

# FEATURES OF THE FORMATION AND DEVELOPMENT OF THE BODY OF SELF- GOVERNMENT OF LAWYERS

V. Davlyatov

Doctor of Science in Law (DSc), Associate Professor

## Abstract

The article analyzes the specific features of the formation and development of a self-governing body of lawyers. Scientific research and study of the genesis of the development of the organizational and legal foundations of the institute of advocacy in our country and its specific features are of great importance in improving the organizational and legal foundations of the institute of advocacy.

**Keywords:** Legal aid, bar association, presidium authority, public associations, Bar Association.

## Introduction

The genesis of the development of the organizational and legal foundations of the institute of advocacy from 1991 to 2008 - the fourth important stage - began after our country gained state independence. During this period, a regulation adopted in 1980 was in effect, according to which legal advisory offices of the boards operated in the respective districts, which did not have the status of a legal entity and provided legal assistance to citizens, enterprises, "collective and state farms" in their territory. Until 1997, there were no advocacy structures in the localities except for the Bar Association. As of January 1, 1997, a total of 14 bar associations (collegiums) and a total of 180 legal consultations in districts/cities operated in the Republic of Uzbekistan, the number of lawyers working in them was 1,641. The highest body of the bar association (collegium) was the general meeting of lawyers. Its governing body was the Presidium. The presidium consisting of 5, 7, 9 members and its chairman were elected by the general meeting of lawyers for a term of 5 years. Admission of lawyers to the board, dismissal from the board, initiation of disciplinary proceedings against lawyers, consideration of disciplinary cases, and imposition of disciplinary sanctions were within the competence of the Presidium.

Based on scientific-theoretical, historical analysis, the following features of the organizational and legal foundations of the institution of advocacy from 1991 to 1997 can be noted:

Advocacy was controlled and managed by state executive bodies (justice bodies, regional, city, district executive committees of people's deputies), not considered as a separate legal institution of society;

the maximum salary of lawyers and the maximum number of staff units of lawyers in bar associations are established by justice bodies;



In the Republic of Karakalpakstan, regions, and the city of Tashkent, only one bar association operated as an organizational form of advocacy, and the establishment of other forms of advocacy was not permitted. The decision to create or abolish a bar association and to provide legal assistance to the population belonged to the jurisdiction of the justice authorities.

The development of the organizational and legal foundations of the institution of advocacy in Uzbekistan took place in 1996-2008.

At this stage of development, as a legal practical result of the initial reforms implemented in the advocacy system, the laws "On Advocacy" were adopted for the first time in our country on December 27, 1996, and "On Guarantees of Advocacy Activities and Social Protection of Advocates" on December 25, 1998.

As an organizational and legal form of advocacy activity, along with the existing bar association, the establishment of a law firm and a law office has been established.

The "monopolistic" activity of the Bar Association has been curtailed. A healthy competitive environment has been created. As a result, the majority of bar associations were reorganized, and the lawyers who worked in them established their own associations, law firms, and law offices, and began their activities independently.

### **Methodology**

The article uses methods of analysis, synthesis, comparative analysis, indexation, and deduction.

### **Research Results**

The possibility of creating public associations was established. As a result of the creation of advocacy structures of various organizational and legal forms, the need arose to create a public association in the Republic that could ensure the unified professional unity of all lawyers and represent their interests. Therefore, at the Congress of Lawyers held in 1997, the Association of Lawyers of Uzbekistan was established, and its Charter was approved. In 1999, the publication of the journal "Advocate" was launched.

At the Congress of Lawyers of Uzbekistan held on February 6, 2003, the new version of the Charter of the Bar Association of Uzbekistan and the Rules of Professional Ethics for Lawyers were approved. At this Congress, the Chairman of the Association and two members of the Board from each region were elected. The draft Concept for Reforming the Bar was also discussed and approved at the Congress. The Charter designated the Association of Lawyers of Uzbekistan as a professional association of lawyers operating in the Republic.

The Charter also provided for such issues as the legal status of the Association, its goals and objectives, membership in the association, the management and control bodies of the association, its territorial branches, the property and funds of the association. The charter stipulated that the Congress, the highest governing body of the association, should be convened every four years.

As a public association of lawyers, the Association of Lawyers of Uzbekistan was based on voluntary membership, which carried out its activities at the expense of membership fees paid by member lawyers.



