

Disciplinary liability of an advocate: National legislation and foreign experience

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Abstract: In this article the basics of disciplinary liability of an advocate in Uzbekistan, disciplinary proceedings, types of disciplinary penalties applied to an advocate for the results of the review of a disciplinary case, the procedure for suspending the period of validity of the license calculated by disciplinary penalties and the procedure for international standards for disciplinary prosecution of lawyers have been analyzed. As a foreign experiment, the basis and procedure for disciplinary prosecution of advocates in Japan, where the institute of advocacy is one of the most developed countries, has been analyzed.

Keywords: advocate, disciplinary responsibility, the Chamber of Advocates, qualification commissions, Higher qualification commission, disciplinary committee, license, administrative court.

In the Republic of Uzbekistan, advocacy works to protect the constitutional rights and interests of individuals and legal entities and provide them with qualified legal assistance. During the performance of his or her professional duties, advocate is obliged to strictly follow the requirements of legislation regulating the activities of the lawyer, The rules of professional ethics of the advocate, the secret of the advocate and the advocate's oath. Failure to comply with these requirements, according to Article 14 of the law of the Republic of Uzbekistan "On advocacy", causes a lawyer to be brought to disciplinary responsibility. First of all, to comment on the concept of disciplinary liability, it is a type of legal liability that occurs in labor relations by an employee for not fulfilling his or her labor obligations in an illegal way, or to the extent necessary, and is expressed in the application of a disciplinary penalty against this employee.¹ Ye.O.Busurina, on the other hand, addresses in her research work precisely the concept of "disciplinary liability of an advocate", which defines it as a special type of legal liability applied to a special subject of disciplinary legal relations for committing a disciplinary offense, manifested in the fact that an advocate has not fulfilled or should not fulfill his professional obligations and determines the application of disciplinary.²

In accordance with our current legislation, the authority to initiate disciplinary proceedings against a lawyer belongs to the Higher qualification commission under the Chamber of Advocates of the Republic of Uzbekistan or qualification commissions under the territorial departments of the Chamber of Advocates. Disciplinary proceedings can be justified only by three circumstances provided for by

¹ The Labour Code of the Republic of Uzbekistan, Articles 301-302 <https://lex.uz/ru/docs/-6257288#-6264925>

² Бусурина Е. О. Дисциплинарная ответственность адвоката в правозащитной деятельности: автореф. дис. ... канд. юрид. наук. – М., 2013. – С. 10.

law, including: (I)the provisions of the law of advocate, The rules of professional ethics of an advocate, the fact that the secret of the advocate and the violation of the advocate's oath is determined by the territorial department of the Chamber of Advocates or department of the Ministry of Justice, (II)appeals of individuals or (III) private judgment of the court against the advocate.³

On the first basis given above, if in the process of control activities carried out by the territorial department of within its competence, the heads of these bodies refer to the commission of qualification under the territorial department of the Chamber of Advocates to consider the issue of initiating disciplinary proceedings against the lawyer, stating the reasons. In the overwhelming majority of cases, the basis for the initiation of a case on the second basis is the complaints of persons who have signed an agreement with an advocate to provide legal assistance to the territorial departments of the Chamber of Advocates on the illegal behavior of the advocate. If the advocate does not come to court without excuses or disobeys the orders of the judge after the first warning in court, the court issues a private decree on him and sends him to the territorial department of the Chamber of The Ministry of Justice of the Republic of Uzbekistan. Appeals to the regional administration or the Ministry of Justice on the illegal conduct of the incoming lawyer, a private ruling of the court against the lawyer will also be entered into the qualification commission for consideration.

Appeals on the consideration of the issue of initiating disciplinary proceedings and on the illegal behavior of the lawyer are registered by the territorial department of the Chamber of Advocates and, along with all documents, the qualification commission under this territorial department is assigned to the responsible secretary. After receiving it, responsible secretary informs the lawyer to whom disciplinary proceedings are being established no later than the next day.⁴ After that, the qualification commission will consider the appeal received at its meeting and decide whether to initiate disciplinary proceedings on its result or refuse to initiate disciplinary proceedings. If the qualification commission decides to initiate disciplinary proceedings, disciplinary proceedings will be considered at this meeting of the commission. A lawyer in disciplinary proceedings has the right to take conciliation measures with the person who filed the complaint that caused the disciplinary action until the decision of the qualification commission or the Higher qualification commission on the case, along with other rights established by the legislation. In the decision of the qualification commission to impose disciplinary sanctions on a lawyer, the severity of the offense committed, the circumstances in which it was committed, the previous activities and conduct of the lawyer are taken into account. In the case of disciplinary proceedings, one of the disciplinary penalties, such as (I)warning, (II)suspending the validity of the license for a period of up to six months, or (III)ending the validity of the license, applies to a lawyer in case of a breach of law. In this case, the qualification commission can only apply disciplinary

