

CONSTITUTIONAL LAW OF THE REPUBLIC OF TAJIKISTAN

ON ADVOCACY

Section I Introduction

Article 1. Advocacy in the Republic of Tajikistan

The advocacy in the Republic of Tajikistan is an independent professional association ensuring in accordance with the Constitution of the Republic of Tajikistan the rendering of legal assistance to legal entities and individuals.

When protecting rights and legitimate interests of legal entities and individuals the advocate is representing the ideas of humanism, justice, and legitimacy.

Article 2. Definitions of Basic Concepts

The concepts presented in the Law have the following meanings:

Advocate – member of the Bar, an advocate-attorney;

Advocacy – activity of advocates with regard to rendering legal assistance;

Advocate-attorney – an entrepreneur rendering legal assistance on basis of licenses;

Legal means and methods – means and methods of rendering legal assistance not prohibited by acting legislation;

Legitimate interest – any interest of a legal entity or an individual directly or indirectly recognized by acting legislation or not contradicting with its precise meaning;

Foreign lawyer– a lawyer who is not a citizen of the Republic of Tajikistan;

Client – any legal entity or individual who has applied for legal assistance to an advocate;

The Bar – independent organization of professional lawyers who have united for the purpose of rendering qualified legal assistance to legal entities and individuals;

Legal assistance – type of social assistance rendered in the legal area to legal entities and individuals, which is the application of any legal means and methods for the purpose of defense of rights and legal interests of these entities and individuals.

Article 3. Legal Foundations of Legal Assistance

The legal foundations of legal assistance in the Republic of Tajikistan are identified by the Constitution of the Republic of Tajikistan, the present Constitutional Law, Resolutions of the Majlisi Oli of the Republic of Tajikistan, Decrees of the President of the Republic of Tajikistan, and other legislative acts of the Republic of Tajikistan.

The Bar Charters address all issues related to the advocacy activities which are not regulated by the Constitutional Law and other legislation of the Republic of Tajikistan.

Article 4. Powers of Advocate

The powers of an advocate when rendering legal assistance as a representative in the Constitutional Court, courts with regard to criminal, civil, and economic cases, and also cases concerning administrative delinquency and other categories of cases, are identified by the respective adjective legislation of the Republic of Tajikistan.

Article 5. Assuring rendering of legal assistance

All legal entities or individuals should be provided with legal assistance.

The State guarantees the real and equal access to legal assistance to all persons and foreign citizens residing or located on its territory.

The State establishes in the law instances when legal assistance must be rendered free of charge.

The State guarantees the necessary funding for provision of legal assistance to insolvent citizens, and also for the remuneration of legal assistance rendered free of charge in accordance with the law or in addition to that by a contract freely concluded with the client.

Article 6. Types of Legal Assistance Rendered by Advocates

Advocates render legal assistance, in particular by means of:

- consultations and interpretations, oral and written references with regard to legal issues;
- executing applications, appeals, petitions and other legal documents;
- making inquiries, collecting information and preparing materials for consideration and settlement thereof in accordance with the established procedure;
- being a representative with regard to civil cases, cases concerning administrative delinquencies, and other categories of cases;
- participation in criminal justice, when considering economic disputes, and at the Constitutional Court as defenders and other representatives;
- And also by other methods which are not contrary to the acting legislation.

Section II Fundamentals of Advocacy

Article 7. Professional Duty of Advocate

An advocate must conform undeviatingly the ethical requirements of the professional community, constantly improve his knowledge and professional qualifications, and preserve advocate secrecy.

Article 8. Advocate and Client

An advocate shall render legal assistance to a natural or judicial person under a contract with him or the person acting in his interests. An advocate shall render legal assistance in the absence of a contract in the instances provided by a law.

An advocate shall not have the right to accept a commission concerning the rendering of legal assistance in instances:

- if he is rendering it or has previously rendered it to persons whose interests are contrary to the interests of the person who applied with the request concerning the conducting of the case;
- if he is rendering it or has previously rendered it to persons whose interests are contrary to the person conducting an inquiry, expert, specialist, interpreter, witness, or eye-witness, and likewise if an official takes part in the investigation or examination of the case of whom the advocate is a relative.

An advocate always must defend the legal interests of his client and shall not have the right to take a legal position, which is contrary to his interests, except for instances of self-incrimination in a criminal proceeding.

An advocate shall not have the right to refuse defense.

An advocate shall not have the right to deem the guilt of the person being defended as proved if the last denies it. Acknowledgement of guilt by the person being defended shall not deprive the advocate of the right to contest this assertion and request acquittal for lack of evidence of guilt.

Article 9. Advocate secrecy

The fact of recourse to an advocate, information concerning the content of oral and written negotiations with the client and other persons in his interests, the character and result of actions undertaken in the interests of the client, and also other information effecting the rendering of legal assistance and information which became known to the advocate in connection with the performance of duties for the client, shall be the subject of advocate secrecy.

