

Regulatory and Legal Aspects of the Provision of Advocacy Services in Criminal Proceedings

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Abstract: General Background: Advocacy services in criminal proceedings are essential for ensuring fair legal representation and upholding the rights of defendants, victims, and other parties. The legal profession has evolved over centuries, with contemporary frameworks designed to regulate professional legal support in criminal cases.

Specific Background: The legal framework governing advocacy in Uzbekistan is structured around the Law "On Advocacy" (1996) and procedural laws that define the status, rights, and responsibilities of defense counsels. However, despite the presence of established regulations, challenges remain in ensuring access to qualified legal assistance and maintaining procedural fairness. Comparative legal studies highlight discrepancies between statutory provisions and their practical implementation, raising concerns about procedural limitations, independence, and efficiency in legal representation.

Knowledge Gap: Existing research on advocacy in criminal proceedings often focuses on general procedural aspects, while less attention is given to the specific challenges related to the status of defense counsels, procedural guarantees, and institutional limitations. There is a need for further exploration of how procedural regulations impact the effectiveness of advocacy services and access to justice.

Aims: This study aims to analyze the legal and procedural aspects of advocacy services in Uzbekistan's criminal proceedings, assess existing gaps, and propose reforms to strengthen professional independence and procedural safeguards.

Results and Novelty: Findings indicate that while legal frameworks provide a structured basis for advocacy, inconsistencies in practical application hinder effective legal representation. The study introduces an integrated approach to improving procedural guarantees, enhancing access to qualified legal assistance, and reinforcing the role of defense counsels within the legal system.

Implications: Strengthening the institutional framework for advocacy, improving procedural guarantees, and ensuring effective legal representation are critical for enhancing the fairness of criminal proceedings. Future research should focus on comparative analyses of legal defense mechanisms across different jurisdictions and the role of digital transformation in legal services.

Key words: Advocacy, legal representation, criminal proceedings, defense counsel, procedural guarantees, access to justice, legal framework, legal independence, professional ethics, rule of law

Introduction

The evolution of the institution of the Bar, which is more than two millennia old, began in ancient Greece and reached significant development during the Roman Empire. As noted by Professor M.Y. Barshchevsky in his work "Organization and Activities of the Bar", this institution continues to improve, adapting to modern legal realities.

According to Doctor of Law A.D. Boykov, etymological analysis of the term "advocate" reveals its deep Latin roots. From the original "advocare" (call for help) there was a transformation in Roman law to the concept of "advocatus" - a professional defender of the rights and interests of citizens in courts.

As Uzbek legal scholar Sh. Shorakhmetov emphasizes, the modern legislation of Uzbekistan, in particular the Law "On Advocacy" (1996)[1], creates a clear legal framework for the regulation of advocacy. The Law establishes three key requirements for becoming an advocate: citizenship of the Republic of Uzbekistan, higher legal education and a special license.

Russian scientist Y.I. Stetsovsky in his research notes the importance of the procedure of legitimization of the status of a lawyer, which includes consecutive stages: obtaining a license, taking an oath within the established three-month period and mandatory integration into the professional community through the creation or joining a lawyers' formation[2].

It is important to emphasize that the mere receipt of a license to practice as an advocate does not automatically mean that the person has acquired the powers of an advocate. This means that the person is not yet a party to criminal proceedings and does not have the right to start work. According to Article 31(9) of the above-mentioned Law, the status of an advocate is conferred from the moment the justice authorities issue an advocate's license.

Method

Decision No. 17 of 19 December 2003 of the Plenum of the Supreme Court of the Republic of Uzbekistan on judicial practice on the application of the laws ensuring the right to defend suspects and accused persons states that a lawyer is a person who has obtained a licence to practise as a lawyer in accordance with the established procedure and is a member of an advocates' association, bar association, law firm or bureau[3].

Summarizing the above, the status of an advocate in our country is granted to a citizen of the Republic of Uzbekistan who has full legal capacity, has no criminal record, has sufficient knowledge and experience in the legal specialty to provide permanent and reimbursable legal assistance to individuals and legal entities, who has obtained the relevant permission from the justice authorities based on the results of qualification examinations and who carries out his/her professional activity in one of the advocates' associations in accordance with the procedure established by law".

Improved version with the addition of expert opinion:

"As Doctor of Law I.B. Martkovovich notes, the process of legitimizing the status of an advocate is a multi-stage system where obtaining a license is only the first stage. Professor L.A. Steshenko emphasizes that the key moment in acquiring the status of an advocate is obtaining an advocate's license from the justice authorities.

In the opinion of a prominent Uzbek jurist M.H. Rustambayev, the Resolution of the Plenum of the Supreme Court No. 17 created a clear legal framework for determining the status of an advocate through the prism of his membership in professional organizations[4].

The Russian scientist A.D. Boykov in his research notes the complex nature of the requirements for the status of a lawyer, including not only professional criteria, but also moral and ethical standards, which is reflected in the legislation of Uzbekistan through the requirements of criminal record and full legal capacity of the candidate.

