



ATTORNEY'S REQUEST: PROBLEMS AND THEIR SOLUTIONS

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Article history:	Abstract:
Received: April 6 th 2023 Accepted: May 6 th 2023 Published: May 8 th 2023	In this article, the concept of an attorney's request, its subject, the list of entities to which an attorney's request can be sent, and the terms related to an attorney's request are comparatively studied and analyzed. The experience of foreign countries regarding the request for an attorney has been analyzed, and proposals for the development of national advocacy legislation have been developed.

Keywords: attorney, attorney's request, receiving entity, term, explanation, advice.

In the Republic of Uzbekistan, systematic work is being carried out to improve the effectiveness of the institution of advocacy and to ensure the full use by attorneys of the powers provided for by law in the implementation of professional activities.

Law of the Republic of Uzbekistan "On Advocacy" article 6 defines the rights of an attorney.

According to it, the right to request and receive references, descriptions and other documents from state bodies and other bodies, as well as enterprises, institutions and organizations, which are obliged to provide the documents requested by the attorney or their certified copies in accordance with the procedure established by law, in connection with the provision of legal assistance.

In order to fully use this right, it is necessary to clearly define the time limits for the attorney's request and increase the liability in accordance with the law for not submitting the documents to the request in accordance with the procedure established by law, for not submitting them on time, or for knowingly submitting false or incorrect documents. Because if the attorney receives this information in time and in full, he/she can provide qualified legal assistance guaranteed by the state to the person under protection.

It should be noted that article 141 of the Constitution of the Republic of Uzbekistan establishes that a bar is in force to provide qualified legal assistance to individuals and legal entities.

Attorneys effectively use the attorney's request to collect information and evidence on the case, which

is necessary to provide qualified legal assistance to the persons expressing confidence.

According to the Law of the Republic of Uzbekistan dated October 11, 2018 "On Amendments and Additions to Certain Legislative Documents of the Republic of Uzbekistan in Connection with the Improvement of the Legal Aid and Legal Services System", the Law of the Republic of Uzbekistan "On Advocacy" is called "Attorney Request" It was supplemented by Article 7-1¹.

According to Article 7¹ of the Law of the Republic of Uzbekistan "On Advocacy", an attorney has the right to send an attorney's request to state bodies and other bodies, as well as to enterprises, institutions and organizations regarding the issues within the competence of these bodies and organizations.

Criminal Procedure Code of the Republic of Uzbekistan Article 87 states that a defense attorney has the right to collect and present evidence in a criminal case. The attorney exercises this right by sending a attorney's request.

In accordance with the current legislation, the attorney has the right to request the presentation of references, descriptions and other documents necessary for the provision of qualified legal assistance.

One of the most important rights of an attorney is to send a request for an attorney, and without this right, it is significantly difficult for him to provide qualified legal assistance, which is considered a constitutional guarantee.

According to the results of interviews with attorneys, specialists and researchers working in the

¹ Qonun hujjatlari ma'lumotlari milliy bazasi, 12.10.2018-y., 03/18/4972044-son; 08.01.2020-y., 03/20/601/0025-son



field of advocacy, they face some problems in using the attorney request. In particular:

Firstly, the fact that the range of entities to which an attorney's request can be sent is not clearly defined, so that the sent requests are not being answered;

Secondly, what kind of information the attorney cannot provide by sending a request;

Thirdly, that the general and special time limits for the request of an attorney are violated and there is no procedure for extending these time limits;

Fourthly, the procedure for reimbursement of costs related to the provision of information (documents) indicated in the attorney's request is not clearly indicated.

In our opinion, it is necessary to carefully, fully and comprehensively study and analyze these identified problematic situations, as well as to improve the institution of the attorney inquiry based on the positive experience of foreign countries.

According to the analysis of Article 7, Part 1 of the Law of the Republic of Uzbekistan "On Advocacy", an attorney has the right to send an attorney's request to state bodies and other bodies, as well as to enterprises, institutions and organizations.

