

LEGAL GROUNDS FOR SUSPENDING THE STATUS OF ADVOCATE AND RESTORING IT

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Abstract: *This annotation examines the legal grounds for the suspension and reinstatement of an advocate's status. It delves into the reasons that can lead to the suspension of an advocate's status, such as serious breaches of professional ethics, temporary or permanent incapacity, criminal prosecution or conviction, and lack of active practice or participation in advocacy activities. Additionally, it explores the procedures and requirements for reinstating an advocate's status, including the submission of an application and the decision-making process by the relevant governing body. The importance of upholding professional ethics and actively engaging in legal practice for the maintenance and restoration of an advocate's status is emphasized throughout the annotation*

Key words: *legal grounds, suspension, advocate's status, reinstatement, professional ethics, active participation, legal practice.*

Аннотация: *Аннотация данной работы исследует правовые основания приостановления и восстановления статуса адвоката. В ней рассматриваются причины, которые могут привести к приостановлению статуса адвоката, такие как серьезные нарушения профессиональной этики, временная или постоянная нетрудоспособность, уголовное преследование или приговор, а также отсутствие активной практики или участия в адвокатской деятельности. Кроме того, исследуются процедуры и требования для восстановления статуса адвоката, включая подачу соответствующего заявления и процесс принятия решения соответствующим управляющим органом. В аннотации особое внимание уделяется значимости соблюдения профессиональной этики и активного участия в адвокатской практике для поддержания и восстановления статуса адвоката.*

Ключевые слова: *правовые основания, приостановление, статус адвоката, восстановление в должности, профессиональная этика, активное участие, адвокатская практика.*

Annotatsiya: *Ushbu maqolada advokat maqomini to'xtatib turish va qayta tiklashning qonuniy asoslari ko'rib chiqiladi. Unda advokatlik maqomining to'xtatilishiga olib kelishi mumkin bo'lgan sabablar, xususan, kasbiy odob-axloq qoidalarining jiddiy buzilishi, vaqtincha yoki doimiy muomalaga layoqatsizligi, jinoiy javobgarlikka tortilganligi yoki sudlanganligi, advokatlik faoliyati bilan shug'ullanmasligi yoki ishtirok etmasligi kabilar ko'rib chiqiladi. Bundan tashqari, u advokat maqomini tiklash tartibi va talablarini, shu jumladan ariza berish va tegishli boshqaruv organi tomonidan qaror qabul qilish jarayonini o'rganadi. Annotatsiya davomida advokat maqomini saqlab*

qolish va tiklash uchun kasbiy etikani saqlash va yuridik amaliyotda faol ishtirok etish muhimligi ta'kidlangan.

Kalit so'zlar: *huquqiy asoslar, to'xtatib turish, advokat maqomi, qayta tiklash, kasbiy etika, faol ishtirok etish, yuridik amaliyot.*

It should be remembered that advocacy is characterized as a type of activity, not a position, from the time of its formation. That is, considering other professions held by lawyers, for example, the position of investigator or prosecutor, the bar does not have such a description. From this point of view, when attention is paid to the legal nature of advocacy, it can be seen that it is one of the types of activities that must be licensed and that it has several common aspects with such professions. As a general rule, in most cases, a license is not a requirement for a position, and a licensed activity should not be considered a position or a job function. It is for this reason that in order to work as a lawyer, it is mandatory for applicants to meet the special requirements specified by the legislation on the legal profession and pass the exam for the license that gives them the right to practice in the appropriate manner. This feature indicates that the organizational form of the bar is more similar to the notary.

