Possibilities of improving the activities of attorney’s assistant in the Republic of Uzbekistan

Alibek MATMUROTOV1

Tashkent State University of Law

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ABSTRACT

This article, based on the experience of foreign countries, discussed the main provisions relating to an assistant lawyer, the requirements for him to become an assistant lawyer, persons who cannot be assistant lawyers, and documents regarding the regulation of the activities of an assistant lawyer adopted by the Chamber of Lawyers Republic of Uzbekistan. The authors paid special attention to the inclusion of an assistant lawyer in the list of persons who cannot subsequently be questioned as witnesses under attorney-client privilege, and to the fact that the employment contract concluded with an assistant lawyer must be fixed-term.

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O’zbekiston Respublikasida advokat yordamchisi faoliyatini takomillashtirishning imkoniyatlari

ANNOTATSIYA

Mazkur maqolada advokat yordamchisiga oid bo’lgan asosiy qoidalar qonunda aks ettirish kerakligi, advokat yordamchisi bo’lish uchun qo’ylgan talablar, advokat yordamchisi bo’lishi mumkin bo’imagan shaxslar, advokat yordamchisi faoliyatini tartibga solishga oid hujjatlar O’zbekiston Respublikasi Advokatlar palatasi tomonidan qabul qilinishi zarurli bo’lgan davlatlar tajribasi asosida muhokama qilindi. Mualliflar tomonidan advokat yordamchisini advokatlilik siri bo’yicha kelgusida guvoh sifatida so’roq qilish mumkin bo’imagan shaxslar ro’yxatiga kiritilishi hamda advokat yordamchisi bilan tuziladigan mehnat shartnomasi muddati bo’lishi lozimgiga alohida e’tibor qaratildi.

1 Doctor of Philosophy in Legal Sciences PhD, Acting Associate Professor, Department of Judicial, Law Enforcement Agencies and Advocacy, Tashkent State University of Law. E-mail: alibekmatmurotov@gmail.com.uz
Возможности совершенствования деятельности помощников адвокатов в Республике Узбекистан

Аннотация
В данной статье на основе опыта зарубежных стран обсуждались основные положения, касающиеся помощника адвоката, требования к нему для того, чтобы стать помощником адвоката, лица, которые не могут быть помощниками адвоката, и документы, касающиеся регулирования деятельности помощника адвоката, принимаемые Палатой адвокатов Республики Узбекистан. Авторами уделено особое внимание включению помощника адвоката в список лиц, которые в дальнейшем не могут быть допрошены в качестве свидетелей по адвокационной тайне, и тому, что трудовой договор, заключаемый с помощником адвоката, должен быть срочным.

Интroduction
В Республике Узбекистан, важное значение имеет правильное обеспечение права граждан на получение квалифицированной юридической помощи при оказании юридических услуг, что является одним из ключевых аспектов развития гражданского общества. Роль помощника адвоката важна в юридической структуре, и эти лица вносят не меньший вклад в юридическую деятельность, чем будущие адвокаты. Поэтому необходимо улучшить нормативно-правовую базу по вопросам адвокационной тайны, а также усилить теоретические основания в этой сфере.

Литературный анализ и методы
Методы, такие как логический, сравнительно-правовой, научно-исследовательский, анализ статистических данных, интерпретация правовых документов, и исследование практики применения закона были использованы в работе. Одновременно было изучено положительный опыт стран СНГ относительно роли помощника адвоката.

Обсуждение и результаты
approved by the order of the Minister of Justice of the Republic of Uzbekistan No. 80 of March 27, 2009 determines the procedure for organizing the assistant’s activities.

Only Article 8 of the Law of the Republic of Uzbekistan "On Advocacy" of December 27, 1996, is the norm regarding the attorney's assistant. The main rules aimed at regulating the activities of the attorney’s assistant are defined in the legal document [5]. In our opinion, the basic norms for legal assistants should be defined at the level of the law. First of all, this leads to an increase in their status, and on the other hand, it gives them an advantage in some conflict names related to the assistant attorney.

According to the current regulations, a candidate to become a attorney’s assistant must meet the following requirements:
- being a citizen of the Republic of Uzbekistan;
- having a higher or secondary legal education.

At the same time, the national bar legislation lists the following two types of persons who cannot be attorney’s assistants:
- persons who are incompetent or have limited legal capacity according to the established procedure;
- persons whose convictions have not been canceled or removed.

The recruitment of a candidate who meets the above requirements is carried out by the order of the head of the legal structure (law office, law firm, board of advocates) or the head of the relevant regional department of the Chamber of Advocates of the Republic of Uzbekistan [6]. It should be noted that an attorney-at-law is also appointed as the assistant attorney by this order.

