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ISSUES OF IMPROVEMENT OF THE INSTITUTION OF ADVOCACY IN CRIMINAL PROCEEDINGS

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Abstract: In this article, suggestions were made regarding the issues of improving the legal profession, providing legal services by lawyers, and adding a new clause to the points where the participation of a lawyer is mandatory. It was also recommended that we move to the digitization of criminal proceedings at every stage, and that lawyers in our country continuously expand the use of electronic technologies in their activities. Also, the experience of some foreign countries was studied and many discussions were held. Recommendations were also made regarding the development of new legal bases of electronic criminal proceedings.

Keywords: lawyer, defender, judicial reform, investigator, judge, personal law, intellectual, defendant, video conference, legal service, proof, scientific and technical means, evidence, collection, examination, evaluation, crime, proceedings, software, administrative, economic, civil.

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Introduction

In recent years, significant efforts have been made to strengthen the role and importance of the legal profession, which is one of the effective institutions for ensuring the protection of the rights, freedoms and legal interests of individuals and legal entities, as an important component of judicial reforms in our country. 2.6 of the Action Strategy on five priority areas of development of the Republic of Uzbekistan in 2017-2021. improvement of the legal aid and service system in paragraph: improving the effectiveness of the legal service of state authorities and administrative bodies; the issues of development of the advocacy institute, expansion of the powers of the lawyer in the consideration of criminal, civil, administrative and economic cases were discussed.

In particular, the Decree of the President of the Republic of Uzbekistan dated May 12, 2018 No. PF-5441 was adopted. In this Decree, measures aimed at organizing the proper functioning of the principle of dispute between the parties at all stages of court proceedings were consistently implemented, and the necessary legal framework was created for lawyers to perform their professional activities. In our country, special attention is paid to the improvement of the effectiveness of the bar institute, the improvement of the self-management body of lawyers and advocacy structures, and systematic measures are being implemented to create the necessary constitutional space and legislative framework for the stable and effective operation of the bar. The main goals and objectives of the laws on the legal profession adopted in our country are to establish a strong legal profession that fully meets the requirements of modern social development, to support lawyers in ensuring the rule of law in the administration of justice, to protect them from various pressures, to improve the social protection and material support of lawyers and incentives, ensuring that lawyers strictly adhere to professional ethics, etc. A new, separate chapter entitled "Advocacy"

was added to the new version of the Constitution of the Republic of Uzbekistan. In the "Uzbekistan-2030" strategy, the 88th goal was set to transfer the bar institute to a self-management system and ensure its true independence from state bodies and other structures.

At the same time, "...the fact that we have a lot of tasks ahead of us to strengthen the advocacy institute" is defined as one of the priority tasks of improving the judicial network, which indicates the need for comprehensive improvement of this field. Law of the Republic of Uzbekistan No. 349-I of December 27, 1996 "On Advocacy", No. 721-I of December 25, 1998 "On Guarantees of Advocacy and Social Protection of Lawyers", dated June 16, 2023 Law No. 848 "On providing legal aid at the expense of the state", Presidential Decree of the Republic of Uzbekistan dated May 1, 2008 No. PF-3993 "On measures to further reform the legal profession in the Republic of Uzbekistan", dated May 12, 2018 No. -5441 "On measures to fundamentally increase the efficiency of the Bar Institute and expand the independence of lawyers", dated May 12, 2018 No. PF-6012 "On approval of the National Strategy of the Republic of Uzbekistan on Human Rights", dated May 28, 2022 Decree No. PF-60 of January "On the Development Strategy of New Uzbekistan for 2022-2026", Decree No. PF-158 of September 11, 2023 "On the Strategy of Uzbekistan - 2030", Decree of the Cabinet of Ministers of the Republic of Uzbekistan dated September 27, 2008 A lot of work is being carried out in connection with the decisions No. 112 of May "On the organization of the activities of the Chamber of Advocates of the Republic of Uzbekistan", No. 432 of August 5, 2022 "On the approval of the regulation on the procedure for licensing the legal profession through a special electronic system".

