OSCE human dimension forums.[8] In the last several years the ODIHR carried out numerous activities to promote fair trial standards, improve access to justice, and strengthen the capacity of legal practitioners.

Discussions at OSCE human dimension forums and ODIHR-sponsored events in the field highlighted serious challenges that remain in many participating States. Reported problems include insufficient numbers of qualified lawyers, low quality and unaffordable costs of legal services, and the lack of effective legal aid programmes for the poor.

Many of these problems are linked to, or rooted in, systemic shortcomings in the regulation of the legal profession.[9] While some measures to improve access to legal assistance for some groups (such as legal aid programmes for the poor) have been carried out in relative isolation from reform of the legal profession, this project is based on the premise that making long-term and sustainable improvement in access to justice for all requires a comprehensive approach.

This workshop will look into the prospects for improving access to justice through legal profession reform in the CIS region.[10] Discussions will aim at identifying good practices in the CIS and in other OSCE participating States to address the existing challenges. Workshop participants will be asked to critically reflect on the developments in their countries and share the successes, failures, and lessons learned. The ODIHR intends to make the ensuing recommendations available to policy-makers and domestic advocates who seek to reform the legal profession with the aim of improving access to legal services in the OSCE area.

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[7] See e.g. paragraphs 5.13 and 5.17 of the 1990 Copenhagen Document and Ljubljana Ministerial Council Decision No. 12/2005 on *Upholding Human Rights and the Rule of Law in Criminal Justice Systems*.

[8] Most recently at the Supplementary Human Dimension Meeting on the *Role of Defence Lawyers in Guaranteeing a Fair Trial* (Tbilisi, November 2005), Human Dimension Seminars on *Upholding the Rule of Law and Due Process in Criminal Justice Systems* (Warsaw, May 2006) and *Constitutional Justice* (Warsaw, May 2008), and the annual Human Dimension Implementation Meetings (HDIM).

[9] For the purposes of this Workshop, the term "legal profession" refers to practicing lawyers who provide legal advice and court representation and excludes judges, prosecutors, law enforcement officers, and notaries.

[10] "CIS" and "CIS region" for the purposes of this Workshop refers to all countries of the former Soviet Union with the exception of Latvia, Lithuania, and Estonia (member States of the European Union), regardless of their current status in the Commonwealth of Independent States.

After the break-up of the Soviet Union the former Soviet countries took different steps to reform the legal profession. Some countries have disbanded the Soviet *advokatura*[11] structures, while others left them largely intact. Reform of the Bar was complicated by economic hardships and declining living standards. Lawyers resisted changes that ran against their interests. Legal services rapidly became unaffordable for large parts of the population. Dismantling the old Bar left gaps in ensuring statutorily-required legal assistance and representation.

The new economic order also brought with it a demand for providers of legal services for entrepreneurs and businesses. In this – generally lucrative practice area – the *advokatura* competes with other legal practitioners whose practice is frequently unregulated. The relationship between these groups of lawyers is often confrontational.

To obtain more systematic information on these and other relevant issues, the ODIHR commissioned a number of country reports from independent experts in selected OSCE participating States. Expert reports have been completed for the following countries: Armenia, Belarus, Czech Republic, Estonia, Georgia, Germany, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Moldova, Poland, Russian Federation, Sweden, Tajikistan, and Ukraine. These reports provided valuable background information for this Workshop.

The ODIHR chose a limited number of issues for discussion in this Workshop. This choice should not be interpreted to imply that other issues are unimportant to the topic. Rather, the number of issues was limited to ensure a focused and thorough debate. It was also felt that the chosen issues would serve as good entry points to some of the key problems with availability and accessibility of legal services.

