



## **Legislative Bases for Providing the Independence of a Lawyer: Foreign Experience.**

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**Abstract:** The formation of the bar is influenced by many factors: the level of legal awareness and legal culture in society, the political situation, the social structure of society, economic aspects, lawmaking, law and order, etc.

According to the author, it is very important to take into account the belonging of the state to a certain legal family. The legal status of a lawyer has significant specifics in each country, and it is possible to better understand the goals and objectives of the institute of advocacy, to predict its development, including on the basis of a study of the systems of advocacy of foreign countries.

**Keywords:** legal status of a lawyer, comparative analysis, acquisition of the status of a lawyer, qualification exam, internship at the bar.

To study the legal status of lawyers in the field of the independence of lawyers in Uzbekistan, it is proposed to analyze the features of the legal regulation of the activities of the legal community abroad. We will consider the structure of the bar in Germany, France and the USA.

In Germany, the activities of the bar are regulated by the Federal Law on the Bar, adopted on August 1, 1959, and the Law on Lawyers' Fees of 2004.

"The profession of a lawyer (Rechtsanwalt) 1 has always been considered very prestigious and highly respected in Germany. According to statistics, lawyers occupy an honorable second place in popularity among the population, second only to doctors and bypassing priests."

As of 01.01.2016, the Federal Chamber of Lawyers of Germany had 163,960 lawyers admitted to professional activity. Considering that the population of Germany at the beginning of last year was estimated at 81,459,000 people.

As in the Republic of Uzbekistan, in Germany, France, the USA and the UK, the main conditions for obtaining the status of a lawyer are:

- higher legal education;
- completion of an appropriate internship;
- passing the qualification exam;
- No criminal record.

The citizenship of the relevant states, except Uzbekistan, is not a mandatory criterion.

There is no exam for obtaining the status of a lawyer in Germany, but the process of obtaining legal education in Germany is considered one of the most difficult. Everyone who wants to practice law must pass two state exams. Approximately 30% of students fail the first state exam every year, and 15% of examinees fail the second state exam. After a repeatedly unreleased exam (first or second), the road to law in Germany is closed forever. The first state examination (Erste Juristische Staatsprüfung)

in Germany completes university education, which, according to statistics, takes an average of 10 semesters to obtain.

In addition to the two state exams passed, the German Federal Law on the Bar (Bundesrechtsanwaltsordnung = BRAO) provides for certain requirements for a lawyer who wants to practice law.

"According to Section 7 of this law, an applicant will not be admitted to practice law if he:

- by the decision of the Federal Constitutional Court, he was deprived of basic civil rights;
- deprived of the right to hold public office by a court decision;
- was excluded from the bar by a court decision;
- by the decision of the disciplinary court, he was dismissed from law enforcement agencies;
- was accused of committing an act unworthy of a lawyer's title;
- participates in the struggle against the existing social order in Germany in an illegal way;
- due to their physical disabilities or the weakness of spiritual forces for a long time unable to properly perform legal functions;
- engaged in activities incompatible with the profession and reputation of a lawyer;
- a court decision restricts the right to dispose of their property;
- Is a judge or a civil servant (except in cases where these functions are performed on a voluntary basis).

"Section 1 of the Federal Law on the Bar says: "A lawyer is an independent body of justice" 28 This short sentence conveys the whole essence of the legal profession in Germany: a German lawyer not only defends the private interests of his client, but also objectively contributes to improving the quality of justice (in the broad sense of the word), i.e. a lawyer stands on the guardian of justice and legality, and the legal profession as a whole contributes to the realization of the idea of the rule of law. At the same time, this means that the lawyer is bound by the rules of law in his activities and ensures that the legitimate interests of his principal are respected."

The most interesting thing is that a lawyer can perform the functions of legal advisers, but under a special contract, because officially he cannot work as a legal adviser, in accordance with Federal Law, which defines the bar as an "independent body of justice" (meaning justice in the broad sense of the word — law enforcement, justice).

