

Analysis of Some Issues Related to the Suspension and Restoration of the Status of an Advocate

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Annotation: This article examines and analyzes the concept, principles, and procedure of suspending the status of an advocate, as well as the principles and procedure of restoring the status of an advocate.

In addition, the powers of the qualification commissions, the grounds and procedure for suspending the status of an advocate were thoroughly analyzed based on the positive experience of foreign countries, and proposals for the development of national legislation on the legal profession were developed.

Key words: qualification commissions, advocate, advocate status, suspension of advocate status, restoration of advocate status.

Today, the importance of the legal institution, which plays a key role in the further development of the judicial system in our country, and provides qualified legal assistance to citizens at any stage of court and investigative work, and is one of the important legal institutions of civil society, is increasing day by day. This can be seen from the fact that the legislation of the Republic of Uzbekistan defines the norms of the legal institute. For example, articles 141-142 of chapter 24 of the Constitution of the Republic of Uzbekistan of the new version, which was adopted by popular vote in the referendum of the Republic of Uzbekistan held on April 30, 2023, are dedicated to the institution of advocacy. It should be noted that the legality, independence and self-governance principles of the legal profession have been established at the constitutional level².

At the same time, the Decree of the President of the Republic of Uzbekistan dated January 28, 2022 “On the Development Strategy of New Uzbekistan for 2022 – 2026”³ No. PD–60, purpose 19, human rights of the bar institute, is dedicated to fundamentally increasing its capacity to protect freedoms and legal interests, as well as to fully satisfy the demand of citizens and business entities for qualified legal services, and has set the main tasks in this regard.

Decision No. PD-263 of the President of the Republic of Uzbekistan dated May 30, 2022 “On measures for the widespread introduction of modern information and communication technologies into the activities of the legal profession” was adopted, which contains some provisions related to our research work marked indicates the relevance of the selected topic. In particular, in this decision, the suspension of the status of an advocate based on his application is carried out in the form of an electronic notification by the advocate, cases of suspension or termination of the license are automatically recorded in the “License” information system, and the lawyer the procedure for issuing a certificate with a special QR-code was introduced, thereby creating an opportunity to obtain information about the status of an advocate.

In addition, paragraph 18 of Decree No. PD–67 of the President of the Republic of Uzbekistan dated May 8, 2023 “On the first priority measures for the implementation of the newly revised Constitution of the Republic of Uzbekistan”⁴, The adoption of Resolution No. 432 of the Cabinet of Ministers of the

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² Qonunchilik ma'lumotlari milliy bazasi, 01.05.2023-y., 03/23/837/0241-son

³ Qonunchilik ma'lumotlari milliy bazasi, 29.01.2022-y., 06/22/60/0082-son, 18.03.2022-y., 06/22/89/0227-son, 21.04.2022-y., 06/22/113/0330-son; 10.02.2023-y., 06/23/21/0085-son; 03.01.2024-y., 06/24/221/0003-son

⁴ Qonunchilik ma'lumotlari milliy bazasi, 10.05.2023-y., 06/23/67/0269-son



Republic of Uzbekistan dated August 5, 2022 “On the approval of the regulation on the procedure for licensing the legal profession through a special electronic system”⁵ is also a proof of the high attention paid to this institution.

The study of the legislation of national and foreign countries on the suspension of the status of an advocate, as well as scientific and theoretical sources in this regard, shows that the suspension of the status of an advocate has not been comprehensively studied and analyzed in depth to date.

It should be noted that an advocate plays a key role in the protection of human rights and freedoms, and it is a requirement of today to conduct a thorough study of the grounds and procedures for the suspension of the status of an advocate, as well as to improve the legislation on the suspension of the status of an advocate, as well as to develop a related theory.

It should be noted that the Republic of Uzbekistan, approved by Article 13¹ of the Law of the Republic of Uzbekistan “On Advocacy” and the Order of the Minister of Justice of the Republic of Uzbekistan No. 69 of March 14, 2009 Chapter 51 of the statute on qualification commissions under the regional offices of the Chamber of Advocates lays down the basic rules for suspension and restoration of the status of an advocate.

