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Advocacy in the Russian Federation

First of all, I'd like to say a few words about the history of advocacy in Russia. The birth of Russian advocacy is dated 1864 when emperor Alexander II carried out the famous legal reform (this year Russian advocacy will be 142 years old). For half a century of its existence prior to the revolution of 1917 the Russian advocacy was one of the most democratic and highly professional in the world. Its status and prestige in society were huge, in spite of the fact that the first decades of 20-th century were marked with some politization of advocacy, however, as well as all Russian society of that time. This politization of the Russian advocacy of the beginning of 20-th century did not make the Russian advocacy more popular among the general public.

On the 22nd of November, 1917 Lenin's decree «On the court» liquidated the advocacy. Practically any citizen was able to be an attorney and a representative in court. It proved to be inefficient and then the legislation has charged local authorities to recruit appropriate attorneys, to enlist them in the corresponding registers and to pay them a salary. Essentially, attorneys became state employees. As a result, the natural desire of the client to thank the advocate began to be treated as a bribe. For example, in Petrograd almost all attorneys found themselves indicted for bribery.

Independent bars were founded only in 1922 and thus, in essence, advocacy was reborn. The principles on which the advocacy was founded in 1922 continued for 80 years with only insignificant changes.

I shall not devote much time to the advocacy of the Soviet period, it was in many respects similar to advocacies of other socialist countries. The Soviet advocacy performed its tasks quite successfully and as a whole was professional enough and independent from the state. When I joined the advocacy in the middle of the 70's, I've asked the veterans who worked as advocates in the 30's: «How was it, working in those difficult 30's?» Veterans unanimously spoke, that then (may be except for some political trials, which were a few) investigators and courts strictly observed the legislation, and the qualified advocate could render and rendered real help to clients. The other thing is that the laws were rather severe those years, but it was dictated by conditions of that historical period and has nothing to do with the present topic.

Since the 1st of July, 2002 the new law on advocacy is in force in the Russian Federation.

Until then, the Russian advocacy functioned under the legislation of 1979-80.

The new Russian law on advocacy is a result of a compromise between two major forces existing in advocacy from the beginning of the 90's, and therefore as any other compromise, the law is far from perfection. These two forces, two camps in the advocacy can be called: traditional judicial advocates and, by analogy with "new Russians" - "new advocates", not burdened with traditions and rules of ethics, many of whom gravitated to business advocacy.

For the last decade dozens of bills on the regulation of advocacy were discussed. What traditional advocates offered, however, was not acceptable for the "new advocates" and vice versa. Finally, the Parliament faced a bill that was developed by the Administration of the President of Russia. Before the Russian advocates could react, Duma passed the bill in the first hearing. By the time of the second hearing, advocates managed to contribute their input to the bill, and it became law.

Let's consider, what is the contemporary advocacy in Russia and whether there are any substantial differences with foreign advocacy.

Status of an advocate.

The law does not give a clear definition of an "advocate" and of the "practice of law". "An advocate" is an independent adviser on legal questions, who possesses the status of an advocate and the right to engage in the practice of law. "The practice of law" is any legal aid rendered by advocates. In other words, "an advocate," is someone who is engaged in the practice of law, and "the practice of law" is something that an advocate is engaged in.

An advocate has the right to practice law on all territory of Russia.

The modern legislation allows any person to be engaged in legal practice without any restrictions. For this purpose neither a license, nor special education are required.

There are only four basic differences between an advocate and non-advocate legal representative:

- Legal practice for an advocate is not "commercial activity", and for all others it is "commercial activity," which is subject to income taxation and the value added taxation (VAT);
- Criminal and the commercial legislation limits participation in these proceedings to advocates;
- Advocates fall under the protections of "advocates' immunity," while others do not;
- Advocates must carry out a whole complex of duties, established by the legislation on advocacy, and all others are not obliged to do so.

Any person (citizens of Russia and foreigners) who has a law degree and at least 2 years of work experience in the legal field or has been a trainee in advocates' organization from one to two years has a right to become an advocate. The status of an advocate is granted by the Qualifying Commission at the regional Chamber of Advocates after an applicant passes the qualifying examination. The procedure for passing an examination and the list of questions for the examination, are approved by the Council of the Federal Chamber of Advocates. The decision of the Qualifying Commission on assignment of the status of an advocate inures from the date of taking the oath of an advocate. The status of an advocate is given for an unlimited term and is not limited by advocates' age. An advocate automatically becomes a member of one of the Regional Chambers. Judicial authorities that conduct regional registers of advocates issue certificates that are the only documents, confirming the status of an advocate.

A Qualifying Commission is created for conducting the qualifying examinations and for processing of disciplinary complaints. A Qualifying Commission is formed for two years and consists of 13 members: 7 advocates from the Chamber of Advocates, 2 representatives from the territorial judicial authority, 2 representatives from the regional legislature, 1 judge of court of the general jurisdiction, and 1 judge of a commercial court. The Chairman of the Commission is the president of the regional Chamber of Advocates.

Advocates of a foreign state can render legal advice in Russia only on issues pertaining to the laws of their state and must register with the Ministry of Justice.

Attorney-client confidentiality.

The law forbids to interfere in the practice of law and to obstruct it.

Any information connected with rendering legal advice by an advocate is considered to be confidential. An advocate can not be interrogated as a witness about the circumstances, which became known to him or her in the course of providing legal assistance.

Any investigations concerning an advocate (including searches of the advocate's office) are possible only on the basis of a courts' judgment. Information and documents received during an investigation, can be used as evidence, only if they are not part of a pending case.

Private cooperation with investigative authorities is forbidden for an advocate.

Practice of law.

An advocate is the subject of interrelation with the client, not the organizations he belongs to.

