

Available Online at: https://www.scholarexpress.net

Volume-11 June-2022 **ISSN: 2749-3601**

LEGAL STATUS OF THE CHAMBER OF ADVOCATES

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Article history:		Abstract:
Received: Accepted: Published:	March 26 th 2022 April 26 th 2022 June 6 th 2022	The article deals with some issues related to the professional activities of a lawyer and the legal status of the Chamber of Advocates. The author explores the rights and obligations of lawyers as professionals who provide citizens with qualified legal assistance.

Keywords: bar association, defender, principal, professionalism, state power.

The bar is one of the most important institutions of the legal system and civil society, which has a key role in protecting the rights and interests of individuals and legal entities. It makes an invaluable contribution to the construction of a rule of law state, acts as a guarantor of the provision of adequate qualified legal assistance to subjects of legal relations, without which, in modern realities, it is impossible to provide access to justice. In this regard, it is critically important to create conditions for ensuring the institutional independence of the bar, in line with international standards.

Under the institutional independence of the bar, it is customary to understand the self-governance of the bar as a legal profession and independence in making decisions on access to the profession, disciplinary responsibility of its members. When studying this issue, we consider it appropriate to get acquainted with the key factors that influenced the development of the institution of the bar in Uzbekistan, in the context of historical events, political and social changes taking place in the country. Based on such a historical retrospective, it may be better to understand the causes of problems regarding the institutional independence of the bar and to identify possible ways to solve them.

A Brief History of the Development of the Institute of Advocacy in Uzbekistan. The history of statehood and law of Uzbekistan goes back centuries and has more than three millennia, although the institution of advocacy in the country begins to take shape much later. The territory of Uzbekistan was part of the most ancient and prominent civilizations and empires: Bactria, Khorezm, Sogd, Parthia, the empire of Alexander the Great, the Greco-Bactrian kingdom of Kushan, etc.

At the beginning of the 8th century, Central Asia was conquered by the Arabs and became part of the Arab Caliphate, which served as the beginning of the spread of Islamic law here, which was in effect until the beginning of the 20th century. Registration of

law within the framework of Sharia included the creation of legal institutions, in particular the institution of the bar. The emergence of the institution of advocacy in Sharia legal proceedings was the result of the development and improvement of Muslim legal practice.

Since the 1860s parts of modern Uzbekistan became part of the Russian Empire. On July 11, 1867, the Turkestan Governor General was formed. Thanks to the judicial reform of 1864, the institute of sworn attorneys began to operate in the Russian Empire - lawyers who were in the public service at district courts or judicial chambers. Attorneys-at-law also appeared in the Turkestan region, but they spoke only in the courts of the Russian Empire, that is, in the organs of the colonial apparatus.

The first professional advocacy called "Defenders Branch" as a self-governing structure on the territory of Uzbekistan was established in 1879 in the city of Kokand and united more than ten legal defenders, who were called "finish". The branch was created on the initiative of Abdunabi Kurolbay, who received a law degree in St. Petersburg. He is considered the first Uzbek lawyer.

In 1899, colleges of defenders were established at the Tashkent Court of Justice and district courts. They were guided by Russian law. In Bukhara, since 1915, the "Branch of Volunteer Lawyers" was functioning, created by Valikhon Khodzhi, who studied the practice of law in Russia and Turkey. In 1919, he was accused of contempt of the emir, imprisoned and executed.

It should be noted that for the local population, admission to the bar was associated with great difficulties - there were restrictions on persons of non-Christian origin, they could become attorneys at law only with the permission of the Minister of Justice (Decree of November 8, 1889). Also, although there was no official ban, in fact women were not allowed into the bar. Until 1917, there was not a single woman among the sworn attorneys of the Turkestan region.



Available Online at: https://www.scholarexpress.net

Volume-11 June-2022 **ISSN: 2749-3601**

The revolution of 1917 radically changed the situation on the territory of the Turkestan region. Along with other bodies of the old justice, the bar was also abolished. Having abolished the old legal profession, the Decree on the Court No. 1 established the admission as defenders of all undefeated citizens of both sexes enjoying civil rights, and the defenders could also participate in the preliminary investigation. On December 19, 1917, the People's Commissariat of Justice approved the instructions of the revolutionary tribunal, according to which it was supposed to create colleges of legal defenders with the use of the functions of both prosecution and defense. According to the Decree on the Court No. 2 of March 7, 1918, a collegium of persons is created at the councils of workers', soldiers', peasants' and Cossacks' deputies who have devoted themselves to intercession both in the form of public prosecution and public defense. Only these persons had the right to appear in court for a fee. Subsequently, in the 1920s, a class approach to the legal profession was observed, and, as noted by a number of statesmen of that period, for example, such as D.I. Kursky and P.I. A Stuchka lawyer must first of all serve not the law, but the state.

