



FOREIGN EXPERIENCE AND THE INTRODUCTION OF NEW PRINCIPLES IN IMPROVING THE PRINCIPLES OF THE BAR AND ADVOCACY

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Abstract. The article provides a comparative-legal analysis of the regulation of the principles of the bar and advocacy in the legislation of foreign states (Europe, the USA, and the CIS). On the basis of international standards — the UN Basic Principles on the Role of Lawyers and the CCBE European Charter — the author identifies the points of convergence and divergence with the national legislation of Uzbekistan. As a result of the study, proposals are developed for introducing into national legislation the principles of the equality of lawyers, observance of professional and ethical standards of conduct, observance of advocacy secrecy, the avoidance of conflicts of interest, the provision of legal aid at the expense of the state, and the professional immunity of the lawyer.

Keywords: the bar, comparative-legal analysis, international standards, UN principles, CCBE, professional immunity, advocacy secrecy, conflict of interest, equality, legal aid at the expense of the state.


Introduction

Worldwide, enhancing the effectiveness of the principles of organising and operating the bar is one of the most pressing tasks facing developing states. In the Rule of Law Index published by the World Justice Project, Uzbekistan ranked 78th among 142 states in 2023 [1]. In Transparency International's Corruption Perceptions Index (CPI) for 2023, Uzbekistan ranked 121st among 180 states [2]. These indicators demonstrate the need to bring the legal foundations and principles of the institution of the bar into line with international standards.

The importance of the principles of organising and operating the bar was also recognised in the UN Basic Principles on the Role of Lawyers, adopted at the Eighth Congress on the Prevention of Crime and the Treatment of Offenders [3]. For this reason, improving national legislation on the basis of international standards is a pressing issue of our time.

A comparative analysis of the experience of foreign states

An important achievement of the legal technique characteristic of the legislation of the CIS states on advocacy is the direct normative enshrinement of the principles of organising and operating the bar within the texts of the relevant laws. However, the fact that the principles are not separately consolidated in the Russian Law "On Advocacy", as well as in the laws of Azerbaijan, Armenia and Ukraine, blurs the possibilities for their regulation. On the other hand, the laws of Belarus, Georgia, Kazakhstan, the Kyrgyz Republic, Moldova, Tajikistan and Turkmenistan contain separate articles encompassing the principles of the bar, which constitutes a more successful approach to advocacy.



When conducting a comparative analysis with the experience of foreign states, the Law of the Republic of Kazakhstan "On Advocacy and Legal Aid" is comprehensively systematised, covering both the bar and advocacy as well as the provision of free legal aid at the expense of the state [4]. In our view, the Republic of Uzbekistan should likewise not only establish the principles guiding advocacy but also disclose the essence of these principles by providing definitions for them.

Under French legislation, lawyers must possess high qualifications and experience in order to provide their clients with the best legal advice; strict observance of the principles of independence and confidentiality is essential for protecting clients' rights and their personal data [5]. Article 3 of the Russian Federation's Federal Law "On Advocacy and the Bar" establishes the principle of legality, and under Article 17 a lawyer who breaches the requirements of legality may be subjected to disciplinary liability and even deprived of the status of lawyer [6].

The harmony between international standards and national legislation


International standards serve as an important benchmark in improving the legal foundations of the institution of the bar. The UN Basic Principles on the Role of Lawyers, adopted at the UN Congress, constitute the first international instrument addressing the organisation and activity of lawyers and contain the basic principles recommended for use in drafting national legislation. The Council of Europe's "Basic Principles on the Freedom of Lawyers" and the CCBE European Charter (2006), together with the UN principles, set out a clear and systematic approach to such principles as the independence of advocacy, confidentiality, and the prioritisation of clients' interests [7].

On 19 May 2016, the bodies of the lawyers' communities of the Republics of Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Russia, Tajikistan and Uzbekistan drew up the "Charter of the Basic Principles of Advocacy". The Charter agreed upon adherence to such principles as respect for the rule of law, the independence of the lawyer, self-governance, observance of advocacy secrecy, observance of ethical norms, the equality of lawyers, and loyalty to the client's interests. However, of the principles contained in this Charter, only "legality", "self-governance", "observance of the rules of professional ethics" and "advocacy secrecy" have so far been introduced into the legislation of Uzbekistan, while important principles such as "equality", "loyalty to the client's interests" and "corporateness" have not yet been reflected.

Thus, it was established that our national legislation does not fully correspond to international standards. Although the principles of advocacy are extensively covered in international legal norms, the legislation of Uzbekistan does not fully reflect some of them. For this reason, it is necessary to enshrine the principles at the level of statute, since otherwise a principle cannot perform a protective function and remains merely a declarative norm.

Proposals for introducing new principles

Within the framework of this study, the legislation on the bar of more than 30 foreign countries (Russia, Germany, France, Italy, Sweden, the United Kingdom, the USA and others)



was examined. Proceeding from the results of the analysis and the approaches developed, it is proposed to introduce the following new principles into the legislation of the Republic of Uzbekistan on the bar: the principle of the equality of lawyers; the principle of observing professional and ethical standards of conduct; the principle of observing advocacy secrecy; the principle of avoiding conflicts of interest; the principle of providing legal aid at the expense of the state; and the principle of the professional immunity of the lawyer.

These principles fully correspond to the UN Basic Principles on the Role of Lawyers (in particular, Articles 16–20 on the professional immunity and guarantees of the lawyer, Article 22 on confidentiality, and Articles 1–4 on legal aid at the expense of the state), as well as to the relevant provisions of the CCBE European Charter. Their introduction into national legislation will serve to elevate the standing of the legal profession to the level of international standards.

In addition, the terminological inconsistency associated with the principle of legality should be eliminated. It is expedient to replace the phrase "the rule of law" in Article 4 of the Law "On the Bar" with the phrase "legality", and likewise to establish a clear definition of the principle of legality as a separate norm in legislation.


Conclusion

As a result of the comparative-legal analysis conducted, the following conclusions were reached. First, the experience of the CIS and developed states demonstrates that the normative enshrinement of the principles of the bar in a single legislative act serves legal effectiveness. Second, it was established that the national legislation of Uzbekistan does not fully correspond to international standards, and that certain important principles (equality, loyalty to the client's interests, professional immunity) are not reflected in legislation.

Third, it was proposed to introduce into national legislation, on the basis of the UN and CCBE standards, the principles of the equality of lawyers, observance of professional and ethical standards of conduct, observance of advocacy secrecy, the avoidance of conflicts of interest, the provision of legal aid at the expense of the state, and the professional immunity of the lawyer. The implementation of these proposals will serve to bring the institution of the bar into line with international standards and to strengthen the system for the protection of human rights.

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