



INTERNATIONAL LEGAL ACTS REGULATING THE ACTIVITIES OF ADVOCACY

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Article history:	Abstract:
Received: 11 th February 2024 Accepted: 20 th March 2024	The article considers international and regional legal documents regulating the activities of advocacy. Based on the given analysis, it is concluded that it is necessary to conduct a further comparative analysis of international and regional legal documents, study the experience of foreign countries and the possibilities of their application for the further reformation of the system of high-quality advocate services, improvement the qualifications of advocates and growth of public confidence in the advocacy formations.

Keywords: International legal Acts, convention, advocacy, comparative legal analysis, enhancing the status of an advocate.

Legal documents on advocacy determine the basic rights of advocates, their duties and independence, the system of self-governing bodies and advocacy formations. Thus, such legal documents provide the legal basis for the existence of the institution of advocacy, providing them with professional legal assistance to individuals and legal entities to protect their rights, freedoms, and legitimate interests [1].

The activities of the advocacy institution in the Republic of Uzbekistan are based on such legislative acts as the Constitution, the laws of the Republic of Uzbekistan "On Advocacy", "On Guarantees of Lawyer Activities and Social Protection of Lawyers," as well as other subordinate legal documents.

At the same time, the regulation of advocacy in Uzbekistan is carried out not only by national legislation but also by international legal acts. This is confirmed by Article 33 of the Law of the Republic of Uzbekistan "On International Treaties of the Republic of Uzbekistan", which "are subject to rigorous and mandatory execution by the Republic of Uzbekistan in accordance with international law" [2].

The Republic of Uzbekistan not only uses the national mechanism for regulating the activities of advocacy but also undertakes to strictly follow the norms of international treaties that have been ratified by the State to raise the status of the institution of advocacy to a generally accepted world level.

In recent years, Uzbekistan has been making significant efforts to improve the institution of advocacy, enhance the status of advocate, and transform advocacy into a real institute of civil society.

The conducted analysis demonstrates the impossibility of improving the quality of the institution of advocacy without studying the peculiarities of

advocacy in foreign countries in conjunction with existing international legal acts.

This is because international legal acts play an important role in regulating the activities of advocacy in the world. They provide standards and norms that must be observed by advocates in carrying out their professional activities. Thus, the United Nations Charter enshrines the principle of good faith in accepted international obligations, where the preamble establishes the determination "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained" [3].

Following paragraph 2 of Article 2 of the Charter, "All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter".

Grudtsina L. classifies several international legal acts involved in the regulation of the activities of advocacy into three distinct categories:

- The general nature of the international regulatory legal acts ensuring the implementation of the rights and freedoms of human and citizen;
- The special nature of the international regulatory legal acts ensuring the realization of the rights and freedoms of human and citizen;
- international regulatory legal acts establishing general principles for the provision of legal assistance and the activities of advocates." [4]

The first international document, which had officially asserted the human right to legal protection, was the Universal Declaration of Human Rights of 1948 [5]. The preamble of the Declaration, like most



international legal documents protecting basic human rights and freedoms:

- recognizes the dignity and equal rights of all human beings;
- gives freedom of speech and belief, and freedom from fear and want;
- promotes the development of friendly relations between nations;
- reaffirms the faith in the dignity and worth of the human person and gender equality, as well as promote social progress and better standards of life in larger freedom;
- proclaims the Declaration as a common standard of achievement for all peoples and all nations.

The articles of the Declaration define the equality before the law and equal protection of the law without any discrimination (Article 7), the presumption of innocence and all the guarantees for defense (Article 11), the right to the protection from arbitrary interference in his privacy, family, home or correspondence, (Article 12), the protection of the family by society and the State (Article 16), the right to work and protection against unemployment (Article 23), the protection of motherhood and children together with special care and assistance in it (Article 25), the right to the protection of the moral and material interests (Article 27), the right to the social and international order in which the rights and freedoms can be fully realized (Article 28). At the same time, a person's rights and freedoms can only be limited by law due recognition and respect for the rights and freedoms of others (Article 29).

Another international document defining the political and civil rights of a person (people) is the International Covenant on Civil and Political Rights of 1966 [6]. This covenant provides the right of the people to self-determination (Article 1), the right to protection without distinction of any kind, such as sex, race, religion, language, or belief (Articles 2-3), the right to life (Article 6), protection against torture or cruel, inhuman or degrading treatment or punishment (Articles 7-8), the right to liberty and security of person, legal defense and fair trial (Articles 9, 12-17), the right to freedom of thought, conscience and religion (Article 18), as well as other rights provided for by the Covenant.

With this purpose, the Human Rights Committee was established to monitor the implementation of the articles of the Covenant (Article 28). According to the Covenant, "The States undertake to submit reports on the measures they have adopted which give effect to the rights recognized in the

Covenant, and, on the progress, made in the enjoyment of those rights" [6]. In turn, the Committee examines the submitted reports and makes general comments.