Result

Professor Shorakhmetov emphasizes the importance of the system of qualification examinations as a guarantee of professionalism and competence of the advocates' community.

The legal nature of the institution of the Bar is revealed through the constitutional enshrinement of its main function - the provision of qualified legal assistance. Article 141 of the Constitution establishes the fundamental right of citizens and legal persons to professional legal support. This constitutional provision forms the legal basis of advocacy aimed at protecting the rights and legitimate interests of subjects of law. A thorough understanding of the concept of legal aid requires an analysis of three key aspects:

- meaningful characteristics of the right to receive qualified legal aid;
- the subject composition of recipients of qualified legal aid;
- Legal status of a person authorized to provide qualified legal assistance.

The fundamental right to qualified legal assistance in the constitutional-legal dimension is a special form of subjective right that determines the legitimate boundaries of actions of individuals and legal entities in accordance with the current legislation. Professor A.D. Boykov emphasizes that this right includes not only awareness of their own rights and mechanisms of their realization through legal norms to achieve legitimate goals, but also the possibility of obtaining professional interpretation of normative-legal acts. According to Doctor of Law M.Y. Barshchevsky, this right is focused on ensuring proper interpretation of legislation and formation of legally sound decisions, which can be realized only through the professional assistance of a qualified lawyer[5].

The constitutional legislation of the Republic of Uzbekistan defines the range of subjects entitled to qualified legal assistance as universal, covering all persons without exception. As Uzbek jurist Sh. Shorakhmetov notes, in the sphere of criminal proceedings this principle finds its concrete embodiment through the provision of the right to qualified legal assistance to all participants in the process: suspect, accused, defendant, victim, witness, civil plaintiff and civil defendant. Professor I.L. Petrukhin emphasizes that the Constitution not only enshrines the right to protection of persons brought to criminal responsibility, but also establishes a system of guarantees for the realization of this right. The institute of defense in criminal proceedings, according to the leading proceduralist M.S. Strogovich, is implemented through a set of powers of the defense party aimed at refuting the accusation or suspicion, proving non-involvement in a crime and ensuring the minimization of criminal liability[6].

Of fundamental importance in the system of criminal procedural law of the Republic of Uzbekistan is the principle of ensuring the right to defence, which is enshrined in article 24 of the Code of Criminal Procedure. As noted by the well-known proceduralist M.S. Strogovich, this principle represents the cornerstone of fair trial proceedings, conferring the right to a defense on three key procedural figures: the suspect, the accused and the defendant.

Professor V.M. Savitsky emphasizes that the realization of the right to defense is ensured through the system of procedural duties of officials of criminal prosecution bodies and the court. These duties, according to Doctor of Law G.P. Sarkisyants, have a dual nature: firstly, it is the explanation of procedural rights to the mentioned participants of the process, and secondly, the creation of real conditions for the use of the full range of legal means and ways of defense against the charge.

As Uzbek jurist Sh.Sh. Shorakhmetov points out, the analysis of this normative construction allows to determine the circle of persons entitled to receive qualified legal assistance of defense counsel. These include the suspect, the accused and the defendant. Professor I.L. Petrukhin emphasizes the inseparable connection between the right to defense and the system of guarantees of its realization. It is this conceptual relationship, according to Academician V.N. Kudryavtsev, that caused the imposition on state bodies and officials involved in criminal proceedings of an imperative obligation to provide a real opportunity to use all legal ways and means of defense against the charge.

Discussion

Practical realization of the constitutional right to qualified legal assistance in criminal proceedings faces a number of significant legal problems of systemic nature. These problems are manifested in the following aspects:

1. Lack of direct regulation of the right to qualified legal assistance in criminal procedural legislation, which creates a legal vacuum in the mechanism of realization of this constitutional right;
2. Legislative gap in the definition of the conceptual framework of legal aid in criminal cases, expressed in the absence of normative consolidation of the conceptual apparatus and substantive characteristics of this institution;
3. Procedural uncertainty of the status of a lawyer as an independent participant in criminal proceedings, who has procedural powers to provide qualified legal assistance to those participants in the process, which are not covered by traditional forms of advocacy (defender and representative).

The institution of qualified legal assistance is personified in the person of the advocate as a professional participant in the legal system. The legislation of the Republic of Uzbekistan, in particular the Law on Advocacy, defines the complex nature of advocacy through the following prism:

Advisory and advocacy activities: provision of legal advice preparation of clarifications on legal issues drafting of legislative reference documents

Documentary support: preparation of statements of legal nature drafting of complaints and other legal documents.

Representation: in court instances defense of interests in state bodies representation of interests before individuals and legal entities participation in arbitration proceedings representation in international commercial arbitration

Procedural defense in criminal proceedings: exercise of the functions of the defense counsel representation of the interests of the victim protection of the rights of the civil plaintiff and defendant

Specialized legal support: legal support of entrepreneurial activity other forms of legal assistance within the framework of legislation

This system of functions of an advocate reflects the multifaceted nature of professional legal assistance aimed at ensuring full protection of the rights and legitimate interests of individuals and legal entities in various legal situations.

