Legal Status Of A Legal Consultation Office In The Development Of The Institute
Of Advocacy

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Abstract: The article highlights the issues of improving the institution of advocacy, the current state of legal consultation, foreign experience, existing problems in this area and the ways to solve them. Author analyzed the legal status of legal consultation office as a type of advocacy structure.

The article also contains the results of a sociological survey conducted among representatives of the attorneys' community of Uzbekistan. The article includes doctrinal views on the mandatory creation of legal consultation office. The author emphasises the need for legislative consolidation of quantitative and qualitative criteria for determining the need for legal consultation office in the context of each administrative-territorial unit.

Keywords: Improving the institution of advocacy, the legal status of legal consultation office, the law of direct action, the legal framework, an attorney, the experience of foreign countries.

Introduction

The fundamental reforms carried out in all areas in Uzbekistan over the past three years require the parallel development of the institution of advocacy and the improvement of its

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legal framework. The advocacy system as an integral part of civil society is directly interested in the reforms carried out in Uzbekistan, particularly, in positive changes in the judicial-legal system. [1; p. 239].

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 100 normative-legal acts regulating the institution of advocacy. Most of them are by-laws. At the ceremony dedicated to the 26th anniversary [2] of the adoption of the Constitution of the Republic of Uzbekistan and in the State Program for 2019, President Sh.Mirziyoyev emphasised the need for bringing lawmaking activities to a qualitatively new level and adopting laws with direct action.

The Joint Decree of the Kengashes of the Legislative Chamber and Senate of the Oliy Majlis of the Republic of Uzbekistan dated March 26, 2019 No. 2419-III /SP-523-III approved the “Road Map” for the revision of legislative acts to be systematized and unified in direct laws. Paragraph 45 of the Roadmap determines the development of a draft law “On advocacy and advocacy activities”, which will combine the existing normative-legal acts on advocacy.

We believe that this project will not only summarize the existing laws and by-laws in the field of advocacy, but will also incorporate norms that fully comply with international standards and innovative ideas that will help improve the institution of advocacy in Uzbekistan.

As noted by legal scholars Rustambaev M.Kh., Tukhtasheva U.A., advocacy is the result of social activity that arose on the basis of the need for protection of the rights and freedoms of all individuals in society, i.e. civil society. And organizational forms of the activities of advocacy are determined by the state through the legislative branch, that is, advocacy is a legal

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institution that provides legal assistance to individuals and legal entities based on the rule of law, independence and other democratic principles [3; p. 440-441].

It should be noted that according to an anonymous survey among 1,550 attorneys conducted in Uzbekistan from June to July 2019, the question "Does the current activities of the Chamber of Attorneys meet today's requirements?" 20.7% of respondents answered "satisfactorily", 8.4% answered "unsatisfactorily", 70.1% answered "partially" [4].

Focusing on protection of the rights, freedoms and interests of individuals and legal entities, ensuring access to justice are some of the main features of advocacy. The state transfers to advocacy, as an essential element of civil society, a part of its powers to protect individual interests, which are often intertwined and come into conflict with public interests. Therefore, the state should be interested in having a strong institute of advocacy. Otherwise, the state cannot be called democratic, law-abiding and socially oriented.

Of particular interest in this regard is the legal status of an attorney in the United States. In the USA, the term attorney is not in the continental sense, based on the separation of attorneys and all other lawyers. In the USA there is no such division: any practicing lawyer must have a license issued by the Bar Association on the basis of passed exams.

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"[5; p.288].

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After some time, a public opinion poll showed that the perception of lawyers by society has worsened since the late 1980s [6]. The image of an attorney as a “predator” regarding attorney's fee and as a person distorting logic, has taken root in the minds of American society.

In addition, along with the negative attitude from the population, in recent times, the American legal community has undergone two changes that have dramatically changed the vector of the development of the legal profession.

