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RESTRICTIONS ON OBTAINING THE STATUS OF AN ADVOCATE TRAINEE: AN ANALYSIS OF NATIONAL AND FOREIGN LEGISLATION

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Abstract

This article provides a comprehensive study of the requirements and restrictions established under the national legislation of the Republic of Uzbekistan for persons seeking to obtain the status of an advocate trainee, with particular emphasis on their substance, legal nature, and practical application. The study substantiates the need to establish a systematic legal mechanism for regulating the restrictions applicable to persons seeking the status of an advocate trainee, which should not be confined solely to formal legal criteria but should also enable an assessment of a candidate's professional, ethical, and legal suitability for the subsequent practice of advocacy.

The article identifies certain legal and practical issues arising in the application of the existing restrictions on obtaining the status of an advocate trainee and develops proposals and recommendations aimed at addressing them. In addition, the legal regulation of restrictions on obtaining the status of an advocate trainee is examined from a comparative legal perspective, with reference to the legislation of the Russian Federation, the Republic of Kazakhstan, the Republic of Belarus, the Republic of Lithuania, and the Republic of Tajikistan. Drawing on foreign legislative experience and taking into account the specific features of the national legal system, the article puts forward a number of scientific and practical proposals aimed at further improving the requirements and restrictions for obtaining the status of an advocate trainee in the Republic of Uzbekistan in a more precise, systematic, and legally substantiated manner.

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Keywords: Advocate trainee; requirements for obtaining the status of an advocate trainee; restrictions on obtaining the status of an advocate trainee; formal legal criteria; professional and ethical criteria for the practice of advocacy; impeccable reputation.

In Uzbekistan, large-scale reforms are being implemented to ensure the effective exercise of the constitutional right of individuals and legal entities to qualified legal assistance and to strengthen the institutional and legal guarantees of this right. One of the significant outcomes of reforms in this area is the constitutional entrenchment of the right to receive qualified legal assistance. This serves as an important legal foundation for ensuring effective access to justice, providing reliable protection of individuals' rights and legitimate interests, and further improving the constitutional and legal framework governing the provision of legal assistance.

It should be noted that the quality of qualified legal assistance provided to individuals and legal entities is, first and foremost, directly dependent on the level of theoretical knowledge acquired, practical skills developed, and professional competencies attained by a person prior to obtaining the status of an advocate.

From this perspective, the legal status of an advocate trainee, the requirements applicable thereto, and, in particular, the legal grounds and criteria for determining the categories of persons who may not obtain the status of an advocate trainee require thorough examination. Equally important is the identification of the necessity and legal justification for establishing such restrictions. At the same time, a comprehensive comparative legal study and analysis of the regulation of the requirements applicable to advocate trainees under national legislation, as well as the approaches adopted by foreign legal systems to this institution, constitute an important area for improving the mechanisms governing entry into the legal profession.

Under the current legislation, the legal status of an advocate trainee and the requirements applicable thereto are regulated by specific regulatory legal acts.

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In particular, Article 8[1] of the Law of the Republic of Uzbekistan "On Advocacy"[1] and paragraph 3 of the Regulation on the Procedure for Organizing the Activities of Advocate Trainees and Assistants, approved by Annex 1 to Order No. 10-mh of the Minister of Justice of the Republic of Uzbekistan dated 3 June 2024, establish the categories of persons who may not act as advocate trainees.

More specifically, under the applicable legislation, the following categories of persons may not act as advocate trainees:

– persons who have been declared legally incapable or whose legal capacity has been restricted in accordance with the procedure established by law;

– persons whose conviction has not been expunged or whose criminal record has not been removed[2].

In our view, it is necessary to develop a thorough understanding of the legal substance of these restrictions precluding a person from obtaining the status of an advocate trainee, to identify the legal grounds and objectives underlying their establishment, and to examine in detail the significance of each restriction for ensuring the effective practice of advocacy and the provision of qualified legal assistance.

Chapter 31 of the Civil Procedural Code of the Republic of Uzbekistan, comprising Articles 310–316[3], establishes the principal rules governing procedural relations arising in connection with declaring a person to have limited legal capacity or to be legally incapable. These provisions determine the procedural grounds for declaring a person to have limited legal capacity or to be legally incapable, the procedure for judicial consideration of such cases, and the specific features of judicial proceedings in this category of cases.

