

THE LEGAL PROFESSION IN KYRGYZSTAN

by Ruslan Khakimov

Table of contents

1. The organization and structure of the legal profession	3
1.1. Professional organizations of lawyers	4
1.2. Forms of organizing the legal practice	10
2. Obtaining the right to practise law	11
2.1. Obtaining permission to sit an examination for the right to engage in advocacy	11
2.2. The procedure of conducting a qualifying examination for the right to engage in advocacy	13
2.3. Suspension and withdrawal of the defence lawyer's licence granting the right to engage in advocacy	14
3. The cost of legal services and legal aid	17
3.1. The level of payment to defence lawyers for providing free legal aid and procedure of paying for defence lawyers' work	17
3.2. The level of payment for free legal aid	20
4. Reforms in the sphere of providing legal aid	21
4.1. Reforms of the Bar	21
4.2. Reforms of provision of legal aid guaranteed by the state	26

1. The organization and structure of the legal profession

Representatives of the legal profession¹ in the Kyrgyz Republic at present can be divided into two groups:

1. defence lawyers;
2. self-employed lawyers².

Such a situation developed after Kyrgyzstan had gained its independence and changed the legislation regulating these issues.

The defence lawyers and self-employed lawyers in Kyrgyzstan differ in the following:

- depending on access to the profession:

- a citizen of the Kyrgyz Republic who has a licence granting the right to engage in advocacy can be a defence lawyer; to be permitted to practise the profession a candidate must pass a qualifying examination to have the right to engage in advocacy³;
- to engage in private practice it is sufficient to have a state-recognized higher degree in law. The law does not establish any additional requirements.

- depending on permission to be involved in particular categories of cases:

- in criminal cases, during investigation only defence lawyers are permitted to carry out the defence. In court, close family members and legitimate representatives of the defendant can be allowed to be involved as defenders⁴;
- self-employed lawyers cannot carry out defence in criminal cases; however, the law does not preclude them from giving legal advice on this category of cases.

-depending on guarantees of independence in engaging in professional activities:

- for defence lawyers, the law provides sound guarantees of independence. In particular, entering the dwelling or working premises of a defence lawyer, his/her means of transportation, conducting inspection, search, seizure of the same, personal search of a defence lawyer, seizure of his/her property, inspection and seizure of his/her correspondence, tapping his/her telephone and other conversations, taking in for questioning, detention and arrest of a defence lawyer cannot be carried out other than by the decision of the prosecutor or on the court's ruling. A defence lawyer cannot be subjected to personal search whilst performing his/her professional duties. A criminal case with regard to a defence lawyer in connection with his/her legal practice can be instigated and arrest sanctioned only by the Prosecutor General of the Kyrgyz Republic or his/her Deputy. A defence lawyer, in connection with his/her legal practice, can be held as accused only on the decision of the said prosecutors. Information about instigating criminal proceedings against a defence lawyer, holding him/her as accused, his/her detention or taking into custody shall be immediately passed on to the highest body of the professional public association of defence lawyers of the Kyrgyz Republic. A defence lawyer cannot be held accountable on disciplinary, civil, administrative or criminal grounds as a consequence of expressing an opinion whilst performing his/her professional duties, for any statement made in court or before the law-enforcement body and for any actions carried out by him/her in

¹ In this analytical report the term "legal profession" refers to practising lawyers except judges, prosecutors and notaries.

² In this report those are persons who have a higher degree in law and work either on contracts in organizations or as sole traders engaged in legal practice.

³ Article 4 of the KR Law "On advocacy" of 21 October 1999 – Newspaper "Erkin Too", 03.11.1999.

⁴ P. 2, Article 44 of the Criminal Procedure Code of the Kyrgyz Republic of 30 June 1999 – Newspaper "Erkin Too", 21.07.1999.

compliance with recognized professional duties and ethical norms⁵. In addition, the law forbids restricting the freedom of movement of a defence lawyer if travel is important for him/her for the purposes of rendering legal aid, except for the instances provided for by the law. A defence lawyer cannot be called and questioned as a witness about the circumstances which fall under the defence lawyer's code of confidentiality. A defence lawyer does not have the right to give explanations and testimony of these circumstances nor provide any materials about them for them to be used in criminal investigation, judicial proceedings, administrative and in other law-enforcement bodies' proceedings. Explanations, statements and materials related to providing legal aid, obtained from a defence lawyer, cannot be admitted as evidence. Interference in advocacy in any shape or form is forbidden as is interference by any bodies, organizations, agencies, enterprises, officials and other entities⁶. The criminal legislation also establishes responsibility for obstructing the professional activities of the defence lawyer⁷.

- The law does not have these types of guarantee for self-employed lawyers.

- depending on requirements to comply with professional ethics:

- To regulate the issues related to ethical norms the Ministry of Justice approved the Rules of Professional Ethics for Defence Lawyers⁸. They are used as guidelines when considering the misconduct of defence lawyers and imposing disciplinary penalties by the Qualification Commission under the Ministry of Justice of the Kyrgyz Republic, which administers the qualifying examination for persons wishing to obtain a licence to have the right to engage in advocacy.
- No such rules have been established for self-employed lawyers.

- depending on the necessity of national registration:

- All persons who have obtained a licence to have the right to engage in advocacy are put on the National Register of Defence Lawyers⁹, maintained by the Ministry of Justice of the Kyrgyz Republic. The register information is also published on the Ministry of Justice site¹⁰. It contains: the surname, name and patronymic of the defence lawyer, his/her address, the date of issue of the licence, the number of the licence, the name and legal address of the defence lawyer's firm, a sample of the seal made according to the prescribed format.
- Self-employed lawyers are not subject to national registration. Therefore it is difficult to calculate the number of people engaged in private legal practice in Kyrgyzstan.

1.1. Professional organizations of lawyers

The legislation of the Kyrgyz Republic does not require mandatory membership for defence lawyers in any organizations or associations. Moreover, one of the principles of advocacy is the voluntary character of membership in the professional public association of defence lawyers¹¹. The Rules of Professional Ethics for Defence Lawyers also state the principle of the voluntary

⁵ Article 16 of the KR Law "On advocacy" of 21 October 1999 – Newspaper "Erkin Too", 03.11.1999.

⁶ Article 17 of the KR Law "On advocacy" of 21 October 1999 – Newspaper "Erkin Too", 03.11.1999.

⁷ Article 318 – 1 of the Criminal Code of the Kyrgyz Republic of 1 October 1997 – Newspaper "Erkin Too", 24.10.1998.

⁸ The Rules of Professional Ethics for Defence Lawyers. Approved by Decree of the Ministry of Justice of the Kyrgyz Republic of 21 May 2003 No. 73 – "Legal Acts of the Kyrgyz Republic" Journal, 01.10.2005.

⁹ Article 11 of the KR Law "On advocacy" of 21 October 1999 – Newspaper "Erkin Too", 03.11.1999.

¹⁰ www.minjust.gov.kg

¹¹ Article 3 of the KR Law "On advocacy" of 21 October 1999 – Newspaper "Erkin Too", 03.11.1999.

character of membership in a professional association¹². Many defence lawyers can be members of several associations at the same time, others may join none of them. With regard to self-employed lawyers the legislation does not establish the necessity of membership of a professional organization either. Membership in such organizations is voluntary. Due to the voluntary character of membership for lawyers and defence lawyers in professional public organizations, a considerable number of such organizations is registered in Kyrgyzstan.

The most well-known professional organizations of lawyers are:

- The public association “Association “Lawyers of Kyrgyzstan”;
- The public association “The Union of Defence Lawyers of the Kyrgyz Republic”;
- The public association “Young Lawyers of the South”.

The public association “Association “Lawyers of Kyrgyzstan” (hereinafter – Association) was registered by the Kyrgyzstan Ministry of Justice on 8 August 1995. Today it is one of the most well-known and largest professional associations of lawyers.

The Association was created with the purpose of uniting lawyers of various professions to carry out the following tasks:

- to protect and represent the interests of the Association and representatives of legal professions;
- to promote the legal education and knowledge of the legislation of the Kyrgyz Republic;
- to provide the members of the Association with information and materials necessary in their practical activities;
- to facilitate the improvement of the professional qualities of the lawyer;
- to participate in reforming the law, to advance the lawmaking process on the basis of progressive legal ideas, to enhance the legal culture and legal education;
- to establish and consolidate professional ties with similar associations including those in other countries;
- to conduct conferences, symposia, round tables and workshops contributing to strengthening the professional status of the lawyer;
- to publish bulletins, newspapers and journals of a legal character, to participate in the creation of films, videos and documentaries;
- to contribute to charity work.

In conformity with the Charter of the organization, the governing bodies of the Association are:

- the General Assembly of the Association members - the highest governing body;
- the Board - the governing body of the Association between the General Assemblies;
- the Executive Director - the executive body of the Association.

The annual General Assembly is held not later than 25 December of the reporting year. However, it is possible to have extra assemblies as well. The General Assembly’s responsibilities include:

- introducing changes and amendments into the Charter;
- identifying the most important directions of the Association’s activities and determining the procedure for using its property;
- electing and recalling the members of the Board and its Chairperson as well as a Chairperson for the following year and the members of the Auditing Commission;

¹² The Rules of Professional Ethics for Defence Lawyers. Approved by Decree of the Ministry of Justice of the Kyrgyz Republic of 21 May 2003 No. 73 - “Legal Acts of the Kyrgyz Republic” Journal, 01.10.2005.

- approving the annual report on the activities of the Association and the balance of the year;
- taking decisions on setting up branches and representations and on participating in the work of other legal entities;
- taking decisions on restructuring and winding up of the Association and appointing a dissolution commission.

In addition, the General Assembly has the right to take decisions on any issues of the Association's activities.

The Board of Association is elected by the General Assembly for the term of one year comprising 9 people by open or secret ballot. Within the framework of its responsibilities the Board shall:

- bring before the General Assembly the proposals to introduce changes and amendments into the Association's Charter;
- develop and approve internal regulatory documents of the Association, work schedules; admit new members and expel members from the Association;
- engage and dismiss the Executive Director of the Association;
- approve the schedule of posts and salaries for the personnel of the Association;
- suspend the powers of the Chairperson of the Board;
- approve the regulations on branches and representations, appoint their heads, approve the cost estimate and the schedule of posts and salaries for branches (representations);
- organize Association committees in various areas of activities.