Since membership in the Association was voluntary, and the implementation of decisions and regulatory documents was not mandatory for lawyers, only a certain portion of lawyers working in the Republic were members of the Association, and the membership fees they made limited the possibility of full-fledged activities of the association. However, despite this, the Association of Lawyers, effectively representing the interests of lawyers in the republic before state bodies, solving problems facing the advocacy system as much as possible, improving the legislative framework of the sphere, became known in the republic as an association that literally unites lawyers, and its branches operated in all regions of the republic and the city of Tashkent. As a result, the attitude of lawyers towards the activities of the Association gradually changed for the better, and they began to voluntarily unite around the Association of Lawyers. If we pay attention to the figures, if in 2003 1100 lawyers operating in the Republic were officially members of the Association, and 50% of them paid membership fees, then by 2007 this figure reached 2,500[3].

The Association of Lawyers carried out its activities through territorial branches created in the Republic of Karakalpakstan, regions, and the city of Tashkent. The Charter of the Bar Association stipulates that the term of office of the Association's chairman is 4 years and is elected by secret ballot from among alternative candidates at the Congress.

The Association of Lawyers of Uzbekistan operated as a public association of lawyers until 2008. Based on the Decree of the President of the Republic of Uzbekistan dated May 1, 2008 No. UP-3993 "On Measures for Further Reforming the Institution of Advocacy in the Republic of Uzbekistan" [4], the Chamber of Advocates of the Republic of Uzbekistan, a self-governing body based on mandatory membership, was established on the basis of the Association of Advocates of Uzbekistan and ceased its activities in September 2008.

At this stage of development, although the institution of advocacy has its place and status in society, some shortcomings and gaps in legislation have shown that there are the following problems that need to be solved in practice, and the advocacy needs further reform:

firstly, due to the fact that the legislation does not establish a legal norm on when a person who has received the status of a lawyer should start practicing law, the practice of confiscating a lawyer's license by persons with higher education working in law enforcement agencies has intensified, even if they do not intend to engage in legal practice. For example, as of January 1, 2009, 7,225 individuals in the Republic received licenses to practice law, of which 4,225 were practicing as lawyers.

Secondly, the Association of Lawyers of Uzbekistan, established in 1997, did not create territorial branches in 9 regions between 1997 and 2003, and although it was officially declared that a territorial branch was created in the city of Tashkent, it did not actually operate. Also, the Association of Lawyers of Uzbekistan did not have a separate office due to the fact that the chairmen of the Association of Lawyers of Uzbekistan (3 times the chairman of the Association of Lawyers of Uzbekistan changed) and their deputies simultaneously worked in other positions as the main job. Due to these problems and insufficient awareness-raising work among lawyers, and most importantly, because the Association of Lawyers of Uzbekistan was not a self-governing body of lawyers, but a public association, it could not become an association that played an important role in the socio-political life of lawyers in 1997-2003.



The period from 2008 to 2017 is characterized by the adoption of the Decree of the President of the Republic of Uzbekistan dated May 1, 2008 No. UP-3993 "On Measures for Further Reforming the Institution of Advocacy in the Republic of Uzbekistan." This document marked the beginning of a new stage in the development of the institution of advocacy as an important direction of judicial and legal reform.

The Decree establishes the Chamber of Lawyers of the Republic of Uzbekistan, based on the mandatory membership of all lawyers working in the country, on the basis of the Association of Lawyers of Uzbekistan, which operated as a public association of lawyers, defining its main tasks and areas of activity.

Based on the Decree, on May 27, 2008, the Cabinet of Ministers of the Republic of Uzbekistan adopted a Resolution "On the Organization of the Activities of the Chamber of Advocates of the Republic of Uzbekistan." The resolution defines such organizational and legal issues as the organizational structure of the Chamber of Advocates, the approval of the chairman and deputies of the Chamber, the creation of territorial departments of the Chamber in the regions of the Republic of Karakalpakstan and the city of Tashkent, the appointment and dismissal of heads of departments, the establishment of membership in the Chamber, admission and membership fees of members, and the provision of places for the Chamber of Advocates of the Republic of Uzbekistan and its territorial departments.

