



## **DISCIPLINARY RESPONSIBILITY OF AN ADVOCATE IN THE REPUBLIC OF UZBEKISTAN: ANALYSIS OF THE LEGISLATION OF NATIONAL AND FOREIGN COUNTRIES**

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<b>Article history:</b>	<b>Abstract:</b>
<b>Received:</b> December 10 <sup>th</sup> 2022 <b>Accepted:</b> January 8 <sup>th</sup> 2023 <b>Published:</b> February 17 <sup>th</sup> 2023	This article analyzes the legal documents on the disciplinary responsibility of an advocate, the disciplinary responsibility of an advocate in foreign countries' legislation on the legal profession, and comments on the possibilities of introducing their positive experience into the national legislation.
<b>Keywords:</b> advocacy, disciplinary responsibility, Disciplinary penalties, admonition, reprimand, pecuniary fine, removal from the Bar	

In our country, extensive work is being done to improve the advocacy institute and to raise the prestige of an advocate position. It should be noted that the authority of an advocate status is directly related to their honest and conscientious performance of their professional duties, always protecting human rights and freedoms, keeping the lawyer's secret, strict adherence to the Constitution and laws of the Republic of Uzbekistan and the rules of professional ethics of an advocate. Failure of an advocate to comply with the above requirements will result in his disciplinary liability in accordance with the current legislation.

Disciplinary responsibility of a lawyer in our country is carried out on the basis of the Law of the Republic of Uzbekistan "On Advocacy" and the regulations 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 of 2009.

Article 14 of the Law of the Republic of Uzbekistan "On Advocacy" describes the reasons for applying disciplinary measures against a lawyer, the grounds and procedure for initiating disciplinary proceedings, the types of disciplinary measures, and the circumstances in which disciplinary measures cannot be applied.

Chapter 6 of the regulation on qualification commissions under the regional offices of the Chamber of Advocates of the Republic of Uzbekistan describes the procedure for disciplinary proceedings against an advocate.

Based on the results of the analysis of the current legal documents, we believe that the disciplinary proceedings against an advocate in the Republic of Uzbekistan can be divided into the following stages:

- 1) the stage of checking the existence of grounds for initiating disciplinary proceedings against an advocate;
- 2) stage of initiation of disciplinary proceedings or refusal to initiate disciplinary proceedings;
- 3) the stage of consideration of disciplinary proceedings;
- 4) the final decision-making stage based on the results of the disciplinary proceedings.

The improvement of the advocacy institute in our country, especially the legislation on the disciplinary responsibility of an advocate, cannot be imagined without the experience of advanced foreign countries.

One of the issues to be discussed now is to study and analyze some of the problems in the stages of disciplinary action against an advocate based on the positive experience of advanced foreign countries and to find an acceptable solution for them.

Only Article 14 of the Law of the Republic of Uzbekistan "On Advocacy" deals with the disciplinary responsibility of an advocate. The main provisions on the disciplinary responsibility of an advocate are defined in the legal document.

In this regard, the disciplinary liability of a lawyer in foreign countries, such as Turkmenistan, Belarus, Armenia, Moldova, Ukraine, Georgia, Lithuania, and Poland, is described in a separate chapter in the law on advocacy of these countries.



Therefore, we believe that it is necessary to define the main norms of the lawyer's responsibility in the legislation of the national bar association in the form of a chapter called "Disciplinary responsibility of an advocate".

It should be noted that when thinking about disciplinary proceedings, the subject of disciplinary proceedings is considered important. For example, the subjects of disciplinary action in foreign countries are defined as:

- President of the Chamber of Advocates of the subject of the Russian Federation or his deputy. In exceptional cases, in order to ensure the uniform application of legal norms on legal profession, on the initiative of the president of the Federal Chamber of Advocates or on the recommendation of the vice-president (Russian Federation);
- District prosecutor or chairman of the bar (French Republic);
- Prosecutor's Office (Federal Republic of Germany);
- Courts (disciplinary committees under the courts) (United States of America);
- Ethics Commissions of the Board (Kyrgyz Republic);
- Chairman of the Disciplinary Commission (Republic of Kazakhstan)<sup>1</sup>.

In our opinion, it is necessary to clearly define the range of entities authorized to initiate disciplinary proceedings. Because it is directly related to the independence of an advocates, the secret of advocacy.

According to the current legislation, the following disciplinary measures may be applied to an advocate:

- 1) admonition (based on the decision of the qualification commission);
- 2) suspension of the license for a period of up to six months (in accordance with the second and third paragraphs of the second part of Article 15 of the Law on Advocacy);
- 3) termination of the license (in accordance with the second, fifth and sixth paragraphs of the second part of Article 16 of the Law "On Advocacy")<sup>2</sup>.