The Executive Director of the Association is engaged by the Board on a contract basis, is a full-time employee of the Association apparatus and is accountable to the Board. He/she shall:

- represent without the power of attorney the interests of the Association in its relations with legal and physical entities, conclude civil law contracts and issue powers of attorney;
- oversee logistics and finance-and-business operations of the Association;
- within his/her authority manage the property and resources of the Association, and open bank accounts;
- engage and dismiss the employees of the Association apparatus, and apply measures of rewarding and disciplining them;
- organize book-keeping, operational and statistical recording and be responsible for their being a true record;
- fulfil other functions referred to his/her competence by the Board.

Speaking about Association activities it is worthy of note to mention the work of its committees. They are created in various areas of the law and legislation. The committees are made up by the Board of the members of the Association and include no fewer than five people specializing in one or other sphere of the law. The committees discuss the respective issues of the law and legislation, prepare proposals and drafts for adopting new regulations or on introducing changes and amendments into the current acts.

The peculiarity of this professional association is in the fact that its members can be citizens of the Kyrgyz Republic, foreign nationals and stateless persons having a law degree, recognizing the Charter of the Association, involved in its activities and paying the fees¹³. The fees at present equal 400 Som (approximately 11.4 US Dollars) a year.

According to the 2008 data, the Association Register includes 347 members from across the Kyrgyz Republic. The break-down of these data is as follows:

¹³ Source - the Public Association "Association "Lawyers of Kyrgyzstan".

- judges - 14;
- defence lawyers - 54;
- teachers - 79;
- self-employed lawyers - 113;
- prosecutors - 4;
- notaries - 18;
- public servants - 47;
- representatives of other organizations¹⁴.

Members include lawyers from the following regions: Narynskaya oblast – 3 people, Chuiskaya oblast – 2 people, Issyk-Kulskaya oblast – 2 people, the city of Osh – 1 person, the Republic of Kazakhstan – 1 person.

The public association “The Union of Defence Lawyers of the Kyrgyz Republic” (hereafter – Association) was founded after the Nationwide Congress of Kyrgyzstan Defence Lawyers and was registered in the Ministry of Justice of the Kyrgyz Republic in September 2002. The organization is a professional public association of defence lawyers of Kyrgyzstan, based on the following principles: voluntary membership in a professional association, self-regulation, democratic character and collegiality. It is a non-commercial organization which does not pursue the purpose of gaining profits from its work and unites the defence lawyers of the Kyrgyz Republic on the basis of their common professional interests irrespective of race, ethnicity, language, gender, religion and social background.

In conformity with the Charter, the main goal of the Association is to improve and restructure the Bar as the most important institution protecting the rights and legitimate interests of citizens and legal entities, guaranteed by the Constitution of the Kyrgyz Republic, to improve the system and procedures providing for the protection of human rights, to develop a new approach, aimed at creating a logical system providing for further progressive development of democratic processes in the Kyrgyz Republic.

Key objectives of the Association are:

- to ensure high standards of defence lawyer skills, professional ethics, unity and cooperation of defence lawyers;
- to protect the professional and social rights of defence lawyers, their liberties, honour and dignity;
- to promulgate the principles and guarantees of independence of the Bar recognized by the world community;
- to promote the development of juridical science and upgrading the legal culture of the public;
- to expand and strengthen the professional and cultural ties between the defence lawyers of various regions;
- to promote the reforming of efficient and informed dialogue between the parties in civil society with the purpose of maintaining sustainable development of economic and social welfare of the population;
- to develop the concept of reforming and social/economic development of the institute of the Bar in the Kyrgyz Republic and methods of its realization;
- to build a rule-of-law state whose top priority will be to truly observe the rights and legitimate interests of citizens guaranteed to them by the Constitution of the Kyrgyz Republic;
- to promote the role of defence lawyers in contemporary society and the state;

¹⁴ *ibid.*

- to improve the activities by defence lawyers aimed at protecting the rights, liberties and legitimate interests of physical and legal entities and to render them qualified legal aid;
- to conduct events aimed at upgrading the qualification and legal culture of defence lawyers and to carry out research and methodology activities to improve their professional skills;
- to train young specialists;
- to prepare and publish brochures, text-books, magazines, methodological recommendations, collections of statutory acts and monographs;
- to take part, together with authorized bodies of state power in law-making, in preparation and discussion of draft laws and other statutory acts related to advocacy;
- to represent the members of the Association (defence lawyers) in state bodies and public organizations of the Kyrgyz Republic in situations stipulated by the law;
- to involve representatives of the public at local and national level as well as representatives of relevant state agencies in the activities of the Association;
- to develop the international ties of the defence lawyers of the Kyrgyz Republic.

The governing bodies of the Association are:

- The Congress of the members of the Association;
- The Board;
- The Executive Director;
- The Auditing Commission.

The highest governing body of the Association is the Congress of its members. The Congress has the authority to deal with the following:

- to approve the Charter of the Association and introduce changes and amendments into it;
- to identify the priority areas of activities of the Association of defence lawyers and the procedure of using its property;
- to elect the Secretariat of the Association and approve its structure and schedule of posts;
- to receive to and approve the reports by the Board and Auditing Commission;
- to approve the projected estimate of income and expenditure;
- to approve methodological recommendations and instructions;
- to elect the members of the Auditing commission;
- to take decisions on setting up branches and representations;
- to restructure and wind up the Association;
- to discuss the professional issues of advocacy.

The Congress has the right to take decisions on any issues of the Association's activities. The Congress holds its session not less than once in two years.

The Board is the collegiate governing body of the Association which is in charge of its activities in the period between Congress of the Association's members. The Board is elected at a Congress meeting by the members of the Association by open ballot for the term of 2 years and numbers 15 people.

The Board of Association shall:

- implement the decisions by the Congress;
- approve the financial plan of the Association and introduce amendments into it;
- determine and approve the level of admittance and membership fees;
- lay before Congress the proposals on changes and amendments in the Charter of the Association;
- manage the resources of the Association in conformity with the estimate of costs within the boundaries determined by the Congress;

- develop and lay before the Congress the internal documents of the Association;
- make proposals on organizing committees on branches of law; receive and approve the reports of the Chairpersons of the committees about the work done;
- develop draft provisions on branches, representations and legal advice bureaux as proposed by the General Assembly;
- admit to and expel from the membership of the Association.

The Chairperson of the Board and the Deputies to the Chairperson are elected by the members of the Board at the Board meeting from its members for the term of 2 years. The Chairperson of the Board reports to Congress. The Chairperson cannot be elected to office for more than two consecutive terms.

The Executive Director is the sole executive body engaged by the Board on contract; he/she is a full-time employee of the Association and reports to the Board.

The Executive Director shall:

- represent the interests of the Association in all enterprises, firms and organizations;
- manage the property, resources and funds of the Association within his/her authority;
- conclude agreements (contracts), open transaction and other bank accounts, issue orders and instructions and give directions to all staff of the Association;
- organize book-keeping, operational and statistical record keeping and be responsible for their being a true record;
- carry out operational guidance and control over all activities of the Association;
- fulfil other functions which the Congress and the Board refer to his/her competence.

The peculiarity of this Association is in the fact that its members can only be citizens of the Kyrgyz Republic in possession of a licence granting the right to engage in defence lawyer activities, who recognize the Charter of the Association of the Defence Lawyers of the Kyrgyz Republic and are involved in the Association's activities and pay membership fees.

The level, terms and procedure of paying membership fees are determined by the Board of the Association. At present the monthly fees of the members of the Association amount to 25 Som (about 0.70 US cent).

According to the 2008 data, there are 288 members from across the entire Kyrgyz Republic on the Register of the Public Association "The Union of Defence Lawyers of the Kyrgyz Republic". Represented by oblast this number can be broken down in the following way:

- Issykkulskaya oblast – 14 defence lawyers;
- Jalalabadsкая oblast – 40 defence lawyers;
- Oshskaya oblast – 37 defence lawyers;
- Narynskaya oblast - 12 defence lawyers;
- Talasskaya oblast - 15 defence lawyers;
- Chuiskaya oblast - 60 defence lawyers;
- The city of Bishkek – 110 defence lawyers¹⁵.

The Public Association "Young Lawyers of the South" was registered on 6 March 2000 in the Ministry of Justice of the Kyrgyz Republic.

The organization pursues the following goals:

- ✓ to promote the development of the rule-of-law state in Kyrgyzstan;
- ✓ to protect human rights and interests;
- ✓ to assist in preparing qualified lawyers for civil society.

The organization has the following tasks:

- ✓ to upgrade the level of legal awareness and legal culture of the public;

¹⁵ Source - the Public Association "The Union of Defence Lawyers of the Kyrgyz Republic.

- ✓ to facilitate the improvement of juridical education;
- ✓ to disseminate and promulgate the law and the ideas of the rule-of-law state;
- ✓ to provide access for the public to legal information, etc.

The Public Association «Young Lawyers of the South» is a membership organization, therefore its leader (President of the Board), members of the Board and the Auditing Commission are elected by the General Assembly of the members of organization. The strategic plan of the organization's activities for 2 years is also approved by the General Assembly. The General Assembly, the highest body of governance of the organization, is convened not less than once a year.

The Board takes decisions on all key issues of the organization; it sits not less than once in 2 months.

The general leadership of the organization is carried out by the President of the Board, who is responsible for the realization of the organization's objectives and implements the cadre policy of the organization.

At present the organization has 43 member lawyers, and its personnel numbers 6 people. The organization collects membership fees; currently it is 340 Som per annum (approximately US \$ 9.7)¹⁶.

As was mentioned above, considering that self-employed lawyers are not subject to state or any other registration, it is very difficult to determine their number in Kyrgyzstan. As for the defence lawyers, since it is mandatory that all defence lawyers must be put on the register maintained by the Ministry of Justice of the Kyrgyz Republic, we can quote the exact figures both nationwide and by region. At present the register includes 2262 defence lawyers.¹⁷

1.2. The forms of organization of legal practice

In conformity with Kyrgyzstan's legislation the defence lawyer is independent and can practise advocacy through defence lawyers' firms or a sole entrepreneurship¹⁸. The defence lawyer firms are legal entities and their major sphere of activities is providing legal aid. The law permits the creation of defence lawyer firms on the basis of any form of ownership and type of organizational structure. The founder of the defence lawyer firm could be any legal or physical entity; however the head of a defence lawyer firm can only be a defence lawyer. The defence lawyer firm is permitted to carry out advocacy on condition that it employs at least one defence lawyer.¹⁹

The self-employed lawyers carry out their activities in various forms both in commercial and non-commercial organizations. For this they do not have to apply for a special licence and it is sufficient simply to have a higher degree in law. In such a case lawyers have the right to provide various kinds of legal services except those for which a licence is required by law (for example in criminal cases, at investigation stage only a defence lawyer can carry out the defence²⁰).

