



## ISSUES OF IMPROVEMENT OF THE INSTITUTE OF ADVOCACY IN UZBEKISTAN

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### ABSTRACT

This article analyzes the problems of advocacy in Uzbekistan, raising the legal status of lawyers, overcoming existing barriers to their proper functioning, international experience in this area, the situation in our country and the gaps in the legislation. Suggestions and recommendations were made to transform the legal profession into a credible human rights institution, to eliminate problems that hinder the full realization of the rights of lawyers and their quality legal assistance, to further improve existing regulations, to introduce universally recognized international standards, to expand the rights of lawyers, strengthening cooperation with state bodies and officials responsible for criminal proceedings, as well as achieving the effectiveness of defense activities at all stages of the criminal process.

**KEYWORDS:** lawyer, institute of advocacy, inquiry officer, investigator, prosecutor, court, defense counsel, criminal case, suspect, accused, defendant, rights and freedoms, interest, guarantee, human rights, foreign experience, authority, obligation.

The Decree of the President of the Republic of Uzbekistan No. PF-5441 of May 12, 2018 "On measures to radically increase the efficiency of the Bar and expand the independence of lawyers" plays an important role in ensuring human rights. The decree noted that the legal profession has not yet become a credible human rights institution, and that there are a number of factors that prevent lawyers from fully exercising their rights and providing quality legal assistance.

Indeed, it is no exaggeration to say that the position of lawyers in our country is low and in the last place among law enforcement agencies. That is why the interest of young people and lawyers in this profession is low. This profession did not have a worthy place among the specialties that required legal knowledge, both in the pre-independence period and in the years of independence. As a result, the majority of graduates of higher legal education institutions are reluctant to go to work in the legal profession (those who are unable to find work in the prosecutor's office, court, other law enforcement agencies may be unable to do so).





In developed democratic countries, the opposite is true, and in countries such as the United States, France, Germany, and the United Kingdom, advocacy is the most prestigious profession.

It is known that the fact that the position of the prosecutor's office in society is higher than that of the bar is a characteristic of totalitarian states, and in democratic countries, serious efforts are made to balance the rights and obligations of these subjects.

Therefore, based on the experience of developed democracies, in the new Uzbekistan, it is desirable to achieve a balance between the actors performing such functions as prosecution, defense, resolution of the case, and for this purpose to implement reforms aimed at further improving the sector. In the United States, for example, this problem has been completely eliminated by ensuring the independence of the judiciary and increasing its prestige. The growing prestige of the legal profession plays a crucial role in ensuring the constitutional rights and freedoms of the individual in criminal proceedings.

As President Shavkat Mirziyoyev noted, "... it is necessary to raise human rights to a new level by improving the legal profession.

A number of measures have been taken to strengthen the legal status of this system and expand the powers of lawyers. But there are still unresolved issues. For example, the fact that more than 34 million people in Uzbekistan are served by only 4,000 lawyers cannot be overestimated.

Today, 60% of lawyers in the country are over 50 years old. How can it be explained that among them there are less than 70 young people under the age of 30?!

In order to put an end to this tragic situation, we must first increase the prestige and status of lawyers, ensure the independence of the legal profession.

It is necessary to develop a concept for the development of the legal profession in the near future. No office shall interfere with the activities of lawyers.

In the Resolution of the President of the Republic of Uzbekistan dated December 13, 2019 "On additional measures to ensure the rule of law and the rule of law, strengthening public control in this regard and raising legal culture in society," marked approval of the concept of development of the bar in order to further improve the bar and radically enhance the status of lawyers.

In our opinion, the following issues should be identified in this concept:

- Bringing the mechanism of attracting lawyers at the expense of the state by the inquiry officer, investigator, prosecutor and court in line with international standards;
- Improving the guarantees of advocacy;





- Expansion of the rights of a lawyer in the course of his / her professional activity and establishment of additional privileges;
- Improving the principles and organizational forms of advocacy;
- Creating a mechanism to ensure the necessary level of protection by the state in the event of a threat to life and health of a lawyer due to the performance of his professional duties. This norm is set out in Article 8 of the Law of the Republic of Uzbekistan of December 25, 1998 "On guarantees of advocacy and social protection of advocates" (ensuring the protection of advocacy), but there is no enforcement mechanism.