An advocate shall not have the right to divulge, nor to use in his interests or the interests of third persons, any information whatever comprising the subject of advocate secrecy.

Article 10. Rights of Advocate When Rendering Legal Assistance

In rendering legal assistance an advocate shall have the right to:

- represent the rights and legal interests of the client in all State, social, and other organizations within whose competence is the settlement of the respective questions;
- collect information necessary for rendering legal assistance, including request references, characteristics, and other documents from State and social organizations, which in the established procedure shall be obliged to issue these documents or copies thereof;
- request on a contractual basis the opinions of specialists in order to explain questions which arise in connection with the rendering of legal assistance;
- meet his client alone without obstruction, confidentially, and without limitation of the duration of the meeting, including instances of confinement of the person under guard;
- use during the inquiry, preliminary investigation, and in court second recording devices and other technical means insofar as this does not obstruct the normal course of the explanation nor create a threat to the life and health of surrounding persons and the preservation of the materials of the case.

In order to fulfil auxiliary work when rendering legal assistance and advocate may have assistants who do not have the rights of an advocate and shall not be permitted to conduct the case at the investigation, in court, and in other State agencies.

The duty to preserve advocate secrecy shall extend to the assistant of an advocate.

Article 11. Duties of Advocate

An advocate in his activity shall be obliged precisely and undeviatingly to comply with prevailing legislation, and use all means and methods provided for by law for the defense of the rights and legal interests of natural and judicial persons who have applied to him for legal assistance.

An advocate must constantly maintain the prestige of his profession as a participant of the effectuation of justice and as a public figure.

With regard to cases for which an advocate renders legal assistance in accordance with prevailing legislation by appointment, only the agency, which appointed him, may relieve him from rendering such assistance.

Article 12. Independence of Advocate

An advocate shall be independent when effectuating advocate's activity and shall be subordinate only to law.

An advocate when effectuating his professional activity shall enjoy the freedom of speech in oral and written forms within the limits determined by the tasks of the advocatura and the provisions of the present Constitutional Law.

The utterances of an advocate effecting the honor and dignity of a party, the representative thereof, accuser, or defender, witness, victim, expert, and interpreter which do not violate the rules of professional ethics of advocates shall not be subject to prosecution.

Article 13. Guarantees of Advocate Activity

State agencies and officials shall be obliged to ensure an advocate the possibility of rendering legal assistance and comply with his rights.

The freedom of movement of an advocate may not be limited if his travel is necessary for the purpose of rendering legal assistance, except instances provided for by a law.

The requirement of a special authorization and creation of other illegal obstacles for advocate activity, interference in advocate activity, and a manifestation of disrespect to an advocate shall entail responsibility provided for by legislation of the Republic of Tajikistan.

An advocate shall not be subject to summons and interrogation as a witness concerning circumstances, which are within the subject of advocate secrecy. He shall not have the right to give explanations and testimony concerning these circumstances, nor to grant any materials whatsoever concerning them for use in operational-search activity, court proceedings, administrative, and other proceedings in law enforcement agencies. Explanations, testimony, and materials received from an advocate and connected with rendering legal assistance may not be deemed to the evidence.

Section III Colleges of Advocates

Article 14. The State and College of Advocates

The State shall ensure the independence of the activity of the advokatura, accessibility to legal assistance, and also cooperation of State agencies and organs of advocate self-government in the course of ensuring the defense of the rights, freedoms, and legal interests of citizens and rendering legal assistance to natural and judicial persons.

The State, and agencies of executive power in the localities (khukumats) shall ensure necessary premises for siting all advokaturas in places convenient for citizens near courts. Premises for siting advokaturas shall be granted at low rates of lease payment not exceeding the rates established for courts, and also shall facilitate the transfer to the ownership of colleges of advocates of the premises occupied by them for the siting of advokaturas.

Article 15. Formation of College of Advocates

Colleges of advocates shall be formed at the initiative of not less than forty advocates. A special authorization for the creation of a college of advocates is not required. The founders shall convoke a general meeting at which the Charter shall be adopted and executive organs of the colleges of advocates shall be elected.

The College of Advocates of the Republic of Tajikistan and regional colleges shall be subject to registration at the Ministry of justice of the Republic of Tajikistan. A refusal of registration of charter documents of a college of advocates or the nonregistration thereof within a month may be appealed to a court.

A college of advocates shall be a judicial person, have a seal and stamp designating its own name, autonomous balance sheet, settlement and other accounts in Banks.