Firstly, as already noted, the legal profession in the United States is quite diverse - it includes sole attorneys, and in-house legal advisers, and employees of law firms. Even among private attorneys, it is impossible for all lawyers to be brought under a common denominator according to the conditions of their activity. The lack of unity of profession is associated with both a sharp increase in the number of lawyers in the country (100 percent from 1970 to 1990) and a wide variety within the professional community in terms of nationality and gender. In turn, these changes force us to reconsider the basic principles of advocacy and understanding of American law.

Secondly, over the past half century, large law firms, in which usually 200-250 attorneys work, have occupied leading positions in the legal services market. Along with the advent of the new paradigm, the working conditions of lawyers have also changed - from a sole practicing attorney (small partnerships) to an employee of a large law firm. From an independent professional who works closely with the client and is responsible for the results of his work, the attorney has turned into an ordinary worker who performs a certain range of tasks and evaluates his work by the number of hours worked. At the same time, the existence of law corporations allows the American legal business to count on a transnational character and attract more than fifty percent of the world's lawyers to the country.

Thus, in the United States, we are witnessing the development of business advocacy, and for their representatives it is necessary not only to obtain deep theoretical knowledge and

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practical skills in the field of law, but also the ability to find and attract new clients in a tough competitive environment.

Organizational-legal units – advocacy structures - play an important role in advocacy activities. According to the Law of the Republic of Uzbekistan “On advocacy”, a person who has received the license in the established order shall be entitled to carry out advocacy activities individually by opening advocacy bureau, or by forming with other attorneys (partners) an advocacy firm, or board of attorneys on the basis of membership, or join in one of these existing advocacy structures, or to engage in advocacy activities, working in legal consultation office. Advocacy as a public organization has specific features. As K. Yanevsky wrote, “... public organizations are organizations that are formed by a certain social group and represent the interests of citizens belonging to this social group. For example, political parties serve the interests of party members, trade unions, and workers. The advocacy serves to protect the rights of all citizens in society as a whole, and not just members of this public organization” [7; p. 15].

The non-commercial nature of advocacy is directly enshrined in the legislation of Uzbekistan. Thus, in accordance with article 11 of the Law of the Republic of Uzbekistan “On guarantees of advocacy and social protection of attorneys” dated December 25, 1998, it is stated that “an advocacy structure’ is a non-profit organization”. This characteristic feature of the legal profession is manifested in the following:

- organizational forms of the activities of advocacy are legal entities of a “professional orientation”, and they, therefore, are considered to be subjects of law, not “business entities”;
- organizational forms of the activities of advocacy are legal entities that are subject to many general provisions of Chapter 4 “Legal Entities” of the Civil Code of the Republic of Uzbekistan. At the same time, the rules of paragraph 2 of this Chapter, which regulate the status of commercial legal entities, do not apply to the activities of organizational forms of the activities of advocacy;

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- organizational forms of the activities of advocacy are non-profit legal entities, but not within the meaning of the Law of the Republic of Uzbekistan “On non-governmental non-profit organizations” of April 14, 1999, i.e. these are subjects of law that differ from the legal status of legal entities that are classified as non-profit organizations such as “public association”, “public fund”, “consumer cooperatives”, etc.

In accordance with Article 4 of the Law of the Republic of Uzbekistan “On Advocacy”, advocacy bureau, advocacy firm and board of attorneys and legal consultation office are organizational forms of the activities of advocacy. As of January 1, 2019, the country had 1,660 advocacy structures, including 71 board of attorneys, 435 advocacy firms and 1,154 advocacy bureaus with total number of 3946 attorneys. [8].

It is known that legal consultation office is an advocacy structure created by the territorial department of the Chamber of Attorneys of the Republic of Uzbekistan to carry out advocacy activities, and it does not have the status of a legal entity. A legal consultation office is created by the territorial department of the Chamber of Attorneys if there are not enough attorneys to satisfy the need for legal assistance in the relevant field.

Thus, this structure is the only form of advocacy that is not created by attorneys. However, today this kind of advocacy structure is found in practice in Uzbekistan. This is due to the fact that, in our opinion, specific criteria have not been established for determining the sufficiency of advocacy structures to meet the needs of the population for legal assistance in the relevant field.