There are several forms in which legal practice can be organized in Kyrgyzstan:

- defence lawyers' firms;
- legal firms;

¹⁶ Source - the Public Association «Young Lawyers of the South».

¹⁷ Source of data - the Ministry of Justice of the Kyrgyz Republic. www.minjust.gov.kg

¹⁸ Article 19 of the KR Law «On advocacy» of 21 October 1999. – Newspaper «Erkin Too», 03.11.1999.

¹⁹ Article 20 of the KR Law «On advocacy» of 21 October 1999. – Newspaper «Erkin Too», 03.11.1999.

²⁰ Part 2 of Article 44 of the «Criminal Procedure Code of the Kyrgyz Republic of 30 June 1999. – Newspaper «Erkin Too» of 21.07.1999.

- juridical (legal) surgeries (they are usually set up within law schools of higher educational institutions of Kyrgyzstan and render free legal aid to the Kyrgyz public, enlisting the help of senior students. Such surgeries function within the law school of the Kyrgyz-Russian Slavic University, the Kyrgyz State Law Academy, the Law School of the Osh State University, etc.);
- non-commercial organizations (most often, implementing the projects of international organizations and foundations they render free legal aid to the public or develop the draft legal acts, engaging lawyers and defence lawyers) (Public Foundation “Legal Aid”);
- legal services at enterprises and organizations;
- private practice (work as a sole trader).

At present, it is very difficult to assess the number of legal companies, defence lawyers’ firms and sole traders who render legal services to the Kyrgyz public. Nobody records such statistics.

On 25 April 2008 a legal Forum “Justice.kg”²¹ was held in the city of Bishkek on the initiative of the legal firm “National Juridical Corporation”. 110 legal firms and companies providing legal services, registered on the Forum’s site. However, taking into account that the majority of registered organizations were from the city of Bishkek, the real number of legal firms and organizations is by far greater.

The survey of the legal services market of Kyrgyzstan shows that legal aid is generally provided by small legal firms with from 5 to 12 staff, and sole traders. Large international legal companies are represented on a very small scale. On the whole they prefer to work in Kyrgyzstan via their representation offices in Almaty (Kazakhstan).

2. Obtaining the right to engage in legal practice

In Kyrgyzstan the right to engage in juridical activities is open to all persons who graduate from a higher educational institution majoring in law and have a standard higher degree in law recognized by the state. Such persons have the right to work both in organizations (irrespective of the form of ownership) and independently, and to provide the full range of legal services, from giving legal advice to representing clients’ interests in courts.

However, Kyrgyz legislation establishes a special procedure for obtaining permission to have the right to render a specific kind of legal service. In particular, what is being discussed here is licensing the advocacy.

2.1. Obtaining access to the examination to be granted the right to engage in advocacy

In conformity with the law of the Kyrgyz Republic “On advocacy” a defence lawyer can be a citizen of the Kyrgyz Republic in possession of a licence granting the right to engage in advocacy. The law does not permit defence lawyers and defence lawyer assistants to work for public services. Defence lawyers and defence lawyer assistants are allowed to engage in teaching, research and other creative activities²².

According to the general rule, the examination to obtain the licence can be sat by persons:

- having a higher juridical education degree;
- having not less than one year of legal work experience or having not less than one year of a defence lawyer assistant’s experience;

²¹ www.advocate.kg

²² Article 4 of the KR Law “On advocacy” of 21 October 1999 – Newspaper “Erkin Too”, 03.11.1999.

- not having a previous conviction for intended crime²³.

However, legislation provides for a list of persons who, having five-years' proven work experience, can obtain a licence without taking the examinations. In particular, the list includes persons having five-years' proven work experience of:

1. advocacy;
2. work in the prosecution service;
3. work in the Ministry of the Interior;
4. work in the State Committee for National Security;
5. work in courts;
6. work in the legal department of the Administration of the President of the Kyrgyz Republic;
7. work in the legal department of the Apparatus of the Prime Minister of the Kyrgyz Republic;
8. work in the legal department of the Apparatus of the Legislation Assembly of the Zhogorku Kenesh (Parliament) of the Kyrgyz Republic,
9. Lawyer MPs of the Zhogorku Kenesh of the Kyrgyz Republic²⁴

There is no unanimity of opinion in the legal community regarding this list of persons who have the right to obtain the licence entitling them to engage in advocacy without an examination. However many representatives of legal community are leaning towards the opinion that access to the profession of a defence lawyer has to be equal for everyone and everybody should sit the examinations on an equal footing. It should be noted that in order to engage in the profession of a judge or a prosecutor there is no such list in Kyrgyzstan and all candidates have equal access to the profession.

There are also restrictions in the law regarding permission to engage in advocacy. In particular, these refer to persons who:

- are recognized as legally incapacitated or insufficiently capable in accordance with the procedure established by the law;
- have a previous conviction for intended crime;
- have been dismissed from law-enforcement and other state bodies on discreditable circumstances²⁵.

In conformity with the Regulations "On licensing certain types of entrepreneurship" approved by the Decree of the Government of the Kyrgyz Republic of 31 May 2001, licensing shall be carried out by the Ministry of Justice of the Kyrgyz Republic. The latter, when a candidate successfully passes a qualification examination, shall issue a licence entitling him/her to engage in advocacy, valid indefinitely throughout the entire territory of the Kyrgyz Republic²⁶.

²³ Article 8 of the KR Law "On advocacy" of 21 October 1999 – Newspaper "Erkin Too", 03.11.1999.

²⁴ Article 9 of the KR Law "On advocacy" of 21 October 1999 – Newspaper "Erkin Too", 03.11.1999.

²⁵ Article 5 of the KR Law "On advocacy" of 21 October 1999 – Newspaper "Erkin Too", 03.11.1999.

²⁶ Chapter 32 of the Regulations "On licensing certain types of entrepreneurship" approved by Decree of the Government of the Kyrgyz Republic of 31 May 2001, "Legal Acts of the Kyrgyz Republic" Journal, 27.10.2006.

2.2. The procedure for conducting the qualification examination granting the right to engage in advocacy

With the purpose of selecting and administering the qualification examination for persons applying for the licence granting the right to engage in advocacy, a Qualification Commission shall be formed to test their professional competence. The Qualification Commission is set up within the Ministry of Justice of the Kyrgyz Republic numbering five people, including the secretary of the Qualification Commission. The Qualification Commission includes representatives of the Ministry of Justice and the defence lawyers' community. The Ministry of Justice of the Kyrgyz Republic provides for logistics and methodological support of the Qualification Commission's activities²⁷. The Qualification Commission has the right to take decisions if it sits with more than half of its members, one of whom should be the Chairperson of the Qualification Commission.

The Qualification Commission has the authority:

- to consider the applications of the lawyers claiming the licence granting the right to engage in advocacy;
- to conduct the qualification examination and, based on the professional competence shown by a candidate, to give an opinion about the possibility of issuing a licence granting the right to engage in advocacy;
- to consider documents submitted for obtaining a licence for advocacy by persons having a quashed or spent conviction for intended crime or dismissed from law-enforcement bodies and other state bodies on discrediting circumstances with subsequent taking of the appropriate decision;
- to investigate complaints about the actions of persons having the licence granting the right to engage in advocacy with subsequent taking of a relevant decision.

In addition, in order to carry out its authority, the Qualification Commission is entitled to request the necessary information from all state bodies and public officials and to invite public officials and members of the public to its sittings²⁸.

Candidates who wish to obtain the licence granting the right to engage in advocacy shall submit the following documentation to the Ministry of Justice to be examined by the Qualification Commission:

- an application letter with a request to be permitted to sit the qualification examination;
- a personal sheet from staff records appropriately filled in and signed;
- a notarized copy of the certificate of a higher degree in law;
- a copy of the personal labour records book, bound and certified at the last workplace or notarized;
- a copy of the passport.

When necessary the Qualification Commission has the right to demand additional documents and materials.

²⁷ Article 1 of the Regulations on the Qualification Commission within the Ministry of Justice of the Kyrgyz Republic for administering the qualification examination to persons claiming the licence granting the right to engage in advocacy. Approved by Order of the Ministry of Justice of the Kyrgyz Republic of 15 March 2001. – "Legal Acts of the Kyrgyz Republic" Journal, 01.10.2005.

²⁸ Article 2 of the Regulations on the Qualification Commission within the Ministry of Justice of the Kyrgyz Republic for administering the qualification examination to persons claiming the licence granting the right to engage in advocacy. Approved by Order of the Ministry of Justice of the Kyrgyz Republic of 15 March 2001. – "Legal Acts of the Kyrgyz Republic" Journal, 01.10.2005.

The frequency of the Qualification Commission sittings depends on the number of applications received in the Ministry of Justice of the Kyrgyz Republic within a certain period but no less than once in three months. The date, time and venue of the qualification examination shall be approved by Order of the Minister of Justice of the Kyrgyz Republic. The persons claiming the licence granting the right to engage in advocacy shall be informed about the date, time and venue of the qualification examination not later than one week in advance²⁹.

The qualification examination is conducted in the form of written multiple choice testing and represents questions and answer options, one of which is correct. The tests consist of examination questions which are approved by Order of the Ministry of Justice of the Kyrgyz Republic. Altogether there are 458 approved questions on various areas of the law such as: constitutional law, civil law, civil procedure law, criminal law, criminal procedure law, administrative law, housing law, family and labour law³⁰. The Secretary to the Qualification Commission shall keep minutes which state: the time and venue of the sitting, the composition of the Commission, surname, initials and the test code of the candidate and the number of correct answers in order to determine the result of the test. Persons who have provided correct answers to no less than 70% of multiple choice questions pass the qualification examination. The decision of the Qualification Commission shall be announced in the presence of the person who took the qualification examination after voting and signing it by all members of the Commission present. A person who has failed the qualification examination is permitted to resit it not earlier than in one year's time.

