

## FEATURES OF THE LEGAL REGULATION OF THE PROVISION OF LEGAL SERVICES BY LAWYERS

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### Abstract

Lawyers devote the article to the study of the peculiarities of the legal regulation of the conclusion and execution of contracts for the provision of services. The paper analyzes and compares such concepts as "legal service" and "legal assistance". The conclusion is made that legal services are one of the complex and undeveloped in the theory of types of services that require recommendations to address gaps in the current legislation. An analysis is made of the practical application of contracts for the provision of legal services and contracts of commission concluded by lawyers. Concrete proposals are identified for amendments to the Law "On the Advocacy and the Bar of the Republic of the Russian Federation", which, in our opinion, will help strengthen the independence of the institution of the bar in the Russian Federation and eliminate differences on the qualification of the legal aid agreement.

**Keywords:** legal aid, legal service, legal service, contract, order of assignment, lawyer, contract for the provision of legal services on a fee.

### Introduction

The issue of legal regulation of legal aid to citizens and legal entities is becoming a topical issue.

Before we talk about the legal regulation of legal services, it is necessary to clarify the concepts of "legal assistance" and "legal service".

It is important to determine how they relate to each other and what they have in common, and whether there are differences in these concepts.

An analysis of the current legislation and its application shows that the concept of "legal assistance" and the concept of "legal service" are not yet fully disclosed.

It is very difficult to find the main features in the normative-legal documents that allow to distinguish the above terms.

Given the current state of civil law and the Law of the Republic of Uzbekistan "On Advocacy" it can be said that this issue, ie the concept of "legal services" in general, including "legal services provided by a lawyer" is not defined and properly regulated.

This legislation could not have been different at the time of its adoption. The reason was that the legal services sector was underdeveloped at that time. However, since then, the legislation has used two main categories of law - "legal aid" and "legal service".

The concept of "legal service" is at least listed in the recommendations for the conclusion of contracts, but there is no consensus among scholars and practitioners on the concept of "legal assistance", and even this concept is not reflected in the legislation.

Article 91 of the Law of the Republic of Uzbekistan "On Advocacy" defines the term "agreement (contract) for the provision of legal assistance" and defines the concept of "agreement (contract)" of this type.

Pursuant to Part 1 of Article 9<sup>1</sup> of the Act, a lawyer is represented on the basis of a contract concluded between him and a representative.

Part 2 of this article stipulates that a contract for the provision of legal assistance is a civil law contract.

Thus, we see that the concept of "legal (legal) assistance" is not disclosed in this normative legal document.

As for the concept of "legal service", civil law, Article 703 of the Civil Code of the Republic of Uzbekistan, defines the legal regulation of the contract of paid services, but does not define the concept of "service".

In addition, science does not have a general understanding of what legal or legal services are. Legislation does not imply differences between these concepts.

When discussing one of the most pressing problems of our legislation in legal education - the multiplicity of terms that require unification, the question of the relationship between these terms is considered.

However, some authors (T. I. Ilina, A. I. Muranov, D. V. Novak, G. K. Sharov) note that these concepts do not differ from each other. Others, on the contrary, are trying to justify their position by opposing them. For example, O. S. Ponasyuk believes that "everything that is part of the legal profession is qualified legal assistance, and what is not in this area is legal services." R. R. Lenkovskaya believes that legal and legal services should be distinguished from qualified legal aid. [3, p. 59].

The concept of legal aid has many authors: O. N. Bondar, M. V. Kratenko, R. G. Melnichenko, K. E. Mixaylenko, V. Yu. Panchenko, A. S. Pleten, E. V. It is important that it has been studied by Yanush et al. We can note that there are some theoretical developments.

Based on the study of legislation, judicial and legal practice, special literature, the lawyer can draw some conclusions about the features of the contract for the provision of legal services and the contract for the provision of legal assistance (general, other and special).

The concepts of legal services and legal aid differ in their legal nature (in the first case they are used in the economic sense, in the second case they are used in the sense of providing constitutional law).

As these concepts differ from each other, they require appropriate regulation in the legislation.

Qualified legal assistance is provided by a lawyer who is a specially authorized person. Legal services are, as a rule, provided by qualified persons. Services, including legal services, are the object of civil law. However, the concept of "legal service" is contained in the general and special parts of the Civil Code of the Republic of Uzbekistan. This is evidenced by the gap in the legislation and, in particular, the incompleteness of the norms governing the provision of paid services.

It is also necessary to highlight two main problems in the civil legislation of the Republic of Uzbekistan in the conclusion of contracts for the provision of legal assistance - consumers of legal services.

*First*, it is difficult to determine the qualifications of a subject who "helps" citizens because they do not have specific knowledge and experience.