Also, the special rapporteur of the UN Human Rights Council on the independence of judges and lawyers will be in Uzbekistan on an official visit on September 19-25, 2019. to achieve and ensure that judges, prosecutors and lawyers carry out their professional activities without any unreasonable interference and pressure, and emphasized that it is necessary to strengthen the status of lawyers, as well as their independence. As a logical continuation of judicial reforms, it can be said that a lot of work has been done in this regard. Also, during the conduct of criminal cases, requests sent by lawyers to various organizations for the effective protection of the rights and interests of individuals and legal entities are often ignored, first of all, by officials of state bodies, the exact order and terms of consideration of a lawyer's request, knowingly false or incorrect. responsibility for providing information was determined. It is ensured that lawyers meet with their clients in special rooms without audio and video monitoring devices and without the presence of outsiders on time and without any obstacles.

In order to carry out his professional activities, a lawyer has the right to bring a computer, mobile and other means of communication to the courthouse without hindrance, except for closed court sessions. It is considered that the use of the mentioned devices inside the court building should not violate the order of the court proceedings. Requests by lawyers to obtain references, descriptions and other documents or their copies from state and other bodies and enterprises, institutions and organizations, necessary for providing qualified legal assistance, must be completed within fifteen days from the moment of receipt of the request, state secret or law except for information containing other secrets protected by The Constitution of the Republic of Uzbekistan enshrines basic rights and freedoms of citizens. According to their classification, they are divided into personal rights and freedoms, socio-economic and political rights. A person's right to protection is one of his personal rights and freedoms. Article 28 of the Constitution of the Republic of Uzbekistan states that "every person accused of committing a crime shall not be considered guilty until the case of each person accused of committing a crime is considered in a court of law in a public manner and his guilt is

determined." All conditions for self-defense will be provided to the person accused in the court. On the basis of this article of the Constitution, everyone's right to protection is guaranteed. According to the rule, this right of a person is exercised through lawyers, a lawyer provides qualified legal assistance on any legal issues, participates in criminal and civil, economic and administrative cases and protects the interests of those who turn to them. It should be noted that failure to provide protection to the suspect, the accused and the defendant is the basis for annulment and change of sentence in criminal cases. When certain persons cannot pay for legal services, the provision of such assistance by the state for free is one of the constitutional guarantees of their right to protection. "In our legislation, all the foundations are being created for lawyers to work effectively. But, unfortunately, the bar has not yet become an institution of reliable protection of citizens' rights.

For this reason, we need to take additional measures to further increase the role and role of the legal profession in the field of justice and law, and to expand its powers." At the same time, as the analysis shows, the Bar Association has not yet become a human rights protection institution, there are a number of factors that prevent the full realization of the rights of lawyers and the provision of quality legal assistance by them. As President Sh.M. Mirziyoev noted, it is known to everyone that it is necessary to expand the activities of lawyers in providing legal services. In particular, it is necessary to strengthen such services in areas such as assisting entrepreneurs in issuing permission documents, representing them in state bodies, resolving disputes before the court, providing legal services on labor rights, increasing legal literacy. Because currently, reforming the legal system, strengthening its position in society, and expanding the powers of lawyers are one of the priority tasks. The main powers of the defense attorney are defined in the Criminal Code of the Republic of Uzbekistan, and they are to provide legal assistance to a person suspected or accused of committing a crime, to protect his rights and legal interests, to ensure that legality is observed in the investigation and preliminary investigation, and in the administration of justice. In his activities, the defender must comply with the legal documents, including the laws "On Advocacy" and "On Guarantees of Advocacy and Social Protection of Lawyers", the independence of the lawyer, professional ethics, the secrecy and oath of the lawyer, methods not prohibited by the law. and should be based on the principles of using tools. As a defender, the suspect, the accused, the defendant chooses the lawyer himself or he can entrust the choice of the lawyer to his close relatives, legal representatives, as well as trusted people. After the contract is signed by the lawyer and the person in need of the defense chosen by him or his representative, the lawyer presents the warrant to the investigator, investigator or the court stating that he has the authority to conduct a specific criminal case and shows the lawyer's certificate.

