



Increasing The Responsibility Of Lawyers And Ensuring The Human Right To Professional Legal Assistance

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ABSTRACT

This thesis is devoted to the improvement of the legislation of the Republic of Uzbekistan “On the Bar” and insurance of the liability of lawyers and lawyers to clients (individuals and legal entities receiving legal services on the basis of a contract) in order to increase their loyalty to the use of the constitutional right to qualified legal assistance.

KEYWORDS

Professional liability insurance, mistakes of attorneys and lawyers, foreign jurisdiction.

INTRODUCTION

According to article 116 of the Constitution of the Republic of Uzbekistan, the right to professional legal assistance is guaranteed at any stage of the investigation and legal proceedings. The advocacy operates to provide legal assistance to citizens, enterprises, institutions and organizations. The practice of the functioning of lawyers' formations shows that the quality of the work of lawyers has deteriorated. The number of complaints against lawyers remains high. Citizens' confidence in this institution is being lost. Complaints against lawyers from individuals and legal entities are checked by the Chamber of Lawyers and as of December

2020, complaints against lawyers account for 80% of the total number of complaints that were simply discussed, i.e. lawyers are not legally responsible. They do not compensate for damage caused by non-performance or improper performance of their professional duties. In this part, it is necessary to consider liability in the framework of legal aid treaties.

THE MAIN FINDINGS AND RESULTS

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) provides support, assistance and expertise to participating States and civil society to advance democracy,

rule of law, human rights, tolerance and non-discrimination. ODIHR observes elections, reviews legislation, and advises governments on developing and maintaining democratic institutions. The Office conducts training programs for government and law enforcement agencies and non-governmental organizations on the protection, promotion and monitoring of human rights [8]. According to the standards for ensuring human rights developed by this institution, one of the requirements is public lawyers (and not just lawyers!), who must be bound by ensuring their liability through professional liability insurance. Most foreign jurisdictions require professional liability insurance for clients to provide professional legal assistance.

For example, in France, in accordance with the Law “On the Organization of the Bar” from 1991 professional liability insurance for lawyers is compulsory. It covers all professional mistakes of lawyers that may cause harm or loss of expected benefits for their clients or third parties. Errors may consist in violation of procedural deadlines for filing applications or appeals (violation of procedural deadlines; improper filling of documents; failure to notify third parties about the consequences of legal actions, causing harm to such persons; loss or damage to documents received by the insured person (policyholder) from the client (trustee) for the provision of legal assistance; illegal disclosure of information subject to attorney secrecy, etc.).

In the United States, each of the 52 states has its own insurance system with a predominantly individual insurance model. Only Oregon has a collective insurance system. In Georgia, lawyers are required to insure their professional compensation in the manner and in the cases provided for by law in order to compensate clients for possible material damage. In Estonia, professional insurance compensation is compulsory. Article 12 of the Swiss Federal Law on the Freedom of

the Advocate Movement 2000 provides for compulsory professional liability insurance, depending on the risks associated with advocacy [8].

In Kazakhstan, in accordance with the Law of the Republic of Kazakhstan dated July 5, 2018 No. 176-VI “On advocacy and legal assistance” from January 1, 2021, lawyers and legal consultants are not entitled to provide legal assistance in the absence of a professional liability insurance contract. In accordance with the innovation:

1. A lawyer is obliged to conclude a professional liability insurance contract for obligations arising as a result of causing harm to third parties (principal), to whom, in accordance with the contract, legal assistance is provided, as a result of such assistance.

A lawyer does not have the right to start providing legal assistance in the absence of a professional liability insurance contract.

2. The object of insurance of a lawyer's professional liability is the property interests of the policyholder (insured person) related to his obligation, in the manner prescribed by the legislation of the Republic of Kazakhstan, to compensate for harm caused to third parties who, in accordance with the contract, are provided with legal assistance in connection with the implementation of advocacy.

3. An insured event under a lawyer's professional liability insurance contract is the fact of the insured's civil liability for compensation for damage caused to the property interests of third parties who are provided with legal assistance in accordance with the contract as a result of professional mistakes made by the insured person in the provision of legal assistance.

For the purposes of this article, professional errors mean:

- 1) Skipping due process;

- 2) Incorrect paperwork;
- 3) Failure to notify the person to whom legal assistance is provided in accordance with the contract about the consequences of legal actions that have caused him harm;
- 4) Loss or damage to documents received by the policyholder (insured person) from the client for the provision of legal assistance;
- 5) Unlawful disclosure of information constituting an advocate secret.

The professional liability insurance contract may determine other actions (inaction) that caused damage to the property interests of third parties (the principal), who, in accordance with the contract, are provided with legal assistance, as a result of the provision of such assistance by the insured person.

4. An insured event is considered to have occurred if the harm caused to third parties to whom, in accordance with the contract, legal assistance is provided, was the result of an unintentional violation of professional duties by the policyholder (insured person).

The procedure and other conditions for insurance of the professional liability of a lawyer are determined by agreement of the parties on the basis of a standard contract for insurance of professional liability of a lawyer [9].

The study and analysis of international standards, the experience of the countries of Europe and the CIS makes it possible to think about amending the legislation of the Republic of Uzbekistan on the legal profession in terms of civil liability insurance of a lawyer and legal consultant. Such a change will give such advantages as,

Compliance of the responsibility of a lawyer and a lawyer with the standard of democracy;

Improving the quality of services provided by lawyers and legal consultants;

Guarantees of compensation for harm caused to the property interests of third parties (principal), who are provided with legal assistance in accordance with the contract, as a result of professional mistakes made by the insured person in the provision of legal assistance.

CONCLUSION

What is the responsibility of the legislation of the Republic of Uzbekistan on the Bar for violation of the procedure for the provision of legal assistance?

And so, according to article 14 of the Law of the Republic of Uzbekistan "On the Bar" dated December 29, 1996, No. 349-I, for violation by a lawyer of the requirements of the legislation on the legal profession, the Rules of Professional Ethics of Lawyers, advocate secrecy and the lawyer's oath entails the application of disciplinary measures to him.

Disciplinary proceedings are initiated by a decision of the qualification commission or the Higher Qualification Commission.

The grounds for initiating disciplinary proceedings are:

- Revealing by the territorial administration of the Chamber of Advocates or by the justice body that a lawyer has violated the requirements of the legislation on the Bar, the Rules of Professional Ethics of Lawyers, advocate secrecy and the lawyer's oath;
- Appeal of an individual or legal entity to illegal actions of a lawyer;
- Issuance of a private court ruling in relation to a lawyer.
- Based on the results of the consideration of disciplinary proceedings, the following

disciplinary measures may be applied to a lawyer:

- warning (based on the decision of the qualification commission);
- Suspension of the license for up to six months;
- Termination of the license.

And the law does not provide for who will compensate the client for damage. No insurance - no guarantee of compensation. Thus, the introduction of the practice of professional liability insurance for lawyers and lawyers in Uzbekistan will enable individuals to enjoy constitutional rights without the risk of certain harm.

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