

The Birth of a New Advokatura in the Kyrgyz Republic

ICJ mission report

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I. Introduction

After many years of discussion on draft legislation to reform and regulate the legal profession, a new bar association, “Advokatura”, was established in the Kyrgyz Republic in 2015. The establishment of the new bar association ends a long period during which the legal profession was subject to minimal regulation and was without self-governing institutions. This was in a context where lawyers face many challenges in carrying out their professional duties to defend the rights of their clients, including obstruction of their work.

Lawyers play an essential role in any legal system in upholding the rule of law and protecting human rights; therefore the creation of the new Advokatura is as important for the whole legal system as it is for the legal profession itself. International standards on the role of lawyers recognise that “adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession.”¹ They also recognise the importance of a strong and independent bar association, which can defend the rights of and uphold high ethical standards within the profession.

This report analyses the main challenges facing the legal profession and the institutions of the new Advokatura at this crucial juncture. It does not provide a comprehensive analysis of all aspects of the legal framework and outstanding problems of legal practice in the Kyrgyz Republic, which would require a larger scale examination and analysis than is possible within the scope of this report. Rather, the purpose of the report is to set out the ICJ’s recommendations on the issues that should be addressed as a matter of priority in order to lay the foundations for a strong Kyrgyz legal profession based on international law and standards on the independence of lawyers including the UN Basic Principles on the Role of Lawyers.²

The ICJ mission in 2015

This report is the outcome of an ICJ mission to the Kyrgyz Republic, which took place from 21 to 25 September 2015, to assess, examine and analyze the reform in terms of the functioning of the legal profession. An ICJ team met with various representatives of the Advokatura, including members of the Council of the Advokatura and the Advokatura’s constituent bodies, such as the Ethics Commission, the Committee to Protect the Rights of Advocates and the Legislation Committee of Advokatura. The ICJ, in cooperation with the Training Centre of Advokatura, held a round table discussion with independent lawyers who provided an important insight into the issues examined. The ICJ also held meetings with members of the Prosecutor’s Office and the Judiciary, and benefited from the presentation of a representative of the Ministry of Justice at the round table.

The range of issues discussed during those various meetings included the process of establishment of the Advokatura; selection of the members of the Advokatura, to its newly created bodies; and the operation and procedures of these bodies, to ensure the protection of professional ethics and protection of human rights of lawyers. The mission focussed on issues of organization of the profession, lawyers’ rights, privileges, security and other issues, which deserve further investigation.

The mission included Jeroen Brouwer, former president of the Dutch Bar Association, Róisín Pillay, Director of the ICJ Europe programme and Temur Shakirov, Legal Adviser of the ICJ Europe Programme. Almaza Osmanova, Chair of the Central Asia League of Lawyers, supported, advised and assisted the ICJ mission. Irina Kuznetsova undertook legal research on the legislative framework and legislative developments in the Kyrgyz Republic, which informed the mission. The ICJ is grateful to the leadership

¹ *Basic Principles on the Role of Lawyers*, UN Doc. A/CONF.144/28/Rev. 1, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August–7 September, 1990, Preamble; Recommendation No. R(2000)21 of the Committee of Ministers to Member states on the freedom of exercise of the profession of lawyer, Preamble.

² *Ibid.*

of the Advokatura, other partners and State and non-State stakeholders who facilitated and informed the mission. Meetings with international organizations including the American Bar Association (ABA), Open Society Foundations (OSF), Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), European Union (EU) and United Nations Development Programme (UNDP) provided an important perspective in regard to the reform. All these views were taken into account in the preparation of the present report. The project was supported by a grant from the Open Society Foundations.

The ICJ's previous engagement

Since 2010, the ICJ has worked to support the independence of lawyers, and of the legal profession as a whole, in Central Asia, including in the Kyrgyz Republic. In 2013, the ICJ published a report, 'The Independence of the Legal Profession in Central Asia', which analysed the situation of the legal profession in the Kyrgyz Republic, as well as in the other countries of Central Asia. It recommended then that: "In states where a unified structure of lawyers' associations does not already exist, steps should be taken to establish such a structure, that is independent of government and other executive bodies, and is mandated, empowered and adequately resourced to ensure the quality, integrity and accountability of the profession."³ The ICJ therefore welcomed the adoption of the new law and the creation of the Advokatura as a unified and independent association of lawyers as the first step in the longer-term task of establishing a strong and independent legal profession.

The Report

The report consists of six chapters. The introduction provides background information and a brief context that existed prior to the reform introduced by the Advokatura in the Kyrgyz Republic. Chapter II provides a brief historical background to the establishment of the new bar association; Chapter III describes the organizational structure of the Advokatura and the legal framework related to it; Chapter IV lays out some of the main issues of access to the profession; Chapter V is dedicated to the issues of ethics and accountability of lawyers; and Chapter VI provides conclusions and recommendations, which are based on international law and standards as well as the ICJ's comparative perspective and expertise.

³ ICJ Report 2013, *Independence of the Legal Profession in Central Asia*, <http://www.icj.org/new-icj-report-highlights-the-challenges-faced-by-the-legal-profession-in-central-asia/>, p. 84.

II. Background: The establishment of the bar association of the Kyrgyz Republic

Historical background

The Bar Association of the Kyrgyz Republic, established in the Soviet era, was significantly reformed following the break-up of the USSR. In 1999, as a result of a reform, legal representation was equated to “entrepreneurial activity”. Following this change in the law, public discussions reflected the need for further reforms.⁴ In 2004, as a result of negotiations involving the Ministry of Justice, members of Parliament, the legal profession and representatives of the international community, a new law “*On Advokatura and Lawyers’ Activity*” was drafted. The draft law was nearly enacted twice, in 2005 and in 2010, but the revolutionary change of governments in each of those years stalled the process, despite the urgent need for reform of the legal profession. While countries elsewhere in the Commonwealth of Independent States (CIS) region had structures that governed the legal profession, the Kyrgyz Republic remained for several years an anomaly in that it lacked a unified bar association⁵ or other institutions to regulate the profession.⁶

Regulation of the legal profession, a role that should under international standards belong to the profession itself, was carried out by the Ministry of Justice directly until 2015. This meant that the qualification and disciplinary body of the Ministry of Justice—the Qualification Commission—decided on the matters of qualification of lawyers and disciplinary measures. No universal Code of Ethics to govern the legal profession existed at this time.

In its 2012 report, “The Independence of the Legal Profession in Central Asia”, the ICJ noted that the law did not establish or recognize a unified organization of lawyers nor an independent self-governing body, and that this meant that functions that should normally be carried out independently by the legal profession, such as disciplinary action, were carried out directly by the Ministry of Justice.⁷ The ICJ therefore welcomed moves towards the creation of a unified bar association, but emphasized that: “such an association must have as its primary goal the maintenance of the independence of the profession and action in defence of individual lawyers. Safeguards must therefore be in place to protect against undue influence of the association by outside interests, and to ensure its democratic governance by the members of the legal profession.”⁸

In February 2012, the Parliamentary Committee on Constitutional Legislation, State Structure and Human Rights approved the draft law in the second reading. The draft law was not brought to the Parliament for a vote that year and was not placed again on the Committee’s agenda until June 2014; it was then approved in second and third readings. The Parliament finally adopted the bill in late June 2014, and President Almazbek Atambayev signed it into law in mid-July.⁹ The new law established, for the first time, a unified legal profession, under an independent association of lawyers—named in the law as “Advokatura”.¹⁰ Thus a statutory framework was created for an independent, self-governing and unified nationwide profession, with the Advokatura, an association of lawyers, in charge of the qualification process, in compliance with the principles of integrity and transparency; implementation of standards of professional ethics; and professional

⁴ See *Background statement attached to the Draft Law of the Kyrgyz Republic “On Advokatura of the Kyrgyz Republic and lawyers’ activity”*.

⁵ Until 2015, in Tajikistan, two parallel legal professions existed, one of which was independent. See e.g. *ICJ Report, Independence of the Legal Profession in Central Asia, op. cit.*

⁶ Though there was no single organization to which lawyers belonged there were a number of NGOs of which some lawyers were members. This was in line with legislation under which only organizations without compulsory membership could be established in the country.

⁷ *ICJ Report, Independence of the Legal Profession in Central Asia, op. cit.*, p. 13.

⁸ *Ibid.*, p. 14.

⁹ See *Legal Profession Reform Index for the Kyrgyz Republic*, American Bar Association, July 2014, <http://www.americanbar.org/content/dam/aba/directories/roli/kyrgyzstan/roli-kyrgyz-republic-legal-profession-reform-index-2014.authcheckdam.pdf>, p. 6.

