

PROBLEMS OF ENSURING THE INDEPENDENCE OF ADVOCATES

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Abstract: This thesis delves into critical aspects concerning the autonomy and independence of advocates within the legal framework of the Republic of Uzbekistan. Against the backdrop of evolving socio-legal dynamics, the study scrutinizes the challenges and opportunities faced by advocates in upholding their professional independence.

Ensuring the independence of advocates is a cornerstone of a robust and democratic society, as it safeguards the principles of justice, fairness, and the rule of law. In a democratic system, advocates play a pivotal role in upholding individual rights, ensuring access to justice, and serving as essential checks on the power of the state.¹

Article 116 of the Constitution of the Republic of Uzbekistan ensures the right of every individual residing in Uzbekistan to receive competent legal assistance.² The provision stipulates that advocates are responsible for delivering legal services to both individuals and legal entities. As a pivotal institution within civil society, advocates are entrusted with the constitutional duty of providing proficient legal aid to individuals and legal entities.

Currently, there are about 30 normative-legal acts regulating the institution of advocacy. Most of them are by-laws.³ Among these particularly in the provisions of the 1996 Law of Uzbekistan "On Advocacy,"⁴ the 1998 Law of Uzbekistan "On Guarantees of Advocacy and Social Protection of Lawyers,"⁵ and the Decree No. 263 of the Republic of Uzbekistan dated May 30, 2022⁶ are fundamental normative acts in the field. The Decree of the President of the Republic of Uzbekistan "On measures to radically increase the effectiveness of the institution of advocacy and expand the independence of attorneys" dated May 31, 2018 No. UP-5441 ushers in a new era in improving the institution of advocacy.

Despite these legal instruments, the discord and incongruity in the legal framework surrounding the advocates in Uzbekistan persist. The upcoming discussion will address several issues, such as the election of the Chair of the Chamber of Advocates, the representation allocation from every administrative unit in Uzbekistan, the government's role in licensing advocates, and the lack of legislative initiative demonstrated by advocates. According to opinion of Scholar Salomov⁷ the following actions to be taken in order to minimize existing problems in the advocacy in the Republic of Uzbekistan:

¹ Zalogina, O. G. (2011). Problems of strengthening guarantees of independence of lawyers. Law and order in modern society, (3), 10-14.

² The Constitution of the Republic of Uzbekistan dated 01.05.2023

³ Bakhrom Salomov (2020). Advocacy in Uzbekistan: current state and development prospects. Society and Innovation, 1(1), 107-113. doi: 10.47689/2181-1415-vol1-iss1-pp107-113

⁴ Law of the Republic of Uzbekistan "On advocacy" from 27.12.1996 r. № 349-I

⁵ Law of the Republic of Uzbekistan, "On guarantees of advocate activity and social protection of Advocates" dated December 25, 1998 No. 721-I

⁶ Resolution of the President of the Republic of Uzbekistan, dated May 30, 2022, No. PP-263

⁷ DCs, Chairman of the Methodological and Advisory Council of the Chamber of Advocates of the Republic of Uzbekistan, Academician of the Academy of bar and notarial system of Russian Federation, Vice-President of International Union

- Reconsideration of the activities of Advocacy self-government bodies and further improvement of their management system;
- Reconsideration of issues related to obtaining and revoking the status of an attorney as well as licensing its activities;
- Strengthening social and professional protection of attorneys;
- Further improvement of legal practices; 5. Improvement of the quality and effectiveness of legal service;
- Establishment of training and further training system as well as improvement of professional development system of attorneys;
- Expansion of the procedural authorities of attorneys and ensuring the principle of competition in criminal proceedings;
- Expansion of legal market and introduction of the procedure allowing foreign attorneys to practice law in the Republic of Uzbekistan;
- Liberalization of the relations between the Advocacy and the State.

Most of these problems have existed since at least 1996, resulting in 27 years of stagnation and insufficient progress within the legal profession. A notable illustration of this challenge is the conflicting and ongoing provisions found in Articles 12-3 and 12 of the "On Advocacy" Law from 1996 and the "On Guarantees of Advocacy and Social Protection of Advocates" Law from 1998, respectively.

First aspect to point out is that unfortunately, there is still a provision in Part 3 of the Article 12 which stipulates that the Ministry of Justice of Uzbekistan has the right to nominate a new chairman of the Chamber of Lawyers. Although this provision does not oblige the members of the conference to follow the presentation of a particular candidate (the above article of the law says "by presentation", not "by choice"). Based on the current legislation, it seems appropriate for the lawyers themselves to choose the candidate for the future chairman of the Chamber of Advocates.⁸ As known from the aforementioned laws regulating legal practice, the highest body of the Chamber of Advocates of Uzbekistan is the conference of the Chamber of Advocates, convened once every 5 years. According to the founding and other internal documents of the Chamber of Advocates, the conference consists of 10 representatives of advocates from each administrative unit of Uzbekistan (Karakalpakstan, regions, and Tashkent). In total, the conference should consist of 140 representatives (advocates). For a long time, an issue that remains unresolved for presumably clear reasons is the proportionality of the representation in the conference of Advocates from a specific territory based on the percentage of the total number of registered advocates in that territory.⁹ Out of approximately 5000 advocates in Uzbekistan, almost 51% are registered and permanently work in Tashkent. Thus, around 2500 advocates from the capital are represented by 10 delegates. The same number of delegates represents, for example, 250 advocates from any given region. Agreeably, a 10-fold difference in representation does not provide a balanced voting system and agenda formation