On March 18, 1920, the All-Russian Central Executive Committee adopted a decree approving the new Regulations on revolutionary tribunals, according to which the legal profession was abolished, and the defense began to be considered as a public duty of all citizens capable of fulfilling this duty. All work of the colleges was carried out under the control of the regional executive committees of the Soviets, and the leadership of the activities of the colleges in the republic as a whole was carried out by the People's Commissariat of Justice of the TASSR.

Muslim law continued to be applied on the territory of Turkestan until the beginning of 1920, when the Emirate of Bukhara and the Khanate of Khiva were finally overthrown. Despite the influence of the legislation of the RSFSR, in practice, the Qazi courts continued to apply the norms of Sharia and Adat. In the family and household sphere, the ordinary interpretation and application of Shariah norms was preserved to one degree or another until 1928.

The birthday of the Soviet advocacy in essence was May 26, 1922, when the All-Russian Central Executive Committee approved the Regulations on the Advocacy. It provided for the creation of colleges of defenders in criminal and civil cases under the provincial departments of justice, regulated the composition and activities of these colleges, the functions of their presidiums, the procedure for remunerating lawyers, etc. This provision, which

determined the organizational structure and principles of the Soviet advocacy, was extended to to the TASSR as an integral part of the RSFSR. On January 5, 1924, the Regulations on the judiciary of the Bukhara People's Soviet Republic were approved, which established that the district courts have collegiums of defenders in criminal and civil cases, whose activities are regulated by a special Regulation. The general management of their work was carried out by the Commissariat (Nazirat) of Justice, and the daily activities of the colleges were carried out under the quidance of their presidiums.

By May 1924, there were only 106 defenders in the TASSR, of which 52 were in the Syrdarya region, 18 in Samarkand, 13 in Turkmen, 14 in Dzhetysu (Semirechensk), 9 in Ferghana, and there was not a single defender in the Amu Darya department. Of the total number of defenders, only about 20 people were people of local nationalities. Therefore, the authorities attached particular importance to the issues of involving representatives of the indigenous population in the ranks of the collegiums of the defenders of the republic.

In 1979, the Law of the USSR "On the Bar of the USSR" was adopted, on the basis of which the Law of the Uzbek SSR of November 12, 1980 "Regulations on the Bar in the Republic of Uzbekistan" (1961) was set out in a new edition. This edition practically duplicated the provisions of the Law of the USSR and the Regulations on the Advocacy of 1961. However, this legislation was now based on constitutional norms. With the adoption of the Law of the USSR, it became possible to form bar associations on the initiative of the lawyers themselves, although the proposal to form a board should have been sent to the Ministry of Justice of the union republic, which provided it for approval and registration to the Council of Ministers of the union republic. Only citizens with higher legal education could become lawyers. Persons who had no work experience in the legal specialty or had less than two years of experience could be admitted to the board after an internship from six months to one year, and persons who had at least two years of work experience in the legal specialty could be admitted to the board subject to a probationary period of up to three months.

It should be noted that under the conditions of the administrative-command system of the Soviet state, the right to protection and the participation of a defender in the administration of justice was, to a certain extent, formal, declarative. The state, represented by the Ministry of Justice and party bodies, exercised control over advocacy. The state



Available Online at: https://www.scholarexpress.net

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approved the maximum limits of the states of the collegiums.

Thus, in the Soviet period there was a total control of the bar by the state, although some authors note its relative independence even in such conditions.

Advocacy in the period of independence. On August 31, 1991, at an extraordinary session of the Supreme Council of the Uzbek SSR in Tashkent, the Decree "On the Declaration of State Independence of the Republic of Uzbekistan" and the Law "On the Fundamentals of State Independence of the Republic of Uzbekistan" were adopted. With the country gaining independence, a new stage began in the development of the institution of advocacy in the Republic of Uzbekistan.