Day I, 13 November 2008

9:30 – 10:00 Welcoming Remarks, Introductions

Panel I: The Bar and access to legal services

This Panel is invited to reflect on reforms of the Bar in the post-Soviet countries and assess the results of these reforms through the prism of access to legal services.[12]

Dismantling of the Soviet *advokatura* structures and the emergence of groups of lawyers who practice outside the *advokatura* continue to fuel the debate in some countries about the need for a single (unified) mandatory Bar. Often at the same time, the *advokatura* is trying to (re)establish its monopoly as a provider of legal services and court representation in all practice areas, meeting resistance from other groups.

- What are the advantages and disadvantages of a unified mandatory Bar? Does it facilitate better access to legal services? Should all practicing lawyers be members of some mandatory Bar?

[11] The traditional Bar whose members practice all areas of law including criminal, civil, and commercial law and appear in courts.

[12] The law makes a distinction between the "legal services" and "legal assistance" in many former Soviet states. Members of *advokatura* are deemed to provide "legal assistance", rather than "legal services" (the latter regulated as a type of business activity), and are entitled *inter alia* to attorney-client privileges and a more favourable tax treatment. While this distinction may be debatable, the term "legal services" used in this Agenda broadly refers to legal advice and representation in all matters when these services are paid for by the clients themselves.

- Should Bar members have a monopoly on the provision of legal services or court representation?
- Can voluntary Bar associations effectively uphold ethical standards and discipline their members? To what extent should the state be involved in this process?

Access to legal services is directly linked to their costs. Popular complaints about the high costs of legal services are commonplace in the OSCE area.

- Should Bar associations regulate costs of legal services? What examples may be regarded as good practices in this area?
- Should the state take on this regulatory function and to what extent?

Moderator: Vasily Vashchanka

Introductory Reflections: Martin Solc

Case studies: Russian Federation, *Dmitry Shabelnikov*
Ukraine, *Oksana Syroyid*
Hungary, *Marta Pardavi*
Tajikistan, *Mahira Usmanova*

11:15 – 11:30 Coffee Break

13:00 – 14:00 Lunch

Panel II: Admission to the legal profession

Admission to legal profession is arguably the most controversial issue in reform debates. Who should "stand at the gate" and decide on the admission of new members to the legal profession? Proponents of broad Bar independence insist that the Bar should do so, without any state interference. Their opponents reply that members of any legal "corporation", and especially of one enjoying a monopoly, have no incentive to increase competition for themselves. They argue that leaving the Bar itself in charge of the admission process has in some countries resulted in decreased numbers of practicing lawyers, nepotism, corruption and ultimately negatively impacted on the accessibility of legal services. This Panel is encouraged to assess these arguments and discuss the ways to ensure that new lawyers regularly join the legal profession, and do so exclusively on the basis of qualifications and merit.

- What body should be in charge of admission to the legal profession and how should it be composed? Should it include only lawyers or also representatives of the government and/or other professionals?
- What safeguards may be put in place to ensure objectivity and transparency, and to avoid inappropriate state interference in the admission process?
- What criteria, other than the admission examination, should guide the body in charge of admissions? How should its decisions be appealed?
- Should the body in charge of admission have any other functions?
- Should any quotas on newly admitted lawyers be set by the legal profession or by the state?

In the CIS, the admission process for lawyers is different from admission to the judicial and prosecutorial careers.

- If judges and prosecutors have special privileges for the Bar admission, should the same be true for lawyers who want to pursue a judicial or prosecutorial career?

In addition to formal eligibility criteria and the bar examination, the admission body may be authorized to consider a "good moral character" of the applicant.

- Is this a valid criterion for admission to the legal profession?
- How should the assessment be made to avoid arbitrary decisions?

