



Advocacy in Uzbekistan: present state and development prospects

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ABSTRACT

The article analyzes the present state of the Institution of advocacy in the Republic of Uzbekistan. It provides an investigation of existing problems, without which it is impossible to further reform the advocacy. The article presents the author's classification of development stages of the advocacy as well as the development prospects and directions. Moreover, the article focuses on the thorough study of the results of a sociological survey conducted among lawyers and students, contributing to identify problems in the field of advocacy and form ground proposals for their elimination.

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Ўзбекистонда адвокатура: жорий ҳолат ва ривожланиш истиқболлари

АННОТАЦИЯ

Калит сўзлар:

Адвокат
Адвокатура институти
Адвокатлар палатаси
Адвокатуранинг
ривожланиши
Қонунчилик

Мақолада Ўзбекистонда адвокатура институтининг ҳозирги ҳолати таҳлил қилинди. Адвокатурани ислоҳ қилишга тўсқинлиқ қилаётган муаммолар ўрганилди. Адвокатура ривожланиш босқичлари бўйича муаллифнинг классификацияси келтирилди, ва адвокатурани

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Социологик сўров.

такомиллаштириш истиқболлари ва йўналишлари муҳокама қилинди.

Шунингдек, мақолада адвокатлар ва талабалар ўртасида ўтказилган ҳамда соҳадаги муаммоларни аниқлаш ва уларни бартараф этиш бўйича таклифларни шакллантиришга ёрдам берган социологик сўров натижаларини ўрганишга алоҳида эътибор қаратилди.

Адвокатура в Узбекистане: текущее состояние и перспективы развития

Ключевые слова:

Адвокат
Институт адвокатуры
Палата адвокатов
Развитие адвокатуры
Законодательство,
социологический опрос.

АННОТАЦИЯ

В статье анализируется текущее состояние института адвокатуры в Республике Узбекистан. Изучены существующие проблемы, без устранения которых невозможно дальнейшее реформирование адвокатуры. Приведена авторская классификация этапов развития адвокатуры, обсуждены перспективы и направления её совершенствования.

Также в статье уделено особое внимание изучению результатов социологического опроса среди адвокатов и студентов, который помог выявить проблемы в сфере и сформировать конкретные предложения по их устранению.

In a law-governed state, ensuring a balance of power between the state and society is a prerequisite for the establishment of democracy. This requires a deterrent force that will counteract the abuse of authority in the exercise of their functional duties by the armed forces, law enforcement, and other state bodies, as well as their officials who protect the political structure of the state.

That force is public control, successfully tested through human history and functioning in developed countries, or rather, the local authorities, media, and non-profit organizations. Therefore, the state is interested in the development and strengthening of this system. In fact, this is the foundation of civil society. In this very regard, the reform of the Institution of advocacy, which is by nature non-governmental and by the scope of the activity non-profit, possesses an essential value in strengthening the effectiveness of the judicial reforms introduced in our country.

At the same time, since the formation of the American state, lawyers have held key posts in the country's leadership. The attitude towards representatives of the legal community is clearly expressed in the words of Alexis de Tocqueville: "In America there are no nobles or pundits, and people tend to distrust rich people; therefore, lawyers form the upper political class and the most developed part of society ... If they asked me in what sections of this society I see the American aristocracy, I would not hesitate to answer that they are not among the rich, by no means connected by bonds of community: the aristocracy in the USA – these are those who sit on the bench and are engaged in legal profession"[1].

Article 116 of the Constitution of the Republic of Uzbekistan guarantees everyone who lives in Uzbekistan the right to receive qualified legal assistance. It is established that the advocacy carries out activity on rendering legal service to physical and legal entities[2].

As a key and significant institution of civil society, the advocacy is designed to carry out the constitutional task of providing qualified legal assistance to physical and legal entities. It is for this reason that from the very first days of independence of our country, special attention has been paid to the issues of reforming the institution of advocacy and establishing strong, independent advocacy based on democratic principles and an integral part of the judicial and legal system.

Large-scale changes in the political life of the country, ongoing economic, social, political, and cultural, judicial, and legal reforms make it necessary to further develop the advocacy system and improve its legal framework.

