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# Х А Б А Р Ш Ы С Ы

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**ВЕСТНИК**

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**ABOUT THE METHODOLOGY  
OF THE LEGAL SERVICE  
IN THE REPUBLIC OF UZBEKISTAN**

**Abstract.** In the entire countries of the world priority directions creation of perfect legislation, providing its steady execution, increase of legal culture of population and public servants, clear determination of rights and duties of the citizens, public and management authorities were considered. Legal service of public organs and organizations, managing subjects has an important value in this process. Legal service actively participates in the preparation of projects of normative-legal acts, in realization of the legal examination, since the process of acceptance to providing of their execution; change, stopping and execution of economic agreements; in providing legal facilities of property safety; in the observance of labor legislation and strengthening of labor discipline; in defense in courts and other organizations of rights and legal interests of corresponding organs and managing subjects. In the developed states of the world scientific researches carefully investigate the field of legal service and providing of legal help in the process of perfection of legal frameworks of the legal state and civil society. An important value has research of the concepts “Legal service” and “legal help”, perfection of bases of the legal adjusting of activity of legal service, research on the basis of new approaches of the system of legal service, legal status and basic directions of activity, participating of legal service in providing of supremacy of law and legality in activity of public organs and managing subjects, in law-making, increase of legal consciousness and legal culture of citizens.

**Keywords:** legal assistance, legal service, democratic reforms, supreme of law, modernization of state building, system of legal service, wide reforms, modernization of the country, state sector, regional administration.

Legal profession - the legal institution including independent, voluntary, professional associations of persons who are engaged in lawyer activities and the individuals who are engaged in private lawyer practice. The legal profession according to the Constitution of the Republic of Uzbekistan gives legal aid to citizens of the Republic of Uzbekistan, foreign citizens, stateless persons, the companies, organizations, the organizations.

The citizen of the Republic of Uzbekistan having the higher legal education and who obtained in accordance with the established procedure the license for the occupation right lawyer activities can be the lawyer in the Republic of Uzbekistan [1].

Persons recognized in accordance with the established procedure incapacitated are not allowed to lawyer activities or it is limited capable, and also having the outstanding or not removed criminal record.

The lawyer has no right to be engaged in other types of paid activities, except:

scientific and pedagogical activities;

activities in Chamber of lawyers of the Republic of Uzbekistan (further - Chamber of lawyers) and its territorial administrations;

activities as the patent agent and mediator;

activities as the employee of legal service of state bodies, bodies of economic board, the state companies, organizations and the organizations on the contractual legal basis;

activities as the judge in reference tribunals and the international commercial arbitrations (courts).

The license is granted by the Ministry of Justice of the Republic of Karakalpakstan, justice departments of areas and the city of Tashkent (further judicial authorities) based on decisions of the relevant qualification commissions.

For receipt of the license person applying for acquisition of the status of the lawyer (further - the applicant), shall have length of service on legal specialty at least two years, including with passing of training in lawyer forming (lawyer bureau, law firm, Bar, legal advice bureau) at least three months, and shall pass qualification examination.

Person having years of service on legal specialty at least three years as the employee of legal service of state bodies, bodies of economic board, the state companies, organizations and the organizations in judgeship, the investigator, the investigator or the prosecutor has the right to participate in qualification examination without passing of training in lawyer forming [2, p. 21].

The applicant who did not pass qualification examination is allowed to its repeated delivery not earlier than in six months.

The applicant who successfully passed qualification examination within three months shall address to relevant organ of justice for receipt of the license. The applicant who passed this term can address to judicial authority for receipt of the license only after repeated passing qualification examination.

The procedure for licensing of lawyer activities is determined by the Cabinet of Ministers of the Republic of Uzbekistan.

The applicant who obtained in accordance with the established procedure the license within three months shall take the oath of the lawyer and individually or together with other persons having the license, to create lawyer forming or to enter one of the operating lawyer forming.

From the moment of registration of lawyer forming or obtaining by judicial authority of the documents confirming the introduction of the applicant in the operating lawyer forming the certificate of the lawyer is issued to the applicant within three working days [3, p. 29].