"In Germany, the legal profession is represented by two large law communities: The Federal Chamber of Lawyers and the German Bar Association. The Federal Chamber of Advocates includes regional chambers of advocates, membership in which is mandatory for lawyers, since the chambers perform important tasks, for example, allow lawyers to carry out professional activities, settle lawyers' disputes, monitor the performance of their duties by lawyers, etc. The German Union of Lawyers, on the contrary, is a voluntary professional association."

"A person applying for the status of a lawyer in the United States must go through a number of difficult stages: obtaining higher education in any specialty, then graduating from law school and obtaining a Doctor of law degree, and finally obtaining a practicing lawyer license.

The degree of Doctor of Jurisprudence is sufficient for practicing law, but does not automatically grant its holder the right to practice law. To obtain the right to practice law in most states, it is necessary to pass exams, the conditions of which are set by the state Supreme Court. A person admitted to the practice of law after the exams gets the right to speak in all courts of this state. To represent the client's interests in the courts of another state, it is required either to pass a new exam or to obtain a special permit. Permission to conduct cases in federal courts is issued to persons admitted to practice law in the state automatically.

In order to preserve the validity of the patent, the lawyer is obliged to annually improve his qualifications in a certain amount of hours (at least 12).

The patent may be revoked for committing a crime, and its validity may be suspended for three years for certain violations of the law and professional ethics (for example, contempt of court, if the client has a reasonable complaint about unprofessionalism).

“Members of bar associations are not only practicing lawyers, but also persons working as legal advisers, lawyers working in the prosecutor's office. In the USA, there are the following types of advocacy associations:

- state Bar Associations — the official association of all state lawyers engaged in licensing, supervising lawyers' compliance with professional ethics and imposing disciplinary penalties;
- voluntary associations — associations of lawyers operating at the level of the city, state, country as a whole, engaged in professional development of their members, providing free legal assistance on a voluntary basis.

The scope of the Association's activities includes the following issues:

- problems of professional ethics;
- development of draft laws;
- development of uniform standards of legal practice and principles of administration of justice;
- Providing opinions on candidates for the positions of federal judges, including members of the Supreme Court of the United States, federal prosecutors.

Members of the Association can be US citizens who have a law degree and are admitted to practice law. Foreign lawyers who are not allowed to practice in the United States can become foreign members of the Association.

General issues" of the Association's activities are considered at annual congresses.

An American court has the right to grant a license to practice as a legal consultant to a foreign person who has reached the age of 26. The following requirements are imposed on the applicant:

- the applicant must have been a lawyer in a foreign country for at least five years from the date preceding the appeal to the court;
- the applicant meets the necessary moral qualities and meets the general requirements for members of the bar association of this state;
- The person intends to practice in this state as a legal consultant and open an office for this purpose.

The foreign person must also submit to the court Secretary the following set of documents (with duly certified translations):

- a certificate issued by a professional organization or a state institution in a foreign country certifying that the applicant is admitted to practice, indicating the date of admission, as well as confirming the validity of his status as a lawyer;
- a letter of recommendation from one of the members of the executive body of such a professional organization or state institution or from one of the judges of the court of higher instance or the court of first instance of such a foreign state;
- Birth certificate.

A person who has received a license to provide legal consultant services is considered a lawyer who is a member of the bar association of this state, has all the rights inherent in other members of the association and bears the same responsibility. Thus, a foreign lawyer who holds a license is obliged to submit to the court that issued it an obligation or confirmation of the existence of professional liability insurance for the amount established by the court.

Systems of legal discipline are introduced by the states individually within each state system of licensing and regulating the activities of lawyers. The American Bar Association has formulated a model of the rules of professional conduct adopted in most states and these rules serve as guidelines for the conduct of a lawyer. Each state ultimately decides what, within its licensing system, is a violation of the rules, what procedure an attorney is entitled to when accused of such, and, if necessary, imposes any sanctions for violating these rules in accordance with established procedures.

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