¹⁰ M. Madykov, *Advocate and legal profession in the Kyrgyz Republic: incomplete reform*.

training of its members.¹¹ However, this new law introduced a new type of an organization, a public association with mandatory membership, a type of legal entity which had not been previously provided for in Kyrgyz law. The statutory framework introduced was not sufficient to support this legal development, as will be described later in this report.

The First Founding Conference of Lawyers of the Kyrgyz Republic established the Advokatura on 26 November 2014. The Conference also approved the Charter of the Advokatura, established its governing bodies and adopted the Code of Ethics of Lawyers, applicable to all members of the Advokatura, something that had not existed before. Pursuant to the decision of the Conference of 26 November 2014, the Chuy-Bishkek Department of Justice registered the Advokatura of the Kyrgyz Republic on 26 December 2014, in accordance with the established procedure for registering public associations.

Under the law "*On Advokatura of the Kyrgyz Republic and Lawyers' Activity*", all lawyers already practicing in the Kyrgyz Republic preserved their status of a lawyer. On 26 January 2015, the Council of Lawyers of Advokatura of the Kyrgyz Republic opened registration of admissions of lawyers to the Advokatura¹² of the Kyrgyz Republic.¹³

The creation of a unified profession and the automatic preservation of the status of lawyer, for those who already had licenses to practice, did not mean, however, that every lawyer automatically joined the Advokatura. Lawyers were required to file an application to join the Association within one month of its registration, which took place on 26 December 2014. One month later, however, only a very small number of lawyers had actually joined the Advokatura. Their reasons for not joining varied but included a lack of knowledge that this institution was created and, for some, a principled refusal to join it. It would be fair to note that one month was too short a period for all lawyers across the country to register. The ICJ understands that information about the registration process was disseminated widely and genuine attempts were made to alert lawyers of the need to join the profession within a rather brief period of time. Despite this, the Advokatura needed to prolong the deadline for filing application to join it twice, first to the end of February 2015 and then to the end of March 2015, when registration was finally closed. By the end of September 2015, the time of the mission, only about 1,800 of 3,000 licensed lawyers had signed up to join the Advokatura. The number was thought to be reasonable and reflected the fact that many of those with a licence to practice law who had not joined the Advokatura had deliberately not done so for reasons including that they had ceased their practice at the time of the re-registration; were working abroad or working in other professions; had passed away; or simply did not want to join the new Advokatura as a matter of principle. It is unclear how many fall into this latter category and if their numbers are significant. However, cases were reported of lawyers who had not registered in time and who were prevented from visiting their clients or entering courts when they could not produce an ID showing they belonged to the new Advokatura.

Overcoming mistrust and inertia

Even before the creation of a unified profession in the Kyrgyz Republic, the ICJ was aware of concerns amongst Kyrgyz lawyers about the establishment of one organization to which all lawyers must belong. These concerns were reflected in the ICJ report of 2012, which noted that: "[a] range of sources have expressed concern to the ICJ about the creation, under the proposed law, of a single association, to which all lawyers would be required to belong, on the basis that the association could be used by the authorities or by powerful private interests to interfere with lawyer's independent exercise of their profession."¹⁴

¹¹ *Legal Profession Reform Index for the Kyrgyz Republic, op. cit.*, p. 7.

¹² Prior to the new Law "*On Advokatura*", lawyers were not required to belong to or be otherwise associated with any organization to practice law. See: *ICJ Report, Independence of the Legal Profession in Central Asia, op. cit.*, p. 13.

¹³ G. Kozhomova, *Today's situation and reform of lawyers' activity in the Kyrgyz Republic*. <http://advokatura.kg/index.php/2015-01-24-14-40-29/2015-01-24-15-01-33/63-2015-04-01-17-20-42>.

¹⁴ *ICJ Report, Independence of the Legal Profession in Central Asia, op. cit.*, p. 14.

Currently, at this early stage after the establishment of the new Advokatura, there is a certain level of scepticism on the part of ordinary lawyers, and a lack of full trust in the Advokatura and its bodies. This may be partly explained by low expectations and a lack of trust in bureaucratic structures. While this scepticism from Kyrgyz lawyers could be seen as an obstacle to their fruitful engagement with the Advokatura, a certain degree of mistrust may also serve as an effective check against corruption or poor management of the organization, particularly when this takes the shape of a heightened level of scrutiny and analysis. In a seminar to discuss the new structures, organized by the ICJ during the mission, lawyers were eager to engage with representatives of the new bodies of the Advokatura. It is also notable that the leaders of the Advokatura are close to their colleagues in ranks and have a good understanding of the real state of affairs within the profession.

Many lawyers who practiced law under the old system have a somewhat cautious attitude to the new structures of the Advokatura, finding it difficult to understand the need for the reform of their profession. There is scepticism as to what a unified bar association could offer to lawyers that could not be achieved without it. Those lawyers see the new organization as another bureaucracy that imposes on them certain obligations such as paying fees, conducting regular compulsory training, and oversees ethical standards of their work. Such lawyers argue that they do not need a mechanism to control them or say what they should or should not do. Some also mistrust the new professional structures as having the potential to impede lawyers' work and interfere with their diligent and principled defence of clients.

Synchronization of laws to bring them in line with other legislation

Whether the legal framework of the Kyrgyz Republic allowed for the creation of a bar association as a public organization with mandatory membership became one of the most debated issues of the reform. According to the law of the Kyrgyz Republic: "A non-commercial organization is a voluntary self-governing organization established by physical and/or legal persons on the basis of unity of their interests [...]"¹⁵ The law therefore did not expressly provide a basis for the creation of non-commercial public organizations with membership that was mandatory rather than voluntary. On the constitutional level, such organizations are also not provided for where it is stated that "Political parties, labour unions and other public associations may be established by citizens on the basis of a free-will [...]"¹⁶ and that "everyone has freedom of association".¹⁷ It was therefore conceptually and legally difficult to reconcile the idea of a compulsory membership of a bar association with the limitations of the existing legal framework.

These legal uncertainties prompted a constitutional action against the newly-enacted law "*On Advokatura of the Kyrgyz Republic and Lawyers' Activity*". A number of lawyers brought a case before the Constitutional Chamber of the Supreme Court challenging the reform. In particular, the lawyers challenged the mandatory character of membership of the bar association; disciplinary measures imposed by the Advokatura for violation of the Code of Ethics or non-payment of membership fees as being contrary to the right of freedom of association; and the requirement to become members of the Advokatura within one month as limiting their rights to a greater extent than is provided for by the Constitution.¹⁸ The Constitutional Chamber noted that "The Advokatura due to its particular importance is vested by the Constitution with an exceptional public legal status, which in essence, removes it from the from ordinary citizens' associations."¹⁹ It decided that "only under the condition of legal certainty, clarity, unambiguousness and consistency in the system of legal regulation of advocates' activity is it possible to reach a full resolution of the constitutional tasks, meanwhile it is important to follow the principle of a proportionate State interference on the one hand, evaluation of the real capacities

¹⁵ The Law of the Kyrgyz Republic of 15 October 1999 No. 111 "*On Non-Commercial Organizations*", article 2.

¹⁶ The Constitution of the Kyrgyz Republic, article 4.

¹⁷ *Ibid.*, article 35.

¹⁸ The Decision of the Constitutional Chamber of the Supreme Court of 11 March 2015, "*On Checking the constitutionality of certain normative provisions of the Law of the Kyrgyz Republic 'On Advokatura of the Kyrgyz Republic and lawyers' activity'*", <http://advokatura.kg/Documents/O%20проверке%20конституционности%20отдельных%20нормативных%20положений.docx>.

¹⁹ *Ibid.*

of the organization itself as well as its institutional capabilities to carry out certain functions, without violation of the principle of independence and self-sufficiency of lawyers, on the other.”²⁰

Apart from the matter of principle as to whether the Constitution or the law allowed for mandatory membership public associations to exist at all, it still remains unclear how such an organization fits within the legislative framework. The ICJ mission encountered a lot of uncertainty as to what “organizational-legal form” associations of lawyers belong to. The problem emerged from the old system’s registration of lawyers as entrepreneurs (see historical background above). It was the impression of the mission that this lack of clarity pointed to an objective problem that exists in the law. The situation where lawyers, *en masse*, do not have certainty as to what legal regime applies to their bar association still remains to be fully addressed. Resolving this uncertainty will also enable lawyers to fully understand further consequences of the adoption of the law, including the applicable taxation regime and the particular status of lawyers provided for by the national legal framework. It also suggests that further harmonization of laws should take place, perhaps including legislation to give the Advokatura a special status as a *sui generis* legal form of incorporation. The Legislation Committee of the Advokatura, which was established by law, would be well placed to make proposals in this regard. The Committee plays a crucial role in analyzing draft laws and proposing the legislative amendments necessary for harmonizing laws affecting the legal profession. It was reported that proposals are being drafted by a specialised working group of the Legislation Committee of the Council of Advokatura for specific legislation that would take account of the legal status of the Advokatura as a special organization. This approach appears *prima facie* to be appropriate.