*Second*, citizens do not have the right to choose a "helper", because in this case not only higher legal education is sufficient, but also the right to provide qualified legal assistance requires the presence of an appropriate legal specialty.

"Legal aid" represents the public interest, and "legal service" has a public-legal significance. At the same time, the state has not adopted a special law regulating the activities of legal service providers (except for lawyers), defining their professional training and professional ethics, as well as a mechanism for liability for poor service.

In general, both "legal service" and "legal aid" have aleator (risk of not achieving the desired result) qualities and are fiduciary (based on trust). Even after the contract has been executed and the service rendered, it is difficult to assess such features from a legal point of view.

Also, the lack of legal regulation of the concept of the subject of the contract for the provision of legal assistance leads to legal ambiguity in the qualification of this contract, and as a result the courts qualify the contract for legal assistance as either a contract of service or a contract of assignment.

In practice, where protection is required, a legal professional will often enter into an assignment agreement. An attorney under an assignment contract will perform certain legal actions on behalf of and at the expense of the principal. Its parties have the right to determine the essence of the contract, ie whether it is paid or free (Article 818 Part 1 of the Civil Code of the Republic of Uzbekistan).

There are significant differences between this contract and the legal services contract, the difference and individual nuances of which are determined in the process of studying the practice.

Thus, according to the current civil law, the legal features of a legal service contract are:

- Regulated by Chapter 39 of the Civil Code of the Republic of Uzbekistan;
- The parties are the contractor and the customer;
- The subject of the contract is the provision of legal services, ie the performance of actions or activities for which the customer pays;

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- Method of performance - personal performance of contractual obligations by the contractor;
  - The order and terms of payment are specified in the contract;
  - In case of non-provision of services for reasons related to the customer, as a general rule, payment will be made in full.

If the services are not provided for reasons beyond the control of the parties, the customer shall, as a rule, pay the actual costs;

- In the event that the customer unilaterally waives the contract, he will pay the actual costs. In the event of a unilateral refusal by the Contractor, he shall reimburse the damages;
- The relations arising from the provision of legal services are allowed to apply the provisions of the current legislation on contracting and domestic contracting.

Features of the assignment agreement:

- Regulated by the provisions of Chapter 46 of the Civil Code of the Republic of Uzbekistan;
- Parties - the representative and the principal;
- as a lawyer, the lawyer undertakes to take legal action on behalf of the principal (principal);
- Actions are performed at the expense of the principal (principal);
- The principal (principal) receives the rights and obligations for the actions of the lawyer;
- The contract may set a time limit for the lawyer to act as a representative on behalf of the principal (principal) and in his interests;
- If the assignment is related to the business activities of both parties or one of them, the principal must pay a fee, unless otherwise provided by the contract.

If the contract is not related to entrepreneurial activity, a fee shall be paid if it is provided for in normative legal acts or the contract.

An analysis of the legal features of the above contracts shows the main difference between them - in one of the contracts the trustee delegates his powers to the representative to carry out his instructions, and in the other the customer does not delegate his powers to the executor.

Thus, the main difference between contracts is determined by their subject of legal regulation. The list of specific legal actions that a representative must take may include the purchase or alienation of property, making payments, and so on.

In this regard, some nuances of the practice of applying the assignment contract should be taken into account: According to the assignment agreement, the lawyer (representative) undertakes to take certain legal actions on behalf of and at the expense of the principal. The rights and obligations under the agreement concluded by the lawyer (representative) arise directly in the principal;

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- The issuance of a power of attorney does not automatically confirm the conclusion of the contract, as the above does not indicate a unilateral action (the intention of the principal to authorize the representative), but does not indicate the desire of the second representative to act using these powers. The contract of assignment states that an agreement has been reached on this issue. In this case, the failure to issue a power of attorney is not automatically deemed not to have entered into an assignment agreement;

- Expiration of the power of attorney and non-issuance of a new power of attorney - indicates the termination of the contract;

- The issuance of a power of attorney indicates the formation of relations between the parties arising from the contract of assignment, and the norms of the Civil Code of the Republic of Uzbekistan on the contract of assignment apply to these relations.

As a rule, in practice, citizens and legal entities seek help from lawyers or legal services and decide which contract is better to protect themselves from the negative consequences of legal aid. Given the current situation, it is necessary to choose the type of contract. The assignment contract is often of an aleator-fiduciary (trust-based) nature. In our view, the fact that the assignment contract is of a personal-confidential nature characterizes all legal relations, regardless of the composition of the subject. The contract for the provision of legal assistance concluded by attorneys is the closest to the contract of assignment. The difference between the latter and the contract of assignment is that if its subject is criminal protection, the lawyer himself cannot refuse to provide legal assistance.