The dynamic pace of development and progress of society, and in particular, fundamental reform of the legal framework introduced over 1991-2016 years, increased use of means of Internet technologies and electronic resources in the legal system as well as the intensified inflow of foreign investment in the country through improving the business environment have revealed a lack of lawyers specialized in providing legal assistance in business and lack of educational institutions that prepare field-oriented qualified lawyers.

Furthermore, the process of globalization taking place in the world undoubtedly includes the population of our country. Thanks to the democratic reforms carried out over the past 2-3 years, the growth of consciousness and legal culture of citizens have expanded their political and legal activity, consequently, increased the number of appeals to the judicial authorities and the need for legal services. These factors stipulate the necessity to improve the institution of advocacy at a level meeting modern requirements.

To our knowledge, one lawyer in Germany accounts for 499 people [3]. In Turkey, one lawyer accounts for 794 people. In France, one lawyer accounts for 1020 people. As for the Russian Federation, one lawyer accounts for 1870 people. In Ukraine, one lawyer accounts for 1205 people. In Georgia, one lawyer accounts for 833 people. In Uzbekistan, the number of lawyers practicing advocacy equals to 3,946 lawyers, while the total population is over 33.5 million. Thus, one lawyer accounts for about 8,5 thousand people[4].

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.

Currently, there are about 30 normative-legal acts regulating the institution of advocacy. Most of them are by-laws. At the ceremony dedicated to the 26th anniversary of the adoption of the Constitution of the Republic of Uzbekistan and in the State Program for 2019, President Sh. Mirziyoyev emphasized the need for bringing lawmaking activities to a qualitatively new level and adopting laws with direct action[5].

The Roadmap “On the revision of legislative acts subject to unification and systematization in legal acts of direct effect” has been adopted by a Joint resolution of the Legislative Chamber of the Oliy Majlis and the Council of the Senate of the Republic of Uzbekistan on March 26, 2019[6]. Paragraph 45 of this Roadmap sets forth the task related to the adoption in January 2021 of a unified restated Law that combines two Legal acts

namely “On advocacy” and “On guarantees of advocacy activity and social protection of attorneys” into a single Law called “On advocacy and advocacy activity”. The Chamber of Lawyers, the Ministry of Justice, as well as other concerned ministries and departments have been determined as the responsible executors for the realization of this task.

Nowadays, to implement this Resolution, the Chamber of attorneys of the Republic of Uzbekistan, in cooperation with the UN Development Program, is actively working on developing a Strategy for the development and further reform of the Institution of advocacy.

Within the framework of this project, there has been made a thorough analysis of the development stages of advocacy in Uzbekistan, its present state, and reform prospects, as a result of which relevant proposals have been developed.

In this regard, it is worth noting the four main stages of development of the Institution of advocacy within the period of independence of Uzbekistan:

1. The stage of development of the advocacy over 1990-1996 years. This stage is characterized by the adoption of the Law of the Republic of Uzbekistan “On advocacy” dated on December 27, 1997;

2. The stage of development of the advocacy over 1997-2007 years. At this stage, the second Law “On guarantees of advocacy activity and social protection of attorneys” dated on December 25, 1998 was adopted and the Association of Attorneys of Uzbekistan was established;

3. The stage of development of the advocacy over 2007-2017 years. The stage is notable for the adoption of Decree of the President of the Republic of Uzbekistan “On measures for further reforming of the institution of advocacy in the Republic of Uzbekistan” dated on May 1, 2008, as well as the improvement of the field legislation, and in particular, the establishment of the Chamber of attorneys of the Republic of Uzbekistan in accordance with the objectives of the Decree;

4. The stage of development of the Advocacy: one of the initial steps taken at the fourth stage was the adoption of the Decree of the President of the Republic of Uzbekistan “On measures of radical improvement of the effectiveness of the institution of the advocacy and expansion of the independence of attorneys” dated on May 12, 2018.

In the course of the research, there has been conducted a comparative analysis of the present state of advocacy in Uzbekistan, the relevance and necessity of its improvement at this stage of development of the society, as well as the systems of advocacy in foreign countries.

