**Nagoya University**

**Graduate School of Law**

**Doctoral Dissertation:**

# INDEPENDENCE OF THE LEGAL PROFESSION AS A CIVIL SOCIETY INSTITUTE IN UZBEKISTAN: COMPARATIVE ANALYSIS WITH JAPAN AND THE USA

**A Dissertation Submitted in Fulfillment of the Requirements for the Degree of Doctor of Laws Course: LL.D. (Comparative Law) Program in Law and Political Science**

**Name of the Student: UMURGAZIN Nursultan Ravil Ogli**

**Student ID Number: 431904044**

**Main Academic Supervisor: Professor FUJIMOTO Akira**

**Sub-Academic Supervisor: Professor COLOMBO Giorgio Fabio**

**Sub-Academic Supervisor: Professor SATO Fumito**

**Date of Submission: June 8, 2022**

**Acknowledgement**

My LL.D. journey has started right before the explosion of COVID-19 pandemic, which brought some obstacles to the field of academia, including my research. However, with the support of my academic advisor professor Akira Fujimoto of the Graduate School of Law at Nagoya University, I managed to accomplish this journey. Professor Fujimoto was always ready to help me whenever I had troubles regarding my research. His reading seminars supplemented me with the solid foundation to form my paper in the right direction.

I would also like to acknowledge my sub-advisors, professor Colombo Giorgio Fabio and professor Sato Fumito, and academic writing team member professor Paul Lege. Without their passionate participation and insightful comments, my study would not have been constructed in the consistent way. My sincere thanks also go to Ms. Tomoe Ogaki for solid organizational support during my studies.

Finally, I must express my very profound gratitude to my beloved family and friends. This achievement would not have been possible without their continuous inspiration and huge support throughout the years of my study. Thank you very much!

**Abstract**

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.

**Table of Contents**

## List of Figures

# Chapter I: Introduction

## Background

The legal profession in Uzbekistan as a civic institution has a long history of subjection from the state. Before the Russian invasion in the second half of the 19th century, Muslim law was the main legal system in the territory of current Uzbekistan, and religious experts supported indigenous people on various legal matters. The Russian empire, after the conquest of the Central Asia, introduced a civil law system to the region and used it in regard to its own nationals, leaving minimal influence on locals in legal matters. This state of affairs gave rise to *jadidism* in Uzbekistan, which was a reformation movement among Muslim intellectuals in Central Asia. They were quite independent from the state and active in promotion of liberal ideas among native people.

However, the 1917 *bolshevik* Revolution brought the working class to power, and they despised the intelligentsia, including Russian advocates and Uzbek *jadids*. The Soviets started a program of the eradication of intellectual and free-thinking people right from the formation of the Soviet Union. The justice authorities gained regulating powers over the legal profession by controlling the bar, conducting admission to the profession, and regulating disciplinary processes. Although the Soviet Union undertook some efforts to reform the legal profession, the idea of alterations was to make advocates observe and strengthen socialism together with the governmental institutions. Thus, during the period of Soviet Uzbekistan, advocates gave priority to the interests of the state rather than to people, which turned the legal profession into a state-like structure, fulfilling political functions.

After Uzbekistan's independence in 1991, the administration of President Karimov, embracing the ideas of neo-liberalism, started a program on gradual transformation from the strong state to the strong civil society. At the first steps of development of the legal profession, the legislature left in place the old-fashioned Soviet system of the legal profession's construction. In 2008, President Karimov tried to broaden the level of the legal profession's independence, but, in fact, the legislature reinterpreted the ideas put forward by the President, and only strengthened control over the legal profession. After the transition of power to President Mirziyoyev in 2016, the whole legal system faced transformation, and, in recent years, the legal profession has experienced some alterations. However, the reforms, although mainly positive, demand more consideration and elaboration.

Thus, whilst the legal profession throughout the history of its development has undergone numerous reformations, the community of advocates is still controlled by the state.

**Structure of the Uzbek Law Professions**

To outline a general understanding about the status of the legal profession in the legal sphere of Uzbekistan, the dissertation provides the following brief explanation of the structure of the law occupations in presidential Uzbekistan. The parliament is the legislative branch, which consists of two chambers and oversees the creation of laws. The judiciary acts impartially maintaining the principle of adversarial nature of the proceedings. This principle is realized in criminal cases between prosecutors and advocates as well as between advocates in civil, commercial, and administrative cases. Nonetheless, in civil, commercial, and administrative cases, prosecutors also appear, but only as observers, supervising over the legality of the proceedings (in all of the cases prosecutors have the right to appeal against decisions of the courts). The Prosecutor's Office is an independent authority with supervision powers over governmental and non-state organizations, subordinated to the president, and operating without influence of the judiciary and the Ministry of Justice. The occupations of prosecutor and judge are the most attractive spheres among law alumni. Uzbekistan's legal system also includes the Ministry of Justice, which is the part of the Cabinet of Ministers, and is the weakest among governmental law professions. The Ministry has the right to guide the activities of advocates. As for the legal profession, according to the legislation, it is a non-governmental and independent institution, headed by the Chamber of Advocates and its territorial bodies. However, in practice, the justice authorities have the right to regulate the activities of the bar. Moreover, from recent years, the legislature also introduced the right of the judiciary to participate in the advocates' disciplinary proceedings, which created more space for the state to manage the legal profession. Thus, the most striking spheres of the state's control levels over the bar and advocates are organizational relations between the bar and the justice authorities, admission to the profession sphere, and the disciplinary domain. Such an approach puts the legal profession in the lowest position among all the law professions in Uzbekistan, and the least attractive sphere for law university graduates. Figure 1 below illustrates the current hierarchy of the law professions in the Uzbek legal domain.

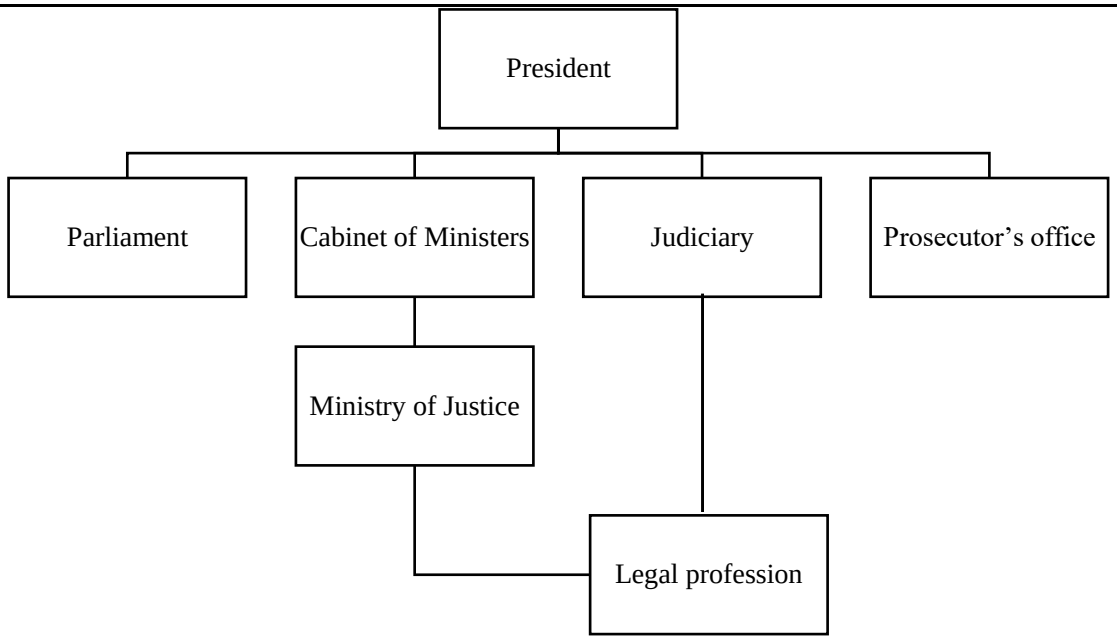


Figure 1: Hierarchy of Law Professions in the Legal Sphere of Uzbekistan.

Source: Created by the Author.

**Problem Statement**

This dissertation analyzes the problem of the independence of the legal profession in Uzbekistan as an institution of the civil society. After Uzbekistan's independence, the legal profession was constructed as a non-governmental, non-commercial institution, with the aim of protecting human rights. However, the state, affected by neo-liberal ideas, pursued the objective of transition from a strong state to a strong civil society. However, the government remained at the first stage of its plan, and created all the foundations for the authority of governmental bodies, leaving independence of the civic square institutions on paper. Therefore, the current advocates' community is inferior to the governmental law professions sphere.

Particularly, the influence of the state on the legal profession is reflected through the following three issues. First, in the organizational domain, the Ministry of Justice has the right to de-facto influence in the appointment process of managing personnel of the Chamber of Advocates. Second, in admission to the professional sphere, the justice authorities have the right to interfere in the whole process. Finally, disciplinary rules are constructed in such a way that allows both the judiciary and the justice authorities to participate in the initiation, examining, and rendering of the decisions. In recent years, the legislature is trying to reform the legal

profession and elaborating a concept for its development, which can cardinally transform the legal domain. However, the reforms lack careful consideration of up-to-date issues, require proper implementation of international experience, and threaten to leave the status and quality of the legal profession in the same underprivileged position.

**Purpose and Significance of the Research**

The purpose of the study is to answer whether Uzbekistan's transitional society with a Soviet past, needs an independent legal profession or the community of advocates and the bar has to be regulated by the state for the sake of the public good. This dissertation views the public good as a professionalism of the legal profession as an independent institution of the civic square, which has declined due to unnecessary obstacles created by the state to ensure its own policies with regard to the civil sphere. The dissertation states that a high level of professionalism can be achieved through the adequate independence of the legal profession. In other words, the legal profession, as an independent civic institution in Uzbekistan, might promote the public good in the transitional society of Uzbekistan.

The significance of the research is conditioned by three factors. First are recent reforms, which started by President Mirziyoyev, and discussions on the *Concept for the Development of the Institution of the Legal Profession* as well as adoption in March 2021 of the *Concept for the Development of the Civil Society in 2021-2025*. The flow of current reforms is positive, however, approach to implementation of international experience as well as careful and sober comprehension of condition of the present Uzbek legal profession are far from ideal. Second is the necessity to enhance the scholarship debates both in Uzbekistan and the international domain with regard to understanding of the legal profession as an institution of civil society. This comprehension of the legal profession could also be applicable in other developing countries as a pattern for enhancing lawyers' status both with in relation to the state and to the society. Finally, Uzbekistan faces lack of accessibility and transparency of data and research regarding the analyzing matter. This dissertation could be the first well-documented paper on the legal profession's independence issue in recent years which includes the analysis of current reforms.

**Methodology of the Research**

The dissertation's main method is comparative analysis. This type of research helps to grasp the essence and content of various legal systems in order to identify common and different legal phenomena. In this context, a comparative approach is a powerful tool in solving legal problems. Japan and the USA were chosen as the main countries of the analysis. Both jurisdictions are completely different, but have research interest for the Uzbek legal profession.

The Japanese model, sophisticated by the unitary system and civil law construction of the state, provides a good example of the relatively high independence of the Japan Federation of Bar Associations (JFBA) and local bars. However, this status of the legal profession was achieved after decades of dependence on the Ministry of Justice. Before adoption of the *Attorney Act* of 1949, the state controlled the bar, admission policies, and disciplinary domains. The 1949 legal act provided solid independence to the bar to conduct its own policy, and control the disciplinary sphere. In terms of admission to the profession, Japan applied a unique approach in uniting the bar examination and apprenticeship system for three professions: judge, prosecutor, and lawyer, which increased the status of the legal profession, and improved the system of checks and balances in the legal realm. Thus, the Japanese experience and its transition from dependence on the Ministry of Justice to adequate autonomy of the bar is of high interest to current research regarding the situation in Uzbekistan.

The American approach to the construction of the legal profession, due to federal system of the country with a common law incline, differs in each state. In general, the community of lawyers in the USA is historically guided by the judiciary, and, in many states, the court has supervision power over state bar associations, as well as disciplinary and admission to the profession domains. The American Bar Association (ABA), being a voluntary organization, spreads its soft power mostly on the composition of model legal ethics rules and legal education guidelines for states. The dissertation analyzes two models, the California admission procedure and the Delaware disciplinary system, both of which are complicated by participation of the judiciary in the process. The American experience with the court's inclusion in the construction of the legal profession is also important for this research since Uzbekistan's legislature in recent years is promoting the American framework of the legal profession.

**Terminology**

To assist the reader with understanding the terms used in this dissertation, the paper provides definitions of the following four main terms. The term advocate refers to an Uzbek citizen with a degree in law and a special license to provide qualified legal assistance to individuals and legal entities, including protection of their interests and rights in preliminary investigations, court, and arbitration. In this dissertation this term is used in the same meaning as the word lawyer. The term legal profession limits its frame to advocates and the bar only, excluding other law professions like judges, prosecutors, or employees of a justice authority. The term advocacy is used in the same meaning as the term legal profession.

**Dissertation's Structure**

The dissertation is divided into five chapters. Chapter I is the introduction, which provides the background of the issue, structure of the Uzbek law professions, problem statement, purpose, significance, and methodology of the research, main terms used in the paper, and the dissertation's structure. Chapter II aims to analyze current debates on the independence of the legal profession issue. The dissertation divides the concept into two domains: independence of lawyers from the society and independence of the legal profession from the state. The first idea includes two subsections: professional independence from clients and from third parties. The second realm implies independence of the legal profession from the justice authorities, the judiciary, and the prosecutor's office. Narrowing down the scope of the analysis, the dissertation moves to Chapter III, which provides research on the conception of the legal profession's independence as an institution of civil society. The chapter starts with the analysis of two broad terms: society and civil society, and forms an understanding regarding both concepts. The second and third sections are devoted to the examination of the civic square and its relation with the legal profession in the targeted countries: Uzbekistan, Japan, and the USA. Chapter IV tackles the issue of the interrelation between the legal profession and the state in the chosen countries in terms of three matters: organizational construction of the bar, admission to the legal profession, and lawyers' discipline, and provides recommendations to improve the current legal profession in Uzbekistan as a civic organization. Chapter V summarizes the paper, provides the results of the research, and establishes further possible topics of analysis outside the scope of this dissertation.

## Chapter II: Types of Independence of the Legal Profession in Contemporary Society

### Introduction

The principle of independence of the legal profession is one of the fundamental tenets which characterizes the legal nature and status of lawyers and the bar. The *Basic Principles on the Role of Lawyers* state that "adequate protection of the human rights and fundamental freedoms … requires that all persons have effective access to legal services provided by an independent legal profession."[1] The independence of lawyers and the bar, in turn, is ensured by certain criteria, which identify the nature of the principle. These, as the *Basic Principles* suggest, include effective and equal access to lawyers and legal services, special safeguards in criminal justice matters, appropriate education and training processes, due level of honor and dignity, freedom of expression, the right to form and join to self-governing professional associations, and proper disciplinary proceedings.[2]

The International Bar Association (IBA) in its *International Principles on Conduct for the Legal Profession* provides the following general description of the legal profession's independence:

> A lawyer shall maintain independence and be afforded the protection such independence offers in giving clients unbiased advice and representation. A lawyer shall exercise independent, unbiased professional judgment in advising a client, including as to the likelihood of success of the client's case.[3]

Explaining the meaning of the abovementioned statement, the IBA reckons that independence of the legal profession is maintained by an "absence of improper conflicting self-interest, undue external influences or any concern which may interfere with a client's best interest or the lawyer's professional judgment."[4] The other important components of the independence picture, from the IBA's standpoint, are the proper process for the

[1] Basic Principles on the Role of Lawyers. Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, from August 27 to September 7, 1990. Accessed on August 24, 2020, https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx.
[2] Ibid.
[3] International Principles on Conduct for the Legal Profession. Adopted by the International Bar Association on May 28, 2011. Accessed on August 24, 2020, https://www.ibanet.org/Document/Default.aspx?DocumentUid=1730FC33-6D70-4469-9B9D-8A12C319468C, Sec. 1.1., p. 12.
[4] Ibid, sec. 1.2., p. 12-13.

lawyer's admission to the bar, due disciplinary proceedings, and appropriate professional supervision in general.[5]

Analysis of the international standards for the activities of the legal profession shows that the principle of independence is indispensable and countries must ensure effective application of this tenet, so that lawyers can duly protect humans' and legal entities' rights and interests, and the bars are given appropriate strength to maintain the independence of legal professionals. However, international organizations and scholars stand for various ideas and understandings with regards to the meaning of this concept. To exclude ambiguous understanding of the legal profession's independence concept, this chapter seeks to analyze two types of independence of the legal profession using a comparative analysis of three countries: Uzbekistan, Japan, and the USA. The types include independence of lawyers from the society and independence of the legal profession from the state. The importance of addressing the issue from various angles is conditioned by the necessity to identify different approaches to the meaning of the legal profession's independence concept in the targeted countries and the core problems with regard to the matter in Uzbekistan. The last section of this chapter concludes the discussions and provides the basis for analysis in further chapters.

[5] Ibid.

### 2.1 Independence of lawyers from society

Independence of lawyers from the society is used in two conflicting, but in some cases complementary ways.[6] First is professional independence from clients, which refers to objectivity, abstraction, or something material (state of mind). The second way of operating of the term is the independence from third parties. This implies the independence of lawyers from influences of outside the lawyer-client relationships, which may undermine lawyers' faithfulness to clients.

#### 2.1.1 Independence of lawyers from clients

Lawyers' independence from clients implies that a lawyer acts in accordance with his own professional discretion in protecting the rights of his clients, even if the way of providing legal services is disapproved by a client. In other words, a lawyer is supposed to give advice based on the client's interests as a member of the society, rather than on the grounds of a client's optimum financial interest.

A story of Abraham Lincoln clearly illustrates this concept in action in the mid 19th century USA. In his Springfield law practice, Lincoln once said to a client:

> We can doubtless gain your case for you; we can set a whole neighborhood at loggerheads; we can distress a widowed mother and her six fatherless children, and thereby get for you six hundred dollars to which you seem to have a legal claim, but which rightfully belongs, it appears to us, as much to the woman and children as it does to you. We will not take your case, but we will give you a little advice, for which we will charge you nothing. You seem to be a sprightly, energetic man. We would advise you to try your hand at making six hundred dollars in some other way.[7]

The optimum choice for Lincoln was to take and win the case to get a decent amount of money, but in fact, he lost a fee and, probably, the client. However, he advised the patron according to his professional independence, which benefited the society as a whole, but not the client personally.

Contemporary lawyers, use the story as an example of civic teaching.[8] For example, Russell Pearce and

---

[6] Bruce A. Green, "Lawyers' Professional Independence: Overrated or Undervalued?" *Akron Law Review* Vol. 46, No. 599 (2013): 607-608.
[7] David Luban, "The Lysistratian Prerogative: A Response to Stephen Pepper," *American Bar Foundation Research Journal* Vol. 11, No. 4 (1986): 637.
[8] Bruce A. Green, Russell Pearce, "Public Service Must Begin at Home: The Lawyer as Civics Teacher in Everyday Practice," *William and Mary Law Review* Vol. 50, issue. 4 (2009): 1207-1238.

Bruce Green, by Lincoln's story imply that:

> When lawyers counsel clients about their legal rights and obligations, and about how to act within the framework of the law, lawyers invariably teach clients not only about the law and legal institutions, but also, . . . about rights and obligations in a civil society that may not be established by enforceable law-including ideas about fair dealing, respect for others, and, generally, concern for the public good.[9]

Others also advocate similar positions. Robert Gordon, for example, asserts that independence in advising clients is a "purposive lawyering or public-minded counseling."[10] William Allen, analyzing lawyers' professional independence from clients, states that "the duty of independence," when it comes to advising clients about obedience to the law, means "the lawyer's duty to the legal system and to the substantive values it incorporates."[11]

Finally, a lawyer must decline representing the client if the latter pursues not so much illegal, but rather socially dishonorable goals. In other words, a lawyer has latitude to cancel a client's representation, when his view of an outcome of a case conflicts with the client's standpoint, or the patron seeks unsocial goals.[12] However, this way of representation stoppage has its opponents. The idea is that a lawyer should not give up any case, because otherwise he becomes a judge who condemns even before the verdict. Back in 1898, a Belgian lawyer, Edmond Picard, noted that it is professionally dishonest for a lawyer to avoid dangers, and seeking a better client.[13] In his legal practice, he was of an opinion that "clients' appeal to us is not a request, but a demand, from which we can only evade when it is obvious that legal support and a dispute over their claims are impossible."[14] Thus, a lawyer should not perform the functions of a court, defining the morality and ethics of a client's position. In the former Soviet Union states, the constitutions of many countries have enshrined that "everyone shall be guaranteed the right to qualified legal assistance,"[15] and it is not a lawyer who decides when to deprive this right. The

---

[9] Ibid, 1212.
[10] Robert W. Gordon, "The Independence of Lawyers," *Boston University Law Review* Vol. 68 (1988), 33.
[11] William T. Allen, "Corporate Governance and a Business Lawyer's Duty of Independence," *Suffolk University Law Review* Vol. 38 (2004), 3.
[12] Bruce A. Green, "Lawyers' Professional Independence: Overrated or Undervalued?", 612.
[13] Edmond Picard, "Paradoxe sur l'avocat" [Paradox of Advocate] [Об Адвокате (Парадокс)] Russian language translation from French language by M. Quetritz, *Высочайш. Утверж. Товарищ.* (1898).
[14] Ibid, 82.
[15] Constitution of Kazakhstan (Конституция Республики Казахстан), 1995. Accessed on August 26, 2020 https://online.zakon.kz/document/?doc_id=1005029, art. 13; Constitution of Uzbekistan (Конституция Узбекистана), 1992. Accessed August 26, 2020 http://www.lex.uz/acts/35869, art. 116; Constitution of the Russian Federation (Конституция Российской Федерации), 1993. Accessed August 26, 2020 http://www.consultant.ru/document/cons_doc_LAW_28399/, art. 48; Constitution of Belarus (Конституция

drawback of this idea is that a lawyer may disagree with a client on various issues, which can lead to undue protection of client's rights and, as a result, may negatively affect the outcome of a case.

The difference in the understanding of the independence of a lawyer from a client is conditioned by various approaches to the structure of the legal profession in the developed countries and post-Soviet states. The ABA *Model Rules of Professional Conduct* (1983), which supports the idea of independence of lawyers from clients, focuses on mandatory defined candid advice and broad-mindedness of lawyers on discretionary basis. Particularly, the Rule 2.1. states:

> In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.[16]

The *Model Rules* also provide lawyers room to stop a client's defense if the viewpoints of a lawyer and a client conflict on the flow of the case, or if client's goals are, maybe lawful, but unsocial. To be more specific, the *Model Rules* provide that "a lawyer may withdraw from representing a client if the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement."[17] The lawyer's discretion to disclose confidential information about a client, stay limited after withdrawal.[18]

The European model is similar to America's structure of lawyers' professional independence. The Council of Bars and Law Societies of Europe (CCBE) in its *Charter of Core Principles of the European Legal Profession* (2006), defined that "a lawyer needs to be free – politically, economically and intellectually – in pursuing his or her activities of advising and representing the client. This means that … the lawyer must also remain independent of his or her own client if the lawyer is to enjoy the trust of third parties and the courts."[19] The *Charter* also states that "without this independence from the client there can be no guarantee of the quality

---

Республики Беларусь), 1994. Accessed August 26, 2020 https://pravo.by/pravovaya-informatsiya/normativnye-dokumenty/konstitutsiya-respubliki-belarus/, art. 62; Constitution of Tajikistan (Конституция Таджикистана), 1994. Accessed August 26, 2020 http://prokuratura.tj/ru/legislation/the-constitution-of-the-republic-of-tajikistan.html, art. 92.

[16] Model Rules of Professional Conduct. Adopted by American Bar Association in 1983. Accessed on August 27, 2020 https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/.

[17] Ibid, r. 1.16. (b) (4).

[18] Ibid, r. 1.6. (b).

[19] Charter of Core Principles of the European Legal Profession. Adopted by The Council of Bars and Law Societies of Europe on November 24, 2006. Accessed on August 27, 2020 https://www.ccbe.eu/NTCdocument/EN_CCBE_CoCpdf1_1382973057.pdf, principle (a).

of the lawyer's work."[20] At the same time, in case of interests'conflict between a client and a lawyer, both before and in the process of advising a client, a lawyer must stop representation,[21] and the lawyer's duty to respect client's confidentiality remains after he ceased to act for a client.[22]

In Japan, similarly to the American and European approaches, the *Basic Rules on the Duties of Practicing Attorneys* (2004) defined that a *bengoshi* (lawyer) must try to uphold his own independence from a client's position with regard to a case.[23] If a lawyer loses a client's trust and there are no options to rehabilitate it, the lawyer must trigger a resignation procedure,[24] and even after the resignation, the *bengoshi* must respect the client's confidentiality.[25]

In the post-Soviet countries, the idea of the advocates' professional independence from clients is similar to the American, European, and Japanese models, but advocates' latitude to terminate a client's representation is narrowed down (close to Picard's idea). In Uzbekistan for example, as a general rule, an advocate has no right to decline representation of a client in criminal proceedings, unless the latter releases the advocate.[26] There are certain cases when an advocate has to refuse or cease a representation, but none of the instances falls into the right of an advocate to stop the defense if a client is pursuing anti-social goals or viewpoints regarding the case of a client and an advocate are different radically.[27] Similarly, in the Russian Federation an advocate has no right to refuse an accepting of defense.[28] Moreover, an advocate is not allowed to take a position different from the position of his client, which implies that all the actions of an advocate have to be in accordance with the viewpoint of an advisee.[29]

---

[20] Ibid.
[21] Ibid, principle (c).
[22] Ibid, principle (b).
[23] Basic Rules on the Duties of Practicing Attorneys (弁護士職務基本規程). Adopted by Japan Federation of Bar Associations (日本弁護士連合会) on November 10, 2004 (Rule No. 70). Accessed on August 27, 2020 https://www.nichibenren.or.jp/library/en/about/data/basic_rules.pdf, art. 20.
[24] Ibid, art. 43.
[25] Ibid, art. 23.
[26] Law of Uzbekistan "On Advocacy" (Закон Узбекистана «Об Адвокатуре») 1996. Accessed on August 28, 2020 http://www.lex.uz/acts/58372, art. 7, par. 3.
[27] Ibid, art. 7, par 2.
[28] Federal Law of the Russian Federation "On Advocatory Activity and Advocacy" (Федеральный Закон Российской Федерации «Об Адвокатской Деятельности и Адвокатуре в Российской Федерации») 2002. Accessed on August 28, 2020 http://www.consultant.ru/document/cons_doc_LAW_36945/, art. 6 (4) (6).
[29] Ibid, art. 6 (4) (3).

In sum, although advocates of some of the Commonwealth of Independent States' countries have to keep confidentiality with regard to their clients even after their representation stops,[30] legal service providers have only narrower room to decline representation compared to the American, European and Japanese models. Thus, the independence of lawyers from clients, having similarities and differences in comprehension of its meaning in various countries, still implies the provision of a proper and unbiased defense of a client's interests.

### 2.1.2 Independence of lawyers from third parties

The professional independence of lawyers from third parties (the general public) also plays an important role in ensuring the proper protection of clients' rights and ensuring public good. A story of John Adams, American statesman and lawyer, who represented British soldiers after the massacre in Boston in the second half of the 18th century, is a good example of this type of independence.[31]

In 1770, a group of people surrounded and accosted eight British soldiers. The crowd struck soldiers with snowballs, stones, and other objects and the soldiers, in the chaos, opened fire on the crowd, killing five people and bringing about the infamous Boston massacre.[32] Adams considered it his professional duty to defend soldiers. David McCullough, an American historian, narrating the biography of Adams, described that "Adams was firm in the belief … that no man in a free country should be denied the right to counsel and a fair trial."[33] Adams, showing his professional performance, stood for the position that the soldiers' actions were self-defense, and managed to get an acquittal of six of the servicemen, and the other two, who had fired into the people, were convicted of manslaughter, instead of a murder.[34]

The situation of Adams defending the soldiers became the epitome of a lawyer's responsibility to defend

[30] Law of Uzbekistan "On Advocacy". Accessed on August 28, 2020 http://www.lex.uz/acts/58372, art. 9; Federal Law of the Russian Federation "On Advocatory Activity and Advocacy". Accessed on August 28, 2020 http://www.consultant.ru/document/cons_doc_LAW_36945/, art. 8; Law of Kazakhstan "On Advocacy and Legal Assistance". Accessed on August 28, 2020 https://online.zakon.kz/document/?doc_id=33024087, art. 37.
[31] Robert S. Alexander, "The History of the Law as an Independent Profession and the Present English System," *The Forum* Vol. 19, No. 2 (1984): 199.
[32] John Adams and the Boston Massacre Trials. Constitutional Rights Foundation, 2012. Accessed on August 30, 2020 https://www.crf-usa.org/images/pdf/JohnAdamsandtheBostonMassacreTrials.
[33] David McCullough, John Adams, (Simon and Schuster, 2001), 66.
[34] Ibid, 67.

ostracized people.[35] In other words, the case reflected the idea of the professional independence of lawyers from the general public. The concept implies not only professional conduct to take and handle these issues, but also professional character "to defy self-interest and outside pressures, including from friends and members of their community, which would deter them from fulfilling their sense of professional duty to clients and to the public."[36]

Lawyers are members of society, and different societies, to a greater or lesser extent, affect their activity, especially in cases that attract high public attention. The influence from the public differs, based on various factors: economic and political stability, political orientation of a state, religious factors, the role of a lawyer's profession in the society, and interaction of lawyers with governmental authorities. Therefore, in order to understand the full picture of the legal profession's interaction with clients and the general public, there is an importance to analyze professional independence in the context of the legal profession's existence and role in a particular society.

[35] For further research works, see Mark Brodin, "What One Lawyer Can Do for Society: Lessons from the Remarkable Career of William P. Homans Jr.," *New England Law Review* Vol. 46, No 1 (2011): 37-63; Laurel E. Fletcher, "Defending the Rule of Law: Reconceptualizing Guantanamo Habeas Attorneys," *Connecticut Law Review* Vol, 44, (2012): 617-673; Margaret Tarkington, "A First Amendment Theory for Protecting Attorney Speech," *U.C. Davis Law Review* Vol. 45, Issue 1 (2011): 27-102.
[36] Green, "Lawyers' Professional Independence: Overrated or Undervalued?", 615.

## 2.2 Independence of the legal profession from the state

The legal profession as an institution of the society has nothing to do with state bodies. At the same time, lawyers and the bar have governmental functions which make them distinct from other institutions of civil society. Since it has such a specific role, the legal profession has to be independent from state bodies to an adequate extent. In other words, the independence of the legal profession as a part of the society should be ensured by the construction and functioning of laws in a way that governmental bodies are not allowed to interfere with the activities of lawyers and the bar. This section analyzes the interrelation of the legal profession with various state authorities. Depending on states, governmental bodies have different powers and levels of influence on the bar and lawyers. State organs mentioned in this section are considered as part of the justice system in many countries, and frequently interact with the legal profession and have more potential space to exert pressure on the bar and lawyers.

First are justice authorities, which in some countries, especially with socialist incline, have serious powers to guide and paternalize the legal profession.[37] Second is the court that, in some jurisdictions, play a vital role in the construction of the legal profession. For example, in the USA, judges historically expected from lawyers "good fidelity to the court" and the latter were to preserve judicial independence.[38] Finally, the prosecutor's office can also affect the in-court activity of lawyers by possessing more powers to get opportune for public prosecution decisions. This inequality is noticeably expressed in the countries with inquisitorial judicial systems (Japan in the first half of the 20th century[39], post-Soviet states[40]).

---

[37] Independence of the Legal Profession in Central Asia. Adopted by the International Commission of Jurists in 2013. Accessed on September 1, 2020 https://www.icj.org/wp-content/uploads/2013/09/Independence-of-the-Legal-Profession-in-CA-Eng.pdf.; Susan Carle et al., "The Reform of the Russian Legal Profession: Three Varying Perspectives," *Fordham International Law Journal* Vol. 42, issue 2 (2018): 271-323.

[38] Bruce A. Green, "The Lawyer's Role in a Contemporary Democracy, Foreword." Fordham Law Review Vol. 77 (2009): 1240.

[39] Richard W. Rabinowitz, "The Historical Development of the Japanese Bar," *Harvard Law Review* 70, no. 1 (1956): 61-81.

[40] Sid Yanyshev (Сид Янышев), Decorative Protection: Advocates of Uzbekistan – About the Upcoming Reform, Their Current Status and Position in the Courts [Декоративная Защита: Адвокаты Узбекистана – о Предстоящей Реформе, Своем Нынешнем Статусе и Положении в Судах], Fergana News, May 8, 2020. Accessed on September 1, 2020 https://fergana.news/articles/117877/; Legal Policy Research Center (Центр Исследования Правовой Политики). Analysis of Some Provisions of the Draft Law of the Republic of Kazakhstan "On Advocacy and Legal Assistance", 2018. Accessed on September 1, 2020 https://online.zakon.kz/Document/?doc_id=34734809#pos=2;-101.; Gurbanov Ramin (Гурбанов Рамин),

### 2.2.1 Independence of the legal profession from justice authorities

The Ministry of Justice, especially in socialist-orientated countries, possesses wide powers to influence the activities of the bar and lawyers, though the Ministry itself is not considered a strong state body with regards to other governmental authorities. For example, control over the legal profession by the justice authorities in the post-Soviet countries was formed during the early stages of the foundation of the Soviet legal system (1917 onwards). Political leaders of the Soviet Union, prioritizing the working class, expressed personal hostility towards the legal profession, which enjoyed the attributes of independence, freethinking, intelligence, and high spiritual culture. Advocates of the Tsarist period undoubtedly were seen as a "relic of the bourgeois past", who were to be fought and "burnt out like a hydra."[41] The revolutionary-minded soldiers, sailors and workers who received the reins of power, saw the legal profession as unnecessary "trash for the revolution."[42]

Well-known words of Vladimir Lenin, belong to the same series of unseemly judgments about the legal profession: "The lawyer must be taken with an iron fist, and put in a state of siege, since these people often play dirty."[43] Lenin's words for all generations of Bolshevik-communists had always been an indisputable testament of "correct" behavior, regardless of the place, time and circumstances under which such behests were born. Acting precisely on this mandate, in 1929 Andrei Vyshinsky, a prominent Soviet statesman, branded the legal profession as "the brightest counter-revolutionary class."[44] Thus, after the Russian Revolution of 1917, a negative attitude towards advocates spread to the public, which lasted throughout the entire period of the Soviet Union. Like many of the Soviet intelligentsia, lawyers were repressed, humiliated by their dependence on the party and the Ministry of Justice, and the voice of an advocates in defense of human and civil rights was drowned in every possible way.

---

Prosecutor's Office and the Advocacy in the Post-Soviet Countries: Comparative Legal Analysis [Прокуратура и Адвокатура в Постсоветских Странах: Сравнительно-Правовой Анализ], *Business in Law Journal* No. 3 (2015): 194-197.

[41] Demidova Lyubov (Демидова Любовь), Advocacy in Russia [Адвокатура в России], (Justicinform, 2006), 62.

[42] Ibid.

[43] Vladimir Lenin (Владимир Ленин), Full Composition of Writings [Полное Собрание Сочинений] Vol. 9, (Political Literature Publisher 1969), 171.

[44] Andrei Vyshinsky (Андрей Вышинский), Encyclopedia of State and Law [Энциклопедия государства и права] Vol. 1, (Soviet Encyclopedia, 1929), 40.

The Ministries of Justice on federal and regional levels, as well as their local branches, exercised general guidance over the activities of the bar. The licensing and disciplinary processes regarding lawyers also went through the supervision of the justice authorities.[45] In other words, there was a priority of state concern over the interests of an individual, which put a lawyer in a subordinate position to the state. Lawyers were obliged to "serve socialist justice and strengthen socialist legality", which turned them into people in the service of the state.[46]

After gaining independence in early 1990s, the post-Soviet states started to make attempts to liberalize the legal system and give a higher status to the bar and advocates. Many of the countries established that the legal profession is an independent institution,[47] although there was still severe dependence on the justice authorities in various aspects. In recent years, in connection with the sore problems in legal systems of the former Soviet Union states, the countries started heated discussions regarding the legal profession and its independence from the Ministry of Justice, especially in the Central Asian region. For example, in 2018, Kazakhstan, the Central Asian legal trendsetter, adopted a new legal act called the Law *On Advocacy and Legal Assistance* which regulated the legal profession domain.[48] Another role model of Central Asia, Uzbekistan, after Shavkat Mirziyoyev came into power in 2016, started massive work on the reconsideration of the legal profession, which is still continuing now.[49] In spite of positive incline of these reforms, they still give rise to doubt their

[45] Umida Tukhtasheva (Умида Тухташева) et al., Judicial and Law-Enforcement Authorities [Судебные и Правоохранительные Органы], (Tashkent State Institute of Law, 2009), 401-405.
[46] Victor Burobin (Виктор Буробин), Advocate's Activity [Адвокатская деятельность], (Statute, 2005), 19.
[47] Law of Uzbekistan "On Advocacy". Accessed on September 3, 2020 http://www.lex.uz/acts/58372, art. 1; Federal Law of the Russian Federation "On Advocatory Activity and Advocacy". Accessed on September 3, 2020 http://www.consultant.ru/document/cons_doc_LAW_36945/, art. 3; Law of Kazakhstan "On Advocacy" (Закон Казахстана «Об Адвокатской Деятельности») 1997. Accessed on September 3, 2020, https://online.zakon.kz/document/?doc_id=1008408, art. 3. Expired on 05.07.2018 with the adoption of a new Law "On Advocacy and Legal Assistance".
[48] Law of Kazakhstan "On Advocacy and Legal Assistance". Accessed on September 3, 2020 https://online.zakon.kz/document/?doc_id=33024087
[49] Strategy of Actions on the Five Priority Directions of Development of the Republic of Uzbekistan in 2017-2021 (Стратегия Действий по Пяти Приоритетным Направлениям Развития Республики Узбекистан в 2017-2021 годах) 2017. Accessed on September 3, 2020 http://www.lex.uz/ru/docs/3107042; Decree of the President of Uzbekistan "On Development of Effectiveness of the Institution of Advocacy and Broadening of Advocates' Independence" (Указ Президента Узбекистана «О Мерах по Коренному Повышению Эффективности Института Адвокатуры и Расширению Независимости Адвокатов») 2018. Accessed on September 3, 2020, http://lex.uz/docs/3731058; Decree of the President of Uzbekistan "On Additional Measures to Ensure the Rule of the Constitution and the Laws, Strengthening Public Control in Legal Sphere, as well as Improving of Legal Culture in Society" (Постановление Президента Республики Узбекистан «О Дополнительных Мерах по Обеспечению Верховенства Конституции и рагона, Усилению Общественного Контроля в Данном Направлении, а Также

effectiveness among scholars, lawyers and international community.[50]

In sum, lawyers in the Soviet Union were placed under the control of the administrative organs, which made them state-like employees. Over the whole period of Soviet rule, the justice authorities thoroughly supervised the legal profession and demeaned its status. After independence, the post-Soviet countries provided more independence to the legal profession. However, there are still acute issues between the interaction of the legal profession and justice authorities, including in Uzbekistan.

As for Japan, the country also faced the same problems with control from the Ministry of Justice over the activities of the legal profession.[51] The situation changed after the adoption of current *Attorney Act* in 1949.[52] The new law allowed the legal profession significant independence from all governmental authorities. Due to the reform of 1949, the newly established JFBA, a non-governmental institution for Japanese lawyers, became free from government supervision and transformed into one of the world's most independent bar associations. In this regard, former President of JFBA, Kazumasa Kuboi, stated that the "reason *bengoshi* have gained the faith of citizens after World War II and have been recognized as an important profession in society lies in the guarantee of their independence".[53]

---

Повышению Правовой Культуры в Обществе»), 2019, Accessed on September 3, 2020, https://lex.uz/ru/docs/4647340.

[50] Daniyar Kanafin (Данияр Канафин), On the Issue of Independence of the Legal Profession and Development of Guarantees for advocacy [К Вопросу о Независимости Адвокатуры и Развитию Гарантий Адвокатской Деятельности], International scientific and practical conference "Advocacy 2018", Almaty, June 20, 2018, Accessed on September 3, 2020 http://advokatura.kz/k-voprosu-o-nezavisimosti-advokatury-i-razvitiyu-garantij-advokatskoj-deyatelnosti/#_ftn2; Sid Yanyshev, Decorative Protection: Advocates of Uzbekistan – About the Upcoming Reform, Their Current Status and Position in the Courts. Accessed on September 3, 2020 https://fergana.news/articles/117877/; Anonymous advocate, "The Advocate's Curse," Internet Newspaper Uzmetronom, April 26, 2020. Accessed on September 3, 2020 https://www.uzmetronom.com/2020/04/26/prokljatie-advokata.html.

[51] Edward I. Chen, "The National Law Examination of Japan." *Journal of Legal Education* 39, no. 1 (1989): 1-26; Richard W. Rabinowitz, "The Historical Development of the Japanese Bar.": 61–81.

[52] Attorney Act of Japan [弁護士法] (1949). Accessed on March 12, 2019, http://www.japaneselawtranslation.go.jp/law/detail/?id=1878&vm=04&re=02.

[53] Kazumasa Kuboi "Legal Ethics, Public Interest Activities and Independence of Lawyers. Moving Towards a Uniform Code of Conduct for the Legal Profession in Asia" (paper presented at the 12th POLA Conference Christchurch, New Zealand, October 8, 2001). Accessed April 27, 2019 https://www.nichibenren.or.jp/library/en/document/data/HI_031_PS_12thPOLA2.pdf.

### 2.2.2 Independence of the legal profession from the judiciary

The issue of independence of the legal profession from the judiciary is the concept typical to the countries, in which the bar and lawyers have stronger interplay with the judiciary. In other words, the judiciary can spread its powers over the bar and its lawyers not only inside of the courtroom, but also outside the judicial proceedings, for example, in lawyers' disciplinary process domain. The USA is a model of the strong connection between the legal profession and the judiciary. There is an idea that self-regulation of the American bar is a myth.[54] Another point of view is that although the concept of lawyers' professional independence from the judiciary in the USA is weaker than in other countries, still, such an approach is more favorable than dependence of lawyers on executive or legislative branches.[55]

The ABA *Model Rules of Professional Conduct* established that "the legal profession holds relative autonomy", but with "special responsibilities of self-government."[56] Historically, judges expected from lawyers "good fidelity to the court" and the latter were to preserve judicial independence.[57] The idea of the construction of the legal profession in this way was necessary "for the observance of that trust, courtesy, and respect, which is indispensable to the safe and orderly administration of justice."[58] In this regard, Bruce Green stated that if "judiciary is subject to outside pressure from other government branches, then the judiciary may not be in a position to insulate the bar and professional regulation."[59] Former New York City bar President Evan Davis, shared the following idea regarding the legal profession's independence:

> In my opinion, it is very important for the bar to be independent of the political branches of government. It has not been a problem that in the United States the bar has come to be regulated by the judiciary because of the judiciary's own neutrality; it would be a huge problem if the bar were regulated by the Department of Justice or by the various elected or appointed state attorneys general. It would be much harder to resist either gentle or firm governmental pressure if the government's lawyers decided how the bar in general or you, as an attorney, in particular, should behave.[60]

---

[54] Fred C. Zacharias, "The Myth of Self-Regulation." *Minnesota Law Review* Vol. 93 (2009): 1147-1190.
[55] Bruce A. Green, "Lawyers' Professional Independence: Overrated or Undervalued?", 606.
[56] Model Rules of Professional Conduct. Preamble [12]. Accessed on September 10, 2020 https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/.
[57] Green, "The Lawyer's Role in a Contemporary Democracy, Foreword.": 1240.
[58] Ibid.
[59] Green, "Lawyers' Professional Independence: Overrated or Undervalued?": 607.
[60] Evan A. Davis, "The Meaning of Professional Independence.": 1290-1291.

However, it does not mean that there have not been any conflicts between lawyers and the judiciary over the independence of the former. The disputes between lawyers and judges have three directions: lawyers' out of court criticism of the judiciary, lawyers' disobedience with orders of the judiciary, and lawyer's self-standing resolution of the questions related to ethics matters.[61]

Supreme Court of Pennsylvania Chief Justice George Sharswood's decision (1880) *ex parte Steinman and Hensel* reflects an example of the first point of conflict between the legal profession and the judiciary, that of extrajudicial criticism of the judiciary.[62] According to this case, two lawyers were in charge of a newspaper that printed an article about a case in which a statesperson was acquitted. The position of the column was that absolution had been supported by a corruption of the justice system to serve the demands of the Republican Party (the ruling party in the USA at that period). The trial court considered the article as a violation of the lawyers' loyalty to the judiciary and dismissed them from the bar. Later, the upper court concluded the opposite. In this regard, Chief Justice Sharswood asserted:

> It is now the right and the duty of a lawyer to bring to the notice of the people who elect the judges every instance of what he believes to be corruption or partisanship. No class of the community ought to be allowed freer scope in the expression or publication of opinions as to the capacity, impartiality or integrity of judges than members of the bar. They have the best opportunities of observing and forming a correct judgment. They are in constant attendance on the courts. Hundreds of those who are called on to vote never enter a court-house, or if they do, it is only at intervals as jurors, witnesses or parties. To say that an attorney can only act or speak on this subject under liability to be called to account and to be deprived of his profession and livelihood by the very judge or judges whom he may consider it his duty to attack and expose, is a position too monstrous to be entertained for a moment under our present system.[63]

The second point of dispute between two professions: lawyers' disobedience of court orders, arises, when a lawyer considers a decision of a judge in the courtroom as incorrect. The usual discretion in such a situation is that a lawyer must obey a judge out of respect to the court.[64] However, there are cases when a lawyer, supporting his own independent judgment, refuses to follow the court's orders. If such a matter arises, there is a problem of the bar's choice to follow either a lawyer or the judiciary. Moreover, since in the USA lawyers are seen as "officers of the court", such a state of affairs can build tension between two professions. An example of

[61] Green, "Lawyers' Professional Independence: Overrated or Undervalued?": 621-638.
[62] Ex parte Steinman and Hensel, 95 Pa. 220, (1880).
[63] Ibid, 238-39.
[64] John R.B. Palmer, "Collateral Bar and Contempt: Challenging a Court Order After Disobeying It," *Cornell Law Review* Vol. 88 (2002): 238.

this problem is the case of *Maness versus Meyers*, where the Supreme Court of the USA addressed the matter of whether a lawyer was violating the court's rules by supporting a clientele to defy an order of a judge, implying that this order was breaching the right to resist self-incrimination.[65] The court started the argumentation that people have to follow orders of the court: "We begin with the basic proposition that all orders and judgments of courts must be complied with promptly. If a person to whom a court directs an order believes that order is incorrect the remedy is to appeal, but, absent a stay, he must comply promptly with the order pending appeal."[66] However, right after, the court recognized that in some cases a party can disobey with an order, namely if an order contradicts with a legal or constitutional privilege (right against self-incrimination is also the part of this privilege).[67] As for the lawyer, the court admitted that the advice to the client to disregard the court's ruling was made in good faith and, although the appellate court supported the trial court's position, the Supreme Court decided that punishing the lawyer would infringe upon the principle of lawyers' professional independence:

> The assertion of a testimonial privilege, as of many other rights, often depends upon legal advice from someone who is trained and skilled in the subject matter, and who may offer a more objective opinion. … If performance of a lawyer's duty to advise a client that a privilege is available exposes a lawyer to the threat of contempt for giving honest advice it is hardly debatable that some advocates may lose their zeal for forthrightness and independence.[68]

The third direction of conflict between the judiciary and the legal profession is a lawyer's self-standing resolution of ethics questions. This idea implies that lawyers must have maximum room to resolve difficult ethics issues for themselves, even if they seem to violate the disciplinary rules. Staples Hughes, a North Carolina lawyer, is an example of such case.[69] In the mid-1980s, he represented a man, whose name was Cashwell, in a murder case.[70] Cashwell persuasively told Hughes that he was the only person that was responsible for murders (there were also two other defendants in the case). Later the lawyer's client was convicted to a life sentence. Another defender (Hunt) asked Cashwell to testify *ex parte* Hunt, but on the advice of Hughes, Cashwell availed his Fifth Amendment right, and Hunt was sentenced. After some time in prison, Cashwell committed suicide and Hughes

[65] Maness v. Meyers, 419 U.S. 449 (1975).
[66] Ibid, 458-459.
[67] Ibid, 460.
[68] Ibid, 466.
[69] Titan Barksdale, "Lawyer's Revelation of Confession May Ruin Him" *News & Observer*, November 27, 2007. Accessed on September 14, 2020 https://legalethicsforum.typepad.com/blog/2007/11/confidentiality.html
[70] Adam Liptak, "When Law Prevents Righting a Wrong," *New York Times*, May 4, 2008. Accessed on September 14, 2020 https://www.nytimes.com/2008/05/04/weekinreview/04liptak.html

decided to reveal Cashwell's confession to help Hunt. However, a presiding judge considered this decision a violation of the confidentiality obligation of Hughes's deceased client and warned Hughes that if he testified, the judge would refer it to disciplinary bodies. Nevertheless, Hughes decided to attest, which contradicted the ethics rules and the judge's warning, but the disciplinary authority, after examining the issue, came to the decision not to initiate the disciplinary process.[71]

In sum, despite historical precedents, favoring the right of lawyers to criticize and oppose judges, there is a room to assert that the legal profession in the USA acts as a structure, significantly related to the judiciary. Thus, the ABA *Model Rules of Professional Conduct* established rule 8.2. that formulated:

> A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.[72]

In recent years, Uzbekistan has implemented the American approach, by revising the disciplinary system with the judiciary involvement in the process.[73] In the American model, the legal profession, relying on the court, implies that the judiciary is neutral and impartial from the other state branches, the legislative and the executive. However, Uzbekistan is in the process of providing judges with true independence from the other powers. The following chapters of this dissertation provide scrupulous analysis regarding this topic, and potential advantages and drawbacks of this approach.