Methods

The statement employs a descriptive and analytical method, focusing on the development and challenges of the legal profession and advocacy in Uzbekistan. It describes the legislative and institutional reforms aimed at enhancing the role of lawyers, improving the effectiveness of legal services, and ensuring the independence of the legal profession. The statement also highlights various laws and decrees implemented to strengthen the legal profession's role in protecting individual rights, the reforms introduced in criminal procedures, and the use of digital technologies in the judicial system. Additionally, it compares international practices and provides recommendations for further improvement of the legal framework and professional conduct of lawyers in Uzbekistan, emphasizing the need for expanding the legal profession’s role in justice and law.

Result and Discussion

From this moment on, the lawyer participates as a defense attorney in the case. If there are legal reasons preventing a certain lawyer from participating as a defense attorney, the investigator and the judge are obliged to state the reasons clearly and in detail in their decision (judgment) to refuse permission. The suspect, the accused, the defendant, as well as the defender have the right to appeal to the prosecutor against the decision of the investigator, and to the higher court against the decision of the court. It is not prohibited by law for one suspect, accused or defendant to have several defense attorneys. One defender may take several persons under his protection, but in this case, the interests of the defendants must be compatible with each other, that is, they must not conflict with each other. As soon as the defense attorney participating in the case knows that the interests of those under his protection are in conflict with each other, he should apply to the investigator or the court, asking him to withdraw from the defense of one of them. The defense attorney can continue his activity at all stages from the beginning to the end of the criminal case. It depends on the will of the protected person. According to the introduced changes, now the process of the suspect, accused or defendant's refusal to defend himself must be recorded by video recording. Also, the procedural actions of arresting a person, personal search and seizure during the process of arresting a person will now be required to be recorded by video recording. In addition, it was established that the person's relatives should be immediately informed about the procedural coercive measure applied to the person and the place where the person is detained. And the defender does not have the right to stop the defense he is conducting and divert the case from himself. After familiarizing himself with the content of the criminal case, the defender must explain his rights and obligations to the person under his protection in detail, taking into account the essence of the case, and inform the protected person about the direction, method and means of defense, and mutually agree. The defender must openly express his opinion to the person giving confidence and choose the most suitable defense method with him. In this case, the defender cannot deviate from the path of the person under his protection. The protected person can tell about the advice and opinion under protection to a trusted person and discuss with him. The defender, on the other hand, must keep confidential the information given to him by the person under protection. Questioning of the defense as a witness about this is prohibited under the Criminal Procedure Code. When the defender finds out that there is a reason that prevents him from participating in this case, he must apply to the investigator, investigator, prosecutor or judge with a request for his refusal according to Article 79 of the Criminal Code.

A lawyer shall be liable for actions such as preventing a person under suspicion, the accused, the defendant from taking his protection, threatening him, his family members, relatives, acquaintances, property, using force, and intimidation. The defense attorney enjoys equal rights with the prosecutor in conducting criminal cases and conducts equal activities in accordance with the principle of dispute. At the same time, the destruction of evidence, falsification, persuasion of witnesses and other illegal attempts to determine the truth, preventing the proper conduct of the case, are brought to appropriate responsibility. In the JPK of the Republic of Uzbekistan, the cases in which the participation of the defender must be determined. Some investigators believe that the law's requirement for the presence of a defense attorney can be implemented only by appointing a defense attorney against the accused, and do not explain to the accused his important procedural right to choose a defense attorney. Sometimes this explanation to the accused and his legal representative is merely a formality and premature, which in practice deprives the accused of the opportunity to choose a defense attorney at his own discretion. It is expedient to specify in the law the mandatory participation of the defender even in cases where the lawyer is present. In addition, even though it is

