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Executive Summary

This report is based on research and interviews with a cross section of the Bar and other NGO’s. In light of the fact that recent legislation will significantly change the size, structure and obligations of the Union of Lawyers, this report contains not only an analysis of current strengths and concerns in the present organization but also some areas for future development that meet the perceived needs of the membership as well as responding to the new mandated duties for the Bar. The Bar now has 4 mandated regulatory duties: licensing and internships, ethics/discipline enforcement, maintenance of a list of the members of the legal profession and the organization of continuous training and monitoring of member’s compliance with the required hours. Given 2010 is a relatively early stage in the development of these Bar operations, generally these functions are performed pretty well. On the other hand, in terms of communications with the members and providing helpful guidance and seminars to assist members in their practices, there are a number of enhancements that would put the Bar in a stronger position to assist its members.

Methodology

The objective of this assessment is to measure, through a series of key information interviews, using a standardized organizational capacity assessment questionnaire, the organizational capacity of Moldova Bar Association (MBA). The assessment is intended to document the progress of MBA today; to identify MBA relative strengths and weaknesses, and to provide the baseline information needed to develop strengthening interventions. It can also be used to monitor and gauge progress over time. In addition to the questionnaires, all past similar evaluations of the Bar were reviewed and both the annual Congress, a Bar Council meeting and a Bar meeting with current interns were observed.

MBA Capacity Assessment Tool (Questionnaire)

The questionnaire used for this assessment, was developed from materials borrowed from the recently completed Assessment Survey of Moldovan Judges and Prosecutors conducted under the auspices of the National Institute of Justice, the UNDP Moldova and the Council of Europe. The factors for measurement were adapted from the ABA ROLI’s Kosovo Chamber of Delegates Organizational Assessment conducted by Kathy Ladun, the ABA ROLI Legal Specialist for Kosovo at that time. Kathy has continued to advise and assist on this project as well and her help has been invaluable. The project was also assisted by a number of ABA ROLI personnel now serving in other countries in this region. They each contributed insights into what similar Bar organizations were doing in their countries to make the comparisons observed in Moldova more meaningful. Therefore thanks and recognition go out to Gina Schaar, Country Director of ABA ROLI Kosovo; Dave Ru-
bino, Country Director of ABA ROLI Azerbaijan; Garry Ledbetter, Country Director of ABA ROLI Kosovo and Kregg Halstead, Country Director of ABA ROLI Armenia. The methodology did not use a strict numerical score. It is thought that a review of the MBA relative strengths/weaknesses based on their current situation would be more helpful at this time.

Questions were asked during structured key information interviews and focus groups, and responses were immediately captured and recorded for the assessment. The assessment considered 10 components of organizational effectiveness: strategic planning and analysis; governance; project design and implementation; financial planning and management; human resource management; operational and systems management; fundraising; media, public relations, and marketing; advocacy and constituency-building/ membership development; and gender and minority participation.

Interviews & Data Collection

Key informant interviews and focus groups were conducted by ABA ROLI's Criminal Law Program Legal Specialist Tom Russell between June and July, 2010 and lasted on the average one hour. The process was facilitated and attended to by the ABA ROLI in Moldova Staff Attorneys Mihaela Vidaicu and Olimpia Iovu. A one-page summary of the assessment, the objectives, and possible question areas was given to all interviewees and discussed with them at interviews.

Sampling

Because of the size of MBA membership (presently about 1500), the interview sample was drawn from members based on region, legal experience, gender and seniority within the MBA. 19 MBA members as well as MBA administrative staff and NGO’s were interviewed. Interviews were conducted in 4 Moldova regions, within the leadership structure and the Commission structure, and also included newly registered and senior lawyers.