---

[71] James E. Molitemo, "Rectifying Wrongful Convictions: May a Lawyer Reveal Her Client's Confidences to Rectify the Wrongful Conviction of Another," *Hastings Constitutional Law Quarterly* Vol. 38, No. 4 (2011): 820-21.

[72] Model Rules of Professional Conduct. Accessed on September 14, 2020 https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/.

[73] Law of Uzbekistan "On Amendments of Some Legislative Acts of the Republic of Uzbekistan due to the Improvement of the System of Legal Assistance and Legal Services" (Закон Республики Узбекистан «О Внесении Изменений и Дополнений в Некоторые Законодательные Акты Республики Узбекистан в Связи с Совершенствованием Системы Оказания Юридической Помощи и Правовых Услуг») 2018. Accessed on September 14, 2020, http://www.lex.uz/acts/3977634.

### 2.2.3 Independence of lawyers from the prosecutor's office

The prosecution bodies of the United States[74] and Japan[75] have one important common characterisic: the prosecutor's office acts as a part of the executive branches. In turn, in some post-Soviet states, in particular in Uzbekistan[76], Kazakhstan[77], and the Russian Federation[78], the prosecutor's offices are not included in the system of separation of powers and occupy places in independent state bodies that do not belong to any branches of the state powers. Thus, in contrast to the post-Soviet states, where the prosecutor's office is a so-called "fourth branch of power" with extensive credentials, in the USA and Japan, the prosecution authorities are part of the Ministry of Justice system.

Based on the function of the prosecutor's office in the countries where it is accountable to the Ministry of Justice, prosecutors' primary task is to maintain public prosecution. As for Uzbekistan, Kazakhstan, and Russia, prosecutors also perform the task of "procuratorial supervision."[79] This concept turns the prosecutor's office into a powerful organization that extends its influence outside the framework of criminal proceedings and the court, and provides prosecutors with the right of absolute supervision over state and non-state organizations.

---

[74] Sara Sun Beale, "Rethinking the Identity and Role of United States Attorneys," *Ohio State Journal of Criminal Law* Vol. 6, (2009): 369-439; Ryan C. Barber, "Inside the Disharmony at the DC Federal Prosecutor's Office," *The National Law Journal, July 20, 2020.* Accessed on October 6, 2020, https://www.law.com/nationallawjournal/2020/07/20/inside-the-disharmony-at-the-dc-federal-prosecutors-office/?slreturn=20200906041931; Arisha Hatch, Terri Gerstein, "Re-Envisioning the Roles of Prosecutors and Attorneys General to Make the Justice System Work for Everyone," *Stanford Social Innovation Review*, Winter 2020. Accessed on October 6, 2020 https://ssir.org/articles/entry/re_envisioning_the_roles_of_prosecutors_and_attorneys_general_to_make_the_justice_system_work_for_everyone#.

[75] David T. Johnson, "Japan's Prosecution System," *The University of Chicago Press,* Vol. 41, No. 1, (2012), 35-74; Magdalena Osumi, "Japanese justice: Innocent until proven guilty or innocent until detained?" *The Japan Times,* February 2, 2020. Accessed on October 6, 2020, https://www.japantimes.co.jp/news/2020/02/02/national/crime-legal/japanese-justice-system/.

[76] Law of Uzbekistan "On the Prosecutor's Office" (Закон Узбекистана «О Прокуратуре» 2001. Accessed on October 6, 2020, https://www.lex.uz/acts/105533.

[77] Law of Kazakhstan "On the Prosecutor's Office" (Закон Казахстана «О Прокуратуре») 2017. Accessed on October 6, 2020, https://online.zakon.kz/document/?doc_id=31690116#pos=5;-106

[78] Federal Law of the Russian Federation "On the Prosecutor's Office" (Закон Российской Федерации «О Прокуратуре Российской Федерации) 1992. Accessed on October 6, 2020, http://www.consultant.ru/document/cons_doc_LAW_262/.

[79] Law of Kazakhstan "On the Prosecutor's Office". Accessed on October 6, 2020, https://online.zakon.kz/document/?doc_id=31690116#pos=5;-106, chapter 2; Law of Uzbekistan "On the Prosecutor's Office". Accessed on October 6, 2020, https://www.lex.uz/acts/105533, section 3; Federal Law of the Russian Federation "On the Prosecutor's Office". Accessed on October 6, 2020, http://www.consultant.ru/document/cons_doc_LAW_262/, section 3.

Peter the Great, the Russian empire's ruler from 1682 to 1725, first created prosecution bodies in 1722 as a supervisory authority, carrying out its activities to a greater extent in relation to the actions of the Senate.[80] Over time, the list of powers and main tasks in the activities of this law enforcement body has been expanded (especially during the Soviet period).[81] Current procuratorial supervision in Uzbekistan, Kazakhstan and Russia is the type of public verification activity that involves a legal assessment of the observance and implementation of laws by the maximum possible circle of supervised persons, including the overwhelming majority of public bodies, institutions, and officials as well as non-governmental organizations.[82] For example, in Uzbekistan prosecutor's offices can exercise procuratorial supervision with regard to ministries, state committees, state departments, self-government bodies, non-governmental associations, enterprises, institutions, city halls and other authorities including the armed forces of Uzbekistan.[83] Similar subjects of procuratorial supervision also exist in Kazakhstan and Russia.[84]

Since prosecutors in the targeted countries possess wide powers, the list of the authorities which can control them is also very limited. In Uzbekistan, for example, a prosecutor general is accountable to the President and the Senate of Oliy Majlis (Parliament).[85] In Kazakhstan, in turn, prosecutor's offices exercise their powers on the principles of legality, independence from other state bodies, and accountability only to the President.[86] Similarly, in Russia, a prosecutor general annually submits a report on the state of law and order in the country and on the work done to strengthen law and order to the chambers of the Federal Assembly (Parliament) and the President.[87]

In sum, prosecutors in some post-Soviet states, unlike their colleagues in developed countries, enjoy

[80] Mikhail Smolensky (Михаил Смоленский), Procuratorial Supervision [Прокурорский Надзор], (Dashkov and Co, 2011), 240.
[81] Ibid.
[82] Oleg Voronin (Олег Воронин), On the Essence of Modern Procuratorial Supervision [О Сущности Современного Прокурорского Надзора], (Russian Journal of Criminal Law, No. 11, 2018), 183-184.
[83] Law of Uzbekistan "On the Prosecutor's Office". Accessed on October 6, 2020, https://www.lex.uz/acts/105533, art. 4.
[84] Law of Kazakhstan "On the Prosecutor's Office". Accessed on October 6, 2020, https://online.zakon.kz/document/?doc_id=31690116#pos=5;-106, art. 5-6; Federal Law of the Russian Federation "On the Prosecutor's Office". Accessed on October 6, 2020, http://www.consultant.ru/document/cons_doc_LAW_262/, art. 1.
[85] Law of Uzbekistan "On the Prosecutor's Office", art. 14.
[86] Law of Kazakhstan "On the Prosecutor's Office", art. 3.
[87] Federal Law of the Russian Federation "On the Prosecutor's Office", art. 12.

solid credentials due to the right of supervision over a large number of governmental and non-governmental organizations.[88] Such high authority of prosecutors is expanded also to the courtroom and affects the adversary principle in criminal procedures between a prosecutor and an advocate and consequently tramples the independence of advocates from prosecutors in the judicial proceedings.

[88] Before the current Law "On the Prosecutor's Office" (2001) of Uzbekistan was adopted, the previous Law, regulating the prosecutor's sphere (1992), also included people as the subject of procuratorial supervision.

## 2.3 Summary

The chapter analyzed current discussions and debates on the types of independence of the legal profession from the perspective of the targeted countries. Two big branches divide the legal profession's independence principle by subjects: the society and the state. Independence of lawyers from society can be divided into independence from clients and independence from third parties. In turn, the concept of independence of the legal profession from the state in this dissertation is divided into three sections: independence from the justice authorities, the judiciary, and the prosecutor's office.

The first branch of the discussion: independence of lawyers from the society is limited to lawyers and society, excluding the bar from the debate, since this concept have, in its core, more individual approach to lawyers, and not to the legal profession as a whole. This conception implies independence from the influences and pressures of the society (both clients and general public) who might compromise lawyers' activity on protection of human rights and interests.

Professional independence of lawyers from clients is understood as the right of lawyers to operate in accordance with his own discretion to protect clients' interests, even if a lawyer's position on particular issue is different from his clientele. The concept does not imply that lawyers have a right to act in contradiction to their clients, but rather the activity of legal professionals is supposed to be based on clients' best interests as members of society, even if their financial interests are not fulfilled to an adequate consideration. If the viewpoints of a client and a lawyer vary significantly, in other words, if a client tries to achieve not illegal, but rather socially dishonest objectives, a lawyer should possess room to stop client's representation. Current American, Japanese and European approaches to this concept are based on the described model, whereas post-Soviet countries (Uzbekistan, Kazakhstan, and Russia) follow a pattern, where lawyers have narrower discretion to terminate representation of a client.

Another course of independence of lawyers from the society is directed at third parties. The legal profession, being the unique structure in the construction of a nation, which possesses the powers of both a state organization and non-governmental institution, serves as the key link between the state and the society. Therefore, lawyers must maintain an adequate level of independence from not only the state, but also the third parties.

Serving as a reference to the scholarship on the independence of the legal profession, the discussions regarding the concept of independence of lawyers from clients and third parties is beyond the focus of this dissertation. Still, the debate in this sphere is a sign of how broad the concept of the independence of the legal profession is, which suggests further research is needed in this domain. Thus, this analysis narrows down the application of the legal profession's independence concept with regard to the state only.

Therefore, section 2.2 was specifically devoted to the second branch of the scholarship on the independence of the legal profession principle, independence from the state. In this dissertation, this concept is divided into three fields: independence of the legal profession from the justice authorities, the judiciary, and the prosecutor's office. This division is motivated by the choice of the targeted countries of the research, Uzbekistan, Japan, and the USA.

Independence of the legal profession from the justice authorities is an idea more applicable to the countries subject to socialism or former socialist states. In such countries, the Ministry of Justice possesses wide credentials to control and guide activities of the legal profession, being the so-called "big brother" of the bar and lawyers. Moreover, in countries where justice authorities have a right to control the legal profession, the Ministry of Justice itself does not enjoy high status in the society and in the hierarchy of the governmental bodies. For example, the paternalization of the legal profession by the justice authorities in Uzbekistan was formed and strengthened during the early formation of the Soviet Union since the working class, which came into power, abhorred the intelligentsia. After the collapse of the Soviet Union, newly established states, including Uzbekistan, tried to enhance the role of advocates, but, still there is strong participation of the justice authorities in the activities of the bar and of advocates. A similar situation experienced the Japanese legal profession before adoption of the Attorney Act in 1949. After reformation of the Japanese legal system, JFBA got solid independent credentials, and current discussions and debates in the Japanese scholarship on the legal profession are concentrated, among others, on the excessive autonomy of the bar.[89]

As for independence of the legal profession from the judiciary, the chapter distinguished three types of such independence: lawyers' out of court criticism of the judiciary, lawyers' disobedience with orders of the

[89] Kay-Wah Chan, Helena Whalen-Bridge, "Who is Worthy? Non-Lawyer Participation in Japanese and Singaporean Lawyer Disciplinary Systems." *Fordham International Law Journal* vol. 42, 2 (2019): 325-72.

judiciary and lawyer's self-standing resolution of questions related to ethics matters. The discussion on the topic is actual in countries, where the relation between the legal profession and the judiciary appears to be stronger. For example, in the USA, lawyers are considered as loyal to court members of the legal system, which possess only relative autonomy. This chapter provided three cases on each topic: *ex parte Steinman and Hensel*, *Maness versus Meyers*, and the case with a North Carolina lawyer, Staples Hughes. Uzbekistan, in recent years, due to application of the American experience, introduced a court-orientated disciplinary process against advocates. Under the current system, only administrative courts can suspend or terminate advocates' licenses. The implementation seems as a mere a switch from one governmental organization (justice authorities) to another (administrative courts). In case of the American legal system, when the judiciary is truly independent, control of the legal profession by the court appears as the lesser of two evils approach, but in the case of Uzbekistan, when the judiciary still faces issues with its independence, this innovation seems as a mere rearrangement of the legal profession's controlling body.

The last governmental institution, which in some countries have all the opportunities to trample the independence of the legal profession is the prosecutor's office. The Japanese and American legal systems are based on the separation of powers and checks and balances principles. Therefore, prosecutors in these countries are part of the justice authorities' structure and associated mostly with the maintenance of public prosecution in criminal cases. On the other hand, the prosecutor's office of Uzbekistan, inherited from the Soviet period, possess wide credentials. These include not only public prosecution in criminal proceedings, but also the procuratorial supervision that goes beyond the frame of court proceedings and implies that prosecutors have a right to supervise over a significant number of governmental and non-governmental organizations. Such a high authority of prosecutors influences criminal cases as well, and transforms advocates into weak participants in criminal proceedings who fear to stand against the will of prosecutors.

The concept of independence of the legal profession from the state, which absorbs quite a wide range of subjects, is also an important part of the whole independence issue picture. Thus, the dissertation, while continuing to frame the focus of the discussion, limits the analysis to the organizational relation of the legal profession with the justice authorities and the judiciary, and excludes the independence issue parallel between prosecutors and advocates in criminal cases.

In sum, although the research on the independence of the legal profession from the justice authorities and the judiciary is mostly related to the issues of the bar and the state, the matter cannot be analyzed only in the frame of the state and the legal profession. The society is also a full-fledged participant, since the legal profession as the civic structure, especially in the picture of Uzbekistan's system, is supposed to serve as the connecting link between the society and the state, possessing the powers of both cells. Therefore, the ensuing chapters are based on society, the legal profession, and the state approach, focusing on the role of the legal profession's independence as an institution of civil society in Uzbekistan and its comparative analysis with Japan and the USA (chapter III), and organizational influence of the state (justice authorities and the judiciary) towards the legal profession's independence, by means of institutional relations, admission to the profession and disciplinary process (chapter IV).

## Chapter III: The Legal Profession and the Civil Society

### Introduction

The terms society and legal profession are interrelated and complementary, since the legal profession is originated in connection with the needs of the society in protecting rights and interests of individuals who constitute the society. The legal framework of the legal profession is established by the state through its legislative body, the parliament, elected by people. In other words, the status of the legal profession and its activity is regulated by laws, enacted by the state and reflecting the will of the society. In such system, the indispensable characteristic of lawyers as servants of the society, is an adequate independence level from the state to prevent the possibility of the intervention in the activities of the legal profession in order to ensure appropriate defense of human rights. Independent legal profession is one of the important characteristics of civil societies, where the bar is considered as a civic organization. Therefore, for the purpose of thorough comprehension of the legal profession's independence issues and provision of appropriate recommendations, there is a need to analyze the role of the legal profession from the perspective of its existence and activity in the civil societies of the targeted countries – Uzbekistan, Japan and the USA.

This chapter focuses particularly on the terms of society, civil society and legal profession. The chapter starts with the section 3.1, which provides brief explanation of the idea of the society and proceeds to the main term – civil society. The following section 3.2, concentrates on Uzbekistan, and the role of the legal profession in Uzbek civil society. The section 3.3 provides analysis of Japanese and American models of construction and interrelation of the civil society and the legal profession. The section 3.4 concludes this part of the dissertation and provides a summary on the discussions in chapter III.

### 3.1 The ideas of society and civil society

This section sheds light on the concepts of society and more scrupulously civil society. There are many various discussions with regard to both concepts and all of them were elaborated under the impact of numerous factors. The section provides the summary of the discussions with regard to both conceptions and forms own understanding of the ideas of society and civil society. The former concept has a longer history of development, while the latter, being the part of the society notion, is relatively newer idea.

#### 3.1.1 The concept of the society

The term society is the central problem of sociology. Therefore, no major sociologist could get around it. There are various sociological trends in the understanding of the concept of the society, each of which emphasizes different aspects of the phenomenon.[90] In more general distinction of this term, it can be divided into two realms: macro-sociology (study on the structure of society, its institutions, social processes) and micro-sociology (study on human communication in everyday life).[91] This study, analyzing the macro-sociological structures of the legal profession and the state, includes also micro-sociological attitude of people towards advocates and the legal profession in general.

Sociologists have made many attempts to give a complete definition for the term society and highlight its essential features. Karl Marx, for example, viewed society as a special social organism, subject to its own laws of functioning and development. He argued that society is the relationship of individuals, determined, first of all, by economic relations.[92] His ideas gave rise to the communist movements in many countries in later decades, part of which in 20th century was Uzbekistan as well. Emile Durkheim, a founder of the French

[90] Karl Marx, Friedrich Engels, Compositions [Сочинения]. Second edition, *Publishing house of political literature*, Vol. 46, (1968); Emile Durkheim, "The Division of Labor in Society," *The Free Press of Glencoe,* (1960); Talcott Parsons, "The System of Modern Societies," *Prentice Hall* (1971).
[91] Gianluca Manzo, "Macrosociology-Microsociology," *International Encyclopedia of the Social & Behavioral Sciences*, 2nd edition, Vol 14, (2015): 414-421; Joseph Brandon Ford, "Macro-sociology and Micro-Sociology: A Way to Bridge the Gap," *International Review of Modern Sociology,* Vol 2, no. 2, (1972): 255-266.
[92] Karl Marx, Friedrich Engels, Compositions [Сочинения]. Second edition, *Publishing house of political literature*, Vol. 46, (1968).

sociological school, by the term society, understood collective consciousness. In his opinion, this consciousness is expressed by one thing and is scattered throughout the society but does not have specific features that create a special reality.[93] Another prominent sociologist, Parsons Talcott, defined society as a social structure which has the optimum level of self-sufficiency in relation to other social systems.[94]

Analysis of the works of leading sociologists and modern sociological literature, leads to the understanding of the term of society as a clump of social ties and interactions, existing in social space and time that have developed between people, living in a common territory and united by a common culture, the most common features of which are autonomy, great integrating power and high level of self-regulation. Social relations generated by joint activities of people form stable social formations that ensure the integrity of society: social structures and the social institutions that regulate them, which lead to formation of the civil society.

### 3.1.2 The civil society and the legal profession

The term civil society was introduced to the legal lexicon by Aristotle, who used a term *koinonia politike* (political community or political association) to describe civil society as a political structure.[95] The idea of the civil society took shape in the middle of the 18th century as a response of an enlightened society to the arbitrariness of the absolute monarchy.[96] Throughout the period of rapid increase of attention to the concept, various inputs were made by Ferguson, Montesquieu, Kant, and many others.[97] The term mostly stood for "an utopian plan for a future civilization in which the people would live together in peace as politically mature, responsible citizens – as private individuals in their families and as citizens in public."[98] Started as an anti-absolutist philosophical concept for the future society, the idea of the civil society gradually became one of the

[93] Emile Durkheim, "The Division of Labor in Society," *The Free Press of Glencoe,* (1960).
[94] Talcott Parsons, "The System of Modern Societies," *Prentice Hall* (1971).
[95] Boris DeWiel, "A Conceptual History of Civil Society: From Greek Beginnings to the End of Marx." *Past Imperfect* vol. 6 (1997): 7-10.
[96] The French Revolution and the Birth of Modernity: Feher, Ferenc, Ed.: Berkeley, CA: University of California Press 289 Pp., Publication Date: December 1991: History: Reviews of New Books: Vol. 20, No 2.
[97] Adam Ferguson, "An Essay on the History of Civil Society," *T. Cadell*, 1767; Melvin Richter, "Montesquieu and the concept of civil society," *The European Legacy*, Vol 3 (6), (1998): 33-41; Chris W. Surprenant, "Liberty, Autonomy, and Kant's Civil Society," *University of Illinois Press*, Vol. 27 (1), (2010): 79-94.
[98] Jurgen Kocka, "Civil Society from a Historical Perspective," *European Review*, Vol. 12 (1), (2004), 66.

central motivations of political thought and liberation movements in Western countries, as well as all other public undertakings in civilized countries.[99]

Influence of capitalism, introduced its own corrections to the concept, and the definition went through alterations in the first half of the 19th century in works of Hegel, Marx, and others.[100] Sociologists gave rise to a new understanding of the civil society, which stood for non-political society with capitalist interests and possibility of conflicts and inequalities within it.

In the 20th century, on the whole, the concept of the civil society experienced a decline and played mostly a marginal role.[101] In the Soviet Union, including Soviet Uzbekistan, only a few human rights defenders and professors knew about the concept of the civil society.[102] This term was not applied owing to a different model of community's construction and other principles of relationship between people and the state. In the minds of the Soviet people, instead of the ideas of the civil society, the state imposed ideological cliches such as socialist collectivism, public duty, and responsibility before the state.

Attention to the civil society revived in 1980s as anti-dictatorial expression, especially in the countries, struggling with communist regimes.[103] Prioritizing the reconsideration of welfare system, the concept of civil society transformed into neoliberal ideology, supporting development of the third sector as a replacement for the welfare state. Today civil society is considered as "a diverse and ever-wider ecosystem of individuals, communities and organisations."[104]

Analysis of the various views and approaches to the comprehension of the term civil society leads to the following understanding of the term in this dissertation. Civil society is a way of coexistence of people via

---

[99] Jean L. Cohen, Andrew Arato, "Civil Society and Political Theory," *The MIT Press, Reprint Edition* (1994); Neera Chandhoke, "The 'Civil' and the 'Political' in Civil Society," Democratization, Vol. 8, iss. 2, (2010), Accessed on October 22, 2020, https://doi.org/10.1080/714000194.

[100] Thom Brooks, "Hegel's Social and Political Philosophy," *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, 2021; Geoffrey Hunt, "The Development of the Concept of Civil Society in Marx," *Imprint Academic* Vol. 8 (2), 263-276.

[101] Jurgen Kocka, "Civil Society from a Historical Perspective," *European Review*, Vol. 12 (1), (2004), 67.

[102] Demidova Lyubov (Демидова Любовь), Advocacy in Russia [Адвокатура в России], (Justicinform, 2006), 12.

[103] Adam Jezard, "Who and what is 'civil society?'" World Economic Forum Agenda article, 23 April 2018, accessed on April 12, 2021, https://www.weforum.org/agenda/2018/04/what-is-civil-society/; Jennifer Alexander, Kandyce Fernandez "The Impact of Neoliberalism on Civil Society and Nonprofit Advocacy," *Nonprofit Policy Forum*, vol. 12 (2), (2021): 367-394.

[104] World Economic Forum, "The Future Role of Civil Society," World Economic Forum in Collaboration with KPMG International, January 2013. Accessed on April 25, 2021, https://www3.weforum.org/docs/WEF_FutureRoleCivilSociety_Report_2013.pdf

social action, based on intelligence, freedom, democracy, and laws. Civil society recognizes compromise in public, accents individual freedoms, supports plurality with moderate participation of the state in its maintenance and society's control over activities of the state. Thus, the state and the civil society are continued interdependent structures, maintaining each other via civic institutions.

The main institutions of the civil society are non-governmental and non-profit organizations (NGOs and NPOs). These associations are understood as non-state voluntary organizations of people based on the commonality of their goals and interests. NGOs and NPOs play a large role in industrialized and developing countries. They take part in political decision-making, influencing the government and providing expert opinion on political issues. They support political participation and political education. One of the important goals of these organizations is to draw attention of the society and the authorities to the problems and interests of their members.

As for the legal profession, unlike other non-governmental entities, it exists as the special institute with both state and non-state powers, and embraces a solid list of credentials to defense human rights. The institute of the legal profession, as an active element of the civil society, acts in two ways. First, this institution helps the state in implementation of proclaimed human rights and freedoms. Second, it acts as an instrument for protection of human rights and freedoms in the event of their violation by the state itself or by other persons. In this context, the special legal nature and special status of the legal profession is expressed in the way that it acts as a link between the state and the society, which is a necessary condition for functioning of the healthy civil society.

In order to provide the basis for the legal profession to act as an intermediary for the purposes of public good, there is a need to ensure the adequate level of its independence from the state. The principle of independence of the legal profession, comprehensively discussed in the previous chapter, is a prerequisite for the society's trust to lawyers and the bar in protection of people's rights and freedoms, and the key element in the system of checks and balances in the legal sphere.

In sum, one of the crucial elements of active and vibrant civil society is the independent functioning of civic institutions, among which the legal profession plays an important role. However, this does not mean the decline of the state's power. The state is expected to delegate authority and independence to the civic square, which will ultimately lead to the development of both the society and the state. Therefore, the civil society, led

by the legal profession, can and must play a vital role in resistance of the arbitrariness of the state.

### 3.2 The civil society and the legal complex of Uzbekistan

This section analyzes the development of Uzbek society after collapse of the Soviet Union and transformation of the legal profession into the civic institution. Modern society of Uzbekistan is the natural product of economic, social and political processes that have taken place after the country gained independence in 1991. The movement from totalitarian community to the society based on the principles of freedom and democracy is a complex and ambiguous process. Currently, the civil society in Uzbekistan is at the beginning of its formation as the pluralistic community. This section provides Uzbekistan's idea with regard to the concept of the civil society and development of the civic square as well as the role of the legal profession in this process.

#### 3.2.1 First stage of the civil society development – foundation

Right after Uzbekistan gained independence, the country faced a process of transformation of the society. The specificity of the transformation process was determined by a number of factors: economic crisis that emerged at the end of the 1980s; planned economy approach left from the Soviet past, which lacked of the principles of entrepreneurship; minimal experience of political attitude of people; strong traditions and customs; priority of the state in all the spheres, including the legal profession; religious tolerance peculiarity, conditioned by the special location of the country; highly diverse ethnic structure; high rate of population growth, more than half of which lived in rural areas.[105]

In general, a retrospective analysis guides to the conclusion that the path traveled by Uzbekistan in the formation of the civil society can be divided into three stages: from 1991 to 2010, from 2010 to 2016 and from 2016 to present days.

The first stage, from 1991 to 2010, is the period of formation of the legislative framework for the civic institutions in Uzbekistan. First of all, this is the adoption in 1992 of the main law of Uzbekistan – the

[105] Latifdjon Siddikov (Латифжон Сиддиков), "Formation of the Civil Society in Uzbekistan," [Формирование Гражданского Общества в Узбекистане], *Eurasian scientific journal No 4*, (2018). Accessed on May 5, 2021, http://journalpro.ru/articles/formirovaniya-grazhdanskogo-obshchestva-v-uzbekistane/.

*Constitution*, in which the human being, his life, freedom, honor, dignity and other inalienable rights were proclaimed the highest value.[106] The *Constitution* enshrined the rights of citizens to unite in trade unions, political parties and other public associations to participate in mass movements.[107] Article 58 stipulates that:

> The state shall safeguard the rights and lawful interests of public associations and provide them with equal legal possibilities for participating in public life.
>
> Interference by state bodies and officials in the activity of public associations, as well as interference by public associations in the activity of state bodies and officials is impermissible.[108]

In addition, recognizing the special status of the legal profession, the *Constitution* gave it an exclusive right, uncommon for a civic organization, to provide a professional legal assistance.[109]

During this period, the legislature also adopted a number of legislative acts regulating the procedure for the creation and functioning of public associations, NGOs, NPOs, political parties, the media and the legal profession.[110] Adoption of these documents gave a start to an increase of the civil society institutions. So, if as of January 1991, only 95 civic organizations operated in the republic, then as of January 2000, the number

[106] Constitution of Uzbekistan, 1992. Accessed on May 19, 2021, http://www.lex.uz/acts/35869, art. 13.
[107] Ibid, 34.
[108] Ibid, art. 58.
[109] Ibid, art. 116.
[110] Law of Uzbekistan "On Public Associations" (Закон Узбекистана «Об Общественных Объединениях в Республике Узбекистан») 1991. Accessed on May 19, 2021, https://www.lex.uz/acts/111827; Law of Uzbekistan "On Political Parties" (Закон Узбекистана «О Политических Партиях») 1996. Accessed on May 19, 2021, https://www.lex.uz/acts/57033; Law of Uzbekistan "On Mass Media" (Закон Узбекистана «О Средствах Массовой Информации») 1997 (expired in 2007). Accessed on May 19, 2021, https://www.lex.uz/acts/53112; Law of Uzbekistan "On Non-Governmental Non-Profit Organizations" (Закон Узбекистана «О Негосударственных Некоммерческих Организациях») 1999. Accessed on May 19, 2021, https://www.lex.uz/acts/10863; Law of Uzbekistan "On Non-Governmental Non-Profit Organizations" (Закон Узбекистана «О Негосударственных Некоммерческих Организациях») 1999. Accessed on May 19, 2021, https://www.lex.uz/acts/10863; Law of Uzbekistan "On Advocacy" (Закон Узбекистана «Об Адвокатуре») 1996. Accessed on May 19, 2021, http://www.lex.uz/acts/58372; Law of Uzbekistan "On Guarantees of the Activity and Social Protection of Advocates" (Закон Узбекистана «О Гарантиях Адвокатской Деятельности и Социальной Защите Адвокатов») 1998. Accessed on May 19, 2021, http://www.lex.uz/acts/1321; Law of Uzbekistan "On Principles and Guarantees of Free Information" (Закон Узбекистана «О Принципах и Гарантиях Свободы Информации»), 2002. Accessed on May, 21, 2021, https://lex.uz/docs/52709; Law of Uzbekistan "On Financing of Political Parties" (Закон Узбекистана «О Финансировании Политических Партий»), 2004. Accessed on May 21, 2021, https://lex.uz/docs/168377; Law of Uzbekistan "On Guarantees for the Activities of Non-Governmental Non-Profit Organizations" («О Гарантиях Деятельности Негосударственных Некоммерческих Организаций»), 2007. Accessed on May 21, 2021 https://www.lex.uz/docs/1101280; Decree of the President of Uzbekistan "On Measures for Further Reforming of the Institution of Advocacy in the Republic of Uzbekistan" (Указ Президента Республики Узбекистан «О Мерах по Дальнейшему Реформированию Института Адвокатуры в Республике Узбекистан») 2008. Accessed on May 21, 2021, http://lex.uz/docs/1347567.

reached to 2585.[111]

For the legal profession sphere, this period was commemorated by the establishment of the Association of Advocates as a head non-governmental institution for the legal profession. However, the Association was very nominal institution without any solid credentials and with optional membership for Uzbek advocates.[112] In 2008 the Association of Advocates was transformed into the Chamber of Advocates and membership in the Chamber became mandatory for all advocates,[113] and the general management over the Chamber was conducted by the Ministry of Justice.[114]

Despite of all the alterations, the work on the enhancement of the civil society was conditioned by the general policy of Islam Karimov, the first President of Uzbekistan from 1991 to 2016. His Uzbek model of development, created in 1993, was based on five principles, one of which stipulated the role of the state as the main reformer, implying the transition from "the strong state to the strong civil society."[115] Such a policy left a very small room for NGOs and NPOs to realize their full potential in the reformation processes. Karimov's understating of the civil society was based on the neo-liberal political thought, which got wide spread in 1980s in Europe. His understanding of the idea implied that "the civil society helps to generate a transition from authoritarian rule … deepens and consolidates democracy once it is established."[116] This approach resulted in a tight control by the state over the society, and the legal profession, as an institute of the civic square, was not an exception. The outcome of such policy was an authoritarian neoliberalism[117], which covered the whole period

[111] These figures were mentioned by Deputy Director of Independent Institute for Monitoring the Formation of Civil Society A. Khamdamov on a Human Dimension Meeting of the Organization for Security and Co-operation in Europe in 2014. Accessed on May 20, 2021, https://www.osce.org/files/f/documents/7/b/124083.pdf.
[112] Gulnara Ishanhanova (Гульнара Ишанханова), "Association of Advocates of Uzbekistan: Analysis of Current Situation and Prospects of Development" [Ассоциация Адвокатов Узбекистана: Анализ Ситуации и Пути Развития], in *Proceedings of the International Regional Conference: The Current Condition of the Advocacy in Central Asia: Problems and Prospects*, ed. Hodanivich (Ходанович), (Tashkent: Konsauditinform-Nashr, 2003), 32-37.
[113] Ibid.
[114] Regulation of the Cabinet of Ministers of Uzbekistan "On the Chamber of Advocates of the Republic of Uzbekistan" (Постановление Кабинета Министров Республики Узбекистан «Об Организации Деятельности Палаты Адвокатов Республики Узбекистан») 2008. Accessed on May 21, 2021 https://www.lex.uz/acts/1359517.
[115] More on Karimov's "Uzbek model" is available at: https://uzreport.news/economy/printsipyi-uzbekskoy-modeli-reform, accessed on May 20, 2021.
[116] Larry Diamond, "Rethinking Civil Society: Toward Democratic Consolidation," *Journal of Democracy Vol. 5, No. 3.* (1994), p. 14.
[117] Ernesto Gallo, "Three Varieties of Authoritarian Neoliberalism: Rule by the Experts, the People, the Leader," *Competition & Change,* (2021). Accessed on February 2, 2022, https://journals.sagepub.com/doi/full/10.1177/10245294211038425.

of Karimov's ruling.

In sum, over the first two decades of independence, Uzbekistan remained in its old approach towards the civil society, since fail of Soviet Union did not mean the end of the regime. Karimov left most of the institutions which were established and used during the Soviet period to control various spheres, including political, economic and social domains.[118] Therefore, the outdated institutions, style of governance, and cadres made the formation of the civil society slow and dead end.

### 3.2.2 Second stage – stagnation

The second stage, covering the period from 2010 to 2016, is related to the development of the civil society institutions after implementation of the *Concept for Further Deepening the Democratic Reforms and Establishing the Civil Society in the Country*.[119]

The *Concept*, which in November 2010 President Karimov put forward at a joint meeting of the chambers of the national parliament, determined the most important priorities for the country's further development. This *Concept* marked the beginning of new transformations in all spheres of the society, the expansion of the participation of the civil society institutions in state and social construction.

The meaning of the *Concept* was to give the civil society institutions a wider range of rights to protect democratic values, rights, freedoms and legitimate interests of people, and to increase the role of citizens in realizing their potential, increasing their social, economic activity and legal culture. President Karimov stated:

> With the formation and strengthening of their authority in society, the role of the civil society institutions in the implementation of effective public control over the activities of state and power structures increases. Today, the institution of public, civil control is becoming one of the most important elements of ensuring effective feedback between the society and the state, revealing the mentality of people, their attitude to the reforms being carried out in the country.[120]

After the adoption of the *Concept*, the republic experienced slight tendencies of strengthening social

[118] Janice Giffen, Lucy Earle, Charles Buxton, "The Development of Civil Society in Central Asia," *INTRAC*, (2005), 50-51. Accessed on May 21, 2021, https://assets.publishing.service.gov.uk/media/57a08c3de5274a27b200108f/R7649-report.pdf.
[119] More on the Concept is available at: https://parliament.gov.uz/ru/events/chamber/2549/?sphrase_id=7453081#spich. Accessed on May 22, 2021.
[120] Ibid.

partnership between civil society institutions and state structures in the implementation of various social programs.[121] Civic institutions and the state carried out active work to spread the meaning and idea of the *Concept* among ordinary citizens.

However, the innovations were conducted more at the initiative of the state, without the real participation of the society in the development of the civic square. The government implemented initiatives from top to bottom, from state to people, and in reality, NGOs and other structures of the civil society, including the legal profession, came under the final control of the governmental bodies. Sukhrobjon Ismailov, an Uzbek human rights activist, appealed that "fewer and fewer committed, independent civil society activists are remaining in Uzbekistan. … Western interlocutors of the Uzbek government started to pay less attention to independent Uzbek civil society activists, and focused more on government-run programs of cooperation, which resulted in a dramatic decrease of international assistance for Uzbek independent civil society."[122]Although by the end of this period the number of civic organizations in Uzbekistan reached 8500 and spreaded to almost all spheres of society's life, in essence, these were just quantitative indicators, without specific identity and issue orientated civic organizations.[123]

### 3.2.3 Third stage – revival

The third period in the development of the civil society started after the first President Karimov, passed away in 2016, and the power was peacefully transitioned to the Prime Minister of Karimov's Cabinet – Shavkat Mirziyoyev. The new President's administration faced a number of challenges: vital necessity to develop the capacity of civic organizations, boost critical thinking, and monitor governmental reforms. All these problems

[121] Adham Shadmanov (Адхам Шадманов), "The civil society institutions are an important factor in protecting democratic values and the legitimate interests of people," [Институты гражданского общества – важный фактор защиты демократических ценностей и законных интересов людей]. Accessed on May, 23, 2021, https://parliament.gov.uz/upload/iblock/822/shadmanov.pdf.
[122] More on Ismailov's interview to CIVICUS is available at: https://www.civicus.org/index.php/fr/medias-ressources/122-news/interviews/1259-fewer-and-fewer-committed-independent-civil-society-activists-are-remaining-interview-with-sukhrobjon-ismailov-civil-society-activist-uzbekistan. Accessed on May 23, 2021.
[123] More on the number of civil society institutions in Uzbekistan from 2009 to 2019 is available at: https://fpc.org.uk/challenges-ngos-in-uzbekistan-are-still-facing/. Accessed on May 23, 2021.

were against the backdrop of conservative religious views, which were becoming increasingly prepotent.

Mirziyoyev began an active policy of cooperation with international partners and initiated ambitious reforms towards overcoming Uzbekistan's isolationist foreign policy. So, in 2017, he enacted a *Strategy of Actions on Five Priority Directions of Development in 2017-2021*, which laid the foundation for the further development of the civil society.[124] The first direction of the *Strategy* stood for practical implementation of public control mechanisms and strengthening the role of the civil society institutions, and the second advocated the necessity to improve the legal sphere, including the enhancement of the legal profession's role.[125]

In accordance with the *Strategy*, in May 2018, President Mirziyoyev issued a decree *On Measures to Fundamentally Increase the Role of the Civil Society Institutions in the Process of Democratic Renewal of the Country*.[126] The decree established an Advisory Council for the development of the civil society under the President, which included leading specialists in the civil society sector as well as other representatives of the highest echelon of power.[127] The main goal of the Council was set to establish a systematic and effective dialogue between the state and the civil society institutions at the highest level as a modern, democratic and transparent platform to consolidate their efforts aimed at further advanced and comprehensive development of the country.[128]

Reformations gave an impulse to an active work on acceleration of the role of the civil society institutions. From January 2020, registration fees for NGOs and NPOs were considerably reduced; an application time for registration shortened from two to one month; an exchange between the state and civic square institutions moved to internet platform, reducing unnecessary face-to-face communication; the registration gave tax benefits for these organizations.[129]

The result of the reforms was that according to the Ministry of Justice of Uzbekistan, the total number

[124] Strategy of Actions on the Five Priority Directions of Development of the Republic of Uzbekistan in 2017-2021 (Стратегия Действий по Пяти Приоритетным Направлениям Развития Республики Узбекистан в 2017-2021 годах) 2017. Accessed on May 24, 2021, http://www.lex.uz/ru/docs/3107042.
[125] Ibid.
[126] Decree of the President "On Measures to Fundamentally Increase of the Role of the Civil Society Institutions in the Process of Democratic Renewal of the Country" [Указ Президента «О Мерах по Коренному Повышению Роли Институтов Гражданского Общества в Процессе Демократического Обновления Страны» 2018. Accessed on May 24, 2021, https://lex.uz/docs/3721651#3724785.
[127] Ibid.
[128] Ibid.
[129] More on January 2020 reforms is available at: https://fpc.org.uk/challenges-ngos-in-uzbekistan-are-still-facing/, accessed on May 25, 2021.

of registered civic organizations in the country by 2020 exceeded 10 thousand.[130] However, this quantitative growth speaks more of changes in number and less in its qualitative part. The solid impetus to the increase in the number give the systemic civic organizations, which are government-organized associations, funded by the state budget. The systemic NGOs and NPOs account for 6 thousand units, which cover more than 65 percent of all registered civic organizations in Uzbekistan.[131] The rest is left for self-initiated civic organizations, which are still by various ways influenced by the state.

Systemic NGOs and NPOs have close relationship with the state, which makes the process of their registration much easier. On the other hand, in order to register a self-initiated civic organization, civil society activists have to spend plenty of time and face many formal and informal obstructions to get their organization registered by the Ministry of Justice. In spite of some "positive steps are being taken to support civil society in Uzbekistan, the internal administrative procedures of registration for self-initiated NGOs remain bureaucratic, with red tape seemingly designed to frustrate applicants into giving up in the end."[132] The registering authorities apply unlawful tactics, making the process of registration of unwanted applicants cumbersome. They are trying to lengthen the process by finding mistakes in the application or sending the application document for an expert examination.[133]

A long and cumbersome registering process of self-initiated NGOs is only the start of future impediments for civic organizations. As soon as costly and time-consuming administrative proceedings with the justice authorities are finished, and the self-initiated NGO or NPO gets the much-awaited certificate of registration, it enters the set of other obstacles in the process of fulfilling its statutory activities and financing issues.[134]

All these problems create one big picture – strict state control over the civic institutions instead of fellow

[130] The Ministry of Justice of the Republic of Uzbekistan, "Refusal to Register NGO: Causes and the Consequences," accessed on May 25, 2021, https://www.minjust.uz/en/press-center/news/98816/.
[131] Dilmurad Yusupov, "Challenges NGOs in Uzbekistan are still facing," The Foreign Policy Center, July 14, 2020. Accessed on May 26, 2021, https://fpc.org.uk/challenges-ngos-in-uzbekistan-are-still-facing/
[132] Ibid.
[133] Leonid Khvan (Леонид Хван), "Legislation on Administrative Procedures and Registration of NGOs," [Законодательство об Административных Процедурах и Регистрация НКО], Gazeta.uz, Febuary 14, 2020. Accessed on May 26, 2021, https://www.gazeta.uz/ru/2020/02/14/administrative-procedures/
[134] Dilmurad Yusupov, Oybek Isakov, "Regulations of NGOs in Uzbekistan: Control or Partnership?" *Central Asian Bureau for Analytical Reporting*, March 13, 2021. Accessed on May 27, 2021, https://cabar.asia/en/regulation-of-ngos-in-uzbekistan-control-or-partnership.

relationships with the state. Registration in March 2020 of the first since 2003 human rights NGO *Huquqiy Tayanch* (Legal Support), raised hopes for further liberalization of the civil society sphere.[135] In spite of this move from the state and all the recent reformation processes, the government still tightly controls the third sector. Even now, there are Soviet stereotypes and prejudices regarding the activities of independent self-initiated NGOs and NPOs. Such an attitude of governmental organizations, looking at civic organizations as foreign agents, only slow down and damage reforms, which are essential for the third sector.[136]

The next step of the state in the development of the civil society was the *Concept for the Development of the Civil Society in 2021-2025*, signed by President Mirziyoyev in March 2021.[137] The priority directions of the *Concept* are improvement of the legal framework for the development of the civil society; financial enhancement of the civic square; development of the civic institutions' participation in state and public administration; improvement of transparency issues.[138]

At the current phase of implementation of the *Concept*, Uzbekistan's civil society is still at the phase of formation. Reconsideration of the civic square needs to be carefully analyzed, with the support of national civic activists and foreign experts and structures. Therefore, the state should become truly open to the critical sources and stop banning or putting other pressure on them in the Internet, which can completely frustrate the freedom to express independent opinions on the acute issues in the third sector. The COVID-19 pandemic can be another trigger for the state and the civil society to build the relationships on mutual trust rather than on one-sided control from the government. The amicable activities can more efficiently deal with the acute issues raised by the coronavirus and make the civic square more sustainable for possible future emergencies.

Moving to the legal profession domain, the situation is similar to the rest of civic organizations. In accordance with the *Strategy*, President Mirziyoyev enacted a decree *On Development of Effectiveness of the*

[135] Eurasianet, "Uzbekistan sparks hope with registration of NGOs," March 11, 2020. Accessed on May 31, 2021, https://eurasianet.org/uzbekistan-sparks-hope-with-registration-of-ngos
[136] Nikita Makarenko (Никита Макаренко), "Maidan-Paranoia" [Майдан-Паранойя], Gazeta.uz, January 31, 2020. Accessed on May 31, 2021, https://www.gazeta.uz/ru/2020/01/31/ngos/.
[137] Decree of the President of Uzbekistan "On the Concept for the Development of the Civil Society in 2021-2025" [Указ Президента Республики Узбекистан «Об Утверждении Концепции Развития Гражданского Общества в 2021-2025 Годах»] 2021. Accessed on May 31, 2021, https://lex.uz/docs/5319760.
[138] Ibid, chapter II.

*Institution of Advocacy and Broadening of Advocates' Independence*.[139] The decree admitted that the legal profession had not yet been able to turn into a reliable human rights institution possessing the trust of the population; there were several factors that hinder the full realization of the rights of advocates and provision of high-quality legal assistance by them. Among these issues were: influence from the state authorities in judicial proceedings, diminished role of the Chamber of Advocates, outdated organizational and legal forms of advocates' structures, problems with licensing and disciplinary proceedings of advocates, and insufficient competence of the legal profession.[140]

Based on the Decree, the legislature adopted a law *On Amendments of Some Legislative Acts of the Republic of Uzbekistan due to the Improvement of the System of Legal Assistance and Legal Services* in October 2018.[141] The law, in general, slightly expanded the powers of the Chamber of Advocates, changed the processes of disciplinary proceedings and admission to the profession, and increased the role of advocates in the judicial process.