The decision of the Qualification Commission can be appealed in court within a month from the day its copy was given to the person concerned.

The decision of the Qualification Commission about successful passing of the qualification examination by a candidate is the ground for issuing him/her a licence granting the right to engage in advocacy.

All persons who have obtained a licence granting the right to engage in advocacy are placed on the National Register of Defence Lawyers maintained by the Ministry of Justice of the Kyrgyz Republic. It contains the surname, name and patronymic of the defence lawyer, his/her address, the date of issue of the licence, the number of the licence, the name and legal address of the defence lawyers' firm and a sample of the seal made according to the established standard. Any changes introduced in the Register have to be brought to the notice of the Ministry of Justice of the Kyrgyz Republic within a month³¹.

2.3. Suspension and termination of the licence granting the right to be engaged in advocacy

The legislation of Kyrgyzstan stipulates two cases when the licence granting the right to be engaged in advocacy can be suspended when:

- a defence lawyer is elected an MP (Member of Parliament) or to other elected positions;
- a defence lawyer takes a public service position.

²⁹ Article 4 of the Regulations on the Qualification Commission within the Ministry of Justice of the Kyrgyz Republic for administering the qualification examination to persons claiming the licence granting the right to engage in advocacy. Approved by Order of the Ministry of Justice of the Kyrgyz Republic of 15 March 2001. – “Legal Acts of the Kyrgyz Republic” Journal, 01.10.2005.

³⁰ Examination questions for administering the qualification examination to persons claiming the right to engage in advocacy. Approved by Order of the Ministry of Justice of the Kyrgyz Republic of 15 February 2006 - “Legal Acts of the Kyrgyz Republic” Journal, 01.03.2006.

³¹ Article 11 of the KR Law “On advocacy” of 21 October 1999 – Newspaper “Erkin Too”, 03.11.1999.

In addition, the law provides for the cases when a defence lawyer is deprived of the licence granting the right to engage in advocacy:

- a defence lawyer steps down from office of his/her own free will;
- a defence lawyer loses nationality of the Kyrgyz Republic;
- a defence lawyer grossly violates the Law “On advocacy” and other legislative acts of the Kyrgyz Republic;
- a defence lawyer violates the requirements laid down by Article 5 of the Law “On advocacy”³². Regarding this point it seems that it is appropriate to talk not about the defence lawyer’s violation of the requirements set out in Article 5 of the Law “On advocacy” but about the ensuing consequences mentioned in this Article. In particular, recognition as legally incapacitated or insufficiently capable according to the procedure established by the law; conviction for intended crime; dismissal from the law-enforcement bodies and other state bodies on discrediting circumstances.

Regulations on licensing certain types of activities have one more ground for depriving the defence lawyer of the licence granting the right to engage in advocacy. This is the unjustified avoidance of providing free legal aid in cases stipulated by the legislation of the Kyrgyz Republic³³.

In order to regulate the procedure of carrying out advocacy when a defence lawyer performs his/her professional duties to protect the rights and freedoms of citizens and legal entities guaranteed to them by the Constitution of the Kyrgyz Republic, to outline the ethical principles of advocacy, and to detail the issues related to disciplinary punishments regarding the defence lawyers and to establish the procedure of imposing such punishments, the Ministry of Justice of the Kyrgyz Republic developed the Rules of Professional Ethics for Defence Lawyers (hereinafter – the Rules). The disciplinary measures include:

- a warning that it is inadmissible to violate the Rules of Professional Ethics of Defence Lawyers;
- termination of the licence granting the right to engage in advocacy.

These measures can be applied to defence lawyers who have violated the requirements of the Law of the Kyrgyz Republic “On advocacy”, who do not discharge their professional duties or who do not discharge their professional duties appropriately and commit actions undermining the prestige of the defence lawyers’ community³⁴.

The right to choose the disciplinary measure belongs to the Chairperson of the Qualification Commission for administering the qualification examination to persons claiming the licence granting the right to engage in advocacy within the Ministry of Justice of the Kyrgyz Republic. At present this is the Minister of Justice of the Kyrgyz Republic.

Disciplinary actions with regard to defence lawyers shall be administered on the basis of the results of official investigation conducted by the Qualification Commission within the Ministry of Justice of the Kyrgyz Republic.

The grounds for ordering an official investigation shall be based on information and facts about the committed violation or improper discharge of duties obtained from the following sources:

- reports and information of public officials or governing bodies of professional associations of defence lawyers;
- law-enforcement bodies;

³² Article 10 of the KR Law “On advocacy” of 21 October 1999 – Newspaper “Erkin Too”, 03.11.1999.

³³ Chapter 32 of the Regulations “On licensing certain types of entrepreneurship” approved by Decree of the Government of the Kyrgyz Republic of 31 May 2001 – “Legal Acts of the Kyrgyz Republic” Journal, 27.10.2006.

³⁴ Article 10 of the Rules of Professional Ethics for Defence Lawyers. Approved by Order of the Ministry of Justice of the Kyrgyz Republic of 21 May 2003 No 73 – “Legal Acts of the Kyrgyz Republic” Journal, 01.10. 2005.

- court rulings about improper actions by defence lawyers;
- publications in the mass media, containing information about the violations on the part of defence lawyers;
- allegations, claims and letters by physical and legal entities about the actions by defence lawyers.

Official investigation shall be conducted on each occurrence of defence lawyers' violating or improper discharge of their professional duties on providing qualified legal aid to physical and legal entities.

In order to regulate the process of conducting official investigation the Ministry of Justice has approved the Instructions on the Procedure to Conduct Official Investigation of the Occurrences of Violations Committed by Persons in Possession of the Licence Granting the Right to Engage in Advocacy (hereinafter – the Instructions)³⁵.

In conformity with the Instructions the purpose of an official investigation is to detect and to put an end to the occurrences where constitutional guarantees are violated. The violation which triggers an official investigation shall be unlawful, culpable non-fulfilment or improper discharge by a defence lawyer of his/her duties.

The decision on conducting an official investigation shall be taken by the Chairperson of the Qualification Commission for administering the qualification examination to persons claiming the licence granting the right to engage in advocacy within the Ministry of Justice of the Kyrgyz Republic. The decision on conducting an official investigation shall be executed in the form of an Order which determines the constitution of the Commission and sets the timeframe for submitting the conclusion based on the results of the investigation. The Chairperson of the Qualification Commission shall also take a decision based on the results of the investigation and has the right to choose the type of disciplinary action.

Disciplinary action shall be taken immediately after the discovery of the misconduct but not later than one month following its discovery and not counting any time when a defence lawyer is ill or on leave.

Disciplinary action cannot be taken later than six months following the day of the breach of discipline. The time spent on an official investigation shall not be included within the said timeframe.

The effective period of the disciplinary action shall not exceed one year following the day of its application. If within this period a defence lawyer is not subject to another disciplinary action he will be considered not to have been through a disciplinary action.³⁶

The latest sitting of the Qualification Commission chaired by the Minister of Justice of the Kyrgyz Republic took place on 31 July 2008. The sitting resulted in cancelling the licences granting the right to engage in advocacy of four defence lawyers in conformity with article 10 of the Law of the Kyrgyz Republic "On advocacy".

Three of them had their licences cancelled due to the fact that contrary to Article 55 of the Civil Procedure Code of the Kyrgyz Republic³⁷, the requirements of the Law "On advocacy", the

³⁵ The Instructions on the Procedure to Conduct Official Investigation of the Occurrences of Violations Committed by Persons in Possession of the Licence Granting the Right to Engage in Advocacy. Approved by Order of the Ministry of Justice of the Kyrgyz Republic of 11 January 2002 No. 2 – "Legal Acts of the Kyrgyz Republic" Journal, 01.10.2005.

³⁶ Article 11 of the Rules of Professional Ethics for Defence Lawyers. Approved by Order of the Ministry of Justice of the Kyrgyz Republic of 21 May 2003, No. 73 – "Legal acts of the Kyrgyz Republic" Journal, 01.10.2005.

³⁷ In conformity with part 3 of Article 55 of the Civil Procedure Code of the Kyrgyz Republic, a person cannot represent another person's interests if in a particular case he/she is providing or provided earlier legal aid to those persons whose interests are contrary to the interests of the person to be represented, or if he/she was involved as a judge, prosecutor, expert, specialist, interpreter, witness or attesting witness, or if he/she has a family relationship to the official involved in consideration of the case – Newspaper "Erkin Too", 12.01.2000.

“Rules of Professional Ethics for Defence Lawyers” and being in possession of information about the circumstances of the case provided by their clients, they switched to defend the interests of the opposite side. The fourth defence lawyer, having received the fees for providing legal aid, did not fulfil his obligations³⁸.

3. The cost of providing legal services and legal aid

The Rules of Professional Ethics for Defence Lawyers require that a defence lawyer quote a reasonable level of fees for his/her work, taking into consideration the following:

- the complexity of the case;
- the time necessary to be spent, the duration of the proceedings or relevant consultations and the probability of the fact that the defence lawyer’s consent to act on a particular case will cause him/her to refuse other cases;
- the financial situation of his/her client;
- his/her professional experience and reputation;
- the need to use the services of experts whose involvement in the investigation has to be paid for.

The defence lawyer should not abuse the fees agreement based on hourly rates by using time-consuming procedures³⁹.

Adopting the said Rules of Professional Ethics for Defence Lawyers the Ministry of Justice of the Kyrgyz Republic established general rules on developing the tariff payment grid for providing services by defence lawyers. However, when approving the catalogue of fees for legal services by defence lawyers, the heads of legal firms and companies as well as self-employed lawyers are led by the market.

The Government reserved the right to establish the cost of services when providing free legal aid which, in accordance with the Constitution of the Kyrgyz Republic, shall be rendered at the expense of the state⁴⁰.

3.1. The level of defence lawyers’ payment for providing free legal aid and the procedure for remuneration for those services

The Constitution of the Kyrgyz Republic states that everyone has the right to qualified legal aid. In cases laid down by the law, legal aid is publicly funded⁴¹. Such cases are stipulated by the Criminal Procedure Code which, in particular, establishes that at the request of the suspect/accused/defendant, the investigator/court provide for the involvement of the defender. Where a defence lawyer is involved in investigation or in court proceedings on assignment, the expenses for paying for the defence lawyer’s services are paid out of public funds. However, reimbursement of expenses to the state in such situations can be charged to the convicted person⁴².

