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Specific Features and Aspects of Obtaining the Status of an Advocate in the Republic of Uzbekistan

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Abstract: This article studies and analyzes the naming and essence of the legal term «advocate» in Uzbekistan and other foreign countries, the opinions of national and foreign legal scholars on the concept of «advocate», and the concept of «having the status of an advocate» based on the legislation of national and foreign countries.

At the same time, the scientific article presents substantiated conclusions on the further improvement of the theory of advocacy and legislation on advocacy.

Keywords: advocacy, advocate, to become an advocate, the right to practice advocacy, obtaining a license to practice law, to have the right to practice law, requirements to become an advocate, to be admitted as an advocate.

Introduction.

In the ongoing process of judicial and legal reforms in the Republic of Uzbekistan, there is a need to ensure the independence of the advocacy system and to further reform and develop its structure. One of the main reasons for this is the daily increasing need of individuals and legal entities for legal services and legal assistance, especially for advocates.

Obtaining qualified legal assistance is one of the fundamental guarantees enshrined not only in our Constitution but also in internationally recognized documents. Most importantly, ensuring the full and timely provision of this guarantee is considered one of the most crucial responsibilities carried out by advocates.[1]

In our opinion, since the concepts of «advocate», «status», and «acquisition of advocate status» have not been sufficiently researched in our country, it is necessary, first and foremost, to conduct a scientific and theoretical analysis of their essence and content. For this reason, these concepts were analyzed based on scientific sources, legal encyclopedias, dictionaries, and the perspectives of foreign state scholars.

Reference to historical sources shows that although the profession of advocate originated in ancient Rome, the term «advocate» was first used in relation to the representatives of the parties at the beginning of the 18th century.

For reference, it can be said that the first advocacy in the territory of Uzbekistan was established as a self-governing structure under the name «Protectors' Branch» in 1879 in the city of Kokand, at the initiative of Abdunabi Kurolboy, who studied law in St.Petersburg. He is regarded as the first Uzbek advocate.[2]

It should be noted that today it is emphasized that Yakubov Sanjar Akhmedjanovich, a candidate of legal sciences, is the «father of advocates». Today, he has led many well-known advocates and, in turn, is considered a scientist.

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First of all, it should be noted that the concept of «advocate» was first used after our country gained independence in the Law of the Republic of Uzbekistan No. 349-I «On Advocacy» dated December 27, 1996.

It is noteworthy that there is no clear definition of the concept of «advocate» and definitions related to this concept are developed taking into account the legislation of each state.

The term advocate is called differently in the legislation of foreign countries. For example, the variety of names of advocates in European countries is indicated in Article 1, paragraph 2 of Directive 98/5/EC of the European Parliament and of the Council of the European Union of 16 February 1998, according to which they are called by the following names: in Austria «Rechtsanwalt», in Belgium «Avocat/Advocaat/Rechtsanwalt», in Great Britain «Advocate/Barrister/ Solicitor», in Germany «Rechtsanwalt», in Greece «Δικηγόρος», in Denmark «Advocat», in Ireland «Barrister/Solicitor», in Spain «Abogado/Advocat/Avogado/Abokatu», in Italy «Avvocato», in Luxembourg «Avocat», in the Netherlands «Advocaat», in Portugal «Advogado», in Finland «Asianajaja/Advokat», in Sweden «Advocat», in France «Avocat».[3]

The explanatory dictionary notes that the concept of «advocate» means (in Latin «advocatus», «advocare» - to call for aid) an advocate who provides legal assistance (advice) to the defendant in court, defends the defendant (accused); acquitter, defender».

The Uzbek legal encyclopedia defines the concept of «advocate» as «a citizen of the Republic of Uzbekistan who has a higher legal education and has received a license in accordance with the established procedure granting the right to engage in advocacy activities may be an advocate in the Republic of Uzbekistan», and another legal source states that «an advocate is a person who has received the status of an advocate and the right to engage in advocacy activities in accordance with the established procedure». In our opinion, this is the dictionary meaning of the term «advocate», and therefore does not reveal the full meaning of this concept.

Some legal literature defines an advocate as «a citizen of the Republic of Uzbekistan who has a higher legal education and has obtained a license in accordance with the established procedure granting the right to practice law may become an advocate in the Republic of Uzbekistan».[4]

The concept of an advocate is defined by some scientists as follows: «An advocate is a natural person who performs legal activities, which includes the protection, representation and provision of other types of legal assistance to a client.». From this definition, it can be concluded that an advocate is a person who has chosen a profession that is primarily charged with protecting the rights and freedoms and legal interests of people.

According to A.D.Boykov, the word «advocate» is derived from Latin and has two meanings, including the first, «a trusted representative in legal matters, a defender in court, «and the second, «one who speaks orally or in writing in defense of something or someone».