One of the unique aspects of the status of a lawyer is that it is granted for an unlimited period, that is, there are no prohibitions to engage in activity after reaching a certain age. The lawyer's license also states that it is issued for an indefinite period. Another difference in the status of a lawyer is that a lawyer can temporarily suspend his status even if his license has not expired. This is allowed in the legislation of many countries, especially Uzbekistan. Just as notaries and judges are required to have certain grounds for suspending their status, lawyers must justify why and on what basis they want to suspend their status. After all, in the course of his work, a lawyer may feel the need to recover his health or engage in activities that are not allowed to be carried out together with the practice of law in the law regulating the legal profession. The existence of such cases led to the creation of legal grounds for the suspension of the status of a lawyer and the recognition of this right. Briefly, the suspension of the status of a lawyer means the obligations arising from the professional activity of lawyers who have a lawyer's license in accordance with the procedure established by law and are engaged in this activity at the time of applying for suspension. It is understood that it suspends the execution and use of rights. That is, when the status of a lawyer is suspended, lawyers are not required to perform the duties specified in Article 7 of the Law "On Advocacy". This is the advantage of suspending the status of a lawyer. After all, Article 16 of the Law "On Advocacy" stipulates that if a lawyer does not perform the duties of his profession for no reason, the license will be terminated. In such cases, according to the 2009 edition, if the lawyer does not practice law for a period of 3 months, the license of the lawyer will be canceled by the decision of the qualification commission. However, according to the current law, this period is set at 6 months. According to this norm, a lawyer can

provide legal services once every 6 months and can work without suspending his status.

It is not wrong to say that the suspension of the status of a lawyer has been included in our national legislation in recent years as a result of the practical use of the achievements of the legislation of developed countries, based on international experience. After all, the article on the suspension of the status of a lawyer was not transferred from the legislation of the Uzbek SSR to the laws adopted after independence. Because such a norm did not exist in the 1979 Law "On Advocacy". Also, although the 1996 Law on Advocacy defined the principles of advocacy and the rights and obligations of advocates, there was no article on suspension of the status of advocate. Such an opportunity was given at the next stage of reforms in the field of advocacy. The Law of the Republic of Uzbekistan dated December 31, 2008 "On Amendments and Additions to Certain Legal Documents of the Republic of Uzbekistan in Connection with the Improvement of the Legal Institute" Article 131 was added to the Law on In this article, the reasons for suspending the status of a lawyer are given. The suspension of the status of a lawyer was carried out by the decision of the judicial body that issued a certificate to the lawyer. With the Law of the Republic of Uzbekistan dated October 11, 2018 "On Amendments and Additions to Certain Legislative Documents of the Republic of Uzbekistan in Connection with the Improvement of the Legal Aid and Legal Services Provision System", this authority was given to qualification commissions. conducted. Now, the suspension of the lawyer's status is carried out by the decision of the qualification commission of the place where the lawyer's license was issued. At this point, we need to define qualification commissions. Qualification commissions are established on the basis of Article 13 of the Law "On Advocacy" and the order of the Minister of Justice dated March 14, 2009.¹⁵ Based on this order, the qualification commissions are formed by the joint decision of regional administrations and judicial bodies from lawyers who have gained respect during their work, and by mutual agreement, employees of justice and judicial bodies or employees of other organizations with experience in the field of law. . In this case, the members of the commission should be formed with the majority of lawyers, in particular, if the members are formed of 7 people, at least 4 of them should be lawyers, if the number of members will be 9. , it is established that there should be at least 5 lawyers in their ranks. Also, the range of grounds for termination of the status of a lawyer has been expanded. Issues of suspension of the status of advocate are regulated by Article 131 and Chapter V¹ of the Regulation on qualification commissions under the regional offices of the Chamber of Advocates of the Republic of Uzbekistan dated March 14, 2009.¹⁶

Attorney status may be suspended in the following cases:

¹⁵ O'zbekiston Respublikasi Advokatlar palatasi hududiy boshqarmalari huzuridagi malaka komissiyalari to'g'risidagi Nizomni tasdiqlash to'g'risidagi buyrug'i, 2009 –yil 14-mart, 69-mh son, 1921-son bilan davlat ro'yxatidan o'tkazilgan.