In 1995 the CIS countries adopted Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, which is aimed at the effective implementation of obligations to protect human rights and fundamental freedoms [7]. According to this Convention, member-states must ensure to every person the basic rights and freedoms outlined in the Convention (Article 1). In particular, the right to life (Article 2), protection from torture and ill-treatment (Article 3), the right to freedom from slavery and forced labor (Article 4), liberty and security of person (Article 5), equality before the law in legal proceedings (Article 6), the right to privacy of private and family life (Article 9), the right to freedom of thought, speech, conscience and religion (Articles 10-11), the right to freedom of choice in marriage (Article 13), the right to work and protection of health (Articles 14-16), the right to appeal for protection of violated rights and freedoms (Articles 19-20), as well as other rights aimed at protecting human rights and freedoms without distinction of any kind, such as race, gender, language, political opinions, religion and social background. In addition, the Convention protects the rights of juveniles and persons with limited physical and mental abilities and also provides for the right of the accused to choose a lawyer for himself or to have a lawyer appointed by the State, as well as to use the free legal assistance.

The Human Rights Commission of the Commonwealth of Independent States (HRC CIS) was created specifically to monitor the implementation of the articles of this Convention [8]. The activities of the Commission are regulated by the "Statute of the Human Rights Commission of the Commonwealth of Independent States", approved by the Decision of the CIS Heads of State Council in September 24, 1993.

Resolution No. (76) 5 on legal aid in civil, commercial, and administrative matters, adopted by the Committee of Ministers of the Council of Europe on 18 February, 1996, guarantees equal conditions for the provision of legal aid to citizens of member states of the Council of Europe and those foreigners in respect of whom such equality of conditions is the most justified. In addition, this resolution recommends that the governments of member states provide, under the same conditions as their citizens, legal aid in civil, commercial, and administrative matters, regardless of the nature of the court exercising jurisdiction, a) to all natural persons being nationals of any member state;



b) all other natural persons who have their habitual residence in the territory of the member state" [9].

Recommendation R (81)7 of the Committee of Ministers of the Council of Europe to member states on measures facilitating access to justice of 1981, was adopted to "take all necessary steps to inform the public on the means open to an individual to assert his rights before courts and to make judicial proceedings, relating to civil, commercial, administrative, social or fiscal matters simple, speedy and inexpensive. To this end member states should have particular regard to the matters enumerated in the following principles" [10].

In terms of advocacy, paragraph B.4. indicates that no litigant should be prevented from being assisted by a lawyer, at the same time stating that an individual has the opportunity to put his case before the courts.

Paragraphs D.13 and D.14 recommend that Particular attention should be given to the question of lawyers' and experts' fees in so far as they constitute an obstacle to access to justice. Some form of control of the amount of these fees should be ensured. Furthermore, a winning party should in principle obtain from the losing party recovery of his costs reasonably incurred in the proceedings.

As for juveniles, in 1985, the UN adopted the Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the main purpose of which was to provide recommendations for creating a meaningful life for a teenager that will have a positive impact on the education and development of the juvenile, thus, minimizing the risk their involvement in criminal activity [11].

Taking into account that the Beijing Rules were developed taking into account the 1966 International Covenant on Civil and Political Rights and the 1948 Universal Declaration of Human Rights, these rules provide for the protection of human rights, namely the right to be represented by a lawyer or to receive free legal assistance.

Moreover, taking into account the need for special protection of the rights of the child, the 1989 Convention on the Rights of the Child was adopted. The Convention determines the need for special protection of every human being until the age of 18 from all forms of discrimination, as well as the mandatory presence of a lawyer at a procedural action aimed toward the child [12].

The 1955 Standard Minimum Rules for the Treatment of Prisoners also indirectly relate to advocacy to protect the rights and interests of prisoners [13]. Thus, according to the Article 93 of the

Rules "For his defense, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defense and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official."

The 1988 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment establishes the rights of a detainee (prisoner) to legal assistance, meetings, and consultations with a lawyer [14].

The principles of protection include the rights of a detainee to defend himself or to seek the assistance of a lawyer (principle 11), to receive legal assistance from a lawyer chosen by the detainee himself or by appointment (principle 17), to consult and communicate with a lawyer (principle 18), to litigate by himself or his lawyer, the lawfulness of detention to achieve immediate release (principle 32), making a request and/or complaint regarding the treatment of the detainee (principle 33).

These principles recommend that Member States: (i) create conditions for the possibility of every person to have the right to seek the assistance of a lawyer to protect their rights and interests; (ii) oblige the competent authorities to inform the detainee of his right to use the services of lawyers from the moment of detention; (iii) create conditions for the training and advanced training of lawyers; (iv) enable lawyers, in the exercise of their functions and duties, to act independently and in good faith, without violating the laws, norms and ethics of lawyers; (v) to give the right to lawyers to form their independent professional associations, with the possibility of choosing bodies and officials from among the members themselves without outside interference; (vi) enable disciplinary committees composed of lawyers themselves to deal with lawyers' misconduct impartially and independently, with disciplinary action and the ability for lawyers to challenge such penalties.