³ The law of Republic of Uzbekistan "On Advocacy" <https://lex.uz/ru/docs/-54503>

⁴ Order of the Minister of Justice of the Republic of Uzbekistan on approval of the regulation on qualification commissions under the territorial departments of the bar of the Republic of Uzbekistan <https://lex.uz/ru/docs/-1458647#-1458780>

punishment in the history of the warning based on its decision. The lawyer can appeal this decision of the qualification commission to the Higher qualification commission within a month from the date of receipt of an extract from the protocol of the meeting of the qualification commission. The complaint is written in the name of the Higher qualification commission and sent to the Chamber of Advocates directly or through the relevant territorial departments.

In order to suspend the validity of the license and resolve the issue of ending the validity of the license, the qualification commission, which is in disciplinary proceedings, decides to apply to the administrative court, respectively, or to the Higher qualification commission under the Chamber of Advocates. The decision of the qualification commission to apply to the administrative court on the suspension of the validity of the license, no later than three days from the date of its adoption, is sent by the territorial department in writing to the relevant department of the Ministry of Justice shall appeal to the relevant administrative court to suspend the validity of the license within seven days from the date of receipt of this decision. Also, the Higher qualification commission under the Chamber of Advocates draws up a conclusion on the appeal of the qualification commission on the termination of the validity of the license granting the right to practice law, sending it to the Ministry of Justice in writing no later than three days from the date of its conclusion. The Ministry of Justice will appeal to the relevant administrative court to terminate the validity of the license within seven days from the date of receipt of this conclusion.

According to the provisions of the Code of Administrative litigation of the Republic of Uzbekistan, the development of a mechanism for depriving an advocate of his license through the court is prescribed by law. According to this, the application for suspension or termination of the validity of the lawyer's license is accompanied by legislation on the practice of law by an advocate, The rules of professional ethics of advocates, maintaining the secrecy of the advocates and materials confirming violations of the requirements of the advocate's oath. The court informs the parties about the time and place of the hearing and may recognize their arrival as mandatory. The case will be considered within a maximum of 15 days from the date of issue of the order of preparation for the hearing. During the hearing, the court determines that:

- the fact of whether an offense has occurred or not and the fact of its occurrence;
- the presence of a basis for checking and drawing up an act (other document) on its results and the powers of the applicant:
- that the legislation provides for responsibility for committing this offense and that there are grounds for suspending or terminating the validity of the advocate's license.⁵

The court decision to suspend the validity of the license, if an appeal is not filed, comes into legal force 10 days later (in cases where an appeal is filed – from the date of the decision by the appellate instance), and the decision to terminate the validity of the license from the date of its adoption. A copy of the decision made on

⁵ Portal for the discussion of projects of regulatory legal acts ID-4649 <https://regulation.gov.uz/oz/document/4649>

the case on the suspension of the validity of the legal license is sent to the participants in the proceedings on the day of its adoption, and a copy of the decision to terminate the validity of the license no later than the day after its adoption. In a word, the suspension of the practice of a lawyer's license and the termination of the validity of a license through the court in this way is in accordance with the norms of international law and the democratic principles of our national legislation, openness, transparency in this process is ensured, and an advocate has the right to appeal to the high courts.⁶

International legislation has also developed international standards governing the practice of law, which also specifically cover the issue of disciplinary prosecution of lawyers. In particular, the 1990 "UN Basic Principles on the role of lawyers" adopted in Havana established that disciplinary cases should be considered by an impartial disciplinary committee or other independent body established in the manner established by the law, according to the Code of professional conduct, universal standards of the legal profession and the norms of ethics, and the decision can be made.⁷ Under our current legislation, the authority to carry out disciplinary proceedings in relation to an advocate belongs to the qualification commissions or the Higher qualification commission, as described above. Considering that qualification commissions in turn are also structured from applicants to perform tasks such as taking the qualification exam, taking the lawyer's oath and granting the advocate the qualification level, it is now known that we are not following the established international legal standards. That is, advocates should be an impartial and independent body that handles the work of disciplinary responsibility, and it should not solve any other issue related to the practice of law.