A special feature of the contract for the provision of legal (legal) services for a fee is "the performance of certain actions or the performance of certain activities" aimed at protecting the interests of the service user in court or other jurisdiction. These bodies must make a decision on the established requirements. Therefore, the interests of the customer are not limited to the provision of relevant legal services, but to achieve a positive result of the enforcement action (claim, satisfaction of the complaint, other positive decision), which goes beyond the scope of the contract.

The disadvantage of the legal regulation of the contract for the provision of legal services is the lack of a clear result of the service provided by law - it is difficult for the customer to determine the existence of a specific result in the contract, because the law does not specify the contractor's obligation to deliver a specific result.

In addition, the legal service itself is a relative concept, with each representative or attorney independently deciding on actions related to the order of legal services or legal assistance based on his or her legal knowledge and work experience. And in the future it is very difficult, almost impossible, to prove that the legal service representative made a mistake in his actions.

Summarizing the above, it can be said that the detailed, expanded subject of the legal aid contract and the lack of legal regulation of the type of legal aid contract should be

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considered as a gap in the Law of the Republic of Uzbekistan "On Bar" and measures should be taken to eliminate it.

We propose to specify in the Law on Advocacy that a contract for the provision of legal assistance is an independent type of civil contract and to supplement this Article 9 with the concept of "subject of a contract for the provision of legal assistance".

Paragraph 2 of Article 9, Part 5 of the Law on Advocacy uses the term "subject of assignment" in the qualification of the subject of the contract for legal assistance, ie in terms of the subject of the contract for legal assistance, but for some reason this article it did not refer to Chapter 46 of the Civil Code.

In Article 818 of the Civil Code of the Republic of Uzbekistan, a contract of assignment is an agreement on the implementation of legal actions, which is carried out only by power of attorney. However, the powers of a lawyer are not always expressed in the form of a power of attorney. In criminal proceedings, a lawyer shall perform the assignment for defense only on the basis of a certificate and an order (Part 2 of Article 49 of the Criminal Procedure Code of the Republic of Uzbekistan), as well as on the basis of an order and with the direct participation of the principal. It turns out that a power of attorney is not a mandatory document confirming the powers of a lawyer in the performance of an assignment under a contract for the provision of legal assistance. We therefore consider it necessary to supplement the content of the Law, i.e. the content of Article 91 of the Law on Advocacy, with the concept of "subject of the contract on legal aid".

These changes, in our opinion, will strengthen the independence of the legal profession in the Republic of Uzbekistan and eliminate disputes over the qualification of the contract for the provision of legal assistance in legal practice.

In addition, our topic is "Features of the regulation of legal aid by lawyers", if we focus on the mechanism of regulation of legal aid by lawyers, we will now consider the digitization of the courts. At the same time, the President of the Republic of Uzbekistan issued a decree on May 12, 2018 "Institute of Advocacy in accordance with the requirements of the Decree "On measures to radically increase the efficiency and expand the independence of lawyers", we must also present innovative and information and communication technologies in advocacy in the field of advocacy:

1. Abandon red tape in the legal system and conduct its activities through the electronic system;
2. In order to protect the client under his / her protection, the lawyer should assist the courts in submitting their appeals online and allowing them to hear them online;
3. Ensuring the provision of prompt and quality services to the population by assisting in the prevention of confusion by establishing legal advisers in three or four neighborhoods as close as possible and by attaching lawyers on a rotating basis;
4. Creating favorable conditions for users of the legal services, reducing redundant procedures and deadlines for using public services;

5. Creating a system that is convenient to use the services of a lawyer and free from excessive bureaucracy, and helps to save time of users;
6. Determining the quality (rating) of lawyers' services, encouraging high-performing lawyers, conducting explanatory work among low-performing lawyers;
7. Creation of a simplified system for obtaining a license to practice law;
8. Establishment of a system of training lawyers in accordance with international standards;
9. Establish a rating of lawyers, so that the population will be able to choose a lawyer of the appropriate level, knowing which lawyer has what position;
10. Conduct a face-to-face question-and-answer session (in the form of a video conference for those unable to attend) with a lawyer once a month in each district;
11. Creating an opportunity for lawyers to pay for services through an electronic system;
12. Establish an electronic enforcement system between the lawyer and the client to encourage the parties to be liable for their obligations by enabling them to take action if one of the parties fails to comply with the request in a timely manner.

Based on these proposals and recommendations, we believe that together with the creation of a system of qualified lawyers, we can achieve the provision of fast and quality services to the population.

Based on the above, it can be concluded that the relevance of the research topic was disclosed as much as possible. The reason is that the terms legal aid and legal services and the connections and differences between them have been revealed. At the same time, it should be noted that at a time when the focus is on the digitalization of the judiciary, our legal scholars need to conduct more comprehensive research to formulate detailed proposals and recommendations to address the gaps in the legal profession.

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