¹⁶ O'zbekiston Respublikasi Adliya vazirining buyrug'i, 14.03.2009 yilda ro'yxatdan o'tgan, ro'yxat raqami 1921, Adliya vazirining buyrug'i bilan o'zgartish va qo'shimchalar kiritilgan, 09.01.2019 yilda ro'yxatdan o'tgan, ro'yxat raqami 1921-3

1. When a lawyer is elected or appointed to a position where it is not possible to work at the same time as a lawyer, during the term of employment;

In this case, a written application of a lawyer and a document stating that he has been appointed or elected to a job that cannot be conducted together with the lawyer must be submitted.

2. If a lawyer enrolls in educational institutions, including personnel training and retraining courses - during the period of study and for a period not exceeding three years;¹⁷

In such cases, the suspension of the lawyer's status is carried out on the basis of a document confirming that the lawyer has been admitted to training or professional development courses.

3. In case of leave for pregnancy and childbirth, taking care of a child under three years of age - for the duration of the leave and on the basis of documents confirming this;

4. When a medical opinion is presented due to temporary incapacity for work due to a serious illness of a lawyer or his close relative - until recovery, but for a maximum of one year;

The grounds specified in clauses 3 and 4 are based on the law of October 11, 2018 "In connection with the improvement of the system of legal aid and legal services, it is correct to introduce changes and additions to some legal documents of the Republic of Uzbekistan on" law is mainly introduced. Undoubtedly, these changes were introduced for the benefit of lawyers. Prior to that, the legislation did not provide for maternity or child-rearing leave for female lawyers. The inclusion of the suspension of legal status due to incapacity for work is also beneficial for lawyers, because in such situations, the lawyer may not be able to provide qualified legal assistance to the trustee due to ill health and, as a result, may not earn income. In such cases, the suspension of the lawyer's status exempts them from paying the membership fee to the Chamber of Advocates.

On this basis, the written application of the lawyer serves as the basis for the suspension of the status of the lawyer. If a lawyer is physically diagnosed with a disease that excludes writing, a written application may be written by close relatives of the lawyer instead. In the absence of such an opportunity, the issue of suspending the status of a lawyer can be considered on the basis of the appeal of the legal structure. A medical conclusion must be attached, regardless of who submitted the written application or application. to justify the suspension of status due to the serious illness of a close relative of a lawyer, it should be explained why such a serious illness prevents him from conducting a legal career, otherwise the illness of a close relative will not be the basis for suspending the status of a lawyer.

¹⁷ Yuridik yordam va huquqiy xizmatlar ko'rsatish tizimi takomillashtirilishi munosabati bilan O'zbekiston Respublikasining ayrim qonun hujjatlariga o'zgartish va qo'shimchalar kiritish to'g'risida"gi qonun

5. If a lawyer is found missing in the manner prescribed by law — until the decision to find missing is overturned by the court;

At this point, according to this framework, we should focus on the procedural aspects of the suspension of the status of a lawyer. In this case, the case is considered by the court in a separate order in accordance with articles 33 of the Civil Code and 293 of the code of Civil Procedure. The basis for finding a lawyer missing is that - about where he is, there will be no data for a year in the place where he lives. In accordance with the application written by the lawyer's loved ones, the court may find him missing.

6. When a lawyer is called up for military service — to the period of military service;

Article 52 of Chapter XI of the Constitution of the Republic of Uzbekistan, called “duties of citizens”, states that the protection of the Republic of Uzbekistan is the duty of every citizen of the Republic of Uzbekistan.¹⁸

Citizens are obliged to perform military or alternative service in accordance with the Constitution and the law “on General military duty and military service”.¹⁹

Including, lawyers also serve in the military for the duration, feeling the need to fulfill this duty. In order to suspend the status of a lawyer in connection with military service, a lawyer must personally submit an application with the appropriate content or contact the Qualification Commission of the legal structure in which he works. In either case, it is necessary to provide a reference of the relevant department of Defense Affairs, confirming the fact of compulsory military involvement.