During the study of each development stage of the Advocacy, special attention was paid to such issues as the organizational and legal formation of the advocacy; legal activity; taxation of the advocacy and other mandatory payments of attorneys; interaction of the advocacy with the Ministry of Justice and other state bodies; problems existing in the system.

The final document prepared based on the analysis results through focusing on the features of reforms at each stage of the development of the institution of advocacy, identifies the problems and measures taken to solve them. The problems arising in the process of implementation of both legal acts (“On advocacy” and “On guarantees of advocacy activity and social protection of attorneys”), the declarative nature of certain norms, the lack of mechanisms for their implementation, the presence of certain

inaccuracies, the inconsistency of some legal norms with international standards in this area – all of that makes it necessary to further reform the advocacy.

In our opinion, the reform of the Advocacy should have the following directions:

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

There have been developed several suggestions addressing the shortcomings and problems that hinder the development of this sphere in the process of further reforms that need to be carried out in the above-mentioned areas.

To ensure a comprehensive and detailed development of the new Law, the adoption of which determined in the Strategy for the development of the institution of advocacy, the Chamber of Attorneys conducted a sociological survey among attorneys throughout June-July 2019. The survey containing 45 questions related to the controversial and problematic aspects of the advocacy and advocacy activity was submitted to the court of attorneys, because of which we received objective opinions and suggestions from our colleagues.

Among 3 946 attorneys carrying out advocacy activity in our Republic and the Republic of Karakalpakstan, 1 550 ones participated in this sociological survey, which accounts for 39% of the total number of attorneys.

The main purpose of the conducted survey is to study the opinions, positions, and suggestions of practicing attorneys regarding the role, place, and authority of the advocacy in the society. Moreover, it aims to investigate the results of reforms in this field, problems arising in the implementation of current legislation, the level of quality and effectiveness of legal service, and based on this to develop a set of measures to solve existing problems.

In the course of the study, it was revealed that young attorneys, gradually merging into the field of advocacy, make up a relatively small part of the advocacy body. In particular, according to the results of a sociological survey conducted among attorneys, the number of lawyers under 35 years old only accounts for 5.9% of the total number of attorneys in the country.

Moreover, there has been surveyed 4th-year students studying Bachelor's degree at the Tashkent state university of law. The survey involved 200 students out of 468 ones. The number of students taking part in the survey approximately accrued to 43% of all undergraduate students. The purpose of this survey is to test the knowledge and skills of students as well as at the same time to investigate their attitude to the institution of

advocacy, excite their interest in the profession of attorney and fill them with enthusiasm of choosing this noble profession in the future.

In the process of the development of the draft Strategy for the development of the Advocacy, it was of paramount importance to research the Advocacy system in some foreign countries, and in particular, the legislation in the field of Advocacy in such countries as the United States, Germany, France, the Russian Federation[7], Kazakhstan[8], Kyrgyzstan and Tajikistan. There has been made a comparative analysis of the features of advocacy systems of these countries, which was used in the introduction of recommendations and proposals for improvement of the national legislation. It should also be mentioned that there has been thoroughly investigated the strategic plan for the development of the advocacy in such countries as the Russian Federation, Kazakhstan, Kyrgyzstan and Tajikistan, as well as the model law on the advocacy and advocacy activity, adopted by the inter-parliamentary Assembly of the CIS member States on April 19, 2019.

To ensure the compliance of the restated Law, being developed, with the norms of international law, there have been analyzed international standards regulating this sphere as well as legal norms of national legislation aimed at the implementation of the recommendations of UN working bodies and other international organizations on improving the procedures for regulation of the legal profession in the Republic of Uzbekistan.

There has been revealed by conducting a systematic investigation of the institution of advocacy that along with the positive changes due to the ongoing reforms in the field of advocacy, there are also some drawbacks requiring a constructive solution. Under international standards in the field of advocacy, the proposals of the Chamber of attorneys of the Republic of Uzbekistan developed in the framework of a project prepared jointly with the United Nations Development Program are particularly significant in creating the Strategy of the development of the Advocacy in Uzbekistan.

We believe that these proposals should be subject to the discussion and development among our country's attorneys. This will serve as an alternative version of the Strategy of development of the Advocacy in Uzbekistan, which will be developed by the authorized bodies in the future.

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