The study showed that the legislation of the national bar did not fully reflect the subjects to whom the attorney's request could be sent. For example, if an attorney sends an attorney's request to an individual entrepreneur to obtain information about a person under protection, the entrepreneur may not respond to it.

Because the list of entities to which a attorney's request can be sent does not include a single businessman, failure to present the information (documents) he has, failure to present it on time does not cause him to be held responsible. Therefore, among these entities, it is necessary to include legal entities and private entrepreneurs, with strict attention to the form of ownership. This serves to provide timely and complete information (documents) necessary for providing qualified legal assistance by the attorney and to provide qualified legal assistance to the person expressing confidence.

The research and analyzes conducted on the second issue show that the number of requests by attorneys to explain the content of normative legal documents and advise on the situation that needs to be resolved is increasing day by day.

Based on the content of article 5 of the Law of the Republic of Uzbekistan "On Advocacy", it is

established that in order to provide legal assistance to individuals and legal entities, the attorney provides advice and clarification on legal issues, oral and written certificates on the law. According to the analysis, the content of most of the attorney's request received from the advocacy structures to the Tashkent State University of Law during the months of January-May 2023 is to obtain information about the students' studies at the higher educational institution.

However, today there are also cases of requesting information (documents) that do not constitute the content of the attorney's request.

So, this year, when the request of an attorney to the professor-teacher acting at the university was studied, the organization building housing of the Civil Code of the Republic of Uzbekistan asked questions about non-residential premises located on the basement of a residential building, and asked for information on them².

It is important to note that failure to respond to an attorney's request on time and providing false information is considered an obstacle to an attorney's professional activity and is a cause of administrative liability in accordance with the current legislation.

In our opinion, in this case, the attorney made the following three mistakes:

- the entity that can send an attorney request is incorrectly specified. Because the professor-teacher on behalf of the university does not have the right to respond to the attorney's request;

- the attorney receiving explanations or advice from other subjects regarding his work in his practice causes his provision of qualified legal assistance to be in doubt;

- it is completely contrary to the current legislation to determine that failure to provide information (documents) that is not the subject of an attorney's request, failure to provide it on time, or knowingly providing false or incorrect information (documents) is a cause of liability in accordance with the law.

At the same time, paying attention to Ukrainian legislation, it was established that the attorney's request cannot relate to consulting and clarifying the provisions of the law³.

Taking into account the above, it is necessary to change and make additions to Article 7¹ of the Law of the Republic of Uzbekistan "On Advocacy" on the fact that the attorney's request does not apply to giving advice and explaining the legislation of the Republic of Uzbekistan.

² Documents on the request of the attorney of 25 law firm "Prae Legal" dated February 15, 2023.

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https://kodeksy.com.ua/ka/ob_advokature_i_advokatskoj_deyatel_nosti/24.htm



Focusing on the third issue, the national bar legislation provides 4 different time limits for requesting an attorney. These terms can be divided into the following general and special types:

1) no later than fifteen days from the date of receipt of the attorney's request – general term;

2) a special period defined in the contracts concluded with state forensic institutions and non-state forensic organizations – to obtain an expert opinion at the request of an attorney;

3) no later than five days from the date of receipt of the request – if the state body or other body, as well as the enterprise, institution, organization does not have the requested information (documents);

4) in the event that the information (documents) specified in the request is submitted by the attorney no later than three working days, indicating the initiation of the inquiry, preliminary investigation or trial of the case.

In the fourth part of Article 7¹ of the Law "On Advocacy", it is established that in the event that an attorney submits a document indicating the initiation of a case inquiry, preliminary investigation or trial, the information (documents) indicated in the request must be submitted no later than three working days.

There are two different issues analyzed in the fourth part of Article 7¹ of the Law "On Advocacy". In particular:

1) it is not clearly defined when the period of three working days begins;

2) in the event that the subject to whom the attorney's request was sent does not have the information (documents) that must be provided no later than three working days, there is no information about how long the requesting attorney will be informed about this.