Article 16. Charter of College of Advocates

The charter of a college of advocates must provide for:

- name, purpose, and tasks of college of advocates;
- structure of college of advocates;
- conditions and procedure for admission to college of advocates and termination of membership;
- rights and duties of members of college of advocates;
- competence, conditions, and procedure for election of organs and persons effectuating the functions of leadership in the college of advocates, periods of their powers, procedure for their activity, recall and relieving from office, location;
- procedure for settlement of disagreements within college of advocates;
- procedure for bringing member of college of advocates to disciplinary responsibility;
- sources of formation of means and other property of college of advocates;
- procedure for making changes in and additions to Charter of college of advocates;
- procedure for suspending and terminating activity of college of advocates.

Other provisions may be may be provided for in the Charter relating to the activity of the college of advocates must not be contrary to legislation.

Article 17. Organs of college of advocates

The higher organ of a college of advocates is the general meeting (or conference) of members of the college of advocates. The general meeting (or conference) of members of college of advocates shall elect:

- members of the presidium and the chairman of the presidium of the college of advocates;
- the internal audit commission of the college of advocates;
- the qualifications commission of the college of advocates.

The duty chairman shall be elected from among the members of the presidium of the college of advocates by open ballot at a session of the presidium.

The internal audit commission of the college of advocates shall be the control-internal audit organ thereof.

The qualifications commission of the college of advocates shall organize the admission examination of person who have expressed the wish to join the respective college of advocates and consider and give opinions with regard to questions of professional ethics.

Article 18. Admission to College of Advocates

Citizens of the Republic of Tajikistan having a higher legal education and work experience in a legal speciality of not less than two years or although not having such experience but has undergone training as an advocate from six months up to one year shall be admitted to membership in a college of advocates.

The presidium of the college of advocates shall effectuate admission to a college of advocates upon the opinion of a qualifications commission of the college of advocates, taking into account the professional and moral qualities of the person who has applied for admission.

Article 19. Rendering Legal Assistance Free of Charge

Members of the college of advocates shall render legal assistance free of charge to:

plaintiffs in court of first instance when conducting cases concerning the recovery of alimony, reinstatement in work, participants of the Great Fatherland and Afghan wars, disabled persons, and persons who have lost a breadwinner during the civil war in Tajikistan and refugees;

citizens with regard to appeals against inaccuracies in list of electors;

people's deputies when giving consultations with regard to questions of legislation connected with effectuation by them of deputy powers.

In addition the presidium of the college of advocates, and also agencies of preliminary investigation, procurator, and court within whose proceedings the case is situated shall have the right to relieve a natural person wholly or partially from payment for legal assistance. When deciding the question of relieving a natural person from payment for legal assistance there shall be taken into account his property status, age, labor capacity, state of health, whether he has minors or children lacking labor capacity, and the maintenance by him of dependents.

Article 20. Payment for Labor of Members of College of Advocates

The labor of advocates shall be paid for from the means received for the rendering of legal assistance from clients.

The amount of the fee shall be determined by agreement of the parties. In the absence of an agreement the amount of the fee shall be determined in accordance with an Instruction confirmed by the presidium of the college of advocates by agreement with the Ministry of Finance of the Republic of Tajikistan.

When an agency of preliminary investigation, procurator, or a court exempts a person from payment for legal assistance, in the event assistance is rendered at their request in addition to a contract freely concluded with the client, and also if legal assistance was rendered free of charge, expenses for the payment for the labor of advocates shall in accordance with a law be relegated in the established procedure to the account of the local budget.

Article 21. Means of College of Advocates

The means of college of advocates shall be formed from contributions to be paid by advocates in accordance with the Charter of the college and other proceeds not prohibited by legislation.

The deduction for social insurance from a college of advocates shall be made in the amount of 5% from revenues received by advocates and it shall be exempt from general-State taxes, charges, and other payments except for income and local taxes and charges.

Article 22. Social Guarantees of Members of College of Advocates

A member of the college of advocates shall have the right to annual paid vacation of 30 calendar days in duration.

Section IV Disciplinary Responsibility of Advocates

Article 23. Disciplinary Responsibility

Advocates shall be subject to disciplinary responsibility for actions, which are contrary to the present Constitutional Law and norms of professional ethics.

Appeals against the actions of advocates connected with the effectuating of professional duties shall be considered by the presidium of the respective college of advocates.

Article 24. Disciplinary Sanctions

The disciplinary sanctions that may be applied to members of a college of advocates shall be:

1. warning;
2. reprimand;
3. strict reprimand;
4. expulsion from the advokatura.

Article 25. Procedure for Application of and Appeal Against Disciplinary Sanctions

A case concerning disciplinary responsibility of an advocate may be instituted and considered by the presidium of the college of advocates.

A recommendation concerning the instituting of a disciplinary proceeding against of advocate shall be maid on the basis of the recommendation of any agency or upon the appeal of an interested person against the action of an advocate.

An advocate with respect to whom a criminal case is instituted may be temporarily removed from the performance of professional duties by the agency within whose proceedings the case is for the term of consideration thereof, but not more than one year.