It should be emphasized that a person may be declared to have limited legal capacity or to be legally incapable only by a court through a judgment rendered on behalf of the Republic of Uzbekistan.

[1] Law No. 349-I of the Republic of Uzbekistan, "On Advocacy," adopted on 27 December 1996 // Bulletin of the Oliy Majlis of the Republic of Uzbekistan. – 1997. – No. 2. – Art. 48.
[2] Regulation on the Procedure for Organizing the Activities of Advocate Trainees and Assistants, approved by Annex 1 to Order No. 10-mh of the Minister of Justice of the Republic of Uzbekistan dated 3 June 2024 // National Database of Legislation, 5 June 2024, No. 10/24/3517/0401.
[3] Civil Procedural Code of the Republic of Uzbekistan // National Database of Legislation, 23 January 2018, No. 02/18/CPC/0612; 12 October 2018, No. 03/18/496/2043.

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At present, certain practical difficulties arise in connection with the submission by persons seeking to obtain the status of an advocate trainee of documents confirming the absence of the relevant restriction. In particular, there are instances in which candidates for the status of an advocate trainee are required to submit certificates confirming that they are not registered with psychiatric or narcological institutions, purportedly for the purpose of establishing that their legal capacity has not been restricted and that they have not been declared legally incapable.

In our view, such a practice is not fully consistent with the requirements of the applicable legislation. The fact that a person is not registered with a psychiatric or narcological institution cannot, in itself, be regarded as a legal fact directly establishing that the person has unrestricted legal capacity or has not been declared legally incapable. This is because the question of whether a person's legal capacity should be restricted or whether the person should be declared legally incapable is to be resolved by a court in accordance with the procedure prescribed by law and where the relevant legal grounds are present.

Article 34 of the Law of the Republic of Tajikistan "On Advocacy and Advocacy Activities" sets out provisions concerning advocate trainees and establishes that the persons specified in Part 2 of Article 12 of that Law may not obtain the status of an advocate trainee.

Accordingly, a person may not obtain the status of an advocate trainee if:

1. the candidate does not meet the requirements of being a citizen of the Republic of Tajikistan, having a good command of the state language, and possessing a higher legal education;
2. the person has been declared legally incapable or has had their legal capacity restricted in accordance with the procedure established by the legislation of the Republic of Tajikistan;
3. the person has a criminal conviction;
4. the person has been dismissed from a state body, judicial body, justice body, prosecutor's office, advocacy institution, another law enforcement body, or military service for violating a professional oath or committing an act of a corrupt nature;

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5. the person has been exempted from criminal liability pursuant to paragraph 4 of Part 1 of Article 27 and Articles 29–32 of the Criminal Procedure Code of the Republic of Tajikistan[4].

The study and analysis demonstrate that the restrictions imposed by the legislation of the Republic of Tajikistan on obtaining the status of an advocate trainee are broader in scope than those established under the legislation of the Republic of Uzbekistan and are characterized by more stringent and comprehensive requirements applicable to candidates.

Article 28 of Federal Law No. 63-FZ of the Russian Federation dated 31 May 2002, "On Advocacy and the Bar in the Russian Federation," provides that persons falling within the categories specified in paragraph 2 of Article 9 of that Law may not act as advocate trainees. In particular, persons who have been declared legally incapable or whose legal capacity has been restricted in accordance with the procedure established by the legislation of the Russian Federation, as well as persons with an outstanding or unexpunged conviction for an intentional crime, may not obtain the status of an advocate trainee[5].

A comparative legal analysis of this provision and the corresponding rules of the legislation of the Republic of Uzbekistan demonstrates that Russian legislation adopts a more specific and differentiated approach to persons seeking to obtain the status of an advocate trainee with regard to the form of culpability involved in the commission of a criminal offence. In particular, the relevant restriction applies to persons whose conviction for an intentional crime has not been expunged or removed in accordance with the procedure established by law.