7. When it is decided by the court to apply medical coercion measures to a lawyer, if the court's decision in question does not have reason to terminate the validity of the license — to the period until the medical coercion measures are canceled or amended by the court;

In cases specified in paragraphs 5-7, the suspension of the status of a lawyer must be carried out on the basis of the decision of the court to find a lawyer missing, and in the latter case on the basis of the decision of the court to apply medically mandatory measures against a lawyer, and according to the application or appeal of the

8. When a lawyer is criminally prosecuted or subject to disciplinary punishment, the validity of the license is suspended — to the period when the validity of the license is suspended;

9. To the period when the legal structure is terminated or when the lawyer comes out of it — until the formation of another legal structure, which is carried out by the lawyer no more than three months, or until it enters one of the existing legal structures;

There are specific parties to leaving the advocacy structure or suspending the status of a lawyer when that structure is being wound up. For example, in the event of

¹⁸ O‘zbekiston Respublikasi Konstitutsiyasi. 08.12.1992

¹⁹ O‘zbekiston Respublikasining Qonuni, 12.12.2002 yildagi 436-II-son

termination of the legal structure, it is not mandatory to suspend the status of a lawyer when a lawyer moves to another firm no later than the next working day or when establishing a bureau. The same rule may apply when moving from one advocacy structure to another. In other cases, however, the lawyer's status may be suspended by submitting a written notice to the qualification commission that the structure in which he / she works is being terminated or has come out of it, and by writing a petition.

10. When a lawyer has other grounds provided for by law to be exempt from practicing law for more than a month, the status of a lawyer may be suspended for such a period of release upon his application.

From the date of the decision to suspend the status of a lawyer, the status of a lawyer is suspended.

In doing so, the lawyer submits his certificate to the Qualification Commission. The Justice Authority will withdraw the attorney's certificate from the Qualification Commission within a three-day period, with the exception of cases where the lawyer was found missing. Thereafter, the Justice Authority informs the relevant territorial Directorate of the bar that the status of lawyer has been suspended. One important aspect of *ya'na* is that her membership in the bar is suspended due to the suspension of her lawyer status prohibiting her from practicing law services for a certain period of time in her own right.

A person whose lawyer status is suspended must enter the practice of law within three months of the termination of the circumstances under which the lawyer status is the basis for suspension. Failure to comply with this requirement will cause the validity of the license to be terminated in this prescribed manner.

As mentioned above, the suspension of the status of a lawyer will not only temporarily suspend the performance of the duties of a lawyer in his profession, but will also become the basis for the suspension of the validity of guarantees provided for by legislation aimed at ensuring the independence of the activities of a lawyer.

However, the following guarantees provided for by the law "on advocacy" and "on guarantees of the practice of Law and on the social protection of lawyers" will continue to apply:

In view of the legal point of view of the lawyer when providing legal assistance to citizens, the Inquirer, investigator, prosecutor are prohibited from submitting a submission, as well as from issuing a private judgment of the court;

Although the status of a lawyer is suspended, criminal proceedings against him can be brought according to the rule on the side of the prosecutor general of the Republic of Uzbekistan, the prosecutor general of the Republic of Karakalpakstan, prosecutors of the regions and the city of Tashkent;

A precaution in the manner of imprisonment or house arrest against a lawyer can only be applied by a Municipal (District) Court on the petition of prosecutors and equivalent prosecutors, who are listed above, who only have the right to criminal incitement against a lawyer.

Legislative inaccuracies. Despite the fact that the status of a lawyer is established to maintain such guarantees for suspended persons, there remain loopholes in the legislation on this issue. Below we will consider the shortcomings of this regulation, which are present in the legislation on advocacy:

First, it is not clear what types of activities a lawyer can engage in during the period when his special status is suspended. Only, the fact that a lawyer can act as a legal adviser in commercial organizations is separately prescribed in the legislative act.²⁰ However, the question remained open whether a lawyer whose status was suspended could act as a judge, patent representative, mediator in international arbitration courts. Whereas, to be judges in international arbitration courts, including the Vienna International Arbitration Centre (), a lawyer's litzension is not required unlike the judicial system of some Western states. In addition, it is possible to work as a mediator and patent representative even without a lawyer's license. Therefore, the fact that lawyers engage in such types of activities when their status ceases should be duly strengthened by a separate article in the legislation. To be more specific, the basis of the right of a lawyer to provide other types of legal services during the period when his status is suspended by his application is not the principle "not prohibited, it is allowed", it must be a specific article in the law on advocacy. As a proposal, to fill this gap in the legislation, the law on advocacy can be supplemented with a new article as follows:

"Persons whose legal status is suspended under Article 131 as well as on their application, legal services provided in Sections 5, 2,3 and 6,7 of this act, as a judge, patent representative, mediator in international arbitration courts, may thus indicate other types of legal assistance that do not require an order."

Secondly, there is no mechanism by which a lawyer can verify that the suspension of the status of a lawyer during the appropriate period follows the conditions. There are no specific rules for setting a disciplinary penalty against a lawyer and no procedure for setting specific types of disciplinary penalties if such cases are found. In situations like this, disciplinary punishment is imposed on the lawyer on the grounds that it is due to a violation of the law on the lawyer, which is somewhat abstract. Giving a reference to an unclear norm is in many cases a corrupt factor. For this reason, such abstractions may be the impetus for the influence on the decision of the Qualification Commission by a lawyer to obtain a lighter disciplinary punishment.

Thirdly, the issue of whether or not lawyers whose status as lawyers is suspended can continue to work in the bar and its territorial departments also remains abstract. Looking at international experience, in the legislation of most states, it is established that lawyers are also exempt from the job of a career that they occupy in self-governing bodies in the event that a lawyer ceases status according to his application. In particular, the federal law"on the practice of law and advocacy in the

²⁰ "Tijorat tashkilotlari tomonidan yuridik maslahat xizmatlarini ko'rsatish to'g'risidagi Nizom" O'zbekiston Respublikasi Vazirlar Mahkamasining 2018-yil 17-avgust 675-sonli qarori bilan tasdiqlangan.

Russian Federation " establishes that a lawyer whose status is suspended cannot occupy elective positions in the bar. Such a norm should also be included in our national legislation.

Fourth, section six of Article 131 states that a lawyer whose lawyer status is suspended must enter professional activities within 3 months of the elimination of the circumstances underlying it. It has been established that failure to follow this rule by an attorney will result in the termination of the license under Section 16. However, the law does not mention at all the system or means of verifying the existence of circumstances and grounds that caused the suspension of the status of a lawyer. For example, a lawyer whose status has been suspended by his application due to ill health does not have a mechanism for how a person appointed to a position whose health has been restored or cannot be taken at the same time as a lawyer, is working or not at the same time in that case. As stated above, it was established that failure to continue practicing law after the grounds that caused" de yuri " to suspend the status of a lawyer were eliminated would lead to the termination of the most stringent liability for a lawyer – the license. But the" de facto " use of such disciplinary punishment by the bar and its territorial departments is under questioning. This is due to the fact that the chamber and its territorial departments do not have the opportunity to have information about the circumstances that will be the basis for ending the validity of the license.

In the case of restoring the status of a lawyer, as a rule, the suspension of the status of a lawyer is carried out on the basis of a certain need or to solve the problem. Therefore, when applying to the qualification commission, it is possible to restore the status of a lawyer by writing a petition in the 10-day period until the end of the 3-month period, with the accompanying document or references confirming the elimination of the circumstances that caused the suspension of the status of a lawyer. The competence commission must notify the relevant Justice authority within 48 hours after deciding to restore the status of a lawyer.

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6. O'zbekiston Respublikasining Qonuni, 12.12.2002 yildagi 436-II-son

7.“Tijorat tashkilotlari tomonidan yuridik maslahat xizmatlarini ko'rsatish to'g'risidagi Nizom” O'zbekiston Respublikasi Vazirlar Mahkamasining 2018-yil 17-avgust 675-sonli qarori bilan tasdiqlangan.