Review of Prior Analysis

In 2008 the Moldova Bar Association, as the Bar was then known, invited the Council of Bars and Law Societies of Europe (CCBE) to make recommendations that would enhance the functioning of the Moldovan Bar Association and assist the legal profession in Moldova in its reform process. CCBE through various activities and the research of a project coordinator, focused on the issues of the Bar’s administrative structure, the training of lawyers, the disciplining of lawyers, the procedural rights of lawyers appearing before the European Court of Human Rights and the reform process of the Moldovan Bar in general. By letter of September 2008, the CCBE recommended that within the existing budget the Bar could:
• Organize small seminars for lawyers in Chisinau and the regions;
• Establish working groups of expert lawyers to work on proposed legislation affecting the profession;
• Publish monthly news of the Bar’s activities on the website and in the publication;
• Organize an “Open-Door Day” at least once a year where volunteer lawyers could provide free legal assistance to the public;
• Organize regular programs for law students to inform them about the practical aspects of the profession in general and specialties in particular;
• Hold press conferences to inform the public of all important activities;
• Raise funds by letting advertising appear in the publication;
• Cut the magazine down to quarterly publications and substitute monthly newsletters;
• Consider having an independent audit performed;
• Review whether the Bar fee structure should be set on other bases, e.g. income, age, and/or family situation.

In April, 2009, ABA ROLI as part of a Legal Profession Reform Index of Moldova, (ABA ROLI LPRI) had the following suggestions concerning the Bar’s current programs:

• That the meetings of the Congress should have more advance notice of the meeting, agenda, who the candidates are and their qualifications posted on the Bar’s website, and that there should be some rule as to how to determine that a quorum is present.
• That the Bar should do at least as many CLE courses as would let the members meet the Bar’s resolution that each member receive 40 hours of training per year, to include classes in the regions outside Chisinau. The Bar should require or provide incentives for attendance.
• That the Bar leadership have a larger role in law reform especially in areas that affect the legal profession.

To date, some of these issues have been addressed either by the Bar, or will be addressed by the Amendments to Law on the Legal Profession.

**History and Structure of Union of Lawyers (UoL)**

To understand the history and current developmental stage of UoL, it is necessary to understand the modern history of the legal profession in this region. 1940 to 1991 were the years of Soviet domination here when this land and its people comprised one of the Soviet Socialist Republics. Like prosecutors, criminal defense lawyers were compensated by the state through the Collegium of Advocates which also absorbed any honorariums counsel were paid by private clients. These lawyers had no real representational role to oppose the priorities or actions of the police or prosecutors. They largely helped facilitate the progress of cases. Civil law issues concerned with property rights and private transactions and arrangements were nonexistent because the state owned the property and dominated and controlled the production, distribution, and transfer of goods and services to the public. In
1991, post Berlin Wall and post Perestroika, the Parliament passed the Moldova Declaration of Independence declaring the sovereignty and independence of the Republic of Moldova and created the framework of a new government. This ended its existence as a Soviet Socialist Republic and started its assumption of control over its own affairs. So from 1991 to 1998 the role of lawyers was transforming and the role and force of an organized Bar had yet to be realized. It was a period of political unrest, declining economic conditions, largely ineffective governments, and separatist movements on the eastern and southern flanks of the Republic. In 1980 in the soviet period, the Supreme Soviet of Moldova mandated membership for lawyers in the Collegium of Advocates described above. In 1998 the Moldovan Parliament attempted to change the system with a new Law on the Legal Profession which was later held to be unconstitutional. Two years later in 2002, the Parliament passed the new Law on the Legal Profession which, with subsequent amendments, forms the basis of today’s administration of the legal profession and the statutorily created Moldova Bar Association. So in most important respects, the legal profession as it is practiced today has, at best, a 19 year old track record and MBA as the self-administering body of the profession has an 8 year old history.

The Bar as created by the Parliament, was authorized to regulate certain aspects of the practice of law only by licensed advocats (referred to hereafter as “lawyers”) - Law no. 1260-XV of 19.07.2002. That law was significantly amended in 2010 by Law no. 102 of 28.05.2010. The amendments changed the name of the Bar from the Moldova Bar Association to the Union of Lawyers, made several structural changes that are reflected in this report and added a mandatory continuing education requirement for all members of the UoL. Even as amended this law doesn’t apply to prosecutors, judges, independent civil practice attorneys who don’t appear in court, in-house legal graduates working for companies or governmental bodies, or the “jurists” who are individuals not licensed but usually law graduates, who nevertheless provide legal services other than court appearances. There are around 1500 lawyers registered as UoL members presently. The ultimate UoL governing authority is the Congress comprised of delegates selected by the Regional Bars and also comprised of the UoL Council. The Congress must meet at least once a year. If a quorum of the members is present, the Congress is authorized to elect or revoke the UoL President and the Ethics and Disciplinary Commission members, hear and approve the annual reports of the UoL Council and Commissions, to set the various fees to be paid by the members, approve the UoL staffing and budget requests, and decide issues pertaining to relationship between the Regional Bars.