For information, according to statistics provided by the Tashkent regional office of the Chamber of Advocates of the Republic of Uzbekistan, 123 lawyers working in Tashkent in 2019, 70 in 2020, 22 in 2021, In 2022, 33 people, and in 2023, 12 people were suspended based on the decision of the relevant qualification commissions. This includes the fact that her health has deteriorated, she has been transferred to a permanent job, the advocate’s organization has been terminated or the advocate has left it, she has been appointed to the position of a judge, she has been accepted to study for a magistracy, she has gone on maternity or pregnancy leave, in the event that the lawyer is brought to criminal liability, suspension from the moment of involvement as an accused and until the court verdict enters into legal force or until a decision is made to release him from criminal liability on rehabilitative grounds.

The suspension of the status of an advocate means that a person who has been granted the status of an advocate loses the ability to engage in the activities of an advocate for a certain period of time. To be more precise, from the moment a person is granted the status of an advocate, the obligations and rights established by the current legal documents arise. In case of non-fulfilment or impossibility of fulfillment within the framework of the status of lawyer, the status of lawyer shall be suspended or terminated in accordance with the procedure established by law. The suspension of the status of an advocate implies a certain period, which means that the person who has received the status of an advocate cannot use the rights and documents. In the case of termination of the status of an advocate, the guarantees established by law, which are aimed at ensuring the independence of activity and the achievement of the goals and tasks set for the advocate, are also terminated⁶.

In the process of studying this topic, we found out that the suspension of the status of an advocate is divided into 3 types, to be more specific:

1. The legislator only determines the grounds for suspending the validity of the license, to be more precise, it does not lead to the suspension of the status, only the license is suspended and the grounds for it are indicated. For example, if the license is suspended for civil cases, he cannot participate only in these cases for a certain period of time;
2. In some countries, the suspension of the license to practice law is, among other grounds, grounds for suspension of the practice of law, to be more precise, the whole system stops. . He cannot act as a lawyer in civil, economic, criminal and administrative courts;

⁵ Qonunchilik ma'lumotlari milliy bazasi, 06.08.2022-y., 09/22/432/0717-son; 29.11.2023-y., 09/23/628/0907-son

⁶ Matmurotov A.R. Issues of improving the procedure for obtaining the status of a lawyer in the Republic of Uzbekistan. Monograph Tashkent 2022 -B. 12



3. but in some countries there is no need to obtain a license to obtain the status of a lawyer, therefore, the grounds for suspending the status are legally determined, among which the grounds for suspending the validity of the license are not distinguished.

Based on the above, we enter the 2nd type of suspension of the status of an advocate in our country. In our country, if the status of an advocate is suspended, it is completely suspended in the system. To be more specific, according to the Law of our state, if the license of advocates is suspended, he cannot perform any legal actions, when it is determined that he can be reinstated only after the reason for suspension is removed.

Another important issue to be studied and analyzed is the need to divide qualification commissions into two groups. This practice is implemented as an experiment in the city of Tashkent. And it is worth mentioning that two qualification commissions have been approved and are operating according to the following powers provided for in paragraph 1 of the regulation on qualification commissions under the regional offices of the Chamber of Advocates of the Republic of Uzbekistan:

First Qualification Commission:

- acceptance of a qualification exam from applicants for the status of an advocate;
- taking the advocate's oath;
- awarding a qualification to an advocate.

Second Qualification Commission:

- suspension and restoration of the status of an advocate;
- consideration of appeals regarding the advocate's illegal actions;
- Disciplinary proceedings by advocates regarding the violation of the requirements of the Legislative documents, the rules of professional ethics of lawyers, the advocate's secret and the advocate's oath.

For information, it should be said that the members of the qualification commission working on the termination of the status of an advocate are approved as 1 employee from lawyers and judicial bodies. Taking into account the above, the following conclusions can be drawn:

firstly, it is necessary to establish two different types of qualification commissions under the territorial administrations of 14 administrative-territorial units;

secondly, it is necessary to make an amendment to the national legislation that the order of the commission authorized to suspend the status of an advocate should consist only of advocates.

To make this issue more specific, it is appropriate to consider the legal grounds for suspending the status of an advocate based on which laws of foreign countries are established.

Activities, powers and competences of advocates in the Russian Federation are determined by the federal law, to be more precise, by the Law "On the activities of lawyers and the legal profession in the Russian Federation". This Law was adopted on May 31, 2002 with No. N63 F3 in its last version⁷. This Law consists of 5 chapters and 45 articles, and it is our issue, to be more specific, the suspension of the status of an advocate is in Article 16 of Chapter 3 (status of a lawyer), to be more specific, the status of an advocate in the article called suspension of the status, 5 grounds for suspension of the status of attorney are defined.

