The Advocate in the Mongolian People’s Republic

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By all accounts there was no organized legal profession in Outer Mongolia under the ancien regime. A tiny group of “advocates” may have come into being about 1920, perhaps as a consequence of the entry into effect of a vast svod zakonov prepared by a special commission charged with systematizing Mongolian law.

The far-reaching judicial reforms introduced after the Revolution of 1921 made specific provision for the assignment of defense counsel by a court upon the request of the accused or if the “accusor” was participating in the case. In 1928 a kruzhok of advocates was organized in Ulan Bator. The Statute of the society, confirmed 27 June 1928 by the Presidium of the MPR State Small Khural, empowered members of the society to act as defense counsel in judicial sessions and to prepare all significant legal documents at the request of citizens.

How common it was for litigants or defendants to have recourse to members of the society is not clear. In principle, any person could act as defense counsel (a principle retained intact in Mongolia down to the present day). Sodovsüren reports that society members acted as defense council during the 15-day session of the MPR General Court held during September 1930. A Statute confirmed on 19 June 1934 by the Presidium of the MPR State Small Khural provided that any persons having the right to vote might act as defense counsel (at this time lamas and feudal elements were deprived of suffrage). Aimag courts were instructed to maintain a register of individuals who would serve as defense counsel, the amount of remuneration for legal services to be settled between the client and his representative. The MPR law on criminal procedure enacted in 1935 reasserted the rule that an accused be assigned defense counsel at his request, and the 1940 MPR Constitution laid the base for the modern Mongolian advokatura by stipulating that the accused is “...guaranteed the right to be defended by counsel”.

On 14 January 1944 major reforms were introduced in Mongolia with regard to the provision of legal services. Within the MPR Ministry of Justice, a College of Defense Counsel was established with the powers of a Ministry section to

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service requirements of individual citizens for representation in civil and criminal cases and to prepare legal documents. On 25 July 1952 the competence of the College was enlarged to embrace legal services for state enterprises and departments on the basis of individual contracts. Article 70 of the 1960 MPR Constitution reaffirmed that “cases shall be examined in all courts openly, the accused being ensured the right to defense.”

The MPR Code of Criminal Procedure reproduces the constitutional provision quoted above and further stipulates that an investigator, procurator, and the court are obliged to ensure the accused the opportunity to defend himself, in the procedure established by law, against an accusation and to secure the protection of his personal and property rights (Article 20). Mongolian criminal procedure follows the Soviet practice of allowing defense counsel to enter a case when the end of the preliminary investigation is announced to the accused and all the materials of the case are handed over to him for familiarization. In cases involving a minor or persons who by virtue of mental or physical defects can not exercise their right to defense, or in instances when the procurator in his discretion deems a defender to be necessary, the latter may participate in the case from the moment the accusation is presented (Article 45). The defender, it should be noted, need not necessarily be an advocate; representatives from trade unions and other social organizations, close relatives, and legal representatives of the accused also may act. Participation of a defender is compulsory at the stage of judicial examination in certain instances (Article 47). Mongolian sources suggest that defense counsel participate in 97.5% of criminal cases heard and disposed of at the court of first instance and that the advocate is increasingly involved in the preliminary investigation. Cases appealed to the MPR Supreme Court by defense counsel were decided in the favor of the latter 53% of the time.

By a Statute confirmed 30 June 1965 by the MPR Council of Ministers, the Mongolian advokatura was reorganized into a voluntary social organization operating on the principle of economic accountability while retaining a nominal relationship with the MPR Ministry of Justice. On 30 October 1978 yet another reorganization was introduced, the advokatura being reconstituted into the College of Mongolian Advocates. The College serves four large urban centers and 18 aimags. Some 24 legal consultation offices have been organized in the country, each containing at least two advocates. There are about 110 full-time advocates in the country, 35 of whom work in the Mongolian capital, Ulan Bator. Their numbers are augmented by part-time (vneshtatnyi) practitioners whose names appear on the rolls of the College.

Fees are fixed by an Instruction on Payment for legal assistance rendered by advocates to citizens, enterprises, institutions, organizations, and agricultural associations which is confirmed by the MPR Ministry of Justice after the text is agreed with the State Committee for Labor and Wages of the MPR Council of