The next step of the state was the decree of the President in December 2019 *On Additional Measures to Ensure the Rule of the Constitution and the Law, Strengthening Public Control in this Direction, as well as Improving the Legal Culture in Society.*[142] This decree created a working group, the result of which was a draft of the *Concept for the Development of the Institution of the Legal Profession* and the road map for its implementation.[143] The draft *Concept* was submitted to the administration of the President and the legal

[139] Decree of the President of Uzbekistan "On Development of Effectiveness of the Institution of Advocacy and Broadening of Advocates' Independence" (Указ Президента Узбекистана «О Мерах по Коренному Повышению Эффективности Института Адвокатуры и Расширению Независимости Адвокатов») 2018. Accessed on June 2, 2021, http://lex.uz/docs/3731058.
[140] Ibid, par 4-10.
[141] Law of Uzbekistan "On Amendments of Some Legislative Acts of the Republic of Uzbekistan due to the Improvement of the System of Legal Assistance and Legal Services" (Закон Республики Узбекистан «О Внесении Изменений и Дополнений в Некоторые Законодательные Акты Республики Узбекистан в Связи с Совершенствованием Системы Оказания Юридической Помощи и Правовых Услуг») 2018. Accessed on June 2, 2021, http://www.lex.uz/acts/3977634.
[142] Decree of the President of Uzbekistan "On Additional Measures to Ensure the Rule of the Constitution and the Law, Strengthening Public Control in this Direction, as well as Improving the Legal Culture in Society" [Постановление Президента Республики Узбекистан «О Дополнительных Мерах по Обеспечению Верховенства Конституции и Закона, Усилению Общественного Контроля в Данном Направлении, а Также Повышению Правовой Культуры в Обществе»] 2019. Accessed on June 3, 2021, https://lex.uz/docs/4647340.
[143] Ibid, clause 9-10.

community still expects its adoption.[144]

In particular, the draft *Concept* stands for the adoption of a number of measures aimed at the development of the institution of the legal profession, including reforming the Chamber of Advocates, with an emphasis on its greater independence; providing the legal profession with the opportunity to resolve issues of licensing, advanced training, as well as disciplinary proceedings in relation to advocates; improving the powers of an advocate in court.[145]

Tracing the trend of reformation of the legal profession, the motive of the reforms is historically directed upside down and seems like imposition of the reforms to the legal profession's community, and the whole civic square. Thus, despite of some progressive reforms, activities of the legal profession in Uzbekistan, left from the Soviet Union, are confined largely to fulfillment of its role in uniting of advocates (the Chamber of Advocates and its local branches) and apathetic activity of advocates on protection of rights of people and organizations. Influence of the state towards the legal profession's independence, resulted in lethargic condition of the legal profession and reluctance of advocates to take decent steps to reconsider their role in the society. Such a condition over the whole period of the development of the legal profession created a negative attitude of people towards advocates, which exists until present days. The draft *Concept* aims to tackle these issues, and increase the role of advocates and the Chamber of Advocates in the society. However, the contents of the *Concept*, progressive by its nature, still leave doubts on their effectiveness, which will be scrupulously analyzed in the next chapter of this dissertation.

To conclude, after Uzbekistan became independent in 1991, the state started the formation of the civil society, which continues until present days. Administration of Karimov, although gave foundation to the third sector, held this sphere in tight control. After Mirziyoyev came into power in 2016, he started massive reforms in all spheres of public life, including the civic square. However, still the general trend towards civil society is

[144] Jamshid Turdaliev (Джамшид Турдалиев), "Concept for the Development of the Institution of the Legal Profession: The Need for Early Adoption and Implementation" [Концепция Развития Института Адвокатуры: Необходимость Скорейшего Принятия и Воплощения в Жизнь], *Advokat Press*, №1 (2021). Accessed on June 3, 2021, http://advokatnews.uz/xabar/1885.html.

[145] Draft Concept for the Development of the Institution of the Legal Profession in Uzbekistan [Проект Концепции развития института адвокатуры в Республике Узбекистан], Chamber of Advocates of Uzbekistan, 2020. Accessed on June 4, 2021, https://paruz.uz/uploads/2020/04/021.pdf, chapter 2.

conditioned by the neoliberal approach of former Karimov's administration, which creates number of obstacles and issues for civic organizations. The same situation exists with the legal profession, where the reforms are directed from the state to the community of advocates. Such tendency, resulted in current condition, which provides the state with substantial powers to guide and control the legal profession in organizational sphere. Three most striking issues in the organizational construction of the legal profession are the core analysis in the chapter IV of this dissertation, which provides research on independence of the legal profession from the state, taking into consideration the civic nature of the bar.

### 3.3 Japanese and American civic square and legal complex

The section covers the civil societies and legal professions of two completely different systems – Japan and the USA. The experiences of both countries are important from comparative perspective with regard to Uzbekistan. In order to provide proper comparative analysis of the legal profession's independence issue as an institute of the civil society, there is a need to analyze both states from the perspective of the legal profession's existence in the societies of Japan and the USA.

Japanese society has undergone a long history of the development. Influenced by the ideas of Confucianism, the society is seen as a domicile one. However, once the society faced the national level issues like huge environmental problems, natural disasters, and national security matters, the civic square actively participated in the public life. The USA, on the other hand, dominated by the ideas of Enlightenment, historically followed the ideals of strong and active civil society, which possesses a striking feature of association. The civil societies together with the role of the legal professions in the public life of the two countries are good role models for Uzbekistan to comprehend the relevance to follow either of the approaches in the reformation of the legal profession's independence or consider implementation of both.

#### 3.3.1 Japanese civil society and the legal profession

Japanese society is originally viewed as quite harmonious and compliant society, focusing diligently on their work and leaving the political square for bureaucrats and politicians.[146] Active discussions with regard to the concept of the civil society in Japan began after the Great Hanshin-Awaji Earthquake in Kobe in January 1995,[147] which were also supported by rapid changes in the world in 1990s due to the end of Cold War and

[146] Wilhelm Vosse, "The Emergence of a Civil Society in Japan," Japanstudien, 11:1, (2000), accessed on June 18, 2021, https://doi.org/10.1080/09386491.2000.11826856, p. 31; Keiko Hirata, "Civil Society in Japan: The Growing Role of NGOs in Tokyo's Aid and Development Policy," *St. Martin's Press*, (2002), accessed on June 18, 2021, http://www.csun.edu/~kh246690/civil_society_ch1.pdf, p. 15.

[147] Tadashi Yamamoto, "Emergence of Japan's Civil Society and Its Future Challenges," Deciding the Public Good: Governance and Civil Society in Japan, *Japan Center for International Exchange*, (1999), 97; Yutaka Tsujinaka, "Civil Society and Social Capital in Japan," International Encyclopedia of Civil Society. Springer, New York, accessed on June 18, 2021, https://doi.org/10.1007/978-0-387-93996-4_727.

changes of communist regimes in many states (debates on democratic consolidation[148]). Many discussions of that period were related to the topic whether Japan has already built its own civil society, or still the country is on the way of its formation.[149]

In spite of the earlier debates on the topic, the current civil square in Japan turned into vigorous sphere, with full integration of the civil society institutions into political, economic and other important domains of public life.[150] The characteristics of current civil society in Japan are "its size, diversity, and the increasing use of new technologies to facilitate both grassroots organizing and enabling local groups to connect to like-minded organizations abroad."[151]

Today's civil society in Japan is the product of a long and sophisticated development of the nation, which can be divided into the following stages: premodern, early modern and wartime stage; period from 1945 to 1960; interval from 1960 to 1995; 1995 to 2011 phase; the current days bout.[152]

First stage covers the period of premodern, early modern and wartime stage of Japan's civil society development. First civic organizations in Japan were formed in the 8th century as a family grouping system, which later during the Tokugawa period (1603-1868) became more sophisticated and formed the five family unit system.[153] These structures provided assistance to local governments with tax collections and sanctions.[154]

Demise of the Tokugawa shogunate and start of the Meiji period (1868-1912) turned Japan into a centralized country, making relations between people and the state more formal. The family groups transformed into the local neighborhood organizations – *chōnaikai* and *jichikai*. These associations, cooperating with local governments, got wide credentials to support people (public safety, infrastructure etc.).[155] Over this period, there

---

[148] Larry Diamond, "Toward Democratic Consolidation," *Journal of Democracy* 5 (3), (1994): 4-17;
Juan J. Linz, Stepan Alfred, "Towards Consolidated Democracies," Journal of Democracy 2 (7), (1996): 14-33.
[149] Wilhelm Vosse, "The Emergence of a Civil Society in Japan," Japanstudien, 11:1, (2000), accessed on June 18, 2021, https://doi.org/10.1080/09386491.2000.11826856, 31-53; Frank Schwartz, "Civil Society in Japan Reconsidered," *Japanese Journal of Political Science* 3 (2), (2002), 195-215.
[150] Mary Alice Haddad, "Civil Society in Japan," Routledge Handbook of Contemporary Japan, (2021), 102-117.
[151] Ibid, 102.
[152] Ibid.
[153] Ibid, 103.
[154] Ralph Braibanti, "Neighborhood Associations in Japan and Their Democratic Potentialities," *The Journal of Asian Studies* 7 (1948), 140.
[155] Theodore Bestor, "Neighborhood Tokyo," *Stanford University Press*, 1989; Susumu Kurasawa (倉沢進), Ritsuo Akimoto (秋元律郎), "Neighborhood Associations and Local Groups" [町内会と地域集団], Tokyo: Minerva, (1990).

were also other organizations, supporting local resident with various issues like volunteer fire departments and social welfare organizations.[156]

The idea of the state and society construction in Japan was based on the traditional Confucian political philosophy, which did not propose division between state and society, advocating the idea that the state is the product of the society and there should be no barriers between two structures.[157] Therefore, civic organizations over this period in Japan were closely connected with governmental organizations.

The Confucian idea, supported in Japan was distinct from European and American approaches, which stood for the political philosophy of the Enlightenment – clear separation between public and private domains.[158] However, in the late 19th century, as Japan started active cooperation with other countries, western-like organizations began to spread around the country like the Red Cross (1877) and the Young Men's Christian Organization (1880).[159] In the beginning of the 20th century, the ideas of democracy started active pervasion in the Japanese society and in 1920s civic activism in Japan reached its prewar culmination.[160] However, together with the liberal democracy movements, the ultra-nationalism ideas started its concurrent expansion, which resulted in the growth of police's power.[161] Therefore, the end of this stage was overshadowed by repression of dissidents and decline of civic activism in the country.

During the Wartime, the civil society organizations primarily lost their power and were significantly suppressed by the expansive military system in the country. Membership in the remaining neighborhood associations became mandatory and the main objective of these organizations was to fulfill orders of the government (collecting taxes, spying on neighbors etc.).[162] Western-like civic organizations were absorbed by

---

[156] Mary Alice Haddad "From Undemocratic to Democratic Civil Society: Japan's Volunteer Fire Departments," *Journal of Asian Studies* 69:1, (2010): 33-56; Takashi Shoumura, "Introductory History of Community Social Welfare" [地域福祉史序説], Tokyo: Taiyo publishing, (1993).

[157] Mutsuko Takahashi, Raija Hashimoto, "Minsei i'in Between Public and Private: A Local Network for Community Care in Japan," *International Social Work* 40, (1997): 303-13; Takashi Shoumura, "Introductory History of Community Social Welfare" [地域福祉史序説], Tokyo: Taiyo publishing, (1993).

[158] Makoto Iokibe, "Japan's Civil Society: An Historical Overview", in Tadashi Yamamoto (ed.) "Deciding the Public Good: Governance and Civil Society in Japan", *Japan Center for International Exchange*, (1999): 51-96.

[159] Haddad, "Civil Society in Japan", 103-104.

[160] Samuel P. Huntington "Democracy's Third Wave," *Journal of Democracy* 2 (2), (1991): 12-34; Haddad, "Civil Society in Japan", 104.

[161] Masao Maruyama, "Thought and Behavior in Modern Japanese Politics" ed. and trans. by Ivan Morris, *Oxford University Press*, (1963).

[162] Sheldon Garon, "Molding Japanese Minds: The State in Everyday Life," *Princeton University Press*, (1997).

the government or dissolved at all.[163]

Next period covers the interval from 1945 to 1960. At the beginning of this stage, Japan faced a large number of issues in all the spheres of public life, including the civic square. The Allied Occupation of Japan (1945-1952), headed by the General Douglas MacArthur, applied massive reforms, which concerned every domain, and aimed to convert the civil society realm into democracy-oriented course.[164] Particular accent was given to suppression of neighborhood organizations, which were associated with the old regime: "the neighborhood association system thus is characteristic of totalitarianism and is contrary to the principles of democratic society. Under this system all Japan is organized in one vast hierarchy from smallest cell to the entire nation."[165] On the other hand, the Allied Occupation provided assistance to the revival and development of Western style civil organizations.[166]

In 1950s, Japan came to the recovery path due the positive efforts of Shigeru Yoshida, one of the longest-serving Japanese Prime Ministers, who gave foundation for the Japanese economic miracle. After the occupation period, neighborhood associations together with other traditional organizations, started their revival and pulled people to work together for mutual support and economic development.[167]

In addition to traditional and western-like civic organizations, Japan witnessed creation and proliferation of organizations, supporting minorities (Japanese Federation for the Deaf etc.), and issue-based associations (consumer co-ops, anti-pollution groups etc.), which stood for inclusion and equality and, in later years, became politically-orientated structures.[168] Other types of entities, which experienced rise during this period, were labor organizations. Initially supported by the Occupation, labor organizations' number increased from 5 thousand in 1945 to 5 million in 1946.[169] Later, threatened by violent and pro-communist spirit of the labor organizations,

---

[163] Haddad, "Civil Society in Japan", 105.
[164] Ibid.
[165] John W. Masland "Neighborhood Associations in Japan," *Far Eastern Survey* 15:23, (1946): 357.
[166] Haddad, "Civil Society in Japan", 105.
[167] Sheldon Garon, "Molding Japanese Minds: The State in Everyday Life," *Princeton University Press*, (1997).
[168] Timothy D. Amos, "Embodying Difference: The Making of Burakumin in Modern Japan," *University of Hawai'i Press*, (2011); Erin Aeran Chung, "Immigration and Citizenship in Japan," *Cambridge University Press*, (2010); Karen Nakamura, "Deaf in Japan: Signing and the Politics of Identity," *Cornell University Press*, (2006); Jeffrey Broadbent, "Environmental Politics in Japan: Networks of Power and Protest," *Cambridge University Press*, (1998); Timothy S. George, "Minamata: Pollution and the Struggle for Democracy in Postwar Japan," *Harvard University Press*, (2002); Margaret A. McKean, "Environmental Protest and Citizen Politics in Japan," *University of California Press*, (1981).
[169] Andrew Gordon, "Labor and Imperial Democracy in Prewar Japan," *University of California Press*, (1991), 8.

the Allied Occupation started to overpower them.[170] Thus, in the second half of 1950s, labor organizations turned to the activity of promotion of good working conditions inside of the political framework.[171]

Following stage in the development of the civil society in Japan is related to the period from 1960 to 1995. In 1960 the Treaty of Mutual Cooperation and Security between the United States and Japan, which was signed in 1951 and was significantly unequal in terms of using Japanese territories as military bases by the American counterparts, was up to renewal. Japanese people were against continuation of this Treaty.[172] However, the Japanese government, headed by the Prime Minister Kishi Nobusuke, believed that the Treaty was critical for national security purposes and triggered the process of its renewal. People's response was immediate with significant protests, particularly among younger generation.[173] As the result of protests, Kishi resigned from his position in disgrace. His successor, Ikeda Hayato, to stop the protests, tried to draw the attention to economic development, and promised to double the national income in ten years.[174]

In spite of the defeat of protesters, their political activity resulted in marked economic increase in the next two decades, meaning the success for the administration of Ikeda. However, the economic growth had its costs, resulted in environmental pollution, issues with social safety nets and tough urban life.[175] These problems gave a trigger to further protests in the late 1960s, which were also supplemented by the disagreements with regard to the government's support for the war in Vietnam.[176]

During this period, civic organizations, supporting minorities and tackling various issues, also became more politically active, and formed their structure as right-based entities.[177] Especially striking are examples of pollution problems in Minamata, Niigata, and Yokkaichi, when environmental activists sued giant corporations

---

[170] Haddad, "Civil Society in Japan", 106.
[171] Andrew Gordon, "The Wages of Affluence: Labor and Management in Postwar Japan," *Harvard University Press,* (1998): 11-12; Robert E. Ward, Yoshikazu Sakamoto, "Democratizing Japan: The Allied Occupation," *University of Hawaii Press,* (1987).
[172] Patricia Steinhoff, "Protest in Japan," in Takeshi Ishida and Ellis S. Krauss (eds.) Democracy in Japan, *University of Pittsburg Press,* (1989).
[173] Haddad, "Civil Society in Japan", 106.
[174] Richard J. Samuels, "Machiavelli's Children: Leaders and Their Legacies in Italy and Japan," *Cornell University Press,* (2003).
[175] Haddad, "Civil Society in Japan", 107.
[176] Patricia Steinhoff, "Protest in Japan," in Takeshi Ishida and Ellis S. Krauss (eds.) Democracy in Japan, *University of Pittsburg Press,* (1989).
[177] Eric A. Feldman, "Ritual of Rights in Japan: Law Society and Health Policy," *Cambridge University Press,* (2000).

and the government for the damages and won the cases.[178] Japanese political leaders of that period, unlike their forerunners of the pre-War and War stages, were more responsive to the civil society activists and movements.[179] Therefore, the connection between the civic square and the state became more solid, and the former got an opportunity to provide feedbacks on government's decision-making as well as call for revision with regard to the actions that were inoperative.[180]

In 1970s and 1980s, the civic square in Japan was gradually expanding in number and types of activities. Civic organizations started to adapt to changes in social lifestyle and attract more women and younger generation to their activities.[181] In 1980s, volunteer and nonprofit activities began to spread, and, by the beginning of 1990s, the civil society took a step in a course of supporting amendments to introduce legal status to them.[182]

The next stage in the development of the civic square started after the disastrous earthquake occurred on January 17, 1995 in Kobe city and the surrounding areas. Around 1.2 million volunteers from various parts of Japan, including local areas, immediately came to help people, suffered from the earthquake. On the other hand, the actions of the government to tackle the issue were inconsiderate, which rose solid criticism.[183]

The earthquake in Kobe became a moment of truth for the civic square in Japan. Both public and private actors admitted that volunteers in Japan are indispensable, and had to be legally well-ordered.[184] Before the catastrophe, a proper legal structure was actual only for large public service organizations and foundations. For

---

[178] Margaret A. McKean, "Environmental Protest and Citizen Politics in Japan," *University of California Press,* (1981); Frank K. Upham, "Litigation and Moral Consciousness in Japan: An Interpretive Analysis of Four Japanese Pollution Suits," *Law and Society Review* 10 (4), (1976): 579-619.
[179] Gary D. Allinson, "Japan's Postwar History," *Cornell University Press,* (2004).
[180] Mary Alice Haddad, "Building Democracy in Japan," *Cambridge University Press,* (2012), 65-71; Kurt Steiner, Ellis S. Krauss, and Scott E. Flanagan, (eds.) "Political Opposition and Local Politics in Japan," *Princeton University Press,* (1980).
[181] Mary Alice Haddad, "Transformation of Japan's Civil Society Landscape," *Journal of East Asian Studies* 7 (3), (2007): 413-37.
[182] Masayuki Deguchi, "Not for Profit: A Brief History of Japanese Non Profit Organizations," *Look Japan* 45 (526), (2000): 18-20; Tadashi Yamamoto (ed.), "Deciding the Public Good: Governance and Civil Society in Japan," *Japan Center for International Exchange,* (1999).
[183] Makoto Imada, "The Voluntary Response to the Hanshin Awaji earthquake: A Trigger for the Development of the Voluntary and Non-Profit Sector in Japan," in Stephen Osborne (ed.), The Voluntary and Non-Profit Sector in Japan: The Challenge of Change, *RoutledgeCurzon,* (2003): 40-50. Makoto Iokibe, "Japan's Civil Society: An Historical Overview", in Tadashi Yamamoto (ed.) "Deciding the Public Good: Governance and Civil Society in Japan", *Japan Center for International Exchange,* (1999); Tadashi Yamamoto, "Emergence of Japan's Civil Society and Its Future Challenges," Deciding the Public Good: Governance and Civil Society in Japan, *Japan Center for International Exchange,* (1999).
[184] Haddad, "Civil Society in Japan", 108.

others, including volunteers, the proceedings were not clearly defined and they had to solve the legal entity issues by informal ways. After the earthquake, the situation started to change and the process for a wide range of organizations became clearer and easier. The result was a new law *To Promote Specified Nonprofit Activities*, adopted in 1998.[185] The new law gave a breath of fresh air for the civic square: civil society organization's registration process became much easier, and the types of activities in the non-profit domain were also significantly expanded.[186]

In the subsequent years, the civil society in Japan expanded dramatically in "size, scope and diversity".[187] To assist the activities of the civil society institutions, support centers were established across Japan. They provided a wide range of support with legal incorporation, taught about the meaning of non-profit organizations, helped newly established entities in the civic sphere.[188]

Moreover, with the development of technologies and computer revolution, which coincided with the growth of civic square in the country, the Japanese civil society organizations started to expand their connections with overseas partners and work together on various projects: environmental issues, comfort women problems and other important matters.[189]

Last stage covers the period from 2011 until current days. In 2011, Japan experienced another serious natural disaster. On March 11, 2011, an earthquake hit a northern part of Japan and, in contrast to the catastrophe of 1995, the activities of the state were well-organized together with the support from volunteers. Both, the government and the civic square, combined their forces to rescue people, clear the roads, provide shelter for displaced families.[190]

In spite of the appropriate response to the disaster from the state and the civil society organizations, still,

---

[185] Robert J. Pekkanen, "Japan's New Politics: The Case of the NPO Law," *Journal of Japanese Studies* 26 (1), (2000): 111-48.
[186] Law of Japan To Promote Specified Nonprofit Activities of 1998 [1998 年特定非営利活動促進法], accessed on June 24, 2021, http://www.japaneselawtranslation.go.jp/law/detail/?vm=04&re=02&id=3028&lvm=01.
[187] Kim D. Reimann, "The Rise of Japanese NGOs," *Routledge*, (2009).
[188] Haddad, "Civil Society in Japan", 108.
[189] Celeste L. Arrington, "Accidental Activists," *Cornell University Press*, (2016); Erin Aeran Chung, "Immigration and Citizenship in Japan," *Cambridge University Press*, (2010); Kim D. Reimann, "The Rise of Japanese NGOs," *Routledge*, (2009); Yasuo Takao, "Reinventing Japan: From Merchant Nation to Civic Nation," *Palgrave Macmillan*, (2007).
[190] Jeff Kingston (ed.), "Natural Disaster and Nuclear Crisis in Japan: Response and Recovery after Japan's 3/11," *Routledge*, (2012); Richard J. Samuels, "3.11: Disaster and Change in Japan," *Cornell University Press*, (2013).

a range of problems in the actions of the government were discovered in connection with the nuclear accident after the earthquake. Therefore, the anti-nuclear activists expressed their discontent with the mistakes of the government. Protesters, coordinated by the social media, flooded the streets throughout the country.[191]

After the breakout of coronavirus pandemic, many countries applied severe measures to tackle the issue, but Japan's government has chosen another way – persuasion.[192] Civic organizations also played its important in two ways role. First, they supported vulnerable groups of people, who fell out of the priorities of the state's policy. Second, the civic square carried out studies regarding endangered groups, run conferences regarding the issue, and provided recommendations to local and central governments.[193]

In sum, the civic square in Japan, as a domicile and compliant society, based on the ideas of Confucianism rather than the Western Enlightenment views, experienced a long way of its development. However, the civic activism in the country was not always been so harmonious and saw rapid splashes, especially in the post-War Japan, primarily due to Japan-US Anpo treaty, environmental issues, natural disasters (Kobe and Tohoku earthquakes, and resulted nuclear issues after the latter). In spite of all the movements, the term civil society became a mainstream in the Japanese society in late-1990s after the Great Hanshin-Awaji Earthquake, and activities of volunteers, who provided great assistance in prevention of the consequences of the disaster. The result was a new *law To Promote Specified Nonprofit Activities*. Currently, the Japanese civil society is a sophisticated and diverse structure, with the broad and increasing network of civic institutions both across the country and overseas.

The legal system, existing in the domicile society, has also experienced its effects and resulted in a distinct from the Western or American structures where the legal systems are based on saturation of rights.[194] The leading Japanese sociologist of the 20th century, Takeyoshi Kawashima, asserted that Japanese people are

[191] Eiji Oguma, "A New Wave against the Rock: New Social Movements in Japan Since the Fukushima Nuclear Meltdown," *Asia-Pacific Journal* 14 (13), (2016).
[192] Paul Kreitman, "In the fight against COVID-19, neighborhood associations could be Japan's ace in the hole," *The Japan Times*, April 26, 2020. Accessed on July 9, 2021, https://www.japantimes.co.jp/news/2020/04/26/national/japan-neighborhood-associations-coronavirus/.
[193] Qihai Cai, Aya Okada, Bok Jeong, Sung-Ju Kim, "Civil Society Responses to the COVID-19 Pandemic: A Comparative Study of China, Japan, and South Korea," *China Review* 21 (1), (2021): 123.
[194] Eric A. Feldman, "The Ritual of Rights in Japan: Law, Society and Health Policy," *Cambridge University Press*, (2000).

quite modest in asserting their rights, and the legal system in Japan is based more on duties and less on rights.[195] In his article "Dispute Resolution in Contemporary Japan" (1963), he argued that cultural factors are a key element in the legal behavior of Japanese people, which are based on the group orientation over individualism and consensus over conflict. Thus, special legal culture of Japanese people makes them to less frequently resort to rights assertion.[196]

Contrary to Kawashima, John Haley, a Japanese legal expert, provided another view towards the attitude of Japanese people to the legal sphere, based on an institutional model.[197] Haley, in his article "The Myth of the Reluctant Litigant" (1978), stated that slow and understaffed courts; control over the number of people, allowed to pass the bar examination; and high court fees, create the conditions which discourage Japanese litigation and people's intention to resort to courts.[198] Later, Mark Ramseyer, in his paper "Reluctant Litigant Revisited: Rationality and Disputes in Japan" (1988) applied the same structural approach, but focused less on institutional hinderances and more on institutional quality.[199] He argued that the strength of Japanese legal system is accounted for low litigation rates, and the legal process takes place when parties cannot predict the outcome of the litigation.[200]

In spite of wide range of discussions on the legal sociology in 20th century Japan, the common feature of the debates was that there were low rates of litigation. This has direct connection to the history of the development of the legal profession. In the pre-War Japan especially before 1870s there were no space for distinct from the state legal profession. Even after the establishment of a separate from the government bar in 1870s, the legal sphere was still limited in its independence from the state. During this period of time, "law was widely understood as an aspect of 'administration', not an individual form of social ordering."[201] Only after the

[195] Takeyoshi Kawashima, "Dispute Resolution in Contemporary Japan" in Arthur Taylor von Mehren (ed.), Law in Japan: The Legal Order in a Changing Society, *Harvard University Press* (1963): 41-72.
[196] Ibid.
[197] John O. Haley, "The Myth of the Reluctant Litigant," *Journal of Japanese Studies* 4 (2), (1978): 359-90.
[198] Ibid.
[199] Mark Ramseyer, "Reluctant Litigant Revisited: Rationality and Disputes in Japan," *Journal of Japanese Studies* 14 (1), (1988): 111-23.
[200] Ibid.
[201] Malcolm M. Feeley and Setsuo Miyazawa, "The State, Civil Society, and the Legal Complex in Modern Japan: Continuity and Change," in Terence C. Halliday, Lucien Karpik and Malcolm M Feeley (eds.), Fighting for Political Freedom: Comparative Studies of the Legal Complex and Political Liberalism, *Hart Publishing* (2007), 152.

War, Japan witnessed independence of bar and lawyers with the establishment of the *Attorney Act* of 1949.[202]

One of the reasons for the impetuous independence and autonomy of the bar was the favor of American occupation forces. Alfred Oppler, an American lawyer, recalled that Japanese lawyers greeted the support from American side in the battle with the justice authorities and the court, to shape the *Attorney Act* in the direction of the bar's independence (disciplinary and admission to bar processes were also enhanced markedly).[203]

In 1960s, when the political activism increased in Japan, Japanese lawyers actively represented activists in courts, and achieved considerable success.[204] The Japanese bar fulfilled its functions in not only representing people in court, but also implemented its own sense of strong civic commitment. This dedication was also reflected in the number of organizations, which were sponsored and currently are financed by the JFBA. These associations account for around 100 special organizations and committees, among which are the Human Right Protection Committee, the Japan Civil Liberties Association, the Japan Young Lawyers Association and others. Such organizations also serve as basis of the JFBA's opinion on various issues, including political matters.[205]

With this kind of expansion of civic activism, importance of access to justice for everyone, as well as discussions in 20th century on the reasons of low-litigation rates, one of which was understaffed legal system, Japan faced a need for a higher number of lawyers. However, governmentally controlled bar exam put restrictions on the quantity of lawyers, and until 1990s from 2 to 4 percent of those taking exam (around 500 people), passed each year, leaving the number of lawyers in relation to the Japanese population quite low.[206]

With the aim to reform the legal system and increase the number of lawyers and judges, the government started legal system reform discussions and in July 1999 the Justice System Reform Council (JSRC) was established to address the issues.[207] The plan of the JSRC was the "realization of a more accessible and user-

---

[202] Attorney Act of Japan [弁護士法] (1949). Accessed June 30, 2021, http://www.japaneselawtranslation.go.jp/law/detail/?id=1878&vm=04&re=02.
[203] Alfred C. Oppler, "Legal Reform in Occupied Japan," *Princeton University Press*, (1976), p. 47.
[204] Sheldon Garon, "From Meiji to Heisei: The State and Civil Society in Japan," in Frank Schwartz and Susan Pharr (eds.), The State of Civil Society in Japan, *Cambridge University Press*, (2003); Frank Upham, "Law and Social Change in Postwar Japan," *Harvard University Press*, (1987), ch. 2.
[205] Feeley and Miyazawa, "The State, Civil Society, and the Legal Complex in Modern Japan: Continuity and Change," *Hart Publishing* (2007), 177-78; Stuart A. Scheingold and Austin Sarat, "Something to Believe In: Politics, Professionalism, and Cause Lawyering," *Stanford University Press*, (2004).
[206] Feeley and Miyazawa, "The State, Civil Society, and the Legal Complex in Modern Japan: Continuity and Change," *Hart Publishing* (2007), 178.
[207] Setsuo Miyazawa, "Successes, Failures, and Remaining Issues of the Justice System Reform in Japan: An Introduction to the Symposium Issue." *Hastings International and Comparative Law Review* 36, (2013): 314.

friendly justice system, public participation in the justice system, redefinition of the legal profession and reinforcement of its function."[208] The JSRC presented the Recommendations on improving the justice system on June 12, 2001.[209] As the result of the implementation of the reform, the legal profession was reconsidered significantly with the introduction of a law school system, amendment of the admission to the bar and disciplinary process with regards to lawyers.

As for the number of *bengoshi*, the aim of JSRC was to reach 1500 successful applicants passing national bar examination in 2004 and 3 thousand people in 2010, reaching 50 thousand professionals in 2018. Over the period from 2004 to 2019 the number of lawyers in Japan doubled from around 20 thousand to more than 41 thousand lawyers.[210] Although the current condition with lawyers' population is better than the one before the reforms, the aims pointed by JSRC have not been achieved.

In sum, from the period when the legal profession in the Japan gained its independence in 1949, lawyers made significant step forward, continuing to maintain their autonomy from the state nowadays as well. The bar became closer to the civil society and its issues, especially after the political activism of 1960s and natural disasters of 1995 and 2011. Originally considered as harmonious and compliant society with low rates of litigation, the civic square over the post-war period is transformed into the vibrant organization, where the bar and lawyers raising in number, possessing solid independence and playing an important role in maintaining "the mission of protecting fundamental human rights and achieving social justice."[211]

[208] The Justice System Reform Council. The Points at Issue in the Justice Reform, 1999. Accessed on June 30, 2021, https://japan.kantei.go.jp/policy/sihou/singikai/991221_e.html.
[209] The Justice System Reform Council. Recommendations of the Justice System Reform Council – For a Justice System to Support Japan in the 21st Century, 2001. Accessed on June 30, 2021, https://japan.kantei.go.jp/policy/sihou/singikai/990612_e.html
[210] Japan Federation of Bar Associations. White Paper on Attorneys 2019. Accessed on June 30, 2021, https://www.nichibenren.or.jp/library/en/about/data/WhitePaper2019.pdf.
[211] Attorney Act of Japan (1949). Accessed on June 30, 2021, http://www.japaneselawtranslation.go.jp/law/detail/?id=1878&vm=04&re=02.
Kay-Wah Chan, "Justice System Reform and Legal Ethics in Japan," *Legal Ethics* 14 (1), (2011), 74.

### 3.3.2 The USA civil society and loyal to court attorneys

In 1727, a group of young people, mostly artisans and tradesmen, met in Philadelphia to discuss philosophy issues and current news, under the title of mutual improvement. They were members of Junto Club, which consisted of progressive-minded people, headed by a 20 years old printer, Benjamin Franklin.[212] Under the management of Franklin, the Club spread its support and aid across the colonial Philadelphia by creation of libraries, volunteer fire brigade, charity hospital etc.[213] These activities in Philadelphia were one of the first steps for further organization of Americans as the society, which voluntarily addresses their common problems. Many further social movements in the history of the USA were resulted from the active instinct of Americans to associate and tackle the issues.

The United States has passed a relatively shorter period of time in development of its society in comparison with other developed countries. However, over the interval of around 250 years of the USA as a federal state, the country has been able to emerge as a leading world power, with a strong civil society built on the particularity of each individual, federalist concepts and solid voluntarily basis of civic organizations.

From the historical perspective, in the second half of the 18th century of the USA, there were no feudal remnants and control by the bureaucracy from the metropolis (Kingdom of Great Britain). All the sections of the American colonists' society sought to defend their rights before the mother country. This contributed to the civil self-organization in the 1760s and led to the intensification of political life and the American Revolutionary War in 1775-1783, which ended with the victory of the colonists.[214]

Gaining independence did not mean the formation of the civil society. In the late 18th and early 19th centuries, the construction of an active civic square in the country began in the form of organization of political parties, active participation of citizens in the state and judicial policy, as well as the rapid development of the

[212] Benjamin Franklin, "Autobiography of Benjamin Franklin," ed. Frank Woodworth Pine, *Henry Holt and Company via Gutenberg Press*, (1916).
[213] Alan C. Houston, "Benjamin Franklin and the Politics of Improvement," *Yale University Press*, (2008), 80; Brooke S. Palmieri, "Junto," *The Encyclopedia of Greater Philadelphia*, (2015). Accessed on July 28, 2021, https://philadelphiaencyclopedia.org/archive/junto/.
[214] Ilan Rachum, "From 'American Independence' to the 'American Revolution,'" *Journal of American Studies*, Vol. 27 (1), (1993): 73-81; David A. Smith, 'Dependent Urbanization in Colonial America: The Case of Charleston, South Carolina," *Oxford University Press* Vol. 66 (1), (1987): 1-28.

press.[215]

Alexis de Tocqueville, during his visit to the USA in 1831-1832, witnessed the striking feature of association characteristic of the American society:

> Americans of all ages, all conditions, all minds constantly unite. Not only do they have commercial and industrial associations in which all take part, but they also have a thousand other kinds: religious, moral, grave, futile, very general, and very particular, immense and very small; Americans use associations to give *fêtes*, to found seminaries, to build inns, to raise churches, to distribute books, to send missionaries to the antipodes; in this manner they create hospitals, prisons, schools. Finally, if it is a question of bringing to light a truth or developing a sentiment with the support of a great example, they associate. Everywhere that, at the head of a new undertaking, you see the government in France and a great lord in England, count on it that you perceive an association in the United States.[216]

Americans supported a peer system rather than patron relations. Associations provided the platform to exercise freedom; protection against intrusion from outside, support the importance of individual's rights; proposition that a whole is better than a part. Most importantly, they "instructed citizens in the art of self-government, instilling the democratic habits necessary to maintain the American republic."[217] In that way, the civic square facilitated the political association, and the same happened in the other direction. Tocqueville argued that "there are no countries in which associations are more needed, to prevent the despotism of a faction of the arbitrary power of a prince, than those which are democratically constituted."[218] Therefore, the freedom of people to associate became a fundamental principle of American democracy and liberal society.

In the middle of the 19th century, slavery in the southern states became an acute problem.[219] Following the November 1860 election victory of Abraham Lincoln from the Republican Party (formed in 1854 to counter the Democratic Party), relations between the northern and southern states escalated, leading to the 1861-1865 civil war between north and south.[220] The result of the war was the final victory of the north led by Lincoln and

---

[215] Robert E. Park, "The Natural History of the Newspaper," *American Journal of Sociology,* Vol. 29 (3), (1923): 273-289; John P. Frank, "Historical Bases of the Federal Judicial System," *Law and Contemporary Problems* Vol. 13, (1948): 3-28.
[216] Alexis de Tocqueville, "Democracy in America," trans. Harvey C. Mansfield and Delba Winthrop, *University of Chicago Press*, (2000), 489.
[217] Wells King, Vijay Menon, Robert Bellafiore, "The Space Between: Renewing the American Tradition of Civil Society," December 18, 2019, United States Congress Joint Economic Committee, accessed on July 28, 2021, https://www.jec.senate.gov/public/index.cfm/republicans/analysis?ID=78A35E07-4C86-44A2-8480-BE0DB8CB104E#_ednref6.
[218] Alexis de Tocqueville, "Democracy in America," 98.
[219] Ira Berlin, "American Slavery in History and Memory and the Search for Social Justice," *The Journal of American History,* Vol. 90 (4), (2004): 1251-68.
[220] Gerald Gunderson, "The Origin of the American Civil War," *The Journal of Economic History,* Vol. 34 (4), (1974): 915-950.

the adoption of the 13th amendment to the US Constitution, which abolished bondage.[221]

In the second half of the 19th century, due to the growing American industrialization and new related social problems like mass immigration and urban poverty, the society experienced a significant transformation of non-profit sector and voluntarism.[222] In addition, during this stage, active development of multilevel democracy and entrepreneurship led to emergence of large corporations.[223] This was accompanied by a rapid growth of trade union organizations.[224]

At the beginning of the 20th century, a mature, reform-oriented civil society of the modern type was formed in the United States. The progressive segment of the civil society began to function as a tool for correcting state policy and monopoly entrepreneurship. Late 19th and early 20th centuries, known as the progressive era, constructed modern America, and many of current civil associations, political culture, and the basic ideas of social contract were established during that period.[225]

At this stage, the state took first steps to redistribute wealth through taxes on income and inheritance. From this period, taxes in the United States started to be used as an important tool in regulating the activities of the non-profit sector.[226] The consequence of this policy was the rise of new specific American formations. Universities were among such entities, which still play an extremely important role in the reproduction of the cultural genome of the American society. From the outset, these institutions did not follow the European model of university education relying on government support, and they also differed from their predecessors – colleges founded by religious denominations and sects. Free from government interference and religious influence, American universities were at the same time dependent on the voluntary contributions of their donors, usually those with large fortunes. Competing for these donations, universities had to both constantly maintain a high level of the educational process and accompany their graduates after graduation, hoping for their charitable

[221] Adrian Wooldridge, Alan Greenspan "Capitalism in America: A History," *Penguin Press*, (2018), 120.
[222] Ran Abramitzky, Leah Boustan, "Immigration in American Economic History," *Journal of Economic Literature*, Vol 55 (4), (2017): 1311-45; "John F. McClymer, Late Nineteenth-Century American Working-Class Living Standards," *The Journal of Interdisciplinary History*, Vol. 17 (2), (1986); 379-398.
[223] Daniel Nelson, "The History of Business in America," *OAH Magazine of History*, Vol. 11 (1), (1996): 5-10.
[224] William Lyon Mackenzie King, "Trade-Union Organization in the United States," *Journal of Political Economy*, Vol. 5 (2), (1897): 201-215.
[225] Kathryn Kish Sklar, "A Historical Model of Women's Voluntarism and the State, 1890-1920," in Civil Society, Democracy, and Civil Renewal, ed. Robert K. Fullinwider, *Rowman and Littlefield Publishers*, (1999), 185.
[226] Berman L. Corwin, "Donor advised funds in historical perspective," *Boston College Law Forum on Philanthropy and the Public Good* 1, (2015), p. 8-9.

contributions in the future. All this required universities to constantly be in the center of an extensive network of various associations, research centers, foundations, which all together integrated the nation.[227]

Charity foundations became another type of organizations in the non-profit sector, which initially had a purely American specificity due to the fact that their emergence and development was mainly dependent on the peculiarities of the USA tax system. Being at the junction of two differently directed needs of donors: the moral obligation to support those in need, as well as the desire to preserve their income from the tax burden, including minimizing inheritance payments, these foundations have taken an exceptional place in the life of American society, accumulating significant means and exerting a powerful influence on politics, culture, education, and science.[228]

The post-World War II years were marked by a new qualitative milestone in the development of the American civil society. The reasons for this were rooted in the transition of developed countries to new standards of social policy. The traditional liberal state had been replaced by the welfare state, with its comprehensive health, social insurance and pro-poor programs. The state, on the one hand, managing tax incentives, directed significant financial resources through charitable foundations to non-profit associations operating in those areas that were of the greatest public importance at the moment. On the other hand, it acted as a direct customer for a wide range of social services from organizations of the non-profit sector.

All of these measures created by the early 1960s a large network of NGOs and NPOs on a scale exceeding anything the American society had ever seen, serving governmental social programs or engaged in philanthropy in the broader sense of the realization of a public good. This new sphere of public activity as a whole has received the name of a non-profit, or third, in contrast to the state and business, sector.[229]

Therefore, if in the mid of 20th century, the civic square in the USA was dominated by business associations, which represented about half of all civic associations in 1950 and gave them strong powers to lobby

---

[227] Hall Peter Dobkin, "A Historical overview of Philanthropy, Voluntary Associations, and Nonprofit organizations in the United States, 1600-2000," In: Nonprofi t sector: The Research Book, ed. Walter W. Powell, Richard Steinberg, *Yale University Press*, (2006), 45-46.
[228] Leonid Bidniy (Леонид Бидный), "Legal Status of Charitable Foundations in the United States," [Правовое положение благотворительных фондов в США]: (PhD diss., Moscow State Institute of International Relations. 1977), 14.
[229] Fridrikh Furman (Фридрих Фурман), "On Philanthropy in America: From the Colonial Era to the Present Day," [Филантропия в Америке. Очерк истории], *CreateSpace Independent Publishing Platform*, (2015), 119.

various matters,[230] then in early 1960s, Americans started to actively participate in fellowship associations which were "groups emphasizing and expressing solidarity among citizens, or among 'brothers' or 'sisters' …, major fraternal groups, religious groups, civic associations, and veterans' associations predominated among very large membership associations."[231] These fellowship associations were often involved in public affairs. For example, more than half of the 20 biggest associations of the mid 20th century were participants in the legislative processes.[232] Among them were the American Farm Bureau Federation, the General Federation of Women's Clubs, The Fraternal Order of Eagles, and the American Legion.[233]

The trend continued in later years and business associations started to lose their positions.[234] The share of business groups decreased from 42 to 17.5 percent over the period from 1960 to 1990, while the number of civil society organizations over the same period increased from 6 to 23 thousand.[235] Such organizations included environmental, women, racial, ethnic minorities, antipoverty and other public good orientated groups.[236]

Moreover, over this period, the organizational structure of many civic organizations switched from membership groups to non-member associations like public law groups, foundations, political action committees.[237] In addition, civic organizations started actively attract professional staff.[238] Thus, by the end of the 20th century American civil society became less orientated towards business and more pluralistic in term of

---

[230] Sherwood Fox, "Voluntary associations and social structure," (PhD. diss., Department of Social Relations, Harvard University, 1952); Frank R. Baumgartner and Beth L. Leech, "Basic Interests: The Importance of Groups in Politics and in Political Science," *Princeton University Press,* 1998.
[231] Theda Skocpol, "Voice and Inequality: The Transformation of American Civic Democracy," *Perspectives on Politics* Vol. 2 (1), (2004), 2.
[232] Ibid, 3.
[233] Theda Skocpol, "Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States," *Belknap Press, Harvard University Press,* (1992); Michael J. Bennett, "When Dreams Came True: The G.I. Bill and the Making of Modern America," *Brassey's,* (1996).
[234] Skocpol, "Voice and Inequality: The Transformation of American Civic Democracy," 2.
[235] Ibid.
[236] Jeffrey M. Berry, "Lobbying for the People: The Political Behavior of Public Interest Groups," *Princeton University Press*, (1977); Jack L. Walker Jr., "Mobilizing Interest Groups in America: Patrons, Professions, and Social Movements," *University of Michigan Press,* (1991).
[237] David M. Ricci, "The Transformation of American Politics: The New Washington and the Rise of Think Tanks," *Yale University Press*, (1993); Andrew Rich, Weaver R. Kent, "Advocates and Analysts: Think Tanks and the Politicization of Expertise," in Interest Group Politics, eds. Allan J. Cigler, Burdett A. Loomis, 5th ed., *CQ Press,* (1998): 235-53; Margaret M. Conway, Joanne Connor Green, "Political Action Committees and the Political Process in the 1990," in Interest Group Politics, eds. Allan J. Cigler, Burdett A. Loomis, 4th ed., *CQ Press,* (1995), 155-73.
[238] Frank R. Baumgartner, Bryan D. Jones, "Agendas and Instability in American Politics," *University of Chicago Press*, (1993); Ronald G. Shaiko, "Voices and Echoes for the Environment: Public Interest Representation in the 1990s and Beyond," *Columbia University Press,* (1999).

types of associations, with a switch towards the quality rather than the quantity of the members.

In the 21st century, American civil society mostly shaped in the following civic organizations: neighborhoods, churches, schools, voluntary associations, philanthropy.[239] Neighborhoods are "[t]he communities which … develop the civic skills and social norms that reinforce reciprocity, trust, and cooperation."[240] Although Americans spend less time with their neighbors, the existence and importance of neighborhoods is a relevant indicator of a flourishing associational life. Churches are another important and active institution for the civil society, since many Americans, although not as frequently as in previous decades, continue to shape a religious life.[241] Schools also serve as a community life for people. They are active in providing people with a range of support: sport events, place for people to vote or hold a community gathering and so on, which ties the community's binds.[242] Voluntary associations are another striking point of American civic institutions with their diverse range. These associations possess broad communal benefits and fulfill wildly various functions like fraternal, veteran, political, sports and other matters.[243] Finally, philanthropy is also a sphere of direct connection to the civil society, which "is an important diagnostic sign of social capital."[244]

After the breakout of coronavirus pandemic, the administration of the President Trump undertook dubious steps to tackle the issue, which stimulated the intense response from the civil society. Faith-based groups as well as mutual aid initiatives took active measures to help people.[245] The same was relevant for labor unions and large non-profit organizations.[246] Religious groups also played their positive role in helping local

[239] King, Menon, Bellafiore, "The Space Between: Renewing the American Tradition of Civil Society," accessed on July 28, 2021, https://www.jec.senate.gov/public/index.cfm/republicans/analysis?ID=78A35E07-4C86-44A2-8480-BE0DB8CB104E#_ednref6.
[240] Ibid.
[241] Ibid.
[242] Eric Klinenberg, "Palaces for the People: How Social Infrastructure Can Help Fight Inequality, Polarization, and the Decline of Civic Life," *Crown*, (2018).
[243] King, Menon, Bellafiore, "The Space Between: Renewing the American Tradition of Civil Society."
[244] Robert Putnam, "Bowling Alone: America's Declining Social Capital," *Journal of Democracy* Vol. 6 (1), (1995), 117.
[245] Aysha Khan, "Faith-Based Mutual Aid Flourishes Amid Pandemic, Protests," *AP News*, June 25, 2020. Accessed on July 28, 2021, https://apnews.com/article/fde57877d75c9b6ff2bdd6fce3849ca3; Lizzie Tribone, "Mutual Aid, for and by Undocumented Immigrants," *American Prospect*, July 1, 2020. Accessed on July 28, 2021, https://prospect.org/coronavirus/mutual-aid-for-and-by-undocumented-immigrants/.
[246] Shane Burley, "Coronavirus Fight: Some US Worker Unions Become More Aggressive," *Al Jazeera*, May 1, 2020. Accessed on July 28, 2021, https://www.aljazeera.com/economy/2020/5/1/coronavirus-fight-some-us-worker-unions-become-more-aggressive; Noam Scheiber, Kate Conger, "Strikes at Instacart and Amazon Over Coronavirus Health Concerns," *New York Times*, March 30, 2020. Accessed on July 28, 2021, https://www.nytimes.com/2020/03/30/business/economy/coronavirus-instacart-amazon.html; Erik Oritz, "Target,

communities with the consequences of the COVID-19.[247] The pandemic has brought people's civic activism to a new level, making them aware of the point that the government's visible shortcomings compelled society to take matters into their own hands.