²⁰ *Ibid.*

III. Organization and governance of advokatura

International standards on the role and independence of bar associations

International standards on the independence of lawyers recognize the role of self-governing institutions of the legal profession, such as bar associations, as being of utmost importance. The UN Basic Principles on the Role of Lawyers assert that professional associations of lawyers play “a vital role in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest.”²¹ Under international law and standards, lawyers have a right to form professional associations. The UN Basic Principles on the Role of Lawyers guarantee that “[l]awyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity.”²²

The UN Basic Principles, in common with other international standards on the role of lawyers, require that bar associations must be independent from government and other executive and private interests. Such independence must be protected in both law and in practice. In particular, the “executive body of the professional associations of lawyers shall be elected by its members and shall exercise its functions without external interference.”²³

The independence of bar associations from government does not, however, mean that they should not cooperate with governments. The UN Basic Principles recognize that such cooperation will often be necessary to ensure effective and equal access to legal services and that lawyers are able to advise and assist their clients in accordance with the law and recognized professional standards and ethics, without improper interference.²⁴

In order to ensure the independent and effective functioning of the legal profession, and to truly “protect the professional integrity” of lawyers, self-governing professional associations of lawyers must also have sufficient competencies and powers relating to the legal profession to be able to protect and strengthen it. These include powers in relation to the qualification and continuing education of lawyers, and competence in relation to disciplinary proceedings against lawyers.²⁵

Advokatura of the Kyrgyz Republic

The Law “*On Advokatura of the Kyrgyz Republic and Lawyers’ Activity*” defines the Advokatura as a self-governed professional community of lawyers that requires membership of all lawyers of the Kyrgyz Republic, which is established on the basis of their common professional interests. The Advokatura should express and protect the interests of lawyers, facilitate their professional development and facilitate the promotion of lawyers’ work.²⁶ It operates pursuant to the Law “*On Advokatura of the Kyrgyz Republic and Lawyers’ Activity*” and the *Advokatura Charter*.²⁷ The law defines the Advokatura as an “institute” of civil society.²⁸ It is a non-profit legal entity with an independent form of incorporation. It does not aim to make a profit and cannot establish or take part in commercial entities.²⁹ The principal objectives of the Advokatura are: 1) develop-

²¹ *Basic Principles on the Role of Lawyers*, *op. cit.*, Preamble.

²² *Ibid.*, Principle 24.

²³ *Ibid.*, Principle 24. See also *Draft Universal Declaration on the Independence of Justice (‘Singhvi Declaration’)*, prepared by Dr L. V. Singhvi, UN Special Rapporteur on the Study on the Independence of the Judiciary, para. 97.

²⁴ *Basic Principles on the Role of Lawyers*, *op. cit.*, Principle 25.

²⁵ *Singhvi Declaration*, para. 99; *Basic Principles on the Role of Lawyers*, Principle 24.

²⁶ See Law of the Kyrgyz Republic No. 135 of 14 July 2014 “*On Advokatura of the Kyrgyz Republic and lawyers’ activity*”, section 2(1).

²⁷ *Ibid.*, article 2(2).

²⁸ *Ibid.*, article 2(2).

²⁹ *Ibid.*, article 2(3).

ment of the Advokatura and lawyers' activity; 2) ensuring professional quality of legal representation; 3) representing lawyers and defending their rights and legitimate interests; and 4) improving qualifications of lawyers.³⁰

Under the law, the Advokatura exercises the following functions, among others: consolidating lawyers into one professional association and coordinating the activities of the "Territorial" (Regional) Advokaturas; promoting recognition, respect and protection of human rights and freedoms; defending the legitimate interests, honour and dignity of lawyers and their social and professional rights; promoting continuing education of lawyers and developing guidance for training and retraining of lawyers and assistant lawyers; outlining common principles and standards of professional ethics applicable to lawyers and the operation of the Advokatura; representing lawyers before municipal and public authorities; and establishing the procedure for being admitted to the Advokatura.³¹

Since its establishment on 26 December 2014, a number of standards and procedures of the Advokatura have been adopted. These include such key documents as the Charter of Advokatura of the Kyrgyz Republic, the Code of Professional Ethics of Lawyers of the Kyrgyz Republic, Regulations on the Ethics Commission of Advokatura of the Kyrgyz Republic, and the Strategic Plan for 2015–2017. The documents have been made available to the lawyers' community through online and paper publications.

Territorial Advokaturas

The Advokatura has regional or, according to the law, "territorial" affiliates³² incorporated as its branches:³³ these are the Bishkek City Advokatura, Osh City Advokatura, Batken Region Advokatura, Jalal-Abad Region Advokatura, Issyk-Kul Region Advokatura, Naryn Region Advokatura, Osh Region Advokatura, Talas Region Advokatura, and Chuy Region Advokatura. The Territorial Advokatura are branches of the Advokatura of the Kyrgyz Republic and are not regarded as separate legal entities by the law of the Kyrgyz Republic; they operate within the powers conferred on them by the national Advokatura.³⁴ Territorial Advokatura operate on the basis of the Charter of the Kyrgyz Territorial Advokatura and the Regulation approved by the Council of Lawyers.³⁵ At the same time, the Territorial Advokatura operate on the basis of principles of financial self-sufficiency.³⁶

According to the law, the objectives of the Territorial Advokatura include: representing and defending the rights and legitimate interests, honour, dignity and good name of lawyers before public, law-enforcement, judicial and other bodies; contributing to legal, social, financial, professional and personal security of the Advokatura members; and organizing the provision of qualified legal representation by lawyers to individuals and legal entities for the purpose of defending their rights, freedoms and legitimate interests, as well as facilitating their access to justice.³⁷

The law makes a relatively clear distinction between the functions of central and territorial advokaturas. According to the Charter, membership fees are paid to territorial advokaturas, rather than to the Advokatura of the Kyrgyz Republic.³⁸ However, it was reported to the ICJ that so far this procedure has not been followed and the fees are being paid to the Council of the Advokatura of the Kyrgyz Republic. This may be attributed to the early stages of the development of the Advokatura and it remains to be seen how such allocations of funds will be distributed in the future.

³⁰ See the *Charter of the Advokatura of the Kyrgyz Republic*, *op. cit.*, para. 3.1.

³¹ For the full list of functions under the Charter see: *Charter of Advokatura of the Kyrgyz Republic*, para. 3.3.

³² As of the date of this Background Report (June–July 2015), effort was made to establish local affiliates of Advokatura in every region and city of regional subordination of the Republic.

³³ *Charter of Advokatura of the Kyrgyz Republic*, *op. cit.*, para 6.1.

³⁴ See *Standard Regulation on the Territorial Advokatura in the Kyrgyz Republic*, para. 2.1.

³⁵ *Charter of Advokatura of the Kyrgyz Republic*, *op. cit.*, para. 6.2.

³⁶ *Standard Regulation on the Territorial Advokatura in the Kyrgyz Republic*, *op. cit.*, para. 1.7.

³⁷ *Ibid.*, para. 3.1.

³⁸ *Charter of Advokatura of the Kyrgyz Republic*, *op. cit.*, para. 7.5.

Structure and Bodies of Advokatura

The Advokatura of the Kyrgyz Republic consists of several bodies, including: the Conference of Lawyers, The Council of Advokatura, the Ethics Commission of the Advokatura, the Auditing Commission and the Lawyers' Training Centre. The Advokatura also created a specialised body to protect its members against various types of abuse and violations—the Committee on the Rights of Lawyers; this was not initially mentioned in the law but created later following the adoption by the Council of regulations on the Committee.