a bitter truth, it is necessary to mention that in our society there are still people who cannot write their first and last names correctly, cannot read, and have insufficient literacy. If we take into account that the materials of the criminal case are mainly recorded in writing, it is urgent to eliminate this technical deficiency in protecting their interests. It is known that such (insufficient literacy) persons cannot be included in the list of persons who are required to be provided with a defender by law. Because "illiteracy" cannot be considered a physical or mental deficiency. For this reason, it would be appropriate to include in the law the norm that "persons with insufficient literacy and low intellectual level must be represented by a lawyer in criminal cases." Also, they believe that in the case of minors, the participation of their legal representatives in the court is limited, and in this case, it is not necessary to involve a defense attorney. However, the Supreme Court of the Republic of Uzbekistan has repeatedly pointed out that this requirement of the law, which guarantees the right of a minor to protection, cannot be approached with mere formality. In practice, there is mainly a debate about the age of transition. Because sometimes the persons who committed crimes when they were minors become adults during the preliminary investigation or trial. Some investigators and judges approach this issue with formality, according to the Supreme Court of the Republic of Uzbekistan, "committing a crime committed by minors, taking into account the nature of the crime, the circumstances of the case, and the identity of the accused, against a person who committed a crime before reaching the age of majority, but who became an adult during the trial period" they ignore the explanation that, based on the requirements of the law regarding the committed crimes, the participation of the defender may be considered mandatory. It is known that in the presence of mental or physical defects, it is necessary to provide the accused with a defense attorney. Of course, defects such as deafness, blindness, and muteness are not a reason for discussion in this regard. However, at the same time, if the defendants may have physical and mental defects of a hidden nature that are not obvious to the eye, a forensic medical or forensic psychiatric examination should be conducted in case the parents or relatives of the defendant apply about it. The results of this examination make it possible to solve this issue correctly. What should be done when it is found that the accused has physical and mental defects after he has been charged and certain actions have been taken? In our opinion, the investigator should immediately involve the defense counsel, interrogate him and carry out the investigative actions requested by the defense counsel and the accused. "The following issue is also important: if the public prosecutor, not the public prosecutor, is participating in the case, can the court consider the case without involving a defense attorney?" The answer to this question comes from the content of the law, which means that the law denies it. After all, the prosecutor of the team also fulfills the function of the prosecution in the full sense, and the absence of a defense attorney in such a case would have had a negative impact on the implementation of the right of defense of the accused." Expanding the range of cases in which the presence of a defense attorney is mandatory in criminal proceedings is an additional guarantee of the defendant's right to defense. In addition, it is known that offering a lawyer at the expense of the state means that the state will pay for the legal assistance provided by the lawyer only in cases where the participation of a lawyer is required in criminal cases according to the grounds specified in Article 50 of the Criminal Code of the Republic of Uzbekistan. In addition, inviting a lawyer, a defender, is carried out by the suspect, the accused, the defendant, their legal representatives, as well as other persons with the request or consent of the suspect, the accused, the defendant. At the request of the suspect, the accused, the defendant, the investigator , the prosecutor or the court ensures the participation of the defender in the case. In cases where the selected defender is not able to participate in the case within twenty-four hours, the investigator, investigator, prosecutor or the court recommends to the suspect, the accused, the defendant or their

relatives to offer another defender or to apply to the lawyer's office, panel or firm with a request to appoint a defender. In particular, it is not allowed to replace the defense counsel who participated in the preliminary investigation with another lawyer, if the defendant does not agree. During the conduct of procedural actions, the suspect, the accused, the defendant may not take into account the oral or written receipt of the waiver of the defense counsel due to the absence of the defense counsel. Waiver of the defense counsel in such a case has legal force only if it is given in the presence of another lawyer, if there is a real possibility that he will participate in the case. It should be noted that in order to protect his legal rights and interests during investigation, preliminary investigation and court proceedings, after concluding an agreement with a lawyer on providing legal assistance, he has the right to independently waive a lawyer or hire other lawyers at any time. , but persons who have signed a contract with a lawyer to protect the rights of others do not have such a right.