Moderator: Carsten Weber

Introductory Reflections: Julian Lonbay

Case Studies: Germany and the Czech Republic, *Stephan Heidenhain*
Moldova, *Sergiu Baiescu*
Poland, *Malgorzata Kozuch*
Kyrgyzstan, *Ruslan Khakimov*

15:30 – 15:45 Coffee Break

17:00 Conclusion of Day I

19:00 Reception

Day II, 14 November 2008

9:30 –

Panel III: Bar examinations – ensuring objectivity, fairness, and transparency

Admission to the legal profession is usually conditional on the successful completion of a professional (bar) examination. Bar examinations may include oral questioning by the examining body, written tests and assignments, or a combination of both. There are considerable differences between the countries with regard to the formats of examinations and their content. This Panel is invited to consider what models of the bar examination are most conducive to ensuring an objective, fair, and transparent assessment of the applicants' qualifications. It is also invited to discuss not only "How?", but also "What?" should the bar examinations examine.

- Should the bar examination be the same for all legal professionals, including lawyers, judges, and prosecutors?
- What should be examined in bar examinations: knowledge, skills, or both?
- Are oral examinations justified? What should they examine? How should they be graded and how their objectivity, fairness, and transparency may be ensured?
- What forms of questions/assignments are most effective in achieving the aims of written examinations? What are the "minimal requirements" to ensure objectivity, fairness, and transparency of a written examination?
- What should be the role and place of professional ethics questions/assignments in the bar examination?
- What is the appropriate "weight" of the bar examination in the decision on admission to the legal profession?
- How often should bar examinations be offered? Should applicants be limited in the number of attempts to pass the examination?
- What should be the basis and the procedure for appeals?

Moderator: Vasily Vashchanka

Introductory Reflections: Mihai Selegean

Case Studies: United States, *Donald Bisson*
Armenia, *Nikolay Bagdasaryan*
Estonia, *Timo Ligi*
Georgia, *Gocha Svanidze*

11:15 – 11:30 Coffee Break

13:00 – 14:00 Lunch

Panel IV: Apprenticeship and initial training

Most countries require a mandatory apprenticeship as part of the legal profession admission process. Full membership in the profession is made conditional on the successful completion of this apprenticeship. There is evidence that in some countries the apprenticeship does not adequately prepare the apprentices for the practice of law. There is also a concern in some countries that an apprenticeship may become a barrier to the legal profession by imposing an excessive financial burden on the prospective members.

- Should the apprenticeship be the same for all legal professionals, including lawyers, judges, and prosecutors?
- Should an apprenticeship precede or follow an admission examination? What are the comparative advantages of both approaches?
- What is an appropriate duration of an apprenticeship?
- Who should select applicants for an apprenticeship? How may the process be organized to ensure merit-based selection?
- What models of apprenticeship proved most successful in preparing apprentices for the legal profession?
- How may apprentices be assisted to meet the financial burdens of an apprenticeship?

Only a few Bar associations in the CIS provide initial training to young lawyers, either as part of an apprenticeship process or as a separate programme. The need for such training is frequently highlighted by experts and young lawyers themselves. This Panel is encouraged to highlight good practices with regard to such initial training programmes.

- What initial training programmes should be in place for newly-admitted lawyers? How should they be developed and funded?

Moderator: Carsten Weber

Introductory Reflections: Daniyar Kanafin

Case studies: Germany, *Margarete von Galen*
Russia and the United Kingdom, *Drew Holiner*
Moldova, *Nadejda Hriptievschi*
Latvia, *Dana Rone*

15:30 – 15:45 Coffee Break

17:00 Conclusion of the Workshop

Annex 2

Expert Workshop

REFORM OF THE LEGAL PROFESSION AND ACCESS TO JUSTICE

Krakow, Poland
13-14 November 2008

Short Biographies of the Participants

Nikolay Bagdasaryan

Executive director of the Armenian Chamber of Advocates. Mr Bagdasaryan is also a president of ARNI Law Firm and an Accredited Advocate at the Cassation Court of Armenia. He was a Deputy Dean of Law Faculty of the Armenian Open University in 1997-1998 and is a practicing lawyer since 1998.

Sergiu Baiescu

Graduated from Moldova State University in 1992. Received Ph.D. from Cluj Napoca State University, Romania in 1999. Attorney since 1993. Since 2004 Mr. Baiescu is a chairman of the Bar Licensing Commission. He is also an Associate Professor at the Department of Civil Law at the Moldova State University.