a) Conference of Lawyers

The Conference of Lawyers is the highest governing body of the Advokatura.³⁹ It is convened every three years, pursuant to the decision of the Council of Lawyers which determines the date, time and place of the Conference.⁴⁰ An Extraordinary Conference of Lawyers is convened pursuant to the decision of the Council of Lawyers, or on the initiative of at least one third of the Advokatura members.⁴¹ The quorum is met if at least one half of delegates, elected from among all members of the Advokatura, are present.⁴² The Conference has broad competences which allows it to self-regulate the profession including through adoption of the Charter, forming the Council of the Advokatura; adoption of the Code of Professional Ethics of Lawyers; election of members of the Commission on Ethics and of the Auditing Commission; determining the amount of fees paid by territorial advokaturas; and determining the amount of remuneration paid to the President, Deputy President and members of the Council of Lawyers.⁴³

b) Council of Lawyers

The Council of Lawyers is the executive body of the Advokatura. It consists of up to nine members elected, by secret ballot from members of the Advokatura at the Conference of Lawyers, for a term of three years.⁴⁴ The form of ballot is approved by the Organizing Committee of the Council of Lawyers.⁴⁵ The legal framework established allows the Council of Lawyers to have rather broad powers, sufficient to ensure self-regulation of the profession. Among other things it carries out such functions as developing and approving the Rules and Procedures of the Council of Lawyers; approving regulations of local affiliates for the purpose of coordinating their activities; determining and approving the amount of membership fees paid by lawyers; approving the procedure for paying membership fees; determining the budget of the Advokatura; defending social and professional rights of lawyers; submitting proposals to the Ministry of Justice to suspend or annul legal practitioners' licenses, pursuant to decisions made by the Commission on Ethics of Advokatura; contributing to expert appraisal and drafting laws and regulations; contributing to establishing the procedure for taking a qualification exam, evaluating the skills of candidate lawyers and the list of exam questions; summarizing disciplinary practice and drafting recommendations; appointing and dismissing the Director of the Lawyers Training Centre under the Advokatura; approving the curriculum and standard guidelines for professional training and retraining of lawyers and assistant lawyers, and organizing such training; and nominating candidates to the Qualification Commission.⁴⁶

It has been reported to the ICJ that discussions are underway about a possibility to increase the term of membership of the Council of Advokatura from three years, as is currently prescribed by law, to five or even seven years. The reasoning suggested for such a change is that a three year period does not permit enough time to achieve sufficient results. While understanding the challenges the Council faces in developing a new organization within a short term of office, the ICJ is concerned that these attempts

³⁹ Law of the Kyrgyz Republic "On Advokatura of the Kyrgyz Republic and lawyers' activity", *op. cit.*, article 6(1).

⁴⁰ *Ibid.*, article 6(2).

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Charter of Advokatura of the Kyrgyz Republic*, *op. cit.*, para. 5.2.2.

⁴⁴ Law of the Kyrgyz Republic "On Advokatura of the Kyrgyz Republic and lawyers' activity", *op. cit.*, article 7(1).

⁴⁵ *Charter of Advokatura of the Kyrgyz Republic*, *op. cit.*, para. 5.2.9.

⁴⁶ *Charter of Advokatura of the Kyrgyz Republic*, *op. cit.*, para. 5.3.2.

further undermine efforts to establish the trust of the members of the Advokatura, which may be gained including through constant and genuine rotation of members of the various bodies of the Advokatura.

c) The Qualification Commission

The law does not guarantee an independent status of the Qualification Commission, the main qualification body of the Advokatura. The Qualification Commission is established under the Ministry of Justice of the Kyrgyz Republic.⁴⁷ The Qualification Commission consists of seven members: four representatives of the Advokatura, with at least five years of legal practice experience, nominated by the Council of Lawyers and three representatives of the Ministry of Justice.⁴⁸

The Qualification Commission has the following functions: holding a qualification exam to obtain a license to practice law;⁴⁹ and, deciding whether a candidate should be allowed to take a qualification exam or not, following a verification of documents.⁵⁰ Chapter IV describes the procedure for access to the profession in greater detail.

d) Commission on Ethics of the Advokatura

The Commission on Ethics is a collective disciplinary body of the Advokatura of the Kyrgyz Republic ("the Commission") responsible for examination of applications, complaints and requests of individuals and/or legal entities, proposals of law-enforcement bodies and interim decisions (orders) of courts (collectively, "applications") to apply disciplinary measures concerning violations of professional ethics by lawyers.⁵¹

The Commission is established for a term of three years. It consists of nine members, who should have at least five years of legal practice experience.⁵² Members of the Commission are elected by ballot⁵³ and the President of the Commission is elected from among its members for the three-year term. The Commission has a quorum if at least two thirds of its members attend.⁵⁴ It is convened by the President when necessary but at least four times a year.⁵⁵

Functions of the Commission include: preparation of examination of applications; decision on the institution of disciplinary proceedings; familiarization of lawyers with applications against them and documents attached thereto, as well as obtaining a written explanatory statement from the lawyer; accepting any factual information or evidence produced by the lawyer or individuals who lodged the respective complaints; obtaining information related to the inquiry from municipal or public authorities or companies, regardless of their form of incorporation; examination of the materials of pre-trial and trial proceedings related to the subject of the inquiry, in compliance with the confidentiality requirements (where applicable); and taking a reasoned decision following the disciplinary proceedings.⁵⁶

After having examined the application or complaint, the Commission makes its decision.⁵⁷ The decision of the Commission is taken, by ballot, by simple majority of attending members. The minutes of the meeting are signed by the President of the Commission and its Secretary.⁵⁸ The Regulation on the Commission should be approved by the Council of Lawyers.⁵⁹

⁴⁷ Law of the Kyrgyz Republic "On Advokatura of the Kyrgyz Republic and lawyers' activity", *op. cit.*, article 21(1).

⁴⁸ *Ibid.*, article 21(2).

⁴⁹ *Ibid.*, article 21(1).

⁵⁰ *Ibid.*, article 20(2).

⁵¹ See the Regulation on the Commission on Ethics of Advokatura of the Kyrgyz Republic, *op. cit.*, para. 1.1.

⁵² Law of the Kyrgyz Republic "On Advokatura of the Kyrgyz Republic and lawyers' activity", *op. cit.*, article 8(1).

⁵³ Charter of Advokatura of the Kyrgyz Republic, *op. cit.*, para. 5.2.9.

⁵⁴ Law of the Kyrgyz Republic "On Advokatura of the Kyrgyz Republic and lawyers' activity", *op. cit.*, article 8(1).

⁵⁵ *Ibid.*, article 8(3).

⁵⁶ Regulation on the Commission on Ethics of Advokatura of the Kyrgyz Republic, *op. cit.*, para. 2.1.

⁵⁷ Law of the Kyrgyz Republic "On Advokatura of the Kyrgyz Republic and lawyers' activity", *op. cit.*, article 8(4); Regulation on the Commission on Ethics of Advokatura of the Kyrgyz Republic, *op. cit.*, para. 1.4.

⁵⁸ Law of the Kyrgyz Republic "On Advokatura of the Kyrgyz Republic and lawyers' activity", *op. cit.*, para. 8(5).

⁵⁹ *Ibid.*, article 8(6).

e) Audit Commission

The Audit Commission is an important internal control body, established under the law, which exercises control over financial and economic activities of the Advokatura. It is accountable to the Conference of Lawyers.⁶⁰ The Advokatura Charter determines the procedure for establishing the Audit Commission and its operation.⁶¹ The Audit Commission submits its opinion regarding the performance of the Advokatura over the year to the Council of Lawyers. It submits its reports to the Conference of Lawyers for approval every three years. Members of the Audit Commission are elected by ballot.⁶² Lawyers who are members of the Commission may practice law at the same time as sitting on the Audit Commission, but cannot sit on the Council of Lawyers.⁶³

f) Lawyers Training Centre

Under international standards, it is the role of governments, professional associations of lawyers and educational institutions to ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of lawyers.⁶⁴ The Lawyers Training Centre, which functions under the Advokatura as an independent legal entity, seeks to organize professional training and retraining of lawyers.⁶⁵ The Charter of the Training Centre determines its operating and financial procedures.⁶⁶ The Charter is approved by the Conference of Lawyers.⁶⁷ The Lawyers' Training Centre existed as an NGO prior to the reform of the legal profession, and should become a part of the Advokatura in the near future, as prescribed by the law.⁶⁸ One of the biggest concerns that lawyers raised in regard to the new Advokatura was whether it would be mandatory for lawyers to pay for continuing legal education provided by the Training Centre. Unsurprisingly, lawyers prefer the education to be provided for free, however members of the Training Centre insist that lawyers should pay for their continuing legal education. Bearing in mind that lawyers pay only €2.5 per month for their Advokatura membership, it is indeed difficult to expect that the Training Centre would be able to provide any training without being financially supported in another way.

g) The Committee on the Rights of Lawyers

The Committee on the Rights of Lawyers is a body within the Advokatura that was not foreseen under the law. Its creation was decided at a later stage by the Council of Advokatura. Despite its non-statutory genesis, the Committee is considered to be a fully-fledged body of the Advokatura that operates as one of its most active bodies.

During the ICJ's mission some lawyers said that the protection of the rights of lawyers should be the priority for the Advokatura as it is only this function that gives meaning to its existence. Though it would be difficult to agree with such a limited role of any association of lawyers, protecting the rights of lawyers under threat is clearly an important issue of concern for lawyers in the Kyrgyz Republic. In recent years the ICJ has engaged on a number of occasions in cases where Kyrgyz lawyers were under attack. After the ethnic clashes of 2010, threats and insults to lawyers were common and sometimes lawyers were subjected to physical attacks.⁶⁹ While the situation later normalized, cases of attacks against lawyers still arise in which attempts are made to harass them or undermine their work.⁷⁰

⁶⁰ *Ibid.*, article 9(1).