On December 8, 1992, the Constitution of the Republic of Uzbekistan was adopted, which laid the legal foundations that determine the role of the bar in the protection of the rights and legitimate interests of individuals and legal entities. In particular, Art. 116 of the Constitution, it is determined that the accused is guaranteed the right to defense. The right to professional legal assistance is guaranteed at any stage of legal proceedings. The bar operates to provide legal assistance to citizens, enterprises, institutions and organizations. The organization and procedure for the activities of the Bar shall be determined by law. It is also important that the preamble of the Constitution recognizes the priority of generally recognized norms of international law.

In fact, until the end of 1996, the activities of the bar continued to be regulated by the "Regulations on the bar in the Republic of Uzbekistan" dated November 12, 1980. During this period, 14 bar associations, 180 legal consultation offices operated in the republic, the total number of lawyers was 1641.

On December 27, 1996, the Law of the Republic of Uzbekistan "On the Bar" was adopted, which became an important legal act for the further development of the institution of the bar in the country. The law, among other things, defines the principles and organizational forms of the bar, the procedure for the creation and operation of qualification commissions, the competence of the Ministry of Justice and other issues. The law initially provided for the licensing of advocacy by the Ministry of Justice and its regional divisions and did not contain any provisions on the creation of a single professional association of lawyers as a self-governing body of the legal community (up to the 2008 reform, the Association of Lawyers of Uzbekistan, based on voluntary membership, consisted of less than 50 % of lawyers) [19]. Initially Art. 13 of the law provided that in order to resolve the issue of issuing a license for the right to engage in advocacy under the Ministry of Justice of the Republic of Karakalpakstan, the departments of justice of the regions and the city of Tashkent, qualification commissions are created, which are formed from an equal number of lawyers and employees of justice bodies. To consider an appeal against decisions of qualification commissions, to generalize and analyze the practice of work of qualification commissions, the High Qualification Commission was formed under the Ministry of Justice of the Republic of Uzbekistan. The composition of the High Qualification Commission was approved by the Ministry of Justice of the Republic of Uzbekistan and the republican public association of lawyers from an equal number of employees of justice bodies and lawyers. In the future, this article, as well as many provisions of the law, will be amended to reflect the trends in the development of the institution of the legal profession in the country.

With the introduction of the Law "On the Bar", an increase in the number of lawyers began to be observed. Thus, six months after the adoption of the law, by July 1, 1997, the number of bar associations increased to 20, 42 law firms, 80 law firms were organized, the total number of lawyers was 2701.

On March 13, 1997, the "Regulations on the procedure for state registration of law firms, colleges, firms and the issuance of licenses to citizens of the Republic of Uzbekistan for the right to engage in advocacy" were adopted (approved by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated March 13, 1997 No. 139, currently no longer valid), which determined the procedure for state registration of law firms, colleges and firms, established the procedure for issuing licenses for the right to practice law, approved the forms of a certificate of state registration of law firms and licenses for the right to practice law. The regulation did not provide for any requirement for a length of service for a license applicant.

The criteria for obtaining a license to practice law were:

- the presence of citizenship of Uzbekistan;
- higher legal education;
- passing a qualifying exam.

University graduates who successfully passed the qualification exam could obtain licenses for the right to engage in advocacy without any restrictions or obstacles, which contributed to attracting young professionals to the profession.

In August 1997, at the II Congress of the Uzbekistan Bar Association, the "Rules of Professional



Available Online at: https://www.scholarexpress.net

Volume-11 June-2022 **ISSN: 2749-3601**

Ethics for Lawyers of the Republic of Uzbekistan" were approved and put into effect (now no longer valid). The rules provided that the requirements contained in them must be observed by all lawyers in the course of their professional activities. For violation of the requirements of the rules, measures in the form of deprivation of a license could be applied.

In December 1998, the Law of the Republic of Uzbekistan "On Guarantees for Advocacy and Social Protection of Advocates" was adopted, which established independence as one of the basic principles of advocacy [20]. The law establishes that a lawyer and his professional activities, life and health are under the protection of the state, which cooperates with the bar to ensure the right of every citizen to equal and free access to legal assistance.

An important document that should have influenced the further development of the legal profession in the country was the Decree of the President of the Republic of Uzbekistan "On measures to further reform the institution of the legal profession in the Republic of Uzbekistan" dated May 1, 2008 No. UP-3993. The Decree had a very significant and positive public response, received wide international support and caused a stir among the lawyers' community, as its goal was to strengthen guarantees for the independence of lawyers, to increase the authority and prestige of the lawver profession. The document, among other main directions for reforming the institution of the bar, outlined the creation of an effective centralized system of self-government of the bar, the formation of an effective licensing system and the improvement of the mechanism for monitoring the observance by lawyers of the rules of professional ethics and the system of disciplinary proceedings against lawyers.