In our opinion, the expected goal of applying the above-mentioned disciplinary measures against advocates cannot be achieved by applying these

disciplinary measures. From this point of view, there is a need to further improve this institute.

If we study the experience of foreign countries on this issue, Article 40 of the Law of the Republic of Armenia "On Advocacy" defines the following types of disciplinary punishments applied to an advocate found guilty of a disciplinary offense: 1) reprimand; 2) strict reprimand; 3) fine.

It is important to note that the amount of the fine determined by the Council of the Chamber of Advocates should not exceed one hundred times the minimum wage. The fine is paid to the Chamber of Advocates.

In the application of disciplinary measures, the identity of the person who committed the disciplinary offense, the severity of the act and its repetition, the consequences and the amount of damage are taken into account.

An advocate can appeal to the court about the application of disciplinary punishment within one month from the date of application of the punishment<sup>3</sup>.

In our opinion, all advocates serve to perform their duties within the framework of the law in order to impose a penalty on the types of disciplinary liability of the lawyer.

Article 21 of the Law of the Republic of Belarus "On Advocacy and Advocacy in the Republic of Belarus" establishes the disciplinary measures that can be applied to advocates, according to which: 1) admonition; 2) reprimand; 3) removal from the regional bar association<sup>4</sup>.

According to Article 72 of the Law of the Republic of Kazakhstan "On Legal Aid and Advocacy", the Disciplinary Commission of Lawyers has the right to apply the following disciplinary measures against the advocate: 1) admonition; 2) reprimand; 3) strict reprimand; 4) removal from the bar association on the grounds and procedure provided for in the Law of the Republic of Kazakhstan "On Legal Aid and Advocacy Activities".

It should be noted separately that under the legislation of Kazakhstan, only one disciplinary punishment can be applied for the commission of a disciplinary offense by an advocate<sup>5</sup>.

Article 56 of the Law of the Republic of Moldova "On Advocacy" defines the following types of

<sup>1</sup> Salomov B., Davlyatov V., Pardayev S., Sayfiyeva G. O'zbekistonda advokatura: joriy holati va rivojlanish istiqbollari (tahliliy ma'lumot). - Toshkent: Baktria press, 2020. -B. 130.

<sup>2</sup> Қонун ҳужжатлари маълумотлари миллий базаси, 12.10.2018 й., 03/18/497/2044-сон; 16.01.2019 й., 03/19/516/2484-сон; 24.05.2019 й., 03/19/542/3177-сон,

11.09.2019 й., 03/19/566/3734-сон; Қонунчилик маълумотлари миллий базаси, 21.04.2021 й., 03/21/683/0375-сон, 03.02.2022 й., 03/22/749/0101-сон; 04.08.2022 й., 03/22/786/0705-сон

<sup>3</sup> <https://www.arlis.am/documentview.aspx?docid=78982>

<sup>4</sup> [https://kodeksy-by.com/zakon\\_rb\\_ob\\_advokature.htm](https://kodeksy-by.com/zakon_rb_ob_advokature.htm)

<sup>5</sup> <https://adilet.zan.kz/rus/docs/Z1800000176>



disciplinary punishment: 1) admonition; 2) reprimand; 3) Fine from 1000 to 3000 lei to the budget of the Bar Association. Payment of the fine shall be made within 30 days from the date of adoption of the decision to impose a disciplinary penalty in the form of a fine; 4) suspension of legal practice (on the grounds provided for in clauses); 5) cancellation of the license to practice law (on the grounds provided for in paragraph 1 of Article 25)<sup>6</sup>.

According to Article 36 of the Law of Turkmenistan "On Advocacy and Advocacy activities in Turkmenistan", the following disciplinary measures by the board of the bar association of the region and the city with regional rights are as follows: 1) admonition; 2) reprimand; 3. 4) removal from the committee<sup>7</sup>.

According to Article 35 of the Law of Ukraine "On Advocacy and Advocacy", one of the following disciplinary punishments may be applied to an advocate for committing a disciplinary offense: 1) admonition; 2) suspension of the right to practice law for a period of one month to one year; 3) for advocates of Ukraine - deprivation of the right to practice law with subsequent exclusion from the unified register of advocates of Ukraine, and for advocates of foreign countries – exclusion from the unified register of lawyers of Ukraine<sup>8</sup>.