(Commonwealth) of advocates, honorary lawyer of Russian Federation, managing partner of the law firm "SANKTALEKS" in Tashkent, Tashkent, Uzbekistan

⁸ <https://www.gazeta.uz/ru/2023/11/14/advocacy>

⁹ <https://paruz.uz/post/normativnye-akty-palaty-advokatov>

based on the interests and opinions of the corresponding number of colleagues from their territories.¹⁰

Another important existing problem is the licensing procedure for legal practice, issuance of licenses and certificates to lawyers is still in place, managed and regulated by the state authority – the Ministry of Justice. This includes the issuance of orders by the Minister of Justice regarding the activities of advocates. Essentially and formally, all advocates in the country are "subordinated" to orders of the state authority, specifically its leader.¹¹

Furthermore, In the new Constitution of Uzbekistan (as in the previous one), Article 98 defines the circle of subjects with the right of legislative initiative. Alongside the head of the state and the legislative bodies of the country, supervisory bodies overseeing law enforcement (also acting as preliminary investigative bodies) and the judicial bodies of the country are identified as subjects of legislative initiative, encompassing nearly all participants in judicial and investigative actions.¹²

It is rather surprising that advocates, despite being declared equal participants in these activities, are not officially recognized as subjects of legislative initiative.¹³

- To address the most critical issues in the legal sphere of Uzbekistan, it is necessary to accomplish following remedies:
- Ensuring the complete and absolute independence of the legal profession in Uzbekistan and the normative consolidation of this thesis in laws and statutory documents of the Chamber of Advocates (including licensing, issuance of certificates, adoption of corporate acts, creation and maintenance of publicly accessible information systems, resources, etc.);
- Normative affirmation of the right of the Chamber of Advocates to be among the subjects of legislative initiative;
- Taking measures to fulfill previously unexecuted provisions, decrees, and resolutions of the president related to legal practice;
- Normative confirmation of the Chamber of Advocates' right to appeal to the Constitutional Court of the country;
- Full guarantee of the inviolability of the advocate "on the principle of continuity" - from the moment of obtaining the status until its termination through a judicial process, similar to parliamentary immunity (via the initiation of a criminal or administrative case upon the recommendation of the Prosecutor General or their deputy). It is proposed to revoke the inviolability of an advocate after the consent of no less than 75% of the total number of permanent members of the Board of Advocates;

¹⁰ Bakhrom Salomov (2020). Advocacy in Uzbekistan: current state and development prospects. *Society and Innovation*, 1(1), 107-113. doi: 10.47689/2181-1415-vol1-iss1-pp107-113

¹¹ Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated August 5, 2022 No. 432 "On approval of the Regulations on the procedure for licensing the activities of a lawyer through a special electronic system."

¹² The Constitution of the Republic of Uzbekistan dated 01.05.2023

¹³ <https://www.constituteproject.org/topics/initiat>

- Ensuring the professional and social protection of advocates.

In summary, advocacy serves as a crucial pillar in any democratic society, acting as a guardian of justice, human rights, and the rule of law. Central to the effective functioning of this profession is the independence of advocates, a principle vital for maintaining a fair and impartial legal system. However, various challenges persist in ensuring the autonomy and freedom of legal practitioners, impeding their ability to fulfill their essential role. Addressing the problems surrounding the independence of advocates is imperative for fostering a legal system that upholds justice and protects human rights. By overcoming these challenges, societies can reinforce the indispensable role of advocates in promoting the rule of law and ensuring a just and equitable legal system.

THE LIST OF USED LITERATURE:

1. The Constitution of the Republic of Uzbekistan dated 01.05.2023
2. Law of the Republic of Uzbekistan “On advocacy” from 27.12.1996 г. № 349-I
3. Law of the Republic of Uzbekistan, “On guarantees of advocate activity and social protection of Advocates” dated December 25, 1998 No. 721-I
4. Resolution of the President of the Republic of Uzbekistan, dated May 30, 2022, No. PP-263
5. Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated August 5, 2022 No. 432 “On approval of the Regulations on the procedure for licensing the activities of a lawyer through a special electronic system.”
6. Zalogina, O. G. (2011). Problems of strengthening guarantees of independence of lawyers. Law and order in modern society, (3), 10-14.
7. Bakhrom Salomov (2020). Advocacy in Uzbekistan: current state and development prospects. Society and Innovation, 1(1), 107-113. doi: 10.47689/2181-1415-vol1-iss1-pp107-113
8. <https://www.gazeta.uz/ru/2023/11/14/advocacy>
9. <https://paruz.uz/post/normativnye-akty-palaty-advokatov>
10. <https://www.constituteproject.org/topics/initiat>