Naturally, the question arises as to whether the subject to whom the attorney's request was sent is obliged to inform the attorney who sent the request about the absence of this information (documents). The answer is that according to the current legislation, the entity that received the attorney's request is not obliged to notify about it within three working days.

In our opinion, the beginning of three working days is calculated from the date of receipt of the attorney's request, and if the information (documents) that should be provided no later than three working days is not available in the entity to which the request

was sent, the attorney should be informed about it no later than three working days.

If we pay attention to the experience of foreign countries regarding the terms of considering and responding to an attorney's request, according to the legislation of the Russian Federation, the state authorities and management bodies, local state authorities, public associations and other organizations to which an attorney's request is sent, within thirty days from the date of its receipt, in writing must answer⁴.

In addition, in cases where the legislation of the Russian Federation requires additional time to collect and provide the requested information, the specified period may be extended, but not more than thirty days. In this regard, the attorney who sent the request for advocacy will be sent a notice about the extension of the time for consideration of the request for advocacy⁵.

In accordance with Article 24 of the Law of Ukraine "On Advocacy and Advocacy", the attorney must provide relevant to the attorney no later than five working days from the date of receipt of the request.

At the same time, if the attorney's request refers to the provision of a large amount of information or requires the search of information among a large amount of data, the time period for considering the attorney's request may be extended up to twenty working days with justification. The attorney will be informed about this in writing no later than five working days from the date of receipt of the attorney's request⁶.

Article 25 of the Law of the Kyrgyz Republic "On Advocacy and the Bar Association of the Kyrgyz Republic" states the rights of attorneys. According to the content of this norm, an attorney has the right to collect information necessary for providing legal assistance for the purpose of exercising his powers, including requesting information and other documents from state bodies, local self-government bodies, as well as public associations and other organizations. These bodies and organizations are required to provide the documents requested by the attorney or their certified copies within fourteen working days from the date of receipt of the attorney's request in accordance with the procedure established by the laws of the Kyrgyz Republic⁷.

Article 35 of the Law of the Republic of Kazakhstan "On Legal Aid and Advocacy Activities" provides guarantees of advocacy activities. In paragraph 8 of this article, state bodies, local self-

⁴ Ragulin A.V. The new draft law on an attorney's request is not able to achieve its goals and objectives // Journal EURASIAN, ADVOCACY, 1 (20), 2016. -P. 59-60.

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https://www.consultant.ru/document/cons_doc_LAW_36945/d1d4140b309eaf0840478e49515ad6d3c727d2ee/

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https://kodeksy.com.ua/ka/ob_advokature_i_advokatskoj_deyatel_nosti/24.htm

⁷ <http://cbd.minjust.gov.kg/act/view/ru-ru/205356>



government bodies and legal entities are required to respond in writing to an attorney's request for legal assistance within ten working days⁸.

The legislation of the Russian Federation and Ukraine stipulates the procedure for extending the time period related to the request of an attorney, while the legislation of Kyrgyzstan, Kazakhstan and Uzbekistan does not specify the grounds and procedure for extending this period.

As a result of the study and analysis of the deadlines for the request of an attorney, the following conclusions can be reached:

First of all, the working hours of courts and most law enforcement agencies in our country are five working days. Therefore, it is appropriate to set the deadlines for receiving and responding to an attorney's request on a "working day" basis.

secondly, in the fourth part of Article 7¹ of the Law "On Advocacy", if the information (documents) specified in the attorney's request are not available, the attorney who sent the request should be informed about it no later than three working days.

thirdly, it is necessary to divide the terms related to the request of an attorney into general and special terms. In our opinion, it is appropriate to postpone special periods.