In modern science, there are completely opposite opinions about the mandatory creation of legal consultation offices. Some scholars note that “the law “On advocacy” does not oblige the Chamber of Attorneys to establish a legal consultation office on the legitimate request of the state authority” [9; p. 113].

The Chamber of Attorneys is a non-governmental non-profit organization and operates on the principles of independence and self-government; therefore, the authority of the state is

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not entitled to oblige the Chamber of Attorneys to establish and finance a legal consultation office. On the other hand, representatives of the state justifiably indicate the obligation of the regional authorities to decide on the establishment of a legal consultation office and the obligation of the Chamber of Attorneys to establish it subject to the conditions specified in the Law [10; p. 155].

The opinion is also expressed that the unreasonable refusal or dismissal of establishing a legal consultation office by the Chamber of Attorneys can be challenged in court [11].

An analysis of the experience of foreign countries shows that the legislation of most countries sets strict criteria for the creation of a legal consultation office. In particular, a legal consultation office in the Russian Federation is created on the territory of one administrative-territorial unit if the number of attorneys for each federal judge is less than two [12].

A legal consultation office in Belarus is created by the regional board of attorneys, and its main task is to ensure the participation of attorneys in criminal cases.

In addition, a legal consultation office in Russia, in contrast to the Uzbek legal system, takes the form of a non-governmental non-profit organization and is a separate legal entity. The legal status of a legal consultation office in Russia is regulated by the Laws "On Non-Governmental Organizations", "On Advocacy in the Russian Federation" and the Civil Code. The issue of establishing a legal consultation office is considered at a meeting of the regional chamber of attorneys based on the recommendations of local executive authorities. At the same time, the subject of discussion is the area in which a legal consultation office is created, the number of judges and attorneys in it, as well as the material and technical support of a legal consultation office.

It is worth noting that today in Uzbekistan there are no criteria for determining the need for a legal consultation office. Therefore, based on the experience of foreign countries, it is advisable to determine the amount of criminal, administrative, civil and economic litigation in

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each district and city, based on this, calculate the number of cases per judge, and based on the data obtained, establish the number of attorneys in each region.

The implementation of these recommendations will contribute to the further improvement of the institution of advocacy in Uzbekistan and the expansion of access of individuals and legal entities to a qualified legal assistance.

References

1. Salomov B. "The role of the advocacy in the protection of human rights" // Materials of a scientific-practical conference on the problems of judicial and extrajudicial protection of human rights. T.: TSUL, 2005.
2. S. Mirziyoyev "An educated generation is the key to a great future, entrepreneurs – prosperous life, and friendly cooperation is the key to progress." [Text] // Public speech, December 8, 2018, Narodnoe slovo No. 253 (7211) /.
3. Rustambaev M.Kh., Tukhtasheva U.A. Judicial power and judicial reform in the Republic of Uzbekistan. T.: TSUL, 2009.
4. Report of a sociological survey conducted by the author (V. Davlyatov) jointly with the Chamber of Attorneys of the Republic of Uzbekistan.
5. Alexis de Tocqueville. Democracy in America. Vol. I (1835-1840). Vintage Books, New York, 1954.
6. National Law Journal. August 9, 1993.
7. Yanevsky K. Attorney and advocacy in Russia. - M.: Yurid. lit., 1992.
8. Information of the Chamber of Attorneys of Uzbekistan
9. Commentary on the Federal Law "On advocacy and advocacy in the Russian Federation" / Under general. ed. Trunova I.L. M: Publisher Eksmo, 2005.
10. Gulyaev A.P., Rivkin K.E., Saraykina O.V., Yudushkin S.M. Commentary to the Federal Law "On advocacy activities and advocacy" with appendices: Scientific and Practical Edition. M.: Publishing house "Examination", 2004.

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Website: www.usajournalshub.com

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11. Sharov G.K. Legal consultation and free legal assistance // Lawyer, 2004. No. 11.
12. The Federal Law of the Russian Federation "On Advocacy and advocacy activities in the Russian Federation" dated May 31, 2002 No. 63-FZ.