From the date of certification of the lawyer the applicant receives the status of the lawyer what in three-day time the judicial authority notifies the relevant territorial administration of Chamber of lawyers on. From the moment of receipt of such notification the lawyer becomes the member of Chamber of lawyers.

The legal profession performs the activities on the basis of rule of law, independence and other democratic principles.

Person who obtained in accordance with the established procedure the license having the right to perform lawyer activities individually, opening the lawyer bureau, or to form with other lawyers (partners) law firm or on the basis of membership Bar, or to enter one of such operating lawyer forming, or to be engaged in lawyer activities, working in legal advice bureau. The lawyer has the right to perform the activities only in one lawyer forming.

The aim of the article to develop proposals and recommendations for improving the organizational and legal framework of the system and the activities of the legal service, as well as providing legal assistance to business entities by state relations, arising in the course of rendering legal aid to subjects of the entrepreneurship from non-state non-profit organizations and state bodies and also the organization and implementation of activity of legal service.

The scientific novelty of the article as follows:

it is substantiated that the legal service is an independent structural unit, created on a mandatory basis with a view to legal support of the activities of a state body and organization, it reports directly to the head of a state body and organization;

it is substantiated that the definition in law of the function of conducting legal review of drafts of regulatory legal acts by the legal service serves to identify the existence or absence of norms that can create conditions for corruption or other offenses;

it was determined that the establishment of the procedure for the attestation and advanced training of legal service employees in a situation serves to deepen theoretical and practical knowledge in the field of jurisprudence; objective assessment of their level of professional compliance, increased responsibility for the implementation of the tasks assigned to them;

it is substantiated that the definition in the laws of the procedure for pre-trial settlement of a dispute (complaint and mediation) serves to enable prompt restoration of the violated rights and legitimate interests of state bodies and economic entities;

the importance of expanding the powers of the Chamber of Commerce and Industry in enhancing guarantees of protection of the rights and legitimate interests [4, p. 82].

The scientific results obtained from the study of the theoretical and legal problems of the legal service in the Republic of Uzbekistan were used in the following:

Proposals to further strengthen the rule of law in the activities of state bodies and organizations, consistently strengthening the role and responsibility of the legal service in carrying out democratic and legal reforms were taken into account in paragraphs 4, 5, 9, 15, 16, 18 “Regulations on the legal service of state bodies and organizations, approved by the Decree of the President of the Republic of Uzbekistan dated January 19, 2017 No. PP-2733 (certificate of the Administration of the President of the Republic of Uzbekistan No. 06/2-239 of January 22, 2019). The use of scientific results served to define the requirements for the legal service of state bodies and organizations, their rights, duties and responsibilities, as well as the concept of “legal service.

Participation of legal services in the implementation of legal expertise of draft regulations were included in Article 22 of the Law of the Republic of Uzbekistan “On Regulatory Acts” (new edition), in Article 24 of the Law of the Republic of Uzbekistan “On the procedure for drafting laws and introducing them to the Legislative Chamber of the OliyMajlis of the Republic of Uzbekistan ”(certificate of the Committee on Legislation and Judicial and Legal Issues of the Legislative Chamber of the OliyMajlis of the Republic of Uzbekistan No. 06/1-05 of January 22, 2019). The use of scientific results has served to improve the quality of the lawmaking process, the establishment of legislative participation of the legal service in the implementation of legal expertise of draft legal acts; on the basis of proposals on the need to determine the procedure for attestation and advanced training of employees of legal services of state administration bodies and local authorities, economic management bodies, state enterprises, institutions and organizations, the “Provision on the procedure of attestation and advanced training of employees of legal services” was adopted, approved by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated November 22, 2007 No. 244 (certificate of the Ministry of Justice republics of Uzbekistan № 2 / 1-10-6 of 23 January 2019). The use of scientific results served as the basis for the attestation of legal service workers to objectively assess their professional competence, increase their responsibility for carrying out the tasks and functions entrusted to them, and at advanced training they deepen and update their theoretical and practical knowledge in the field of jurisprudence [5, p. 276].