It follows that, under Russian legislation, the mere existence of an outstanding or unexpunged conviction for a criminal offence committed through negligence does not, in itself, constitute the ground in question for automatically precluding a person from obtaining the status of an advocate trainee. This approach is characterized by recognition of the form of culpability—intent or negligence—

[4] Law No. 1182 of the Republic of Tajikistan, "On Advocacy and Advocacy Activities," dated 18 March 2015 // National Centre of Legislation under the President of the Republic of Tajikistan.
[5] Federal Law No. 63-FZ of the Russian Federation, "On Advocacy and the Bar in the Russian Federation," dated 31 May 2002.

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as an independent legal criterion relevant to determining eligibility for the relevant professional status.

In this respect, the experience of the Russian Federation may be of particular scientific and practical relevance to the improvement of the restrictions established under the legislation of the Republic of Uzbekistan concerning the acquisition of the status of an advocate trainee, particularly with regard to differentiating such restrictions by taking into account the subjective element of a criminal offence.

Article 38 of Law No. 176-VI of the Republic of Kazakhstan dated 5 July 2018, "On Advocacy and Legal Assistance," establishes the legal status of advocate trainees and advocate assistants, the conditions for undertaking an internship, and the principal rules governing these institutions. Under this provision, a person seeking to undertake an advocate traineeship must meet the requirements established by paragraph 2 of Article 32 of the Law. In particular, a person who has been declared legally incapable or whose legal capacity has been restricted by a court, or who has an outstanding or unexpunged criminal conviction in accordance with the procedure established by law, may not obtain the status of an advocate trainee.

In addition, the legislation of the Republic of Kazakhstan establishes a number of time-limited restrictions concerning access to an advocate traineeship. These include persons:

1. who have been exempted from criminal liability on the grounds specified in subparagraphs 3), 4), 9), 10), and 12) of paragraph 1 of Article 35 or Article 36 of the Criminal Procedure Code, for a period of three years from the date on which the relevant circumstances arose;
2. who have been dismissed from public service or military service, law-enforcement or special state bodies on negative grounds, as well as persons removed from judicial office, for a period of three years from the date of dismissal or removal from office;
3. who have committed an administrative offence of a corruption-related nature, for a period of three years from the date on which the relevant circumstances arose;

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4. who have been deprived of a licence to engage in advocacy on the grounds specified in subparagraphs 1) and 2) of paragraph 4 of Article 44 of the Law, for a period of three years from the date on which the relevant court decision entered into legal force;
5. who have been removed from the register of legal consultants on negative grounds, for a period of three years from the date of removal from the register[6].

The results of the comparative legal analysis demonstrate that, under the legislation of the Republic of Uzbekistan, the categories of persons who may not obtain the status of an advocate trainee are defined relatively narrowly and primarily encompass restrictions related to legal capacity and criminal convictions. By contrast, the legislation of foreign states, particularly that of the Republic of Kazakhstan, also takes into account circumstances relating to a person's previous professional activities, the commission of corruption-related offences, dismissal from public service or law-enforcement bodies on negative grounds, and deprivation of the right to engage in advocacy.

Against this background, when considering ways to improve the grounds precluding a person from obtaining the status of an advocate trainee in the Republic of Uzbekistan, it may be appropriate to examine whether certain negative circumstances associated with the person's previous professional activities should also be taken into account. Such restrictions should not, however, be established in an absolute or indefinite manner. Rather, their duration and scope could be differentiated with due regard to the nature of the conduct in question, its degree of social danger, and its legal consequences. This approach could contribute to maintaining the professional standards and public confidence associated with the institution of advocacy while also ensuring respect for an individual's right to engage in professional activity and the principle of legal certainty.

With regard to the legislation of the Republic of Belarus, specific provisions regulate the completion of an internship and admission to the qualification examination. Under these provisions, a candidate for an advocate traineeship may not be admitted to an internship where any of the restrictions established by

[6] Law No. 176-VI of the Republic of Kazakhstan dated 5 July 2018, “On Advocacy and Legal Assistance” // Information and Legal System “Adilet.”

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Article 8 of the Law of the Republic of Belarus "On Advocacy and Advocacy Activities in the Republic of Belarus" apply.