Based on the requirements of the aforementioned Presidential Decree and Cabinet of Ministers Resolution, and in order to ensure its implementation, the founding conference of the Chamber of Lawyers of the Republic of Uzbekistan was held on September 12, 2008. At this conference, on the basis of the Association of Lawyers of Uzbekistan, the Chamber of Lawyers of the Republic of Uzbekistan and its territorial administrations in the Republic of Karakalpakstan, regions, and the city of Tashkent were created as its legal successor. The founding conference also approved the Charter of the Chamber, the Regulations on the Audit Commission, the Rules of Professional Ethics for Lawyers, elected the Chairman of the Chamber, members of the Board, and determined the amounts of entrance and membership fees.

In connection with the establishment of the Chamber of Advocates of the Republic of Uzbekistan, the Chamber of Advocates was granted the authority to resolve the following issues related to the legal profession and advocacy, previously carried out by justice bodies. Specifically:

- providing explanations and conclusions on issues related to the legal profession;
- protection of the rights and legitimate interests of lawyers;
- protection of lawyers from various persecutions, unjustified restrictions and encroachments related to their professional activities;
- professional training and advanced training of lawyers, interns and assistants of lawyers;
- meeting the population's need for legal assistance by creating legal advice offices, studying the population's needs for legal assistance;
- Control over compliance with the Rules of Professional Ethics of Lawyers and legislation regulating the sphere;
- organization of the work of qualification commissions;
- determination of measures for the socio-economic development of the legal profession;



- collection and study of statistical data on the provision of legal assistance by lawyers, etc.

It is known that since the establishment of a self-governing body of advocacy based on mandatory membership was not defined in the previous legislation and mandatory membership in the Bar Association, which operated as a public association of lawyers, was not provided for, the majority of lawyers who worked in law firms and law offices were not members of the association. As a result, the activities of these law firms and the quality of legal assistance provided by their lawyers remained outside of control.

As a result of the creation of the Chamber of Lawyers of the Republic of Uzbekistan, existing problems were eliminated. The Chamber of Lawyers, coordinating the activities of law firms in a centralized manner, together with territorial departments, has formed a unified system of self-government of the legal profession in 14 regions of the country.

Since the legislation establishes a legal mechanism stating that it is impossible to start legal practice without being a member of the Chamber of Advocates, it ensured full membership of all practicing lawyers in the Chamber of Advocates.

During its activities, the Chamber of Advocates, while fulfilling the tasks defined by law, resolved some problematic issues in the professional activities of law firms and lawyers, some shortcomings in management, some confusion in relations with lawyers, in particular, the bureaucratization of the central apparatus and the "bureaucratic" attitude towards lawyers, led to a decline in the role of the Chamber of Advocates as a defender of the institution of the bar. Such shortcomings and some problems in the activities of the Chamber are also indicated in the Decree of the President of the Republic of Uzbekistan dated May 12, 2018 No. UP-5441 "On Measures for Radically Increasing the Effectiveness of the Bar and Expanding the Independence of Lawyers," which defines the directions for further improving the activities of the Chamber.

At this stage of development, the legislative framework aimed at further improving the institution of advocacy, increasing its place and role in society, ensuring the full implementation of the principles of adversarial proceedings at all stages of court proceedings, improving the quality and effectiveness of legal assistance provided to individuals and legal entities, strengthening the requirements for the status and professional qualifications of lawyers, and ensuring guarantees for the professional activities of lawyers has been further improved, and specific tasks have been implemented in this direction. However, despite this, the imperfection of the mechanisms for implementing certain norms in the legislation of the sphere and the lack of definition of certain legal relations in the legislation, as well as certain shortcomings in law enforcement practice, have shown that there are some problems hindering the development of the legal profession at the level of modern requirements. Specifically:

Firstly, the Law "On Advocacy" stipulates that the nomination of a candidate for election to the position of Chairman of the Chamber of Advocates and its early recall are carried out on the basis of a submission from the Ministry of Justice, as well as the appointment and dismissal by the Chairman of the Chamber of heads of territorial departments, which are self-governing bodies, which contradicts the principles of independence of the institution of advocacy and advocacy, established in international documents, and the nature of international norms in this area. Because international documents on advocacy and in foreign countries stipulate that the





heads of advocacy self-government bodies are elected not by appointment, but by lawyers through alternative means in an open and transparent democratic manner.