In sum, based on the brief analysis of the civil society in the United States, the civic square can be characterized by the following features. First, today, civic associations realize their functions in the social policy areas: education, health care, culture, support for the poor and the disabled. Second, the US government policy in the field of regulation of the activities of the third sector was built mainly on the provision of tax preferences to those, whose activities, in the opinion of the state, were aimed at solving public problems. Third, since the post Second World War period, the state, through the implementation of large-scale social programs, has actually made the third sector its long arm, providing social orders and attracting the provision of standardized public services. Finally, the nature of Americans to associate, gave a solid trigger to maintain the strong civil society spirit to tackle various obstacles, and the current COVID-19 situation is a bright example of such union.

Moving to the legal profession in the American society, the bar has undergone a long way in the struggle for its independence. In the second half of the 18th century, "the practice of law [was] grasped into the hands of deputy sheriffs, pettifoggers, and constables, who filled all the writs upon bonds, promissory notes and accounts, and received the fees established for lawyers and stirred up many unnecessary suits."[248] Still, the legal profession started to shape as England-like bar and potential lawyers underwent education in England or American colleges.[249]

---

Walmart Workers and Others Plan 'Sickout' Protests Over Coronavirus Safety," *NBC News*, May 1, 2020. Accessed on July 28, 2021, https://www.nbcnews.com/news/us-news/target-walmart-workers-others-plan-sickout-protests-over-coronavirus-safety-n1195126; Robert Combs, "Analysis: COVID-19 Has Workers Striking. Where Are the Unions?" *Bloomberg Law*, April 14, 2020. Accessed on July 28, 2021, https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-COVID-19-has-workers-striking-where-are-the-unions; Nandia Bose and Krystal Hu, "How Big Unions Smooth the Way for Amazon Worker Protests," *Reuters*, May 21, 2020. Accessed on July 28, 2021, https://www.reuters.com/article/us-health-coronavirus-amazon-com-workers/how-big-unions-smooth-the-way-for-amazon-worker-protests-idUSKBN22X19Q.

[247] Liam Stack, Sheri Fink, "Franklin Graham Is Taking Down His N.Y. Hospital, but Not Going Quietly," *New York Times*, May 10, 2020. Accessed on July 28, 2021, https://www.nytimes.com/2020/05/10/nyregion/franklin-graham-samaritans-purse-central-park-hospital-tent-coronavirus.html; Priya Krishna, "How to Feed Crowds in a Protest or Pandemic? The Sikhs Know," *New York Times*, June 8, 2020. Accessed on July 28, 2021, https://www.nytimes.com/2020/06/08/dining/free-food-sikh-gundwara-langar.html.

[248] Roscoe Pound, "Legal Profession in America," *Notre Dame Law Review* Vol. 19 (4), (1994), 336.

[249] Ibid.

After revolution and until the Civil War (formative era), the legal profession faced the following issues: strong conservative tendencies among lawyers, disbelief to the profession, decentralization of the justice and bar, distrust to English law.[250] During this golden age of American law, due to the work of prominent judges and lawyers like Kent, Martin, Story, Pinkney, Gibson, Webster and others, the legal system experienced positive adjustments and growth.[251] Tocquville described lawyers of this period in the following way:

> The special information that lawyers derive from their studies ensures them a separate rank in society, and they constitute a sort of privileged body in the scale of intellect. They are masters of a science which is necessary...They serve as arbiters between the citizens...American aristocracy...is not among the rich...but it occupies the judicial bench and the bar.[252]

As soon as Civil War ended, the bar associations in the USA turned into social organizations for lawyers to meet and pass resolutions on professional matters. Later, in 1878 the ABA was established and its first meeting was devoted to the matter of legal education and law reform.[253] At first ABA had little influence and did not achieved significant results in the second half of the 19th century with around 2 thousand members in 1903.[254] However, the figure started to grow rapidly and in 1928 the membership reached about 28 thousand lawyers.[255] Until the World War II, among the achievements of the ABA were active participation in the reforms, improvement of the process of the admission to the bar, codification of lawyers' ethics matters (1908 *Canons of Professional Ethics*).[256]

After the end of World War II, the bar reconsidered the position of American lawyers in society and approved a Survey of the Legal Profession in 1946.[257] The Survey delivered both critical and positive reports with regard of the benefit of lawyers in strengthening American democratic foundations.[258] The next milestone

---

[250] Ibid, 339.
[251] Ibid, 343.
[252] Alexis de Tocqueville, "Democracy in America," 298.
[253] American Bar Association. Accessed on July 28, 2021, https://www.americanbar.org/about_the_aba/timeline/.
[254] Pound, "Legal Profession in America," (1994), 346.
[255] Ibid.
[256] Canons of Professional Ethics. Adopted by American Bar Association on August 27, 1908. Accessed on July 28, 2021, https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/1908_code.pdf.
[257] Proceedings of the 1946 Annual Meeting of the House of Delegates, 71 A.B.A. ANN. REP. 307, 308 (1946).
[258] Reginald Heber Smith, "Survey of the Legal Profession: Its Scope, Methods and Objectives," 39 A.B.A. J. 548, 550 (1953); Robert T. McCracken, "Report of Observance by the Bar of Stated Professional Standards," *Virginia Law Review* Vol. 37, (1951): 399-425; Orie L. Phillips, Philbrick Mccoy, "Conduct of Judges and Lawyers: a Study of Professional Ethics, Discipline and Disbarment," *American Political Science Review* Vol. 47 (2), (1953).

was the adoption of the 1969 *Code of Professional Responsibility* by ABA.[259] The *Code* was formed "to reinforce the positive, social good private practice lawyers might, and did, accomplish in representing their clients. The private lawyer's duty to represent clients diligently and zealously was at the forefront of the Code's ideology, though that duty was couched in terms of its social utility."[260] However, the *Code* did not last long, and in 1977 ABA formed a new Special Commission on Evaluation of Ethical Standards (Kutak Commission).[261] The result was the adoption of *Model Rules of Professional Conduct* in 1983. The new *Model Rules* were based on the concept of lawyer's loyalty to the client,[262] which raised the fraction among lawyers with regards to the ethical behavior and many states adopted the *Rules* quite hesitantly.[263] The activities of the bar in the 21st century continued to stress on the mostly development of ethics matters for lawyers.[264]

To conclude, the legal profession in the USA, although regulated by ABA in terms of legal education and ethical matters, and state bars, still considered as pro-judicial structure, with lawyers maintaining "good fidelity to the court."[265] At the same time, lawyers struggling for their independence from the court, achieved some significant progress, the matter which was discussed in the section 2.2.2 of this dissertation. However, the distinction of the American legal profession is that its ultimate objective is to observe safe and orderly administration of justice,[266] making it closer to the governmental profession, rather than civic institution.

[259] Model Code of Professional Responsibility. Adopted by American Bar Association on August 12, 1969. Accessed on July 28, 2021, https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2011build/mod_code_prof_resp.pdf.
[260] Michael Ariens, "Making the Modern American Legal Profession, 1969-Present," *St. Mary's Law Journal* Vol. 50 (2), (2019): 672.
[261] Michael Ariens, "The Last Hurrah: The Kutak Commission and the End of Optimism," Creighton Law Review Vol. 49, (2016): 689-735.
[262] Ibid, 691-692.
[263] Ibid, 693.
[264] Proceedings of the Annual Meeting of the House of Delegates, 126 A.B.A. ANN. REP. 1, 7 (2001); Commission on Ethics 20/20. Accessed on July 28, 2021, https://www.americanbar.org/groups/professional_responsibility/committees_commissions/standingcommitteeonprofessionalism2/resources/ethics2020hompeage/.
[265] Green, "The Lawyer's Role in a Contemporary Democracy, Foreword.": 1240.
[266] Ibid.

### 3.4 Summary

The chapter examined interconnected concepts of the society, the civil society and the legal profession. The section 3.1 started with the analysis of the concept of society. This conception has a long history of its development and gave birth to many approaches to its understanding – Marx, Durkheim, Talcott and other prominent sociologists elaborated their own concepts of society. The idea of society in this dissertation is understood as a clump of social ties and interactions developed by people in a certain social space and time as well as common territory and culture. The features of the society are autonomy, great integrating power and a high level of self-regulation.

Society acts as a special stage in the development of a humankind and conditioned by a collective activity of a person and his interaction with other people. Since society is created and develops in the process of joint activities of humans, its existence is supported by these interactions. The totality of social relations, generated by joint activities, forms stable social formations that ensure an integrity of society – social structures and social institutions that regulate them.

The stage of formation of such structures and institutions, give birth to the concept of the civil society, which was a central topic of the discussion in the second part of the section 3.1. The idea of the civil society, originally related as a political structure, started its proliferation in the 18$^{th}$ century as an opposite to an absolutist-feudal state in the works of Ferguson, Montesquieu, Kant and others. Later, prominent sociologists like Hegel and Marx, influenced by the capitalism ideas, reconsidered the civil society as a non-political society with capitalist interests with conflicts and inequalities. Relinquished in the first half of the 20$^{th}$ century, the concept played marginal role. The Soviet Union, including Soviet Uzbekistan, did not experienced boost of civic society ideas since the Soviet society was based on conceptions of socialism and communism. Finally, in 1980s the neoliberal ideology gave trigger to a new wave of interest towards the civil society as a neoliberal concept, advocating development of the third sector as an alternative for the welfare state.

Analysis of the civil society term leads to the following understanding of its meaning in this dissertation. The idea refers to a necessary and rational way of order of people by means of social action, based on the postulates of intelligence, freedom, democracy, and laws. The important components of the civil society are

public compromise, individual freedoms, plurality, moderate participation of the state in its maintenance, and society's control over activities of the state. The state and the civil society are interconnected structures, preserving each other via civic institutions from reciprocal oppression.

Civic institutions play vital role in the construction of the civil society by participating in political agendas, guide the state on various matters, draw public attention to acute problems, which make them intermediaries between the state and the society. The same role is allotted to the legal profession in the societies, where the bar and lawyers are considered as a part of the civic square.

The legal profession, being a civil society cell, possesses powers of a governmental body and a non-state institution. This structure realizes its abilities in two ways: as a special institute to assist the state in implementation of proclaimed rights and freedoms, and as an instrument for people and legal entities to defend their rights and interests if they are violated by the state. Special position of the legal profession and its nature as the civic institution, led to more scrupulous analysis of the civil societies and legal complexes of the targeted countries, Uzbekistan, Japan and the USA, in the following sections.

The section 3.2 started with the examination of the civil society of Uzbekistan. After independence of the state in 1991, the country began formation of its civic square, since this concept, as mentioned above, was not applicable during the Soviet period. The country faced a large number of issues left from Soviet past, among which were economic crisis, old-fashioned psychology of people and state paternalism. The history of the civil society of an independent Uzbekistan can be divided into three stages: from 1991 to 2010 (foundation), from 2011 to 2016 (stagnation) and from 2016 until current days (revival).

First stage from 1991 to 2010 related to the foundation of the civil society. Adoption of Constitution (1992) and other laws directly related to the construction of the civic square, gave trigger for further reformation and development of the civil society. However, under the pretext of the development of the civil society, administration of the first President Karimov formed the basis for complete control of the civic square. Karimov's vision of the civil society was based on neo-liberal political thought, which was predominant in the end of 20$^{th}$ century in Europe. He proposed five principles for the development of the country, one of which defined the state as the main reformer, and gradual transition from the strong state to the strong civic society. In fact, the idea resulted in authoritarian neoliberalism and the civil society came under the tight control of

governmental organizations, leaving no room for independence of civic institutions, including the Uzbek bar, which was significantly influenced by the justice authorities.

Second stage from 2010 to 2016 started after implementation of the *Concept for Further Deepening the Democratic Reforms and Establishing the Civil Society in the Country*. In spite of quasi attempts to reconsider the civic square, the state in fact entered the phase of stagnation. All the initiatives were conducted on the will of the state, without taking into consideration the civic institutions' opinions. Thus, although by the end of this phase the quantity of civic organizations in Uzbekistan passed 8 thousand units, this was just a number, without any relation to quality of these institutions.

Third stage covers the period from 2016 until current days and is characterized by gradual attempts to revive the civil society by the second President Shavkat Mirziyoyev. The civil society entered this stage with the number of problems: weak capacity of civic institutions, absence of critical thinking, inconsistent reforms, and conservative religious views. President Mirziyoyev issued the *Strategy of Actions on Five Priority Directions of Development in 2017-2021*, which included improvement of the civil society and the legal profession. In accordance with the *Strategy*, the President in May 2018 and in April 2020 adopted two decrees addressed to reform the civic square and raise the role of civic organizations in public life. The next step of the President was the *Concept for the Development of the Civil Society in 2021-2025*, signed in March 2021. Among the main directions of the *Concept* are improvement of the civil society's legal framework, civic institutions' financial support enhancement, provision of necessary conditions for civic square's participation in public life, and reconsideration of transparency problem.

In spite of positive reforms, there are still acute problems in the third sector, which the state has to reconsider in the process of implementation of the *Concept*. Among these issues are long and cumbersome registration process for civic organization, financial support hindrances, unnecessary control from the state over the civic institutions' daily activities, capacity issues, and opaque practices of civic organizations.

In the legal profession domain, President Mirziyoyev in May 2018 and December 2019 enacted two decrees, which triggered reconsideration of the system of bar and advocates. The second decree created a working group, the result of which was the draft *Concept for the Development of the Institution of the Legal Profession*. The draft *Concept* accents measures to increase the legal profession's independence, reconsider

licensing, advanced training and disciplinary processes, and improve the role of advocates in court. Adoption of the *Concept* is a long-awaited moment for the legal community. Nonetheless, striking problems with organizational dependence of the bar on the justice authorities, admission to the profession, and licensing process remain actual.

In sum, current Uzbekistan's civil society is still at the formation stage. Despite positive reforms in recent years, the general trend of the state is still neoliberal approach to construct "strong" civil society, by implementing measures top-down, without careful consideration of possible consequences. The civic square needs more careful research, including the legal profession domain. Therefore, the section 3.3 was devoted to the analysis of the experiences of Japan and the USA, as an example of construction of two different models of relations between the civil society, the state and the legal profession – society-orientated legal profession (Japan) and more pro-judicial bar and lawyers (the USA).

The first part of the section 3.3 started with the analysis of the Japanese civil society, the legal profession and the state. The history of development of the civic square in Japan traces back to the 8th century, when family grouping system was organized. Later, during the Tokugawa period, the practice became more sophisticated, and during the Meiji era transformed to neighborhood associations. The idea of the relations between the civil society and the state during this phase was based on Confucian philosophy, which supports the position that both the state and the society are one unit. Therefore, the civic square and the state were strongly connected in Japan. These ideas also relate to the behavior of Japanese people when it comes to litigation, since there were strong discussions, especially among scholars of 20th century (Kawashima, Haley, Ramseyer), with regard to non-litigiousness of Japanese people.

In the late 19th century, the conceptions of the Enlightenment (separation of the state and society) started to spread around Japan, and western-like organizations became more popular in the country. During the Wartime, prevailing ultra-nationalist movements overwhelmed the progressive ideals of the civil society. Only after the War, under the support of the Allied Occupation, Japan started revival of the civic square.

Second half of the 20th century and the first two decades of the 21st century were marked by the splash of civic activism of Japanese people to tackle various issues like national security problem (Anpo treaty), environment-related matters (Minamata, Niigata, and Yokkaichi), anti-war movement (war in Vietnam), and

natural disasters (The Great Hanshin and Tohoku earthquakes). Current civic square in Japan, on the one hand, based on the ideas of Confucianism and considered as domicile and compliant, on the other hand, is a sophisticated and diverse structure with the broad network both inside and outside the country, which is ready to unite people and tackle nation-wide level issues.

As for the legal profession in the predominantly domicile Japanese society, before the war it was in quite a lethargic position, due to controlling functions from the justice authorities. However, the post-war period gave a boost for the legal profession, which got its independence after *Attorney Act* of 1949, and started fulfilling its social functions, supporting civil activism.

The second part of the section 3.3 is related to the USA third sector, the legal profession and the state. The civil society in the United States has a shorter period of development than Japanese one. Still, the American society overcame many issues on the way of its formation as an active civil society.

During the Formative Era, leading lawyers and politicians undertook significant measures to form the civic square and the legal system as effective mechanisms aimed at promotion of public good. American civic square, backed up by the ideas of the Enlightenment, based on the peer system in the relation with the state power, became a platform to exercise freedom, and developed in people's minds a striking characteristic to associate against various level problems.

After the Civil War of 1861-1865, the USA entered the progressive era. During this time, the United States actively developed domestic market, gave birth to large corporations, and constructed modern America with its unique political culture and ideas of social contract. At the same time, the civil society faced a number of problems like mass immigration and urban poverty. To tackle these issues, the government decided to redistribute wealth through taxes and stimulated philanthropy. This, in turn, gave rise to universities and charity foundations.

After the World War II, the civil society turned to welfare priority and fellowship associations like fraternal groups, religious organizations, civic entities, veterans' associations and others. Furthermore, the structure of many civic groups switched to non-membership organizations like foundations and political action committees. Another important point was turn to the quality rather than quantity of people involved in civic organizations.

Under the strong characteristic of American society to associate, the legal profession also underwent its alterations. The legal profession united in the state bars, and, on voluntary basis in the ABA. The role of the bar, in constructing the current organization of the legal profession was immense but limited mostly to the affairs of the legal sphere. The ABA, for example, took active part in reforms, including the legal profession sphere and provided comprehensive codification of lawyers' ethics – 1908 *Canons of Professional Ethics*, 1969 *Code of Professional Responsibility*, and 1983 *Model Rules of Professional Conduct.* Thus, the development of the legal profession in the USA was mostly regarded with the success of the judicial system, and lawyers were expected to have loyalty to the court, implying that the legal profession is considered as more pro-governmental structure, rather than civic organization.

To conclude, the concepts of the society and, especially, the civil society are important postulates for comprehensive analysis of the legal profession's independence in Uzbekistan. The bar and advocates, under the Uzbek law are considered as civil society members, contrary to the state. Therefore, there is a need for the legal profession to possess certain level of independence to properly fulfill their functions on protection of rights and freedoms of people and legal entities for the public good purposes. Analyzed in this chapter Japanese and American approaches on the construction of the society and the legal complex are good examples for Uzbekistan's transitional society to choose more pro-societal approach (Japan) by provision more autonomy to the bar or more pro-state approach (the USA) by searching the most suitable governmental body to control the legal profession. To estimate the risks of future development of Uzbek legal profession as an institution of the civil society, the following chapter IV addresses three organizational matters, doubting the independence level of Uzbek legal profession from the state, and provides comparative analysis in relation to these matters with Japanese and the USA models.

## Chapter IV: The State and the Uzbek Legal Profession as a Civic Structure: Lessons from the Japanese and the USA Constructions

### Introduction

This chapter analyzes the interrelation between the legal profession and the state (justice authorities and the judiciary) in the targeted countries. The chapter starts with section 4.1, devoted to Uzbek legal profession issues. The first part of this section highlights the history and genesis of the problem regarding autonomy of advocates during the period of Khanates and Emirate, followed by the Soviet era. The second part of section 4.1 analyzes steps implemented by Uzbekistan after its independence in 1991. The state has administered some measures to introduce more independence to the legal profession as a civic structure, but many of the actions were de-facto ineffective, hectic, and done without the true desire of the state to provide independence to advocates. The next section 4.2 dive into three current striking independence problems of the Uzbek legal profession in the organizational sphere: interconnection between the bar and the justice authorities, admission to the profession, and the disciplinary domain.

Section 4.3 provides comparative analysis of the Japanese and American approaches with regard to interaction between the legal profession and the state. The situation in Japan before the Second World War was similar to the current Uzbekistan model, when the justice authorities controlled activities of *bengoshi*. However, the Attorney Act of 1949 changed the situation, and the current bar possesses solid independence as a pro-societal institute, which proved its high status in society during the splash of civic activism in the post-war period. As for the USA, the federal nature of the country led to a variety of approaches toward construction of the legal profession. However, historically American lawyers are considered as loyal officers of the court. Therefore, in spite of the ABA possessing independence from other state structures, the state bars in most cases are in strong correlation with the courts, categorizing the legal profession as a more pro-state structure in American society. The last section 4.4 concludes this part of the dissertation, summarizes the discussions in Chapter IV, and provides further recommendations.

### 4.1 The legal profession's independence issues in Uzbekistan

This section analyzes the matter of organizational independence of the Uzbek legal profession from the state. As an institute of civil society, the legal profession in Uzbekistan needs to possess adequate autonomy to properly fulfill its functions to ensure public good. Currently, Uzbekistan's community of advocates is seeking more impendence, but all the reformations in the civic square are conducted top-down, without proper consideration of possible aftereffects. The most striking hindrances related to the issue are organizational dependence of the bar on the justice authorities, influenced by state control over admission to the profession and licensing procedures. These problems have quite a long history in the structure of the legal sphere, trampling the system of check and balances in this domain. The next section starts with the genesis of the issues, coming from the Soviet period, and moves to the comprehensive analysis of current efforts of the state and the legal community to combat these obstacles, which are vague and have to be well-considered.

#### 4.1.1 Genesis of the legal profession and its development before the collapse of the Soviet Union

Uzbekistan is a place with a long history of influence and adoption from other cultures and societies correlated with its own peculiarity, since the country is located between Asia and Europe and therefore, historically served as a transit point for traders and conquerors. Strong impact on the formation of the culture in Uzbekistan before the Russian empire's invasion in the 19th century,[267] played Arabs' conquest in 7th and 8th centuries, which brought Islamic religion to the region.[268] The Silk Road, a trade route which connected the East and the West also had a strong impact on the area.[269] After time and numerous battles, the area of current Uzbekistan entered a relatively stable period from the 16th to 19th centuries, when the space was divided between three countries: the Kokand Khanate, the Khiva Khanate, and the Bukhara Emirate, which were ruled by Muslim

[267] Alexander Morrison, "The Russian Conquest of Central Asia: A Study in Imperial Expansion, 1814-1914," *Cambridge University Press*, (2020).
[268] Hamilton Alexander Rosskeen Gibb, "The Arab conquests in Central Asia," *The Royal Asiatic Society*, (1923).
[269] Michael A. Peters, "The Ancient Silk Road and the Birth of Merchant Capitalism," *Educational Philosophy and Theory* Vol 53 (10), (2021): 955-61.

law.[270] There were no advocates in the understanding of this profession at that time. However, so-called *muftis*, experts in Muslim law, were subordinated to the courts and supported indigenous people by interpreting complex religious matters, which were often controversial and without clear wording.[271]

After the Russian empire's invasion in the mid of the 19th century, the Russian law system was introduced to the countries. Two legal systems operated: Muslim law was applicable to indigenous people, while Russian law (civil law) was relevant to Russian and other nationals. Since Russian legislation started to penetrate into many sectors of the society, local people began to attend Russian universities. One of them was Abdunabi Kurolbai, educated in Saint Petersburg and considered as the first Uzbek advocate. He initiated the formation of the first advocacy-like structure in 1879 in the Kokand Khanate. Soon similar structures started to open also in the Khiva Khanate and the Bukhara Emirate, which operated independently from the state authorities.[272] These organizations consisted of *jadids*, but the quantity of such structures was insignificant all over the region.[273]

*Jadids* led constant battle with the oppression of the Russian empire for independence of the region and helped indigenous people with legal issues. Difficulties of functioning of the legal profession institute during this period are also evidenced by a historical fact that an advocate Ubaydullahodja Asadullakhodjaev and one of his associates Sulayman Kelginboyev, despite of being exposed to mortal danger, in 1916 expressed their sharp discontent with the Tsarist government regarding extermination of innocent people. In this regard, they were put on trial, but the defendants achieved an incredible acquittal.[274] However, not all cases were favorable for *jadids*. For example, the famous advocate-*jadid*, Valikhon Khoja, in 1919, was accused of disrespect to the state, imprisoned, and killed without investigation and trial.[275]

The Socialist Revolution in 1917 triggered a transformation of the area of current Uzbekistan into a

[270] John W. Strong, "Russian Moves in Central Asia 1843-1856," *Hokkaido University Slavic Studies* Vol 17, (1973): 41-55.
[271] Mirzayusup Rustambaev (Мирзаюсуп Рустамбаев) et al., Law-Enforcement Authorities [Правоохранительные Органы], (Tashkent State Institute of Law, 2003), 398.
[272] Leonid Khvan (Леонид Хван) et al., Advocacy in the Republic of Uzbekistan [Адвокатура в Республике Узбекистан], (Konsauditinform-Nashr, 2007), 50.
[273] Ingeborg Baldauf "Jadidism in Central Asia within Reformism and Modernism in the Muslim World" *Die Welt Des Islams*, New Series, 41, no. 1 (2001): 72-88. Accessed on July 31, 2020. www.jstor.org/stable/1571377.
[274] Hamdam Sodikov et al., History of Uzbekisan. Book 1. Turkistan under the period of Russian colonialism [Ўзбекистоннинг янги тарихи. Китоб 1. Туркистон чор Россияси мустамлакачилиги даврида.], (Shark, 2000), 438.
[275] Khvan et al., Advocacy in the Republic of Uzbekistan, 51.

socialist state.[276] All people were subjected to the only legal system – Russian. Soviets started to implement a so-called right activist (*pravozastupnik*) system, which implied that any unstained capable person who reached the age of twenty years old had the right to become an activist and represent people in courts.[277] This transformation meant that *jadids'* advocacy-like activities of the prerevolutionary period were annulled, and throughout the 1920s and 1930s, almost the entire intelligentsia of Uzbekistan, including *jadids*, was purged.[278]

The *pravozastupnik* policy led to many problems with the proper defense of human rights, and the Soviets in 1918 decided to introduce a governmentally controlled system of right activists.[279] They created collegiums of activists, which were subordinated to the judiciary with the main task – assist courts with complete clarification of all circumstances of cases. Although collegiums of activists were inferior to courts, territorial offices of People's Commissariat of Justice (analogue of the current Ministry of Justice) appointed and dismissed members of collegiums. Right activists became governmental officials with a fixed salary, paid from the budget of the People's Commissariat. The head of one of the departments of the People's Commissariat Bolshevik Meranvil, in 1922 at the congress of justice officials described the reforms in the legal profession as follows:

> State legal profession cannot exist because it would ultimately prostitute. Our theory does not know more unfortunate and more harmful institution than the collegium of rights activists. There is a strong need for independent legal profession.[280]

Andrey Stoyanov, a prominent 19th century lawyer, in his well-known work on the history of the legal profession, noted that "government discipline does not cure the legal profession, … Not the sole power of a judge, not bureaucratic tyranny, but self-correction through self-government can raise the moral and social significance of the legal profession."[281] Stoyanov's prophetic statement reflects the condition of the legal profession during the first years of the Soviet ruling, when the status and place of the legal profession on the

[276] Murodilla Khaydarov, Izzatilla Khaydarov, Avaz Yermetov, Otabek Alimardonov, Jasurbek Karimjonov, "October Revolution and its Influence in Socio-Political Life of Turkestan at the Beginning of the 20th Century," *Journal of Critical Reviews* Vol. 7 (6), (2020): 115-120.
[277] Gennadiy Sarkisyanc (Геннадий Саркисянц), Advocacy of Soviet Uzbekistan [Адвокатура Советского Узбекистана], (Fan, 1972), 13-14.
[278] Adeeb Khalid, "Jadidism in Central Asia: Origins, Development, and Fate Under the Soviets" Al-Mesbar Studies and Research Center. (2018). Accessed on July 31, 2020. https://mesbar.org/jadidism-in-central-asia-origins-development-and-fate-under-the-soviets/.
[279] Sarkisyanc, Advocacy of Soviet Uzbekistan, 15-16.
[280] Meranvil (Меранвиль), *Soviet Justice Weekly* (Еженедельник Советской Юстиции) № 6, 1922, 10.
[281] Adrey Stoyanov (Андрей Стоянов), History of legal profession [История Адвокатуры], (Kharkov, University press, 1869), 130.

territory of current Uzbekistan entirely depended on the state. This Soviet policy gave a beginning to dependence of the legal profession on governmental authorities.

After formation of the Soviet Union in 1922, the Soviets started the establishment of "independent" socialist republics, among which was creation of Uzbek Soviet Socialist Republic (Uzbek SSR) in 1924. Right after the formation of new republics, the Soviets began to create a coherent system for the legal profession. They created collegiums of advocates which were similar to current bar associations.[282] This system consisted of newly established regional collegiums that were separated from the courts and controlled advocates throughout the country. In turn, collegiums were inferior to the People's Commissariat of Justice and its respective territorial offices. Private law practice was prohibited.

The idea of the legal profession during Soviet rule was to ensure socialist legality, protection of rights, and the provision of legal assistance to the population.[283] The People's Commissariat of Justice systematically monitored and directed the work of collegiums, regulated its structure, and heard collegiums' reports. These powers of the state aggravated a weak condition of the legal profession in the society. Moreover, court officials and other law enforcement agencies exerted negative attitudes towards participation of advocates in court proceedings.

During the Second World War, the Soviets adopted an official decree allowing law enforcement agencies to apply their own discretion to any punishment, up to a capital. Only after Stalin's (a statesman who governed the Soviet Union from the mid-1920s until his death in 1953) death, the Presidium of the Supreme Soviet of the USSR issued a decree, abolishing these powers.[284]

In 1950s, organizational form of the legal profession in Uzbekistan remained unchanged, the Ministry of Justice (in 1946 People's Commissariat of Justice was renamed to the Ministry of Justice) exercised control over the activities of the collegiums. There was an acute shortage of qualified personnel in the legal profession, the material base was poorly developed, and advocates faced serious shortcomings in the legal regulations. Ilya Perlov, one of the leading scholars of that period, explained the role of an advocate in a court as follows:

[282] Tukhtasheva et al., Judicial and Law-Enforcement Authorities, 401.
[283] Ibid.
[284] Khvan et al., Advocacy in the Republic of Uzbekistan, 57.

> An advocate, like a prosecutor, in a course of judicial investigation explains social and political significance of a case, analyzes and evaluates evidences in the court, gives legal assessment to the established facts, characterizes personality of the accused, expresses advocate's understanding of the case and calls for acquittal of the accused.[285]

This provision consisted of cold regulative requirements which the advocate had to follow, and did not provide the space for realization of the advocate's rights in court. Therefore, to further reform and enhance the status of the profession, in 1958, the Soviets adopted *The Fundamentals of Legislation on Judicial Proceedings*.[286] The legal act provided specific wording to the term collegium of advocates, which stood for voluntary associations of persons engaged in an advocate activity to protect people in courts, provide other types of legal assistance to citizens and organizations, and act on the basis of regulations approved by the Supreme Soviet of each union republic.[287] That is, each union republic was obliged to adopt their own regulation on the collegiums. Uzbek SSR adopted the regulation in 1961.[288]

According to the Uzbek SSR regulation, advocates were required to be a model of an accurate and unswerving compliance with laws, moral purity, and impeccable behavior. Persons with a criminal record or under investigation or trial could not be accepted as advocates. Members of the collegiums of advocates were prohibited from serving in government and public institutions, with the exception of teaching or scientific activities. The Ministry of Justice received broad powers in establishing the procedure for providing legal assistance, creating conditions for advocates to exercise their professional rights and duties, holding events to improve the professional level of advocates, summarizing practice of the collegiums, and publishing instructions and guidelines on activities of the legal profession.[289] In sum, although the Soviets made a step to reform the legal profession in a positive direction by defining it as a voluntary organization and creating the basis for the formation of a future legal community, governmental officials, by means of the justice authorities, highly

[285] Ilya Perlov (Илья Перлов), Judicial pleadings and the last word of the defendant in the Soviet criminal process [Судебные прения и последнее слово подсудимого в советском уголовном процессе], (State Legal Publishing House, 1957), 32.
[286] Khvan et al., Advocacy in the Republic of Uzbekistan, 58.
[287] Mumin Mahbubov (Мумин Махбубов), "The Creation and Development of Advocacy in Uzbekistan," [Создание и Развитие Адвокатуры в Узбекистане]: (Phd diss., Tashkent State University, 1975).
[288] Khvan et al., Advocacy in the Republic of Uzbekistan, 59.
[289] Ibid, 59-60.

affected the activities of advocates and controlled all domains of their occupation.

The next important event in the history of the Soviet legal profession was the adoption in 1979 of the law *On Advocacy* in the USSR.[290] This legal act regulated the organization and activity of the Soviet legal profession on an all-union scale. On the basis of this law, regulations in *On Advocacy* were developed in each Union Republic. Uzbek SSR adopted the regulation in 1980.[291]

The regulation established that "the tasks of the Soviet advocacy are to provide legal assistance to citizens and organizations, observe and strengthen socialist legality, educate citizens in the spirit of the exact and unswerving observance of Soviet laws, and promote the rules of socialist community."[292] The legal act also adjusted the foundation process and structure of collegiums. Proposals for the formation of collegiums were to be sent to the Ministry of Justice, which further regulated their registration. The structure of collegiums consisted of a general assembly as a supreme body, a presidium – an executive authority, and an audit commission which controlled the audit domain. The legal act also covered the remuneration of advocates, which was fixed and varied upon the complexity of a case. The average salary of an advocate of this time was around 100-120 rubles a month.[293] This salary, compared to the average monthly earnings of 200 rubles in the 1980s Uzbek SSR, was low.[294] As for the disciplinary process, the system remained under the control of collegiums, but with general supervision from the Ministry of Justice. There were six types of disciplinary punishments: concern, reprimand, severe reprimand, suspension from advocate's activity for no more than six months, and expulsion from the collegium.

The regulation stipulated that only citizens of the USSR with a bachelor's degree in law and work experience in the legal sphere of at least two years could become members of collegiums.[295] The legal act required that an advocate had to be an example of moral purity and impeccable behavior, constantly improve his

[290] Law of the USSR "On Advocacy" (Закон СССР «Об Адвокатуре в СССР») 1979. Accessed on July 30, 2021, https://docs.cntd.ru/document/58807185
[291] Tukhtasheva et al., Judicial and Law-Enforcement Authorities, 402.
[292] Ibid.
[293] Khvan et al., Advocacy in the Republic of Uzbekistan, 59.
[294] Sputnik, "What was the salary of Uzbek people in the USSR and now," [На что хватало зарплаты узбекистанца при СССР и сейчас], August 18, 2016. Accessed on April 8, 2021, https://uz.sputniknews.ru/20160818/3547790.html.
[295] Ibid

knowledge, ideological, political, business qualifications, and actively participate in the promotion of law. The Ministry of Justice and its territorial offices had rights to monitor compliance by collegiums with the requirements of laws and the regulation *On Advocacy*. In addition, the justice authorities were given the right to suspend decisions of general assemblies of advocates and decisions of presidiums if they did not comply with the legislation.

One famous Soviet advocate, Semyon Aria, narrated the following story, which clearly reflected an advocate's status of the Soviet period:

> On one of my trips to Uzbekistan, the prosecutor, who was sitting with me in the process, told me how he was recently sent for an inspection to the prosecutor's office of one of the remote regions. During the first half of the day he reviewed various affairs, checked the records and statistics. For lunch, the remote region's prosecutor invited him to his house. They came to the host prosecutor's place and sat down at the table in the guest room. At the same time, a man in the yard was cooking food, which he later brought for two prosecutors as a lunch. The guest prosecutor said that it would be polite if they invite the man, who cooked the dish, to have the lunch with them. However, the host prosecutor replied that he is a local advocate and will have lunch in the kitchen.[296]

To conclude, during the Soviet period, the state conducted reforms to change the shape of the legal profession. Each reform, starting from 1917 until the last of 1980, aimed to enhance the level of the profession, at least on paper. The Soviet system of the legal profession was regulated by collegiums of advocates, which were declared as voluntary organizations only in 1958. Admission to the profession required higher standards after each reform, which demonstrates the gradual improvement of the advocates' quality. However, the problem of independence of advocates against governmental bodies remained a weak part of the Soviet approach towards advocacy. The state, under the pretext of general management of the legal profession, interfered in the activities of advocates by means of the justice departments. This intervention was expressed in the selection and placement of heads of collegiums of advocates, unreasonable financial and other inspections, and the cleansing of advocates. Admission to the profession and disciplinary processes were completely controlled by the justice authorities. The Soviets sought to transform the legal profession into one of the instruments to spread socialist ideas rather than provide the profession an opportunity to fulfil properly their main task – protection of rights and freedoms of people and legal entities. As a result of such conditions, the legal profession became a weak and

[296] Semyon Aria (Семён Ария), Mosaic: Advocate's notes Speeches [Мозаика: Записки адвоката. Речи], (De jure, 2000), 138.

understaffed[297] organization, which confined its activities to the narrow boundaries defined by the state. Such a tendency turned advocates into informal state servants and left people in need of legal assistance without a chance for proper protection of their rights.

### 4.1.2 Advocate-state issues after independence of Uzbekistan

After Uzbekistan proclaimed independence in 1991, the legislature adopted two laws which regulate the activity of advocates until present days, the law *On Advocacy* (1996)[298] and the law *On Guarantees of the Activity and Social Protection of Advocates* (1998)[299]. The history of the development of Uzbekistan's legal profession after independence can be divided into four stages: 1991-1996 – maintenance of the leftover of the Soviet legal profession, 1996-2008 – formation of the legislative basis and its slight enhancement, 2008-2016 – a step back in its development, and from 2017 until the present days, the liberalization stage of the legal profession.

From the proclamation of independence and until adoption of the two new laws, the 1980 regulation *On Advocacy* of the Uzbek SSR was in force. In general, the legal profession during this period did not undergo any significant changes, but was simply kept afloat. The legislature, however, secured the right to professional legal assistance served by the legal profession in Article 116 of the Constitution, adopted in 1992.[300]

During the second period, the state adopted legislation on advocacy, which defined the status of the legal profession, its functions, principles of activity, organizational forms, conditions for obtaining the status of an advocate, and rights and obligations of legal professionals. The legislature also created qualifying

[297] Statistics show that advocates were few in number. In 1924, there were only 108 advocates in Uzbek SSR. Even 10 years later, by 1935, the number of advocates was 122 people, including only 35 people with bachelor degree in law. By the beginning of 1971, 452 people were registered as advocates in Uzbekistan, while the population of Uzbek SSR was approximately 12.5 million people. This means that in 1971 there were only 36.2 advocates per 1 million persons. To compare, John Haley in his research "The Myth of the Reluctant Litigant" (1978), analyzing the problem with the lack of lawyers in Japan, indicated that in 1971 there were 88.2 attorneys per 1 million persons. Figures in Japan, appear more attractive than the situation with advocates' number in Uzbek SSR.
[298] Law of Uzbekistan "On Advocacy" (Закон Узбекистана «Об Адвокатуре») 1996. Accessed on August 13, 2020, http://www.lex.uz/acts/58372.
[299] Law of Uzbekistan "On Guarantees of the Activity and Social Protection of Advocates" (Закон Узбекистана «О Гарантиях Адвокатской Деятельности и Социальной Защите Адвокатов») 1998. Accessed August 13, 2020, http://www.lex.uz/acts/1321.
[300] Constitution of Uzbekistan, 1992. Accessed August 13, 2020 http://www.lex.uz/acts/35869.

commissions of advocates, which were in charge of disciplining advocates and examining candidates for admission to the law practice. These commissions were subordinated to the justice authorities. The state also established an Association of Advocates as advocates' head non-governmental institution. However, the Association was a very nominal institution without any solid credentials and with optional membership for Uzbek advocates.[301] Among novices distinct from the Soviet period were independence of the legal profession, a right to establish law firms, a need for a license to become an advocate, advocates' remuneration based on a freely concluded contract with a client.

Both the laws of 1996 and 1998 were progressive for this period, compared to other Central Asian countries, and declared some powers and rights for advocates. Still the legislation continued to secure dependence of advocates on the justice authorities and other governmental organizations. Rudolf Ambartsumov, former member of the Tashkent city branch of the Association of Advocates, analyzed this period's legal profession, and stated that "the practice testified about the numerous facts of appeal of law enforcements agencies to justice authorities to 'punish' advocates or revoke their licenses."[302]

In the 2000s, to tackle these issues, an initiative group of advocates from Tashkent and Karshi cities developed a reform concept and a draft of a new law *On Advocacy*.[303] The legal act envisaged strengthening the independence of the legal profession as an institution of the civil society. This document was discussed and approved by advocates in the vast majority of regions of Uzbekistan. Advocates wanted to submit the draft document for discussion to the Congress of Advocates of Uzbekistan, which was planned for December 2002. The Ministry of Justice, worried by such a splash of civic activism of the legal profession, banned the congress.

---

[301] Gulnara Ishanhanova (Гульнара Ишанханова), "Association of Advocates of Uzbekistan: Analysis of Current Situation and Prospects of Development" [Ассоциация Адвокатов Узбекистана: Анализ Ситуации и Пути Развития], in *Proceedings of the International Regional Conference: The Current Condition of the Advocacy in Central Asia: Problems and Prospects*, ed. Hodanivich (Ходанович), (Tashkent: Konsauditinform-Nashr, 2003), 32-37.

[302] Rudolf Ambartsumov (Рудольф Амбарцумов), "The Status of the Advocacy Institute in Uzbekistan and Possible Ways of its Reformation" [Статус Института Адвокатуры в Узбекистане и Возможные Пути его Реформирования], in *Proceedings of the International Regional Conference: The Current Condition of the Advocacy in Central Asia: Problems and Prospects*, ed. Hodanivich (Ходанович), (Tashkent: Konsauditinform-Nashr, 2003), 38-42.

[303] Tatiana Yakovleva (Татьяна Яковлева), The Legal Profession in Uzbekistan Strives to Become an Institution of the Civil Society [Адвокатура в Узбекистане Стремится Стать Институтом Гражданского Общества], February 20, 2002, Accessed on August 13, 2020 https://www.fergananews.com/articles/1421.

In 2003, advocates managed to organize the congress, but the proposals of advocates remained only on paper without any implementation.

The decree of the President of Uzbekistan *On Measures for Further Reformation of the Institution of Advocacy in the Republic of Uzbekistan* (2008) stipulated the third stage of the development of the legal profession.[304] The decree had a positive response from the public and received broad international approval.[305] The legal document clearly accented the priority areas for improving the legal profession: organizational independence, professional competence, self-government as an institution of the civil society, inalienability of the legal profession in the justice system, and effective protection of human rights and freedoms by advocates. At the same time, this document noted the need for governmental measures to support the implementation of the set goals and objectives.

State authorities used these powers to implement the reforms in a completely different way. The result was a new law *On Introduction of Changes and Amendments to Some Legislative Acts of the Republic of Uzbekistan in Connection with Improvement of the Institution of Advocacy*.[306] The law received a critical public response.[307] The meaning of the decree was not correctly reflected in the law adopted by the legislature. The state apparatus neutralized the legal profession and turned it into a so-called general advocate[308], a resemblance

[304] Decree of the President of Uzbekistan "On Measures for Further Reforming of the Institution of Advocacy in the Republic of Uzbekistan" (Указ Президента Республики Узбекистан «О Мерах по Дальнейшему Реформированию Института Адвокатуры в Республике Узбекистан») 2008. Accessed April 1, 2019, http://lex.uz/docs/1347567.

[305] Leonid Khvan, "Advocacy of Uzbekistan: "Quo Vadis?" *Russian Academy of Advocacy and Notary Public* No 1, (2009): 29-42.

[306] Law of Uzbekistan "On Introduction of Changes and Amendments to Some Legislative Acts of the Republic of Uzbekistan in Connection with Improvement of the Institution of Advocacy" (Закон Республики Узбекистан «О Внесении Изменений и Дополнений в Некоторые Законодательные Акты Республики Узбекистан в Связи с Совершенствованием Института Адвокатуры») 2008. Accessed April 1, 2019 http://lex.uz/acts/1420409

[307] Leonid Khvan (Леонид Хван), "Advocacy of Uzbekistan: "Quo Vadis?" [Адвокатура Узбекистана: Quo Vadis?] *Russian Academy of Advocacy and Notary Public* No 1, (2009): 29-42.; Leonid Golovko (Леонид Головко), Degradation of the Status of an Advocate in the Republic of Uzbekistan (Analysis of the Latest Legislation in the Field of Advocacy) [Деградация Статуса Адвоката в Республике Узбекистан (Анализ Новейших Подзаконных Актов в Сфере Адвокатской Деятельности)], (Legal Policy Research Centre, 2010), 453-467.; Daniyar Kanafin (Данияр Канафин), Analysis of the Decree of the President of Uzbekistan dated May 1, 2008 *on Development of Effectiveness of the Institution of Advocacy and Broadening of Advocates' Independence* and the Regulation of the Cabinet of Ministers of Uzbekistan dated May 27, 2008 *on the Organization of the Activities of the Chamber of Advocates of the Republic of Uzbekistan,* August 2008, Accessed on August 11, 2020 https://online.zakon.kz/Document/?doc_id=35338636#pos=44;-45.

[308] This image was first introduced into scientific circulation in the book "The Yukos Case" as a mirror of the Russian legal profession" [Дело Йукоса" как зеркало русской адвокатуры]. Its authors wrote: "... he turns into the

of the governmental structure similar to the Soviet period legal profession. Critics argued that this reform on the legal profession would gradually turn an ordinary advocate into a state employee.[309] Therefore, in 2008, the legal profession of Uzbekistan was thrown back 10-15 years in its development.

The 2008 reform left the disciplinary procedure, the process of obtaining an advocate's license, as well as the organizational activities of the Chamber of Advocates (after the reform of 2008, the Association of Advocates was transformed into the Chamber of Advocates and membership in the Chamber became mandatory for all advocates) under significant control of the justice authorities. The positive alteration was that qualifying commissions (the structures in charge of admission and disciplinary processes) were placed under the authority of respective local branches of the Chamber (before they were subordinated to the territorial offices of the Ministry of Justice). The membership in commissions was divided equally between the justice authorities and the bar, and numbered eight to ten people. The term of the commissions' members was set to three years. The High Qualifying Commission as the head disciplinary body was subordinated to the Chamber of Advocates. The membership in the High Qualifying Commission was also divided equally between the bar and the justice authorities, numbering ten people and having three year terms.