Proposals aimed at increasing the efficiency of the procedure for pre-trial (claim) settlement of the dispute were included in Articles 107, 149 and 151 of the Economic Procedural Code of the Republic of Uzbekistan (reference of the Committee on Legislation and Judicial and Legal Issues of the Legislative Chamber of the OliyMajlis of the Republic of Uzbekistan №06 / 1-05 from January 22, 2019). The use of scientific results served to comply with the pre-trial procedure for resolving disputes, promptly restoring violated rights and legitimate interests of state bodies and economic entities, as well as saving money spent on the judicial process and time of legal service employees;

proposals on mediation, including requirements for the mediator, basic principles of mediation, mediation agreement, agreement on mediation procedure, agreement on mediation application, as well as on the possibility of using mediation in the dispute resolution process in the arbitration court were taken into account in Articles 4, 5, 7, 12, 14, 15, 16, 22 of the Law of the Republic of Uzbekistan “On Mediation” (certificate of the Committee on Legislation and Judicial and Legal Issues of the Legislative Chamber of the OliyMajlis of the Republic of Uzbekistan No. 06/1-05 dated January 22, 2019). The use of scientific results served as the definition in law of basic concepts of mediation based on scientifically grounded conclusions and experience of foreign countries, determining in the law the provision that a mediator can be not only a lawyer, but also a person engaged by the parties to conduct mediation, including legal counsel; proposals on the tasks of the legal service of economic entities, aimed at the organization of legal support of contractual relations, as well as on the claim, statement of claim and court order are taken into account in Articles 17, 18, 19, 20, 21 of the Law of the Republic of Uzbekistan “On the legal framework of activities economic entities ”(certificate of the Committee on Legislation and Judicial and Legal Issues of the Legislative Chamber of the OliyMajlis of the Republic of Uzbekistan No. 06/1-05 dated January 22, 2019). The use of the results of the research served to determine in the law the participation of the legal service of economic entities in the organization of legal support for contractual relations, as well as the procedure and timing for filing and considering a claim, the right to file a claim and an application for a court order;



the proposals of the researcher to strengthen the guarantees of reliable protection of the rights and legitimate interests of business entities, improve legislation in the field of entrepreneurship and empower the Chamber of Commerce and Industry were taken into account in paragraphs a) and b) - paragraph 1, paragraphs 4, 5, 11 of the Decree of the President of the Republic of Uzbekistan of July 19, 2017, No. UP-5087 “On measures to fundamentally improve the system of state protection of the legitimate interests of business and the further development of entrepreneurial activity” (certificate of the Chamber of Commerce and Industry of the Republic of Uzbekistan No. 11 / IL-39-641 dated January 21, 2019). The use of scientific results served to improve the mechanism for protecting the rights and legitimate interests of business entities;

proposals for improving the structure of the Executive Committee of the Chamber of Commerce and Industry of the Republic of Uzbekistan and organizing an independent legal service therein were taken into account when adopting Presidential Decree of June 19, 2017 No. PP-3068 “On Improving the Organization of the Chamber of Commerce and Industry of the Republic of Uzbekistan” (reference Chamber of Commerce and Industry of the Republic of Uzbekistan No. 11 / IL-39-641 dated January 21, 2019). The use of scientific results allowed the creation of a Law Office under the Executive Committee of the Chamber of Commerce and Industry, reporting directly to the Chairman of the Chamber, which serves to increase the effectiveness of ensuring the rule of law and the rule of law in the Chamber.

Legislation must reflect the folk traditions, customs, and moral norms rooted in the daily life of the population and inherited from centuries of history of interpersonal and inter-nationality communion and profession of faith which are not contrary to universal humanitarian values, rights, and freedoms of people [6, p. 68]. One cannot turn back the River of Time, nor return a civil secular society to the era of the dominance of norms of the Shari’ah. The Shari’ah is an absolutely concrete historical phenomenon. It is hardly necessary in a modern society to elevate it to an absolute, to treat it literally. This would be contrary to the very pragmatic philosophy of the Shari’ah, where the spirit is raised above the letter, the new is not rejected and is agreed with the known. It would be reasonable to take into account the conciliatory experience of the regulation of certain spheres of private law by the Shari’ah when building a rule-of-law society in Uzbekistan.