⁶¹ *Ibid.*, article 9(2).

⁶² *Charter of Advokatura of the Kyrgyz Republic, op. cit.*, para 5.2.9.

⁶³ Law of the Kyrgyz Republic "On Advokatura of the Kyrgyz Republic and lawyers' activity", *op. cit.*, article 9(3).

⁶⁴ *Basic Principles on the Role of Lawyers, op. cit.*, Principle 9.

⁶⁵ Law of the Kyrgyz Republic "On Advokatura of the Kyrgyz Republic and lawyers' activity", *op. cit.*, article 10(1).

⁶⁶ As of the July 2015, the LTC has not yet adopted its new Charter.

⁶⁷ Law of the Kyrgyz Republic "On Advokatura of the Kyrgyz Republic and lawyers' activity", *op. cit.*, article 10(2).

⁶⁸ *Ibid.*, article 10.

⁶⁹ Kyrgyzstan: measures to end attacks on lawyers and defendants urgently needed, <http://www.icj.org/kyrgyzstan-measures-to-end-attacks-on-lawyers-and-defendants-urgently-needed/>.

⁷⁰ Kyrgyzstan: ICJ condemns assaults on lawyers in Supreme Court, <http://www.icj.org/kyrgyzstan-icj-condemns-assaults-on-lawyers-in-supreme-court/>.

Lawyers are the weakest actors of the justice system in the Central Asian region and in the Kyrgyz Republic in particular. The ICJ report of 2012 noted that: “the ICJ has witnessed an endemic problem of lack of respect for the legal profession on behalf of the investigatory authorities, prosecutors’ office, judges as well as other state bodies. Contrary to the situation in many other countries, the legal profession in Central Asia is often seen as the ‘poor relative’ in the justice system.”⁷¹ The country situation of the Kyrgyz Republic described in the report followed the general pattern of the region: “[d]espite the guarantees in legislation described above, in practice, lawyers face obstacles in representing their clients effectively in criminal trials.”⁷²

In Kyrgyzstan, attempts to undermine the independent work of lawyers may take different forms. They have included cases of attempts of disbarment of lawyers,⁷³ physical attacks of lawyers,⁷⁴ removal of a lawyer from representation of her client,⁷⁵ as well as threats of criminal prosecution. In a recent case, appeals against searches of lawyers’ offices and homes and seizure of their legal files by law enforcement reached the Supreme Court. The Court adopted an important decision that condemned the the actions of the bodies of prosecution and investigation as illegal and reaffirmed the guarantees afforded to lawyers against searches, in relation to cases in which they represent the interests of their clients, as guaranteed both under national law of the Kyrgyz Republic and international law and standards on the role of lawyers.⁷⁶ For the first time, the legal profession, in particular the Council of Advokatura, intervened in a case where the rights of lawyers were involved. The Council published a statement in support of the lawyers and they presented their position as a third party at the hearings before the Supreme Court. The Court’s decision in favour of lawyers supported institutionally by the profession vividly demonstrated the importance of a unified profession capable of acting in the interests of their members and on issues of institutional and constitutional importance.

Bodies of Territorial Advokaturas

a) General Meeting of Lawyers of the territory

The highest governing body of the Territorial Advokatura is the General Meeting of Lawyers of the territory,⁷⁷ which takes place at least once a year.⁷⁸ An extraordinary meeting may be convened on the initiative of the Conference of Lawyers, by the Board of the Territorial Advokatura or more than one third of lawyers belonging to the relevant territorial advokatura.⁷⁹ The General Meeting has the following functions:⁸⁰ election of the President, Deputy President and members to the Board of the Territorial Advokatura; and any other issues referred to the competence of the General Meeting of Lawyers by the Charter of the Territorial Advokatura. The General Meeting of Lawyers has a quorum if more than one half of members of the Territorial Advokatura have registered to take part therein by the date on which registration is closed.⁸¹ The Charter of the Territorial Advokatura sets out the procedure for holding a General Meeting of Lawyers.⁸²

⁷¹ ICJ Report, *Independence of the Legal Profession in Central Asia*, op. cit., p. 57.

⁷² *Ibid.*, p. 67.

⁷³ Kyrgyz Republic: ICJ observes the Supreme Court hearings concerning confidentiality of legal documents, <http://www.icj.org/kyrgyz-republic-icj-observes-the-supreme-court-hearings-concerning-confidentiality-of-legal-documents/>.

⁷⁴ Kyrgyzstan: lawyer Dinara Turdumatova must be protected following physical assault by State official, <http://www.icj.org/kyrgyzstan-lawyer-dinara-turdumatova-must-be-protected-following-physical-assault-by-state-official/>.

⁷⁵ Kyrgyz Republic: removal of lawyer by police official without client’s consent violates international law, <http://www.icj.org/kyrgyz-republic-removal-of-lawyer-by-police-official-without-clients-consent-violates-international-law/>.

⁷⁶ Kyrgyz Republic: Supreme Court decision protects the role of lawyers and the independence of the judiciary, <http://www.icj.org/kyrgyz-republic-supreme-court-decision-protects-the-role-of-lawyers-and-the-independence-of-the-judiciary/>.

⁷⁷ Law of the Kyrgyz Republic “On Advokatura of the Kyrgyz Republic and lawyers’ activity”, op. cit., article 13(1).

⁷⁸ *Standard Regulation on Territorial Advokatura of the Kyrgyz Republic*, op. cit., para. 4.3.

⁷⁹ *Ibid.*, para. 4.3.

⁸⁰ Law of the Kyrgyz Republic “On Advokatura of the Kyrgyz Republic and lawyers’ activity”, op. cit., article 13(2).

⁸¹ *Ibid.*, article 13(3).

⁸² *Ibid.*, article 13(4).

b) Board of Territorial Advokatura

The Board of the Territorial Advokatura (the “Board”) is the executive body of the Territorial Advokatura. It is elected by secret ballot at the General Meeting and consists of five lawyers, practicing in the relevant locality, who are elected for a term of three years.⁸³ The President and Deputy President of the Board are elected from among the members of the Board.⁸⁴ The President of the Board manages day-to-day activities of the Territorial Advokatura, which are accountable to the General Meeting. He or she acts as an authorized representative of the Territorial Advokatura on the basis of the powers of attorney.⁸⁵

The Board is responsible for all matters outlined in the Charter of the Territorial Advokatura that are not covered by the competence of the General Meeting,⁸⁶ such as:⁸⁷ executing the decisions of the Advokatura; supporting and completing current and long-term plans; giving incentive awards to lawyers who are members of the Territorial Advokatura; applying the Territorial Advokatura’s funds and assets; submitting proposals and recommendations to approve its financial estimate and report to the Council of Lawyers of Advokatura; submitting proposals to the Advokatura to introduce amendments to the Regulation of the Territorial Advokatura; and developing its staffing structure and having this approved by the Advokatura.

Independence of the Advokatura

The mission did not hear any concerns regarding pressure exerted by the executive on the Advokatura, which could undermine the independence of the legal profession. It seems that independent decision making, based on the interests and priorities of the Advokatura itself, remains unimpeded. At this early stage in the establishment of the Advokatura, setting up the new institutions entails the involvement of government actors, as well as international and donor organizations. Such external influence and involvement is necessary, at these initial stages of the creation of the Advokatura. In the long-term, it is important that the Advokatura becomes a strong enough institution that it is capable of organizing the legal profession independently of any undue external pressures whether from State institutions or private parties. This in no way means that the Advokatura should work in isolation, bearing in mind that the UN Basic Principles statement that bar associations: “shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able without improper interference, to counsel and assist their clients in a accordance with the law and recognized professional standards and ethics.”⁸⁸

Financial Sustainability of the Advokatura

The financial sustainability of the Advokatura, which is fundamental to its institutional sustainability, appears to be rather weak and require strengthening. The ICJ mission understood that, as of now, the Advokatura cannot be financially sustained on its membership fees alone and depends to a large extent on external support. The Strategic Plan of the Advokatura for 2015–2017 mentions development of a plan of institutional growth and financial sustainability under Objective 1 “Institutional establishment, organizational development, management of Advokatura”. Currently, the Advokatura clearly depends on external resources and would not be able to operate without them.

At the same time, attempts to increase membership fees are met with some opposition from lawyers. This is understandable in the context of the lack of trust and understanding of the true value of an independent profession. At this point in time it seems to be unavoidable for the Advokatura to depend on external financial support rather than on their own fees, however, with time a lack of financial self-sustainability may become problematic. The mission learned that some territorial advokaturas, for example in Osh

⁸³ *Ibid.*, article 14(1).

⁸⁴ *Ibid.*, article 14(2).

