

SHOULD A FOREIGN LAWYER BE ALLOWED TO WORK IN CIVIL AND ECONOMIC PROCEEDINGS?

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ABSTRACT

This article raises the issue of allowing foreign lawyers to work in civil and economic proceedings in the Republic of Uzbekistan, and analyzes the need and benefits of such a change. In addition, the practice of foreign countries in this area was studied, a comparative analysis was conducted and some recommendations were developed.

Keywords: civil procedure, economic procedure, foreign lawyer, investment disputes, foreign citizens and organizations, healthy competition.

INTRODUCTION

According to the national legislation of the Republic of Uzbekistan, the participation of a foreign lawyer in the courts of the country is not allowed. That is, Article 3 of the Law "On Advocacy" stipulates that a citizen of the Republic of Uzbekistan with a higher legal education and a license to practice law may be a lawyer in the Republic of Uzbekistan [1]. However, in the practice of many foreign countries, we can see that foreign lawyers are allowed to participate in court proceedings.

First of all, let's talk about the need for us to introduce such a practice.

First, the recent reforms in our country are aimed at attracting foreign investment. In this regard, in accordance with the Law of the Republic of Uzbekistan "On amendments and additions to the Code of Economic Procedure of the Republic of Uzbekistan in connection with the improvement of the institution of judicial review" of January 12, 2021, [2] the CEP included relevant articles on investment disputes and competition.

Such disputes have existed in economic courts before, but now as a result of the reforms envisaged above there composed norms that shed light on the procedural aspects of these disputes. If we look at the subjects of these cases, we can see that most of them are foreign citizens and organizations. Therefore, in order to allow them to fully protect their rights in

economic proceedings, it is expedient to include in our legislation the norms that allow foreign lawyers to work in the courts of our country.

Second, in accordance with Article 359 of the Code of Civil Procedure, foreign citizens and foreign organizations have the right to appeal to the courts of the Republic of Uzbekistan, and they enjoy civil procedural rights on an equal footing with citizens of the Republic of Uzbekistan [3]. However, they cannot use the services of a foreign lawyer as a representative.

The Code of Civil Procedure of the Republic of Kazakhstan does not contain special rules for the participation of foreign lawyers in civil proceedings. But they solved the problem with a different norm. According to paragraph 6 of Art. 46 of the Law “On Advocacy and Legal Assistance”, the powers of a foreign lawyer who operates on the basis of the relevant international treaty ratified by the Republic of Kazakhstan are confirmed by documents proving the identity, status of the lawyer and his authority to provide legal assistance [4].

MATERIALS AND METHODS

In Germany, the issue of admitting foreign lawyers to the Chamber of Advocates is decided by the Ministry of Justice of that country. The status of foreign lawyers included in the special register of this state is equal to the status of German lawyers[5,68 p 1].

If foreign lawyers want to practice law in the Republic of Ireland, they will have to take a test (QLTT). Qualified Lawyers Transfer Test is a conversion test which enables lawyers qualified in certain countries outside the Republic of Ireland to qualify as solicitors in this jurisdiction. There are two exam sittings of the test each year in Dublin[6].

The Solicitors Regulation Authority (SRA) operates a registration regime for foreign lawyers in UK. Once registered, a registered foreign lawyer (RFL) is able to become a manager or owner of a law firm with solicitor managers/owners. The SRA Authorisation of Individuals Regulations set out the SRA’s requirements for registration as an RFL. The SRA has also published ethics guidance for RFLs on their obligations. This Practice Note sets out the registration regime for foreign lawyers working in SRA-regulated law firms as RFLs, why registration may be required and how to go about getting registered. It also sets out the continuing obligations for RFLs and the implications for firms working with RFLs. Swiss lawyers may be eligible to register as registered European lawyers (RELs)—see further Practice Note: Working with European lawyers—the Registered European Lawyer (REL) regime.[7].

For a checklist of issues to consider when applying for registration as, or working with an RFL, see: Registered Foreign Lawyer (RFL)—Checklist.

From September 2021, lawyers from abroad and overseas students who wish to qualify in England and Wales can sit the Solicitors Qualifying Examination (SQE). The SQE allows you to qualify as a solicitor by taking the same exam as domestic candidates[8].

If we analyze the Swiss legal system in this regard, we should mention the Federal Act "Free Circulation of Lawyers" of June 23, 2000.

This Act regulates the status of foreign lawyers in the European Union [9], ie a person practicing law in one EU country may practice in other EU member states on the basis of a single permit.