Article 8 of that Law establishes, inter alia, the following restrictions:

1. a person has been declared legally incapable or has had their legal capacity restricted in accordance with the procedure established by law;
2. a person has previously committed an intentional criminal offence;
3. a person has been expelled from or dismissed by a bar association, or dismissed from law-enforcement or other bodies and organizations on grounds that discredit the person, for a period of three years from the date on which the relevant dismissal decisions were adopted;
4. a person has applied for a licence during the period of one year from the date on which a decision terminating or revoking the special permit (licence) to engage in advocacy or, in cases established by legislative acts, to provide legal services entered into force, where such decision concerned the person or an individual entrepreneur or legal entity with which the person was associated as an individual entrepreneur, founder, or head; this restriction does not apply where the validity of the relevant special permit (licence) was terminated at the initiative of the licence holder;
5. a person held a position during the period between the submission of an application for admission to the qualification examination and the date of obtaining a licence, where the period of employment in such position is counted towards the length of public service[7].

The comparative analysis of the legislation of Kazakhstan and Belarus demonstrates that foreign legal systems employ a broader range of legal mechanisms for determining eligibility for an advocate traineeship. These mechanisms extend beyond legal capacity and criminal convictions and may also take into account previous professional conduct, grounds for dismissal from public service or law-enforcement bodies, corruption-related conduct, the termination or revocation of a professional licence, and other circumstances relevant to the integrity and professional suitability of a candidate.

[7] Law No. 176-VI of the Republic of Kazakhstan dated 5 July 2018, "On Advocacy and Legal Assistance" // Information and Legal System "Adilet."

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A comparative legal analysis demonstrates that, whereas the restrictions imposed on advocate trainees in the Republic of Uzbekistan are primarily aimed at assessing a person's legal capacity and existing criminal record, the approach adopted in the Republic of Belarus also encompasses circumstances relating to the person's previous professional activities, professional reputation, licensing history, and public service.

In this regard, the experience of the Republic of Belarus is of particular relevance to the legislation of the Republic of Uzbekistan, especially from the perspective of systematizing the categories of persons who may not obtain the status of an advocate trainee.

In our view, rather than directly transposing the Belarusian approach into the national legal system, the following approach would be more justified from the perspectives of both legal scholarship and legislative drafting:

First, all categories of persons who may not obtain the status of an advocate trainee should be expressly and exhaustively defined in the law itself;

Second, the legal distinction between a restriction based on an outstanding or unexpunged criminal conviction and the fact of having **"previously committed an intentional criminal offence"** should be taken into account;

Third, the possibility of introducing restrictions applicable to persons dismissed from advocacy or other legal professional activities on grounds that discredit their professional reputation should be examined separately;

Fourth, the possibility of subsequently obtaining the status of an advocate trainee by a person whose licence to engage in advocacy has been revoked or whose validity has been terminated should be regulated by law;

Fifth, legal conflicts arising from holding public service positions during an advocate traineeship should be addressed.

Based on the foregoing, it may be concluded that the restrictions applicable to the legal status of an advocate trainee should be formulated not merely as a means of assessing a person's formal legal capacity, but as a system of legal safeguards designed to ensure the independence, reliability, and professional reputation of the legal profession. At the same time, such restrictions should be clearly defined, objective, proportionate, and established at the legislative level, thereby precluding the possibility of their arbitrary or subjective interpretation.

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Article 35 of the Law of the Republic of Lithuania "On the Bar," dated 18 March 2004, establishes the grounds for inclusion in the list of assistant advocates in Lithuania, a legal status that corresponds, in functional terms, to that of an advocate trainee under the legislation of the Republic of Uzbekistan. Pursuant to this provision, a person must have an **impeccable reputation** in accordance with Article 8 of the Law.