The UoL Council is the representative and deliberative body of the Bar. It consists of the Bar President, the Deans of the Regional Bars and delegates selected by the Bars. The Council meets monthly, calls meetings of the Congress and carries out
Congress’ decisions; approves the initial training for interns and the Continuing Education courses for members and monitors their compliance with the 40 hour annual requirement; keeps a current list of the members of the legal profession; registers the contracts and decides all other matters concerning internships; makes recommendations regarding relationships among the regional bars; approves the staffing of the Secretary General and all contracts over 50,000 lei; appoints the members of the State Guaranteed Legal Aid Council; approves the description of the form of lawyers organization as described in lawyers stamps and letterhead; and solves all problems relating to the legal profession except those reserved for the Congress. The Council’s decisions, like those of the Congress, can be appealed to the court system. The Council in turn, selects the Deputy President who substitutes for the President. The UoL President is elected by Congress and the duties of that offices are to represent the UoL with other entities and individuals, call and chair the Council meetings, sign documents for the Council, supervise the relations between the Regional Bars and those Bars and the UoL and ensure that necessary conditions are met for lawyers activities to be conducted in the courts, with the prosecutors and other public authorities. The organizational, administrative, economic and financial activities of the UoL are placed under the authority of the newly created and paid position of Secretary General who is selected by the Council.

By statute the UoL is given authority to regulate the licensing and discipline functions for its members through specific Commissions. The Ethics and Discipline Commission’s 11 members are chosen from the regional Bars and some elected by Congress. The Licensing Commission also has 11 members all selected by a special commission appointed for that purpose by the Council. 8 must be lawyers with at least 5 years of experience and 3 must be law professors. In addition there is a required Audit Commission which performs the audit of the financial-economic activity of the UoL.

In addition to the specific mandates alluded to above, the Bar through its governing bodies regulates and keeps control of “…the fundamental aspects of lawyers’ relations with public authorities, courts, law enforcement agencies, social associations and other agencies” and the Bar “…shall secure the access of individuals and legal entities to qualified legal assistance provided by lawyers.”

In addition to the above described regulatory functions the Bar provides as services: NGO sponsored and other CLE seminars, a monthly publication “Avocatul Poporului”, a web site www.avocatul.md, and it represents the interests of the Bar with various public agencies, and comments on proposed legislation of interest to lawyers. There are presently five staff members in the bar office.

The annual revenue for the Bar from dues, fees and donations, is about 2 million lei (c. $ 160,000 USD).
Analysis of Current Bar Operations:

(1) Bar Mandated Activities:
(a) Licensing/Internships.
(b) Discipline/Ethics
(c) Maintenance of a Current List of Registered Lawyers

Licensing/Interns/Discipline

In terms of licensing and discipline, interviews establish a widespread confidence in the abilities and integrity of the commission members and in the effectiveness of their procedures. In common with other aspects of the Bar’s relationship to its members, there is also a widespread desire that each body be more transparent in their procedures and outcomes. This might be one result of what is frequently referred to as “the Soviet Legacy”. In the lawyer’s case the suspicions grow out of lack of personal knowledge about the reason for decisions or the process by which they are reached, and the suspicions are linked to questions of fairness, equality of treatment and whether the wrong things are being done for the wrong reasons. This arises mostly from the work of the Licensing and Ethics and Disciplinary commissions but also spills into comments about full disclosure of Bar expenses or why some expense items are not in the budget. The focus is not on the people doing the work as much as the lack of transparency about what is being done and why. So it seems the operating arms of the Bar: the administration and these Commissions might counter this tendency by going the extra measure to make their activities abundantly clear to the members who elect them and whose dues support their efforts. This would include announcements in advance about hearings they will hold, writing decisions about what they did that are clear and detailed enough to be upheld on court review and understandable to the membership who should be able to easily access them. Currently only the decisions of the Licensing Commission are available on the web site. For example, not only should results be readily available, but there should be place failing license candidates can find out errors they made. In fact there was enough criticism about the nature of the exam that it would be worth the Commission’s examination about recasting what such an exam should really be testing including perhaps exploring finishing the search for computer scoring on the computer generated exam, and perhaps an alternative to the attempted memorization of 400 “correct” answers in the multiple choice phase. On the other side of the coin, these Commissions are comprised of volunteers earning their income in other activities. So it seems natural to support their efforts by providing investigative support and insisting on up to date lawyer contact information for the use of the Disciplinary Commission. It seems productive to examine the standards each Commission is applying to see if they can be made clearer and more objective so lawyers can be guided by them, and appealed decisions could
be upheld because the standards to apply would leave no room to be subjective, as far as possible. It would also serve everyone’s interests to have someone other than Commission members have the responsibility of representing the decisions in appealed cases especially when they have to add this to their other unpaid responsibilities for their work.