Ioana Baiescu

Graduated from the Law Department of the Moldova State University. Since 1992 she worked as an adviser (senior adviser since 1996) at the Legal Department of the Moldovan Parliament. In 2006 she was appointed Chief of the Civil Law Unit at the Legal Department of the Parliament.

Donald Bisson

Donald Bisson was admitted to the Bar in New Hampshire, United States. He practiced law for over twenty years as a prosecutor, private practitioner, public defender and appellate defender. He also has experience as an associate clinical law professor. For the past ten years he worked on legal reform for the OSCE and ABA/CEELI in the CIS, Eastern Europe and South-East Europe. He is the Head of the Rule of Law Department in the OSCE Spillover Mission to Skopje, Macedonia.

Dominika Bychawska

Studied law at the Warsaw University and University in Poitiers, then completed post-graduate program at the College of Europe (Natolin Campus). Ms Bychawska is currently conducting PhD research in the field of corporate social responsibility. She was involved in the creation of the Strategic Litigation Program of the Helsinki Foundation for Human Rights. She currently works for the Committee for European Integration and provides legal assistance for the Helsinki Foundation for Human Rights.

Vahe Demirchyan

Graduated from Law Faculty of Yerevan State University. In 2003 he started to work at the Armenian Ministry of Justice where he currently heads the Department for International Legal Relations. Mr Demichyan is also a lecturer of Criminal Law and Criminology at the French University in Armenia.

Margarete von Galen

Dr von Galen studied law at the Universities of Heidelberg, Lausanne, Bonn and Munich. Since 1983 she works as a lawyer in Berlin. In 2000-04 she was a managing director of the Federal Office for the associations of German Criminal Defence Lawyers. Since 2004 she is a President of the Berlin Bar Association and since 2008 – deputy in the criminal law committee of the CCBE.

Arkady Gutnikov

Vice-President of the Institute Board and Director of the Centre for Clinical Legal Education of the Saint Petersburg Institute of Law, Russia. He is also expert and trainer of the Living Law Center for law-related and civic education and Clinical Legal Education Foundation, and lecturer of a number of university courses including Introduction to Law, Professional Legal Skills, Interviewing and Counselling, Legal Pedagogy (Street Law/Living Law) and Alternative Dispute Resolution. He is a member of the Global Alliance for Justice Education (GAJE).

Stephan Heidenhain

Studied law in Tübingen and Berlin. In 2000 awarded a PhD in Law from the European University Viadrina. Legal Adviser and Rule of Law Expert with the OSCE and ODIHR from 1999 until 2003. Participated in several short-term election observation missions with OSCE. Presently a practicing lawyer in Prague with bnt - pravda & partner, v.o.s.

Drew Holiner

Drew Holiner is qualified as a barrister in England and Wales and as an *advokat* in Russia. He has over 10 years of experience in litigation, advocacy and advisory work in Russia and other republics of the former Soviet Union. His current practice is focused on commercial litigation and arbitration in Russia and England, as well as proceedings before the European Court of Human Rights.

Nadejda Hriptievschi

Nadejda Hriptievschi is currently a legal consultant in the Public Defender Office in Chisinau and a part-time consultant on access to justice and criminal justice with the Soros Foundation - Moldova. Nadejda worked as Junior Legal Officer for the Open Society Justice Initiative, Budapest, from January 2003 to December 2006. She was also an intern with the Constitutional and Legal Policy Institute, Budapest, Hungary and with the Registry of the European Court of Human Rights, Strasbourg. Nadejda received a Master of Laws in Degree in Comparative Constitutional Law with additional specialization in Human Rights at Central European University in July 2001.