The working conditions of the attorney’s assistant are determined by the employment contract (contract) drawn up following the procedure established by the legislation. The following issues should be stated in the employment contract (contract):
1) rights and obligations of the advocacy structure (territorial office), official advocate, and attorney’s assistant;
2) procedure for payment of labor attorney’s assistant;
3) work regime of the attorney’s assistant;
4) term of validity of the employment contract (contract) of the attorney’s assistant;
5) conditions for termination of the employment contract of an attorney’s assistant;
6) advocacy structure (territorial office), other issues of official-advocate and assistant relations.

The advocate structure (territorial department) issues a certificate of the prescribed model to the assistant. This certificate is returned to the legal structure (territorial office) when the employment contract (contract) concluded with it is terminated [7].

It is important to note that the assistant attorney is directly subordinate to the attorney-at-law. His experience as a paralegal is listed as being in addition to the legal professional experience required to qualify as an attorney.

According to the legislation of the National Bar, the rules of professional ethics of advocates and the requirements of maintaining legal secrecy apply to the assistant.

In addition, it is established that the employment contract concluded with an attorney’s assistant can be canceled in the event of 8 cases.
The study and analysis of the current legal assistant law show that it is necessary to define the basic provisions of the attorney’s assistant, the requirements for becoming an attorney’s assistant, the persons who cannot be an attorney’s assistant, their employment procedure, clarifying the tasks of attorney’s assistant, whether the period of working as an attorney’s assistant is considered seniority in a legal specialty or vice versa, the issues of keeping an advocate’s secret and not questioning him as a witness in this case in the future based on the experience of foreign countries critical review is required.

We will try to reveal the above-mentioned issues in the framework of research based on the experience of foreign countries.

On May 31, 2002, the Federal Law of the Russian Federation "On Advocacy and Advocacy Activities in the Russian Federation" [8] was adopted, the fourth chapter of which describes the norm regarding the assistant attorney. Article 27 of this Law is devoted to the attorney’s assistant, in which the advocate has the right to have assistants, the requirement for a candidate to become an attorney’s assistant is only a higher, incomplete higher, or secondary legal education defined.

At the same time, the legislation of the Russian Federation on the legal profession stipulates that a candidate cannot be employed as an attorney’s assistant in the following cases:

- It was declared insolvent or partially insolvent following the procedure established by the laws of the Russian Federation;
- The conviction for a felony has not been completed or expunged.

In addition, the legislation of the Russian Federation on the legal profession stipulates that the attorney’s assistant is obliged to keep the advocate’s secret, and the work of the attorney’s assistant is carried out based on a fixed-term employment contract.

Article 81 of the Law of the Republic of Azerbaijan "On Advocacy and Advocates" of December 28, 1999 [9] states that a citizen of the Republic of Azerbaijan with a higher legal education can be an attorney’s assistant, an attorney’s assistant is a lawyer it is stipulated that he must protect his secret, as well as observe the rules of conduct of advocates.

Law was called the advocate and his activities [10] is adopted on January 13, 2005 and Article 23 of it defines the basic rules for the attorney’s assistant. In particular, the advocate has the right to have attorney’s assistant and assistants, persons who are incompetent or have limited legal capacity or who have been convicted of a crime committed intentionally by a court decision and whose conviction has not been completed or not removed cannot become an attorney’s assistant, the attorney’s assistant discloses the secret of advocacy it should not be done, except for the cases specified by the law, the identity of the attorney’s assistant is confirmed by the certificate of the attorney’s assistant, and its form and procedure of issuance are approved by the council of the bar association.

"On Advocacy and Advocacy in the Republic of Belarus" of the Law of the Republic of Belarus, was adopted on December 30, 2011 [11] entitled "Advocate", describes the norm on attorney’s assistant. Article 19 of this law is devoted to the attorney’s assistant, which states that legal entities and advocates can hire an attorney's assistant based on an employment contract, the length of time the advocate has worked as an attorney’s
assistant, if he has a legal education, work in a specialty it is established that the attorney’s assistant is obliged to maintain the secrecy of the advocate’s practice, and at the same time, persons who have not been convicted of a crime committed intentionally as an attorney’s assistant, or whose conviction has not been removed, or who is legally incapacitated or have limited legal capacity in the prescribed manner, will not be hired.

Law of the Kyrgyz Republic "On Advocacy and Bar Association of the Kyrgyz Republic" adopted on July 27, 2016 [12] "Rights and obligations of an advocate. Article 28 of the third chapter entitled "Guarantees of Advocacy" defines the requirements for becoming an attorney's assistant. In particular, it is noted that the candidate must be a citizen of the Kyrgyz Republic and have a higher legal education to become an attorney's assistant.