In accordance with the decree, on the basis of the Association of Lawvers of Uzbekistan, the Chamber of Lawyers of the Republic of Uzbekistan was established, based on the mandatory membership of all lawyers of the Republic of Uzbekistan. May 2008 No. 112. This resolution establishes that the chairman of the Chamber of Lawyers of the Republic of Uzbekistan and his deputies are elected by the Conference of the Chamber of Lawyers of the Republic of Uzbekistan on the proposal of the Ministry of Justice of the Republic of Uzbekistan for a period of five years from among the members of the Board of the Chamber of Lawyers of the Republic of Uzbekistan elected by the Conference. The document provides for the formation of territorial departments of the Chamber, the heads of which are appointed and dismissed by the chairman of the Chamber of

Advocates of the Republic of Uzbekistan. The Ministry of Justice of the Republic of Uzbekistan, together with the Uzbekistan Bar Association, was instructed to hold a founding conference of the Chamber of Lawyers within two months and ensure its state registration.

So, on September 12, 2008, the founding conference of the Chamber of Advocates was held, at which the charter was approved, the board and the audit commission were formed, on the proposal of the Ministry of Justice, the chairman of the Chamber of Advocates of the Republic of Uzbekistan was elected (only one candidate was presented, there were no alternatives) and his deputies [21]. Also at this conference, new Rules of Professional Ethics for Lawyers of the Republic of Uzbekistan were approved (now no longer valid).

In March 2009, the Decree of the Cabinet of Ministers of the Republic of Uzbekistan No. 60 "On improving the procedure for licensing advocacy and the creation of advocacy groups" was adopted, in accordance with which the "Regulation on licensing advocacy" and "Regulation on state registration (registration) of lawyers" were approved. formations." According to these resolutions, lawyers were required to undergo re-certification, and lawyer formations operating at that time were required to re-register before July 1, 2009. For violation of the registration procedure or failure to comply with the instructions of the licensing authority, lawyer formations were fined up to 200 minimum wages. The lawyers had to retake the qualification exam, although the licenses they had previously been issued had an indefinite character.

Clause 3 of the "Regulations on Licensing Advocacy" and the amendments to the Law of the Republic of Uzbekistan "On Advocacy" established that in order to obtain a license, a person applying for the acquisition of the status of a lawyer must have at least two years of work experience in the legal specialty, including including an internship in a lawyer formation. Persons who do not have the relevant experience are not allowed to pass the qualification exam.

The introduction of the requirement for two years of experience subsequently led to the fact that the percentage of young professionals in the profession began to decline sharply. If by January 1, 2009, out of the total number of lawyers in the republic (4225), the number of young lawyers under the age of 30 was 224, after 10 years this number has decreased by almost three times. Thus, as of January 1, 2019, out of the total number of lawyers (3944), the number of young lawyers under the age of 30 was only 67 people.



World Bulletin of Management and Law (WBML) Available Online at: https://www.scholarexpress.net

Volume-11 June-2022 **ISSN: 2749-3601**

Also in March 2009, two regulations were approved: on qualification commissions under the territorial departments of the Chamber of Lawyers of the Republic of Uzbekistan and on the High Qualification Commission under the Chamber of Lawyers of the Republic of Uzbekistan. Half of the members of the qualification commission were represented by employees of the Ministry of Justice. This circumstance influenced the independence of the profession and was reflected in the reports and reports of a number of international organizations.

In April 2009, the forms of an order for the conduct of a case by a lawyer are approved, and in December of the same year, the forms of statistical data. With the approval of statistical forms, lawyer formations were obliged to submit statistical reports (semi-annual and annual) to the territorial departments of the Chamber of Lawyers twice a year. Subsequently, by Order of the Chamber of Advocates dated July 4, 2011 No. 1-k, an exemplary nomenclature of cases of lawyer formations was approved, which obliged each lawyer formation to conduct 69 nomenclature cases (books, office folders, control copies of documents and other cases), of which organizational issues - 34, personnel records management - 13, financial issues - 22. The conduct of statistical reporting and 69 nomenclature cases by lawvers' formations began to be controlled and checked by the Ministry of Justice and the Chamber of Lawyers. This led to excessive and unnecessary bureaucratization and became an additional burden for lawyers, who could be held liable for non-compliance with reporting requirements and handling a huge number of nomenclature cases.