This entry provides the description of a country’s legal system. A statement on judicial review of legislative acts is also included for a number of countries. The legal systems of nearly all countries are generally modeled upon elements of five main types: civil law (including French law, the Napoleonic Code, Roman law, Roman-Dutch law, and Spanish law); common law (including United State law); customary law; mixed or pluralistic law; and religious law (including Islamic law). An additional type of legal system - international law, which governs the conduct of independent nations in their relationships with one another - is also addressed below. The following list describes these legal systems, the countries or world regions where these systems are enforced, and a brief statement on the origins and major features of each [7, p. 74].

The most widespread type of legal system in the world, applied in various forms in approximately 150 countries. Also referred to as European continental law, the civil law system is derived mainly from the Roman *Corpus Juris Civilis*, (Body of Civil Law), a collection of laws and legal interpretations compiled under the East Roman (Byzantine) Emperor Justinian I between A.D. 528 and 565. The major feature of civil law systems is that the laws are organized into systematic written codes. In civil law the sources recognized as authoritative are principally legislation - especially codifications in constitutions or statutes enacted by governments - and secondarily, custom. The civil law systems in some countries are based on more than one code.

A type of legal system, often synonymous with “English common law”, which is the system of England and Wales in the UK, and is also in force in approximately 80 countries formerly part of or influenced by the former British Empire. English common law reflects Biblical influences as well as remnants of law systems imposed by early conquerors including the Romans, Anglo-Saxons, and Normans. Some legal scholars attribute the formation of the English common law system to King Henry II (r.1154-1189). Until the time of his reign, laws customary among England’s various manorial and ecclesiastical (church) jurisdictions were administered locally. Henry II established the king's court and designated that laws were “common” to the entire English realm. The foundation of English common law is “legal precedent” - referred to as *stare decisis*, meaning “to stand by things decided”. In the English

common law system, court judges are bound in their decisions in large part by the rules and other doctrines developed - and supplemented over time - by the judges of earlier English courts.

A type of legal system that serves as the basis of, or has influenced, the present-day laws in approximately 40 countries - mostly in Africa, but some in the Pacific islands, Europe, and the Near East. Customary law is also referred to as “primitive law”, “unwritten law”, “indigenous law”, and “folk law”. There is no single history of customary law such as that found in Roman civil law, English common law, Islamic law, or the Napoleonic Civil Code. The earliest systems of law in human society were customary, and usually developed in small agrarian and hunter-gatherer communities. As the term implies, customary law is based upon the customs of a community. Common attributes of customary legal systems are that they are seldom written down, they embody an organized set of rules regulating social relations, and they are agreed upon by members of the community. Although such law systems include sanctions for law infractions, resolution tends to be reconciliatory rather than punitive. A number of African states practiced customary law many centuries prior to colonial influences. Following colonization, such laws were written down and incorporated to varying extents into the legal systems imposed by their colonial powers.

A sub-discipline of international law known as “supranational law” in which the rights of sovereign nations are limited in relation to one another. Also referred to as the Law of the European Union or Community Law, it is the unique and complex legal system that operates in tandem with the laws of the 27 member states of the European Union (EU). Similar to federal states, the EU legal system ensures compliance from the member states because of the Union's decentralized political nature. The European Court of Justice (ECJ), established in 1952 by the Treaty of Paris, has been largely responsible for the development of EU law. Fundamental principles of European Union law include: *subsidiarity* - the notion that issues be handled by the smallest, lowest, or least centralized competent authority; *proportionality* - the EU may only act to the extent needed to achieve its objectives; *conferral* - the EU is a union of member states, and all its authorities are voluntarily granted by its members; *legal certainty* - requires that legal rules be clear and precise; and *precautionary principle* - a moral and political principle stating that if an action or policy might cause severe or irreversible harm to the public or to the environment, in the absence of a scientific consensus that harm would not ensue, the burden of proof falls on those who would advocate taking the action.