In conformity with the procedure of paying for the defence lawyer’s services from public funds the investigator/judge can exempt the suspect/accused/defendant from paying for legal aid

³⁸ Source - the Ministry of Justice of the Kyrgyz Republic. www.akipress.kg

³⁹ Article 5 of the Rules of Professional Ethics for Defence Lawyers. Approved by Order of the Ministry of Justice of the Kyrgyz Republic”, 01.10.2005.

⁴⁰ Part 1 of Article 40 of the Constitution of the Kyrgyz Republic of 5 May 1993 – Newspaper “Erkin Too”, 18.02.2003.

⁴¹ Part 1 of Article 40 of the Constitution of the Kyrgyz Republic of 5 May 1993 – Newspaper “Erkin Too”, 18.02.2003.

⁴² Article 45 of the Criminal Procedure Code of the Kyrgyz Republic – Newspaper “Erkin Too”, 21.07.1999.

provided by the defence lawyer due to his/her material insolvency on the basis of a certificate stating that the person belongs to the indigent category. Such a certificate shall be issued by social services bodies, 'ail okmotu' (in rural areas) and municipal bodies (in cities of oblast and regional status). The grounds for referring the expenses of paying for the defence lawyer's services to the Kyrgyz Republic public funds budget are as follows:

- the decision by an investigator, ruling by a judge (court) in charge of the proceedings in the case, confirming the time spent by the defence lawyer (defence lawyers' establishment) on providing the legal services. The decision by the investigator/ruling by the judge (the court) shall be issued on the basis of the defence lawyer's application;

- an agreement between the person who receives legal aid from public funds (suspect/accused/defendant) and the defence lawyer (defence lawyers' establishment) concluded according to the format approved by the Ministry of Justice of the Kyrgyz Republic. The basis for concluding such an agreement shall be a certificate issued by a social services body confirming the status of indigent.

The decision by the investigator/ruling by the judge (court) about referring the expenses of paying for the defence lawyer (defence lawyers' establishment) services to the public funds budget indicate:

- the name of an investigative body or a court;
- surname, name, patronymic of the defence lawyer or the name of the defence lawyers' institution;
- surname, name, patronymic of the suspect/accused/defendant;
- case number;
- the number of days spent by the defence lawyer (defence lawyer establishment) on providing legal aid;
- the date it was carried out.

Paying for the defence lawyer's services of providing free legal aid to persons entitled to it, is executed by the Ministry of Justice of the Kyrgyz Republic or its territorial bodies from national budget funds.

In order to recover the cost of the defence lawyer's services the judge makes a decision/ruling in three copies one of which shall be forwarded to the Ministry of Justice of the Kyrgyz Republic or to its territorial bodies, the second shall be added to the materials of the case and the third shall be given to the defence lawyer (defence lawyer establishment).

On the basis of the submitted documents the Ministry of Justice of the Kyrgyz Republic or its territorial bodies within a 10-day period shall determine and pay to the defence lawyer a sum of money for provided legal aid from national budget funds or transfer the said amount to the current (transaction) account of the defence lawyers' establishment.

Payment for the defence lawyer's services is made on the basis of the amount of time spent proceeding from 125 Som (about US \$3.5) per working day.

The results of the survey of payment for defence lawyers' services conducted within the framework of this report allow the following conclusions to be drawn:

- according to the defence lawyers, the level of payment for defence lawyers' services for providing legal aid guaranteed by the state amounting to 125 Som is low. Thus, after appropriate statutory deductions the end sum for one day of a defence lawyer's work on rendering such aid equals 103 Som (about US \$2.9) (irrespective of the number of cases: a defence lawyer involved in several cases on the same day and dealing with several rulings by a judge (or decisions by an investigator) is paid for one working day only);
- the amount of payment for defence lawyers' services does not cover their additional costs related to the performance of their duties (travel expenses, information

requests, copying, computer typing and printing of documents pertaining to a case, paying for the services of independent experts, business trips and other expenses related to a case).

When defence lawyers' services are provided in good faith, their expenses can significantly exceed the level of payment envisaged by the state for defence lawyers' services of rendering legal aid guaranteed by the state. Quite often it is this very circumstance that forces defence lawyers to limit the choice of defences available to them and makes them reluctant to accept such cases. Therefore the defence in cases where legal aid is free is not implemented to the full and bears a predominantly formal character.

Where the defence lawyer's involvement either in the investigation or in court proceedings is over a protracted period, the decision of the investigator/ruling of the judge (court) confirming the time spent by the defence lawyer (defence lawyers' establishment) on providing legal aid shall be issued on a monthly basis.

Where a defendant is found guilty by the court the sums of money paid to the defence lawyer from the national budget can be recovered from the convicted person in favour of the national budget. The collection of sums paid from the national budget shall be made from the convicted person if the latter is not exempt from the obligation to reimburse these expenses. The sums paid from the national budget on the decision of the investigator are also subject to reimbursement.⁴³

In order to standardize the work of the defence lawyers in concluding the agreements for free legal aid at the expense of public funds, the Ministry of Justice of the Kyrgyz Republic has approved a pro-forma contract. In conformity with it the client is entitled to qualified and timely legal aid. The client is obliged:

- in due time to provide the defence lawyer (defence lawyers' establishment) with the requisites necessary for him/her to fulfil his/her obligations, namely: in due time to submit the required documentation and information relevant to the issues under consideration and important for the appropriate implementation by the defence lawyer (defence lawyers' establishment) of his/her duties;

- when it is necessary to issue the defence lawyer (defence lawyers' establishment) with a power of attorney for representing the client in state (including the law-enforcement) bodies and judicial bodies of the Kyrgyz Republic;

- to provide the information that he/she has the status of indigent;

- when it is impossible to submit the information that he/she has the status of indigent at the moment of signing the contract to provide assurances to the defence lawyer (defence lawyers' establishment) that he/she will provide such information within 15 calendar days.

In conformity with the contract the defence lawyer is obliged to fulfil his duties in due time and in good faith, including:

- representing the client in state and court bodies;

- fulfilling other instructions by the client within the framework of criminal proceedings;

- observing confidentiality of the information about the client. This prohibition still remains in force even when the contract's term expires.

The defence lawyer has the right to decide on the timescale for providing legal aid to the client⁴⁴.

⁴³ The procedure of paying for defence lawyers' services at the expense of national budget funds. Approved by Decree of the Government of the Kyrgyz Republic of 24 May 2003, No. 306 – Newspaper "Erkin Too", 30.06.2003.

⁴⁴ Pro-forma contract on providing free legal aid at the expense of national budget funds. Approved by Decree of the Ministry of Justice of the Kyrgyz Republic of 12 June 2003 – "Legal Acts of the Kyrgyz Republic" Journal, 01.10. 2005.

To date the national budget has allocated 5 million Som (approximately US\$142.857) to reimburse the expenses of the defence lawyers providing free legal aid⁴⁵.

3.2. The level of payment for providing legal aid

As was mentioned above, heads of firms and self-employed lawyers take the decision about setting up various tariffs for providing legal aid based on the market situation developed in the area. Several factors are of relevance here:

- ✓ the type of legal service (consultation, involvement in court, etc.);
- ✓ popularity of the company and the lawyer;
- ✓ category of the case;
- ✓ complexity of the case;
- ✓ competitive environment;
- ✓ venue of providing services;
- ✓ solvency of the individual, etc.

Unfortunately, at present no serious survey regarding the cost of various legal services has been conducted in Kyrgyzstan. The Internet sites of legal firms and companies do not publish such information either. Despite the fact that there is a number of companies which make such information public, this usually involves the issues of a subscription service where the tariffs for individuals and organizations are set out sufficiently clearly. For example, the site of “The National Legal Corporation” limited liability company places the following information about providing services on the subscription programme “Advocat”: when concluding a contract at “Econom” level its cost amounts to US \$150 a month. There is a guarantee to everyone who concludes this contract of provision of legal services to the amount of US \$350 in case of road traffic accidents, actual bodily harm, theft, robbery and burglary. The cost at “Business” level is US \$350 and the range of services is wider. “Exclusive” level is paid for on a negotiable basis⁴⁶. The site also gives the price list for the parties to this programme⁴⁷.

The site of the “Defence Lawyers’ Bureau “Shaibekov and Co”” limited liability company also provides information on the cost of services for the parties to the programmes on subscription. Here the scale of charges is formed subject to the number of hours to be spent by the defence lawyer when providing legal services. Tariff “Budget” in this case amounts to 5,600 Som (approximately US \$160) and includes 6 hours of work; “Econom” respectively costs 12,000 Som (approximately US \$ 342) for 20 hours; “Business” costs 16,000 Som (approximately US \$457) for 40 hours; “VIP” 24,000 Som (approximately US \$685) and covers 80 hours⁴⁸.

It should be noted that the information on the cost of legal services cited above pertained to the instances when an individual or an organization were parties to various programmes. We managed to find a scale of charges for providing legal services for clients - not subscribers to programmes - directly in legal firms. Frequently tariffs are not final but vary depending on circumstances of the case. In addition, very often legal firms offer discounts from 5 to 50% of the rate to their regular customers. Very many issues related to paying for services are decided

⁴⁵ Source - the Ministry of Justice of the Kyrgyz Republic. www.minjust.gov.kg

⁴⁶ www.advocate.kg/ru/lawyer

⁴⁷ www.advocate.kg/ru/lawyer/price_list

⁴⁸ www.law.kg/index.php/2008-04-21-05-33-38

on a negotiable basis. Not infrequently legal firms provide free consultations to indigent sectors of the public.

The average hourly rate for the cost of legal services (oral or written consultation) usually varies from 200 Som (US \$ 5.7) to 3,500 Som (US \$100). Where a lawyer gets a percentage from the sum won, the said percentage varies from 2 to 20%, subject to the amount of the claim. The cost of the involvement of defence lawyers and lawyers during the investigation and in courts (civil, criminal) usually varies from 17,500 Som (US \$500) to 70,000 Som (US \$2,000).