In terms of the activities of the Chamber, the advocates' community proposed the principle of compulsory membership of all advocates in the Chamber of Advocates[310], which was reflected in the presidential decree and the law. Overall, this was a correct decision, but this principle was supposed to impose great responsibility on the supreme bodies of the Chamber of Advocates. The principle of compulsory membership entailed numerous responsibilities for the leaders of the Chamber to coordinate the actions of its members, provide them with methodological assistance, ensure the unified practice of applying the *Rules of Professional*

shadow of the 'general advocate' – the full replica of the general prosecutor or other official". In Uzbekistan, an advocate played this role after the 2008 reforms.

[309] Sergei Pashin, Expert opinion on the Decree of the President of the Republic of Uzbekistan dated May 1, 2008 "On Measures for Further Reforming of the Institution of Advocacy in the Republic of Uzbekistan", and the Regulation of the Cabinet of Ministers of the Republic of Uzbekistan dated May 27, 2008 "On the organization of the activity of the Chamber of Advocates of the Republic of Uzbekistan", (Legal Policy Research Centre, 2009), 30-38; Leonid Khvan, "Advocacy of Uzbekistan: "Quo Vadis?" *Russian Academy of Advocacy and Notary Public* No 1, (2009): 29-42.

[310] Mirzayusuf Rustambaev (Мирзаюсуф Рустамбаев), Advocacy of Uzbekistan: Assistance in Reforming [Адвокатура Узбекистана: содействие в реформировании], (The world of economics and law, 2002), 177.

*Ethics of Advocates,*[311] and participate in the continuous professional development of advocates. However, the wording of the Cabinet of Ministers' regulation *On the Organization of the Activities of the Chamber of Advocates of the Republic of Uzbekistan* seriously and negatively affected the reputation of the legal community as an independent institution of civil society.[312] Paragraph 1 of the regulation clearly stated:

> The chairperson of the Chamber of Advocates of the Republic of Uzbekistan and his deputies are elected by the Conference of the Chamber of Advocates of the Republic of Uzbekistan on the proposal of the Ministry of Justice of the Republic of Uzbekistan for a period of five years from among the members of the Board of the Chamber of Advocates of the Republic of Uzbekistan elected by the Conference.[313]

Through mandatory membership, the community of advocates desired to create a unified system of the legal profession. However, in practice the bureaucratic apparatus of the Chamber and its territorial bodies was simply increased, and these organizations, in turn, came under the total control of the justice authorities.

In sum, after the reforms of 2008, the advocacy of Uzbekistan took a step back in its development and the justice authorities strengthened the right to interfere in the activities of the legal profession, violating the internationally recognized principle of self-government of the legal profession.[314] Article 17 of the law *On Advocacy* before the 2008 reforms, established that one of the tasks of the Ministry of Justice was to take measures to protect advocates from persecution or unreasonable restrictions in connection with their professional activities. After the reforms of 2008, this task was excluded from Article 17, but at the same time, a new clause in this article introduced the power of the Ministry of Justice to monitor compliance by advocates with licensing requirements and conditions, the right to monitor law firms and bureaus, and provide assistance on different

---

[311] The Rules of Professional Ethics of Advocates. Adopted by Conference of the Chamber of Advocates of Uzbekistan on September 27, 2013. Accessed on August 1, 2021, https://nrm.uz/contentf?doc=549534_pravila_professionalnoy_etiki_advokatov_(prilojenie_n_8_k_resheniyu_ii_konferencii_palaty_advokatov_ruz_ot_27_09_2013_g_)&products=1_vse_zakonodatelstvo_uzbekistana.

[312] Regulation of the Cabinet of Ministers of Uzbekistan "On the Chamber of Advocates of the Republic of Uzbekistan" (Постановление Кабинета Министров Республики Узбекистан «Об Организации Деятельности Палаты Адвокатов Республики Узбекистан») 2008. Accessed on August 13, 2020 https://www.lex.uz/acts/1359517.

[313] Ibid.

[314] Basic Principles on the Role of Lawyers. Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, from August 27 to September 7, 1990. Accessed on August 24, 2020, https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx; International Principles on Conduct for the Legal Profession. Adopted by the International Bar Association on May 28, 2011. Accessed on August 24, 2020, https://www.ibanet.org/Document/Default.aspx?DocumentUid=1730FC33-6D70-4469-9B9D-8A12C319468C.

matters.[315] Fundamentally, although the legislature used different wording, the meaning of Article 17 remained the same, which allowed the justice authorities to interfere in the organizational activities of the bar, disciplinary processes, and admission procedures under various pretexts.

Old-fashioned policy of the first president, Islam Karimov, led to acute problems in the legal profession and the whole civic square. The result was stagnation, which continued until 2016, when Uzbekistan witnessed the peaceful transition of power to the second President, Shavkat Mirziyoyev. A new era of massive reforms touched the whole civil society, including the legal profession. President Mirziyoyev started his agenda in 2017 with the adoption of a program named *Strategy of Actions on the Five Priority Directions of Development of the Republic of Uzbekistan in 2017-2021*,[316] which consisted of five sections and was targeted to improve all the spheres of Uzbek society including the advocacy domain. In order to address specifically the legal profession, in May 2018, the President of Uzbekistan enacted the decree *On Development of the Effectiveness of the Institution of Advocacy and Broadening of Advocates' Independence*.[317]

The decree was aimed at fundamentally improve the system of the advocacy, and enhance the quality of professional legal assistance and prestige of an advocate's profession. The document noted that the legal profession had not yet been able to turn into a reliable human rights institution due to a number of factors that impede the full realization of advocates' rights.[318] First, employees of the preliminary investigation authorities were allowed to obstruct the access of advocates to their clients. Second, requests of advocates sent to various organizations were in many cases ignored, primarily by officials of state bodies. Third, the role of the Chamber of Advocates as a civic institution was minimized; its interaction with advocates was limited to collecting statistics and was characterized by excessive bureaucracy. The fourth factor was related to organizational and legal forms of advocates' structures, which did not contribute to the development of competition in the market

[315] Law of Uzbekistan "On Advocacy" (Закон Узбекистана «Об Адвокатуре») 1996. Accessed on August 13, 2020, http://www.lex.uz/acts/58372.
[316] Strategy of Actions on the Five Priority Directions of Development of the Republic of Uzbekistan in 2017-2021 (Стратегия Действий по Пяти Приоритетным Направлениям Развития Республики Узбекистан в 2017-2021 годах) 2017. Accessed on August 13, 2020 http://www.lex.uz/ru/docs/3107042.
[317] Decree of the President of Uzbekistan "On Development of Effectiveness of the Institution of Advocacy and Broadening of Advocates' Independence" (Указ Президента Узбекистана «О Мерах по Коренному Повышению Эффективности Института Адвокатуры и Расширению Независимости Адвокатов») 2018. Accessed on August 13, 2020, http://lex.uz/docs/3731058.
[318] Decree of the President of Uzbekistan "On Development of Effectiveness of the Institution of Advocacy and Broadening of Advocates' Independence" 2018. Accessed on August 14, 2020, http://lex.uz/docs/3731058.

of legal services. Fifth, the licensing system of advocates did not take into account the division of legal practice into relevant areas, which negatively affected the specialization of the legal profession. Sixth, significant administrative pressure was a common matter during consideration of the suspension or termination of an advocate's license; as a result, the independence of the legal profession was undermined. Finally, due to incompetence and unfair attitudes to advocates' professional duties, there were many cases of violations by advocates of the requirements of the *Rules of Professional Ethics*, advocate-client privilege, and the advocate's oath, which caused discontent among their clients.[319]

Based on the decree, the legislature adopted a law *On Amendments of Some Legislative Acts of the Republic of Uzbekistan due to the Improvement of the System of Legal Assistance and Legal Services* in October 2018,[320] which transformed the system of the legal profession. First, the period of compulsory internship for a candidate wishing to become an advocate was reduced from six to three months. Moreover, employees of the legal departments of state bodies, for example, employees of the legal department of the Ministry of Justice, and persons who had worked as a judge, investigator or prosecutor for at least three years, were exempted from compulsory internship. Second, the advocate's license was divided into two types of licenses, a civil and commercial type and an administrative and criminal type. From then on, persons who had received the status of an advocate could provide legal assistance only based on the type of the license they applied for. Third, the decision on suspension and termination of an advocate's license, could be rendered only by administrative courts at the request of the Ministry of Justice and on the conclusion of the High Qualifying Commission. Disciplinary proceedings, in turn, could only be initiated by a decision of the relevant qualifying commission or the High Qualifying Commission. Previously, justice officials could also initiate the process. Finally, the role of the Chamber of Advocates was increased in relation to state bodies. Drafts of legal acts related to advocacy and legal proceedings were now subject to mandatory approval by the Chamber of Advocates. In addition, a chairperson of the Chamber received the right to participate in meetings of the Legislative Chamber of the

[319] Ibid.

[320] Law of Uzbekistan "On Amendments of Some Legislative Acts of the Republic of Uzbekistan due to the Improvement of the System of Legal Assistance and Legal Services" (Закон Республики Узбекистан «О Внесении Изменений и Дополнений в Некоторые Законодательные Акты Республики Узбекистан в Связи с Совершенствованием Системы Оказания Юридической Помощи и Правовых Услуг») 2018. Accessed on August 13, 2020, http://www.lex.uz/acts/3977634.

Parliament of Uzbekistan to discuss draft laws and express opinions on them. The law also established an ethics commission in the Chamber with the purpose of ensuring high standards of the legal profession.

Overall, the trend formed by the 2018 reforms was positive and led to further development of the legal profession. The President, in the decree *On Additional Measures to Ensure the Rule of the Constitution and the Laws, Strengthening Public Control in Legal Sphere, as well as Improving of Legal Culture in Society* issued in December 2019,[321] instructed the Chamber of Advocates, together with the Ministry of Justice, the Supreme Court and the Prosecutor General's Office, to develop a draft of a decree of the President *On Further Improvement of the Institution of the Legal Profession and Fundamental Enhancement of the Status of Advocates* by May 1, 2020. The draft was supposed to include the *Concept for the Development of the Institution of the Legal Profession*.

The draft of the decree was published on the official website for nationwide discussion on April 14, 2020.[322] After fifteen days of being posted, the discussion was closed on April 29, 2020 with only two comments from the general public. The draft of the decree stated that a number of systemic problems and shortcomings impede the creation of a modern, efficient, and qualitative functioning of the judicial and legal systems and successful implementation of the state policy for further fundamental improvement of the institution of the legal profession.

More scrupulously, in terms of organizational matters of the legal profession, the draft of the decree ensured that true institutional independence of the legal profession was not going to happen. The instruments of state control over admission to the profession of an advocate remained, and the principles of the formation and organization of qualifying commissions of the Chamber and its local branches required further improvement. There were frequent obstructions of the professional activities of advocates, and local authorities did not comply

[321] Decree of the President of Uzbekistan "On Additional Measures to Ensure the Rule of the Constitution and the Laws, Strengthening Public Control in Legal Sphere, as well as Improving of Legal Culture in Society" (Постановление Президента Республики Узбекистан «О Дополнительных Мерах по Обеспечению Верховенства Конституции и рагона, Усилению Общественного Контроля в Данном Направлении, а Также Повышению Правовой Культуры в Обществе»), 2019, Accessed on August 14, 2020, https://lex.uz/ru/docs/4647340, sec. 9.

[322] The draft of the Decree of the President of Uzbekistan "On Further Improvement of the Institution of the Legal Profession and Fundamental Enhancement of the Status of Advocates" («О мерах по дальнейшему совершенствованию института адвокатуры и коренному повышению статуса адвокатов»). Accessed on August 18, 2020, https://regulation.gov.uz/ru/document/16779.

with the norms stipulated by law on the provision of the legal profession with the necessary premises. Moreover, the normative regulation of the formation and operation of the governing bodies of the Chamber of Advocates did not meet the principles of democracy, equality, proportionality, collegiality, openness, and accountability. Finally, in terms of legal education, which is directly connected to the admission process, the draft decree stated that the system of legal education, focused on science and fundamental theoretical knowledge, did not provide the opportunities for acquisition of practical skills required in the advocacy.

Based on these issues, the draft decree, in terms of organizational independence of the legal profession from the state, suggested the following steps. The draft stated that to ensure the genuine organizational independence of the legal profession, there is a need to abolish the control and managerial powers of the Ministry of Justice in relation to the institution of the advocacy and completely transfer the normative regulation of the activities of the legal profession to the jurisdiction of the Chamber of Advocates. In addition, it is necessary to reform the system of disciplinary control over the activities of advocates. Moreover, composers supposed that it is essential to improve the organizational and legal foundations of the activities of self-government bodies of the Chamber and its local branches. Drafters considered it important to also strengthen the responsibility of officials and other persons for violations of the professional rights of advocates and for obstruction of their professional activities. Finally, the draft suggested a necessity to ensure participation of the Chamber of Advocates in legislative activity, grant the Chairperson of the Chamber the right to participate in meetings of the Plenum of the Supreme Court, as well as the right to submit issues to the Constitutional Court.

To implement these reforms, the draft decree proposed adoption of the *Concept for the Development of the Institution of the Legal Profession*.[323] The draft defined strategic goals, priority areas, tasks, stages of development of the legal profession in Uzbekistan until 2025 inclusively. However, neither the draft decree nor the draft *Concept* has been adopted yet. In case of approval of these documents, according to the current Chairperson of the Chamber of Advocates, Alim Ernazarov, the legal profession plans to move on to the

[323] Draft of the Concept for the Development of the Institution of the Legal Profession. Accessed on August 1, 2021, https://paruz.uz/uploads/2020/04/021.pdf.

development of a new law *On Advocacy*.[324] Therefore, two laws of direct action regarding the legal profession (law *On Advocacy* and law *On Guarantees of the Activity and Social Protection of Advocates*) may be combined.

Still, current Uzbek bar and advocates are in suspense, without a clear future vision of the situation on the one hand, since the documents have been in consideration for two years, and, on the other hand, the legal profession operates under the influence of the state. According to Davronbek Saidov, Deputy Chairperson of the Chamber of Advocates:

> The current judicial and legal systems, which determine the role of the legal profession in upholding the rights of citizens, are largely based on principles that have survived since Soviet times. They are often declarative in nature. … This state of affairs contributes to the growth of corruption: citizens are not looking for an advocate who knows the law well, but an advocate who knows well an investigator, prosecutor and judge.[325]

Such condition of the legal profession leaves this occupation as the least popular domain among law alumni,[326] who see the legal profession as the last possible option, leaving this sphere to aged people or former employees of the law-enforcement bodies in Uzbekistan.[327] (Figure 2 below illustrates the percentage of advocates by age operating in Uzbekistan).

[324] Lola Abduazimova (Лола Абдуазимова), "The Legal Profession: What are the Problems and How to Solve Them," [Адвокатура: Каковы Проблемы и Как Их Решать], *Norma*, February 2, 2020. Accessed on August 1, 2021, https://www.norma.uz/nashi_obzori/advokatura_kakovy_problemy_i_kak_ih_reshat.
[325] Ruslan Krivobok (Руслан Кривобок), "Reform of the Legal Profession in Uzbekistan: The Mechanism of Protection of Citizens will be Revised," [Реформа Адвокатуры в Узбекистане: Механизм Защиты Граждан Будет Пересмотрен], *Sputnik*, February 27, 2020. Accessed on August 1, 2021, https://uz.sputniknews.ru/20200227/Reforma-advokatury-v-Uzbekistane-mekhanizm-zaschity-grazhdan-budet-peresmotren-13552987.html.
[326] In the interview with two recent successful applicats to the Uzbek advocate's license, the interviewees mentioned that among all the people, who passed bar examination together with the applicants (they passed examination in September 2021 and October 2021 respectively), the only persons who were below 30 years old in each group were the interviewed by the author people, taking into account that the number of applied people for each exam was 30 people (Interview with Tashkent city advocate, interview by author via zoom platform (September 7, 2021); Interview with Tashkent city advocate, interview by author via zoom platform (October 8, 2021)).
[327] Interview with Tashkent city advocate, interview by author in Tashkent (January 6, 2020); Tashkent city advocate, interview by author in Tashkent (January 7, 2021).

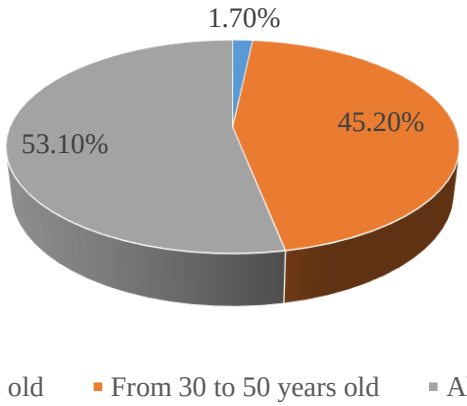


Figure 2: Distribution of the number of advocates by age groups.

Source: Official website of the Chamber of Advocates of Uzbekistan, https://paruz.uz/post/otchety-o-deyatelnosti-advokatskih-formirovaniy.

As of January 1, 2022, there are 4211 registered advocates in the country (3316 men and 895 women), and over the past six years the number has increased by only around 300 advocates.[328] On average, there are 8660 people per advocate in Uzbekistan. In regions, this figure varies from 12 thousand to 20 thousand per advocates, and in the Surkhandarya region, one advocate serves 32 thousand people.[329]

To summarize, the President Mirziyoyev's reforms gave a breath of fresh air to the legal profession. The positive trend has been achieved in the process of enhancing the status of the bar and advocates. Still, this liberalization movement occurred due to the will of those in power, and partly because of pressure on the Uzbek government from international institutions.[330] Nonetheless, the state is in the process of reforming the institute of the legal profession and implementing the *Concept*, needs to consider the following matters: increase the status of the bar, revise admission to the legal profession process, and improve disciplinary proceedings. If the second and third matter were slightly improved during recent reforms, then the problem with the bar's status is in alarming condition. These matters are the central topic of the research in the following section.

[328] Official website of the Chamber of Advocates of Uzbekistan, accessed on May 1, 2022, https://paruz.uz/post/otchety-o-deyatelnosti-advokatskih-formirovaniy.
[329] Lola Abduazimova, "The Legal Profession: What are the Problems and How to Solve Them," Accessed on August 1, 2021, https://www.norma.uz/nashi_obzori/advokatura_kakovy_problemy_i_kak_ih_reshat.
[330] Sid Yanyshev (Сид Янышев), "Decorative Protection: Advocates of Uzbekistan – About the Upcoming Reform, Their Current Status and Position in the Courts," [Декоративная Защита: Адвокаты Узбекистана – о Предстоящей Реформе, Своем Нынешнем Статусе и Положении в Судах], *Fergana News*, May 8, 2020. Accessed on September 1, 2021, https://fergana.site/articles/117877/.

### 4.2 Current core issues in the Uzbek legal profession's independence realm

This section dives particularly in the core of this dissertation and analyzes three striking issues: the bar and justice authorities' institutional relations, the admission process and disciplinary regulation with regard to advocates in Uzbekistan.

#### 4.2.1 The bar and justice authorities' institutional relations

One of the main guarantees of the institutional independence of the legal profession as a structure of the civil society is the existence of a self-governing bar association, the bodies and structural units of which are freely elected directly by the legal profession without any interference from other governmental or non-governmental bodies or a person.[331] However, dependence of the bar on justice authorities in Uzbekistan has a long history. During the Soviet period, collegiums of advocates, bar-like entities, were controlled by the justice authorities.[332] The same trend continued after Uzbekistan's independence. The law *On Advocacy* created an Association of Advocates, the head non-governmental organization for the legal profession. The membership there was based on voluntary foundations and the role of the Association was very fragile.[333]

Therefore, in 2008, the state created the current Chamber of Advocates. This alteration was suggested by President Karimov in his decree *On Measures for Further Reformation of the Institution of Advocacy in the Republic of Uzbekistan*, issued in May 2008.[334] The decree stated that:

> The Chamber of Advocates of the Republic of Uzbekistan is a non-profit organization with the rights of a legal entity, which together with its territorial divisions created in the Republic of Karakalpakstan, regions and Tashkent city, forms a unified system of self-government of the bar; acts on the basis of the principle of non-interference in the activities of advocates carried out in accordance with the law; financed by the entrance and membership fees of advocates and other funds not prohibited

[331] Basic Principles on the Role of Lawyers. Accessed on August 2, 2021, https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx, principle 24.
[332] Tukhtasheva et al., Judicial and Law-Enforcement Authorities, 401.
[333] Gulnara Ishanhanova, "Association of Advocates of Uzbekistan: Analysis of Current Situation and Prospects of Development," in *Proceedings of the International Regional Conference: The Current Condition of the Advocacy in Central Asia: Problems and Prospects*, ed. Hodanivich (Ходанович), (Tashkent: Konsauditinform-Nashr, 2003), 32-37.
[334] Decree of the President of Uzbekistan "On Measures for Further Reforming of the Institution of Advocacy in the Republic of Uzbekistan". Accessed on August 2, 2021, http://lex.uz/docs/1347567.

> by law; is the legal successor of the rights and obligations of the Association of Advocates of Uzbekistan.[335]

Back then, scholars and practitioners drew attention to the concept of mandatory membership of all advocates in the Chamber (the old Association of Advocates did not imply mandatory membership),[336] and in general this step was in right direction since the document suggested an increase of the bar's independence.

However, later, in September 2008, the Cabinet of Ministers adopted a regulation *On the Chamber of Advocates of the Republic of Uzbekistan*.[337] According to the new legal act, the chairperson of the Chamber and his deputies were elected on the proposal of the Ministry of Justice; that is, the Chamber became directly dependent on the state. A prominent Uzbek advocate, Gulnara Ishanhanova, claims that:

> When all advocates were united into the Chamber of Advocates in 2008, it was assumed that the Chamber would become an independent body of professional self-government, would introduce common ethical standards for advocates and monitor their observance. The reform of 2008 led to the creation of an apparatus of control over the legal profession, as a result, the number of those who wanted to join the profession greatly diminished, and the Chamber itself turned into a bureaucratic body that did not protect advocates, but, on the contrary, kept advocates in tight hands.[338]

Thus, in the current condition, the bar is not able to either freely elect or recall the head of the Chamber without interference from the executive branch. A number of international organizations and experts drew attention to this shortcoming in the legislation of Uzbekistan.[339] Moreover, the state, by means of the justice authorities, also has the powers to assist in the activities of advocates and the bar; study statistical data on the legal profession; render assistance in the implementation of measures to improve qualifications of advocates; monitor compliance by advocates with licensing requirements, constituent documents and statutory activities, as well as observe the procedure for re-registration and liquidation of law firms; approve an advocate's order form (order is the document allowing advocates to participate in court proceedings); and maintain the roll of

---

[335] Ibid, sec. 4.
[336] Leonid Khvan, "Advocacy of Uzbekistan: "Quo Vadis?" *Russian Academy of Advocacy and Notary Public* No 1, (2009): 29-42.
[337] Regulation of the Cabinet of Ministers of Uzbekistan "On the Chamber of Advocates of the Republic of Uzbekistan". Accessed on August 21, 2021 https://www.lex.uz/acts/1359517.
[338] Sid Yanyshev, "Decorative Protection: Advocates of Uzbekistan – About the Upcoming Reform, Their Current Status and Position in the Courts". Accessed on August 2, 2021, https://fergana.site/articles/117877/.
[339] Independence of the Legal Profession in Central Asia. Issued by the International Commission of Jurists in 2013. Accessed on August 2, 2021, https://www.icj.org/wp-content/uploads/2013/09/Independence-of-the-Legal-Profession-in-CA-Eng.pdf, 24; Concluding observations of the Human Rights Committee with regard to Uzbekistan, (CCPR/C/UZB/3), April 7, 2010. Accessed on August 2, 2021, http://www.notabene.tj/Doc/Kaz/compl/3-07.pdf, sec. 17.

advocates.[340] All together these problems indicate serious organizational dependence of the legal profession on justice authorities.

In recent years, the administration of President Mirziyoyev tried to tackle these issues. The President, in December 2019, instructed the governmental agencies and the Chamber of Advocates to elaborate a draft decree and draft *Concept for the Development of the Institution of the Legal Profession*[341] to reconsider the institutional dependency of the bar on the justice authorities.[342] According to the draft documents, the bar was separated from the Ministry of Justice.[343] The drafts, in particular, referred to "systemic problems and shortcomings" that obstruct the creation of "a modern, efficient, and functional legal system". The authors admitted that "the true institutional independence of the bar has not been ensured", and the normative regulation of the bar as a state institution "does not meet the principles of democracy, equality, proportionality, collegiality, openness and accountability."[344] The draft documents highlighted the need to ensure the genuine independence of the bar and abolish the control and management powers of the Ministry of Justice. The documents were ready in 2020, but still, the state did not make any moves to adopt them, leaving the legal profession in a suspended status, anticipating reforms, but operating in the condition of institutional dependence on the justice authorities. Figure 3 below illustrates the current structure of the legal profession, where the organization starts with the Ministry of Justice, followed by its influence on the supreme body, known as Conference, which decides the Chairperson who heads the Board and the Revision Commission and the rest of the legal profession.

[340] Law of Uzbekistan "On Advocacy". Accessed on August 2, 2021, http://www.lex.uz/acts/58372, art. 17.
[341] Draft of the Concept for the Development of Institution of the Legal Profession. Accessed on August 1, 2021, https://paruz.uz/uploads/2020/04/021.pdf.
[342] Decree of the President of Uzbekistan "On Additional Measures to Ensure the Rule of the Constitution and the Laws, Strengthening Public Control in Legal Sphere, as well as Improving of Legal Culture in Society". Accessed on August 14, 2020, https://lex.uz/ru/docs/4647340, sec. 9.
[343] The draft of the Decree of the President of Uzbekistan "On Further Improvement of the Institution of the Legal Profession and Fundamental Enhancement of the Status of Advocates". Accessed on August 2, 2021, https://regulation.gov.uz/ru/document/16779.
[344] Ibid.

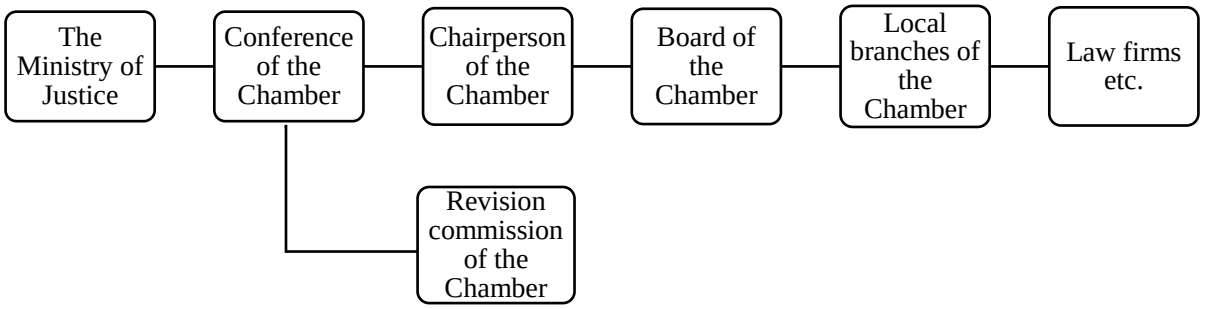


Figure 3: Structure of the Uzbek legal profession (left-right).

Source: Created by the Author.

To summarize, the current Chamber of Advocates is significantly dependent on the Ministry of Justice. The Chamber, being a non-governmental and non-profit organization on paper, is in fact subordinated to the Ministry of Justice. The Chamber became a copy of a governmental agency, but the difference is in funding, which is not at the expense of the budget, but is a burden on ordinary advocates, who are mandatory members of the bar, paying monthly membership fees.[345] The employees of the Chamber consist mostly of former governmental officials, basically from law enforcement bodies or justice authorities.[346] This issue has to be reconsidered in accordance with international standards on independence of the legal profession and in correspondence with Uzbek legislation, which gives to the legal profession the status of a civic institution. This dissertation in section 4.2 provides two examples of institutional relations between the bar and the state in Japan and the USA as possible role models, followed by the summary in section 4.3, advocating the possibility to apply one of the approaches in reconsideration of the Uzbek bar's institutional relations.

[345] Law of Uzbekistan "On Advocacy". Accessed on August 2, 2021, http://www.lex.uz/acts/58372, art. $12^{1}$.
[346] Anonymous advocate, "The Advocate's Curse," *Uzmetronom*, April 26, 2020. Accessed on September 2, 2021, https://www.uzmetronom.com/2020/04/26/prokljatie-advokata.html.

### 4.2.2 Admission to the profession

Admission to the profession of an advocate is an important tool for regulation of the whole legal profession. Without a proper, unbiased and qualitative process of becoming an advocate, the whole legal profession cannot fulfill its functions to its full potential. During the Soviet period, the admission process was completely regulated by the justice authorities by means of collegiums of advocates.[347] After Uzbekistan's independence, the state, under the law of 1996 *On Advocacy,* created qualifying commissions, subordinated them to the justice authorities, and gave them the power to conduct admission and disciplinary processes.[348] All members of newly created commissions were appointed by the justice authorities.

The state defined that only a citizen of Uzbekistan who has a bachelor degree in law and a license to practice law can be considered as an advocate.[349] The license was issued by the justice authorities after passing an examination conducted by a qualifying commission. Thus, the whole process was completely controlled by the justice authorities and the Association of Advocates was a passive observer in this apparent violation of the legal profession's independence principle.

After the 2008 reform, the subordination of qualifying commissions was switched to newly created branches of the Chamber of Advocates, and the High Qualifying Commission was placed in the structure of the Chamber.[350] The membership in commissions was divided equally between employees of territorial offices of the Ministry and local branches of the Chamber. Another striking feature was that, from then on, in order to obtain an advocate's license, a candidate had to have two years of working experience in the legal sphere, including six months of internship in an advocate's formation. To keep up with the reform, the justice authorities conducted re-attestation of all Uzbek advocates, and only 75% of them passed the test.[351] The rest were deprived

[347] Gennadiy Sarkisyanc (Геннадий Саркисянц), Advocacy of Soviet Uzbekistan [Адвокатура Советского Узбекистана], (Fan, 1972).
[348] Law of Uzbekistan "On Advocacy" in the edition of 1996. Accessed on August 6, 2021, https://lex.uz/docs/58372?ONDATE=09.01.1997%2000#58620, art 13.
[349] Ibid, art. 3.
[350] Law of Uzbekistan "On Introduction of Changes and Amendments to Some Legislative Acts of the Republic of Uzbekistan in Connection with Improvement of the Institution of Advocacy" 2008. Accessed on August 6, 2021 http://lex.uz/acts/1420409.
[351] Interview with Tashkent city advocate, interview by author in Tashkent (January 7, 2021).

of their licenses.[352]

Moreover, the Ministry of Justice adopted two regulations *On Qualifying Commissions*[353] and *On High Qualifying Commission*[354] thoroughly explaining the process of admission to the profession. A candidate willing to pass the qualifying exam had to submit the application. Within a month after submission, he had to pass oral and written examinations. Based on the results of the examinations, the qualifying commission made a decision on whether the candidate passed or failed the test. In case of disagreement with the decision of the commission, the applicant could appeal to the High Qualifying Commission, and in case of disagreement with the latter, to the court.

After successful passage, the person had to apply to the Ministry of Justice within three months to get a license. If the person missed the term, he had to pass the examination again. The state adopted the special decree *On Licensing of Advocate's Activities and Creation of Advocate's Formations,*[355] which provided the descriptive process of a license's acquisition. After obtaining the license, the person had to take an oath and become a member of an advocate's formation or create his own structure. Only after this procedure, the justice authorities provided the person with a certificate of an advocate, which implied that he had become an advocate and a member of the Chamber. Thus, although the state made a step to liberalize the admission process and provided slightly more independence to the bar in this sphere by placing qualifying commissions in the structure of the legal profession and included bar members in commissions, still the process was bureaucratically cumbersome and significantly affected by the justice authorities.

After President Mirziyoyev came into power, he addressed the issue of admission to the bar. His May 2018 decree *On Development of Effectiveness of the Institution of Advocacy and Broadening of Advocates' Independence*, suggested some alterations to the admission procedure.[356] Among them was a cutback of the

[352] Ibid.
[353] Regulation "On Qualifying Commissions" in the edition of 2009. Accessed on August 6, 2021, https://lex.uz/docs/1458645?ONDATE=24.03.2009%2000#4165802.
[354] Regulation "On High Qualifying Commission" in the edition of 2009. Accessed on August 6, 2021, https://lex.uz/docs/1459052?ONDATE=24.03.2009%2000#1459087.
[355] Decree "On Licensing of Advocate's Activities and Creation of Advocate's Formations" in the edition of 2009. Accessed on August 6, 2021, https://lex.uz/docs/1455564?ONDATE=09.03.2009%2000#1455581.
[356] Decree of the President of Uzbekistan "On Development of Effectiveness of the Institution of Advocacy and Broadening of Advocates' Independence". Accessed on August 6, 2021, http://lex.uz/docs/3731058.

internship period from six to three months[357] (former employees of legal departments of state bodies and persons who worked as a judge, investigator or prosecutor for at least three years, were exempt from the internship), as well as reduction of the period for repeated passing of the examination after failure from one year to six months. Moreover, the decree suggested to enhance the transparency of exams by allowing electronic submission of the necessary documents for applicants and broadcasting exams in real time on the Internet. Finally, the legal act introdcued two specializations of the legal profession: an administrative and criminal specialization as well as a civil and economic specialization, with the aim to improve the quality of the profession. This division meant that advocates were supposed to pass separate examinations for each specialization, and both exams if one wanted to practice in all four realms.

Adopted in October 2018, the law *On Amendments of Some Legislative Acts of the Republic of Uzbekistan due to the Improvement of the System of Legal Assistance and Legal Services*[358], reflected all the suggestions, but also included another important matter. From then on, qualifying commissions would be formed by joint decisions of the bar and the justice authorities in an odd number of advocates and experienced specialists in the law field. At the same time, the vague and broad term experienced specialist in the law field would be used to define the possible members of qualifying commissions, providing a wide range of opportunities for the justice authorities to appoint people loyal to the Ministry of Justice and continue controlling the process.

The next step was the plan of the state to exclude participation of the Ministry of Justice from the admission to the bar process from October 1, 2020. This idea was included in the draft of the presidential decree *On the State Program for 2020.*[359] However, in the adopted version of the *Program*, the measure was not reflected,[360] and the plan was postponed. The draft version of the President's decree *On Further Improvement*

[357] In the interview with Tashkent city advocate with 18 years of experience, the interviewee noted that switch from six to three months of internship in a law firm can harm the quality of profession, since even six months are not enough to get the whole picture of the legal profession in practice in Uzbekistan. (Interview with Tashkent city advocate, interview by the author in Tashkent, January 9, 2020).
[358] Law of Uzbekistan "On Amendments of Some Legislative Acts of the Republic of Uzbekistan due to the Improvement of the System of Legal Assistance and Legal Services". Accessed on August 6, 2021, http://www.lex.uz/acts/3977634.
[359] "The state must determine the boundaries of its participation in each area," [Государство должно определить границы своего участия в каждой сфере], *Газета.uz*, February 20, 2020. Accessed on August 6, 2021, https://www.gazeta.uz/ru/2020/02/20/licensing/.
[360] Decree of the President of Uzbekistan "On the State Program for 2020" [Указ Президента Узбекистана «О Государственной Программе по Реализации Стратегии Действий по Пяти Приоритетным Направлениям

*of the Institution of the Legal Profession and Fundamental Enhancement of the Status of Advocates* and draft *Concept for the Development of the Institution of the Legal Profession,* elaborated in 2020, again addressed the matter to provide the Chamber with the complete power to regulate the admission process.[361] Nonetheless, the documents have not been adopted yet, and the process, though enhanced since Uzbekistan's independence, is still influenced by the justice authorities.

The most important part of the admission process, the examination, did not face any significant changes. In interviews with Uzbek advocates, who had received their licenses in 2004, 2007, 2016 and 2021, the author noted that the admission examination has only five questions and one hour for preparation, followed by the oral examination by the qualifying commission.[362] The justice authorities, who take part in the admission process do not reflect any interest toward the quality of the admission process, fulfilling mostly bureaucratic functions.[363] Such a state of affairs creates a picture of the outdated admission process, which needs to be further reconsidered and improved. Figure 4 bellow provides the current highly bureaucratic process of becoming an advocate in Uzbekistan.

Развития Республики Узбекистан в 2017-2021 Годах в «Год Развития Науки, Просвещения и Цифровой Экономики»], 2020. Accessed on August 6, 2021, https://lex.uz/ru/docs/4751567.

[361] The draft of the Decree of the President of Uzbekistan "On Further Improvement of the Institution of the Legal Profession and Fundamental Enhancement of the Status of Advocates". Accessed on August 2, 2021, https://regulation.gov.uz/ru/document/16779.

[362] Interview with Tashkent city advocate, interview by author in Tashkent (January 9, 2020); Interview with Tashkent city advocate, interview by author in Tashkent (January 7, 2021); Interview with Tashkent city advocate, interview by author via zoom platform (September 7, 2021); Interview with Tashkent city advocate, interview by author via zoom platform (October 8, 2021).

[363] Interview with Tashkent city advocate, interview by author in Tashkent (January 6, 2020).

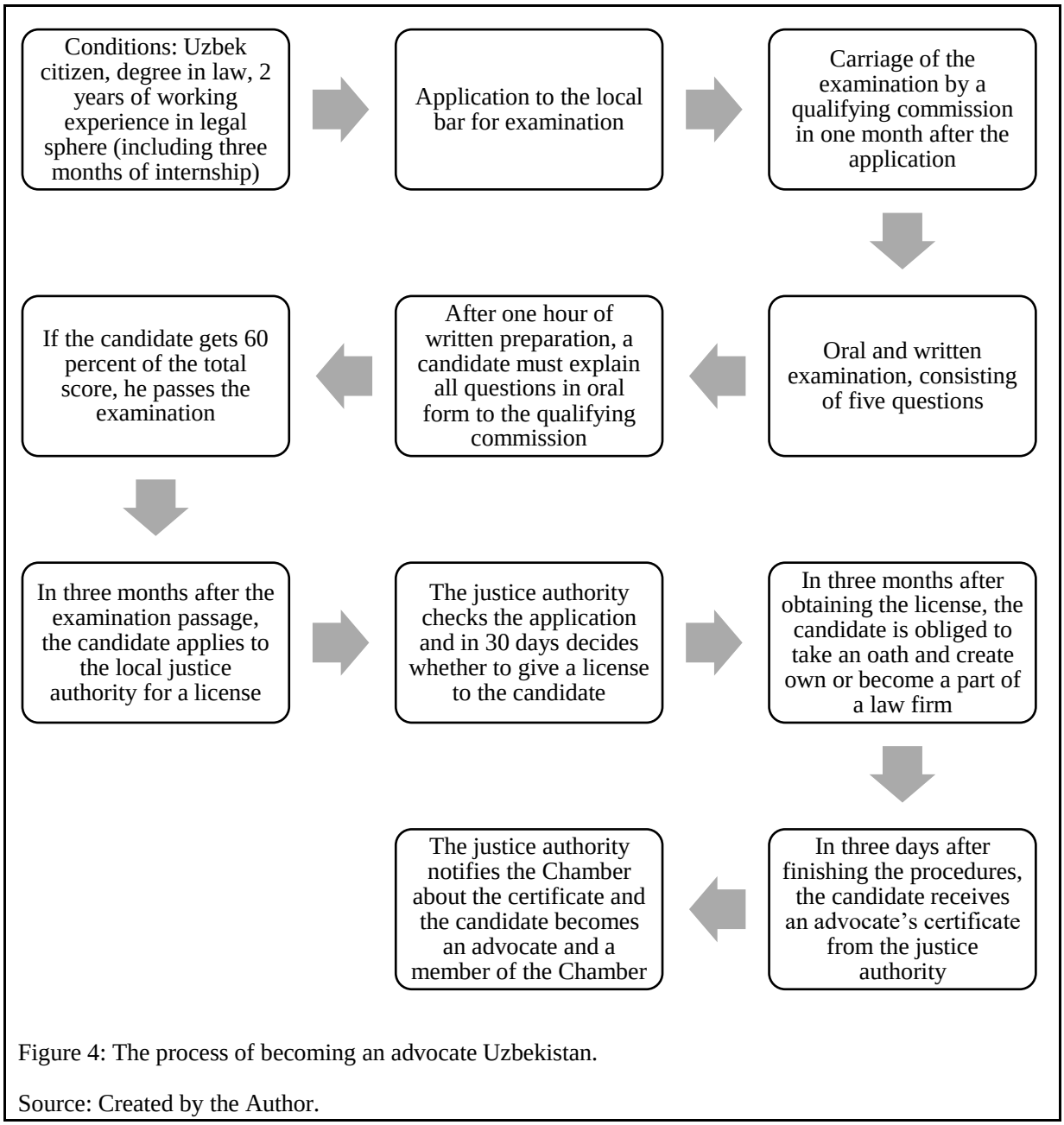


Figure 4: The process of becoming an advocate Uzbekistan.

Source: Created by the Author.

To conclude, over the whole period of Uzbekistan's legal profession development, the admission process, although gradually transforming from complete control of the justice authorities to a more liberal trend of the bar's priority in the procedure, is still guided by the state. In recent years, the administration of President Mirziyoyev seriously tackled the issue, but still the plans have not been implemented thoroughly, and the justice authorities provide guidance with regard to the admission process. This dissertation, in section 4.2 provides analysis of two completely difference admission processes, the Japanese and the American approaches, which

may be applicable in further reformation by Uzbekistan. Based on the comparative analysis, this research provides suggestions in the summary section 4.3 for further improvement of the situation.

### 4.2.3 Advocates' disciplinary process

The disciplinary process is another important tool which preserves the quality of the legal profession and keeps advocates within frames of ethics rules and Uzbek legislation. Established during the Soviet period, disciplinary proceedings with regard to advocates have a long history of correlation with the justice authorities.[364] After Uzbekistan's independence, the state adopted the law *On Advocacy* which empowered qualifying commissions, who were in charge of the admission process, with the authority to conduct disciplinary proceedings as well.[365] Thus, disciplinary mechanisms were also placed under control of the state. The legislature defined three types of disciplinary punishments: reprimand, suspension of a license for no more than six months, and termination of a license.

Following the reforms of 2008, the state provided a descriptive process with regard to disciplinary proceedings.[366] Violation by an advocate of the legislation, the *Rules of Professional Ethics of Advocates*,[367] advocate-client privilege, the oath of an advocate, a complaint from an individual or legal entity, and special court ruling against an advocate entailed application of disciplinary measures. The right to trigger disciplinary proceedings was granted to the justice authorities and the bar (before the reform such a right was the prerogative of only the justice authorities, since the Association of Advocates did not have any solid credentials).

After initiation of disciplinary proceedings, a case was sent to the relevant qualifying commission. A

[364] Gennadiy Sarkisyanc (Геннадий Саркисянц), Advocacy of Soviet Uzbekistan [Адвокатура Советского Узбекистана], (Fan, 1972).
[365] Law of Uzbekistan "On Advocacy" in the edition of 1996. Accessed on August 6, 2021, https://lex.uz/docs/58372?ONDATE=09.01.1997%2000#58620, art 13-15.
[366] Regulation "On Qualifying Commissions" in the edition of 2009. Accessed on August 6, 2021, https://lex.uz/docs/1458645?ONDATE=24.03.2009%2000#4165802; Regulation "On High Qualifying Commission" in the edition of 2009. Accessed on August 6, 2021, https://lex.uz/docs/1459052?ONDATE=24.03.2009%2000#1459087.
[367] The Rules of Professional Ethics of Advocates. Adopted by Conference of the Chamber of Advocates of Uzbekistan on September 27, 2013. Accessed on August 1, 2021, https://nrm.uz/contentf?doc=549534_pravila_professionalnoy_etiki_advokatov_(prilojenie_n_8_k_resheniyu_ii_konferencii_palaty_advokatov_ruz_ot_27_09_2013_g_)&products=1_vse_zakonodatelstvo_uzbekistana.

simple majority of votes of the commission's members rendered a decision of the qualifying commission (members of the commission consisted of employees from the justice authorities and the bar). In case of a split decision, the chairperson's voice was decisive. The qualifying commission could render one of the following decisions: reprimand, suspension of a license for no more than six months, termination of a license, or refusal to impose disciplinary punishment. Qualifying commissions made definitive decisions only regarding reprimands and refusal to impose disciplinary punishment. Commissions sent suspension and termination of a license decisions to respective territorial offices of the Ministry of Justice, which decided whether to apply these punishments.

After Shavkat Mirziyoyev came into office in 2016, he also addressed the disciplinary proceedings issue. The Decree *On Development of Effectiveness of the Institution of Advocacy and Broadening of Advocates' Independence*,[368] followed by the law *On Amendments of Some Legislative Acts of the Republic of Uzbekistan due to the Improvement of the System of Legal Assistance and Legal Services*,[369] transformed the process to a court-orientated system in 2018, and provided qualifying commissions slightly more independence from the justice authorities. The justice authorities started to form commissions and the bar in an odd number of advocates and experienced specialist in law field, but the vague term regarding law specialists, still left room for the justice authorities to control the process.

From then on, a disciplinary process could be initiated only by qualifying commissions, but the Ministry of Justice and its territorial offices still had the right to promote initiation of cases. The same right belongs to the Chamber of Advocates and its local branches, which is understandable, since qualifying commissions are subordinated to the Chamber and its local branches. The power to promote remains vague for the Ministry of Justice and its territorial offices, which is seen as lobbying of initiation. For example, a person can file a complaint against an advocate to either the Chamber (local branch) or the Ministry of Justice (territorial office). These bodies, in turn, promote the initiation of the process by a respective qualifying commission if there are

[368] Decree of the President of Uzbekistan "On Development of Effectiveness of the Institution of Advocacy and Broadening of Advocates' Independence". Accessed on August 6, 2021, http://lex.uz/docs/3731058.
[369] Law of Uzbekistan "On Amendments of Some Legislative Acts of the Republic of Uzbekistan due to the Improvement of the System of Legal Assistance and Legal Services". Accessed on August 6, 2021, http://www.lex.uz/acts/3977634.

proper grounds (reasons for initiation remained the same as before the 2018 reform).

The process of examining disciplinary cases did not changed significantly after the 2018 reform. However, a notable point is that advocates' rights during the hearing of cases were broadened. Among them are the right to use services of other advocates during the disciplinary process, the right to submit requests to the qualifying commission on inviting people who have a necessary information about the case, and the right to make copies of case materials.

As for the rendering of decisions, qualifying commissions still have the right to render final verdicts regarding only reprimands and refusal to impose disciplinary punishments. In case of suspension of a license, the right to deliver conclusive decisions was switched from the justice authorities to administrative courts. At the same time, the right to request the suspension of a license to an administrative court is held by both the bar and the justice authorities. In other words, a qualifying commission, after rendering a decision to suspend a license, sends it to a relevant territorial office of the Ministry and local branch of the Chamber, and these authorities request an administrative court to suspend a license. The process regarding the termination of a license became quite complicated. A qualifying commission, after rendering a decision to terminate a license, sends it to the High Qualifying Commission, which examines the case again and, after that, the latter sends the materials to the Ministry of Justice, which requests an administrative court to deprive an advocate's license. If an advocate disagrees with any of the above-mentioned decisions, he can appeal them to an administrative court.

In recent years, the administration of President Mirziyoyev elaborated a plan to reform the disciplinary process. The draft version of the presidential decree *On Further Improvement of the Institution of the Legal Profession and Fundamental Enhancement of the Status of Advocates* and the draft *Concept for the Development of the Institution of the Legal Profession* suggest granting the Chamber of Advocates exclusive competence and power on issues related to the initiation of disciplinary proceedings, termination and suspension of the status of an advocate, as well as creation of a separate disciplinary committee in the structure of the bar responsible for the disciplinary process.[370] However, the efforts to reform the system have remained unchanged since 2020,

[370] The draft of the Decree of the President of Uzbekistan "On Further Improvement of the Institution of the Legal Profession and Fundamental Enhancement of the Status of Advocates". Accessed on August 2, 2021, https://regulation.gov.uz/ru/document/16779.

creating the following current process of disciplining advocates illustrated in the Figure 5.