⁸⁵ *Standard Regulation on Territorial Advokatura of the Kyrgyz Republic*, *op. cit.*, para. 4.12.

⁸⁶ Law of the Kyrgyz Republic “On Advokatura of the Kyrgyz Republic and lawyers’ activity”, *op. cit.*, article 14(3)

⁸⁷ *Standard Regulation on Territorial Advokatura of the Kyrgyz Republic*, *op. cit.*, para. 4.9.

⁸⁸ *Basic Principles on the Role of Lawyers*, *op. cit.*, Principle 25.

and Naryn, have taken the initiative to increase the fees in order to sustain their organizations after having realized that the generally accepted fees did not reflect the reality of their costs. Moreover, they have established their own bookkeeping offices. However, this development has raised concern amongst some lawyers as it is clearly prescribed in the law as well as in the Charter of the Advokatura that it is the Congress of Lawyers that establishes the level of fees to be paid.⁸⁹

The Advokatura has all the necessary institutions to ensure financial transparency and gain the trust of the public and the lawyers. The Audit Commission is particularly important in ensuring transparency of the organization. Some lawyers expressed the opinion that the Audit Commission has not yet started playing the role that it should play in ensuring transparency and thus ensuring the trust of the colleagues and the public in the work of the Advokatura bodies. It is especially important that it takes on this role in order to strengthen confidence in the financial transparency of the Advokatura.

⁸⁹ Law of the Kyrgyz Republic "On Advokatura of the Kyrgyz Republic and lawyers' activity", *op. cit.*, article 6(3)(7); *Charter of Advokatura of the Kyrgyz Republic, op. cit.*, para. 5.2.2.

IV. Access to the profession

International standards on access to the profession

According to international standards, entry to the legal profession must be open to all persons with the requisite qualifications. Under the UN Basic Principles on the Role of Lawyers: “[g]overnments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.”⁹⁰

The importance of professional qualifications was stressed in the UN Human Rights Council Resolution 23/6 which stated that lawyers should: “possess the professional qualifications required for the performance of their functions through improved methods of recruitment and legal and professional training, and through the provision of all necessary means for the proper performance of their role in ensuring the rule of law.”⁹¹ In the Council of Europe region, Recommendation No. R(2000)21 of the Council of Europe Committee of Ministers emphasizes the importance of the qualification process: “decisions concerning the authorization to practise as a lawyer or to accede to the profession, should be taken by an independent body. Such decisions, whether or not taken by an independent body, should be subject to review by an independent and impartial judicial authority.”

Kyrgyzstan legal framework and practical issues

Requirements to be licensed as a lawyer

A license to practice law may be granted to a national of the Kyrgyz Republic who has completed higher legal education, has at least one year of experience in legal practice,⁹² and has passed the qualification exam.⁹³ Under certain circumstances the license cannot be granted.⁹⁴

Individuals with five years of professional experience in the following fields are licensed without having to pass the qualification exam: 1) experience in investigative services of law-enforcement bodies; 2) as a judge; 3) as a member of the staff of the President, Parliament (*Zhogorku Kenesh*) or Government of the Kyrgyz Republic, in a position that requires higher legal education; 4) as a member of the Parliament, who has completed higher legal education.⁹⁵

Qualification examination process

A person who meets the requirements mentioned above may lodge a request with the Ministry of Justice of the Kyrgyz Republic to be admitted to the qualification exam. Certain documents should be attached to the application.⁹⁶ The procedure for

⁹⁰ *Basic Principles on the Role of Lawyers*, *op. cit.*, Principle 10.

⁹¹ Resolution adopted by the Human Rights Council, 23/6, *Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers*, 19 June 2013, A/HRC/RES/23/6, Preamble.

⁹² Experience in legal practice required to be licensed as an advocate includes the following professional experience: 1) as a judge; 2) holding a public position that requires higher legal education in a public agency, including those that used to be in place before the current Constitution of the Kyrgyz Republic was adopted; 3) holding a municipal position that requires higher legal education; 4) as a member of legal services in a company that require higher legal education; 5) working in a research institute, in a position that requires higher legal education; 6) as a professor of law in schools of secondary level, higher level and post-graduate level vocational training; 7) as an assistant advocate; 8) as a notary.

⁹³ Law of the Kyrgyz Republic “*On Advokatura of the Kyrgyz Republic and lawyers’ activity*”, *op. cit.*, article 19(1).

⁹⁴ Anyone who: 1) has been declared legally incapable or partially capable in accordance with the procedure established by the laws of the Kyrgyz Republic; 2) has an outstanding or unspent conviction; 3) has been dismissed from the law-enforcement or other public agency in view of a disciplinary offence—during 1 year from the date of dismissal; 4) has already had his/her license to practice law annulled; 5) has been dismissed from the judicial office in view of reprehensible conduct—during 1 year following such dismissal (Law of the Kyrgyz Republic No. 135 of 14 July 2014 “*On Advokatura of the Kyrgyz Republic and lawyers’ activity*”, section 19(2)).

⁹⁵ Law of the Kyrgyz Republic “*On Advokatura of the Kyrgyz Republic and lawyers’ activity*”, *op. cit.*, article 19(4).

⁹⁶ 1) Personal record form; 2) proof of identity and of Kyrgyz citizenship; 3) a notarized copy of a law school diploma; 4) a notarized copy of a document confirming that an applicant has at least one year of legal experience; 5) a reference letter from the last job; 6) a photograph (Law of the Kyrgyz Republic No. 135 of 14 July 2014 “*On Advokatura of the Kyrgyz Republic and lawyers’ activity*”, section 20(1)).

the qualification examination⁹⁷ is adopted by the Government of the Kyrgyz Republic and not by the Advokatura itself.⁹⁸ The examinee is considered to have passed the qualification exam if (s)he has answered seventy per cent or more multiple choice questions correctly. The candidates who fail the exam may retake it only after six months.⁹⁹

Based on the result of the exam, the Qualification Commission takes a decision, which is recorded in the form of minutes. On the basis of these minutes, the Ministry of Justice makes its decision regarding the outcome of the exam, which may be challenged before the court within one month from the date on which it was made.¹⁰⁰ Therefore, not only is the qualification conducted by a body that belongs to the Ministry of Justice, but the final decision is made by the Ministry of Justice. This system raises a significant concern in regard to international standards on the independence of lawyers. Both international¹⁰¹ and regional¹⁰² standards guarantee an independent profession. In order to protect this independence, they foresee that access to the profession should be governed by the professional association of lawyers. Among other authorities,¹⁰³ the IBA Standards for the Independence of the Legal Profession provide that it is the function of the Lawyers' Association "to ensure that there is free access to the profession for all persons having the requisite professional competence, without discrimination of any kind, and to give assistance to new entrants into the profession."¹⁰⁴ Since membership in the Advokatura is compulsory for all lawyers, the current system means that the Ministry of Justice exerts significant control over access the profession, a situation that is incompatible with its independence.

Licensing of lawyers

The license to practice law is issued by the Ministry of Justice within one month from the date of the Qualification Commission's decision. The Ministry of Justice of the Kyrgyz Republic notifies the Advokatura of the licensing within ten business days. The Advokatura notifies the Ministry of Justice of the lawyer's admission within five business days from the receipt of such notice.¹⁰⁵

Licensing of lawyers was one of the particular concerns that lawyers raised with the ICJ mission. Under the previous law, the practice of lawyers was considered to be an entrepreneurial activity and thus fell under the category of activities that should be licensed.¹⁰⁶ Thus, a success in the qualification examination led automatically to a licence to practice law. The new law empowered the Advokatura to check the qualification of a candidate, leading to a certification of a lawyer. However, passing a qualification exam no longer automatically results in obtaining the status of a lawyer, as it used to. A licence is still required to practice law, in addition to the certification; however, the need for having both mechanisms, which apparently duplicate each other, is unclear. The Ministry of Justice's role in the qualification process appears to be excessive. It goes beyond a merely nominal function of issuing an ID or adding the name of a lawyer to a national register. Furthermore, the double qualification, which includes both licensing and the examination, appear to be superfluous and requires further reform.

⁹⁷ As of the date hereof (June–July 2015), the Government of the Kyrgyz Republic has not yet defined the qualification exam process.

⁹⁸ Law of the Kyrgyz Republic "On Advokatura of the Kyrgyz Republic and lawyers' activity", *op. cit.*, article 21(3).

⁹⁹ *Ibid.*, article 21(4).

¹⁰⁰ *Ibid.*, article 21(5).

¹⁰¹ *Basic Principles on the Role of Lawyers*, Principle 9; *Singhvi Declaration*, *op. cit.*, Preamble: "Whereas adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession."