Closely related to licensing is the Internship program. A lot of the members interviewed felt that this program needs serious revision especially in terms of a qualifying, screening exam and the Bar taking the reins of format providing formal training during the Internship. These are all provided for in the new Amendments so those needs must be met.

*Registry of Lawyers*

The third area of responsibility - the maintenance of the registry of lawyers - did not fare as well. The lack of uniformity of contact information for all lawyers, the lack of maintenance of an updated list on the web site, and the lack of the public access to the list of licensed lawyers so they could determine if the person they want to hire is even a lawyer, came up repeatedly in the interviews. This issue will be resolved by the new amendments to the LLP which transfer this responsibility to the Ministry of Justice.

**Member Service**

(1) Clearly the number one desired but lacking member service is Bar generated continuous training of lawyers. The common perception is that the Bar does some of its own seminars but mainly it facilitates the packaged NGO seminars that are devoted to concerns those organizations have. While these seminars are welcome, practical training on what lawyers do in their practice and how the law is changing are unmet needs.

The continuing widespread member concern that the Bar’s biggest shortfall was in continuing legal education is met by the LLP Amendments requiring that every member have at least 40 hours of training per year and giving to the new Union of Lawyers exclusive authorization to set the requirements for approved providers and the initial and continuous training of the members. According to the “Informative Note” to the LLP Amendment, paragraph 6, funding for all this training “... would be covered from membership fees that the lawyers pay annually as well as from additional funds of the Union of Lawyers.” Since the UoL is approving the form of training and paying for it, logic dictates that it will effectuate the training. Suggestions as to how this mandate could be implemented are found in the new ABA ROLI Moldova report entitled “Recommendations to the Union of Lawyers on Regarding Continuing Legal Education”, submitted to the UoL along with this report. This report can be available to any member by going to the ABA ROLI web site:

It is recommended that the UoL follow the plan of the National Institute of Justice to promote planning and guide additional funding. Namely this would be that MBA request a grant similar to that provided to Moldova’s National Institute of Justice by the Council of Europe and the UNDP. This grant funded a curriculum and training needs assessment of the judges and prosecutors in terms of courses they desired. The same thing could be done here for the members and then those results would help the Union of Lawyers Council set the curriculum for the members and the results could be used as a sponsorship guide for outside donors.

The strength of this desire and the reality that the new Amendments to the Law on the Legal Profession will result in hundreds of more providers of legal service required to be lawyers thus increasing at least by one third, the persons required to have training and the requirement that the training be at least 40 hours, all suggests an organizational change. This component of the Bar’s activities might best be established through a separately staffed and budgeted department. Some thought should be given to utilizing the Law Center built for this Bar purpose some years ago. Beyond seminar training there is a wide spread desire that the Bar should provide guides on the necessities of the practice. This can be how-to-do it guides created by experienced members with check lists and forms on practical tools such as advocacy skills, sample fiscal declarations with comments, model client contracts and suggested minimum fees for representation in national and international courts. An example of such a published practical guide has been furnished to the Bar along with this report.