A disciplinary sanction may be appealed in a judicial proceeding within a month from the day of application of the sanction.

Article 26. Periods of Limitation

A disciplinary proceedings may not be instituted, and one instituted shall be subject to termination, if six month have elapsed from the moment of the commission of the offence and with regard to the results of an audit or verification of financial activity, two years, not counting the period of temporarily labor incapacity of the advocate, sojourn on leave, or time of the case being in a disciplinary proceeding.

Disciplinary sanctions shall be applied not later than one month from the day of discovery thereof, not counting the period of temporary labor incapacity of the advocate or his being on leave.

Article 27. Cancellation of Disciplinary Sanctions

If an advocate within one year from the day of the application of a disciplinary sanction does not commit a new offence, he considers not to have been subjected to a disciplinary sanction.

At the petition of an interested party the cancellation of a disciplinary sanction before time, but not earlier than six months, may be maid by the organ which initiated the disciplinary proceeding.

Article 28. Termination of Membership

Membership in college of advocates shall terminate as a result of resignation or expulsion from the college of advocates.

Resignation from the college of advocates shall be:

upon the application of the advocate;

in he event of the advocate discovering the impossibility of performing his duties by reason of state of health;

in the event of engaging in advocate activity outside the college of advocates.

Expulsion of advocates from a college of advocates shall occur in instances of:

the commission of an offence not compatible with the title of advocate;
the systematic violation of the present Constitutional Law, rules of professional ethics, or
unconscientious fulfilment of his duties if measures of disciplinary influence already were
applied previously for the said violation.

Section V

Licensing of Activity of Advocates-Attorney

Article 29. Licensing of Activities of Advocate-Attorneys

The professional lawyers, who are not part of the Bar, render legal assistance basing on licenses according to the procedure established for business activity.

A license for rendering legal assistance when being an advocate-attorney shall be issued by the Ministry of Justice of the Republic of Tajikistan in the procedure established by the Government of the Republic of Tajikistan.

Each person having a pretension to receive a license for work as an advocate-attorney shall be obliged to:

personally submit a questionnaire, documents confirming citizenship of the Republic of Tajikistan, existence of the legal education and work experience in the speciality of not less than two years;

take the qualifications examination in the Ministry of Justice of the Republic of Tajikistan.

A person corresponding to the requirements of the present Constitutional Law and who successfully took the qualifications examination may be not refused the issuance of a license.

The questions of the issuance of a license for work as an advocate-attorney shall be decided within a month from the day of recourse of the person having a pretension to receive it.

The Ministry of Justice of the Republic of Tajikistan shall determine the procedure and amounts of payment for licenses by agreement with the Ministry of Finance of the Republic of Tajikistan.

In the event of a refusal to issue a license the Ministry of Justice of the Republic of Tajikistan shall be obliged in writing to inform the person thereof who applied, indicating the reasons. The decision adopted or leaving the application without consideration may be appealed to the Supreme Court of the Republic of Tajikistan.

Article 30. Qualifications Commission of Ministry of Justice of the Republic of Tajikistan

The qualifications commission of the Ministry of Justice of the Republic of Tajikistan shall give examinations to persons wishing to effectuate advocate activity as an advocate-attorney.

The procedure for the formation and activity of the qualifications commission shall be determined by the Ministry of justice of the Republic of Tajikistan.

Article 31. Responsibility of Advocate-Attorney

The Ministry of Justice of the Republic of Tajikistan shall consider appeals against the actions of advocates-attorneys connected with the effectuation of professional duties.

For a violation of the requirements of the present Constitutional Law, prevailing legislation of the Republic of Tajikistan and also unconscientious performance of his professional duties by an advocate-attorney the Ministry of Justice of the Republic of Tajikistan may reduce the period of the license issued.

Article 32. Suspension and revocation of the of issued License

The operation of an issued license may be suspended or the Ministry of justice of the Republic of Tajikistan may annul a license:

in the event of an advocate-attorney being deemed to be guilty of the commission of a crime by the judgement of a court which has entered into legal force;

in the event of an advocate-attorney being deemed by a court to lack dispositive legal capacity;

the eliciting of circumstances testifying to illegal actions of advocates-attorneys when receiving a license for the right engage in advocate activity;

in the event of establishment by tax agencies of the fact of an advocate-attorney concealing revenues received from advocate activity from taxation.

The suspension, annulment and reduction of the period of a license issued may be appealed to the Supreme Court of the Republic of Tajikistan.

Section VI Final Provisions

Article 33. Rendering Legal Assistance from Foreign Lawyers

The Republic of Tajikistan on the basis of reciprocity recognizes the right of advocates of foreign States and countries of the Commonwealth of Independent States to render legal assistance on its territory without the right to establish a legal enterprise.

**President
Of the Republic of Tajikistan**

E. Rakhmonov

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