Law No. 5076-VI of the Republic of Ukraine dated July 5, 2012 "On Advocacy and Bar Practice" is the Law regulating the activities of advocates in the territory of the Republic of Ukraine. This Law consists of 10 sections and 61 articles. Article 31 of Section 5 of this Law specifies the grounds for suspending the status of an advocate⁸. In the Republic of Ukraine, there are 4 grounds for suspending

⁷ https://www.consultant.ru/document/cons_doc_LAW_36945/055deb3fca3c643c51d973ea1428f898eb8cc0f8/

⁸ <https://zakon.rada.gov.ua/laws/show/5076-17#Text>



the status of an advocate based on the above article, as well as disciplinary sanctions in the form of suspension of the activity of an advocate⁹.

Advocacy in the Kyrgyz Republic is regulated by the Law of the Kyrgyz Republic dated July 14, 2014 No. 135 “On Advocacy and Advocacy Activities”. This Law consists of 4 chapters and 32 articles. Article 22 of Chapter 2 of this Law specifies 5 grounds for suspending the status of Advocate.

Advocacy activities in the Republic of Kazakhstan are regulated by the Law of the Republic of Kazakhstan dated July 1, 2021 No. 176 “On Advocacy and Legal Services”. This Law consists of 4 sections, 7 chapters and 98 articles. Section 3, Chapter 3, Article 43 of this Law is called suspension of attorney’s license, and this article describes 4 grounds for suspension of attorney’s status¹⁰.

Advocacy in the Republic of Belarus is regulated by the Law of the Republic of Belarus dated December 30, 2012 No. 334-3 “On Advocacy and Advocacy Activities”. This Law consists of 8 chapters and 55 articles. Article 12 of this Law is called the suspension of the status of a advocate and 5 grounds for suspension of the status of an advocate are defined.

Advocacy in the Republic of Moldova is regulated by Law LP1260/2002 of the Republic of Moldova dated July 19, 2002 “On Advocacy”. This Law consists of 12 chapters and 69 articles. Article 13 of this Law is called “suspension of the status of an advocate” and it defines 6 grounds for suspension of the status of an advocate.

Advocacy in Georgia is regulated by the Law of the Republic of Georgia dated September 29, 2004 No. 970 “On Advocacy”. This Law consists of 10 sections and 46 articles. Article 21 of this Law is called suspension of membership in the Bar Association and it specifies 3 grounds for suspension of the status of an advocate.

Advocacy in the Republic of Armenia is regulated by the Law of the Republic of Armenia “On Advocacy” dated December 14, 2004. This Law consists of 8 sections and 49 articles. The basis of this Law is Article 38 of Section 5 called suspension of attorney’s license, and it specifies 6 grounds for suspension of attorney’s license¹¹.

The next issue is a comparative legal analysis of the grounds for suspending the status of an advocate. For example, in the Russian Federation, there are the following grounds for the suspension of legal practice:

- when an advocate is elected or appointed to the position of a state body or local government body;
- as a result of the advocate not being able to perform his professional duties for more than six months;
- as a result of the advocate being called up for military service;
- when the advocate is declared missing according to the procedure established by the federal law;
- Attorney status may be suspended in cases where an advocate applies to the Council of the Bar Association with an application to suspend the legal status for personal reasons. Also, if the court makes a decision to apply coercive medical measures against the advocate, the court may consider the issue of suspending the status of this advocate. In addition, the Code of Professional Ethics of Lawyers shall remain in force in relation to an advocate whose status has been suspended in the appropriate manner.