It should be noted that the list of persons who cannot become an attorney's assistant in the Kyrgyz Republic is more extensive than in other countries. For example:
- a person who does not have the citizenship of the Kyrgyz Republic, who has been declared incompetent or has limited legal capacity following the laws of the Kyrgyz Republic, cannot be an attorney's assistant;
- the status of conviction is completed or conviction persons not removed;
- those dismissed from law enforcement and other state bodies in connection with the commission of a disciplinary offense - within one year from the date of dismissal;
- was previously deprived of a license to practice law.

In addition, in the legislation of the Kyrgyz Republic, it is specifically noted that the attorney’s assistant must maintain the confidentiality of the information of the persons applying for legal assistance.

The Law of the Republic of Tajikistan "On Advocacy and Advocacy" adopted on March 18, 2015 [13] is entitled "Organization of Advocacy", Article 33 of which states that an advocate assistant has the right to be an attorney's assistant, persons who have a higher or incomplete higher legal education can be an attorney's assistant, an attorney's assistant is obliged to keep state and advocate’s secrets.

The Law of Ukraine "On Advocacy and Advocacy" adopted on July 5, 2012 [14] states that "Having the right to engage in advocacy. There is a second section called "Organizational Forms of Advocacy", Article 16 which specifies the requirement for an assistant attorney. In particular, an advocate may hire an assistant from among persons with a higher legal education.

An important aspect of the law of Ukraine on advocacy is that the regulation on assistant advocates is approved by the Bar Council of Ukraine.

The fourth chapter of the Law of Georgia "On Legal Practice" [15], adopted on June 20, 2001, is entitled "Advocate Trainee. Attorney’s assistant". Article 17 of this law states that an advocate may hire an assistant to receive technical or other assistance in the course of legal work, based on a permit signed by the advocate in the presence of the relevant advocate or on his behalf, the attorney’s assistant may be employed in his court, arbitration court, investigative bodies, and other state bodies. and organizations, while working in public associations, have the right to familiarize themselves with case materials, and the attorney's assistant cannot be questioned as a witness on matters known to him during his professional activity.

In addition, Article 7 of the Law of Georgia "On Advocacy" deals with professional secrecy, which also applies to paralegals.
CONCLUSION

Based on the above and the positive experience of foreign countries, the following conclusions can be drawn:

❖ it is necessary to describe the main provisions of the activity of the attorney's assistant in the form of a separate chapter in the Law "On Advocacy and Advocacy Activities", which is planned to be adopted. This positive experience is available in the legislation of Georgia.

Today, the regulatory legal document regulating the activities of the attorney's assistant is implemented based on the regulation approved by the order of the Minister of Justice of the Republic of Uzbekistan. To ensure the independence of the Advocacy Institute, it is appropriate to adopt the document regulating the activities of the assistant attorney by the Chamber of Advocates of the Republic of Uzbekistan. This experience can be seen in the legislation of the Russian Federation, of Ukraine.

It is necessary to cancel the requirement to be a citizen of the Republic of Uzbekistan to become an attorney's assistant. This creates the necessary conditions for foreign citizens and stateless persons studying in Uzbekistan to work as attorney assistants. This experience can be found in the legislation of the Russian Federation, Ukraine, and Georgia.

❖ the current legislation, there is a requirement to have a higher legal education or a secondary legal education. Therefore, currently, undergraduate students are not allowed to work as paralegals. In our opinion, to increase the attractiveness of the advocate institute and attract young people, it is necessary to give the right to work as an attorney’s assistant to the students studying in the bachelor’s department of higher legal educational institutions. This positive experience exists in the legislation of the Russian Federation and Tajikistan.

❖ it is appropriate to include in the current legal documents the norm that persons who have not completed or not removed the conviction for an intentional crime cannot work as an attorney's assistant. This experience is available in the legislation of the Russian Federation, Armenia, and Belarus.

❖ it is appropriate to include the attorney’s assistant among the persons who will not be questioned as a witness in the future investigation or preliminary investigation on issues related to the advocate’s secrets. Because this situation is not regulated in the national legislation. This experience can be observed in the legislation of Georgia.

Today, individuals find it difficult to find sufficiently complete information about paralegals from official sources. To find an acceptable solution to this problem, it would be appropriate to introduce a registry of attorney’s assistants.

REFERENCES:


3. Law No. 349-I of the Republic of Uzbekistan "On Advocacy" adopted on December 27, 1996;
4. Regulation on the procedure for organizing the activities of the Attorney's assistant, approved by the order of the Minister of Justice of the Republic of Uzbekistan No. 80 of March 27, 2009;