The standards for the independence of the legal profession of the International Bar Association of 1990 were established to improve the status of lawyers and their role in the life of society and the state [15].

Thus, the standards establish that when fulfilling their duties to protect the rights and legitimate interests of citizens, lawyers must act independently, honestly, and freely (Articles 6, 12); no lawyer should be identified with his client and/or be



held liable for the position taken by him in the case (Articles 7-8), the relationship between the lawyer and the client must be confidential without the right of access and seizure of the lawyer's documents (Article 13). The standards also provide for the rights of all citizens, particularly the rights of the poor, to have access to legal services to protect their rights and freedoms (Articles 15-16).

The 1990 Basic Principles on the Role of Lawyers, adopted by the Eighth UN Congress on the Prevention of Crime in 1990, are considered to be the first international document directly related to advocacy and designed to help countries harmonize national legislation with international legal instruments to raise the status of a lawyer and establish their proper role in society, which in turn, would lead to the achievement of the goals of justice and public interest [16].

The main provisions on the role of lawyers are divided into 8 sections. These sections define the following main components of the modern institution of advocacy in the country: the right of any person to seek the assistance of a lawyer and the creation by the Government of an effective mechanism for equal access of people to the services of lawyers, qualification requirements for lawyers, their basic rights and obligations, as well as the possibility of creating professional associations to represent their interests and get the opportunities to maintain their professional level.

Additionally, special attention should be paid to the regional formats of the international regulatory documents. However, while studying the issue of improving advocacy and raising the status of the institution of advocacy, the importance of the above-mentioned international regulatory documents should not be diminished.

For example, the 2021 Model Code of Conduct for European Lawyers, aimed at establishing uniform rules for advocacy for all integrating countries of the European Union [17]. The Model Code defines the independence of a lawyer to enable the protection of the client in a proper way. Moreover, it describes the conditions of relations with clients and among lawyers themselves to avoid conflict of interests.

The 2000 Recommendation of the Committee of Ministers of the Council of Europe to member states "on the freedom of exercise of the profession of lawyer" aimed at strengthening the rule of law, establishing the independence of lawyers in fulfilling their duties to protect the rights and legitimate interests of citizens, recommends taking all necessary measures for the freedom to exercise the profession,

the possibility of obtaining a legal education and access to the profession regardless of gender, race, and other factors. It also guarantees access for all persons to legal services from lawyers. At the same time, the Committee's Recommendation defines the role and responsibilities of lawyers, their right to associate, and the possibility of disciplinary action for their failure to comply with professional standards [18].

In 2016, the CIS countries also developed the Charter of the Fundamental Principles of Advocacy, recognizing "the common interest in the reliable and sustainable development of advocacy as an institution of civil society and a necessary element of a democratic rule of law state". The Charter aims at promoting the principles of the rule of law and increasing the role of lawyers in judicial proceedings, taking into account internationally recognized standards of advocacy [19].

The Charter embodies thirteen basic principles: The principle of respect for rule of law and fair justice, the Principle of legality as the fundamental principle for providing legal assistance, the Principle of providing access to justice, the Principle of independence of the advocate and legal practices, the Principle of self-regulation of the profession, the Principle of observance of the client-lawyer privilege, the Principle of compliance with the ethical norms and protection of dignity, honor and reputation of the profession, the Principle of compliance with the rules of professional conduct, the Principle of corporate nature based on common interests to provide due protection of the clients and their access to justice, the Principle of mutual professional cooperation, the Principle of equality of advocates, the Principle of professional competence and the Principle of commitment to the client's interests.

The participants in this Charter aim to unite their efforts to mutually support and defend the basic principles of advocacy, as well as the introduction of these principles into national legislation to protect human rights and improve the status of advocacy.

The listed international legal acts are considered international and regional standards determining the regulation of the institution of advocacy. They also assert the need to strictly follow the rule of law, justice, and ethical standards aimed at the main goals, such as protecting the rights and legitimate interests of individuals, increasing the professionalism of the institution of advocacy and public trust in it, which in turn, increases in the status of a lawyer in civil society.



Thus, the examination of international legal documents indicates the need to improve the status and prestige of advocacy by strengthening the protection of a lawyer in the exercise of his professional activities, developing standards for the provision of legal assistance, and other measures aimed at further harmonizing the legislation on advocacy in the Republic of Uzbekistan with international norms and standards.

In summary, it's important to emphasize that conducting a comparative legal analysis of foreign legal practices' organizational structures, studying their experiences, and exploring how to apply their positive aspects are essential steps for forecasting the future direction of the legal profession in Uzbekistan. These efforts will also play a significant role in advancing the reform of the legal service system, enhancing the training of lawyers, and bolstering public trust in legal entities.

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