It should be noted that the rates quoted above are more typical for the large cities in Kyrgyzstan – Bishkek and Osh. In other regions these rates, subject to the standard of living of the population are usually 2 to 4 times lower.

Regarding the accessibility of these services, their cost is too high for the majority of the population of Kyrgyzstan. Furthermore, people do not always have the ability to pay the state duty when they file their court suits. Taking this into consideration, quite recently amendments were introduced into the Law of the Kyrgyz Republic “On the state duty” in conformity with which the state duty is to be paid before the action, on which the duty is liable, can go ahead. The same applies when documents are issued with the exception of taking legal action. When taking legal action the state duty is to be collected dependent upon the results of the court’s consideration of statements of action, claims and other applications⁴⁹.

4. Reforms in the area of providing legal aid

4.1. Reforms of the Bar

The reforms of the bar and improving the advocacy in Kyrgyzstan have been talked about for quite a long time. As early as 2003 a well-known defence lawyer, Shamalar Maichiev, noted that the purpose of reforming advocacy was to create a fully-fledged public law institution protecting the rights of individuals and legal entities. Such an institution, in his opinion, should become a professional, self-regulating and non-commercial organization⁵⁰.

In order to outline the major areas within the framework of which the reform of advocacy is to be carried out, it is necessary to mention the two major documents:

- The Guidelines for improving advocacy in the Kyrgyz Republic (hereinafter – the Guidelines) approved by Decree of the Government of the Kyrgyz Republic as early as April 2005⁵¹;
- The Draft Law “On advocacy and the Bar in the Kyrgyz Republic” (hereinafter – the Draft Law)⁵².

Let us have a more detailed look at these documents and highlight those crucial changes which they entail for the improvement of the institution of the Bar in Kyrgyzstan.

The authors of the Guidelines include well-known lawyers in Kyrgyzstan, Members of Parliament (Zhogorku Kenesh) of the Kyrgyz Republic, representatives of the Law department of the Presidential Administration, Apparatus of the Prime Minister, the Supreme Court, the Ministry of Justice, the Judicial department, professional organizations of lawyers and defence lawyers and non-governmental organizations. The Guidelines note that some of the fundamental principles of advocacy are its freedom and independence as well as voluntary character of

⁴⁹ The Law of the Kyrgyz Republic “On introducing changes and amendments into some legislative acts of the Kyrgyz Republic of 25 July 2008, No 168 – Newspaper “Erkin Too”, 01.08.2008.

⁵⁰ The materials of the international conference: The contemporary state of advocacy in the countries of Central Asia: problems and prospects. Tashkent, 2003, p.72.

⁵¹ The Guidelines for improving advocacy in the Kyrgyz Republic. Approved by Decree of the Government of the Kyrgyz Republic of 21 April 2005, No. 163 – Newspaper “Erkin Too”, 30.04.2005.

⁵² The Draft Law “On advocacy and the Bar in the Kyrgyz Republic”.

membership in a professional public association of defence lawyers. However, in the opinion of defence lawyers themselves, the freedom available to them to choose an organizational form of advocacy, their independence and voluntary character of membership in a defence lawyers' association gave rise to a number of issues related to the quality and accessibility of defence lawyer services, and taxation. An important issue, in the opinion of the authors of the Guidelines, is the improvement of the quality of legal aid provided by the defence lawyers and of the level of professional fitness of the defence lawyers⁵³.

The Guidelines regard the provision of efficiency and upgrading the quality of advocacy in the Kyrgyz Republic as a key goal of its improvement, with objectives being the development of specific measures aimed at realization of the key goal of upgrading advocacy in the Kyrgyz Republic. This can be achieved through:

- improving the regulatory and legal framework;
- organization of an efficient system of advocacy.

As an important change the Guidelines suggest that a system of advocacy be created based on independent bodies of defence lawyers' self-governance: a central body – a Chamber of Defence Lawyers, and regional organizations.

It is proposed that the congress of defence lawyers of the Kyrgyz Republic be made the supreme body of defence lawyers' self-governance, which should be organized on the principle of electivity of the delegates according to electoral quotient. The principle of electivity of delegates of the congress is put forward with the purpose of providing representation of all administrative territorial units of the Kyrgyz Republic.

It is proposed that the bodies of defence lawyers' self-governance be given the right to:

- develop an efficient procedure of engaging defence lawyers and accrediting them for courts and law-enforcement bodies;
- register defence lawyers;
- administer a qualification examination;
- consider submissions about the actions (failures to act) by defence lawyers;
- upgrade the qualification of defence lawyers;
- prepare statistical reports, etc.

It is suggested that preparing proposals on prospective areas of advocacy development and the issues of creating a nation-wide qualification, disciplinary and auditing bodies within the advocacy system be included in the competence of the Chamber of Defence Lawyers. At the same time, it is proposed that the Chamber of Defence Lawyers should fulfil the function of coordination in resolving theoretical and methodological issues of advocacy and to monitor the quality of work by the members of the bodies of defence lawyers' self-governance.

The key objectives of the Chamber of Defence Lawyers will be:

- to represent the interests of defence lawyers in state bodies on the issues of advocacy;
- to provide for efficiency and democratic principles of administration in the bodies of defence lawyers' self-governance;
- to provide for training and retraining of defence lawyers;
- to develop the norms of defence lawyers' ethics;
- to summarize the law-enforcement best practices of defence lawyers and on their basis to prepare the proposals for improving advocacy;
- to provide for methodological support of defence lawyers' establishments;
- to consider the submissions about the actions (failures to act) by the bar associations;

⁵³ Chapter 1 of "The Guidelines for improving advocacy in the Kyrgyz Republic". Approved by Decree of the Government of the Kyrgyz Republic of 21 April 2005, No. 163 – Newspaper "Erkin Too", 30.04.2005.

- to ensure the efficient provision of legal aid guaranteed by the state.

It should be noted that in their professional activities the defence lawyers do not depend on the Chamber of Defence Lawyers which does not have the right to interfere with their work.

The regional bodies of defence lawyers' self-governance (at the level of oblasts and the city of Bishkek) should become primary organizations. It is assumed that the major volume of current work will be carried out at this level. The supreme bodies of the Bar at regional level will be general assemblies of defence lawyers of the relevant territory. The composition of general assemblies of territorial bodies shall be made up on the basis of the data from the relevant territorial register of defence lawyers. The executive bodies of the Bar shall be elected at general assemblies.

Registration in the regional bodies of self-governance should become a mandatory condition of acquiring the status of defence lawyer and obtaining the right to engage in advocacy.

The functions of the regional bodies should cover the issues of admission to membership of the defence lawyers' community at a relevant territorial level (that is testing, administering the qualification examination, placing on the defence lawyers' register, defence lawyers' performance review, etc.), implementation of disciplinary control, upgrading of qualifications, distribution of cases amongst the defence lawyers within the framework of legal aid guaranteed by the state.

Under the regional self-governance of defence lawyers, the bodies which are directly subordinate to the supreme body of the Bar to be created are:

- 1) Qualification Commission;
- 2) Commission on Ethics;
- 3) Auditing Commission.

The regional bodies of defence lawyers' self-governance shall be founded at the meeting of defence lawyers of a region based on the requirement of a minimum number of defence lawyers in that region.

Major functions of the regional bodies of defence lawyers' self-governance shall be as follows:

- management of case loads involving the defence lawyers when they have been assigned by an investigator or a judge in conformity with the norms of the Criminal Procedure Code of the Kyrgyz Republic;
- territorial registration of the defence lawyers;
- administering the qualification examination;
- control over compliance with the rules of defence lawyers' ethics;
- statistical report on the region and so on⁵⁴.

The Guidelines presuppose the creation of new types of organizational structure for non-commercial organizations for defence lawyers in the form of an office, bureau or legal advice bureau.

The defence lawyer's office is founded by a single defence lawyer without creation of a legal entity. Persons having legal education can work in a defence lawyer's office as a paralegal. The number of paralegals is not limited. The distinctive feature of this type is simplicity of its structure. The defence lawyer's office does not envisage hiring any persons on a labour contract since no legal entity is formed. All relations with third parties are based on civil law contracts.

The defence lawyers' bureau is founded by two or more defence lawyers on the basis of a partnership agreement (defence lawyers work on behalf of the bureau but each of them bears sole

⁵⁴ Article 3.3. of "The Guidelines for improving advocacy in the Kyrgyz Republic". Approved by Decree of the Government of the Kyrgyz Republic of 21 April 2005, No. 163 – Newspaper "Erkin Too", 30.04.2005.

responsibility for his/her own activities). The bureau is a legal entity. The distinctive feature of this type is that the defence lawyers, by creating a legal entity, can hire persons, apart from other defence lawyers, on a labour contract and on a civil law contract.

The legal advice bureau is founded by the body of defence lawyers' self-governance or defence lawyers. In this case defence lawyers work on a labour contract. The head of the legal advice bureau can only be a defence lawyer. The bodies of the defence lawyers' self-governance should be represented exclusively by defence lawyers⁵⁵.

The authors of the Guidelines suggest looking into the expediency of a staged replacement of the current qualification examination system in the Ministry of Justice of the Kyrgyz Republic by the system of testing in the regional bodies of defence lawyers' self-governance, which will issue a certificate regarding a defence lawyer's status. The Qualification Commission will predominantly include defence lawyers as well as representatives from the Ministry of Justice of the Kyrgyz Republic, and other state bodies and civil society. The fact that the Qualification Commission will include persons who will not be defence lawyers is determined by the necessity to ensure transparency of its work.

The powers of the Qualification Commission include:

- a) the right to administer an examination to applicants and to administer a defence lawyer's oath;
- b) submission of relevant information to the bodies of justice for placing defence lawyers on the Register;
- c) the right to award the certificate.

Contrary to the current system it is envisaged that the Qualification examination should consist of two consecutive stages: a "computer test" and an "oral interview", with the second stage to ensue only when the applicant successfully passes the first one. The content and number of questions, the structure of legal subjects, speciality blocs, the form of control and other issues shall be determined by the bodies of self-governance themselves, which, for this purpose, can involve representatives of legal academia. There is also a proposal to introduce an out-of-court procedure to appeal the decision of the regional Qualification Commission in the superior Qualification Commission within the Chamber of Defence Lawyers.