Secondly, due to the fact that the differences between legal structures (collegium, firm, bureau), the procedures for managing financial and economic activities are not clearly defined in the legislation regulating the sphere, different practices have arisen in this area.

Thirdly, important issues related to the activities of the Chamber of Advocates, in particular, the dismissal of members of the governing bodies (members of the Board, members of the Audit Commission, deputy chairmen), the election or appointment of new members between conferences, are defined not in legislation, but in corporate documents, which in practice creates the possibility of influencing officials of state bodies in the formation of the Chamber's governing bodies.

In the period of development from 2018 to the present, the organizational and legal foundations of the legal profession are distinguished by their specific features. On May 12, 2018, the Decree of the President of the Republic of Uzbekistan No. UP-5441 "On Measures to Radically Increase the Effectiveness of the Advocacy Institute and Expand the Independence of Advocates" was adopted, in which, along with the recognition of the reforms carried out in recent years to create a strong, independent advocacy system in the country and their positive results, the factors negatively affecting its development at the level of today's requirements were also indicated.

### **Conclusion**

Despite the fact that the Chamber of Lawyers was created to ensure the corporate unity of lawyers, their professional protection, and representation of their interests, it did not fully fulfill its functions during its 10-year activity. As noted in the decree, its role as a defender of the institution of advocacy declined, turning into a bureaucratic organization.

Article 29 of the Constitution guarantees everyone the right to qualified legal assistance, and in cases stipulated by law, legal assistance is provided at the expense of the state.

In order to implement this constitutional norm, the Law of the Republic of Uzbekistan "On the Provision of Legal Assistance at the Expense of the State" was adopted on June 16, 2023. The Law consists of 5 chapters and 32 articles. The previous procedure for providing legal aid at the expense of the state had a number of shortcomings, in particular: firstly, legislative acts allowed for the provision of legal aid at the expense of the state only in criminal cases; secondly, legislative acts did not have clear criteria for determining persons entitled to receive free legal aid; thirdly, a national system for providing free legal aid to low-income and those in need of free legal aid was not formed.

The study of the genesis of the development of the organizational and legal foundations of the institute of advocacy and its specific features serves to improve the institute of advocacy.

### **References**

1. Ўзбекистонда адвокатура: жорий ҳолати ва ривожланиш истиқболлари (таҳлилий маълумот). Б.Саломов, В.Давлятов, С.Пардаев, Г.Сайфиева. - Тошкент : Baktria press, 2020. Б. 9.



2. Ўзбекистон Республикаси Олий Мажлисининг Ахборотномаси, 1997 й., 2-сон, 48-модда.
3. Ўзбекистонда адвокатура: жорий ҳолати ва ривожланиш истиқболлари (таҳлилий маълумот). Б.Саломов, В.Давлятов, С.Пардаев, Г.Сайфиева. - Тошкент : Baktria press, 2020. Б. 18.
4. Ўзбекистон Республикаси қонун ҳужжатлари тўплами, 2008 й., 18-сон, 144-модда.
5. Ўзбекистонда адвокатура: жорий ҳолати ва ривожланиш истиқболлари (таҳлилий маълумот). Б.Саломов, В.Давлятов, С.Пардаев, Г.Сайфиева. - Тошкент : Baktria press, 2020. Б. 22.
6. Ўзбекистон Республикасида адвокатлик фаолияти. Дарслик. Муаллифлар жамоаси. Т.: Консаудитинформ, 2007. Б. 39.
7. Advokatura. Darslik. Mualliflar jamoasi. – Toshkent: TDYU, 2019. B. 40.
8. Ўзбекистон Республикасида адвокатлик фаолияти. Дарслик. Муаллифлар жамоаси. Т.: Консаудитинформ, 2007. Б. 46.
9. Махбубов М. Создание и развитие адвокатуры в Узбекистане: Автореф. ... канд. юр. наук. – Ташкент, 1975 С. 18.
10. Ўзбекистон ССР адвокатураси тўғрисида низом. – Т.: «Ўзбекистон», 1981. Б. 5.
11. Бирлашмаган тўзар. Адвокатура соҳасида корпоратив бирлик қай аҳволда? // Advokat press, 2022 йил июль № 7 (18).