¹⁰² *Recommendation No. R(2000)21 of the Committee of Ministers to Member states on the freedom of exercise of the profession of lawyer*, Principle V.2: "Bar associations or other professional lawyers' associations should be self-governing bodies, independent of the authorities and the public."

¹⁰³ *The Singhvi Declaration*, *op. cit.*, para. 99(i); *Recommendation No. R(2000)21 of the Committee of Ministers to Member states on the freedom of exercise of the profession of lawyer*, *op. cit.*, Principle V.2.

¹⁰⁴ *IBA Standards for the Independence of the Legal Profession* (Adopted 1990), para. 18(i).

¹⁰⁵ Law of the Kyrgyz Republic "On Advokatura of the Kyrgyz Republic and lawyers' activity", *op. cit.*, article 21(6).

¹⁰⁶ The Law of the Kyrgyz Republic of 3 March 1997, No. 12 "On Licensing", article 8(32).

V. Ethics and accountability of lawyers

International standards on professional ethics and accountability of lawyers

According to international standards, codes of ethics for lawyers should be established by the legal profession itself or by legislation drafted in consultation with members of the profession, and should prescribe conduct in accordance with international standards safeguarding the independence and role of lawyers.¹⁰⁷ These codes should correspond to the principle of legality. In particular, the principle of legality requires that the law be sufficiently clear and foreseeable, since “a norm cannot be regarded as ‘law’ unless it is formulated with sufficient precision to enable the citizen to regulate his [or her] conduct: he [or she] must be able—if need be with appropriate advice—to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.”¹⁰⁸ Thus, while the professional code of conduct does not have to describe in detail every precise situation which may precipitate disciplinary action and incur disciplinary sanctions, it should at least broadly prescribe standards of professional and ethical behaviour in regard to maintaining independence of the profession, honesty, integrity and fairness of lawyers, prevention of conflict of interests, confidentiality, and acting in the interests of the client.¹⁰⁹

Lawyers’ professional duties must be carried out diligently in accordance with the law and recognized standards and ethics of the legal profession.¹¹⁰ The UN Basic Principles provide that “lawyers shall always loyally respect the interests of their clients.”¹¹¹ Lawyers must be able to act freely, diligently and fearlessly in accordance with the wishes of their clients, being guided by the established rules, standards and ethics of the profession.¹¹² It must be understood that a lawyer “serve[s] the interests of justice as well as those whose rights and liberties he or she is trusted to assert and defend and it is the lawyers duty not only to plead the client’s cause but to be the client’s adviser.”¹¹³ Respect for a lawyer’s professional function and their ability to discharge their professional duties independently, diligently and ethically, is an essential component of the rule of law.¹¹⁴

The UN Basic Principles on the Role of Lawyers provide that “[a]ll disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of [the UN Basic Principles on the Role of Lawyers].”¹¹⁵ According to these standards, disciplinary proceedings should be heard by an independent and impartial disciplinary body established by the legal profession, by an independent statutory body, or by a court, and should be subject to independent judicial review.¹¹⁶ Recommendation No. R(2000)21 of the Council of Europe Committee of Ministers prohibits arbitrariness of the disciplinary action and requires a system which “guarantees the independence of lawyers in the discharge of their professional duties without any improper restriction, influence, inducement, pressure threats or interference, direct or indirect, from any quarter or for any reason.”¹¹⁷

Responsibilities of lawyers

Responsibilities of lawyers who are members of the Advokatura are enshrined in the Law “On Advokatura of the Kyrgyz Republic and lawyers’ activity”. In particular, lawyers have an obligation to comply with the laws of the Kyrgyz Republic and the Professional Ethics Code; to join the Advokatura within one month of receiving a license; pay mem-

¹⁰⁷ *Basic Principles on the Role of Lawyers, op. cit.*, Principle 9; *Singhvi Declaration, op. cit.*, para. 102.

¹⁰⁸ *Malone v. United Kingdom*, ECtHR, Application No. 8619/79, Judgment of 2 August 1984, para. 66.

¹⁰⁹ See: *IBA International Principles on Conduct for the Legal Profession*, adopted on 28 May 2011.

¹¹⁰ *Basic Principles on the Role of Lawyers, op. cit.*, Principle 14.

¹¹¹ *Ibid.*, Principle 15.

¹¹² *Singhvi Declaration, op. cit.*, para. 83.

¹¹³ Code of Conduct for European Lawyers was originally adopted at the CCBE Plenary Session held on 28 October 1988, and subsequently amended during the CCBE Plenary Sessions on 28 November 1998, 6 December 2002 and 19 May 2006.

¹¹⁴ *Ibid.*

¹¹⁵ *Basic Principles on the Role of Lawyers*, Principle 29.

¹¹⁶ *Ibid.*, Principle 28.

¹¹⁷ *Recommendation No. R(2000)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer*, Council of Europe, *op. cit.*, Preamble.

bership fees as required by the Advokatura; to make use of all lawful means and methods to protect clients' rights, freedoms, and legal interests, and secure their access to justice; to keep confidential information that has become known to them in the course of providing legal representation, unless otherwise authorized by the client; and to improve their professional knowledge and qualifications at least once every three years.¹¹⁸

Certain important obligations are enshrined in the Code of Ethics. In particular a lawyer must represent his or her client in a responsible manner to ensure the quality of his or her legal representation; must act in compliance with the statutory requirements; must make use of all lawful means and methods to protect clients' rights, freedoms, and legal interests, and secure their access to justice; must explain statutory rights and responsibilities to the client, as well as how to exercise them in practice; and when discharging his or her functions, must keep in touch with the client and discuss with them all matters related to the client's interests in the case, as well as adhere to the attorney-client privilege.¹¹⁹

The Code of Ethics provides that, in the exercise of their activities, lawyers shall comply with certain principles of the profession.¹²⁰ These include the principles of independence,¹²¹ reliability (trust),¹²² confidentiality¹²³ and absence of conflict of interests.¹²⁴ A lawyer is responsible for any failure to discharge his or her duties or inadequate discharge of those duties in accordance with the laws of the Kyrgyz Republic and the Advokatura Charter.¹²⁵

Need to increase the ethical awareness and standards of lawyers

Throughout the mission the ICJ was repeatedly told of the serious problem of low ethical and professional standards of lawyers. This is a long-standing problem in the Kyrgyz Republic, as well as in other countries of Central Asia. In its 2012 report, the ICJ expressed a concern in this regard that: "codes of ethics of the legal profession do not play an important role among the legal community in Central Asia. Although individual lawyers in the region may often have strong personal convictions of professional ethical behaviour, nevertheless these do not seem to stem from collectively accepted principles of the work of the profession, consistently applied and enforced. Unlike in countries with a longer tradition of a strong legal profession, the ethical codes or rules of behaviour are not seen as having a binding force or having the potential to improve the quality of the profession. The legal profession as a rule does not perceive itself as the collective bearer of special functions and responsibilities whose behaviour must always correspond to the rules of ethics developed by the profession; nor does it appear to accept that the profession itself must be responsible for upholding such rules among its members. Lawyers' associations in the region therefore have an important role to play in promoting codes of ethics and providing regular information and training to their members on the ethical standards of the profession."¹²⁶

¹¹⁸ Law of the Kyrgyz Republic "On Advokatura of the Kyrgyz Republic and lawyers' activity", *op. cit.*, article 26(1).

¹¹⁹ See the *Code of Professional Ethics of Advocates of the Kyrgyz Republic*, Part 2.

¹²⁰ *Ibid.*, Part 1.

¹²¹ A lawyer must be independent from any outside or internal (corporate) influence and only act pursuant to the provisions of the Constitution of the Kyrgyz Republic, the Law of the Kyrgyz Republic "On Advokatura and Lawyers' Activity", and other laws and regulations governing lawyers' activity, the *Advokatura Charter* and this Code.

¹²² The client's trust in a lawyer and trustworthiness of the latter shall be based on personal qualifications of the lawyer, his/her objectivity and integrity, decency and commitment.

¹²³ a) Any information known to a lawyer in the course of lawyers' activity shall be treated by such lawyer as confidential; b) Confidentiality requirement shall not be restricted in terms of time. A lawyer cannot disclose confidential information about his/her client in the absence of written consent from the client. Under exceptional circumstances, such disclosure may be allowed where the lawyer is convinced that the client has falsely incriminated him/herself, or where there is a civil dispute between the lawyer and his/her client, or for the purpose of the lawyer's defense against disciplinary or criminal charges. The same confidentiality requirement applies to assistant lawyers.

¹²⁴ a) A lawyer cannot provide legal representation or represent two or more clients in the same case if their interests are different, or if there is a reasonable expectation that a conflict of interest may arise; b) A lawyer must stop representing all clients (where there are two or more clients) once a conflict of interest has arisen between them; c) If there is a personal or professional conflict between several lawyers, they must take steps towards reconciliation on their own. d) In the exercise of lawyers' activity, a lawyer must respect his/her peers.