The Guidelines suggest that the candidates should undergo mandatory special training to obtain permission to sit the qualification examination. In addition it is proposed that a Learning Centre attached to the Chamber of Defence Lawyers be created within the system of defence lawyers' self-governance, whose key objectives should be the following:

- to train future defence lawyers;
- to upgrade the qualification of practising defence lawyers;
- to develop teaching methodology on court advocacy⁵⁶.

The authors of the Guidelines propose that the Bar itself should establish disciplinary commissions to handle disciplinary proceedings against defence lawyers, with the possibility of appealing in court.

It is suggested that the funding of defence lawyers' organizations be implemented at the expense of defence lawyers' membership fees. The level of the fees shall be determined by the representatives of the bar associations at the national congress of defence lawyers⁵⁷.

⁵⁵ Article 3.4. of "The Guidelines for improving advocacy in the Kyrgyz Republic". Approved by Decree of the Government of the Kyrgyz Republic of 21 April 2005, No. 163 – Newspaper "Erkin Too", 30.04.2005.

⁵⁶ Article 3.4. of "The Guidelines for improving advocacy in the Kyrgyz Republic". Approved by Decree of the Government of the Kyrgyz Republic of 21 April 2005, No. 163 – Newspaper "Erkin Too", 30.04.2005.

⁵⁷ Article 3.4. of "The Guidelines for improving advocacy in the Kyrgyz Republic". Approved by Decree of the Government of the Kyrgyz Republic of 21 April 2005, No. 163 – Newspaper "Erkin Too", 30.04.2005.

In conclusion the drafters of the Guidelines suggest examining the expediency and efficiency of a staged replacement of the procedure of licensing advocacy by registration of the defence lawyers in the bodies of defence lawyers' self-governance.

It should be noted, when analysing the provisions of the Guidelines, that the drafters proposed a fundamental change in the approaches to both the permission to engage in practising the profession and the issue of organizing and regulating advocacy. Great emphasis was placed on creating the bodies of defence lawyers' self-governance and enabling those bodies to decide the key issues of advocacy.

It should be noted that the Constitution of the Kyrgyz Republic also considers the Bar to be a self-governing professional community of defence lawyers⁵⁸. Therefore by and large the Guidelines adhere to those provisions which are anchored in the Constitution.

The draft Law "On advocacy and the Bar in the Kyrgyz Republic" was prepared on the basis and as a development of the provisions of the Guidelines. Speaking about the peculiarities of the draft Law which differentiate it from the current law it is possible to pinpoint the following:

- clearer rules of choosing a defence lawyer where the person asking for legal aid has free choice, with the exception of situations when a defence lawyer is assigned to render free legal aid, or as a defender in criminal cases in which his/her involvement is mandatory, if the client did not choose or could not choose a defence lawyer to represent him/her;
- the decision on granting the status of defence lawyer shall be taken by the Bar after a person has passed his/her qualification examination;
- the qualification examination consists of a written test and an oral interview;
- the Bar is a non-governmental self-governing organization based on mandatory membership of defence lawyers, created on the basis of common professional interests, designed to express and protect the interests of defence lawyers of the Kyrgyz Republic, to promote the development of advocacy and facilitate the upgrading of defence lawyers' qualifications;
- the governing bodies of the Bar are: the General Assembly of Defence Lawyers – the supreme governing body; the Council of Defence Lawyers – the governing body in charge of the Bar in the period between General Assemblies of defence lawyers; the Executive Director – the person in charge of the current activities of the Bar; the Auditing Commission is a governing body exercising control over the financial and economic activities of the Bar;
- the Qualification Commission to administer an examination to persons claiming the licence to engage in advocacy is made up of nine people. It includes defence lawyers, lawyers, representatives of judicial bodies and the Ministry of Justice of the Kyrgyz Republic;
- the Disciplinary Commission of the Bar is formed by the bodies of self-governance and can issue defence lawyers with a warning stating that it is forbidden to breach the Rules of Professional Ethics for Defence Lawyers and other requirements established by the Law and the Charter of the Bar; it can also strip a defence lawyer of his/her status.

The two documents cited above, which contain the key provisions aimed at reforming the Bar in Kyrgyzstan, are dramatically changing the approaches towards the process of formation of defence lawyers' community and its functioning. They propose the creation of new types of organizational structure for non-commercial organizations for defence lawyers in the form of the office, the bureau and the legal advice bureau. The Bar is looked upon as a self-governing professional organization which bears full responsibility for preparing candidates to become defence lawyers, administering an examination to persons requesting permission to engage in

⁵⁸ Part 2 of Article 40 of the Constitution of the Kyrgyz Republic of 5 May 1993 – Newspaper "Erkin Too", 18.02.2003.

advocacy, establishing ethical rules and norms and taking disciplinary action against defence lawyers.

It should be noted that the said innovations over a number of years, both before and after the adoption of the Guidelines, have been actively debated at round tables and conferences with the legal community of Kyrgyzstan, representatives of civil society and in academic circles. On the whole, these proposals have had a positive response. Many norms were additionally worked on and elaborated in detail based on the comments and proposals of the participants of the events and were taken into consideration by the drafters of the Guidelines and the draft Law.

4.2. Reforming the provision of legal aid guaranteed by the state

One of the most complicated issues in the area of providing legal aid to the public is providing legal aid guaranteed by the state (LAGS).

The duty of the state to offer such aid is based on the requirements of the International Covenant on Civil and Political Rights (The Kyrgyz Republic acceded to this International Covenant by Decree by the Zhogorku Kenesh (Parliament) of Kyrgyzstan of 12 January 1994 No. 1406-XII “On the accession of the Kyrgyz Republic to international agreements on human rights”) and, as was mentioned above, on the requirements of the Constitution of the Kyrgyz Republic. In particular, the Covenant envisages that in determination of any criminal charge against a person, he/she shall be entitled to the following minimum guarantees, in full equality:

- to defend him/herself in person or through legal assistance of his/her own choosing;
- to be informed, if he/she does not have legal assistance, of this right; and to have legal assistance assigned to him/her, in any case where the interests of justice so require, and without payment by him/her in any such case if he/she does not have sufficient means to pay for it⁵⁹.

Some lawyers identify the following key problems in the area of providing LAGS:

- lack of transparency of the process of assigning LAGS cases and coordination between the investigative bodies, the court and defence lawyers’ establishments. At present the procedure of assigning defence lawyers to LAGS cases has an arbitrary character. This quite often results in violating the rights of the suspect/accused to defence and failure to comply with procedural deadlines.

- Lack of LAGS quality control.
- The appearance of the so called “pocket” defence lawyers who collude with investigators⁶⁰;
- Low quality of defence lawyers’ performance when rendering LAGS was noted by clients, representatives of law-enforcement bodies, courts and defence lawyers themselves. For example, the independent SIAR experts, having examined the materials of 150 criminal cases, made the following conclusions about the quality of work by defence lawyers:

- defence lawyers are not involved in investigation (questioning of witnesses, face-to-face confrontation with witnesses, inspection on the spot, searches, investigative reconstruction, personal identification, article identification inter alia) and therefore do not make full use of the opportunities offered to them by Article 48 of the Criminal Procedure Code of the Kyrgyz Republic;

- defence lawyers are not keen to render LAGS and do it superficially and passively: out of 16 criminal cases heard, which had grounds to be recommitted, the relevant appeals were filed by defence lawyers in three cases only. The rest of the cases were recommitted on the judges’

⁵⁹ Article 14 of the International Covenant on Civil and Political Rights of 16 December 1966 (ratified on 12.01.1994)

⁶⁰ A yearbook on human rights in the Kyrgyz Republic for 2005 – Bishkek. “Uchkun”, 2006, p. 199

initiative. Out of 79 cases (52.7%) which had grounds for the alleged offences to be interpreted in a more favourable way, only 24 percent had relevant appeals filed on them by the defence lawyers.

A poll of 200 inmates serving custodial sentences revealed the following problems in the work by defence lawyers at investigative and court stages:

- The overwhelming majority of respondents (69.1%) said that defence lawyers had shown no interest in their cases;
- 39 percent of respondents said their defence lawyers had not performed any procedural actions at all;
- About one third of participants stated that their defence lawyers had not been involved in their interrogation; 50 per cent said that their defence lawyers had been involved only in some interrogations;
- The overwhelming majority of respondents (77.1%) indicated that they had not seen their defence lawyers to discuss the defence case before the hearing;
- 10.3 per cent of respondents had not seen the defence lawyers assigned to them at all;
- only 11.3 per cent of respondents were not critical of the defence lawyers' work⁶¹.

At present in the Kyrgyz Republic nobody maintains a systematic and centralized collection of information necessary for assessing the LAGS situation and improving the measures related to it, or for determining the level of public funding for LAGS. In particular, there is no information on the following:

- the number of cases in which LAGS was provided (requested);
- the number of persons who received LAGS;
- actual expenses in any one LAGS case, etc.

At present there are no concrete data about the degree of necessity regarding LAGS, the number and categories of cases in which LAGS is provided, which may reflect on planning the national budget for LAGS funding.

Considering the fact that the said problems are serious and violate the rights of the citizens and in order to provide efficient access to justice and to further the development of the institute of the Bar in the Kyrgyz Republic, a Working Group was set up by Decree of the Government of Kyrgyzstan to prepare the draft Guidelines to improve the LAGS system and to develop concrete suggestions on its implementation⁶².

The Working Group included representatives of the Ministry of Justice, the Ministry of Labour and Social Security, the Judicial Department of the Kyrgyz Republic, the Bar and non-governmental organizations.

The Working Group developed the Guidelines on improving LAGS (hereinafter – the Guidelines) which were approved by Presidential Decree⁶³.

Let us look at the key provisions of the Guidelines which suggest changes to the existing system.

There is a proposal to set up the National Council on LAGS (hereinafter – the National Council) for single-point coordination of the functioning of the LAGS system. It will be created on the basis of the law and will be a coordinating body which functions on a voluntary basis.

⁶¹ The report on assessing the quality of free legal aid provided in the Kyrgyz Republic conducted by SIAR Company.

⁶² The Order of the Government of Kyrgyzstan “On creating a Working Group to prepare the draft Guidelines aimed at improving the system of legal aid guaranteed by the state and concrete proposals on its realization of 4 February 2004, www.toktom.kg

⁶³ “The Guidelines for improving the system of legal aid guaranteed by the state”. Approved by Decree of the President of the Kyrgyz Republic of 12 October 2005 No. 457 – Newspaper “Erkin Too”, 14.10.2005.