It should be noted that it is important to increase the number of lawyers at the expense of young, educated, highly qualified specialists, depending on the size of the existing population. At present, the average population of Uzbekistan is 8,250, with one lawyer. This figure is 256 in the United States, 260 in Italy, 500 in Germany, 667 in Azerbaijan, 900 in the Netherlands, 1,403 in France and 4,000 in Kazakhstan. In our opinion, it is expedient to have at least one lawyer per 1,000 people in our country.

An example for comparison. It is known that according to the reforms implemented in the last four years to ensure freedom of speech in our country, the number of journalists and bloggers and their activity have increased. As a result, officials of public authorities and administration were initially prevented from committing illegal acts, and then the adoption of illegal departmental documents was sharply reduced. To this day, they have begun to follow the rules of etiquette in their public speeches. The increase in the number of lawyers in the society also gives only a positive effect. This does not require additional funding from the state budget, as the bar is a self-financing institution.

In our opinion, it is necessary to increase the number of lawyers at the expense of young, educated, qualified specialists based on the population of our country. This is, firstly, to prevent officials responsible for criminal proceedings from misconduct, illegal and unreasonable decisions; secondly, to ensure the constitutional rights and freedoms of the individual in criminal proceedings; third, the emergence of healthy competition among lawyers; fourth, contribution to the acceptability of the cost of legal services provided by attorneys and other similar positive developments.

The above considerations require amendments and additions to the legislation on advocacy.

The need and urgency of further reform of the legal profession, the problems that have arisen in the implementation of both laws governing the industry (the Law on Advocacy and the Law on Guarantees of Advocacy and Social Protection of Advocates), the declarative nature of some norms; study, analysis and generalization





of complex changes in the legislation, harmonization of them with international standards in the field of advocacy are the demands of today's era.

In our opinion, it is expedient to combine the laws "On Advocacy" and "On Guarantees of Advocacy activity and Social Protection of Advocates" into a single law "On Advocacy and Advocacy activity". The state, which has already chosen the path of democratic development, must form, protect, improve and support the bar.

Article 116 of the Constitution of the Republic of Uzbekistan states: "The right to qualified legal assistance is guaranteed at any stage of the investigation and court proceedings. Advocacy works to provide legal assistance to citizens, businesses, institutions and organizations.

Article 51 of the CPC stipulates the presence of a defense counsel, in which case the defense counsel is provided by the territorial administration of the Chamber of Advocates of the Republic of Uzbekistan and its payment may not be imposed on the participants in the proceedings.

The fact is that there are problems in the system of hiring a lawyer and remuneration of labor in cases that do not fall into the category of criminal cases specified in Article 51 of the Criminal Procedure Code.

In accordance with the fourth part of Article 50 of the Code of Criminal Procedure, the inquiry officer, investigator, prosecutor or court (judge) has the right to release the suspect, accused in full or in part from the payment for legal assistance. In such cases, the costs of remuneration of a lawyer shall be borne by the state in accordance with the procedure established by the Cabinet of Ministers of the Republic of Uzbekistan.

In accordance with the procedure established by the Cabinet of Ministers of the Republic of Uzbekistan, persons whose gross monthly income per family member does not exceed 52.70% of the minimum wage on the day of the decision (ruling) on exemption from payment for legal aid shall be exempted from payment for legal aid by lawyers and expenses were transferred to the state account.

In January 24, 2020 In his address to the Oliy Majlis, President of the Republic of Uzbekistan Shavkat Mirziyoyev proposed to reduce poverty and develop a program in this regard together with the World Bank, the United Nations Development Program and other international organizations.

As correctly and fairly stated in the adre, the poverty rate in our country is about 10-12 percent. It is a matter of providing legal assistance to such participants in criminal proceedings, especially when they are involved as suspects or defendants. To date, there is no norm in our national legislation that provides for the provision of free legal aid by the state to a socially vulnerable suspect or accused.



In addition, due to the lack of a transparent procedure for the selection of attorneys provided by the state, some investigators have called in attorneys familiar with the case and influenced the accused. For example, in Tashkent, the state allocated more than 7 billion soums to lawyers last year, half of which was given to 20 law firms (there are 746 such companies).