In the Republic of Ukraine, according to Article 31 of the Law No. 5076-VI dated July 5, 2012 of the Republic of Ukraine “On Advocacy and Advocacy”:

- when an advocate applies for termination of legal practice;

⁹ https://urst.com.ua/ru/ob_advokature/st-32

¹⁰ Об адвокатской деятельности и юридической помощи (с изменениями и дополнениями по состоянию на 01.07.2021 г.) ЗАКОН РЕСПУБЛИКИ КАЗАХСТАН

¹¹ <https://www.arlis.am/documentView.aspx?docID=95015>



- when the conviction of the court for committing a criminal offense against the advocate enters into legal force, in paragraph 6 of the first part of Article 32 of this Law (a serious, extremely serious crime against an advocate, as well as a serious crime punishable by deprivation of liberty the conviction of the court for committing a non-criminal crime has entered into legal force) except for the specified cases;
- when an advocate is subject to disciplinary punishment by suspending the right to practice as an advocate, i.e. when he repeatedly commits a disciplinary offense within a year, or when he regularly or once grossly violates the rules of legal ethics, or violates the rules of legal ethics in case of regular or one-time gross violation;
- the status of an advocate may be terminated in cases where an advocate is found to be incompetent or limited in legal capacity by a court decision.

In the Kyrgyz Republic, Article 22 of the Law No. 135 of July 14, 2014 “On Advocacy and Advocacy Activities” specifies 5 grounds for suspending the status of an advocate, including the following:

- if the advocate enters the state or municipal service (with the exception of deputies of local councils);
- if the advocate goes to military service;
- according to the advocate’s application;
- in case of violation by the advocate of the professional code of ethics of advocates;
- the status of an advocate may be suspended in cases of non-payment of membership fees within the terms specified in the charter of the Bar Association.

In the Republic of Kazakhstan, Article 43 of the Law No. 176 of July 1, 2021 “On Advocacy and Legal Services” is devoted to the suspension of the attorney’s license, in which the attorney’s license is suspended 4 reasons for failure are stated:

- if the advocate is in public service;
- when exercising the powers of a deputy of the Parliament of the Republic of Kazakhstan, a deputy of a limited liability company, who performs his activities on a permanent basis and is paid from the budget funds;
- when the advocate leaves for compulsory military service;
- the status of an advocate may be suspended in cases where the advocate has suspended his activity based on the advocate’s application to the bar association. Also, in part 3 of this article, it is indicated that the status of a certain advocate is suspended for a certain period, which are:
- in the case of initiation of proceedings on the deprivation of the license to practice law - until the decision is made;
- when the advocate is found guilty of committing a crime in accordance with the Criminal Procedure Law – until the judgment enters into force;
- in the event of a violation of the period of completion of professional development for more than thirty calendar days or refusal to pass it for no reason - until the violation is eliminated, but for a period of no more than three months;
- when an advocate commits an action that does not meet the quality criteria of providing legal assistance guaranteed by the state (three or more times in twelve consecutive calendar months) - for a period of six months;
- when engaged in professional, entrepreneurial or other paid activities in addition to legal work, when being a member of the supervisory board of a commercial organization - for a period of six months, to elect or appoint an arbitrator of the relevant arbitration court to resolve the dispute and pedagogy, with the exception of cases of engaging in scientific or other creative activities.



- When regularly (three or more times in twelve consecutive calendar months) violates the requirements stipulated by the Law of the Republic of Kazakhstan “On combating money laundering (legalization) and financing of terrorism” - the status of a lawyer should be suspended for a period of six months.

In the Republic of Belarus, in Article 12 of the Law “On Advocacy and Advocacy Activities”, which regulates the legal profession, there are 5 grounds for suspending the legal profession, which are as follows:

- when an advocate is elected to a state body or other organization for a permanent term of service;
- when an advocate is called up for military service;
- when taking care of a child under the age of three;
- when the advocate is sent to alternative service.

In the Republic of Moldova, Article 13 of the Law “On Advocacy” specifies the grounds for suspending the status of an advocate, which are as follows:

- 1) on the basis of a written application of an advocate - from the moment of presentation of the original license and attorney’s certificate, and within three working days after obtaining the status of an advocate in the list of advocates;
- 2) in case of inconsistency - for the period when such a condition exists;
- 3) when a disciplinary punishment is applied to the period of prohibition of activity according to a court decision - from the day the court decision enters into legal force, from the day the decision or the decision to impose a disciplinary punishment is published on the official website of the Union of Advocates;
- 4) for the period of the preventive measure in the form of deprivation of liberty;
- 5) if the lawyer does not make contributions to the budget of the Union of Advocates, until the payment is made within six months after the due date is set;
- 6) Article 57, part 1, paragraph s) provides (a fine of 1000 to 3000 lei is imposed, and it is transferred to the budget of the Union of Advocates. The decision to pay the fine is made within 30 days from the date of adoption) at the end of the disciplinary penalty in the form of a fine, the status of an advocate may be suspended for a certain period of time until payment is made.