As a legal solution to this issue, paragraph 9 of the decree of the President of the Republic of Uzbekistan dated December 13, 2019 "On measures to ensure the priority of the Constitution and law, strengthen public control in this regard and promote legal culture in society" PD-4551 " of the Ministry of Justice of the Republic of Uzbekistan, together with the Supreme Court and the prosecutor general's office, it was established to develop a "Concept for the development of the Institute of Advocacy"⁸ in order to further improve the institute of jurisprudence and radically increase the status of advocates.

In accordance with paragraph 2.4 of the draft concept prepared in order to ensure the implementation of this decision, dedicated to the reform of the system of disciplinary control over the activities of advocates, the assignment of responsibility for disciplinary proceedings against lawyers to an impartial disciplinary committee established by the advocate, the Independent formation of the activities of the qualification commission and the disciplinary committee.⁹ In the near future, in

⁶ O'zbekistonda Advokatura: joriy holati va rivojlanish istiqbollari (tahliliy ma'lumot). Toshkent - 2020 , p 40
https://info.undp.org/docs/pdc/Documents/UZB/%D0%90%D0%B4%D0%B2%D0%BE%D0%BA%D0%B0%D1%82%D1%83%D1%80%D0%B0_17_01_2020_sm.pdf

⁷ https://www.unodc.org/pdf/criminal_justice/UN_Basic_Principles_on_the_Role_of_Lawyers.pdf

⁸ The decree of the President of the Republic of Uzbekistan "On additional measures to ensure the priority of the Constitution and law, strengthen public control in this regard and promote legal culture in society" <https://lex.uz/docs/-4647329>

⁹ <https://paruz.uz/uploads/2020/04/02.pdf>

accordance with this concept, it will not be an exaggeration to say that the creation of a separate disciplinary committee carrying out the task of conducting disciplinary proceedings against advocates will serve to form a transparent system of advocacy in our country that meets international standards and modern trends.

Research into foreign countries' law on advocacy shows that in most states, an exemplary practice of disciplining lawyers has been formed. In particular, in Japan, where the institute of jurisprudence developed, the "Attorney's act" of 1949 is valid until now, and Chapter VIII of the law (articles 56-71⁷) establishes the procedure for conducting disciplinary proceedings against a lawyer as well as disciplinary penalties. "In Japan, although lawyers are not controlled by the state, they are under the disciplinary supervision of the Federation of Japanese bar associations."¹⁰ In our opinion, this system can prevent lawyers from violating the law while maintaining their independence from the government.

In Japan, the basis for disciplinary proceedings against a lawyer is the following:

- 1) violation of the law or local bar association or the Charter of the Federation by a lawyer;
- 2) violation of the procedure or damage the reputation of the relevant Bar Association
- 3) actions that undermine the dignity of a lawyer or legal corporation, regardless of whether it is carried out outside of professional or professional activities.¹¹

In Japan, any person who believes that an advocate has grounds to be disciplined may petition the relevant Bar Association to which that lawyer is a member for disciplinary action. If the Bar Association believes that there are grounds for disciplinary prosecution of an advocate, or if there is an appeal in the above manner, the bar association must initiate disciplinary proceedings and establish a disciplinary committee to verify the validity of the complaint. The disciplinary committee is made up of at least four or more members, appointed by the president of the Bar Association from among lawyers, judges, prosecutors and persons with experience in the legal field, if the disciplinary committee considers it necessary to consider the case and apply disciplinary sanctions, it will decide on it, indicating specific grounds, and the bar association will be one of 4 different types of disciplinary penalties may apply to advocates under Japanese law, such as (I)warning, (II)suspension of activities for no more than two years, (III)exclusion from the membership of the Bar Association, (IV)exclusion from legal practice.

Advocate who has been disciplined may file a petition with the Federation asking for the suspension of the decision of the association. If the advocate is dissatisfied with the decision of the Federation as well, the decision in question can be appealed to the Tokyo High Court. In our opinion, the fact that in Japan the members of the disciplinary committee are representatives of different spheres further ensures the objectivity of the decisions made by the disciplinary committee. It would

¹⁰ Реховский, А. Ф. (2016). Адвокатура Японии. *Евразийская адвокатура*, (1 (20)), 17-22.

¹¹ https://www.japaneselawtranslation.go.jp/en/laws/view/3636/en#je_ch9sc1

be appropriate to consider the issue of introducing this norm into our national legislation in the near future.

In conclusion, it can be said that it is necessary to make changes and additions to our national legislation for disciplinary liability of advocates. In this regard, international standards and the introduction into practice of the experience of developed foreign countries serve to develop the national advocacy as a transparent and impartial institution.

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