The Minister of Justice of the Republic of Uzbekistan Ruslanbek Davletov said the following about the problems with state-appointed lawyers: "It is true that there are problems with state-appointed lawyers. Because in many cases, the owners of the industry have found their "duty" lawyer, who will call him when the case comes out. That is, if someone needs to appoint a lawyer by the state, he will hire a "duty" lawyer in the prescribed manner, and as a result, the same lawyers will "rotate" in many cases. We offer a single mechanism. We want to make a system that automatically selects lawyers, without human intervention. A list of attorneys is entered into the database, the system itself chooses which attorney to hire, and that attorney is forced to go and serve that person.

The system is designed so that even the strongest lawyers in Uzbekistan have to provide free services to someone. The same is true in America. For example, free service attorneys have been given downloads. There will be cases where strong lawyers fall for poor people in need of legal protection. A lawyer will try to justify and protect this person no matter what for his reputation. We will go through the same procedure. In our opinion, based on Article 116 of the Constitution and the experience of foreign countries (Russia, Ukraine, Moldova, Azerbaijan), taking into account the importance of providing legal assistance to citizens in ensuring human rights and freedoms, it is expedient to adopt the law "On free legal aid". This proposal was supported by 72% of respondents in an electronic survey conducted on social media.

In our opinion, free legal aid should be guaranteed by the state, and should include procedures aimed at ensuring the realization and protection of the rights and legitimate interests of individuals in need.

It is advisable to include persons in need of special protection due to age, sex, disease, disability, social or personal status, especially children, the poor, single mothers with minor children, those who have lost a breadwinner, victims of human trafficking and sexual violence, persons with disabilities, as well as persons without close relatives who are serving sentences in places of deprivation of liberty in persons in need of assistance.

Legitimacy; the priority of human rights and freedoms; free access to free legal aid; impartiality; non-discrimination; adherence to the rules of professional ethics, etc. should be the basic principles of free legal aid.





However, it is expedient to state or add some of the paragraphs referred to in the first part of Article 51 of the CPC (where the defense is required) as follows:

Paragraph 4: in the case of persons suspected or accused of committing crimes punishable by imprisonment for a term of more than ten years or life imprisonment;

Paragraph 7: in cases in which a lawyer participates as a representative of the victim or civil plaintiff;

Paragraph 10: in cases where a measure of detention has been applied to a suspect, accused or defendant;

Article 11: at the request of a low-income (poor) suspect, accused, defendant or convict;

Paragraph 12: if the suspect, accused or defendant is outside the territory of the Republic of Uzbekistan and is unable to appear in the inquiry, investigation body or court.

In addition to the above-mentioned considerations, the following suggestions and recommendations are put forward in order to achieve the effectiveness of the activities of the defense in the investigation of a criminal case:

first, it is necessary to improve the lawyer's cooperation with the inquiry officer or investigator investigating the criminal case in the interests of his client. Effective cooperation contributes to the full protection of the constitutional rights and freedoms of the individual, as well as the release of persons not involved in the crime, as well as the admission of guilt of those who committed the crime and hid from the investigation. In this case, for example, the defense position of the lawyer and the actions of the investigator in solving the crime are balanced. Therefore, such cooperation should be based on mutual respect for the dignity and professional dignity of the parties and the rules of ethics;

secondly, the investigator must allow the detainee, the suspect, the accused and their legal representatives, as well as other persons at their request, to offer defense counsel;

third, it is necessary to strengthen the responsibility for failure to provide information at the request of a lawyer, failure to provide it in a timely manner, or knowingly providing false or misleading information;

fourthly, the person detained (in order to limit the hours of waiting for the persons invited to participate in the investigation and the lawyer) or the person summoned for interrogation and other investigative actions, as well as the lawyer invited to participate in the case arrived at the state body responsible for criminal proceedings it is necessary to introduce an electronic time recording system;



fifthly, it is very important to provide the service rooms set up for lawyers in all state bodies responsible for criminal proceedings with the necessary technical equipment, furniture, normative legal documents and legal literature, as well as to connect them to the Internet.

The introduction of the above-mentioned proposals and recommendations in the legislation and their application in judicial practice will serve to further improve the institution of advocacy in Uzbekistan.

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