In accordance with Article 34 of the Law of Georgia "On Advocacy", the following types of disciplinary punishment may be applied to an advocate: 1) admonition; 2) suspension of the right to practice law for 6 months to 3 years; 3) Termination of membership in the Georgia Bar Association<sup>9</sup>.

Article 53 of the Law of the Republic of Lithuania "On Advocacy" describes the types of disciplinary measures that can be applied to a lawyer: 1) admonition; 2) reprimand; 3) public announcement of reprimand; 4) Cancellation of the decision of the Lithuanian Bar Association to recognize a person as an advocate<sup>10</sup>.

According to the legislation of the Polish legal profession, it is established that the following disciplinary measures may be applied to an advocate: 1) admonition; 2) reprimand; 3) pecuniary fine; 4) suspension from practicing the profession for a period

from three months to five years; 5) removal from the Bar<sup>11</sup>.

According to the analysis, we believe that it is necessary to introduce the disciplinary measure applied to the lawyer into the national legislation based on the positive experience of foreign countries (Armenia, Belarus, Moldova, Turkmenistan, Lithuania, Poland).

In addition, based on the experience of the states of Poland, Moldova, and Armenia, it is appropriate to include a disciplinary penalty in the legislation on national advocacy.

Based on the above, it is appropriate to state the fourth part of Article 14 of the Law of the Republic of Uzbekistan "On Advocacy" in the following version:

"admonition (based on the decision of the qualification commission);

reprimand (according to the decision of the qualification commission);

strict reprimand (based on the decision of the qualification commission);

fine;

suspending the validity of the license for a period of one to six months (in accordance with the second and third paragraphs of the second part of Article 15 of the Law on Advocacy);

termination of the license (in accordance with the second, fifth and sixth paragraphs of the second part of Article 16 of the Law "On Advocacy")."

Another issue to be discussed is the removal of the disciplinary action against the advocate or the completion of the disciplinary action.

According to Article 40 of the Law of the Republic of Armenia "On Advocacy", disciplinary punishment shall be in force from the moment of adoption of the decision on disciplinary punishment:

in case of a reprimand – for a period of three months;

in case of a strict reprimand – for a period of six months;

if a fine is imposed – for a period of nine months.

After the expiration of the period set for the disciplinary punishment to be in force, the punishment of the advocate is considered to be non-existent<sup>12</sup>.

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[https://www.legis.md/cautare/getResults?doc\\_id=126609&lang=ru](https://www.legis.md/cautare/getResults?doc_id=126609&lang=ru)

<sup>7</sup> [http://continent-online.com/Document/?doc\\_id=31344506#pos=0;0](http://continent-online.com/Document/?doc_id=31344506#pos=0;0)

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<sup>12</sup> <https://www.arlis.am/documentview.aspx?docid=78982>



According to the legislation of Belarus, a lawyer is considered not to have been subject to disciplinary punishment if he does not commit a new disciplinary offense within one year from the date of application of the disciplinary punishment.

With the consent of the body (official) who instituted disciplinary proceedings by the decision of the disciplinary commission of the bar association, early removal of the disciplinary punishment may be carried out, but no later than six months from the date of its application<sup>13</sup>.

According to the law of Moldova, the disciplinary punishment is applied no later than two months from the date of detection of the offense, without taking into account the period of temporary incapacity for work and vacation of the advocate.

If an advocate who has been subject to disciplinary punishment has not committed a new offense within one year from the date of application of the punishment, he is considered not to have been subject to disciplinary punishment.

The Ethics and Disciplinary Commission, on its own initiative, at the request of an advocate, as well as at the request of a bar association or a bar association, has the right to remove a disciplinary sanction before the end of the year<sup>14</sup>.

In the legislation of Turkmenistan, the procedure for cancellation of disciplinary punishment is defined in the form of a separate article.

If an advocate is not subject to a new disciplinary penalty within one year from the date of application of the disciplinary penalty, he is considered not to have been subject to a disciplinary penalty.

If an advocate has proved that he has been corrected by his honest attitude to work and impeccable behavior, the head of the regional bar council, the city bar council with regional rights or the general meeting of the members of the council can remove the imposed disciplinary punishment ahead of time.

Premature removal of disciplinary punishment can be carried out at the request of the chairman of the regional bar association, the head of the city bar council with regional rights, the head of another association of lawyers<sup>15</sup>.

Based on the analysis of national and foreign laws, we believe that it is appropriate to include in the Law of the Republic of Uzbekistan "On Advocacy" the procedure for revising the terms related to the completion of the disciplinary measure applied to the

lawyer and removing the disciplinary measure before the completion.

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