Article 17 of the Law of the Republic of Armenia “On advocacy” stipulates that a foreign lawyer shall practice law in accordance with the procedure established by this Law, the Charter of the

Chamber of Advocates and the Code of Ethics for Lawyers, unless otherwise provided by international agreements of the Republic of Armenia. In the Republic of Armenia, a foreign lawyer acts on the basis of a license issued by the relevant law firm of his country and is subject to accreditation by the Chamber of Advocates [10]. A foreign lawyer may not provide legal assistance in matters related to state or official secrets of the Republic of Armenia. A foreign lawyer may not be elected to the bodies of the Chamber of Advocates.

A similar provision is contained in Article 7 of the Law of the Republic of Belarus "Advocacy activities and Advocacy in the Republic of Belarus":

Lawyers of foreign countries act in accordance with international agreements of the Republic of Belarus, Once the right to practice law in the manner prescribed by the Ministry of Justice of Belarus is included in the register of lawyers, legal agencies, legal advice and special permits (licenses), they may provide legal assistance in the territory of the Republic of Belarus[11].

Article 2 of the Federal Law of the Russian Federation "On advocacy and Advocacy activities in the Russian Federation" sets slightly different norms, that is, this article stipulates in what cases foreign lawyers may not work in the Russian Federation:

- ❖ Lawyers of foreign countries are not allowed to provide legal assistance in the territory of the Russian Federation on issues related to state secrets of the Russian Federation;
- ❖ Lawyers of foreign countries conducting advocacy work in the territory of the Russian Federation shall be registered in a special register by the federal executive body in the field of justice, the procedure for maintaining the register shall be established by the competent federal executive body;
- ❖ It is prohibited for lawyers of foreign countries to practice law in the territory of the Russian Federation without registration in the established register. [12]

On September 19, 2003, the Decree of the Government of the Russian Federation "On Approval of the Regulations on Maintaining the Register of Lawyers of Foreign States Practicing Lawyers on the Territory of the Russian Federation" was adopted, which contains the procedure for maintaining the register of lawyers for foreign states carrying out advocacy activities in the territory of the Russian Federation.

In Norway, foreign lawyers can obtain permission from the Auditing Board to provide legal assistance in the field of foreign and international law. At the same time, they are required to indicate their professional status and nationality. They may litigate, but since the working language of the courts is Norwegian, the judge has the right to require a foreign lawyer to appear in court with a Norwegian lawyer[13].

A foreign lawyer must present a professional liability insurance policy and must comply with the Norwegian rules of lawyer ethics.

In Azerbaijan, a foreign lawyer can provide legal assistance solely by providing advice and opinions on the application of the laws of the state, a native which the foreigner is, or international legal norms, as well as by submitting interests of the principal at the executive stage proceedings in civil and criminal cases, cases related to economic disputes, administrative offenses, in accordance with international treaties, supported by Azerbaijan.

RESULTS AND DISCUSSION

Giving foreign lawyers the opportunity to engage in professional activities in the Republic of Uzbekistan leads to the following positive results in the provision of legal assistance and legal consulting services:

- 1) Increases the rate of implementation of our national legislation in the field of international law;
- 2) Create a healthy competitive environment between foreign lawyers and our national lawyers in economic and other fields (except criminal cases) and have a positive impact on the future professional development of local lawyers, as well as the quality and effectiveness of legal assistance.
- 3) The establishment of a guaranteed quality legal service will create a legal basis for further attracting foreign investment.
- 4) Local lawyers will have the opportunity to improve their knowledge and skills in the field of international law and participate in the courts of foreign countries in the framework of mutual cooperation (permission) [5,68 p 2].

CONCLUSIONS

In order to fully protect the interests of foreign citizens, foreign legal entities in the civil and economic process, as well as taking into account the experience of foreign countries, it is important to establish the relevant norm regulating the activities of foreign lawyers in the Civil Procedure Code and the Law "On Advocacy".

Of course, it is appropriate to impose some restrictions on the participation of foreign lawyers in court proceedings, such as:

In order to allow foreign lawyers to operate in civil and economic processes, it is expedient to entrust the Chamber of Advocates of the Republic of Uzbekistan with the task of maintaining their register;

Legal assistance may not be provided in matters related to state or official secrets of the Republic of Uzbekistan;

Acting in accordance with international treaties of the Republic of Uzbekistan, registered in the register established on the basis of a license issued by the relevant bar association of his country.

Also, it is advisable to introduce the same practice among the the Commonwealth of Independent States as in the above-mentioned EU countries.

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