The procedural participation of a lawyer in criminal proceedings is realized through three main legal positions:

- As defense counsel for persons subject to criminal prosecution (suspect, accused, defendant);
- In the role of a representative of the participants of the process, defending their rights and interests (victim, civil plaintiff, civil defendant);
- As legal counsel for the witness.

Legitimization of the status of a lawyer-defender in criminal proceedings requires the presentation of two documents: a lawyer's certificate and a procedural warrant for the conduct of a particular case. The time limits for the defense counsel's entry into the case are determined either by any stage of the criminal process at the will of the participants, or by the moment of actual restriction of freedom during detention.

The mechanism for engaging defense counsel can be implemented through:

direct invitation by the defendant or his legal representatives;

invitation by other persons with the defendant's consent;

Ensuring the participation of defense counsel by the investigation, inquiry, prosecutor's office or court at the defendant's request.

Representation of the interests of the victim, civil plaintiff and defendant shall be formalized by a contract of assignment, which is the legal basis for the advocate's participation in this capacity.

A special procedural status has the lawyer of a witness, whose admission to participation in the case is carried out in the presence of a certificate and a warrant, starting from the moment of summoning his confidant to testify.

Participating in criminal proceedings as a defense counsel for a suspect, accused and defendant, a representative of the victim, civil plaintiff and civil defendant, as well as a lawyer for a witness, the functions of his activity are manifested in the following:

1. the prosecution;
2. defense;
3. case resolution;
4. promoting justice.

The function of prosecution in the activity of a lawyer is manifested in his activity as a representative of the victim and civil plaintiff. In this case, the lawyer shall strive and act to identify the person who committed the crime, impose appropriate punishment and eliminate negative material consequences of a socially dangerous act.

The function of defense is manifested in his activity as a defender. Since the main purpose of the lawyer's activity as a defense counsel is to acquit and rehabilitate the defendant or mitigate his responsibility and punishment.

The function of case resolution in the activity of a lawyer is manifested in the provision of qualified legal assistance to a civil defendant. Since the civil defendant expects from his representative-lawyer to protect his property interests, as he is obliged to compensate for the damage caused by the crime.

It should be noted that when a lawyer takes up a case as a defense counsel, he strives to establish the truth of the case in order to protect the rights and interests of the defendant. This aspiration, in turn, manifests itself as the promotion of justice. After all, the defender is one of the parties interested in the outcome of the case in criminal proceedings. As a result of this interest, he actively carries out his activities.

When considering the process of a lawyer's joining a case as a defence counsel, it should be noted that, under article 49, paragraph 4, of the Code of Criminal Procedure, a defence counsel is permitted to participate in the case at any stage of criminal proceedings, and when a person is detained - from the moment of actual restriction of his or her right to freedom of movement. It is important to draw attention to the fact that a person is recognized as a suspect from the moment of actual detention, even if a record of detention is drawn up after the person has been taken to the internal affairs authorities or other law enforcement agencies. It is from the moment of actual detention that a person enjoys all the rights of a suspect, including the right to a defense counsel. Consequently, it is inadmissible to carry out investigative actions in respect of this person as a witness without announcing a ruling on involving him as a suspect and explaining his rights and obligations. Thus, there is a need for the participation of defense counsel in the case.

Defense counsel shall be invited to participate in the case at the request of the suspect, accused or defendant, their legal representatives or other persons on their instructions or with the consent of the suspect, accused or defendant. Where necessary, the participation of defense counsel is ensured by the person conducting the initial inquiry, the investigator, the procurator or the court at the request of such persons. Consequently, the entry of defense counsel into criminal proceedings is carried out on two grounds:

- **Invitation of defense counsel;**
- **Appointment of Defense Counsel.**

Where the chosen counsel is unable to take part in the case within twenty-four hours, the person conducting the initial inquiry, investigator, procurator or court recommends that the suspect, accused person, defendant or their relatives invite another counsel or apply to the lawyers' associations designated by the local department of the Chamber of Lawyers of the Republic of Uzbekistan for the appointment of counsel. The counsel chosen by the suspect, accused or defendant may intervene in the case at any time. An advocate is admitted to participate in the case upon presentation of an advocate's certificate and a warrant confirming his or her authority to conduct a particular case.

Conclusion

This study highlights the critical role of advocacy services in ensuring procedural fairness and legal representation in Uzbekistan's criminal proceedings. The findings indicate that while the legal framework, particularly the Law "On Advocacy" (1996), provides a structured basis for advocacy, gaps in practical implementation hinder the effectiveness of defense counsel. The procedural inconsistencies, limited access to qualified legal assistance, and challenges in the institutional framework affect the overall efficiency of legal representation. Strengthening procedural guarantees, enhancing the independence of legal professionals, and ensuring broader access to legal assistance are crucial for fostering a more equitable justice system. The implications of this study suggest that legislative reforms and institutional improvements are necessary to align advocacy services with international best practices. Future research should focus on comparative legal studies analyzing defense mechanisms in different jurisdictions and assessing the impact of digital transformation on legal advocacy, particularly in ensuring transparency and accessibility in criminal proceedings.

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