Irada Javadova

Graduated from Baku State University in 1985 with M.D. in law and in received 1998 Ph.D. in legal sciences from the Baku State University. Ms Javadova is a member of the Bar in Azerbaijan. She is a director of an NGO “Education on Human Rights”, director of “AzLegal Company”, and Chairwoman of the Forum of Women Lawyers of Azerbaijan. Ms Javadova worked for a number of

years at National Research Institute of Forensic expertise, Criminality's and Criminology and at the Ministry of Labor and Social Welfare.

Daniyar Kanafin

Graduated from the Omsk Police Academy in Russia in 1994. In 1997 he has defended his Ph.D. thesis at the Moscow Law Institute of the Russian Ministry of Interior. He is a practicing lawyer and a member of the Almaty City Bar since 2000 and is currently a member of its Presiding Board, and a Deputy Head of the Internships and Training Centre. Dr Kanafin is a consultant with a number of international organizations including OSCE and the Soros Foundation. His main area of interest is individual rights in criminal procedure and he has published extensively on this topic.

Ruslan Khakimov

Director of Soros-Kyrgyzstan Foundation's Legal Program. He holds Ph.D. in Law and teaches at the Department of Criminal Law of the Kyrgyz-Russian Slavic University. He is a member of the Bar and a member of the Kyrgyz Lawyers Association, and a member of the Advisory Board on penitentiary reform at the Ministry of Justice of Kyrgyzstan.

Malgorzata Kozuch

Dr Kozuch is a lawyer and Faculty Member of European Law Department at the Jagiellonian University in Krakow. She is also the Information Officer of the Polish Delegation to the Council of Bars and Law Societies of Europe (CCBE).

Ekaterina Kouznetsova

Graduated from the Central European University in 1999 and Belarusian State University in 1998. She currently works for the UNDP/EC Project on administration of justice in Belarus. Ms Kouznetsova is also a Lecturer on Public International Law and International NGOs at the Faculty of International Relations of the Belarusian State University in Minsk. Since 2004 she also teaches at the European Humanities University in Vilnius.

Timo Ligi

Timo Ligi has a degree in Law and in Public Administration from the University of Tartu. He worked in the Estonian Ministry of Justice since 2002, mostly in the Court Administration Division (in 2004-2007 as the head of the division) and since 2007 is a contractual advisor to the Ministry. He has also served as a short term expert in the project to enhance the administrative capacity of the Georgian court system.

Julian Lonbay

Prof. Lonbay teaches European Law at the University of Birmingham. He is currently the Chairman of the Training Committee of the Council of the Bars and Law Societies of Europe (CCBE) and the QUAACAS Committee of the European Law Faculties Association (ELFA). In 2002-2003 he was the President of the ELFA. Julian is a Professeur Invité at the Faculty of Law and Economic Science in the University of Limoges, France and has lectured in China and in many other countries across the world. His research interests centre on the law relating to legal education; lawyers and other professionals; and cross-border practice and the rules affecting such practice. He has undertaken

several major research projects in these areas. Dr Lonbay is a co-author of *Training Lawyers in the European Community* (the Law Society, 1990) and *International Professional Practice* (Chancery Law/Wiley, 1992), as well as numerous articles in these and other areas.

Marta Pardavi

Co-chair of the Hungarian Helsinki Committee (HHC), having started at the organisation in 1995. She is engaged in setting and ensuring the implementation of HHC organisational goals, policies, advocacy work, and directing and supervising the HHC's staff and work programme and financial management. She provides professional direction and support for the HHC's Refugee Protection programme and has been also engaged in the HHC's work on access to justice.

Dana Rone

Ms Rone obtained two master degrees in law. She is a sworn attorney at law, practicing in Latvia. Ms Rone also works in the School of Business administrator Turība as a lecturer of many civil law subjects. She is frequently involved in various researches, including a research about advocates and lawyers in Latvia. The results of this research were presented to Latvia's Ministry of Justice. Currently a practicing lawyer, Ms Rone is also working on a Ph.D. thesis in the University of Latvia.