It is appropriate to set the general terms as follows:

- Information (documents), as well as their copies, shall be submitted no later than seven working days from the date of receipt of the attorney's request. In cases where additional time is required to collect and provide the requested Information (documents), the specified period may be extended with justification, but shall not exceed fourteen working days. In this regard, the attorney who sent the attorney's request must be immediately notified of the extension of the deadline for considering the attorney's request.

- If the state body or other body, as well as the enterprise, institution, organization does not have the requested information (documents), they must inform the attorney who addressed them about it no later than three working days from the date of receipt of the request.

One of the next issues that need to be discussed is the determination of the reimbursement procedure for the information (documents) intended to be presented at the attorney's request, as well as for their copies. According to the current legislation, regardless of the amount of information (documents) to be

presented at the attorney's request, copies are made by the entity that accepted the request. The procedure for reimbursement of expenses incurred in this regard has not been determined. For example, if an attorney asks for 1000-2000 pages of information (documents), it will cause economic damage to the party receiving the request.

As for the Ukrainian legislation on this matter, it is noted that if the satisfaction of the attorney's request involves the preparation of copies of documents with a volume of more than ten pages, the attorney must cover the actual costs of copying and printing⁹. Therefore, it is necessary to specify in the legislation of the national bar association that if the information (documents) provided in the request of the attorney exceed 10 pages in total, the requesting attorney shall fully cover the expenses related to copying and printing.

On the basis of the above, clearly defining the subjects to whom an attorney's request can be sent, defining in law the information (documents) that are not considered the subject of an attorney's request, clarifying the terms of the request, and introducing a mechanism for the reimbursement of costs incurred for obtaining copies of the information (documents) specified in the attorney's request in the future. creates the ground for its implementation.

A specific definition of actions for which an attorney's request can be sent based on the above, the establishment in the law of information (documents) that is not the subject of an attorney's request, the clarification of the terms of the request and the introduction of a mechanism for reimbursement of the costs of obtaining copies of information (documents) specified in the attorney's request, in the future for the attorney's professional advocacy creates the ground

On the basis of the above, it is necessary to clearly define the subjects to which a attorney's request can be sent, to determine at the legal level information (documents) that are not the subject of an attorney's request, to clarify the deadlines for the request, and also to introduce a mechanism for reimbursement of expenses incurred to obtain copies of extracts from information (documents) specified in the attorney's request, creates the basis for the implementation of professional advocacy.

REFERENCES:

1. Qonun hujjatlari ma'lumotlari milliy bazasi, 12.10.2018-y., 03/18/4972044-son; 08.01.2020-y., 03/20/601/0025-son

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https://online.zakon.kz/Document/?doc_id=33024087&doc_id=33024087#activate_doc=2&pos=53;-96&pos2=537;-84

⁹ Zaborovsky V.V. Legal analysis of some aspects of an attorney's right to an attorney's request under the legislation of Ukraine // Journal EURASIAN ADVOCACY, 2 (9), 2014. –P. 50.



2. Documents on the request of the attorney of 25 law firm "Prae Legal" dated February 15, 2023.
3. https://kodeksy.com.ua/ka/ob_advokature_i_advokatskoj_deyatel_nosti/24.htm
4. Ragulin A.V. The new draft law on an attorney's request is not able to achieve its goals and objectives // Journal EURASIAN, ADVOCACY, 1 (20), 2016. -P. 59-60.
5. https://www.consultant.ru/document/cons_doc_LAW_36945/d1d4140b309eaf0840478e49515ad6d3c727d2ee/
6. https://kodeksy.com.ua/ka/ob_advokature_i_advokatskoj_deyatel_nosti/24.htm
7. <http://cbd.minjust.gov.kg/act/view/ru-ru/205356>
8. https://online.zakon.kz/Document/?doc_id=33024087&doc_id2=33024087#activate_doc=2&pos=53;-96&pos2=537;-84
9. Zaborovsky V.V. Legal analysis of some aspects of an attorney's right to an attorney's request under the legislation of Ukraine // Journal EURASIAN ADVOCACY, 2 (9), 2014. -P. 50.