More specifically, an applicant is not considered to have an impeccable reputation and may not be recognized as an assistant advocate (advocate trainee) if the applicant:

– has been convicted of an intentional criminal offence, irrespective of whether the conviction has subsequently been expunged or removed; or has been convicted of another criminal offence and the conviction has not yet been expunged or removed;

– has been dismissed from the position of judge, prosecutor, advocate, assistant advocate, notary, candidate for notarial office (assessor), notary's representative, bailiff, bailiff's representative, or bailiff's assistant for misconduct in professional or official activities, or has been dismissed from a position in the civil service following the imposition of a disciplinary sanction or for a gross breach of employment duties, where three years have not elapsed since the date of dismissal;

– abuses psychotropic, narcotic, or toxic substances, or alcohol;

– fails to meet the requirements established for advocates under the Code of Professional Ethics of Lithuanian Advocates that would be applicable to the applicant if the applicant were an advocate[8].

In the Republic of Uzbekistan, the restrictions applicable to advocate trainees are primarily confined to the assessment of a person's formal legal status, particularly their legal capacity and existing criminal record. In Lithuania, by contrast, the concept of **impeccable reputation** as a condition for entry into the legal profession encompasses, in addition to a person's legal status, their previous professional activities, disciplinary liability, substance- or alcohol-related conduct, and compliance with professional ethical requirements. In this

[8] Law of the Republic of Lithuania "On the Bar," dated 18 March 2004 // Legal Acts Register of the Republic of Lithuania.

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respect, the Lithuanian model establishes a broader legal mechanism for assessing a person's professional reliability and ethical suitability for entry into the legal profession, beyond their formal legal status.

At the same time, rather than transposing the Lithuanian approach in its entirety into the legislation of the Republic of Uzbekistan, it would be appropriate to adapt selected elements of this approach to the specific characteristics of the national legal system.

In particular, the following scholarly proposals may be advanced with a view to expanding the categories of persons who may not obtain the status of an advocate trainee in the Republic of Uzbekistan:

1. to examine the possibility of establishing, in specified circumstances, an outstanding or unexpunged conviction for an intentional criminal offence as a ground precluding admission to an advocate traineeship, irrespective of whether the conviction has subsequently been expunged or removed;
2. to establish time-limited restrictions applicable to persons dismissed from positions such as judge, prosecutor, advocate, notary, bailiff, or other legal positions for serious breaches of professional or official duties;
3. to assess instances of abuse of alcohol, narcotic drugs, psychotropic substances, or other psychoactive substances on the basis of objective medical criteria;
4. to define, at the legislative level, requirements concerning professional ethics and an impeccable reputation for persons seeking to obtain the status of an advocate trainee;
5. to formulate the concept of “impeccable reputation” not as a general and subjective category, but as a clearly defined, exhaustive, and verifiable set of criteria established by law.

In conclusion, the national and comparative legal analysis undertaken above demonstrates the need to establish the circumstances precluding a person from obtaining the status of an advocate trainee under the legislation of the Republic of Uzbekistan in a more precise, systematic, and comprehensive manner.

Article 81 of the current Law of the Republic of Uzbekistan “On Advocacy” provides, inter alia, that a person holding a higher legal education may obtain the status of an advocate trainee, while persons who have been declared legally

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incapable or whose legal capacity has been restricted in accordance with the established procedure, as well as persons whose criminal conviction has not been expunged or removed, may not obtain such status.

However, these restrictions do not fully encompass circumstances relating to a candidate's professional reputation, conduct in the course of previous professional activities, integrity in the performance of professional duties, or compliance with the ethical standards of the legal profession. Consequently, the requirements applicable to the institution of advocate traineeship remain, on the one hand, largely confined to general legal capacity and criminal-record criteria and, on the other hand, are not sufficiently aligned with the high professional and ethical standards inherent in the legal profession.

The comparative legal analysis demonstrates that the legislation of certain foreign states attaches particular importance to an individual's impeccable reputation and professional reliability when determining eligibility for entry into the legal profession. In particular, in some jurisdictions, a conviction for an intentional criminal offence, dismissal from a particular position for breaches of professional or official duties, conduct incompatible with professional activities, and the abuse of alcohol, narcotic drugs, or psychotropic substances are established as legal barriers to entry into the legal profession.

From this perspective, it would be appropriate to establish a systematic mechanism governing restrictions applicable to advocate trainees that is not confined to formal legal criteria, but also takes into account the candidate's professional and ethical suitability for the subsequent practice of advocacy.

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