The National Council will be answerable to the President of the Kyrgyz Republic and will be approved by him; it will comprise 11 members: representatives of legislative, executive and judicial branches of power, the Bar and public organizations. The National Council will have the right to carry out the following functions: to provide a single-point coordination for realization of LAGS; to carry out reform in the area of LAGS; to monitor the processes of realization of LAGS; to prepare reports on the National Council performance and the functioning of the LAGS system for the President and the Government of the Kyrgyz Republic; to submit draft decisions for consideration of the Government of the Kyrgyz Republic on the issues of:

- determining the criteria for eligibility of the individual for LAGS;
- the content of the tests to check the solvency of a person applying for LAGS;
- the procedure to select the providers of LAGS;
- the tariffs, and the mechanism for paying for defence lawyers' services;
- minimum requirements regarding defence lawyers' performance on rendering LAGS;
- the procedure of assessing and monitoring the performance of defence lawyers on rendering LAGS.

The functions of the executive body of the National Council will rest with the Ministry of Justice of the Kyrgyz Republic until the creation of a specialized body⁶⁴.

The authors of the Guidelines suppose that the stages of improving the LAGS system will be carried out by the Ministry of Justice of the Kyrgyz Republic in the following way:

- conducting tests to determine the eligibility of the individual for LAGS;
- putting together territorial lists of LAGS providers and effecting contracts with them, in conjunction with the oblast bodies of justice and professional organization of defence lawyers;
- assigning cases to LAGS providers and coordinating ties with law-enforcement bodies and courts in conjunction with the professional organization of defence lawyers;
- administering the mechanism for paying for the defence lawyers' services;
- monitoring the quality of defence lawyers' performance when rendering LAGS;
- investigating applications and complaints of the members of the public concerning LAGS;
- summarising the experience of providing LAGS and maintaining statistics;
- putting together the annual draft budget for LAGS in conjunction with the National Council;
- appointing coordinators in certain administrative areas;
- providing information about the functioning of the LAGS system for the public.

With these purposes in view, if there are more than 10 defence lawyers working in a particular region, the Ministry of Justice shall appoint coordinators on LAGS on the basis of an agreement. If there are fewer than 10 defence lawyers working in the region, investigators and judges will carry out the function of assigning criminal cases on LAGS on the basis of a list of defence lawyers approved by the Ministry of Justice of the Kyrgyz Republic⁶⁵.

Let us look at the mechanism of providing legal aid. Legal aid is provided by persons having the right to engage in advocacy. In every region the Ministry of Justice, through its

⁶⁴ Part 2 of "The Guidelines for improving the system of legal aid guaranteed by the state". Approved by Decree of the President of the Kyrgyz Republic of 12 October 2005 No. 457 – Newspaper "Erkin Too", 14.10.2005.

⁶⁵ Part 3 of "The Guidelines for improving the system of legal aid guaranteed by the state". Approved by Decree of the President of the Kyrgyz Republic of 12 October 2005 No. 457 – Newspaper "Erkin Too", 14.10.2005.

coordinators, shall put together lists of defence lawyers willing to render LAGS. The lists shall be forwarded to the appropriate bodies of investigation and court.

An investigator or a judge must explain to an individual his/her right to LAGS and furnish him/her with a list of defence lawyers. If an individual needs LAGS he/she will fill in a special form – an application for LAGS. The individual should have the right to choose a defence lawyer from the list. The defence lawyer who arrives on request of a client shall conclude an agreement with the client about providing LAGS to him/her.

After the case is finished the defence lawyer shall submit an application and the agreement with the client to the Oblast Board of Justice for payment. The form of the application should have a column for notes by the investigator/judge confirming the involvement of the defence lawyer in the investigative or court proceedings.

In cases with mandatory involvement of the defender, in conformity with requirements of the Criminal Procedure Code of the Kyrgyz Republic, an individual should also have the right to choose a defence lawyer from the list available to him/her, which is approved by the Ministry of Justice of the Kyrgyz Republic. If he/she fails to choose or refuses the defence lawyer, the investigator and/or the judge shall appoint a defence lawyer from the above-mentioned list. Refusal of the services of the defence lawyer should take place only in the presence of the defence lawyer who must explain to the individual his/her right to LAGS. Payment for the services of the defence lawyer is based on a statement/ruling by the investigator or the judge, with an indication of the time spent and the volume of work performed by the defence lawyer⁶⁶.

It should be noted that the Guidelines radically change the system of providing LAGS in Kyrgyzstan and offer a more efficient mechanism allowing the provision of such aid to the public, when defence lawyers render quality services. In order to realize the provisions of the Guidelines a Working Group was formed by Order of the President of the Kyrgyz Republic to develop the draft laws on LAGS and to introduce relevant amendments into the statutory acts of the Kyrgyz Republic⁶⁷. The Working Group included representatives of the Ministry of Justice of the Kyrgyz Republic, the Ministry of Labour and Social security, the Ministry of Economics and Finances, representatives of academic circles, the Bar and non-governmental organizations. The Working Group was led by the Head of the Department of Legal Policy of the Presidential Administration of the Kyrgyz Republic.

The Working Group prepared a draft Law “On legal aid guaranteed by the state” and amendments to the Criminal Procedure Code. At the moment this draft Law is being considered for approval by Ministries and agencies of Kyrgyzstan.

Let us look only at key points of the draft Law which detail and develop further the provisions of the Guidelines.

LAGS shall be provided in the form of consultations, putting together and submitting documents of a legal nature, protecting the rights and representing the legitimate interests of the individual during the investigative and court proceedings, in conformity with Criminal Procedure legislation.

The right to LAGS shall be granted to the citizens of the Kyrgyz Republic whose annual income does not exceed the level of a minimum income established by the Government of the Kyrgyz Republic. In addition this right, without considering the level of annual income, is available to:

- minors;
- pensioners;
- persons of disability groups 1 and 2;

⁶⁶ Part 4 of “The Guidelines for improving the system of legal aid guaranteed by the state”. Approved by Decree of the President of the Kyrgyz Republic of 12 October 2005 No. 457 – Newspaper “Erkin Too”, 14.10.2005.

⁶⁷ The Order of the President of the Kyrgyz Republic of 2 December 2005 No. 431. www.toktom.kg

- individuals who have difficulty in exercising on their own the right to defence available to them due to substantial disorders of speech, hearing, eyesight, serious lasting disease, or mental deficiency, mental retardation, other mental disorders or physical deficiency;
- those who are suspected, accused, defendants, acquitted or convicted of committing especially serious crimes;
- unemployed, registered in job centres;
- servicemen on compulsory military service ⁶⁸.

The bodies involved in administering the system of LAGS in conformity with the draft law are:

- The National Council on LAGS under the President of the Kyrgyz Republic;
- The Ministry of Justice of the Kyrgyz Republic;
- The professional organization of defence lawyers.

It should be noted that realization of this draft Law presupposes that Kyrgyzstan will create a professional organization of defence lawyers with the following functions:

- participation in developing the criteria according to which defence lawyers will be selected for the National Register to provide legal aid guaranteed by the state, in developing tariffs and terms of payment for defence lawyers' services;
- involvement in monitoring the performance of defence lawyers providing legal aid guaranteed by the state;
- consideration of petitions and complaints about defence lawyers' breaches of the rules of their professional ethics;
- other functions.

It is noteworthy that defence lawyers of the Kyrgyz Republic who have been placed on the National Register and who have concluded an agreement on rendering legal aid with the Ministry of Justice of the Kyrgyz Republic can enjoy the right to provide LAGS.

To be put on the LAGS National Register a candidate shall submit an application to the National Council. The National Council shall select defence lawyers to be placed on the Register to provide legal aid guaranteed by the state⁶⁹.

The Ministry of Justice can apply the following measures to defence lawyers who violate the requirements of the draft Law under consideration:

- warning;
- suspension of a defence lawyer from providing legal aid guaranteed by the state for a period of one to three months;
- dissolution of the agreement on providing legal aid guaranteed by the state and expulsion from the National Register on rendering legal aid guaranteed by the state⁷⁰.

Financing of LAGS shall be implemented out of the funds of the national budget presented on a separate line. The volume and procedure of LAGS financing shall be determined by the Government of the Kyrgyz Republic.

The Government of the Kyrgyz Republic shall approve the tariffs and procedure of payment for defence lawyers' services on rendering LAGS. When determining the tariffs for paying for defence lawyers' services on LAGS cases the following criteria shall be taken into consideration:

- guaranteed payment for taking the case;
- the category of the case (the degree of seriousness of the crime);

⁶⁸ Article 2 of the draft Law "On legal aid guaranteed by the state".

⁶⁹ Article 19 of the draft Law "On legal aid guaranteed by the state".

⁷⁰ Article 22 of the draft Law "On legal aid guaranteed by the state".

- the complexity of the case (multi-count cases);
- the stage of the proceedings.

The defence lawyers will be compensated for their travel, subsistence and other expenses related to rendering LAGS in the amount and according to the procedure established by the legislation of the Kyrgyz Republic.

Payment for defence lawyers' services shall be carried out by the Ministry of Justice of the Kyrgyz Republic⁷¹.

Discussing the reform of the Bar and LAGS provision, it should be noted that they are closely interrelated. The developed Guidelines have been officially approved. It is expected that in the near future laws will be adopted to realize the provisions of the Guidelines and to determine a clear working procedure for the institutions of the Bar and the provision of LAGS. One important aspect of the reforms is the creation of a single professional organization of defence lawyers, which will have responsibility for a number of functions regarding permission to engage in the profession and taking disciplinary action against defence lawyers, and will take an active part in the development of the institution of rendering LAGS. Provided the described reforms are implemented, the structure of the defence lawyers' work and the role of state bodies responsible for providing the public with qualified legal aid will change dramatically in Kyrgyzstan.

All the Guidelines and draft Laws presented here have been many times discussed at round tables and conferences with the defence lawyers' community, academic lawyers, representatives of state bodies and non-governmental organizations and received positive responses and recommendations. A number of recommendations and proposals made by the participants of these discussions were positively accepted by the members of the Working Groups and included in the Guidelines and draft Laws.

⁷¹ Article 2 of the draft Law "On legal aid guaranteed by the state".