On October 6, 2009, the Order of the Minister of Justice of the Republic of Uzbekistan was adopted, according to which the professional development of lawvers is carried out at the Center for Advanced Training of Lawyers under the Ministry of Justice of the Republic of Uzbekistan in the form of off-job training, only in full-time form. The duration of training for lawyers is determined for a period of at least two weeks. A lawyer who has successfully passed tests is issued a certificate of the established form. The order initially provided that cases of a lawyer evading professional development and failure to pass tests based on the results of training are subject to consideration by the qualification commission at the relevant territorial department of the Chamber of Lawyers of the Republic of Uzbekistan (subsequently, this provision was excluded in accordance with the Order of the Minister of Justice of the Republic of Uzbekistan). The order establishes that a lawyer's violation of the requirements, expressed in his failure to improve his professional qualifications over the past three years, is the basis for the termination of his license to practice law. There are no legal alternatives for the advanced training of lawyers in other training centers.

On September 27, 2013, the II Conference of the Chamber of Advocates was held (it is the highest body of the Chamber and is convened at least once every five years), which considered a number of issues, including determining the amount of admission and membership fees to the Chamber of Advocates, making changes and additions to the Regulations on the Chamber of Advocates and the Regulations on the Audit Commission. At the conference, the "Rules of Professional Ethics of Lawyers" in a new edition were adopted, and, on the proposal of the Ministry of Justice, the chairman of the chamber and his deputies were elected for a new five-year term. There were also no alternative nominations.

A number of international organizations and experts have repeatedly drawn attention to the issues of the institutional independence of the Uzbek bar in connection with the reforms of 2008, including the discrepancy between the requirements of the legislation of Uzbekistan and international standards. In particular, the International Commission of Jurists (ICJ), in its report on the independence of the legal profession in the countries of Central Asia, concluded the following: "The Chamber of Lawyers of Uzbekistan is not independent, since its chairman is appointed and dismissed on the proposal of the Ministry of Justice, which, although it depends from voting in the House, in practice prejudges its outcome [...]. The participation of the executive branch in the appointment of the leadership of the bar association does not meet international standards." A similar position is shared by the UN Human Rights Committee and the UN Special Rapporteur on the independence of judges and lawyers. It was also noted that the Chamber of Advocates does not have exclusive competence on issues related to admission to the profession, attestation and advanced training of lawyers, as well as the initiation of disciplinary proceedings against them.

In practice, the lawyers themselves, interviewed as part of a study conducted by the International Commission of Jurists, also pointed out the facts of interference in the activities of the bodies of the legal profession of Uzbekistan. According to respondents, the Ministry of Justice is directly involved in the selection of the head of the Chamber of Advocates of the Republic of Uzbekistan, and state



Available Online at: https://www.scholarexpress.net

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bodies interfere in the development of internal regulations and rules of bar associations.

According to a number of experts, the reform of the legal profession, which began in 2008, was carried out in contradiction to the Decree of the President of the Republic of Uzbekistan dated May 1, 2008 No. UP-3993 and the Control Plan for its implementation, in violation of the internal legislation of the Republic and international law and endangered the independence of the legal profession as a whole. Since the beginning of the reforms in 2008, an active part of lawyers has publicly expressed concern that the legal profession is losing its independence.

It was noted that the state-run advocacy would not be able to perform the high functions that were assigned to it. Every lawyer will become defenseless and vulnerable to any pressure from the state. As a result, such reforms will have a negative impact on the entire justice system, and this will lead to qualitative changes, as a result of which the bar may become an appendage of the state.

As time has shown, the lawyers' fears were not unfounded. The reform carried out in 2008 did not contribute to a real strengthening of the institutional independence of the legal profession, turning it into a body controlled by the executive branch. As a result, as some authors note, the legal profession of Uzbekistan in its development was thrown back 10-15 years ago - the state apparatus organizationally neutralized the legal profession. The bar failed to become a fully self-regulating and self-governing organization, as expected when the reforms of 2008 were outlined. All this necessitated a critical review of the legislation of Uzbekistan regulating the activities of the bar and new reforms.

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World Bulletin of Management and Law (WBML) Available Online at: https://www.scholarexpress.net

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