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**Dear  
Mr. Diego Garcia-Sayan,**

This is in response to your letter of 17 January 2018 ref. OL KAZ 1/2018 where you raise a few questions on the draft Law on Lawyers' Activity and Legal Aid ("Draft Law").

First of all, let me thank you for the attention to this matter and for raising questions which are important for both our Government and legal community. I hope the below will address questions and clear away [or at least diminish] concerns raised in your letter.

Indeed, the Parliament of Kazakhstan is considering the Draft Law, which provides new approaches to legal assistance aimed at improving the quality and accessibility of legal services through setting up more rigorous requirements for lawyers, introducing lawyers' professional liability insurance, differentiating specialization of lawyers such as criminal, civil and other categories and several other amendments.

The necessity in reforming legal aid regulations has become vital in Kazakhstan due to the following reasons.

Legal profession in its non-governmental status, and advocacy in particular, was established in the independent Kazakhstan more than 20 years ago with the adoption of the Law "On advocacy" and, therefore, no longer meets current realities in legal aid/services area. Meanwhile, information technologies which are integrated in the area of legal aid and legal services have developed rapidly, both in the world and in Kazakhstan. This development lead to significant reforms in law enforcement activities whereby approaches to legal regulation have been revisited and changed. As a result of these reforms, new Criminal Code, Criminal Procedural Code, Correctional Code and Civil Procedural Codes, as well as new Law "On the Prosecutor's Office" have been adopted.

However, above mentioned reforms of legal system did not address advocacy and bar institution challenges which remained unaffected by the



reforms until now. Thus, in order to bring this sphere closer to the standards of the most progressive countries in the world it requires improvement.

Notably, for the last few years Kazakhstan has been facing a tremendous lack of advocates. Current statistics show that there is only 1 advocate per 4,000 citizens. In some regions this number is even more overwhelming: 1 advocate per 20,000 people. Obviously, lack of quantity usually leads to a lack of quality of legal aid provided. This is also demonstrated by the fact that some judges have to wait for the advocates who are busy at another trial and, therefore, may be unable to devote proper time and effort for each case.

In view of the foregoing and as a general note, it is inevitable that the state will participate to some extent in a regulation of legal profession and the activities of bar associations in order to ensure quality of legal aid. In most countries, the supervisory state body is the Ministry of Justice (Austria, Netherlands, Spain (depending on the issue), Croatia, Czech Republic) Thus, it is rather a question of principles implemented by the state when regulating these areas.

#### *1. Creation of a State Advocacy.*

Before going into discussion on state advocacy and its potential impact on independence of legal professionals, it is important to bear in mind that establishment of state advocacy is not a novation in Kazakhstan law: same wording is provided for under the Law on Legal Aid Guaranteed by the State which has been in force since 2013.

Conclusions you arrive at in your letter with regards to creation of state advocacy appear to be somewhat premature: Draft Law does not state that membership in state advocacy will be compulsory, nor does it set forth any further details on state advocacy status or activities.

As to the concept of state advocacy, we believe it should not be prejudice to and will not impair the independence of advocacy as long as main principles ensuring such independence are not compromised. Draft Law maintains and guards these principles (please see Draft Law, art. 6 and 36) and provides for liability for breach thereof. Furthermore, Draft Law does not envisage that current advocacy will be substituted or replaced with state advocacy.

Looking into international experience, it's worth noting that state advocacy in its various forms successfully co-exists with independent advocacy associations in such countries as Canada, USA, France, Germany, Israel, South Africa, etc. Notably, the experience of South Africa



showed that the costs of state lawyers are 40% less than the costs of private practitioners. From our perspective it is rather a question of details and specific conditions under which state advocacy is going to be created, if will be created at all. Therefore, as mentioned above, we find this discussion to be premature due to lack of defined terms and conditions for state advocacy status and activities.

The rest of matters which have been raised in your letter require that relevant provisions of Draft Law are analyzed with due consideration of other provisions in context.

*2. Participation of members of the executive in disciplinary procedures against lawyers.*

We would like to emphasize that representatives of executive body and former judges are deemed to be experienced professionals acting under commission for the sole purpose of ensuring proper quality of legal aid (please see, e.g. art 22 of Draft Law for functions and competence of the Ministry of Justice). Therefore, we strongly believe that these highly qualified professionals are able to exercise their functions within the commission impartially or will not be biased when discharging their authorities.