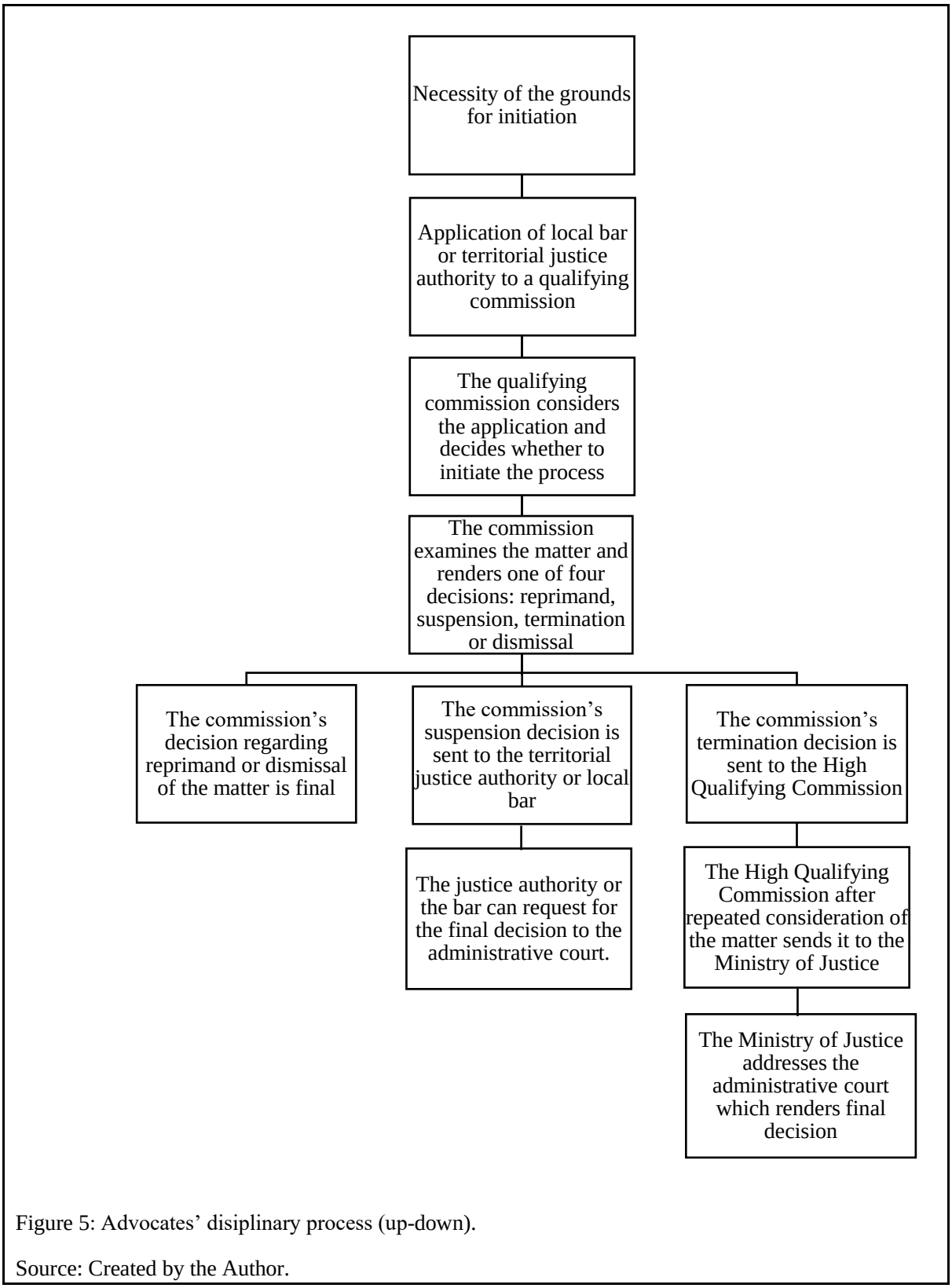


Figure 5: Advocates' disiplinary process (up-down).

Source: Created by the Author.

To conclude, the history of disciplining advocates was under solid control of the justice authorities, creating a cumbersome bureaucratic disciplinary process. In 2018, the administration of President Mirziyoyev, elaborated a plan to reform the disciplinary process, and introduced court-orientated direction of the proceedings. Transition to a court-controlled system of disciplinary rules seems to be a lesser of two evils, but advocates remained in the same inferior position regarding the governmental legal professions without a chance for proper defense of human rights and interests. In 2020, the state suggested granting the Chamber with the right to thoroughly conduct the disciplinary sphere, but the elaborated documents have not been adopted yet and the disciplinary process is currently controlled by two governmental professions, the justice authorities and the judiciary, making this realm highly sophisticated by bureaucratic obstacles. The next section provides analysis regarding the disciplinary proceedings situation in Japan and the USA, and based on the results, in the final section of this chapter, the dissertation suggests further ways to reconsider the Uzbek situation.

### 4.3 Japanese and the USA approaches to the lawyer-state intercourse

This section analyzes two different systems towards construction of the legal profession. First is the Japanese model and the lawyer's mission to protect people's rights and pursue social justice. The legal profession in Japan has undergone a long way of oppression from the state to independence of the JFBA and local bars in managing their own affairs, including the disciplinary domain. The admission process, however, is under the control of the justice authorities (bar examination) and the judiciary (apprenticeship). Therefore, the current structure forms a system of check and balances in the legal domain, with a high level of independence for the legal profession.

As for the USA's approach, lawyers are in strong correlation with the judiciary, and the court, historically used to supervise lawyers' ethics and keep the status of both professions high. The ABA, established in 1878 as a voluntary organization, possess a quite limited range of powers, and mostly guides the legal profession in terms of legal ethics and education. The state bars are in charge of regulation of lawyers in their regions, but they act in correlation with the judiciary, and the latter, in most cases generally manage the disciplinary (Delaware approach) and admission processes (California system) of lawyers. Thus, the legal profession in the USA, opting for the lesser of two evils, operates under the supervision of the judiciary, but possesses quite high autonomy from other governmental bodies.

#### 4.3.1 Japanese legal profession and the bar's independence

The Japanese legal profession has a long history of struggling for its independence, which was achieved after adoption of *Attorney Act* of 1949.[371] The situation before the transformation of the profession into an independent structure was similar to Uzbekistan's current system, implying a strong association with governmental authorities. Currently, the JFBA and local bars possess strong autonomous powers to deliver their

[371] Attorney Act of Japan. Accessed on August 13, 2021, http://www.japaneselawtranslation.go.jp/law/detail/?id=1878&vm=04&re=02.

own public opinions, preserve the prestige and high quality of the legal profession, and serve the interests of the people.

The current status of the legal profession in Japan is conditioned by its historical development which goes back to the Tokugawa period (1603–1867), when there was no legal profession in the current comprehension of this term,[372] and the whole legal system was thoroughly paternalistic.[373] The only professionals, providing legal support to people before the courts during the Tokugawa period, were designated inn-keepers (*kujishi*).[374] *Kujishi* did not have both professional forms or a special training process.[375]

Following the Meiji Restoration of 1868, the state introduced the profession of *daigennin*, people who were quite limited in powers and tightly controlled by the state according to the 1872 statute on the legal profession.[376] Still, this statute, for the first time, recognized the division of the professions into judges, prosecutors, and *daigennin*.[377] In later years, Japan turned towards the British (barrister), French (*advocat*) and German (*rechtsanwalt*) concepts.[378] Referring to these approaches, Japan in 1893 established the profession of *bengoshi*, where *bengo* stood for defense or advocacy, and *shi* at the end meant a person who fulfilled these tasks. Therefore, *bengoshi* became an individual engaged in defense of people in court proceedings.

Until the end of 19th century, the government developed the legal profession mostly referring to the Anglo-American model, which stood for the ideal of private practice.[379] This motivated graduates to opt for the legal profession, rather than pursue the careers of judge and prosecutor. Therefore, from 1895, the state turned to the German approach, where legal training and education had tighter governmental control.[380] To further

[372] Richard W. Rabinowitz, "The Historical Development of the Japanese Bar," *Harvard Law Review* Vol. 70 (1), (1956): 61-68; Tadao Fukuhara, "The Status of Foreign Lawyers in Japan," *Japanese Ann. International Law* Vol. 17, (1973): 22-23.
[373] Malcolm M. Feeley and Setsuo Miyazawa, "The State, Civil Society, and the Legal Complex in Modern Japan: Continuity and Change," 156.
[374] Rabinowitz, "The Historical Development of the Japanese Bar," 62-64.
[375] Malcolm M. Feeley and Setsuo Miyazawa, "The State, Civil Society, and the Legal Complex in Modern Japan: Continuity and Change," 157.
[376] Yasuhiro Matsui, "A Study of Japanese Practicing Attorneys," [Nibon Bengoshi Ron], (Tokyo, Nihon Hyorensha), (1990).
[377] Malcolm M. Feeley and Setsuo Miyazawa, "The State, Civil Society, and the Legal Complex in Modern Japan: Continuity and Change," 157.
[378] Fukuhara, "The Status of Foreign Lawyers in Japan," 21-25; Rabinowitz, "The Historical Development of the Japanese Bar," 69-75.
[379] Ibid, 161.
[380] Ibid.

supervise the legal profession, those in power required lawyers to form associations controlled by the state. However, lawyers used these association to promote their interests and liberal ideas, and continued to expand the bar.[381] Thus, by the beginning of the 1930s, the bar transformed into a structure with the lawyers per capita even higher than during the first two decades after the Second World War.[382] Throughout the period before the Second World War, the legal profession was regulated by the 1893 *Lawyers Law*, which replaced the 1872 statute and introduced the term *bengoshi* as well as first comprehensive legislation on the legal profession.[383] A rapid increase in the number of lawyers and litigation led to revision of the 1893 law and enaction of a revised version of the *Lawyers Law* in 1933, which came into force in 1934.[384]

In sum, before adoption of the *Attorney Act* in 1949, the government, by means of the justice authorities, influenced the legal profession. In spite of some positive transformations, the status of lawyers was "gravely endangered" and the Ministry of Justice controlled all the spheres of their activities.[385] According to the *Lawyers Law* of 1933, the justice authorities regulated the bar, held a national registration roll of lawyers, controlled the process of admission to the profession and disciplinary proceedings.[386]

After the War, Japanese lawyers, receiving support from American occupation forces, started to call for liberalization of the legal profession and enhancement of its independence.[387] The result was a victory against the justice authorities and the Supreme Court in the battle over the *Attorney Act* of 1949, which provided solid credentials and substantial independence to the legal profession. After decades of struggle, the bar attained autonomy from the Ministry of Justice and for the first time the justice authorities were moved out of control over the legal profession.[388] Still, to prevent a monopoly of the legal profession, the qualification, training and admission to the legal profession were entrusted to the Ministry of Justice and the Supreme Court, but

---

[381] Malcolm M. Feeley and Setsuo Miyazawa, "The State, Civil Society, and the Legal Complex in Modern Japan: Continuity and Change," 161; Yasuhiro Matsui, "A Study of Japanese Practicing Attorneys," [Nibon Bengoshi Ron], (Tokyo, Nihon Hyorensha), (1990), 9.
[382] John O. Haley, "Authority Without Power: Law and the Japanese Paradox," *Oxford University Press*, (1991), 97.
[383] John O. Haley, "The New Regulatory Regime for Foreign Lawyers in Japan: An Escape from Freedom," *Pacific Basin Law Journal* Vol 5 (1-2), (1986), 3.
[384] Ibid, 4.
[385] Rabinowitz, "The Historical Development of the Japanese Bar," 61-81.
[386] Edward I. Chen, "The National Law Examination of Japan," *Journal of Legal Education* Vol 39 (1), (1989): 1-26.
[387] Malcolm M. Feeley and Setsuo Miyazawa, "The State, Civil Society, and the Legal Complex in Modern Japan: Continuity and Change," 175.
[388] John O. Haley, "The New Regulatory Regime for Foreign Lawyers in Japan: An Escape from Freedom," 6.

disciplinary processes became the prerogative of the bar. The post-war Constitution also granted the Supreme Court the power to determine "the rules of procedure and of practice, and of matters relating to attorneys."[389]

From then on, in order to become a lawyer, one had to pass a national bar examination, which was administered by the Ministry of Justice, and complete a two-year judicial apprenticeship under the Supreme Court.[390] The national bar examination and apprenticeship were unified for potential judges, prosecutors and lawyers. After a person passed both steps, he had to register in the JFBA, which implied that membership in the bar under the *Attorney Act* of 1949 became compulsory. The successful candidate had to apply to the local bar, where he wanted to practice law. The bar, in turn, considered the application[391] and forwarded it to the JFBA if the request was satisfactory.[392] The JFBA also reviewed the application and decided whether to admit the candidate.[393]

As for the disciplinary process, the bar became solely in charge of the proceedings. From then on, the bar could institute the disciplinary action by itself, or someone's complaint could also trigger the disciplinary process by the bar.[394] The *Attorney Act* introduced four types of disciplinary punishments: reprimand, suspension of practice for a period of two years or less, order to withdraw from membership in a local bar association, and expulsion.[395]

Throughout the second half of the 20th century, the legal profession in Japan experienced a significant rise in status, and the bar held the quality of the profession high, but the number of lawyers low.[396] During the

[389] Constitution of Japan, 1947. Accessed on August 15, 2021, https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html, art. 77.
[390] Kaname Ohira, "Admission to the Bar, Disbarment and Disqualification of Lawyers in Japan and the United States – A Comparative Study," *Washington Law Review* Vol. 38 (1), (1963), 22.
[391] The local bar association could refuse to forward the request for registration to the JFBA, and the JFBA itself could reject the registration in the following cases: a candidate may impair the good order or reputation of the bar association; a person is considered to be inadequate for the practice of law because of impaired mental or physical condition; a candidate filed the request more than three years after the date of expulsion from a bar association or other disciplinary action; he is in full-time public service in the area of the local bar association within one year from the date of the request where it is considered especially inappropriate to permit him to practice law in the particular area. (Ohira, "Admission to the Bar, Disbarment and Disqualification of Lawyers in Japan and the United States – A Comparative Study," 26.)
[392] Ohira, "Admission to the Bar, Disbarment and Disqualification of Lawyers in Japan and the United States – A Comparative Study," 25.
[393] Ibid, 26.
[394] Ibid, 34.
[395] Ibid, 35.
[396] Ota Shozo, Rokumota Kahei, "Issues of the Lawyer Population: Japan," *Case Western Reserve Journal of International Law* Vol 25 (2), (1993): 315-332; Malcolm M. Feeley and Setsuo Miyazawa, "The State, Civil

1970s, the Japanese economy witnessed significant economic growth, resulting in a changing society and an increase of social issues.[397] The small in number legal system was not ready for such alterations, which led to a period of stagnation in the 1980s and a judicial reform movement in the 1990s.[398] The motion was actually not only in the legal profession, but "the grievances of the general public over these inefficiencies began to coalesce into something of a concrete social movement that led to an intense national debate on possible fundamental changes to Japan's entire legal apparatus to resolve this decade-long impasse."[399] One of the movements to the reform were *Opinions on the Reform of Justice System*, issued by the Japan Business Federation (*Keidanren*) on May 19, 1998.[400]

The issues in the legal system at the end of the 20th century became also an alert for the state in the condition of the rapidly globalizing world, changing society and economy, and strong attention to the legal sphere. Therefore, the Japanese government established the Justice System Reform Council (JSRC) on July 27, 1999 to address the issues.[401] The JSRC was founded directly under the Cabinet of Ministers (previous reform committees regarding the legal sphere were established under the Ministry of Justice).[402] The Council consisted of 13 members, the majority of which were outside of the law domain.[403] To support the Council, the state created a Secretariat to collect various information and develop deliberations.[404] There was a concern that the Secretariat would influence the activities of the JSRC, since unlike the Council's members who worked part-time, the Secretariat consisted of people from governmental bodies and the legal profession working full-time on the reforms.[405] Therefore, the Council published a monthly journal to monitor, comment, and criticize the

Society, and the Legal Complex in Modern Japan: Continuity and Change," 175-184.
[397] Shunsuke Marushima, "Historical Genealogy of Japan's Judicial Reform: Its Achievements and Challenges," *Hastings International and Comparative Law Review* Vol. 36, (2013), 350.
[398] Ibid.
[399] Ibid, 351.
[400] Setsuo Miyazawa, "Successes, Failures, and Remaining Issues of the Justice System Reform in Japan: An Introduction to the Symposium Issue," *Hastings International and Comparative Law Review* Vol. 36, (2013), 315-316.
[401] Ibid, 314.
[402] Setsuo Miyazawa, "Successes, Failures, and Remaining Issues of the Justice System Reform in Japan: An Introduction to the Symposium Issue," 317.
[403] The members and their position at the time of operation of the JSRC can be found on the following website: https://japan.kantei.go.jp/policy/sihou/singikai/members_e.html. Accessed on August 16, 2021.
[404] Shunsuke Marushima, "Historical Genealogy of Japan's Judicial Reform: Its Achievements and Challenges," 349.
[405] Setsuo Miyazawa, "Successes, Failures, and Remaining Issues of the Justice System Reform in Japan: An Introduction to the Symposium Issue," 318.

activities of the JSRC.[406]

Operation of the JSRC was extraordinarily open to the public, and ordinary people could easily follow the process through the website,[407] and observers could express their opinions on various matters as well.[408] The plan of the JSRC was the "realization of a more accessible and user-friendly justice system, public participation in the justice system, redefinition of the legal profession,[409] and reinforcement of its function."[410] As for the legal profession, the JSRC stated that "[l]ike medical doctors who are indispensable for people's health-care service, the administration of justice (the legal profession) should play the role of the so-called 'doctors for the people's social life'."[411] The result of the JSRC activities was a 118-page *Report For a Justice System to Support Japan in the 21st Century* to Prime Minister Junichiro Koizumi on June 12, 2001.[412] The *Report* consisted of five chapters and fundamentally covered all the spheres of the legal domain.[413]

With regard to legal education and admission to the bar, the JSRC, promoting the idea of increasing the number of legal professionals, suggested establishment of law schools from April 2004 to connect "legal education, the national bar examination and legal training as a 'process'."[414] Moreover, the traditional national bar examination was replaced by a new examination to respond to teaching programs at law schools. Still, the JSRC left the possibility to conduct the old exam for five years after introduction of the new one to exclude the undue disadvantages for people who prepared for the old examination (last old examination was taken in 2011).[415]Apprenticeship training, coming after the bar examination, was also reconsidered to cope with the increased number of apprentices and to fit the programs provided at law schools.[416] As for the disciplinary rules, the JSRC indicated the necessity to introduce public participation in the process "in consideration of ensuring

[406] Ibid.
[407] The website used by the JSRC to upload the minutes: http://www.kantei.go.jp/jp/sihouseido/. Accessed on August 17, 2021.
[408] Ibid.
[409] Throughout the reports and statements of the JSRC, the term legal profession refers to all professions in the legal sphere, including judges, prosecutors and lawyers.
[410] The Justice System Reform Council. The Points at Issue in the Justice Reform, December 21, 1999. Accessed on August 15, 2021, https://japan.kantei.go.jp/policy/sihou/singikai/991221_e.html.
[411] Ibid, ch. 1, sec. 2.
[412] The Justice System Reform Council. Recommendations for a Justice System to Support Japan in the 21st Century, June 12, 2001. Accessed on August 15, 2021, https://japan.kantei.go.jp/policy/sihou/singikai/990612_e.html.
[413] Ibid.
[414] Ibid, ch. 3, part 2.
[415] Ibid.
[416] Ibid.

transparent, prompt and effective enforcement of the disciplinary procedures" with the aim to secure people's trust in lawyers.[417]

In sum, for the first time, reforms were successfully passed by a state committee as a national policy. Among suggestions by the JSRC were expansion of the legal profession, alteration of the legal education and admission to the bar, as well as legal apprenticeship, introduction of higher transparency and public participation in the legal sphere (lay judge system, involvement of the public in the disciplinary process with regard to lawyers). These achievements happened due to careful consideration of the reforms by the JSRC, wide participation of non-legal actors in the reforms, and high coverage of the JSRC's operation by the mass media.

Moving to the descriptive picture of the admission to the profession after the reforms, which is actual currently as well, the process starts with the reconsidered legal education. In order get a chance to pass a bar examination, one has to graduate from a law school. To apply to the law school, an applicant must have an undergraduate degree, but in some circumstances a candidate may apply during his third year of university studies due to excellent grades.[418] In order to get enrolled in the law school, a person must take an aptitude test.[419] After getting enrolled, one undergoes an education in either a two year program for those who have basic knowledge in law, or a three year program for those who have no prior education in law. Some law schools apply slightly different approaches, such as Waseda University law school. This law school enroll everyone on a three years program and after legal examination transfer some students to a two years program).[420] The idea of division implies attraction of more people with non-law background in the legal sphere.[421]

Successful graduates of the law school then apply to the national legal examination. For those people who cannot afford studying in law schools[422] or cannot undergo education at a law school owing to other

[417] Ibid, ch. 3, part 3.
[418] Shigenori Matsui, "Turbulence Ahead: The Future of Law Schools in Japan," *Journal of Legal Education* Vol. 62 (1), (2012), 14.
[419] Standards for Establishment of Professional Graduate Schools of the Ministry of Education, Culture, Sports, Science and Technology (MEXT) [専門職大学院設置基準], 2003. Accessed on August 18, 2021, https://www.mext.go.jp/a_menu/koutou/houka/03050101.htm, art. 19-20; For more information see the MEXT's notice to implement this Standard [専門職大学院に関し必要な事項について定める件], 2003. Accessed on August 18, 2021, https://www.mext.go.jp/a_menu/koutou/houka/03050102.htm.
[420] Shigenori Matsui, "Turbulence Ahead: The Future of Law Schools in Japan," 14-15.
[421] Ibid.
[422] Ibid, 16.

circumstances such as work or family affairs, the state in 2011 introduced an option of a preliminary qualifying examination (*yobi-shiken)*.[423] This exam consists of short-answer style questions which focus on fundamental law domains and liberal arts, followed by an essay section and oral examination both focusing on basic legal practices.[424] If one passes this exam, he gets an opportunity to apply for the bar examination.

An applicant for the bar exam can take it five times (three times until 2013) within the first five years after graduation from a law school or passage of the *yobi-shiken*.[425] The examination consists of short-answer questions (public law, civil and criminal affairs, and one sphere selected by examinee) and essay exam.[426] The exam is conducted by a special commission established at the Ministry of Justice.[427] The commission consists of seven members, appointed by the Ministry of Justice from among attorneys, judges, prosecutors, and people with special expertise. The term of the members is two years and they serve on a part-time basis.[428] A chairperson is selected by the commission from among its members and appointed by the Ministry of Justice.[429]

Successful passage of the bar examination gives one an opportunity to have a one-year practical training (at first the apprenticeship was two years, in 2002 it was reduced to one year and six months, and from 2006 the practice was shortened to one year) under the Legal Training and Research Institute.[430] This institute was established in 1947 to administer matters related to training judges and legal apprentices.[431] The one year training of potential lawyers consists of eight months of field training in the district court's civil and criminal departments, the prosecutors' office, and at law firms, followed by two months of field training based on the legal apprentices' choices, and two months of collective training.[432] Finally, those who passed the examination at the end of their

[423] Stacey Steele, "Japan's National Bar Examination: Results from 2015 and Impact of the Preliminary Qualifying Examination," *Journal of Japanese Law* Vol. 21 (41), (2016), 56.
[424] Bar Examination Act of Japan [司法試験法], 1949. Accessed on August 18, 2021, http://www.japaneselawtranslation.go.jp/law/detail/?printID=&re=02&ky=court+with+jurisdiction&ia=03&page=139&la=01&ja=04&lvm=02&vm=04&id=2246, art 5.
[425] Ibid, art. 4.
[426] Ibid, art. 2.
[427] Ibid, art 12.
[428] Ibid, art. 13.
[429] Ibid, art 14.
[430] Court Act of Japan [裁判所法], 1947. Accessed on August 18, 2021, http://www.japaneselawtranslation.go.jp/law/detail_main?id=7&vm=2&re=, art. 67.
[431] Ibid, art. 14.
[432] Official website of the Legal Training and Research Institute is available at: https://www.courts.go.jp/english/institute_01/institute/index.html. Accessed on August 18, 2021.

apprenticeship, are eligible to become assistant judges, public prosecutors, or practicing lawyers, which means that the educational and admission route for all three professions is the same. Finally, to become a lawyer, a person has to register in the roll of attorneys held by the JFBA.[433] This process did not change significantly after the reforms proposed by the JSRC.

As for the current disciplinary process with regard to Japanese lawyers, the JFBA and local bars have the ultimate right to initiate the proceedings and discipline their subordinates.[434] A disciplinary action can be imposed on a lawyer in case of violation of the *Attorney Act*, the articles of association of lawyer's local bar association or the JFBA, the order or reputation of his or her local bar, the lawyer's integrity both during and out of the professional activity.[435]

Any person can address a local bar association with a request to initiate disciplinary proceedings against a lawyer and attach an explanation of the grounds for initiation. Another trigger for initiation is a bar association's own intention to start a disciplinary process if it finds proper grounds for the launch.[436] Every bar, including the JFBA, has a Disciplinary Enforcement Committee and a Disciplinary Actions Committee, which specialize in disciplining lawyers. After initiation of a case, the matter is sent to the Disciplinary Enforcement Committee, which investigates it and decides whether the case can go further to the Disciplinary Actions Committee.[437] The latter, in turn, decides whether to administer disciplinary punishment among four possible choices: admonition, suspension for no more than two years, an order to withdraw from the bar association to which a punished lawyer belongs, or disbarment.[438] Members of both Committees are appointed from among lawyers, judges, prosecutors and academic experts.[439] Presidents of bar associations appoint the committees' members. However, judges and prosecutors are appointed based on recommendations of respective courts and prosecutor's offices by the heads of the bar. All the other members are appointed based on resolutions at general meetings of the bar.

If the punished lawyer disagrees with the decision of the local bar, he can appeal the matter to the

[433] Attorney Act of Japan, art. 8.
[434] Ibid, art. 36, 47.
[435] Ibid, art. 56.
[436] Ibid, art. 58.
[437] Ibid, art. 70.
[438] Ibid, art. 57.
[439] Ibid, art. 66-2, 70-3.

JFBA.[440] The disciplined lawyer can also appeal the decision of the JFBA to the Tokyo High Court, whose decision is definitive.[441] The complainant also has the additional possibility to appeal to the Board of Discipline Review in the JFBA for a retrial of the disciplinary decision of the JFBA.[442] The Board was established in 2004 to reflect public opinion.[443] It consists of eleven members, which are appointed by the president of the JFBA. Appointees can be academic experts, who are not lawyers, judges, public prosecutors or formerly worked in these positions.[444] The idea of the Board is to serve as an upper authority to bring an objection on the disciplinary ruling of the JFBA. The Board has the right to decide whether to dismiss an application or send it back to the local Disciplinary Actions Committee for reexamination.

This brief analysis of the Japanese disciplinary system shows that the process is highly autonomous and fully controlled by bar associations. Although persons from the state law professions can be members of Disciplinary Committees, presidents of bar associations are authorized to appoint them. Another striking feature is the Board of Discipline Review, which preserves the transparency of the disciplinary proceedings. Currently, Japan is facing other challenges with regard to over-independence of the disciplinary process, which includes the method of appointment of members of disciplinary committees and the issue with further instances for complainants outside the JFBA.[445]

To summarize, the Japanese legal profession has some similarities with Uzbekistan's system, and the former can be a role model for its Uzbek counterpart. The same legal system and unitary construction of their governments as well as the bar's solid independence in Japan, based on compulsory membership of all lawyers, is a good example and trigger for further research for Uzbek scholars and the legislature on the Japanese experience. Well-adjusted correlation of the check and balances system in the legal sphere, implying adequate independence of the Japanese bar to conduct disciplinary proceedings and participation on the equal level together with other professions in the admission to the law practice, enhances the authority and prestige of the

[440] Ibid, art.: 59.
[441] Ibid, art. 61.
[442] Ibid, art. 64-3.
[443] Kay-Wah Chan, Helena Whalen-Bridge, "Who is Worthy? Non-Lawyer Participation in Japanese and Singaporean Lawyer Disciplinary Systems." *Fordham International Law Journal* vol. 42, 2 (2019): 334.
[444] Attorney Act of Japan, art. 71-2,71-3.
[445] Kay-Wah Chan, Helena Whalen-Bridge, "Who is Worthy? Non-Lawyer Participation in Japanese and Singaporean Lawyer Disciplinary Systems.": 338-348.

legal profession in the society. Moreover, complete institutional independence of the JFBA allows this structure to deliver its own opinions on public and political matters as a pro-societal institute, which backs up lawyers in their activities for the promotion of public good in the country. Therefore, in spite of current issues and hindrances with over-independence, the Japanese legal profession can be a role model for Uzbekistan during its next stage of reforms in the legal sphere.

### 4.3.2 The USA model as bar's fidelity to the judiciary

The American legal profession has undergone quite a long history on the way to achieve its relative independence from those in power. Being a federal country, the level of independence and correlation with governmental bodies differs in each state. Authority of the judiciary with regard to the legal profession, unlike Uzbekistan and Japan, is typical in many American states. From the comparative perspective the USA's experience is of high interest for this research, since Uzbekistan, after Shavkat Mirziyoyev's administration came into power, implemented some elements of the American model to Uzbekistan's legal profession and increased the role of the judiciary in the disciplinary sphere. Therefore, analysis of the independence of the American legal profession with its advantages and drawbacks could serve as a guide for Uzbekistan's scholars and legislature to consider implementation of this model or its distancing throughout further stage of reforms.

During the formative era, covering the period from the American Revolution in the second half of the 18th century to the Civil War in 1860s, there were plenty of issues in the legal sphere. At the first steps of this period, among its problems were conservatism, distrust to lawyers, dissatisfaction with English law, and the decentralization of justice due to the federal nature of the country.[446] However, achievements of the prominent judges and lawyers of the 19th century led to the formation of the current legal system and development of the bar.[447]

To be more specific, in the middle of the 18th century, the bar was a prerogative of wealthier

[446] Roscoe Pound, "Legal Profession in America," *Notre Dame Law Review* Vol. 19 (4), (1994), 339.
[447] Ibid, 343.

communities, and lawyers were trained by Inns of Court.[448] Still, they had rights to organize bar associations or bar-like structures under courts, to establish rules for admission to the profession and to control legal education.[449] Special education was also necessary to be a member of the bar, which says about high standards set up by the bar at the first stages of its development.[450] In spite of some preconditions of the independent bar, the whole admission process before the American Revolution was regulated by the judiciary, and courts in every colony decided whether one would be admitted to the profession.[451]

After the Revolution, American states developed their own requirements for admission to the bar.[452] The standard basically was a law study under the supervision of a lawyer or a judge which varied from one to five years,[453] and some states also included an examination[454] as a prerequisite for the admission to the bar.[455] However, the policy of the third American President, Thomas Jefferson (1801-1809),[456] followed by a ruling of the seventh President, Andrew Jackson (1829-1837),[457] led to a deterioration of the requirements, and decrease in the length of legal education.

As a result, in the first half of the 19th century Americans grew their disbelief to law professions and "felt that admissions practices were … contrary to the ideals of democracy."[458] As a result, almost all admission standards were eliminated or significantly decreased allowing virtually any person to practice law.[459] For

[448] Ibid, 344.
[449] Ibid.
[450] For example, in 1788 in Pennsylvania, in order to become a lawyer, one had to have 4 years study as a clerk and one year of practice in the Common Pleas. The requirement in New York, at the end of the XVIII, were even harder: 4 years of liberal education, followed by 3 years in the office of an attorney were a prerequisite to the bar admission. (Pound, "Legal Profession in America," 344-345.)
[451] Daniel R. Hansen, "Do We Need the Bar Examination – A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives?" *Case Western Reserve Law Review* Vol 45 (4), (1995), 1193-94.
[452] Ibid, 1194.
[453] Anton-Hermann Chroust, "The Rise of the Legal Profession in America," *University of Oklahoma Press*, (1965), 164-165.
[454] This examination was a mere formality, and potential lawyers could detour it by choosing another way to become a lawyer, like clerking. Working as a clerk in a law office for some years allowed a candidate to exempt from an examination. (Hansen, "Do We Need the Bar Examination – A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives?" 1194.)
[455] Michael Bard, Barbara A. Bamford, "The Bar: Professional Association or Medieval Guild?" *Catholic University Law Review* Vol. 19 (4), (1970), 395.
[456] Pound, "Legal Profession in America," 344.
[457] Hansen, "Do We Need the Bar Examination – A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives?" 1195.
[458] Chroust, "The Rise of the Legal Profession in America," 165-166.
[459] Ibid.

example, in 1800, three-fourths of American jurisdictions necessitated an apprenticeship for law practice; then in 1840 the proportion declined to one-third, and by 1860 to one-fourth.[460] Even those states which had examination requirements for admission to the bar, conducted in addition to or instead of the apprenticeship,[461] regulated them inadequately owing to a shortage of time and skills of the judiciary to administer examinations.[462] As for the disciplinary process, the system was also controlled by the judiciary. Justice Marshall, supporting this idea, in 1824 wrote that the competence of courts to suspend and disbar is "incidental … and is necessary for the preservation of decorum, and for the respectability of the profession."[463]

After the Civil War, entering the industrial revolution and the progressive era, the USA faced an increase in the demand for expert legal advice[464] and sophisticated law firms.[465] This situation led to the development and proliferation of law schools, which were not so popular before the war.[466] Law schools were destined to raise the legal education standards and admission practices throughout the country. Among prominent designers of American law schools of that period were Christopher Columbus Langdell (accented case study and Socratic teaching) and Theodore Dwight (emphasized practical domain and part-time law school).[467] Eventually, Langdell's approach succeeded. During this time, the legal sphere experienced transformation of the bar examination from mostly oral to written form, its wide acceptance in 1890s, and application by most states by the 1920s.[468]

The spread of law schools gave trigger to a diploma privilege concept, which was used to attract more people to law schools, and implied an admission ticket to the bar after graduation.[469] The peak of the popularity

[460] Bard, Bamford, "The Bar: Professional Association or Medieval Guild?" 395.
[461] Chroust, "The Rise of the Legal Profession in America," 168.
[462] Robert Stevens, "Law School: Legal Education in America from the 1850's to the 1980's," *The University of North Carolina Press*, (1983), 25; Chroust, "The Rise of the Legal Profession in America," 168.
[463] Ex parte Burr., 22 U.S. (9 Wheat.) 529 (1824).
[464] Stevens, "Law School: Legal Education in America from the 1850's to the 1980's," 9-10.
[465] Thomas Paul Pinansky, "The Emergence of Law Firms in the American Legal Profession," *University of Arkansas at Little Rock Law Review* Vol 9 (4), (1987): 593-640.
[466] Stevens, "Law School: Legal Education in America from the 1850's to the 1980's," 8.
[467] John H. Schlegel, "Langdell's Legacy or, the Case of the Empty Envelope," *Stanford Law Review* Vol. 36, (1984): 1517-33.
[468] Stevens, "Law School: Legal Education in America from the 1850's to the 1980's," 25; George N. Stevens, "Diploma Privilege, Bar Examination or Open Admission," *B. Examiner* 46, 15, (1977), 21.
[469] Stevens, "Diploma Privilege, Bar Examination or Open Admission,".

of this concept was from 1879 to 1929.[470] In 1921 the ABA stated its disfavor of this system: "[t]he American Bar Association is of the opinion that graduation from a law school should not confer the right of admission to the bar, and that every candidate should be subject to an examination by public authority to determine his fitness."[471]

The second half of the 19th century also gave momentum to the established of the ABA in 1878, initiated by the bar association of Connecticut.[472] The ABA was created as a non-mandatory organization aimed to "advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honor of the profession of the law, and encourage cordial intercourse among the members of the American Bar."[473] From the beginning of the 20th century, the ABA became active in the promotion of legal ethics. Inspired by a 1905 address of President Theodore Roosevelt (1901-1909) at Harvard regarding the legal domain,[474] the ABA started work on elaboration of *Canons of Professional Ethics*, adopted in 1908.[475] The *Canons* remained the main ethical document of the American legal profession for the next 60 years.

After the Second World War, the ABA continued expansion of legal ethics and in 1947 published a Survey of the Legal Profession, which revealed uniformity of ethical considerations.[476] Based on the Survey, the ABA reconsidered the ethical standards and disciplinary rules, and in 1956 published *Model Disciplinary Rules*.[477] Admitting the power of the court to regulate the legal profession, the Model Rules stated that "[t]he purpose of the discipline of lawyers is the protection of the public, the profession and the administration of justice, and not the punishment of the person disciplined."[478] However, this document, being not binding for

[470] Hansen, "Do We Need the Bar Examination – A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives?" 1201.
[471] The National Conference of Bar Examiners, the Bar Examiners' Handbook (Stuart Duhl ed., 2nd ed. 1980), 189.
[472] Pound, "Legal Profession in America," 345.
[473] Simeon Baldwin, "The Founding of the American Bar Association." *The American Bar Association Journal* Vol 3, (1917), 695.
[474] Jerold S. Auerbach, "Unequal Justice: Lawyers and Social Change in Modern America," Oxford University Press, (1976), 40.
[475] Canons of Professional Ethics. Adopted by American Bar Association on August 27, 1908. Accessed on July 28, 2021, https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/1908_code.pdf.
[476] Jack S. Nordby, "The Burdened Privilege: Defending Lawyers in Disciplinary Proceedings," *South Carolina Law Review* Vol. 30 (2), (1979), 370.
[477] Ibid.
[478] Ibid.

American states, was not widely adopted.

In 1967 the ABA Special Committee on Evaluation of Disciplinary Enforcement (Clark Committee) started analysis of the disciplinary sphere, and in 1970 submitted a *Report on Problems and Recommendations in Disciplinary Enforcement*, revealing issues in the disciplinary domain and proposing five stages of the disciplinary process.[479] The stages included investigation, inquiry, formal hearings, disciplinary board, and judicial review.[480] The Committee suggested to centralize the "exclusive disciplinary jurisdiction in the state's highest court under a procedure promulgated and supervised by the court in the exercise of its inherent power to supervise the bar."[481] The *Report* gave trigger to modification of disciplinary rules in almost every state.[482] At the end of 1960s, the *Canons of Professional Ethics* also came under reconsideration, and in 1969 it was replaced by the *Code of Professional Responsibility*.[483] Although the *Code* was also a non-mandatory document for the states to adopt, in three years it was accepted and adopted by forty-three states and the District Columbia.[484]

In the sphere of legal education, after the Second World War, the ABA continued to support the bar examination procedure as a prerequisite to the bar admission, standing against the diploma privilege concept. In 1959 the ABA, together with the National Conference of Bar Examiners (NCBE), and the Association of American Law Schools (AALS) adopted the *Code of Recommended Standards for Bar Examiners* (the revised *Code* was adopted in 1980, followed by amendments in 1987 and 2010).[485] The impact of the *Code* was to contribute "toward uniformity of objectives and practices in bar admissions throughout the United States."[486]

---

[479] Problems and Recommendations in Disciplinary Enforcement. The American Bar Association Special Committee on Evaluation of Disciplinary Enforcement, 1970. Accessed on July 5, 2021, https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/reports_migrated/Clark_Report.pdf

[480] Ibid, xvi.

[481] Ibid, xiv.

[482] Nordby, "The Burdened Privilege: Defending Lawyers in Disciplinary Proceedings," 371.

[483] Model Code of Professional Responsibility. Adopted by American Bar Association on August 12, 1969. Accessed on July 28, 2021, https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2011build/mod_code_prof_resp.pdf.

[484] Michael Ariens, "Lost and Found: David Hoffman and the History of American Legal Ethics," *Arkansas Law Review* Vol. 67, (2014), 613.

[485] Code of Recommended Standards for Bar Examiners. Adopted by the ABA, NCBE, AALS. Accessed on June 21, 2021, https://reports.ncbex.org/comp-guide/code-of-recommended-standards/.

[486] Ibid.

The ABA together with the NCBE, in its 1971 statement, proclaimed:

> Bar examinations ... encourage law graduates to study subjects not taken in law school. They require the applicant to review all he has learned in law school with a result that he is made to realize the interrelation of the various divisions of the law – to view the separate subject courses which he took in law school as a related whole. This the curriculum of most law schools does not achieve. Also it is the first time many of the applicants will have been examined by persons other than those who taught them, a valuable experience in preparation in appearing before a completely strange judge.[487]

The negative position towards the diploma privilege system derived from the following reasons. First, the curriculum and length of study differed in all law schools. Second, the diploma privilege concept could be enjoyed by only some law schools. Third, the idea avoided the high standards set by bar examinations.[488] The ABA's lobby helped to get rid of this system in all the states except Wisconsin, the only jurisdiction where the diploma privilege still exists today.[489]

In the second half of the 1970s, the attention of the legal community was drawn again to legal ethics. The ABA created a Special Committee on the Code of Professional Responsibility in 1977,[490] which issued *Model Rules of Professional Conduct* in 1983, the latest guiding ethics document.[491] The *Model Rules* switched to the view of ethical rules as a "law of lawyering", rather than "matters of personal conscience",[492] and favored the concept of a lawyer's loyalty to the client.[493]

By the end of the 20th century and beginning of the 21st century, the legal profession in the USA transformed into a sophisticated and strong structure. Legal education and admission to the profession differ from state to state. Generally, in order to become a lawyer, one has to earn a bachelor degree at an accredited college or university, complete all requirements for graduation from an ABA-accepted law school (some states

---

[487] The National Conference of Bar Examiners, the Bar Examiners' Handbook (Stuart Duhl ed., 2nd ed. 1980), 190.
[488] Ibid, 20-21.
[489] Official website of University of Wisconsin-Madison Law School, diploma privilege procedure: https://law.wisc.edu/current/diploma_privilege/. Accessed on August 9, 2021.
[490] Report to the Board of Governors to the House of Delegates, 102 A.B.A. REP. 575, 581 (1977).
[491] Model Rules of Professional Conduct. Adopted by American Bar Association in 1983. Accessed on August 27, 2020 https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/.
[492] Stephen E. Kalish, "David Hoffman's Essay on Professional Deportment and the Current Legal Ethics Debate," *Nebraska Law Review* Vol. 61, (1982), 57.
[493] Ariens, "Lost and Found: David Hoffman and the History of American Legal Ethics," 617.

also approve graduation from state recognized law schools[494]), and pass a state-administered bar examination.[495] The *Code of Recommended Standards for Bar Examiners* provides the following explanation of a bar examination:

> The bar examination may include multiple-choice questions, such as those on the Multistate Bar Examination, and should include essay questions. Questions should not be based on unusual or unique local case or statutory law, except in subjects with respect to which local variations are highly significant and applicants are informed that answers should be based upon local law. An essay question should not be repeated except after a substantial lapse of time. Questions should not be labeled as to subject matter and should not be so worded as to be deceptive or misleading. Sufficient time should be allowed to permit the applicant to make a careful analysis of the questions and to prepare well-reasoned answers to essay questions.[496]

As for the disciplinary system, the process also varies in each American state, and state supreme courts in general have inherited the right to regulate the legal profession.[497] On the one hand, some critics point out that in this system judges have insufficient time, interest, and capacity to conduct disciplinary proceedings effectively.[498] Courts have tons of cases, and judges have neither the expertise nor resources to properly examine lawyers' discipline matters.[499] On the other hand, others argue that although self-regulation of attorneys is weaker that in other countries (inside of this flow some assert that self-regulation of the bar as a myth[500]), it is still better than dependence on executive or legislative branches.[501] Thus, the American disciplinary process has inherited a system where the role of judges, elected through merit processes, prevail, although the level of their participation differs in each state.

In sum, throughout American history the bar has undergone a great deal of structural transformation. In spite of intervals of decrease in the status of lawyers, high standards for legal professionals were set from the

---

[494] Hansen, "Do We Need the Bar Examination – A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives?" 1203.
[495] Ibid, 1202-03.
[496] Code of Recommended Standards for Bar Examiners. Adopted by the ABA, NCBE, AALS. Accessed on June 21, 2021, https://reports.ncbex.org/comp-guide/code-of-recommended-standards/, 20.
[497] Deborah L. Rhode, Alice Woolley, "Comparative Perspectives on Lawyer Regulation: An Agenda for er Regulation: An Agenda for Reform in the United States and Canada," Fordham Law Review Vol. 80 (6), (2012), 2764.
[498] Deborah L. Rhode, "Professional Regulation and Public Service: An Unfinished Agenda," in the Paradox of Professionalism: Lawyers and the Possibility of Justice, Scott L. Cummings ed., *Cambridge University Press*, (2011).
[499] Benjamin H. Barton, "An Institutional Analysis of Lawyer Regulation: Who Should Control Lawyer Regulation – Courts, Legislatures, or the Market?" Georgia Law Review Vol. 37, (2003): 1167-1207.
[500] Fred C. Zacharias, "The Myth of Self-Regulation," *Minnesota Law Review* Vol. 93, (2009): 1147-90.
[501] Bruce A. Green, "Lawyers' Professional Independence: Overrated or Undervalued?", 606.

early steps of its development. The ABA, being a voluntary institution of the legal profession, is actively engaged in the activities of setting academic standards and legal ethics. State bar associations, on the other hand, are in correlation with the relative judicial powers of each state, engaged in the activities related to legal education and ethical matters, as well as lawyers' discipline and promoting the legal profession's interests in their own jurisdictions.[502] This dissertation has chosen two states for scrupulous research of admission to the profession process and the disciplinary domain.

The California bar examination was chosen for analysis in this dissertation. The bar examination in California is known for being one of the most difficult in the country.[503] Being a lawyer in the Golden State means being able to pass a quite arduous admission process. For example, the pass rate on the July 2018 California bar exam was 40.7%, reaching 67 year low,[504] whereas the figure for the average pass rate over the last decade is barely above 50%; in October 2020, the figure reached 60.7% which was ten year high.[505] The State Bar's Committee of Bar Examiners, under the supervision of the Supreme Court of California, is responsible for development, administration, and grading the bar examination in the Golden State.[506]

As for the characteristics of the California bar, in order to take the examination, one does not have to undergo a pure law education. There are a variety of ways to get an opportunity to try the bar examination: education at a law school accredited by the ABA; education at a State Bar-registered, fixed-facility law school; education with at least 864 hours of preparation at a special law school; education under the observance of a state judge or attorney; or a combination of mentioned programs.[507] An applicant for the bar examination does

[502] Brief explanation of each state bar's functions is available at: https://www.lawyerlegion.com/associations/state-bar. Accessed on May 5, 2021.
[503] Robert Anderson, Derek T. Muller, "The High Cost of Lowering the Bar," *The Georgetown Journal of Legal Ethics* Vol. 32, (2019), 311; Matthew Lynch, "The Difficulty Level of Bar Exams by State," *The Edvocate*, December 19, 2020. Accessed on August 20, 2021, https://www.theedadvocate.org/the-difficulty-level-of-bar-exams-by-state/.
[504] Staci Zaretsky, "California Bar Exam Pass Rate Reaches Nearly All-Time Low," Above the Law, November 19, 2018. Accessed on May 3, 2021, https://abovethelaw.com/2018/11/california-bar-exam-pass-rate-reaches-nearly-all-time-low/.
[505] California bar examination pass rates over the last decade can be reached at the official website of the State Bar of California: https://www.calbar.ca.gov/admissions/law-school-regulation/exam-statistics. Accessed on August 30, 2021.
[506] Official website of the State Bar of California: https://www.calbar.ca.gov/Admissions/Examinations. Accessed on August 30, 2021.
[507] Official website of the State Bar of California: https://www.calbar.ca.gov/Admissions/Requirements/Education. Accessed on August 30, 2021.

not have to be a USA citizen to practice law in California, which means that foreign applicants who have a social security number can also apply for the examination.[508]

The bar examination itself is conducted twice a year, consists of three parts, and is held over two days.[509] First are five one-hour essay questions, the purpose of which is to test the candidate's comprehension of the law and its proper application, as well as check of his writing skills. Second is a 90-minute performance test, which evaluates the candidate's abilities to settle legal challenges while working with a client. The first two parts are typically conducted on the first day. Finally, on the second day, the applicant takes the Multistate Bar Examination, which is a 200 question multiple choice standardized test based on constitutional law, evidence, civil procedure, criminal law and procedure, contracts, torts, and real property. Thus, the arduous bar exam in California exercises three stages over two days, with a pass rate going barely above 50%, allowing applicants from overseas and non-legal domain to take the test.

