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主 論 文 の 要 旨

論文題目

INDEPENDENCE OF THE LEGAL PROFESSION AS A CIVIL
SOCIETY INSTITUTE IN UZBEKISTAN: COMPARATIVE
ANALYSIS WITH JAPAN AND THE USA
(ウズベキスタンの市民社会の機関として弁護士制度の独立性：
日本及び米国との比較分析)

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論 文 内 容 の 要 旨

The study analyzes the problem of independence of the legal profession as the civil society institute in Uzbekistan. Particularly, the research examines three rooted issues: institutional relations between justice authorities and the legal profession, admission to the profession of an advocate and disciplinary process. The paper frames the understanding of the meaning of the term legal profession to bar associations and advocates only, without touching other professions in the legal system like prosecutor or judge. The term advocate, in turn, refers to an Uzbek citizen with a degree in law and special license to provide a qualified legal assistance to individuals and legal entities, including protection of their interests and rights in preliminary investigation, court and arbitration.

The tendency of control over the legal profession in Uzbekistan by the state authorities was formed during the early steps of the formation of the Soviet legal system. Attempts to take away independence from the legal profession were undertaken due to primarily personal hostility towards advocates by political leaders of the Soviet state. Independence, freethinking, intelligence, high spiritual culture of legal professionals aroused hatred and anger among the working-class authorities. Thus, during the Soviet

period, the legal profession became the second-class niche, which was thoroughly controlled by the justice authorities. Advocates were obliged to serve socialist justice and strengthen socialist legality, which turned them into people in the service of the state. After collapse of the Soviet Union and independence of Uzbekistan in 1991, the country undertook some measures to transform and enhance the level of independence of the legal profession, but still, there are hectic discussions among scholars, practitioners and international community regarding the independence from the state topic.

The legal profession in Uzbekistan is considered as independent, non-commercial institute of the civic square. The main idea of advocates is to serve for the benefit of people as an intermediary between the state and the society. Therefore, they possess unique powers of both a state organization and a non-governmental entity to preserve the system of check and balances in the legal sphere, which places the legal profession on the frontline of the process of achieving the public good in the transitional society of Uzbekistan. Active legal profession is also an indispensable element for transformation of the society into the civil one. Thus, one of the key mechanisms for the legal profession to become true guardians of the civil society is to ensure their sufficient independence from the state, the level of which is inadequate in current Uzbekistan.

The purpose of the study is to answer whether Uzbekistan's transitional society aiming to transform into the advanced one, needs independent legal profession, or, still, the community of advocates needs to be paternalized by justice authorities for the sake of public good.

The issue of independence of the legal profession in Uzbekistan in recent years has become highly relevant. After a new President came into power in 2016, the whole legal system faced cardinal transformation, and the legal profession domain was not an exclusion.

Many of the novelties were positive, urgent and necessary for Uzbekistan. However, the reforms with regard to the legal profession are erratic and unarticulated. By keeping the old-Soviet system, some ill-considered alterations during the administration of the first President, current reformers presented a third layer of amendments, which were also far from ideal in terms of nowadays condition of Uzbekistan.

One of the striking causes of ambiguous reforms is that current scholarship on the legal profession in Uzbekistan faces shortage of methodological, theoretical and empirical background. This doctoral dissertation, unlike other analyses on the independence of the legal profession in Uzbekistan that examine the process briefly as a part of other law enforcement authorities, provides scrupulous comparative analysis of the issue to supplement the academia's debate and improve the situation with proper implementation of international experience, taking into account national characteristics.

This research applies a comparative analysis as the main method. The targeted countries are Japan and the USA, which have completely different legal systems and apply distinct attitudes towards understanding of the idea of the legal profession. In Japan, *bengoshi* (lawyers) are considered as servants of society, with the mission to protect human rights and attain social justice. Although Japan has many distinctive characteristics from Uzbekistan, both countries stick to the same legal system and have unitary formation of the state and, most importantly, Japan preserves high autonomy of the legal profession, which can be a role model for Uzbekistan's next stage of reforms. In the USA, on the other hand, attorneys, in the first instance, are loyal to the judiciary, and judges, historically, expected from them good fidelity to the court. American legal system, deriving from the common law and federative foundation, is different from Uzbekistan. However, the USA's experience became an epitome in the recent reforms in the realm of the Uzbek legal profession.

Therefore, the American approach is also of high relevance for this research from the comparative perspective. The research methodology in this dissertation claims to contribute to the enhancement of the weak methodological background of Uzbekistan's scholarship on the legal profession, since the country faces challenges with transparency and accessibility of data and other materials regarding the legal profession's independence.

The structure of this dissertation is divided into five chapters. Chapter I is an introduction, which provides the problem statement, purpose, significance and methodology of the research, theoretical framework, explanation of the main terms used in the paper, and dissertation's structure. Following the introduction, chapter II explains the debates on the types of independence of the legal profession in the academia and forms the theoretical basis for further research. This chapter seeks to analyze two types of independence of lawyers and the bar, based on the subjects of influence towards the profession: independence of lawyers from the society and independence of the legal profession from the state. Chapter III focuses on the terms of society, civil society and legal profession. The chapter starts with brief explanation of the idea of society and proceeds to the main term – civil society. After formation of own comprehension of both terms, the dissertation proceeds to the analysis of the societies in the targeted countries – Uzbekistan, Japan and the USA, and the role of lawyers in these societies. Chapter IV provides research on the independence of the legal profession from the state on the basis of three issues: institutional relations, admission to the profession and disciplinary process. The chapter focuses on the targeted countries, and, in the final section, presents recommendations for the further improvement of the Uzbek legal profession's independence issue as the civic structure, based on the experiences of Japan and the USA. Chapter V concludes the dissertation, states findings, and establishes further possible issues for research outside the scope of this dissertation.