(2) The second most desired member service is information. Largely this would come from the Bar’s governing bodies and administration. The younger members (i.e. those under 45 years of age) whose ranks grow year by year seek more information conveyed by e-mail and on the web. Information includes timely notices of Council meetings, Commission meetings, Congresses and timely revelation of the agendas and decisions of such meetings. They want information about upcoming seminars and proposed new laws that will impact their practice. They want a chance to convey their opinions to the bar whether it is by e-mail replies, chat rooms or blogs. The existence of the popular web based “lawyer’s network” created and maintained by Amnesty International Moldova running parallel to the Bar Web site’s “Forum” is evidence that there is a desire for communication and information in this format. The Bar’s current two communication formats, the journal and the web site received little praise largely because their information is dated, thought to be of no real practical value and the published journal is not widely distributed. The majority opinion was that the journal seemed like too high a cost for the value when it can be put on the web and when a newsletter could suffice for members.
who can’t access the web. The organized bar of Moldova’s neighbor Ukraine has a good, well maintained example of this blending of journal and web site at www. uba.ua. All this takes time and money and is not something that the leadership who are volunteers with a limited staff can easily undertake. So it will be up to the legislatively mandated new office of the Union of Lawyers Secretariat to implement these changes.

(3) In addition here is a list of additional services that the Bar might consider as a means of building loyalty of the members to increase the participation in dues payments as well as in Bar activities. Too often in the interviews the remark was made to the effect that the only relation to the Bar the member had was to pay the dues and attend the Congress.

· Insurance

Under the LLP Amendments a lot of lawyers are going to need legal liability insurance. It would make sense for UoL to negotiate a group rate that maximizes the individual lawyer’s bargaining power. Because the successor Union of Lawyers is mandated to set the minimum policy limits for these policies, it is preferable for UoL to hire an independent broker to research potential insurers and negotiate a group rate. This avoids the potential appearance of a conflict of interest. But while in the insurance area UoL should also explore a group rate for health, dental, vehicle and home insurance which costs the UoL nothing and can produce visible benefits for the members.

· Vendor Discounts

Because the law practice tends to be uniform in the services it consumes, it lends itself to group discounts for such things as supplies (e.g. legal forms and paper), equipment (e.g. computers, monitors, file management and accounting system software, cabinets), and services (e.g. service of court papers, rapid delivery, research, translation services).

· Assorted Services:

As part of this project, this expert consulted ABA ROLI offices in similar nearby jurisdictions to see what their Bars, also with limited funds, were considering. Here’s a non exhaustive list: it includes Bar-developed diversion programs for minor misconduct to deal with such issues through educational or substance abuse intervention, Bar developed alternatives to trials such as arbitration or mediation, fee dispute resolution service for clients who feel ill served or over charged, a Bar Foundation and/or Lawyer Trust Account program—both designed to generate additional Bar funds through contributions or collecting the interest on trust accounts needed by lawyers to sequester client settlements or other funds held tem-
porarily, and a Lawyer Referral Program to assist individuals in securing adequate legal representation.

· Suggestions from UoL members:

Members said UoL should have an educational program for the public and the lawyers on the rights and obligations of lawyers concerning engagement and expectations concerning services and fee. A portion of the web site should be allocated to this topic and hopefully a “Know Your Rights” brochure produced for the public. A speakers’ bureau to explain the aspects of the rule of law and lawyers’ roles in this for programs, promoted by the UoL in schools and community organizations. Certainly the regional bar associations could spread the extension of and participation in some of these services.

Administration and Governance

The LLP Amendments, as they go into effect, should be responsive to some of the stated UoL members’ concerns about Bar administration, governance, fiscal audits and prior notice to the members of events and elections. There is a lot of hope resting on the selection of a Secretary General who will have the experience, talent and vision to effectuate substantial changes in the Bar’s future.

Additionally a lot of concerns that UoL members outside the Chisinau metropolitan area had about little notice of, or interest or participation in, the Bar’s activities, could be solved by the legislated regional Bars from these outside areas. Each has the ability in their General Assemblies to select their own delegates to the Union of Lawyers’ Congress, Council, and to each Commission. At least the structure to expand the UoL focus out to the regions is in place and the rest depends on the involvement of the regional lawyers and the quality of the Deans and delegates each regional Bar selects for these leadership positions.

However, to guide those who will be empowered to effect new directions in Bar administration, here is a list of the factors used widely to measure the administrative performance of any Bar. They formed a basis for the questions posed in the interviews for this report. Strategic Analysis and Planning; Governance; Project Design and Implementation; Financial Planning and Management; Human Resource Management; Operational and Systems Management; Fundraising; Media, Public Relations, and Marketing; Advocacy and Constituency Building/Membership and Gender & Minority Participation.