As for the disciplinary sphere, recent research suggests that Delaware, Hawaii, and New Hampshire are the best states in the country for handling lawyers' discipline cases.[510] This dissertation analyzes the Delaware experience, as a court-oriented approach to lawyers' discipline. According to the *Delaware Lawyer Rules of Disciplinary Procedure*, the Supreme Court of Delaware, possessing the "inherent power and authority over the regulation of the legal profession", administers the lawyers' disciplinary system.[511] The Supreme Court appoints members of all structures, which regulate the process: the Board of Professional Responsibility, the Preliminary Review Committee (PRC), and the Office of Disciplinary Counsel (ODC).[512] Members of all these institutions are appointed from among lawyers and non-lawyers.

First, the ODC screens a complaint and evaluates whether to initiate disciplinary action.[513] The following are grounds for initiation of the proceedings: violation of the ethics rules or codes adopted by the

[508] Ibid.
[509] Official website of the State Bar of California: https://www.calbar.ca.gov/Admissions/Examinations. Accessed on August 30, 2021.
[510] Emma Cueto, "Which States Are Best and Worst at Atty Discipline?" *Law 360*, May 16, 2013. Accessed on June 4, 2021, https://www.law360.com/articles/1159937.
[511] Delaware Lawyers' Rules of Disciplinary Procedure. Adopted by the Supreme Court of Delaware, effective July 1, 2003. Accessed on August 5, 2021, https://courts.delaware.gov/rules/pdf/2020DelawareLawyersRulesDisciplinaryProcedure.pdf, rule 1 (a).
[512] Ibid, rule 1 (b).
[513] Ibid, rule 9 (a).

court; engagement in unlawful conduct in another jurisdiction; violation of the terms of conditional diversion or public (private) disciplinary or disability disposition; failure to submit information or answer to a request from the disciplinary bodies; or failure to appear before the court or the Board.[514] If there are enough grounds to start a disciplinary process, the ODC presents the matter to the PRC. The PRC can propose to the respondent an offer of conditional diversion, private probation, or private admonition.[515] If the respondent accepts an offer, the matter goes back to the ODC for further settlement of the issue. If the respondent rejects the proposal, or if the PRC considers further investigation, the matter proceeds further to the Board of Professional Responsibility. The Board considers the matter, conducts hearings and makes a report, containing findings, reasons, and recommendations, which are submitted to the court for review.[516] A lawyer may be subjected to the one of these sanctions: disbarment; suspension for no more than three years; interim suspension; public probation; reprimand; admonition; private probation; conditional diversion; restitution and reimbursement; or limitation of the respondent's future practice.[517] Thus, the whole disciplinary system in Delaware is generally regulated by the Supreme Court, implying that lawyers in this state are in strong correlation with the judiciary.

In sum, the independence level of the legal profession in the USA is dependent on the level of autonomy of the judiciary. Since the quality of admission to both professions from the early steps of development of American society was kept high, current lawyers, as so-called loyal officers of the court, enjoy relative independence from other structures, creating their own situation of checks and balances in the legal sphere. A variety of approaches toward disciplinary (Delaware court-oriented approach) and admission (California strict bar examination) processes in each state, implies the high autonomy of regional powers to regulate themselves for the interests and needs of their own regions. The following section summarizes the discussions in this chapter, provides suggestions for further reconsideration of the legal profession domain in Uzbekistan in terms of organizational relations of the bar with the state, admission to the profession sphere, and disciplinary processes.

[514] Ibid, rule 7.
[515] Ibid, rule 9 (b).
[516] Ibid, rule 9 (c), (d).
[517] Ibid, rule 8.

### 4.4 Summary

The chapter analyzed the independence of the legal profession in relation to the state in the targeted countries, Uzbekistan, Japan, and the USA. Section 4.1 started with the history of the legal profession in Uzbekistan from the period of rule of the two Khanates, Kokand and Khiva, and one Emirate , Bukhara, followed by the Russian empire and the Soviet stages. Before the Russian invasion, the legal system was characterized by Muslim elements and did not have the concept of an advocate. So-called *muftis*, specialists in Muslim law, subordinated to the court, assisted people with the interpretation of Muslim legal norms. The Russian empire, after its invasion in the mid 19$^{th}$ century, introduced Russian law (civil law), and used both the indigenous legal system for local people and civil law for Russian nationals. At this period of time, progressive minded Uzbek people, called *jadids*, started active development and proliferation throughout the Central Asia and formed the first advocate-like structures to assist locals. These entities were independent from the state, and leading activist-*jadids*, like Ubaydullahodja Asadullakhodjaev, Sulayman Kelginboyev, Valikhon Khoja, maintained a constant struggle against the oppression of the Russian regime set in the Central Asian region.

The Revolution of 1917 gave initiation for transformation of all countries in the region into the communist course. The Soviets introduced the system of *pravozastupnik* (right activists), which allowed almost any person who reached the age of twenty years old to represent people in courts. At the same time, the ruling working class started to eradicate the intelligentsia, including *jadids*, who were completely collapsed throughout the repressions during the 1920s and 1930s. The system of *pravozastupnik* led to a number of issues regarding the proper defense of people's rights, and in 1918 the Soviets gave start to a governmentally controlled system of rights activists, which was gathered under the control of collegiums of activists and subordinated to the judiciary with the idea of the assistance of courts and proper examination of cases. Members of collegiums, at the same time, were appointed and dismissed by the justice authorities, meaning that they became governmental officials with a fixed salary from the state budget.

After formation of the Uzbek SSR in 1924, the Soviets started to create a coherent legal profession under control of the justice authorities. The idea of the legal profession was to ensure socialist legality, protection of people's rights, and provision of legal assistance. The justice authorities systematically supervised activities

of advocates and monitored their collegiums, the bar-like structures which were created in 1920s and based on the system of collegiums of activists. Throughout the whole period of Soviet rule, the organizational form of the Soviet legal profession generally remained unchanged, and the justice authorities kept controlling the admission and disciplinary processes with regard to advocates and supervised the bar. Although the Soviets reformed the legal profession, the ideas of the transformation were to propogate socialist values and turn advocates into governmental-like officials who maintained and promoted socialist incline of the country.

The independence of Uzbekistan in 1991 gave trigger to a positive reformation of the legal profession as a civic institute. However, two laws adopted in the end of 1990s *On Advocacy* and *On Guarantees of the Activity and Social Protection of Advocates*, left the advocates' community in the same inferior position to the justice authorities, which controlled the admission and disciplinary spheres through newly established qualifying commissions that were placed under the jurisdiction of the justice authorities. The Association of Advocates, established in 1990s, became a voluntary and nominal head-organization for the legal profession, based on non-compulsory membership of advocates.

The 2008 decree of the President Karimov *On Measures for Further Reformation of the Institution of Advocacy in the Republic of Uzbekistan* started a new stage of reforms. The Association of Advocates was transformed into the Chamber of Advocates, based on compulsory membership. Qualifying commissions were placed under the control of the Chamber and its local branches, but with the right of the justice authorities to nominate members of commissions. Finally, the Ministry of Justice reserved the right to de-facto appoint the chairperson of the Chamber of Advocates and his deputies. Therefore, in spite of some positive measures to transform the legal profession into an independent civic institution, the state still could infringe on the matters of this structure by means of the justice authorities.

The Soviet justice authorities' approach of President Karimov led to a number of acute issues in the legal profession sphere, and the next administration of President Mirziyoyev started the gradual revival of the advocates' community. His 2018 decree *On Development of Effectiveness of the Institution of Advocacy and Broadening of Advocates' Independence* started a new stage of reforms. If before the reform both the justice authorities and the bar formed members of qualifying commissions from among their employees, then after the reform the members can be appointed from among advocates and specialists in the law field. In the admission

sphere, the legislature divided the advocate's license into two specializations, criminal and administrative and civil and commercial, which meant that advocates have to take separate exams for each specialization. Moreover, to increase the number of advocates and attract more people to the profession, the legislature reduced the internship requirements for potential advocates. In the disciplinary domain, the right to suspend and disbar lawyers was switched from the justice authorities to the court, leaving qualifying commissions only the right of reprimand. In the organizational realm of the bar, the Chamber of Advocates was left in the same inferior position to the Ministry of Justice. Thus, although some positive steps had been taken to improve the situation with the autonomy of advocates, the justice authorities and administrative courts still reserved the right to guide the legal profession.

In 2020, the state elaborated the *Concept for the Development of the Institution of the Legal Profession*, which was tasked by the President in the 2019 decree *On Additional Measures to Ensure the Rule of the Constitution and the Laws, Strengthening Public Control in Legal Sphere, as well as Improving of Legal Culture in Society*. The *Concept* has not been adopted yet, but the draft version includes a wide range of liberalization trends for the legal profession: complete independence of the Chamber of Advocates from the Ministry of Justice; exclusive right of the bar to regulate the admission and disciplinary processes; creation of separate commissions in charge of admission and disciplinary domains. However, after two years, these alterations have still not been implemented and the process is frozen, which puts the legal profession into a suspended position, waiting for changes and operating under the influence of the court and the justice authorities. Thus, this dissertation, provided a comparative analysis in section 4.3 to find further possible ways for development of the Uzbek legal profession and casted doubt on the comprehensiveness of recent reforms.

Section 4.3 addressed the Japanese and the USA approaches. The first part provided research on the lawyer-state independence issue in Japan. Before the Meiji Restoration of 1868, the Japanese legal sphere did not have the concept of a lawyer, and only so-called *kujishi* (inn-keepers) provided legal support to people. During the Meiji era, the state with the adoption of the statute on the legal profession introduced the private legal profession of *daigennin*, who were limited in powers and strictly controlled by the state. With the adoption of next act regarding the legal sphere in 1893, the legislature implemented the term *bengoshi*, who were lawyers engaged in defense of people in courts.

The state until the mid-1890s developed the legal profession based on Anglo-American ideals, prioritizing private practice. However, from 1895 the government opted for the German approach, which exercised tight control over legal training and education. To increase the level of authority over lawyers, the state required them to form associations subordinated to the state. However, *bengoshi* employed these organizations for their own interests: to promote liberal ideas and expand the bar. Therefore, by the beginning of the 1930s, the bar became a relatively strong structure with many lawyers attracted to the profession. These alterations triggered revision of the 1893 *Lawyers Law*, and in 1934, the legislature adopted a revised version of the *Lawyers Law*. Thus, before the Second World War, the state formed solid foundations for formation and development of the bar, and lawyers used all the opportunities to expand and strengthen their profession. However, the controlling functions of the Ministry of Justice over the bar, including the admission and disciplinary processes, left the legal profession as a second-class niche.

The 1949 the *Attorney Act* reformed the legal profession and introduced a solid level of independence to the bar. The disciplinary process became an exclusive prerogative of the newly established JFBA and local bars. The admission procedure was combined for three professions, judge, prosecutor, and lawyer, which enhanced the level of the legal profession's prestige. The process had two parts, a bar examination, conducted by the Ministry of Justice, and an apprenticeship, managed by the Supreme Court. After passage of these two steps, a candidate became a lawyer and had to register in the bar, which meant that membership in a bar association became mandatory.

In the second half of the 20$^{th}$ century, the bar was quite small in number, but consisted of high-quality professionals. An insufficient number of lawyers faced difficulties with the rapidly changing society and economic growth during the 1970s. This situation led to a stagnation period in the 1980s and a call for reforms in the 1990s. The government initiated the JSRC in 1999 to tackle the issues. The result of JSRC was the 2001 *Report*, which regarded the whole legal sphere. Among the striking innovations in the legal education and admission to the profession domains were the suggestion to introduce law schools, replace the bar examination, and make the admission process fit to the law school programs. In the disciplinary sphere, the *Report* called for expansion of public control over the process.

As a result of the reforms, in 2004 law schools started their operations, and in 2006 the first new bar

examination was held, followed by a renewed one-year apprenticeship (at the time of introduction it was two years, in 2002 decreased to one year and six months). Over the next years, the number of lawyers increased, but not on the scale proposed by the JSRC. Still, people from the non-law domain got a chance to study at law schools and pass the bar examination. Moreover, after seizure of the old bar examination in 2011, the newly introduced *yobi-shiken* became another opportunity for people to get a ticket for the bar exam. In the disciplinary sphere, the process became more public orientated and the Board of Discipline Review under the JFBA established in 2004, became another trigger for prevention of the legal profession's monopolization. Today, the legal profession in Japan turned into a pro-societal independent institution, maintaining a system of check and balances in the legal sphere, with strong civic defense of human rights and realization of social justice.

The second part of the section 4.3 analyzed the American legal profession and its correlation with the state. At the beginning of the formative era the bar was a prerogative of the wealthier communities, and lawyers were trained by the court, but special bar-like organizations also participated in admission and legal education practices. The requirements for admission to the legal profession were set high and potential candidates had to undergo a quite difficult process of apprenticeship to become lawyers. However, during the first part of the 19$^{th}$ century, owing to the policy of Presidents Jefferson and Jackson, the requirements were decreased which led to deterioration of the legal profession and a lack of trust in lawyers. As for the disciplinary process, the system, in general, was also controlled by the judiciary.

After the Civil War, the USA legal market facing the progressive era experienced an increased need for qualified legal advice, which resulted in the rise of law schools and law firms. This period also witnessed the foundation of the ABA, a voluntary organization with subsequent soft power to influence legal ethics, legal education, and admission practices in the country. The ABA was active in the establishment of ethics guiding documents in the 20$^{th}$ century including the 1908 *Canons of Professional Ethics*, 1969 *Code of Professional Responsibility*, and 1983 *Model Rules of Professional Conduct*, as well as other documents regarding discipline and admission to the professional spheres. Moreover, the ABA played a crucial role in the promotion of law school education, followed by the bar examination, and had a hand in the decrease of the diploma privilege concept (only Wisconsin uses this concept these days).

Nowadays, the legal profession in the USA, as a federal country is a sophisticated and diverse structure,

having strong historical relations with the judiciary. Each state has its own admission requirements and disciplinary rules, formed under the soft power of the ABA, and state bars, as a general rule, are supervised by their respective Supreme Courts. This dissertation has chosen two role models for the admission and disciplinary spheres each: California and Delaware approaches respectively, to more scrupulously analyze the USA model.

The California bar examination is known as one of the most difficult bar exams in the country. The process is managed by the State Bar's Committee of Bar Examiners under the general supervision of the California Supreme Court. There are a variety of options for people to undergo an education to get a ticket for the bar examination, allowing individuals from different spheres to become lawyers in the state. Moreover, foreign nationals, after passing special procedures, also get an opportunity to pass the bar examination and practice law in the Golden State. The examination itself consists of three parts and is held over two days. The process consists of five one-hour essays, one 90-minute performance test, and the Multistate Bar Examination including 200-multiple choice questions. The result is a pass rate of around 50% over the last decade.

Moving to the disciplinary process, Delaware's approach in recent years was recognized as one of the best in the country for handling lawyers' discipline. The process is managed by the Supreme Court of Delaware, which appoints members of the Board of Professional Responsibility, the PRC, and the ODC. The complaint goes to the ODC which screens and evaluates the matter. If there are grounds for initiation, the ODC triggers the process, and sends the matter to the PRC which considers the matter again and, if possible, proposes to the respondent the offers of a conditional diversion, a private probation, or a private admonition. In case of the respondent's negative reply or the PRC's consideration for further investigation, the matter goes to the Board and this body conducts a hearing and completes the report, which is later submitted to the Supreme Court, and the latter renders the final decision. Thus, the whole process, regulated by the general supervision of the court, forms the typical judiciary-orientated disciplinary process of American lawyers.

Analysis of both countries are of high value for Uzbekistan's current transitional condition of the legal profession as an institute of civil society. First, in the organizational domain, the Uzbek bar must achieve complete independence from the justice authorities in the appointment of their governing personnel, and eradicate the old-fashioned Soviet system of the Ministry of Justice's assistance to the legal profession. A good example is the Japanese model, when before War World II the justice authorities completely controlled the bar,

but the *Attorney Act* of 1949 reversed the situation and the JFBA and local bars received solid independence from the state to deliberate its own policy, and supported civic explosion in the second half of the 20th century. In case of the American approach, complicated by the federal nature of the country and strong participation of the judiciary, the USA resulted in the voluntary identity of the ABA, which is similar to the Association of Advocates, which existed in Uzbekistan at the end of 1990s and during the 2000s. This model of a voluntary bar was ineffective in Uzbekistan, since there were no local bars to organize and guide advocates in Uzbekistan. On the other hand, each American state has its own state bar, which is historically connected with respective Supreme Courts to support and organize the activities of lawyers. Thus, depending on the judiciary, state bars in the USA, strongly connected with the judiciary, together with lawyers fulfill the function of the administration of justice, making this structure more a pro-state institution rather than a civic organization. Such an approach differs with the current aim of the Uzbek bar to become an institution of civil society.

Second, in the admission to the profession domain in Uzbekistan, there is a need to create a separate commission to handle the admission process since currently both disciplinary and admission practices are managed by the same qualifying commission. Moreover, the process needs to be correlated with other governmental bodies or even led by the judiciary to prevent a monopoly of the legal profession, maintain a system of check and balances in the legal sphere, and increase the status of the bar in the society. Current admission practices are regulated with the inclusion of the justice authorities. However, employees of this governmental body do not have special qualifications to handle this domain, and moreover, there is only an interview as a prerequisite to become an employee of the justice authority without any special examinations (in Japan for example there is a civil service examination to become, among others, an employee of a justice authority). Thus, the model with the justice authorities' inclusion is a Soviet appendage, and the legislature has to consider the possible transition of managing the admission process to the Supreme Court of Uzbekistan, which might enhance the role of the legal profession and increase the significance of the bar examination. This approach is used successfully in the California bar examination, where the State Bar's Committee of Bar Examiners, under the supervision of the Supreme Court of California, handles the process. In case of the Japanese approach, the Ministry of Justice has the right to conduct the bar examination, but after the examination, the Supreme Court handles the one-year apprenticeship. This approach can be considered in case of reconsideration of the civil

service in Uzbekistan with introduction of a special examination to become an employee of the governmental authority.

As for the decrease of requirements for people to get a chance to pass the bar examination and introduction of advocates' specializations with the purpose of enlargement of the bar, the measures are ill-considered, and in the long run can harm the status of the legal profession. The example of such decrease of the status of the legal profession is the first half of the 19th century USA, when the quality of the legal profession went down and the trust to lawyers was deteriorated. Another example is the 2000s reform of the Japanese legal system, when the legislature, in an attempt to attract more people to the legal profession, introduced the facilitated options to become *bengoshi*. In spite of controversies with regard to the alterations in Japanese academia, still, a new approach to become a lawyer in Japan is much more difficult, than current Uzbek admission process. Moreover, in Uzbekistan, specialization of the legal profession only created bureaucratic obstacles for potential advocates to undergo two unchallenging examinations, which can be easily passed in around one hour for each.

To tackle the problem with the deficiency of advocates in Uzbekistan, the legislature could lift the ban for foreign nationals to become advocates in Uzbekistan, which might attract more people from the former Soviet countries to practice law in Uzbekistan, since the Uzbek bar examination can be taken both in the Uzbek and Russian languages. The good examples are the opportunity for foreign people to pass the bar exam and practice law in Japan and the USA. Another possible way to increase advocate numbers is to open a latitude for people with non-law degrees to pass the bar examination and practice law in Uzbekistan (Japanese 2000s reform and California approach are also good examples for consideration) or introduce the system similar to *yobi-shiken* in Japan. Finally, there is a need for diversity of universities in the sphere of legal education to increase competitiveness, since currently in Uzbekistan, the Tashkent State University of Law basically has a monopoly on legal education.

Third, in the disciplinary realm, the process must be handled by bar associations to preserve the high quality of the profession. There is a need to create separate disciplinary commissions in the Chamber of Advocates and local bars which could supervise over the professional conduct of advocates. The current disciplinary structure with the inclusion of the justice authorities and the judiciary is the combination of the

Soviet and American models, resulting in an ill-considered preservation of the Soviet system with implementation of the American court-orientated approach and some sort of independence. The Ministry of Justice and its territorial bodies do not possess the proper qualifications to appropriately construct the disciplinary process. Moreover, the judiciary in Uzbekistan has not yet achieved the same level of independence as its American counterpart to handle the cases, related to the one of the key structures of the civic square. Thus, the Japanese approach, with the exclusive competence of the bar to drive the disciplinary realm, seems to be the optimum choice for Uzbekistan. Finally, to prevent a possible monopoly on the process, the system needs to include members of other professions in disciplinary commissions after their approval by the bar (this approach is used in Uzbekistan after 2008 reform, but with influence of the justice authorities in the process of appointment), and a special public review board under the Chamber of Advocates (the system similar to the Japanese Board of Discipline Review introduced in 2004), which will consist of non-law related members and serve as a structure to ensure transparency of disciplinary cases.

## Chapter V: Conclusion

The analysis in the previous chapters shows that the current independence issue in Uzbekistan needs reconsideration and harmonization so that the Uzbek legal profession as a civic structure can ensure public good in the transitional Uzbekistan. The legal profession has been suppressed by the state since the Soviet working class created the model to control the free-thinking intelligentsia. This approach turned advocates into state-like units which were supposed to promote social legality in the country during the Soviet period. After the independence of Uzbekistan in 1991, the state proclaimed independence of the legal profession as a civic institution on paper, but left the old Soviet approach towards the bar and advocates. The 2008 massive reforms that took place in the country only aggravated the independence issue. After the administration of President Mirziyoyev came into power in 2016, he started fundamental reconsideration of the whole legal sphere, and the legal profession was not an exclusion. The flow of the reforms had quite positive incline. However, discussions around the betterments were hectic and rash, the result of which was poor implementation of international experience and ill-considered reformation of the legal profession. Therefore, this study examined the effectiveness of the reformation processes in Uzbekistan regarding autonomy of the legal profession as an institute of civil society from a comparative perspective to comprehend whether the bar and advocates need to possess adequate independence to ensure the public good in the transitional Uzbekistan. Especially particular attention was given to the organizational construction of the bar, admission to the legal profession and advocates' discipline, since these mechanisms are the bases for effective operation of the legal profession.

The significance and uniqueness of the research are conditioned by the following three factors. First, the study specifically analyzes the issue of the independence of the legal profession in relation to both the state and the society. Setting the theoretical framework that the bar and lawyers are the members of Uzbek civil society, the author claims that the independent legal profession can be a key for the proper defense of human and legal entities' rights, and lawyers can head the promotion of public good in the transitional Uzbekistan. Second, unlike other researches in Uzbekistan, which deal with the issue of the legal profession's independence partially, in the context of law-enforcement bodies, this study provides scrupulous analysis of the actual issues and reforms in Uzbekistan as well as up-to-date discussions of the matter on an international level. Finally, lack of data and

empirical background on the legal profession's domain in Uzbekistan is another important trigger for this research. Although in recent years the liberalization movements in Uzbekistan promoted transparency of data and aroused scholarship, the topic is still barely discovered and needs further elaboration.

This study, by applying a comparative approach, has found a number of issues affecting the Uzbek legal profession's independence. This state of affairs resulted in the inferior position of advocates in relation to governmental bodies, the low status of the legal profession in society, and the improper defense of human and legal entities' rights and interests. First, the study found that the organizational activities of the Uzbek Chamber of Advocates and its local branches are significantly regulated by the justice authorities. Although one of the important principles of the legal profession's independence is the existence of a self-governing bar association, the Uzbek Ministry of Justice has the right to appoint the managing team of the Chamber, which creates direct control over the bar. The issue has its roots coming from the Soviet period, when the state provided to the justice authorities the right to regulate collegiums of advocates, the forerunners of the current local bars. After the independence of Uzbekistan, the state left the same relationship between the two institutions, and created the Association of Advocates, which was a nominal organization with voluntary membership for all advocates. After realizing that the Association was ineffective in Uzbekistan, ten years later the state introduced the Chamber of Advocates, based on compulsory membership, and provided this organization with the right to participate in admission and disciplinary procedures. At the same time, however, the state empowered the Ministry of Justice to control the appointment process of the Chamber's head and deputies.

This study claims that such construction of the legal profession only harms its authority and status among law professions and in society. The Ministry of Justice, being the weakest governmental law profession, has a fundamental right to control one of the main institutions of civil society. Furthermore, there is no special examination procedures for potential employees of the justice authorities, and one can start working there after a mere interview. This organizational construction of relations between the bar and the justice authorities harms the principle of checks and balances in the legal domain and puts the bar in the system's most inferior position. In this regard, the author suggests that the Japanese approach provided in the dissertation is a good example of transition from a dependent bar to a highly autonomous legal profession. Before the *Attorney Act* of 1949, the legal profession in Japan was controlled by the Ministry of Justice. The 1949 legal document transformed the

situation. The bar achieved independence from other governmental institutions, and the newly created JFBA became a strong force as a pro-societal structure to promote the interests of lawyers and support civic activism.

The second finding is that the admission to the profession in Uzbekistan needs further reconsideration. Prerequisites to admission include Uzbekistan citizenship, a bachelor's degree in law, and two years of law experience, including three months of apprenticeship in a law firm. The admission process itself, specifically the bar examination part, is handled by qualifying commissions which are also in charge of advocate's discipline. This system was built right after Uzbekistan's independence and is still in use. Qualifying commissions are formed by joint decisions of the justice authorities and the bar. The bar examination is quite an easy procedure, consisting of five questions, which can be handled in around one hour. After the bar examination, a successful candidate undergoes the licensing and registration in the bar procedures, both of which are conducted under the regulation of the justice authorities. Thus, the state, by means of the Ministry of Justice and its regional branches, has control over admission to the profession.

Participation of state organizations in the admission to the profession procedure is not considered harmful by its nature. For example, both Japan and the USA practice active involvement of governmental authorities in the process. In Japan, the bar examination is conducted by the Ministry of Justice, and the apprenticeship, which follows the exam, is regulated by the Supreme Court. In the USA, particularly in California, the bar examination is conducted by general supervision of the Supreme Court and direct control of the State Bar's Committee of Bar Examiners. The latter, in turn, is also supervised by the judiciary. Thus, both systems include the judiciary in the process, and the courts in both countries are considered as solid independent powers. Japan also has the justice authorities involved in the process, and although employees of the Ministry of Justice are not on the same independent level as those working the judiciary, the qualifications for the Ministry of Justice staff are important since in order to work in the civil service in Japan, one has to pass a civil service examination.

In Uzbekistan, on the other hand, the Ministry of Justice, being the weakest governmental law profession, does not have any special examination for potential employees. Thus, providing the Ministry of Justice with the right to participate in the admission to the profession procedure seems inexpedient. This study suggests providing the Supreme Court of Uzbekistan with the right to conduct the process of admission to the profession, since the

level of authority of the judiciary in Uzbekistan is in a much higher position than the Ministry of Justice. Moreover, the new commission has to be specialized only on the admission process, leaving disciplinary functions to a separate structure. This transition, following mostly the American pattern, can contribute to a rise of the status of the legal profession and diminish the possible consequences of over-independence of the bar.

Another finding in the admission domain is related to the ill-considered attempts to attract more potential advocates to the profession by lowering requirements for admission and introducing advocate's specializations (criminal and administrative as well as commercial and civil). Currently there is only one advocate for more than 8 thousand people, and in Surkhandarya region one advocate works for 32 thousand people. The specialization of the profession into two realms forces potential advocates to pass two bar examinations, which are relatively light including only five questions to answer in one hour. Thus, candidates, willing to get both specializations, have to pass two bar examinations, which only creates unnecessary bureaucratic challenges for applicants and barely contributes to quality rise and attractiveness of the profession. Moreover, the interrelated court proceedings in the Uzbek legislation, connecting civil, criminal, commercial and administrative domains, press candidates to take both specializations, since possession of only one would significantly frame their activities.

As for the requirements for admission, rather than dropping the standards, there are options which could raise the number of advocates and also increase the quality of the profession. First, there is a need to allow foreign citizens to pass the bar examination and practice law as advocates in Uzbekistan. The high number of Russian speakers in the post-Soviet countries and the existence of Russian paperwork in Uzbek courts may attract many potential advocates from the former USSR states to practice law in Uzbekistan. Both the Japanese and California approaches are good examples of allowing foreign citizens to pass the bar examinations and practice law in their jurisdictions. Second, there is a need to provide opportunity for people with non-law degrees to pass bar examination after special preparation courses. A good example of such practice is the reform of the Japanese legal education in the 2000s. Introduction of a system similar to *yobi-shiken* in Japan can also contribute to settlement of the issue. Finally, there is a strong need to terminate the monopoly of one university which prepares law cadres, and increase competitiveness in legal education. Currently the Tashkent State University of Law is the only leading university supplying the whole country with the vast majority of legal professionals.

The third finding of this dissertation is that the disciplinary domain is conducted with an inadequate combination of three approaches: the old Soviet organization with the justice authorities' participation, recent court-orientated applications, and ineffective efforts to introduce an independent disciplinary procedure. Historically, the justice authorities provided significant influence in disciplining advocates in Uzbekistan from initiation to rendering the decision. The state, trying to provide more independence to the legal profession, increased participation of the bar in the process, and from recent years, transferred the right to render final decisions regarding suspension and termination of the license to the judiciary. The problem with this mixture of approaches is that it has created confusion about different forms of disciplinary methods, which has resulted in improper consideration of disciplinary cases against advocates.

The justice authorities' option is an old-fashioned Soviet appendage, which is ineffective in the current transitional Uzbekistan, moving towards liberal and democratic reforms, based on independence of civic institutions. Moreover, the justice authorities do not possess proper qualifications to conduct the disciplinary process in an adequate manner, since the requirements to become an employee of a justice authority are set low. As for court-directed recent trends, a system based on the judiciary control implies that the court is neutral and impartial from the other state branches, the legislative and executive. However, Uzbekistan is in the process of providing judges with true independence from the other powers. Moreover, in court-directed disciplinary processes, the idea of an advocate's activity is expressed in good fidelity to the court in order to preserve the independence of the judiciary and maintain administration of justice, making the legal profession more pro-state institution. On the other hand, Uzbekistan's legislature defined that the legal profession is an independent institution of the society, which implies that the activities of advocates are to serve people. Therefore, a transition to a court-controlled system of disciplinary rules seems to be the lesser of two evils, which can break the format of the legal profession as a civic institution, and leave advocates in the same inferior position regarding the governmental law professions without a chance for proper defense of human rights and interests. Thus, although the dissertation suggests the inclusion of the judiciary in the admission process to increase the status of the legal profession, the disciplinary sphere is a more sophisticated matter which needs to be maximally secured from participation of the state.

In these terms, the author suggests transferring the whole disciplinary process to the Chamber of Advocates and its local branches. First, under such a system, advocates would acquire the opportunity to criticize the positions of the state. This state of affairs, in turn, would let advocates become true defenders of society against abuses of the state and duly protect people in court. The second point is that in the disciplinary process, controlled by the bar, the decisions rendered by the legal profession would have more qualitative impact, since advocates are more knowledgeable about the subtleties of their profession. Finally, Uzbekistan's legislation, after adoption of the law *On Advocacy* clearly defined that the legal profession is an independent institution, serving to the interests of the society. Thus, in order to comply with the established obligation before the society, there is a strong need to allot to the Chamber and its local branches the right to lead the disciplinary process. A good example of effective implementation of independent lawyers' discipline is the Japanese experience, where two commissions, the Disciplinary Actions Committee and the Disciplinary Enforcement Committee, under the bar, are in charge of disciplinary procedures.

At the same time, to prevent a monopoly on the disciplinary process, there is a need to allow proper participation of other law professions in the process (this system was introduced in Uzbekistan in 2008, but the justice authorities had the right to influence the process) under the general regulation of the bar and expand public control over the disciplinary sphere to ensure its transparency. A positive example is the introduction of the Board of Discipline Review in 2004 in Japan which enhanced public participation in the process by inclusion of non-law related people.

To summarize, this study can be applied in broader context in relation to other countries, especially in the post-Soviet developing states with pronounced authority of the governmental bodies with regard to the civic institutions. The limits of this dissertation have framed the research area around the issue of the legal profession's independence from the state, especially the Ministry of Justice, and, from recent years, the judiciary. The problem of the legal profession's independence domain is not the only issue. Thus, further research might explore problems with the adversarial principle in court proceedings between prosecutors and advocates, professional independence of advocates from their clients and third parties, advocates' professional development processes, autonomy of advocates from the bar, and more broadly, interrelation of other civic institutions with the state.

## Bibliography

### Books, articles and dissertations


Abduazimova, Lola (Абдуазимова, Лола). “The Legal Profession: What are the Problems and How to Solve Them.” [Адвокатура: Каковы Проблемы и Как Их Решать]. *Norma*, February 2, 2020. Accessed on August 1, 2021, https://www.norma.uz/nashi_obzori/advokatura_kakovy_problemy_i_kak_ih_reshat.

Abramitzky, Ran, Boustan, Leah. “Immigration in American Economic History,” *Journal of Economic Literature*, Vol 55 (4), (2017): 1311-45.

Adams, John. “Diary and Autobiography of John Adams.” ed. L.H. Butterfield, *The Belknap Press of Harvard University Press*, (1961).

Adams, John and the Boston Massacre Trials. Constitutional Rights Foundation. 2012. Accessed on August 30, 2020 https://www.crf-usa.org/images/pdf/JohnAdamsandtheBostonMassacreTrials.

Alexander, Jennifer, Fernandez, Kandyce. “The Impact of Neoliberalism on Civil Society and Nonprofit Advocacy.” *Nonprofit Policy Forum*, vol. 12 (2), (2021): 367-394.

Alexander, S. Robert. “The History of the Law as an Independent Profession and the Present English System.” *The Forum* Vol. 19, No. 2 (1984): 185-204.

Allen, T. William. “Corporate Governance and a Business Lawyer’s Duty of Independence.” *Suffolk University Law Review* Vol. 38 (2004): 1-15.

Allinson, D. Gary. “Japan’s Postwar History.” *Cornell University Press*, (2004).

Ambartsumov, Rudolf (Амбарцумов, Рудольф). “The Status of the Advocacy Institute in Uzbekistan and Possible Ways of its Reformation” [Статус Института Адвокатуры в Узбекистане и Возможные Пути его Реформирования]. in *Proceedings of the International Regional Conference: The Current Condition of the Advocacy in Central Asia: Problems and Prospects*, ed. Hodanivich (Ходанович), (Tashkent: Konsauditinform-Nashr, 2003), 38-42.

Amos, D. Timothy. “Embodying Difference: The Making of Burakumin in Modern Japan.” *University of Hawai'i Press*, (2011).

Anderson, Robert, Muller, T. Derek. “The High Cost of Lowering the Bar.” *The Georgetown Journal of Legal Ethics* Vol. 32, (2019): 310-25.

Aria, Semyon (Ария, Семён). Mosaic: Advocate’s notes Speeches [Мозаика: Записки адвоката. Речи]. (De jure, 2000).

Ariens, Michael. “Lost and Found: David Hoffman and the History of American Legal Ethics.” *Arkansas Law Review* Vol. 67, (2014): 571-625.

Ariens, Michael. “The Last Hurrah: The Kutak Commission and the End of Optimism.” *Creighton Law Review* Vol. 49, (2016): 689-735.

Ariens, Michael. “Making the Modern American Legal Profession, 1969-Present.” *St. Mary’s Law Journal* Vol. 50 (2), (2019): 671-710.

Arrington, L. Celeste. “Accidental Activists.” *Cornell University Press,* (2016).

Auerbach, S. Jerold. “Unequal Justice: Lawyers and Social Change in Modern America.” Oxford University Press, (1976).

Baldauf, Ingeborg. “Jadidism in Central Asia within Reformism and Modernism in the Muslim World.” *Die Welt Des Islams*, New Series, 41, no. 1 (2001): 72-88. Accessed on July 31, 2020. www.jstor.org/stable/1571377.

Baldwin, Simeon. “The Founding of the American Bar Association.” *The American Bar Association Journal* Vol 3, (1917): 658-95.

Bard, Michael, Bamford, A. Barbara. “The Bar: Professional Association or Medieval Guild?” *Catholic University Law Review* Vol. 19 (4), (1970): 393-458.

Barton, H. Benjamin. “An Institutional Analysis of Lawyer Regulation: Who Should Control Lawyer Regulation – Courts, Legislatures, or the Market?” Georgia Law Review Vol. 37, (2003): 1167-1207.

Baumgartner, R. Frank, Jones, D. Bryan. “Agendas and Instability in American Politics.” *University of Chicago Press*, (1993).

Baumgartner, R. Frank, Leech, L. Beth. “Basic Interests: The Importance of Groups in Politics and in Political Science.” *Princeton University Press,* (1998).

Beale, S. Sara. “Rethinking the Identity and Role of United States Attorneys.” *Ohio State Journal of Criminal Law* Vol. 6, (2009): 369-439.

Bennett, J. Michael. “When Dreams Came True: The G.I. Bill and the Making of Modern America.” *Brassey’s,* (1996).

Berlin, Ira. “American Slavery in History and Memory and the Search for Social Justice.” *The Journal of American History*, Vol. 90 (4), (2004): 1251-68.

Berry, M. Jeffrey. “Lobbying for the People: The Political Behavior of Public Interest Groups.” *Princeton University Press*, (1977).

Bestor, Theodore. “Neighborhood Tokyo.” *Stanford University Press,* 1989.

Bidniy, Leonid (Бидный, Леонид). “Legal Status of Charitable Foundations in the United States.” [Правовое положение благотворительных фондов в США]: (PhD diss., Moscow State Institute of International Relations. 1977).

Braibanti, Ralph. “Neighborhood Associations in Japan and Their Democratic Potentialities.” *The Journal of Asian Studies* 7 (1948): 136-64.

Broadbent, Jeffrey. “Environmental Politics in Japan: Networks of Power and Protest.” *Cambridge University Press*, (1998).

Brodin, Mark. “What One Lawyer Can Do for Society: Lessons from the Remarkable Career of William P. Homans Jr.” *New England Law Review* Vol. 46, No 1 (2011): 37-63.

Brooks, Thom. “Hegel’s Social and Political Philosophy.” *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, 2021.

Burobin, Victor (Буробин, Виктор). Advocate’s Activity [Адвокатская деятельность]. (Statute, 2005).

Cai, Qihai, Okada, Aya, Jeong, Bok, Kim, Sung-Ju. “Civil Society Responses to the COVID-19 Pandemic: A Comparative Study of China, Japan, and South Korea.” *China Review* 21 (1), (2021): 107-37.

Carle, Susan et al. “The Reform of the Russian Legal Profession: Three Varying Perspectives.” *Fordham International Law Journal* Vol. 42, issue 2 (2018): 271-323.

Chan, Kay-Wah. “Justice System Reform and Legal Ethics in Japan.” *Legal Ethics* 14 (1), (2011), 73-108.

Chan, Kay-Wah, Whalen-Bridge, Helena. “Who is Worthy? Non-Lawyer Participation in Japanese and Singaporean Lawyer Disciplinary Systems.” *Fordham International Law Journal* vol. 42, 2 (2019): 325-72.

Chandhoke, Neera. “The ‘Civil’ and the ‘Political’ in Civil Society.” *Democratization*, Vol. 8, iss. 2, (2010), Accessed on October 22, 2020, https://doi.org/10.1080/714000194.

Chen, I. Edward. “The National Law Examination of Japan.” *Journal of Legal Education* 39, no. 1 (1989): 1-26.

Chroust, Anton-Hermann. “The Rise of the Legal Profession in America,” *University of Oklahoma Press*, (1965).

Chung, Erin Aeran. “Immigration and Citizenship in Japan.” *Cambridge University Press*, (2010).

Cohen, L. Jean, Arato, Andrew. “Civil Society and Political Theory.” *The MIT Press, Reprint Edition* (1994).

Conway, M. Margaret, Green, Joanne Connor. “Political Action Committees and the Political Process in the 1990.” in Interest Group Politics, eds. Allan J. Cigler, Burdett A. Loomis, 4th ed., *CQ Press*, (1995), 155-73.

Corwin, L. Berman. “Donor advised funds in historical perspective.” *Boston College Law Forum on Philanthropy and the Public Good* 1, (2015): 5-27.

Deguchi, Masayuki. “Not for Profit: A Brief History of Japanese Non Profit Organizations.” *Look Japan* 45 (526), (2000): 18-20.

Demidova, Lyubov. (Демидова, Любовь). Advocacy in Russia [Адвокатура в России]. (Justicinform, 2006).

DeWiel, Boris. “A Conceptual History of Civil Society: From Greek Beginnings to the End of Marx.” *Past Imperfect* vol. 6 (1997): 3-42.

Diamond, Larry. “Rethinking Civil Society: Toward Democratic Consolidation.” *Journal of Democracy Vol. 5, No. 3.* (1994): 4-17.

Dobkin, Hall Peter. “A Historical overview of Philanthropy, Voluntary Associations, and Nonprofit organizations in the United States, 1600-2000.” in: Nonprofit sector: The Research Book, ed. Walter W. Powell, Richard Steinberg, *Yale University Press*, (2006): 32-65.

Durkheim, Emile. “The Division of Labor in Society.” *The Free Press of Glencoe,* (1960).

Feeley, M. Malcolm, Miyazawa, Setsuo. “The State, Civil Society, and the Legal Complex in Modern Japan: Continuity and Change.” in Terence C. Halliday, Lucien Karpik and Malcolm M Feeley (eds.), Fighting for Political Freedom: Comparative Studies of the Legal Complex and Political Liberalism, *Hart Publishing* (2007): 151-189.

Feldman, A. Eric. “Ritual of Rights in Japan: Law Society and Health Policy.” *Cambridge University Press*, (2000).

Ferguson, Adam. “An Essay on the History of Civil Society.” *T. Cadell*, 1767.

Fletcher, E. Laurel. “Defending the Rule of Law: Reconceptualizing Guantanamo Habeas Attorneys.” *Connecticut Law Review* Vol, 44, (2012): 617-673.

Ford, B. Joseph. “Macro-sociology and Micro-Sociology: A Way to Bridge the Gap.” *International Review of Modern Sociology*, Vol 2, no. 2, (1972): 255-266.

Fox, Sherwood. “Voluntary associations and social structure.” (PhD. diss., Department of Social Relations, Harvard University, 1952).

Frank, P. John. “Historical Bases of the Federal Judicial System.” *Law and Contemporary Problems* Vol. 13, (1948): 3-28.

Franklin, Benjamin. “Autobiography of Benjamin Franklin.” ed. Frank Woodworth Pine, *Henry Holt and Company via Gutenberg Press*, (1916).

Fukuhara, Tadao. “The Status of Foreign Lawyers in Japan.” *Japanese Ann. International Law* Vol. 17, (1973): 22-37.

Furman, Fridrikh (Фурман, Фридрих), “On Philanthropy in America: From the Colonial Era to the Present Day,” [Филантропия в Америке. Очерк истории]. *CreateSpace Independent Publishing Platform*, (2015).

Gallo, Ernesto. “Three Varieties of Authoritarian Neoliberalism: Rule by the Experts, the People, the Leader.” *Competition & Change*, (2021). Accessed on February 2, 2022, https://journals.sagepub.com/doi/full/10.1177/10245294211038425.

Garon, Sheldon. “Molding Japanese Minds: The State in Everyday Life.” *Princeton University Press*, (1997).

Garon, Sheldon. “From Meiji to Heisei: The State and Civil Society in Japan.” in Frank Schwartz and Susan Pharr (eds.), The State of Civil Society in Japan, *Cambridge University Press*, (2003).

George, S. Timothy. “Minamata: Pollution and the Struggle for Democracy in Postwar Japan.” *Harvard University Press*, (2002).

Gibb, Hamilton Alexander Rosskeen. “The Arab conquests in Central Asia.” *The Royal Asiatic Society*, (1923).

Giffen, Janice, Earle, Lucy, Buxton, Charles. “The Development of Civil Society in Central Asia.” *INTRAC*, (2005). Accessed on May 21, 2021, https://assets.publishing.service.gov.uk/media/57a08c3de5274a27b200108f/R7649-report.pdf.

Golovko, Leonid (Головко, Леонид). Degradation of the Status of an Advocate in the Republic of Uzbekistan (Analysis of the Latest Legislation in the Field of Advocacy) [Деградация Статуса Адвоката в Республике Узбекистан. (Анализ Новейших Подзаконных Актов в Сфере Адвокатской Деятельности)]. (Legal Policy Research Centre, 2010), 453-467.

Gordon, Andrew. “Labor and Imperial Democracy in Prewar Japan.” *University of California Press,* (1991).

Gordon, Andrew. “The Wages of Affluence: Labor and Management in Postwar Japan.” *Harvard University Press*, (1998).

Gordon, W. Robert. “The Independence of Lawyers,” *Boston University Law Review* Vol. 68 (1988).

Green, A. Bruce, Pearce, Russell. “Public Service Must Begin at Home: The Lawyer as Civics Teacher in Everyday Practice.” *William and Mary Law Review* Vol. 50, issue. 4 (2009): 1207-1238.

Green, A. Bruce. “The Lawyer’s Role in a Contemporary Democracy, Foreword.” Fordham Law Review Vol. 77 (2009): 1229-43.

Green, A. Bruce. “Lawyers’ Professional Independence: Overrated or Undervalued?” *Akron Law Review* Vol. 46, No. 599 (2013): 599-639.

Gunderson, Gerald. “The Origin of the American Civil War.” *The Journal of Economic History,* Vol. 34 (4), (1974): 915-950.

Haddad, Mary Alice. “Transformation of Japan’s Civil Society Landscape.” *Journal of East Asian Studies* 7 (3), (2007): 413-37.

Haddad, Mary Alice. “From Undemocratic to Democratic Civil Society: Japan’s Volunteer Fire Departments.” *Journal of Asian Studies* 69:1, (2010): 33-56.

Haddad, Mary Alice. “Building Democracy in Japan.” *Cambridge University Press*, (2012), 65-71.

Haddad, Mary Alice. “Civil Society in Japan.” Routledge Handbook of Contemporary Japan, (2021), 102-117.

Haley O. John. “The Myth of the Reluctant Litigant.” *Journal of Japanese Studies* 4 (2), (1978): 359-90.

Haley, O. John. “The New Regulatory Regime for Foreign Lawyers in Japan: An Escape from Freedom,” *Pacific Basin Law Journal* Vol 5 (1-2), (1986): 1-15.

Haley, O. John. “Authority Without Power: Law and the Japanese Paradox.” *Oxford University Press*, (1991).

Hansen, R. Daniel. “Do We Need the Bar Examination – A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives?” *Case Western Reserve Law Review* Vol 45 (4), (1995): 1191-1235.