Practice of law is carried out on the basis of the civil-law contract concluded between an advocate and a client (the law mentions two kinds of contracts - commission or rendering of services). This is not a perfect definition for relations of an advocate and a client. The law does not take into consideration the social significance of the practice of law. Rights and duties of an advocate - defender in criminal trial do not fit in frameworks of civil-law relations. For example, the advocate has no right to refuse the participation in a criminal case and even if a client refuses the advocate, only inspector or court can release him from his of duties.

An advocate is obliged to observe not only laws, but also the code of a professional ethics and to follow decisions of the Chamber of Advocates. For failure to observe these duties an advocate can be subjected to disciplinary responsibility and even disbarred. Disciplinary measures are applied by the Council of the Chamber of Advocates following the decision of the Qualifying Commission.

Since 2007 an advocate will be obliged to his legal practice. Today there is no such practice in Russia (I know only one bureau in Moscow which ensures its work in Germany).

An advocate has no right to be engaged in other commercial activities, except for scientific, teaching and other creative activities.

The organization of advocacy.

"Advocacy" is a professional community of advocates and as an institute of civil society, which is not included into the system of government.

Each of 89 subjects of the Russian Federation has its own Chamber of Advocates which unites all advocates of a particular federal region on the basis of obligatory membership. The Chamber of Advocates is established for the organization of legal assistance, for representation and protection of interests of advocates, and for monitoring the observance of the code of a professional ethics of an advocate.

The supreme body of the Chamber of Advocates is the Advocates' Assembly which elects the Council of the Chamber, defines the amount of membership fees, and resolves other questions. The Council of the Chamber elects a president of the Chamber for the term of four years.

Regional Chambers of Advocates are members of the Federal Chamber of Advocates of Russia.

The supreme body of the Federal Chamber is the Russian National Congress of Advocates, which approves the Code of a Professional Ethics, elects the Council of the Federal Chamber and resolves other questions. The Council of the Federal Chamber of Advocates elects the president of the Federal Chamber for the term of four years.

This current structure is full of contradictions, which will hopefully be eliminated during the further refinement of the law on advocacy. In particular, it is not clear, whether the President of a certain Chamber is an executive director of that Chamber or merely the Chairman of the Chamber's Council. If the Federal Chamber unites the regional Chambers, why its supreme body - the Russian National Congress of Advocates?

Advocates have the right to establish public associations. There are 4 nationwide public organizations of advocates operating in Russia now:

- The International Union of Advocates - the former Union of Advocates of the USSR;
- The Federal Union of Advocates of Russia;
- The Professional Guild of the Russian Advocates - unites the initial advocate organizations of «new advocates».

Russian advocates are members of many international advocate unions - IBA, UIA, IGL, ABA, etc.

Organization of the practice of law.

For realization of professional work advocates independently select one of four types of advocate formations: an advocates' cabinet ,a Bar, an advocates' bureau or legal consultation.

An advocates' cabinet is established by the advocate for individual work. A cabinet is not a legal entity and can be situated in premises of an advocate.

A Bar is established by two or more advocates. A Bar is a noncommercial organization, it is an advocates' tax agent and has the right to establish branches in all territory of Russia and abroad. The contract on legal assistance is signed by an advocate and is registered in the documentation of a Bar.

An advocates' bureau - the organization is similar to a Bar. In a bureau advocates are bounded by a partnership contract on rendering a legal aid on behalf of all partners. The contract with a client is signed by one of the partners on behalf of the others partners on the basis of the powers of attorney issued for him or her.

A legal consultation is established by a Chamber of Advocates at the request of the state bodies. The financial help for the maintenance of a consultation comes from the budget of a subject of the Russian Federation and from means of a Chamber of Advocates.

Rendering a free-of-charge legal assistance.

In some cases listed in the law a legal aid for the poor citizens of Russia (the monthly average income in family is lower than 75 US dollars for one person) is rendered free-of-charge. For example, a free-of-charge assistance is guaranteed for plaintiffs in trials on collecting the alimony, compensation of harm, caused at work; for veterans of the WWII and so forth.

The criminal legislation provides wide list of cases when participation of an advocate - defender is obligatory. If an advocate participates in criminal case under the appointment of the inspector or court, his work is paid from the state budget.

In these cases amount of payment of an advocate is established by the Russian Government. For example, the amount of payment for one day varies from 1/4 to 1 minimal size of a payment depending on complexity of case (since 2006 MSOP is about 40 US dollars).

It is necessary to note, that since the last year the state in some special cases began to really pay for advocates' work. Though these sums are insignificant, but in situations when the average salary in Russia scarcely exceeds 200 dollars, such payment is quite acceptable.

Fees for legal services are determined under the principle of a free agreement. Neither the state, nor a Chamber of Advocates can interfere with this question. On practice fees are defined in many different ways:

- In the fixed sum,
- Per hour tariffs (the most popular advocates' rate reaches 500 dollars per hour),
- In percentage of the claims' sum,
- Depending on result (though the Code of ethics recommends the advocate to abstain from this possibility).

The taxation. Technically, Practice of law is not treated as a commercial activity, therefore this work does not generate profit, hence, there is no profit tax and VAT.

The income tax of an advocate as a physical person, makes 13 % and a unified social tax varies from 11% to 2 %. And that's all.

Deductions for a Chamber of Advocates are about 15-20 dollars per month and from 30 to 300 US dollars for the maintenance of an advocates' organization (cabinet. Bar, bureau).

One of my clients likes to repeat: «When I was a child my mum taught me - sonny, any price for us is too high!». And Russian advocates consider, that taxes and deductions are too high, in comparison with their official monthly average incomes which make about 300-400 US dollars.