In Georgia, in Article 21 of the Law “On Advocacy”, there are grounds for termination of the status of an attorney, which are as follows:

- based on personal application;
- provided for in subparagraph “b” of paragraph 1 of Article 34 of this Law (in case of deprivation of the right to practice law for 6 months to 3 years);
- Clause 3 of Article 10 of this Law (At the same time, a lawyer has the right to engage in legal activities in accordance with the Law provided for in Article 2 of the Law of Georgia “On Conflict of Interest and Corruption in Public Service” the status of an advocate may be suspended in the cases provided for.

In the Republic of Armenia, Article 38 of the adopted Law “On Advocacy Activities” specifies 6 grounds for suspending the status of an advocate, which are as follows:

- when elected to the state bodies elected for the term of their authority, to the position of the head of the city hall or the council of elders;
- when called up for compulsory military service before the end of the service period;
- if he has relevant documents confirming his health status, if he cannot perform his professional duties due to health reasons for more than one year, but for a period of not more than 5 years;



- when entering public service - public service, public works, but when entering a job for a period of no more than 5 years;
- when he is found missing in accordance with the law;
- also, if the court applies coercive medical measures against the advocate, the advocate's license may be suspended.

Based on the above statements and analysis, the following conclusions can be drawn:

1. The author's definition of the concept of "suspension of the status of an advocate" was developed as follows:

"Temporary restriction of the right of a person with the status of an advocate to engage in advocacy activities in accordance with the Law, in accordance with the decision of the qualification commissions under the regional offices of the Chamber of Advocates of the Republic of Uzbekistan."

2. In 14 administrative-territorial units of the Republic of Uzbekistan, the establishment of two different types of qualification commissions under the territorial administrations. In our opinion, the experiment being held in Tashkent is a complete success. Therefore, it is necessary to introduce this practice to the rest of the regions.

First Qualification Commission:

- acceptance of a qualification exam from applicants for the status of an advocate;
- taking the advocate's oath;
- awarding a qualification to an advocate.

Second Qualification Commission:

- suspension and restoration of the status of an advocate;
- consideration of appeals regarding the advocate's illegal actions;
- Disciplinary proceedings by advocates regarding the violation of the requirements of the Legislative documents, the rules of professional ethics of lawyers, the advocate's secret and the advocate's oath.

3. The fourth reason for suspending the status of an advocate is "when a advocate or his close relative is presented with a medical report due to temporary incapacity for work due to serious illness - until recovery, but for a maximum of one year;" called In our opinion, there is a need to establish a clear procedure for suspending the status of an advocate on this basis. In particular, we believe that it is necessary to establish a list of diseases or obtain a certificate or conclusion from the Ministry of Health of the Republic of Uzbekistan and its system, and on this basis to terminate the status of an advocate.
4. In the regulation on the procedure for licensing of advocacy activities through a special electronic system, approved by the decision of the Cabinet of Ministers of the Republic of Uzbekistan No. 432 of August 5, 2022, licensing of advocacy activities, civil and economic court proceedings, and administrative and criminal court it is determined that it will be carried out according to the specializations of conducting business. Taking into account the positive experience of foreign countries, there is a need to introduce 2 different types of termination of the status of an advocate, depending on the specialty of the license obtained. For example, if the license for work in the specialty of conducting civil and economic court cases is suspended, the advocate's status in this field should be suspended, but he should continue to work as an advocate in the specialty of conducting administrative and criminal court cases.
5. Amending paragraph 2 of the regulation on qualification commissions under the regional offices of the Chamber of Advocates of the Republic of Uzbekistan approved by the order of the Minister of



Justice of the Republic of Uzbekistan No. 69 dated March 14, 2009 in the following version offered:

“Suspension and restoration of the status of an advocate, consideration of appeals regarding the illegal actions of an advocate, requirements of legal documents by advocates, rules of professional ethics of advocates, consideration of disciplinary proceedings on violation of the advocate’s secret and advocate’s oath the composition of qualification commissions with the power to leave will consist only of lawyers”.

6. Paragraph 3 of the first part of Article 131 of the Law of the Republic of Uzbekistan “On Advocacy” is proposed to be amended as follows:

“when enrolling in educational institutions, including personnel training and retraining courses - for the period of study, but for a maximum of five years;”.

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