«An advocate is a lawyer who provides professional legal assistance by providing advice and recommendations, protecting the accused, protecting the interests of victims at all stages of the investigation and trial», says M.B.Smolensky.

According to O.V.Sineoki, the term «advocate» denotes a professional affiliation, and the term «defender» denotes an activity related to the protection or defense of someone's interests in court.[5]

Advocate F.Fayzullaeva defined the concept of an advocate as follows: «An advocate is an independent professional consultant on legal issues». She also believes that in some countries, a lawyer and an advocate are not separate professions, or rather, when a lawyer is called an advocate, an advocate is also understood. In our country, «all advocates are lawyers by education, but not every lawyer is an advocate».

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Researcher D.Chorieva also expressed her opinion in this regard, she described the concepts of «defender» and «advocate» and their interrelated and different aspects in her scientific research work.[6]

In our opinion, the views expressed by these legal scholars and researchers (A.Boykov, M.Smolensky, F.Fayzullaeva, D.Choriyeva) are significant in that they are aimed at revealing the functional side of the concept of an advocate.

Also, V.R.Dyukina, emphasizing that there is currently no complete and comprehensive definition of an advocate in European Union legislation, defined the concept of an advocate as follows: «An advocate is a professionally qualified independent specialist in the field of law who has the appropriate status in accordance with the regulatory legal acts of the European Union member states, which allows him to provide advice on legal issues under a special professional title, protect the rights of clients by any legal means and take legal actions to protect their interests, as well as protect the interests of clients before judicial bodies, law enforcement agencies and state administration bodies».

Studies have shown that the terms «lawyer» and «advocate» have different meanings in our country, and their main functions and tasks are defined in different regulatory legal documents.[7]

This is because in the United States, practicing lawyers who directly participate in court proceedings are called «trial attorneys, counsels»,«while lawyers who do not participate in court proceedings are simply called «lawyers».

In this regard, V.Davlyatov also emphasized that in the USA the concepts of «advocate» and «lawyer» are the same, and he justified this in his scientific works with legal grounds.[8]

If we look at foreign experience, in France the term «advocate» is not a title, but rather a type of professional activity of a practitioner. Any person who has a legal qualification but has ceased to practice advocacy cannot be called an advocate, even if he continues to work in other areas of law.

It should be noted that in some foreign countries (Germany, France, some states of the USA) the concept of «specialized advocate» is defined by law. In Germany, for example, the concept of «specialized advocate» was developed by the Bar Association, and this name was requested to be included in the 1994 Federal Law and Regulations on Advocates. Importantly, such changes serve to guarantee the provision of highly qualified legal assistance.[9]

Before we dwell on the concept of «having the status of an lawyer», it would be appropriate if we explain the essence of the concept of «status».

The explanatory dictionary defines the concept of «status» as «... the status of an organ, organization, association, official (citizen) formalized by a regulatory document (from which the term «legal status» is derived)», «situation, position, place; degree, rank».

English dictionaries note that the word «status» is used synonymously with the word «status» and that this term means «the legal condition of a person, group, or country», «high rank or social position, the official or legal status of a person or organization».

A.D.Baykov stated that «the term status is used to denote the legal status of a citizen (official, legal entity, etc.). The substantive characteristics of legal status are a set of rights and obligations».[10]

Status is a set of rights and obligations of individuals or legal entities. From this it can be concluded that obtaining the status of an advocate leads to the emergence of rights and obligations, the structural structure of which is considered to be the term «advocate status».

Studies within the framework of the study showed that A.D.Boykov, T.V.Varfolomeeva, S.F.Safulko, A.D.Svyatotsky, P.V.Khotenets in their scientific works studied some aspects of the concept of «legal status of an advocate». In particular, A.D.Boykov's research shows that, in addition to the above

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elements, the term «legal status» also includes the requirements for a person to become an advocate. He stated that the scientific and practical meaning of this term is that based on it, the requirements defining the professional qualification of an advocate, professional training programs for persons applying for the status of an advocate, as well as the system of improving the qualifications of both advocates and the heads of advocates' associations are understood.

Also, A.D. Boykov gave the following definition of the concept of «status of advocate»: It combines a rather complex combination of rights and obligations reflected in the Law «On Advocacy», in the areas of procedural legislation, and in the corporate documents of the advocate association. In our opinion, we can agree with A.D. Baykov's opinion, since obtaining the status of an advocate leads to the emergence of rights and obligations for the applicant. Uzbek legal researcher D.Davlyatov expressed similar opinions on the concept of «status» in his scientific work.[11]

«The legal status of an advocate is a type characterized by its professional nature. This is a professional status that includes the privileges necessary for an advocate not only to exercise his own rights, but also to achieve the final result - to protect the rights of the client,» emphasizes A.E. Zhalinsky.