Mihai Selegean

Studied law at the University of Bucharest and Central European University in Budapest. Currently, he works as an in-house counsel for Group Societe Generale in Romania. Previously, he worked as a Director of the National Institute on the Magistracy and held several positions at the Romanian Ministry of Justice.

Dmitry Shabelnikov

Graduated the Faculty of Philology of the Moscow State University (Classics) and Moscow Institute of Economics, Management and Law (Law Faculty). In 1995-1999 worked for the ABA CEELI Moscow Office. In 1999-2003 he worked for the Ford Foundation Moscow Office. He has led the Russia Program of the Public Interest Law Initiative (PILI) since 2003. He is a member of the Board of the Russian Clinical Legal Education Foundation.

Martin Solc

Chair of the Public and Professional Interest Division of the International Bar Association. He is also a managing partner at Kocian Solc Balastik. Mr Solc has been involved with the IBA in a variety of capacities for 16 years. He has served as a co-chairman of the Eastern European Forum and member of the SBL Council since 2000. He is an active member of the Czech Bar Association, of which he was President in 1994 and vice-president in 1990-93, 1995 and 1998.

Gocha Svanidze

Currently Acting Head of Georgian Bar Association. He is a managing partner of the Law Firm Svanidze & Partners. Graduate of I. Javakhishvili State University, Department of Law and Tbilisi Law Institute. Gocha Svanidze is a co-founder the Georgian Young Lawyers' Association (GYLA) and a founder of the Tbilisi Arbitrator Chamber.

Oksana Syroyid

She received degree in Law from Taras Shevchenko Kyiv National University (2002) and graduated from the University of Ottawa with Master of Laws degree (2003). Since 2004, National Project Manager at the office of OSCE Project Coordinator in Ukraine. Member of several working groups developing draft legislation. Associate professor of the Law Faculty at the National University of Kyiv-Mohyla Academy, lecturer on administrative justice issues at the Academy of Judges of Ukraine.

Mahira Usmanova

Is a practicing defense attorney since 1979, representing both individual and corporate clients. She is also involved in human rights activities. Since 2002 she is the President of the Bar of the Sogdian region of Tajikistan. Ms. Usmanova is a member of the network on criminal justice reform in Tajikistan.

OSCE ODIHR

Marta Achler-Szelenbaum

Legal Officer with the Legislative Support Unit of the ODIHR, working on legal reforms in the areas of countering trafficking in human beings, gender equality, migration issues, and political parties. Previously experience includes work as paralegal with Hunton & Williams and subsequently, Dewey Ballantine (Warsaw), predominantly on issues of banking, financing, merger & acquisitions, capital markets law. Graduated in 2000 from Deakin University in Australia, with a focus on commercial law within the LL.B. Currently, near completion of second law degree in Warsaw, Poland.

Alexander Paperny

Democratic Governance and NGO officer at the ODIHR. Previously worked at the criminal justice reform program at the ABA\CEELI in Moscow, dealing with issues of criminal procedure reform, jury trials and access to justice. Alexander has received his B.A. from the St. Petersburg State University and LL.M from the Central European University in Budapest.

Vasily Vashchanka

Officer and Adviser with the Rule of Law Unit at the ODIHR since 2002. Prior to that worked as in-house legal counsel in Moscow, Russia, and as a legal assistant for the American Bar Association's CEELI programme in Minsk, Belarus. Graduated from the European Humanities University in Minsk and received a Master of Laws (LL.M) degree from the Central European University in Budapest, Hungary. In the course of Master studies interned with the Judicial and Legal Reform Unit at the World Bank in Washington, D.C.

Carsten Weber

Graduated from Muenster University in 1994 and passed the Second Legal State Exam in Berlin in 1998. His international experience includes working for the OSCE Mission to Kosovo (last position: Director of Human Rights and Rule of Law Department); and the United Nations in the Democratic Republic of the Congo (Rule of Law Advisor & Coordinator of Prison Support Programme). Since May 2008, he is the Chief of ODIHR's Rule of Law Unit.