A type of civil law that is the legal system of France. The French system also serves as the basis for, or is mixed with, other legal systems in approximately 50 countries, notably in North Africa, the Near East, and the French territories and dependencies. French law is primarily codified or systematic written civil law. Prior to the French Revolution (1789-1799), France had no single national legal system. Laws in the northern areas of present-day France were mostly local customs based on privileges and exemptions granted by kings and feudal lords, while in the southern areas Roman law predominated. The introduction of the Napoleonic Civil Code during the reign of Napoleon I in the first decade of the 19th century brought major reforms to the French legal system, many of which remain part of France's current legal structure, though all have been extensively amended or redrafted to address a modern nation. French law distinguishes between “public law” and “private law”. Public law relates to government, the French Constitution, public administration, and criminal law. Private law covers issues between private citizens or corporations. The most recent changes to the French legal system - introduced in the 1980s - were the decentralization laws, which transferred authority from centrally appointed government representatives to locally elected representatives of the people.

The law of the international community, or the body of customary rules and treaty rules accepted as legally binding by states in their relations with each other. International law differs from other legal systems in that it primarily concerns sovereign political entities. There are three separate disciplines of international law: public international law, which governs the relationship between provinces and international entities and includes treaty law, law of the sea, international criminal law, and international humanitarian law; private international law, which addresses legal jurisdiction; and supranational law - a legal framework wherein countries are bound by regional agreements in which the laws of the member countries are held inapplicable when in conflict with supranational laws. At present the European Union is the only entity under a supranational legal system. The term “international law” was coined by Jeremy Bentham in 1780 in his *Principles of Morals and Legislation*, though laws governing relations between states have been recognized from very early times (many centuries B.C.). Modern international law

developed alongside the emergence and growth of the European nation-states beginning in the early 16th century. Other factors that influenced the development of international law included the revival of legal studies, the growth of international trade, and the practice of exchanging emissaries and establishing legations. The sources of International law are set out in Article 38-1 of the Statute of the International Court of Justice within the UN Charter.

The most widespread type of religious law, it is the legal system enforced in over 30 countries, particularly in the Near East, but also in Central and South Asia, Africa, and Indonesia. In many countries Islamic law operates in tandem with a civil law system. Islamic law is embodied in the sharia, an Arabic word meaning “the right path”. Sharia covers all aspects of public and private life and organizes them into five categories: obligatory, recommended, permitted, disliked, and forbidden. The primary sources of sharia law are the Qur’an, believed by Muslims to be the word of God revealed to the Prophet Muhammad by the angel Gabriel, and the Sunnah, the teachings of the Prophet and his works. In addition to these two primary sources, traditional Sunni Muslims recognize the consensus of Muhammad’s companions and Islamic jurists on certain issues, called *ijmas*, and various forms of reasoning, including analogy by legal scholars, referred to as *qiyas*. Shia Muslims reject *ijmas* and *qiyas* as sources of sharia law.

Also referred to as pluralistic law, mixed law consists of elements of some or all of the other main types of legal systems - civil, common, customary, and religious. The mixed legal systems of a number of countries came about when colonial powers overlaid their own legal systems upon colonized regions but retained elements of the colonies’ existing legal systems.

A type of civil law developed in ancient Rome and practiced from the time of the city's founding (traditionally 753 B.C.) until the fall of the Western Empire in the 5th century A.D. Roman law remained the legal system of the Byzantine (Eastern Empire) until the fall of Constantinople in 1453. Preserved fragments of the first legal text, known as the Law of the Twelve Tables, dating from the 5th century B.C., contained specific provisions designed to change the prevailing customary law. Early Roman law was drawn from custom and statutes; later, during the time of the empire, emperors asserted their authority as the ultimate source of law. The basis for Roman laws was the idea that the exact form - not the intention - of words or of actions produced legal consequences. It was only in the late 6th century A.D. that a comprehensive Roman code of laws was published (see Civil Law above). Roman law served as the basis of law systems developed in a number of continental European countries.

All this different systems are needed to know and be used in daily practice by the legal servants in the Republic of Uzbekistan [8, p. 127]. Especially the Roman Law as well.

In the conclusion we would like to remind that Administrative law is the authority delegated to state executive agencies. Case law, also referred to as common law, covers areas where constitutional or statutory law is lacking. Legal servants are the representatives of the authorities in the whole country and must to work in accordance with the Constitution and national legislation.