A.Cherdantsev, in turn, emphasizes that «the legal status (legal status) of citizens is expressed in a set of rights and obligations, which is characterized by the breadth and reality of the rights and freedoms enshrined in the Constitution and other laws».

M.Strogovich, on the other hand, puts forward the idea that legal status consists of rights, legal obligations, legal guarantees and legal liability. In our opinion, P. Khotenets' approach is the most appropriate for studying the legal status of an advocate. According to him, the concept of «advocate status» includes the rights and obligations of an advocate, the advocate's liability and guarantees of his activities. These three elements constitute the general status of an advocate.

Taking into account the above, it can be concluded that the legal status of a person, as well as an advocate, in addition to the rights and obligations that are the initial and generally accepted elements, should include legal guarantees and responsibility, as well as the requirements for obtaining the status of an advocate. Therefore, during the study, we will comprehensively analyze the requirements for obtaining the status of an advocate.[12]

The concept of «having the status of an advocate» was first used in Law No. 198 of the Republic of Uzbekistan, adopted on December 31, 2008.

The concept of having the status of an advocate is very rarely defined in legal sources and by legal scholars. In this regard, N.Davydov expresses the following opinion: «there are no detailed recommendations on this concept in either the Law or scientific publications». In our opinion, N.Davydov's conclusion is due to the fact that each state has different requirements for having the status of an advocate in its legislation.

According to A.Boykov, the rights and obligations of an advocate arise from the moment of obtaining this legal status. For this, the applicant must apply to the qualification commission, and only after a decision is made to grant him this status, he will receive the status of an advocate and at the same time enter the Chamber of Advocates.

In order to fully understand the essence of this concept, it is important to study and analyze the experience of foreign countries in this regard regarding the legal profession. In particular, the legislation of the Russian Federation establishes that the requirements for obtaining the status of an advocate, work experience in a legal specialty, a list of persons who cannot be candidates for the practice of law and advocacy, and the procedure for foreign citizens and stateless persons to practice

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law in the territory of the Russian Federation constitute the concept of «obtaining the status of an advocate».

The legislation of Turkmenistan uses the concept of «obtaining the status of an advocate», which includes the requirements for obtaining the status of an advocate and the procedure for obtaining a license for individuals and legal entities to provide legal assistance.[13]

In foreign countries, instead of the concept of «having the status of an advocate», other concepts that are consistent with this concept have been used. For example, the concepts of «advocate», «the right to practice advocacy», «obtaining a license granting the right to advocacy», «beginning to advocacy», «having the right to advocacy», «obtaining the status of an advocate», «requirements for becoming an advocate», «recognition as an advocate» have been used.

While the legislation of foreign countries requires «having the status of an advocate» to begin practicing law, some also impose requirements other than those established in our legislation. Including taking an oath, paying membership fees, obtaining an advocate's certificate, joining advocate associations, and others.

In accordance with current legislation, we consider that obtaining the status of an advocate includes the following:

1. Being a citizen of the Republic of Uzbekistan;

2. Having a higher legal education;

3. Obtaining a license to practice law in accordance with the established procedure;

3.1. Having completed an internship in a advocate's firm for at least three months;

3.2. Passing a qualification exam;

4. Taking the oath;

5. Obtaining a advocate's certificate;

6. Being a member of the Chamber of Advocates.

Based on the opinions of scholars and analyses of current legislation, the following concepts were given an author's definition:

«*An advocate is a person who has received the status of an advocate and the right to engage in advocacy activities in accordance with the established procedure under current legislation»;*

«*Obtaining the status of an advocate means that the applicant fully fulfills the requirements established by law for obtaining the status of an advocate and obtains an advocate's license, takes the advocate's oath and obtains an advocate's certificate confirming the status of an advocate in accordance with the established procedure, and is included in the register of advocates and becomes a member of the Chamber of Advocates».*

In our opinion, the following can be pointed out as the distinctive features of having the status of an advocate:

firstly, the requirements for obtaining the status of an advocate are set at the level of the Law «On Advocacy»;

secondly, obtaining the status of an advocate serves as the basis for starting an advocacy activity, which leads to the exercise of his rights and fulfillment of obligations established by law;

thirdly, according to current legislation, a person with the status of an advocate is required to provide qualified legal assistance, not legal assistance;

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fourthly, while Articles 141-142 of Chapter 24 of our Constitution set out the basic rules for the advocacy, Article 29 of it states that a person who has received the status of an advocate cannot refuse to provide services to a person who has applied for qualified legal assistance (who has applied for legal assistance) without good reason.[14]

Based on the analysis, it can be concluded that theoretically revealing the meaning of the concept of «acquiring the status of an advocate» serves the correct use of terms (concepts) in the current legislation, and the clear and understandable statement of requirements for applicants to obtain the status of an advocate.[15]

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