Composition of the commission in question and decision making process should eliminate any concerns as to impartiality and influence of the state on the commission's decisions: meetings of the commission are only eligible if more than half of its members are present (5 members from the state in aggregate will not make a quorum), whereas decisions are made by simple majority of votes; the advocate shall be chairing the commission; commission regulations are approved by the Republican Bar Association; decisions by disciplinary commission can be appealed to court. Furthermore, in accordance with the Draft Law, the disciplinary commission is formed by the supreme body of Bar association which entirely consists of members who have the right to engage in advocacy [see art. 51, 54 and 55 of the Draft Law]. All these factors are set out in the Draft Law to ensure that the activities of disciplinary commission are independent from the influence of the state and can be formed repeatedly at the discretion of the relevant Bar association.

And again, turning into international experience, very often claims against advocates or their communities are brought to state agencies (as in Kenya) or court (as in some states of the USA) rather than independent bar associations. In some countries judges are included into disciplinary commissions: particularly, in the UK complaints against advocates are considered by the panel from Bar Tribunals and Adjudication Services which



is appointed by the Tribunals Appointment Body (chaired by the Lord Judge) and usually comprises of barristers, non-legal professionals and judges.

As demonstrated by the above international experience, the presence of independent (i.e., non-advocate) legal and non-legal professionals in disciplinary commissions should further facilitate exclusion of biased consideration of complaints against advocates as opposed to consideration of such complaints solely by the advocates comprised commissions.

Thus, approach to creation and composition of disciplinary commission as provided under the Draft Law is based on international experience and is expected to eliminate any protection (whitewash) amongst advocates thus enhancing high quality advocacy in Kazakhstan.

### 3. *Removal of entrance fees.*

For many years entrance fees in a legal profession have been an obstacle for new comers to commence the activities thus reducing competition. It is obvious that lack of competition often leads to a lower quality of service.

In 2011 Kazakhstan government abandoned entrance fees for notaries via adopting amendments to the Law on Notaries. Predictably, the number of notaries has increased from being around 1900 in 2011 to 4171 in 2017. This, according to various researches, led to increase of quality of notary services. Considering this positive effect of the amendments to the Law on Notaries, Kazakhstan government intends to implement same approach in advocacy.

It is worth noting that the entrance fee for advocates has been pretty high amounting to USD 2,500 (while the average salary in Kazakhstan equals to USD 466 as of today).

Removal of entrance fees is indeed aimed at eliminating obstacles for new professionals to come into the industry and, thus, at increasing competition and improving quality of legal services.

Along with cancelling entrance fees, Draft Law, nonetheless, stipulates that bar associations are free to finance their activities via membership fees, special purpose contributions, charity donations and subsidies from individuals and legal entities.

In terms of bar admission fees international experience is rather diverse: many bar associations around the world do not require any entrance fee, for example USA, Germany, Austria, Spain, Netherlands, Croatia, Czech Republic.



We are of the opinion that in this particular matter the bar association is free to determine the amount of membership fees and special purpose contributions, as well as seek for other sources of financing sufficient to cover its needs as provided for under the law.

4. *The Attestation Commission.*

No major changes have been introduced with regards to attestation commission which has been successfully operating in Kazakhstan for 8 years.

As correctly pointed out in your letter, it is widely spread practice worldwide to include representatives of state authorities or court or both into the bar admission commissions (Japan, South Korea, Poland, Belorussia, Germany, USA, Singapore).

While our argument made in response to question 2 is equally applicable to the mater in question, it is important to also consider the following. Draft Law clearly states that the objectives of such commission is to ensure quality choice of candidates and transparency. Draft Law further stipulates that the meetings of the commission are open to attendees from mass media, Republican and regional bar associations, while decisions of the commission can be appealed to the Ministry of Justice or court.

Practical statistics show that during 2015-2017 (with the attestation held once in a quarter) only 6 decisions of the attestation commission have been appealed; these appeals have not been upheld.

As mentioned above, proper attention to details and specific conditions set in the Draft Law leaves no room for abuse of discretion by non-advocate members of the commission.

In conclusion, let me once again express my gratitude for your attention to the legal aid related reforms in Kazakhstan and convey my readiness to continue meaningful dialogue on the matter in question.

Best regards,

**M. Beketayev**

Minister of Justice  
of the Republic of Kazakhstan.