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### **ӨЗБЕКСТАН РЕСПУБЛИКАСЫНДАҒЫ ЗАҢГЕРЛІК ҚЫЗМЕТТІҢ ӘДІСНАМАСЫ ЖАЙЫНДА**

**Аннотация.** Әлемнің барлық елдерінде басымдық бағыт деп, жетілген заңнамаларды қалыптастыру есептеледі, соның әсерінен халықтың құқықтық мәдениеті көтеріледі және қызметкерлердің өз қызметтерін жүзеге асыру, құқықтық нормаларды іске асыру орындалады, азаматтардың құқықтары мен міндеттері белгіленеді, сол сияқты мемлекеттік басқарушы биліктің де қызметі заңды түрде нақтыланады. Бұл процессте мемлекеттік мекемелердің заңгерлік қызметі өте маңызды роль атқарады. Заңгерлік қызмет нормативтік-құқықтық актілерді жобалауда, дайындауда белсенді қызмет атқарады, оны қабылдаудан бастап жүргізетін барлық процесстерде оларға түзетулер енгізуде, әртүрлі шаруашылық келісімдер жүргізуде, меншікті құқықтық аспаптармен қорғауды жүзеге асыруда, еңбек кодексін сақтауда, еңбек тәртібін күшейтуде әртүрлі

шаруашылықтардың заңды құқықтарын соттар мен басқа да ұйымдарында қорғауды жүзеге асырады. Осы бағытта заңгерлік қызмет түсінігінің әдіснамалық аспабын зерттеу маңызды роль атқарады. Сонымен қатар «заңгерлік көмек» түсінігінің мәнін ашуда қоғамдағы қатынастарды құқықтық негізде жетілдіруге заңгерлік қызметтің негізін зерттеуге және онда болып жатқан жаңалықтардың мәнін ашуға көмектеседі, сол сияқты оның іс-қимылының құқықтық статусын ашуға, негізгі бағыттарын көрсетуге, заңгерлік қызметтің құқықтық басымдылығын жүзеге асыруында, мемлекеттік мекемелердің, шаруашылық субъектілердің, азаматтардың құқықтық білімдерін көтеруге тікелей әсеретеді.

**Түйін сөздер:** заңгерлік көмек, құқықтық қызметтер, демократиялық реформалар, заңның басымдығы, мемлекеттік құрылысты жетілдіру, заңгерлік қызмет жүйесі, кеңкөлемді реформалар, елді модернизациялау, мемлекеттік сектор, аймақтық әкімшілік.

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### **О МЕТОДОЛОГИИ ЮРИДИЧЕСКОЙ СЛУЖБЫ В РЕСПУБЛИКЕ УЗБЕКИСТАН**

**Аннотация.** Во всех странах мира приоритетными направлениями считаются создание совершенного законодательства, обеспечение его неуклонного исполнения, повышение правовой культуры населения и должностных лиц, четкое определение прав и обязанностей граждан, органов государственной власти и управления. В этом процессе важное значение имеет юридическая служба государственных органов и организаций, хозяйствующих субъектов. Юридическая служба активно участвует в подготовке проектов нормативно-правовых актов, в проведении правовой экспертизы, начиная с процесса принятия до обеспечения их исполнения; в заключении, изменении, прекращении и исполнении хозяйственных договоров; в обеспечении правовыми средствами сохранности собственности; в соблюдении трудового законодательства и укреплении трудовой дисциплины; в защите в судах и других организациях прав и законных интересов соответствующих органов и хозяйствующих субъектов. В развитых государствах мира осуществляются научные исследования в сфере юридической службы и оказания юридической помощи в процессе совершенствования правовых основ правового государства и гражданского общества. Здесь важное значение имеет исследование понятий «юридическая служба» и «юридическая помощь», совершенствование основ правового регулирования деятельности юридической службы, исследование на основе новых подходов системы юридической службы, правового статуса и основных направлений деятельности, участие юридической службы в обеспечении верховенства закона и законности в деятельности государственных органов и хозяйствующих субъектов, в правоприменении, повышении правового сознания и правовой культуры граждан.

**Ключевые слова:** юридическая помощь, правовые услуги, демократические реформы, верховенство закона, совершенствование государственного строительства, система юридической службы, широкомасштабные реформы, модернизация страны, государственный сектор, региональная администрация.

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