¹²⁵ Law of the Kyrgyz Republic No. 135 of 14 July 2014 "On Advokatura of the Kyrgyz Republic and lawyers' activity", section 26(2).

¹²⁶ *ICJ Report, Independence of the Legal Profession in Central Asia*, *op. cit.*, p. 29.

Little has changed since those conclusions were made; more effort therefore needs to be made to instil the values of the Code of Ethics in all practicing lawyers. One potential obstacle to achieving this is that lawyers may view a rigorous application of the Code of Ethics through disciplinary proceedings with hostility at this stage of establishment of new institutions, which have yet to prove their value. However, it should also be borne in mind that the way the reform is carried out will shape the profession's future role and whether it is able to carry out one of its functions "[t]o maintain the honour, dignity, integrity, competence, ethics, standards of conduct and discipline of the profession."¹²⁷ Addressing the issue requires change to the mentality and the long-standing culture shared by the profession, rooted in its Soviet past. Changing these attitudes requires sustained education, awareness raising and debate within the profession on what professional ethics mean in practice. In tandem with this, the Code of Ethics needs to be applied, through disciplinary proceedings, rigorously, fairly, consistently and transparently in order for lawyers to know what behaviour is considered to be ethical and where such ethical rules are violated. The prompt adoption of procedures for the Ethics Commission is a necessary and welcome development. The mission noted that more remains to be done in terms of further elaborating standards and procedures, raising awareness of them amongst lawyers and ensuring their implementation in practice. The ICJ understands that even though the main procedures have been adopted, many lawyers are not sufficiently aware of them. Another problem to be taken into account is that of the so-called "pocket lawyers", who act against the interests of their clients in violation of both the Code of Ethics, and of the Kyrgyz law, including criminal law. Corruption amongst lawyers in the Kyrgyz Republic, as in other sections of society, is not a rarity. Indeed, lawyers are sometimes referred to as merely a means to transfer money from the client to the officials. While a generalization that includes all the lawyers is obviously inaccurate, such a perception points to the problem which is widespread, deep-rooted and therefore difficult to address; Kyrgyzstan holds the 136th position out of 174 in the Transparency International *Corruption Perception Index 2014*.¹²⁸

In other countries of Central Asia where bar associations have been established for some time, they have had difficulty in addressing the problem of pocket lawyers. The ICJ report of 2012 noted that the phenomenon of pocket lawyers "is recognized as one of the most serious problems of legal communities in Central Asia, however lawyers' associations have not taken, or have not been able to take, effective action to address it, including through the promotion and enforcement of disciplinary action and the application of disciplinary measures. This has had a detrimental effect on the quality and dignity, as well as prestige of the legal profession, and has significantly undermined its effectiveness in protecting human rights and the rule of law."¹²⁹

The ICJ understands the complexity of the problem, which cannot be resolved exclusively through disciplinary mechanisms. However, there is a responsibility on the part of any lawyers' association to hold accountable a lawyer who commits serious violations of the Code of Ethics, such as disloyalty to the case of the client by acting against his or her interests and in the interest of the investigation; or negligence, where lawyers merely approve legal documents without providing any real legal assistance. These cases should not be difficult to establish and address through disciplinary proceedings. At the same time, it is important that the disciplinary mechanisms do not turn into "the Sword of Damocles" over lawyers who act in accordance with professional ethics. In the CIS region as well as globally, there are many examples of the disciplinary system being applied abusively against lawyers who carry out their functions in accordance with professional ethics and in respect of international principles on the role of lawyers. It is for the disciplinary bodies to establish practices that demonstrate to both lawyers and other actors of the justice system that they consistently interpret and apply professional ethical rules in a way that ensures independence of individual lawyers and the profession as a whole. The disciplinary system must guard against any action that would undermine the ability of lawyers to rigorously and freely defend their clients as required by national and international standards on the role of lawyers.

¹²⁷ *Singhvi Declaration, op. cit.*, para. 99.

¹²⁸ *Corruption Perceptions Index 2014*, Results, <https://www.transparency.org/cpi2014/results>.

¹²⁹ *ICJ Report, Independence of the Legal Profession in Central Asia, op. cit.*, p. 30.

VI. Conclusions and recommendations

This is a crucial time in the development of the legal profession in the Kyrgyz Republic. The creation of the Advokatura, a unified lawyers' association, is a significant step in the development of the justice system of the country. The ICJ welcomes the establishment of the Advokatura as it creates conditions necessary for an independent, self-regulated profession with institutions, rules and procedures that can uphold lawyers' integrity and high professional standards. However the establishment of this legal and institutional framework is only the first step in the complex task of developing a strong and independent legal profession, with high standards of professional ethics. As the new institutions begin their work and the new procedures are applied, many practical issues will need to be resolved and a new culture will need to develop within the profession.

The leaders of the new Advokatura have the privilege and the responsibility of creating an essential institution in their country. Their actions will shape the future of the profession and indeed the justice system as a whole, since the legal profession can and should be a bastion for the defence of the rule of law, in the Kyrgyz Republic as in any State. The active participation of lawyers in the establishment of the new system and institutions should ensure close scrutiny of the work of the new Advokatura in its early stages of development. Individual lawyers therefore have a responsibility to take part in the development of the new Advokatura. However the Advokatura, if it is to be effective in strengthening the profession, will also need to gain the trust of its members. For their part, the institutions of the Advokatura should strive to ensure that lawyers see that their work benefits lawyers and the profession as a whole.

Based on the findings of the report, international law and standards on the role of lawyers, the ICJ recommends as follows.

The role and functioning of the Advokatura

- The Advokatura and each of its institutions should operate in a way that is transparent, so that lawyers can be fully informed of its work; a participatory approach, fair procedures and regular, credible elections to each of its constituent bodies should result in a strong and truly representative professional association.
- In line with these principles, proposed changes to the laws and regulations governing the profession should be discussed and debated in a participatory manner that involves a broad community of lawyers before they are proposed as legislative amendments or imposed by the Advokatura. This concerns various aspects of the functioning of Advokatura, including fees, procedures and authorizations.
- The Advokatura should develop a strong and consistent practice of protecting lawyers against attacks and interference and thereby protecting their independence. The Committee on the Rights of Lawyers should take a proactive role in the protection of lawyers, drawing attention to and intervening in cases where lawyers face threats or harassment. It should also develop procedures to allow lawyers to address the Committee in any cases of improper interference with their work or their independence.
- The legal status of the Advokatura should be clarified and should be harmonized line with domestic legislation. It also has to be clarified what legislation applies to lawyers in their professional practice under the new Advokatura.
- The financial sustainability of the Advokatura needs to be built in order to secure the long-term stability of the new institutions. Full financial transparency, including regular reporting on the budget, can help Advokatura in gaining trust of the members of the profession.

Access to the profession

- The Qualification Commission and the qualification process should be independent in law as well as in practice from the Ministry of Justice or other executive institutions. The current law should therefore be reviewed and should be amended in line with international standards on the role of lawyers by bringing

the Qualification Commission and the qualification process within the competence of the Advokatura.

- Once a candidate has passed the examination to qualify as a lawyer, and has met the other relevant qualifications, authorization to practice as a lawyer should be automatic, and should not depend on any discretion of the Ministry of Justice.
- Regulations should be developed to provide for a comprehensive and rigorous examination of candidates for qualification as a lawyer. Such a system should include safeguards to protect against any abuse, discrimination or corrupt practice.
- The range of exemptions from the qualification examination for lawyers—applying to categories of persons with professional experience in the legal system or in public administration—should be reviewed and restricted with a view to ensuring that all those entering the profession possess a sufficient level of legal knowledge and skills and share the ethical standards for lawyers.

Ethics of lawyers and disciplinary system

- The legal profession should use the opportunity of the new Advokatura to establish high and consistent ethical standards throughout the profession. Steps should be taken to promote and enforce the Code of Ethics, which should be seen as a binding instrument for every lawyer that informs their daily practice.
- The Ethics Commission should take on a leading role as a guarantor of the professional ethics of lawyers. Its consistent and fair interpretation and application of the Code of Ethics can be an effective tool in shaping a new profession with high ethical standards.
- Practices such as those of “pocket lawyers” who act contrary to the interests of their clients should be treated as flagrant violations of the Code of Ethics and should lead to disciplinary responsibility.
- Fair and comprehensive disciplinary procedures should be developed; this should be done in consultation with the broader lawyers’ community in order to strengthen trust in the disciplinary process.
- A high quality of continued legal training for lawyers needs to be developed and maintained in order to uphold the ethical standards and legal knowledge of the profession; the Training Centre of Advokatura should become the key institution within the Advokatura which provides such education

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