Hirata, Keiko. “Civil Society in Japan: The Growing Role of NGOs in Tokyo’s Aid and Development Policy.” *St. Martin’s Press*, (2002), accessed on June 18, 2021, http://www.csun.edu/~kh246690/civil_society_ch1.pdf.

Houston, C. Alan. “Benjamin Franklin and the Politics of Improvement.” *Yale University Press*, (2008).

Hunt, Geoffrey. “The Development of the Concept of Civil Society in Marx.” *Imprint Academic* Vol. 8 (2), 263-276.

Huntington, P. Samuel. “Democracy’s Third Wave.” *Journal of Democracy* 2 (2), (1991): 12-34.

Imada, Makoto. “The Voluntary Response to the Hanshin Awaji earthquake: A Trigger for the Development of the Voluntary and Non-Profit Sector in Japan.” in Stephen Osborne (ed.), The Voluntary and Non-Profit Sector in Japan: The Challenge of Change, *RoutledgeCurzon*, (2003): 40-50.

Iokibe, Makoto. “Japan’s Civil Society: An Historical Overview.” in Tadashi Yamamoto (ed.) “Deciding the Public Good: Governance and Civil Society in Japan”, *Japan Center for International Exchange*, (1999): 51-96.

Ishanhanova, Gulnara (Ишанханова, Гульнара). “Association of Advocates of Uzbekistan: Analysis of Current Situation and Prospects of Development” [Ассоциация Адвокатов Узбекистана: Анализ Ситуации и Пути Развития]. in *Proceedings of the International Regional Conference: The Current Condition of the Advocacy in Central Asia: Problems and Prospects*, ed. Hodanivich (Ходанович), (Tashkent: Konsauditinform-Nashr, 2003), 32-37.

Jezard, Adam. “Who and what is ‘civil society?’” World Economic Forum Agenda article, 23 April 2018, accessed on April 12, 2021, https://www.weforum.org/agenda/2018/04/what-is-civil-society/.

Johnson, T. David. “Japan’s Prosecution System.” *The University of Chicago Press,* Vol. 41, No. 1, (2012), 35-74.

Kalish, E. Stephen. “David Hoffman’s Essay on Professional Deportment and the Current Legal Ethics Debate.” *Nebraska Law Review* Vol. 61, (1982): 54-73.

Kanafin, Daniyar (Канафин, Данияр). Analysis of the Decree of the President of Uzbekistan dated May 1, 2008 *on Development of Effectiveness of the Institution of Advocacy and Broadening of Advocates’ Independence* and the Regulation of the Cabinet of Ministers of Uzbekistan dated May 27, 2008 *on the Organization of the Activities of the Chamber of Advocates of the Republic of Uzbekistan*, August 2008, Accessed on August 11, 2020 https://online.zakon.kz/Document/?doc_id=35338636#pos=44;-45.

Kawashima, Takeyoshi. “Dispute Resolution in Contemporary Japan.” in Arthur Taylor von Mehren (ed.), Law in Japan: The Legal Order in a Changing Society, *Harvard University Press* (1963): 41-72.

Khalid, Adeeb. “Jadidism in Central Asia: Origins, Development, and Fate Under the Soviets.” Al-Mesbar Studies and Research Center. (2018). Accessed on July 31, 2020. https://mesbar.org/jadidism-in-central-asia-origins-development-and-fate-under-the-soviets/.

Khaydarov, Murodilla, Khaydarov, Izzatilla, Yermetov, Avaz, Alimardonov, Otabek, Karimjonov, Jasurbek. “October Revolution and its Influence in Socio-Political Life of Turkestan at the Beginning of the 20th Century.” *Journal of Critical Reviews* Vol. 7 (6), (2020): 115-120.

Khvan, Leonid (Хван, Леонид) et al. Advocacy in the Republic of Uzbekistan [Адвокатура в Республике Узбекистан]. (Konsauditinform-Nashr, 2007).

Khvan, Leonid (Хван, Леонид). “Advocacy of Uzbekistan: “Quo Vadis?” [Адвокатура Узбекистана: Quo Vadis?]. *Russian Academy of Advocacy and Notary Public* No 1, (2009): 29-42.

King, Wells, Menon, Vijay, Bellafiore, Robert. “The Space Between: Renewing the American Tradition of Civil Society.” December 18, 2019, United States Congress Joint Economic Committee, accessed on July 28, 2021, https://www.jec.senate.gov/public/index.cfm/republicans/analysis?ID=78A35E07-4C86-44A2-8480-BE0DB8CB104E#_ednref6.

King, William Lyon Mackenzie. “Trade-Union Organization in the United States.” *Journal of Political Economy*, Vol. 5 (2), (1897): 201-215.

Kingston, Jeff (ed.). "Natural Disaster and Nuclear Crisis in Japan: Response and Recovery after Japan's 3/11," *Routledge*, (2012).

Klinenberg, Eric. "Palaces for the People: How Social Infrastructure Can Help Fight Inequality, Polarization, and the Decline of Civic Life." *Crown*, (2018).

Kocka, Jurgen. "Civil Society from a Historical Perspective." *European Review*, Vol. 12 (1), (2004): 65-79.

Krivobok, Ruslan (Кривобок, Руслан). "Reform of the Legal Profession in Uzbekistan: The Mechanism of Protection of Citizens will be Revised," [Реформа Адвокатуры в Узбекистане: Механизм Защиты Граждан Будет Пересмотрен]. *Sputnik*, February 27, 2020. Accessed on August 1, 2021, https://uz.sputniknews.ru/20200227/Reforma-advokatury-v-Uzbekistane-mekhanizm-zaschity-grazhdan-budet-peresmotren-13552987.html.

Kuboi, Kazumasa. "Legal Ethics, Public Interest Activities and Independence of Lawyers. Moving Towards a Uniform Code of Conduct for the Legal Profession in Asia." (paper presented at the 12th POLA Conference Christchurch, New Zealand, October 8, 2001). Accessed April 27, 2019, https://www.nichibenren.or.jp/library/en/document/data/HI_031_PS_12thPOLA2.pdf.

Kurasawa, Susumu (沢進倉), Akimoto, Ritsuo (律郎秋元). "Neighborhood Associations and Local Groups." [町内会と地域集団], Tokyo: Minerva, (1990).

Lenin, Vladimir (Ленин, Владимир). Full Composition of Writings [Полное Собрание Сочинений]. Vol. 9, (Political Literature Publisher 1969).

Linz, J. Juan, Alfred, Stepan. "Towards Consolidated Democracies." Journal of Democracy 2 (7), (1996): 14-33.

Luban, David. "The Lysistratian Prerogative: A Response to Stephen Pepper." *American Bar Foundation Research Journal* Vol. 11, No. 4 (1986): 637-49.

Mahbubov, Mumin (Махбубов, Мумин). "The Creation and Development of Advocacy in Uzbekistan." [Создание и Развитие Адвокатуры в Узбекистане]: (Phd diss., Tashkent State University, 1975).

Manzo, Gianluca. "Macrosociology-Microsociology." *International Encyclopedia of the Social & Behavioral Sciences*, 2nd edition, Vol 14, (2015): 414-421.

Marushima, Shunsuke. "Historical Genealogy of Japan's Judicial Reform: Its Achievements and Challenges." *Hastings International and Comparative Law Review* Vol. 36, (2013): 349-67.

Maruyama, Masao. "Thought and Behavior in Modern Japanese Politics." ed. and trans. by Ivan Morris, *Oxford University Press*, (1963).

Marx, Karl, Engels, Friedrich. Compositions [Сочинения]. Second edition, *Publishing house of political literature*, Vol. 46, (1968).

Masland, W. John. "Neighborhood Associations in Japan." *Far Eastern Survey* 15:23, (1946): 355-58.

Matsui, Shigenori. "Turbulence Ahead: The Future of Law Schools in Japan," *Journal of Legal Education* Vol. 62 (1), (2012): 3-31.

Matsui, Yasuhiro. “A Study of Japanese Practicing Attorneys.” [Nibon Bengoshi Ron], (Tokyo, Nihon Hyorensha), (1990).

McClymer, F. John. “Late Nineteenth-Century American Working-Class Living Standards.” *The Journal of Interdisciplinary History*, Vol. 17 (2), (1986); 379-398.

McCracken, T. Robert. “Report of Observance by the Bar of Stated Professional Standards.” *Virginia Law Review* Vol. 37, (1951): 399-425.

McKean, A. Margaret. “Environmental Protest and Citizen Politics in Japan.” *University of California Press*, (1981).

Miyazawa, Setsuo. “Successes, Failures, and Remaining Issues of the Justice System Reform in Japan: An Introduction to the Symposium Issue.” *Hastings International and Comparative Law Review* 36, (2013): 313-47.

Molitemo, E. James. “Rectifying Wrongful Convictions: May a Lawyer Reveal Her Client’s Confidences to Rectify the Wrongful Conviction of Another.” *Hastings Constitutional Law Quarterly* Vol. 38, No. 4 (2011): 811-44.

Morrison, Alexander. “The Russian Conquest of Central Asia: A Study in Imperial Expansion, 1814-1914.” *Cambridge University Press*, (2020).

Nakamura, Karen. “Deaf in Japan: Signing and the Politics of Identity.” *Cornell University Press*, (2006).

Nelson, Daniel. “The History of Business in America.” *OAH Magazine of History*, Vol. 11 (1), (1996): 5-10.

Nordby, S. Jack. “The Burdened Privilege: Defending Lawyers in Disciplinary Proceedings.” *South Carolina Law Review* Vol. 30 (2), (1979): 363-454.

Oguma, Eiji. “A New Wave against the Rock: New Social Movements in Japan Since the Fukushima Nuclear Meltdown.” *Asia-Pacific Journal* Vol. 14 (13), (2016).

Ohira, Kaname. “Admission to the Bar, Disbarment and Disqualification of Lawyers in Japan and the United States – A Comparative Study.” *Washington Law Review* Vol. 38 (1), (1963): 22-57.

Oppler, C. Alfred “Legal Reform in Occupied Japan.” *Princeton University Press*, (1976).

Palmber, R.B. John. “Collateral Bar and Contempt: Challenging a Court Order After Disobeying It.” *Cornell Law Review* Vol. 88 (2002): 215-56.

Palmieri, S. Brooke. “Junto.” *The Encyclopedia of Greater Philadelphia*, (2015). Accessed on July 28, 2021, https://philadelphiaencyclopedia.org/archive/junto/.

Park, E. Robert. “The Natural History of the Newspaper.” *American Journal of Sociology*, Vol. 29 (3), (1923): 273-289.

Parsons, Talcott. “The System of Modern Societies.” *Prentice Hall* (1971).

Pashin, Sergei. Expert opinion on the Decree of the President of the Republic of Uzbekistan dated May 1, 2008 “On Measures for Further Reformation of the Institution of Advocacy in the Republic of Uzbekistan”, and the Regulation of the Cabinet of Ministers of the Republic of Uzbekistan dated May 27, 2008 “On

the organization of the activity of the Chamber of Advocates of the Republic of Uzbekistan", (Legal Policy Research Centre, 2009), 30-38.

Pekkanen, J. Robert. "Japan's New Politics: The Case of the NPO Law." *Journal of Japanese Studies* 26 (1), (2000): 111-48.

Perlov, Ilya (Илья Перлов), Judicial pleadings and the last word of the defendant in the Soviet criminal process [Судебные прения и последнее слово подсудимого в советском уголовном процессе]. (State Legal Publishing House, 1957).

Peters, A. Michael. "The Ancient Silk Road and the Birth of Merchant Capitalism." *Educational Philosophy and Theory* Vol 53 (10), (2021): 955-61.

Phillips, L. Orie, Mccoy, Philbrick. "Conduct of Judges and Lawyers: a Study of Professional Ethics, Discipline and Disbarment." *American Political Science Review* Vol. 47 (2), (1953).

Picard, Edmond. "Paradoxe sur l'avocat" [Paradox of Advocate] [Об Адвокате (Парадокс)]. Russian language translation from French language by M. Quetritz, *Высочайш. Утверж. Товарищ.* (1898).

Pinansky, Thomas Paul. "The Emergence of Law Firms in the American Legal Profession," *University of Arkansas at Little Rock Law Review* Vol 9 (4), (1987): 593-640.

Pound, Roscoe. "Legal Profession in America." *Notre Dame Law Review* Vol. 19 (4), (1994): 334-354.

Putnam, Robert. "Bowling Alone: America's Declining Social Capital." *Journal of Democracy* Vol. 6 (1), (1995): 65-78.

Rabinowitz, W. Richard. "The Historical Development of the Japanese Bar." *Harvard Law Review* 70, no. 1 (1956): 61-81.

Rachum, Ilan. "From 'American Independence' to the 'American Revolution'." *Journal of American Studies,* Vol. 27 (1), (1993): 73-81.

Ramin, Gurbanov (Рамин Гурбанов). Prosecutor's Office and the Advocacy in the Post-Soviet Countries: Comparative Legal Analysis [Прокуратура и Адвокатура в Постсоветских Странах: Сравнительно-Правовой Анализ]. *Business in Law Journal* No. 3 (2015): 194-197.

Ramseyer, Mark. "Reluctant Litigant Revisited: Rationality and Disputes in Japan." *Journal of Japanese Studies* 14 (1), (1988): 111-23.

Reimann, D. Kim. "The Rise of Japanese NGOs." *Routledge,* (2009).

Rhode, L. Deborah. "Professional Regulation and Public Service: An Unfinished Agenda." in the Paradox of Professionalism: Lawyers and the Possibility of Justice, Scott L. Cummings ed., *Cambridge University Press,* (2011).

Rhode, L. Deborah, Woolley, Alice. "Comparative Perspectives on Lawyer Regulation: An Agenda for er Regulation: An Agenda for Reform in the United States and Canada." *Fordham Law Review* Vol. 80 (6), (2012): 2761-90.

Ricci, M. David. "The Transformation of American Politics: The New Washington and the Rise of Think Tanks." *Yale University Press,* (1993).

Rich, Andrew, Kent, R. Weaver. “Advocates and Analysts: Think Tanks and the Politicization of Expertise.” in Interest Group Politics, eds. Allan J. Cigler, Burdett A. Loomis, 5th ed., *CQ Press*, (1998): 235-53.

Richter, Melvin. “Montesquieu and the concept of civil society.” *The European Legacy*, Vol 3 (6), (1998): 33-41.

Rustambaev, Mirzayusuf (Рустамбаев, Мирзаюсуф). Advocacy of Uzbekistan: Assistance in Reforming [Адвокатура Узбекистана: содействие в реформировании]. (The World of Economics and Law, 2002).

Rustambaev, Mirzayusup (Рустамбаев, Мирзаюсуп) et al. Law-Enforcement Authorities [Правоохранительные Органы]. (Tashkent State Institute of Law, 2003).

Samuels, J. Richard. “Machiavelli’s Children: Leaders and Their Legacies in Italy and Japan.” *Cornell University Press*, (2003).

Samuels, J. Richard. “3.11: Disaster and Change in Japan.” *Cornell University Press*, (2013).

Sarkisyanc, Gennadiy (Саркисянц, Геннадий). Advocacy of Soviet Uzbekistan [Адвокатура Советского Узбекистана]. (Fan, 1972).

Scheingold, A. Stuart, Sarat, Austin. “Something to Believe In: Politics, Professionalism, and Cause Lawyering.” *Stanford University Press*, (2004).

Schlegel, H. John. “Langdell’s Legacy or, the Case of the Empty Envelope,” *Stanford Law Review* Vol. 36, (1984): 1517-33.

Schwartz, Frank. “Civil Society in Japan Reconsidered.” *Japanese Journal of Political Science* 3 (2), (2002), 195-215.

Shadmanov, Adham (Шадманов, Адхам). “The civil society institutions are an important factor in protecting democratic values and the legitimate interests of people,” [Институты гражданского общества – важный фактор защиты демократических ценностей и законных интересов людей]. Accessed on May, 23, 2021, https://parliament.gov.uz/upload/iblock/822/shadmanov.pdf.

Shaiko, G. Ronald. “Voices and Echoes for the Environment: Public Interest Representation in the 1990s and Beyond.” *Columbia University Press*, (1999).

Shoumura, Takashi. “Introductory History of Community Social Welfare” [地域福祉史序説]. Tokyo: Taiyo publishing, (1993).

Shozo, Ota, Kahei, Rokumota. “Issues of the Lawyer Population: Japan.” *Case Western Reserve Journal of International Law* Vol 25 (2), (1993): 315-32.

Siddikov, Latifdjon (Сиддиков, Латифжон). “Formation of the Civil Society in Uzbekistan.” [Формирование Гражданского Общества в Узбекистане], *Eurasian scientific journal No 4*, (2018). Accessed on May 5, 2021, http://journalpro.ru/articles/formirovaniya-grazhdanskogo-obshchestva-v-uzbekistane/.

Sklar, Kathryn Kish. “A Historical Model of Women’s Voluntarism and the State, 1890-1920.” in Civil Society, Democracy, and Civil Renewal, ed. Robert K. Fullinwider, *Rowman and Littlefield Publishers*, (1999): 185-205.

Skocpol, Theda. “Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States.” *Belknap Press, Harvard University Press,* (1992).

Skocpol, Theda. “Voice and Inequality: The Transformation of American Civic Democracy,” *Perspectives on Politics* Vol. 2 (1), (2004): 3-20.

Smith, A. David. “Dependent Urbanization in Colonial America: The Case of Charleston, South Carolina.” *Oxford University Press* Vol. 66 (1), (1987): 1-28.

Smith, Reginald Heber. “Survey of the Legal Profession: Its Scope, Methods and Objectives.” 39 A.B.A. J. 548, 550 (1953).

Smolensky, Mikhail (Смоленский, Михаил). Procuratorial Supervision [Прокурорский Надзор]. (Dashkov and Co, 2011).

Sodikov, Hamdam et al. History of Uzbekisan. Book 1. Turkistan under the period of Russian colonialism [Ўзбекистоннинг янги тарихи. Китоб 1. Туркистон чор Россияси мустамлакачилиги даврида.], (Shark, 2000).

Steele, Stacey. “Japan’s National Bar Examination: Results from 2015 and Impact of the Preliminary Qualifying Examination,” *Journal of Japanese Law* Vol. 21 (41), (2016): 55-75.

Steiner, Kurt, Krauss, S. Ellis, Flanagan, E. Scott (eds.). “Political Opposition and Local Politics in Japan.” *Princeton University Press*, (1980).

Steinhoff, Patricia. “Protest in Japan.” in Takeshi Ishida and Ellis S. Krauss (eds.) Democracy in Japan, *University of Pittsburg Press,* (1989).

Stevens, Robert. “Law School: Legal Education in America from the 1850’s to the 1980’s,” *The University of North Carolina Press*, (1983).

Stoyanov, Adrey (Стоянов, Андрей). History of legal profession [История Адвокатуры]. (Kharkov, University press, 1869).

Strong, W. John. “Russian Moves in Central Asia 1843-1856.” *Hokkaido University Slavic Studies* Vol 17, (1973): 41-55.

Surprenant, Chris W. “Liberty, Autonomy, and Kant’s Civil Society.” *University of Illinois Press,* Vol. 27 (1), (2010): 79-94.

Takahashi, Mutsuko, Hashimoto, Raija. “Minsei i’in Between Public and Private: A Local Network for Community Care in Japan.” *International Social Work* 40, (1997): 303-13.

Takao, Yasuo. “Reinventing Japan: From Merchant Nation to Civic Nation.” *Palgrave Macmillan*, (2007).

Tarkington, Margaret. “A First Amendment Theory for Protecting Attorney Speech.” *U.C. Davis Law Review* Vol. 45, Issue 1 (2011): 27-102.

Tocqueville, de Alexis. “Democracy in America.” trans. Harvey C. Mansfield and Delba Winthrop, *University of Chicago Press,* (2000).

Tsujinaka, Yutaka. “Civil Society and Social Capital in Japan.” International Encyclopedia of Civil Society. Springer, New York, accessed on June 18, 2021, https://doi.org/10.1007/978-0-387-93996-4_727: 252-59.

Tukhtasheva, Umida (Тухташева, Умида) et al. Judicial and Law-Enforcement Authorities [Судебные и Правоохранительные Органы]. (Tashkent State Institute of Law, 2009).

Upham, K. Frank. “Litigation and Moral Consciousness in Japan: An Interpretive Analysis of Four Japanese Pollution Suits.” *Law and Society Review* 10 (4), (1976): 579-619.

Upham, Frank. “Law and Social Change in Postwar Japan.” *Harvard University Press*, (1987).

Voronin, Oleg (Воронин, Олег). On the Essence of Modern Procuratorial Supervision [О Сущности Современного Прокурорского Надзора]. (Russian Journal of Criminal Law, No. 11, 2018).

Vosse, Wilhelm. “The Emergence of a Civil Society in Japan.” Japanstudien, 11:1, (2000), accessed on June 18, 2021, https://doi.org/10.1080/09386491.2000.11826856: 31-53.

Vyshinsky, Andrei (Вышинский Андрей). Encyclopedia of State and Law [Энциклопедия государства и права] Vol. 1, (Soviet Encyclopedia, 1929).

Walker, L. Jack Jr. “Mobilizing Interest Groups in America: Patrons, Professions, and Social Movements.” *University of Michigan Press*, (1991).

Ward, E. Robert, Sakamoto, Yoshikazu. “Democratizing Japan: The Allied Occupation.” *University of Hawaii Press*, (1987).

Wooldridge, Adrian, Greenspan, Alan. “Capitalism in America: A History,” *Penguin Press*, (2018), 120.

World Economic Forum, “The Future Role of Civil Society,” World Economic Forum in Collaboration with KPMG International, January 2013. Accessed on April 25, 2021, https://www3.weforum.org/docs/WEF_FutureRoleCivilSociety_Report_2013.pdf.

Yamamoto, Tadashi. “Emergence of Japan’s Civil Society and Its Future Challenges.” Deciding the Public Good: Governance and Civil Society in Japan, *Japan Center for International Exchange*, (1999): 97-124.

Zacharias, C. Fred. “The Myth of Self-Regulation.” *Minnesota Law Review* Vol. 93 (2009): 1147-90.

**Documents of international organizations and governmental institutions**

Basic Principles on the Role of Lawyers. Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, from August 27 to September 7, 1990. Accessed on August 24, 2020, https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx .

Charter of Core Principles of the European Legal Profession. Adopted by The Council of Bars and Law Societies of Europe on November 24, 2006. Accessed on August 27, 2020 https://www.ccbe.eu/NTCdocument/EN_CCBE_CoCpdf1_1382973057.pdf.

Concluding observations of the Human Rights Committee with regard to Uzbekistan, (CCPR/C/UZB/3), April 7, 2010. Accessed on August 2, 2021, http://www.notabene.tj/Doc/Kaz/compl/3-07.pdf.

International Principles on Conduct for the Legal Profession. Adopted by the International Bar Association on May 28, 2011. Accessed on August 24, 2020, https://www.ibanet.org/Document/Default.aspx?DocumentUid=1730FC33-6D70-4469-9B9D-8A12C319468C.

Independence of the Legal Profession in Central Asia. Issued by the International Commission of Jurists in 2013. Accessed on August 2, 2021, https://www.icj.org/wp-content/uploads/2013/09/Independence-of-the-Legal-Profession-in-CA-Eng.pdf.

**Laws, regulations, and reports**

Constitution of Japan, 1947. Accessed on August 15, 2021, https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html.

Constitution of Uzbekistan (Конституция Узбекистана), 1992. Accessed August 26, 2020 http://www.lex.uz/acts/35869.

Constitution of the Russian Federation (Конституция Российской Федерации), 1993. Accessed August 26, 2020 http://www.consultant.ru/document/cons_doc_LAW_28399/.

Constitution of Belarus (Конституция Республики Беларусь), 1994. Accessed August 26, 2020 https://pravo.by/pravovaya-informatsiya/normativnye-dokumenty/konstitutsiya-respubliki-belarus/.

Constitution of Tajikistan (Конституция Таджикистана), 1994. Accessed August 26, 2020 http://prokuratura.tj/ru/legislation/the-constitution-of-the-republic-of-tajikistan.html.

Constitution of Kazakhstan (Конституция Республики Казахстан), 1995. Accessed on August 26, 2020 https://online.zakon.kz/document/?doc_id=1005029.

Court Act of Japan [裁判所法], 1947. Accessed on August 18, 2021, http://www.japaneselawtranslation.go.jp/law/detail_main?id=7&vm=2&re=, art. 67.

Bar Examination Act of Japan [司法試験法], 1949. Accessed on August 18, 2021, http://www.japaneselawtranslation.go.jp/law/detail/?printID=&re=02&ky=court+with+jurisdiction&ia=03&page=139&la=01&ja=04&lvm=02&vm=04&id=2246, art 5.

Attorney Act of Japan [ 弁 護 士 法 ] (1949). Accessed on March 12, 2019, http://www.japaneselawtranslation.go.jp/law/detail/?id=1878&vm=04&re=02.

Law of the USSR “On Advocacy” (Закон СССР «Об Адвокатуре в СССР») 1979. Accessed on July 30, 2021, https://docs.cntd.ru/document/58807185.

Law of Uzbekistan “On Public Associations” (Закон Узбекистана «Об Общественных Объединениях в Республике Узбекистан») 1991. Accessed on May 19, 2021, https://www.lex.uz/acts/111827.

Federal Law of the Russian Federation “On the Prosecutor’s Office” (Закон Российской Федерации «О Прокуратуре Российской Федерации) 1992. Accessed on October 6, 2020, http://www.consultant.ru/document/cons_doc_LAW_262/.

Law of Uzbekistan “On Advocacy” (Закон Узбекистана «Об Адвокатуре») 1996. Accessed on August 28, 2020 http://www.lex.uz/acts/58372.

Law of Uzbekistan “On Political Parties” (Закон Узбекистана «О Политических Партиях») 1996. Accessed on May 19, 2021, https://www.lex.uz/acts/57033.

Law of Kazakhstan “On Advocacy” (Закон Казахстана «Об Адвокатской Деятельности») 1997. Accessed on September 3, 2020, https://online.zakon.kz/document/?doc_id=1008408.

Law of Uzbekistan “On Mass Media” (Закон Узбекистана «О Средствах Массовой Информации») 1997 (expired in 2007). Accessed on May 19, 2021, https://www.lex.uz/acts/53112.

Law of Uzbekistan “On Guarantees of the Activity and Social Protection of Advocates” (Закон Узбекистана «О Гарантиях Адвокатской Деятельности и Социальной Защите Адвокатов») 1998. Accessed on May 19, 2021, http://www.lex.uz/acts/1321.

Law of Japan To Promote Specified Nonprofit Activities of 1998 [1998年特定非営利活動促進法], accessed on June 24, 2021, http://www.japaneselawtranslation.go.jp/law/detail/?vm=04&re=02&id=3028&lvm=01.

Law of Uzbekistan “On Non-Governmental Non-Profit Organizations” (Закон Узбекистана «О Негосударственных Некоммерческих Организациях») 1999. Accessed on May 19, 2021, https://www.lex.uz/acts/10863.

Law of Uzbekistan “On the Prosecutor’s Office” (Закон Узбекистана «О Прокуратуре» 2001. Accessed on October 6, 2020, https://www.lex.uz/acts/105533.

Law of Uzbekistan “On Principles and Guarantees of Free Information” (Закон Узбекистана «О Принципах и Гарантиях Свободы Информации»), 2002. Accessed on May, 21, 2021, https://lex.uz/docs/52709.

Federal Law of the Russian Federation “On Advocatory Activity and Advocacy” (Федеральный Закон Российской Федерации «Об Адвокатской Деятельности и Адвокатуре в Российской Федерации») 2002. Accessed on August 28, 2020 http://www.consultant.ru/document/cons_doc_LAW_36945/.

Law of Uzbekistan “On Financing of Political Parties” (Закон Узбекистана «О Финансировании Политических Партий»), 2004. Accessed on May 21, 2021, https://lex.uz/docs/168377.

Law of Uzbekistan “On Guarantees for the Activities of Non-Governmental Non-Profit Organizations” («О Гарантиях Деятельности Негосударственных Некоммерческих Организаций»), 2007. Accessed on May 21, 2021 https://www.lex.uz/docs/1101280.

Law of Uzbekistan “On Introduction of Changes and Amendments to Some Legislative Acts of the Republic of Uzbekistan in Connection with Improvement of the Institution of Advocacy” (Закон Республики Узбекистан «О Внесении Изменений и Дополнений в Некоторые Законодательные Акты Республики Узбекистан в Связи с Совершенствованием Института Адвокатуры») 2008. Accessed April 1, 2019 http://lex.uz/acts/1420409.

Law of Kazakhstan “On the Prosecutor’s Office” (Закон Казахстана «О Прокуратуре») 2017. Accessed on October 6, 2020, https://online.zakon.kz/document/?doc_id=31690116#pos=5;-106.

Law of Uzbekistan “On Amendments of Some Legislative Acts of the Republic of Uzbekistan due to the Improvement of the System of Legal Assistance and Legal Services” (Закон Республики Узбекистан «О Внесении Изменений и Дополнений в Некоторые Законодательные Акты Республики Узбекистан в Связи с Совершенствованием Системы Оказания Юридической Помощи и Правовых Услуг») 2018. Accessed on September 14, 2020, http://www.lex.uz/acts/3977634.

Law of Kazakhstan “On Advocacy and Legal Assistance” (Закон Республики Казахстан «Об адвокатской деятельности и юридической помощи»), 2018 Accessed on August 28, 2020 https://online.zakon.kz/document/?doc_id=33024087.

Decree of the President of Uzbekistan “On Measures for Further Reformation of the Institution of Advocacy in the Republic of Uzbekistan” (Указ Президента Республики Узбекистан «О Мерах по Дальнейшему Реформированию Института Адвокатуры в Республике Узбекистан»), 2008. Accessed on May 21, 2021, http://lex.uz/docs/1347567.

Decree of the President of Uzbekistan “On the Strategy of Actions for Further Development of Uzbekistan” (Указ Президента Узбекистана «О Стратегии Действий по Дальнейшему Развитию Республики Узбекистан»), 2017. Accessed on September 3, 2020 http://www.lex.uz/ru/docs/3107042.

Decree of the President of Uzbekistan “On Development of Effectiveness of the Institution of Advocacy and Broadening of Advocates’ Independence” (Указ Президента Узбекистана «О Мерах по Коренному Повышению Эффективности Института Адвокатуры и Расширению Независимости Адвокатов»), 2018. Accessed on September 3, 2020, http://lex.uz/docs/3731058.

Decree of the President “On Measures to Fundamentally Increase of the Role of the Civil Society Institutions in the Process of Democratic Renewal of the Country” (Указ Президента «О Мерах по Коренному Повышению Роли Институтов Гражданского Общества в Процессе Демократического Обновления Страны»), 2018. Accessed on May 24, 2021, https://lex.uz/docs/3721651#3724785.

Decree of the President of Uzbekistan “On Additional Measures to Ensure the Rule of the Constitution and the Laws, Strengthening Public Control in Legal Sphere, as well as Improving of Legal Culture in Society” (Постановление Президента Республики Узбекистан «О Дополнительных Мерах по Обеспечению Верховенства Конституции и рагона, Усилению Общественного Контроля в Данном Направлении, а Также Повышению Правовой Культуры в Обществе»), 2019. Accessed on September 3, 2020, https://lex.uz/ru/docs/4647340.

Decree of the President of Uzbekistan “On the State Program for 2020” (Указ Президента Узбекистана «О Государственной Программе по Реализации Стратегии Действий по Пяти Приоритетным Направлениям Развития Республики Узбекистан в 2017-2021 Годах в «Год Развития Науки, Просвещения и Цифровой Экономики»), 2020. Accessed on August 6, 2021, https://lex.uz/ru/docs/4751567.

Decree of the President of Uzbekistan “On the Concept for the Development of the Civil Society in 2021-2025” (Указ Президента Республики Узбекистан «Об Утверждении Концепции Развития Гражданского Общества в 2021-2025 Годах») 2021. Accessed on May 31, 2021, https://lex.uz/docs/5319760.

Regulation of the Cabinet of Ministers of Uzbekistan “On the Chamber of Advocates of the Republic of Uzbekistan” (Постановление Кабинета Министров Республики Узбекистан «Об Организации Деятельности Палаты Адвокатов Республики Узбекистан») 2008. Accessed on May 21, 2021 https://www.lex.uz/acts/1359517.

Standards for Establishment of Professional Graduate Schools of the Ministry of Education, Culture, Sports,

Science and Technology (MEXT) [専門職大学院設置基準], 2003. Accessed on August 18, 2021, https://www.mext.go.jp/a_menu/koutou/houka/03050101.htm.

Regulation of the Justice Minister of the Republic of Uzbekistan "On Qualifying Commissions" (Приказ Министра Юстиции Республики Узбекистан «Об Утверждении Положения о Квалификационных Комиссиях при Территориальных Управлениях Палаты Адвокатов Республики Узбекистан»), 2009. Accessed on August 5, 2021, https://lex.uz/docs/1458645.

Regulation of the Justice Minister of the Republic of Uzbekistan "On High Qualifying Commission" (Приказ Министра Юстиции Республики Узбекистан «Об Утверждении Положения о Высшей Квалификационной Комиссии при Палате Адвокатов Республики Узбекистан»), 2009. Accessed on August 5, 2021, https://lex.uz/docs/1459052.

The Justice System Reform Council. The Points at Issue in the Justice Reform, 1999. Accessed on June 30, 2021, https://japan.kantei.go.jp/policy/sihou/singikai/991221_e.html.

The Justice System Reform Council. Recommendations of the Justice System Reform Council – For a Justice System to Support Japan in the 21st Century, 2001. Accessed on June 30, 2021, https://japan.kantei.go.jp/policy/sihou/singikai/990612_e.html

Japan Federation of Bar Associations. White Paper on Attorneys 2019. Accessed on June 30, 2021, https://www.nichibenren.or.jp/library/en/about/data/WhitePaper2019.pdf.

Proceedings of the Annual Meeting of the House of Delegates, 71 A.B.A. ANN. REP. 307, 308 (1946).

Report to the Board of Governors to the House of Delegates, 102 A.B.A. REP. 575, 581 (1977).

Proceedings of the Annual Meeting of the House of Delegates, 126 A.B.A. ANN. REP. 1, 7 (2001).

The National Conference of Bar Examiners, the Bar Examiners' Handbook (Stuart Duhl ed., 2nd ed. 1980).

Draft of the Decree of the President of Uzbekistan "On Further Improvement of the Institution of the Legal Profession and Fundamental Enhancement of the Status of Advocates" («О мерах по дальнейшему совершенствованию института адвокатуры и коренному повышению статуса адвокатов»). Accessed on August 18, 2020, https://regulation.gov.uz/ru/document/16779.

Draft Concept for the Development of the Institution of the Legal Profession in Uzbekistan [Проект Концепции развития института адвокатуры в Республике Узбекистан], Chamber of Advocates of Uzbekistan, 2020. Accessed on June 4, 2021, https://paruz.uz/uploads/2020/04/021.pdf.

**Ethics documents**

Canons of Professional Ethics. Adopted by American Bar Association on August 27, 1908. Accessed on July 28, 2021, https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/1908_code.pdf.

Model Code of Professional Responsibility. Adopted by American Bar Association on August 12, 1969. Accessed on July 28, 2021,

https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2011build/mod_code_prof_resp.pdf.

Problems and Recommendations in Disciplinary Enforcement. The American Bar Association Special Committee on Evaluation of Disciplinary Enforcement, 1970. Accessed on July 5, 2021, https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/reports_migrated/Clark_Report.pdf.

Code of Recommended Standards for Bar Examiners. Adopted by the ABA, NCBE, AALS in 1980. Accessed on June 21, 2021, https://reports.ncbex.org/comp-guide/code-of-recommended-standards/.

Model Rules of Professional Conduct. Adopted by American Bar Association in 1983. Accessed on August 27, 2020 https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/.

Delaware Lawyers' Rules of Disciplinary Procedure. Adopted by the Supreme Court of Delaware, effective from July 1, 2003. Accessed on August 5, 2021, https://courts.delaware.gov/rules/pdf/2020DelawareLawyersRulesDisciplinaryProcedure.pdf.

Basic Rules on the Duties of Practicing Attorneys (弁護士職務基本規程). Adopted by Japan Federation of Bar Associations (日本弁護士連合会) on November 10, 2004. Accessed on August 27, 2020 https://www.nichibenren.or.jp/library/en/about/data/basic_rules.pdf.

The Rules of Professional Ethics of Advocates. Adopted by Conference of the Chamber of Advocates of Uzbekistan on September 27, 2013. Accessed on August 1, 2021, https://nrm.uz/contentf?doc=549534_pravila_professionalnoy_etiki_advokatov_(prilojenie_n_8_k_resheniyu_ii_konferencii_palaty_advokatov_ruz_ot_27_09_2013_g_)&products=1_vse_zakonodatelstvo_uzbekistana.

**Judicial decisions**

Ex parte Burr., 22 U.S. (9 Wheat.) 529 (1824).

Ex parte Steinman and Hensel, 95 Pa. 220, (1880).

Maness v. Meyers, 419 U.S. 449 (1975).

**Newspaper articles**

Anonymous advocate. "The Advocate's Curse" [Проклятие Адвоката]. Internet Newspaper Uzmetronom." April 26, 2020. Accessed on September 3, 2020 https://www.uzmetronom.com/2020/04/26/prokljatie-advokata.html.

Barksdale, Titan. “Lawyer’s Revelation of Confession May Ruin Him.” *News & Observer,* November 27, 2007. Accessed on September 14, 2020 https://legalethicsforum.typepad.com/blog/2007/11/confidentiality.html.

Bose, Nandia, Hu, Krystal. “How Big Unions Smooth the Way for Amazon Worker Protests.” *Reuters*, May 21, 2020. Accessed on July 28, 2021, https://www.reuters.com/article/us-health-coronavirus-amazon-com-workers/how-big-unions-smooth-the-way-for-amazon-worker-protests-idUSKBN22X19Q.

Burley, Shane. “Coronavirus Fight: Some US Worker Unions Become More Aggressive.” *Al Jazeera*, May 1, 2020. Accessed on July 28, 2021, https://www.aljazeera.com/economy/2020/5/1/coronavirus-fight-some-us-worker-unions-become-more-aggressive.

Combs, Robert. “Analysis: COVID-19 Has Workers Striking. Where Are the Unions?” *Bloomberg Law*, April 14, 2020. Accessed on July 28, 2021, https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-COVID-19-has-workers-striking-where-are-the-unions.

Cueto, Emma. “Which States Are Best and Worst at Atty Discipline?” *Law 360*, May 16, 2013. Accessed on June 4, 2021, https://www.law360.com/articles/1159937.

Eurasianet, “Uzbekistan sparks hope with registration of NGOs,” March 11, 2020. Accessed on May 31, 2021, https://eurasianet.org/uzbekistan-sparks-hope-with-registration-of-ngos.

Gazeta.uz. “The state must determine the boundaries of its participation in each area,” [Государство должно определить границы своего участия в каждой сфере]. February 20, 2020. Accessed on August 6, 2021, https://www.gazeta.uz/ru/2020/02/20/licensing/.

Hatch, Arisha, Gerstein, Terri. “Re-Envisioning the Roles of Prosecutors and Attorneys General to Make the Justice System Work for Everyone.” *Stanford Social Innovation Review*, Winter 2020. Accessed on October 6, 2020 https://ssir.org/articles/entry/re_envisioning_the_roles_of_prosecutors_and_attorneys_general_to_make_the_justice_system_work_for_everyone#.

Kanafin, Daniyar (Канафин, Данияр). “On the Issue of Independence of the Legal Profession and Development of Guarantees for advocacy” [К Вопросу о Независимости Адвокатуры и Развитию Гарантий Адвокатской Деятельности]. International scientific and practical conference “Advocacy 2018”, Almaty, June 20, 2018, Accessed on September 3, 2020 http://advokatura.kz/k-voprosu-o-nezavisimosti-advokatury-i-razvitiyu-garantij-advokatskoj-deyatelnosti/#_ftn2.

Khan, Aysha. “Faith-Based Mutual Aid Flourishes Amid Pandemic, Protests.” *AP News*, June 25, 2020. Accessed on July 28, 2021, https://apnews.com/article/fde57877d75c9b6ff2bdd6fce3849ca3.

Khvan, Leonid (Хван, Леонид). “Legislation on Administrative Procedures and Registration of NGOs.” [Законодательство об Административных Процедурах и Регистрация НКО]. *Gazeta.uz*, Febuary 14, 2020. Accessed on May 26, 2021, https://www.gazeta.uz/ru/2020/02/14/administrative-procedures/

Kreitman, Paul. “In the fight against COVID-19, neighborhood associations could be Japan’s ace in the hole.” *The Japan Times*, April 26, 2020. Accessed on July 9, 2021, https://www.japantimes.co.jp/news/2020/04/26/national/japan-neighborhood-associations-coronavirus/.

Krishna, Priya. “How to Feed Crowds in a Protest or Pandemic? The Sikhs Know.” *New York Times*, June 8, 2020. Accessed on July 28, 2021, https://www.nytimes.com/2020/06/08/dining/free-food-sikh-gundwara-langar.html.

Liptak, Adam. “When Law Prevents Righting a Wrong.” *New York Times*, May 4, 2008. Accessed on September 14, 2020 https://www.nytimes.com/2008/05/04/weekinreview/04liptak.html.

Lynch, Matthew. “The Difficulty Level of Bar Exams by State.” *The Edvocate*, December 19, 2020. Accessed on August 20, 2021, https://www.theedadvocate.org/the-difficulty-level-of-bar-exams-by-state/.

Makarenko, Nikita (Макаренко, Никита). “Maidan-Paranoia.” [Майдан-Паранойя]. *Gazeta.uz*, January 31, 2020. Accessed on May 31, 2021, https://www.gazeta.uz/ru/2020/01/31/ngos/.

Meranvil (Меранвиль). *Soviet Justice Weekly* (Еженедельник Советской Юстиции). № 6, 1922.

Oritz, Erik. “Target, Walmart Workers and Others Plan ‘Sickout’ Protests Over Coronavirus Safety.” *NBC News*, May 1, 2020. Accessed on July 28, 2021, https://www.nbcnews.com/news/us-news/target-walmart-workers-others-plan-sickout-protests-over-coronavirus-safety-n1195126.

Osumi, Magdalena. “Japanese justice: Innocent until proven guilty or innocent until detained?” *The Japan Times*, February 2, 2020. Accessed on October 6, 2020, https://www.japantimes.co.jp/news/2020/02/02/national/crime-legal/japanese-justice-system/.

Ryan, C. Barber. “Inside the Disharmony at the DC Federal Prosecutor’s Office.” *The National Law Journal, July 20, 2020.* Accessed on October 6, 2020, https://www.law.com/nationallawjournal/2020/07/20/inside-the-disharmony-at-the-dc-federal-prosecutors-office/?slreturn=20200906041931.

Scheiber, Noam, Conger, Kate. “Strikes at Instacart and Amazon Over Coronavirus Health Concerns.” *New York Times*, March 30, 2020. Accessed on July 28, 2021, https://www.nytimes.com/2020/03/30/business/economy/coronavirus-instacart-amazon.html.

Sputnik, “What was the salary of Uzbek people in the USSR and now,” [На что хватало зарплаты узбекистанца при СССР и сейчас], August 18, 2016. Accessed on April 8, 2021, https://uz.sputniknews.ru/20160818/3547790.html.

Stack, Liam, Fink, Sheri. “Franklin Graham Is Taking Down His N.Y. Hospital, but Not Going Quietly.” *New York Times*, May 10, 2020. Accessed on July 28, 2021, https://www.nytimes.com/2020/05/10/nyregion/franklin-graham-samaritans-purse-central-park-hospital-tent-coronavirus.html.

Tribone, Lizzie. “Mutual Aid, for and by Undocumented Immigrants.” *American Prospect*, July 1, 2020. Accessed on July 28, 2021, https://prospect.org/coronavirus/mutual-aid-for-and-by-undocumented-immigrants/.

Turdaliev, Jamshid (Турдалиев, Джамшид). “Concept for the Development of the Institution of the Legal Profession: The Need for Early Adoption and Implementation.” [Концепция Развития Института Адвокатуры: Необходимость Скорейшего Принятия и Воплощения в Жизнь]. *Advokat Press*, №1 (2021). Accessed on June 3, 2021, http://advokatnews.uz/xabar/1885.html.

Yakovleva, Tatiana (Яковлева, Татьяна). “The Legal Profession in Uzbekistan Strives to Become an Institution of the Civil Society.” [Адвокатура в Узбекистане Стремится Стать Институтом Гражданского Общества]. February 20, 2002, Accessed on August 13, 2020 https://www.fergananews.com/articles/1421.

Yanyshev, Sid. (Янышев, Сид). “Decorative Protection: Advocates of Uzbekistan – About the Upcoming Reform, Their Current Status and Position in the Courts” [Декоративная Защита: Адвокаты Узбекистана – о Предстоящей Реформе, Своем Нынешнем Статусе и Положении в Судах]. *Fergana News*, May 8, 2020. Accessed on September 1, 2020 https://fergana.news/articles/117877/.

Yusupov, Dilmurad (Юсупов, Дильмурад), Isakov, Oybek (Исаков, Ойбек). “Answer to the Ministry of Justice About the Problems of Registration of NGOs.” [Ответ Минюсту о Проблемах Регистрации ННО]. *Gazeta.uz*, February 12, 2020. Accessed on May 26, 2021, https://www.gazeta.uz/ru/2020/02/12/answer/.

Yusupov, Dilmurad. “Challenges NGOs in Uzbekistan are still facing.” *The Foreign Policy Center*, July 14, 2020. Accessed on May 26, 2021, https://fpc.org.uk/challenges-ngos-in-uzbekistan-are-still-facing/.

Yusupov, Dilmurad, Isakov, Oybek. “Regulations of NGOs in Uzbekistan: Control or Partnership?” *Central Asian Bureau for Analytical Reporting*, March 13, 2021. Accessed on May 27, 2021, https://cabar.asia/en/regulation-of-ngos-in-uzbekistan-control-or-partnership.

Zaretsky, Staci. “California Bar Exam Pass Rate Reaches Nearly All-Time Low.” *Above the Law*, November 19, 2018. Accessed on May 3, 2021, https://abovethelaw.com/2018/11/california-bar-exam-pass-rate-reaches-nearly-all-time-low/.

**Interviews**

Interview with Tashkent city advocate. Interview by author in Tashkent, January 6, 2020.

Interview with Tashkent city advocate. Interview by the author in Tashkent, January 9, 2020.

Interview with Tashkent city advocate. Interview by author in Tashkent, January 7, 2021.

Interview with Tashkent city advocate. Interview by author via zoom platform, September 7, 2021.

Interview with Tashkent city advocate. Interview by author via zoom platform, October 8, 2021.

**Electronic sites**

Asian Development Bank (www.adb.org).

Chamber of Advocates of Uzbekistan (paruz.uz).

Foreign Policy Centre (https://fpc.org.uk/).

Global alliance of civil society organisations and activists – CIVICUS (www.civicus.org).

Information agency Uzreport (uzreport.news).

Japan Federation of Bar Associations (www.nichibenren.or.jp).

Lawyers Legion (https://www.lawyerlegion.com/).

Ministry of Justice of Uzbekistan (www.minjust.uz).

Organization for Security and Cooperation in Europe (https://www.osce.org/).

Parliament of Uzbekistan (parliament.gov.uz).

Prime Minister of Japan and His Cabinet (https://japan.kantei.go.jp/).

State Bar of California (www.calbar.ca.gov).

Supreme Court of Japan (https://www.courts.go.jp/index.html).

University of Wisconsin-Madison Law School (https://law.wisc.edu/).