Among those who felt they had enough knowledge to comment and rate UoL on each factor, sometimes a scale of scale of 0 to 10 with 10 being the highest was used. When this scale was employed the general award range was 0 to 5. The most positive comments were linked to the Advocacy factor especially in light of the Bar’s April 7th response and the strike over limiting counsel’s access to their clients.
in pre-trial detention. On the last category Gender/Minority, there was a majority feeling that discrimination as known elsewhere in the world, doesn’t exist here and the fact there are two women in leadership positions already demonstrates there is no impediment to getting there based on gender. Also there was widespread admiration for the staff member who keeps track of all the lawyer registrations. In terms of future member services there was a wide spread acknowledgement that the image of the lawyer in the public mind is indeed low and a hope that the UoL consider programs supporting the importance of lawyers in contributing to the rule of law in Moldovan society as an area of importance.

The Strategy for the Strategy

The newly reformed Union of Lawyers is going to face the inevitable result of change many choices, new decision makers and not a lot of historical precedence to fall back on. So to balance all the ideas presented here as well as issues like staffing and funding, this section suggests with how to go through the decision process which neighboring Bars have used to their advantage, both internally and in gaining sponsor support to implement parts of their program.

- The first requirement, Organizational Assessments, the UoL has the benefit of 3 of them. The present one, the previously mentioned ABA LPRI and CCBE Assessments.
- Retreat/Vision/Plan- A gathering of the experienced members of the components of the UoL, with regional representation, both civil and criminal practice representation and some younger lawyer representation; along with officers, Councilors, Commission chairs, perhaps past councilors and officers, and representatives of law firms that have demonstrated their interest through donations and/or participation.

The focus of the retreat might be where do we want this organization to be in 5 years? Then, the next issue is what goals does UoL need to set to get to that vision. Then, what specific objectives and changes does UoL need to accomplish in order to get to those goals. Then, what specific activities must be accomplished to get to those objectives/changes. Then what is the time line and natural progression in these goals so one success builds on the prior success. The final issue is what is the time line to start and end these activities. This is what meant by the first evaluative factor noted above, “Strategic Plan and Implementation”:

In this process the group will explore all the suggestions, discard some, enlarge others and defer some that seem worthy but can’t be accomplished right away. The product of all this is called a Strategic Plan. But it’s not a plan set in stone. It’s the foundation for a work in progress. To really be effective it needs to be reviewed, updated and amended yearly as the bar learns from experience, from unforeseen consequences of its initiatives, and from changing conditions.

Part of such planning could be a Needs Assessment similar to the one done with many members for this report and including a suggestion list for continuing ed-
ucation topics where more members could indicate the strength of support for choices available to the UoL. Most of this could be done through list serve e-mails.

**Conclusion**

This assessment reveals that the MBA has done well in its first 8 years in most of the mandated activity given that the administrative and policy leadership is partially voluntary and it lacked a legacy of a strong and independent legal profession to build on. There certainly is no lack of respect from most people interviewed about the integrity of those in the Council and the Commissions and in many cases there is admiration for the efforts of those past and present lawyers that donated their time and expertise in those positions.

However at this point in time, account must be taken of the shortcomings which are endemic to organizations like UoL in similar positions. Consider the conclusion of the 2008 report about the Kosovo Chamber of Advocates (KCA). “Part of this frustration can be attributed to poor communication between the leadership and membership about what the leaders are doing. KCA could take relatively low cost steps to vastly improve the flow of information between the leadership and the membership. Part of the frustration can also be attributed to what is perceived as a lackluster performance by leadership.”

If UoL is willing to create widespread member support through better communications and increased/improved member services, then it should likewise expect increased donation of member participation in the form of dues and committees to focus on specific areas of challenge like: meeting the continuing education requirements; fostering programs newsletters and events designed for younger lawyers, or for that matter senior lawyers near retirement; a communications committee to set up interactive features of the web site and associated chat rooms; a committee on setting up policies and procedures for and enforcing the requirements of the mandatory aspect of continuing legal education; and committees to focus on events, trainings and aids in specific areas like labor law, family law, criminal law, real estate law, etc. The idea is to get the membership meeting, talking, brainstorming and working for the betterment of themselves and their colleagues, on a regular basis.
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