The reason is that such persons have signed a contract with a lawyer to protect their close relative, friend or acquaintance, the defender directly protects the legal rights and interests of the suspect, accused, defendant in a criminal case, and therefore, giving up or replacing the defender or other defenders should be engaged only with their consent. "In his professional activity, a lawyer must comply with the requirements of current legal documents, the rules of professional ethics of a lawyer, the lawyer's oath, and use the means and methods provided for by law to protect the rights and legal interests of individuals and legal entities who turn to him for legal assistance." The interests of the person who is providing legal assistance in a specific case or who previously provided legal assistance conflict with the interests of the person who applied for the conduct of the case, or he is a judge, prosecutor, investigator, investigator, public prosecutor, court clerk, expert, expert, victim, civil plaintiff, in cases where the representative of the civil defendant participated as a witness, impartial, translator, as well as in the preliminary investigation of the case or in the court, an official who is a relative of the lawyer participated or is participating, as well as if the lawyer directly or indirectly has a personal interest in this case, and this is a matter of confidence to him does not have the right to accept an order to provide legal assistance if it conflicts with the interests of the person (the person under protection). A lawyer has no right to use his powers to the detriment of the person who has received the task of protecting the interests of the person and to refuse to protect the suspect, the accused, the defendant, unless the person who trusts him has an objection. A lawyer must constantly improve his knowledge, improve his professional qualifications at least once in three years in accordance with the procedure established by the Chamber of Advocates. A lawyer appointed to participate in a criminal case does not have the right to refuse to provide legal assistance to a citizen on the grounds of his inability to pay.

According to the third part of Article 51 of the Code of Criminal Procedure of the Republic of Uzbekistan, "If in the cases specified in this article, at the request of the suspect, accused or defendant, or with their consent, a defense attorney was not offered by other persons, the regional office of the Chamber of Advocates of the Republic of Uzbekistan In accordance with the decision of the investigator, the investigator, the prosecutor on the appointment of a defense attorney or the ruling of the court, the head of the determined advocacy structure must ensure the participation of a defense attorney in the criminal case no later than four hours after the decision or ruling is received by the regional office of the Chamber of Advocates of the Republic of Uzbekistan. The right to provide protection to the accused is a constitutional principle, which is enshrined in Article 27 of the Constitution of the Republic of Uzbekistan. The accused is given a number of procedural rights to exercise his constitutional right. Using these rights, the suspect or the accused organizes certain procedural actions and relations in defense of his rights and legal interests in order to completely or

partially deny the accusation against him. Providing legal assistance to the accused in criminal proceedings is valid regardless of the involvement of other persons. Secondly, protection carried out by specially engaged persons, that is, defenders. Thirdly, preliminary investigation, investigation, prosecution, and defense by the court. Bar electronic document exchange is well established. Looking at the experience of some foreign countries, the German Criminal Procedure Code today contains the most important rules and regulations on the use of digital technologies in criminal proceedings. These norms are developed in the legislation of the federal states. From January 1, 2018, any person can apply to the police, prosecutor's office, court in the form of an electronic document. At the same time, until January 1, 2026, the requirement for all paper documents to be mandatory in the criminal case materials remained. In particular, in Germany, measures are being taken to develop the service of reporting crimes to the police via the Internet, to expand the powers of the investigating judge, and to improve the audio recording systems of court sessions. Also, the issues of creating a DNA bank of persons facing criminal responsibility, improving electronic communication systems between courts, prosecutor's office and police bodies at the national and international level, and improving the possibilities of electronic consultation and court translation are being discussed. In US practice, video conferencing is of particular importance in the investigation of crimes with the participation of a lawyer and at the trial stage. Initially, videoconferencing was implemented in criminal court cases in the United States, and now it is used at all stages of criminal proceedings. The current state and operation of the electronic document circulation system allows the persons involved in the case to use official documents (official record) for proof in accordance with Rule 27 of the Federal Criminal Procedure Rules. This rule of criminal procedure contains a reference to Rule 44 of the Federal Rules of Civil Procedure, which provides uniform methods for the collection of official documents as evidence. In the United States, the procedures for proving the use of digital evidence in a criminal case are detailed in the Attorneys' Guide to the Search and Collection of Electronic Evidence. In Scotland, it is planned that a lawyer will completely abandon the paper format and use a digital evidence storage system when collecting evidence of a criminal case. In Germany, the organization and activities of the legal profession are regulated by special legal documents, the Federal Law "On Advocacy" adopted on August 1, 1959 and the 1957 It is regulated by the Federal regulation "On payment of fees for the services of lawyers" adopted on July 26. A lawyer can practice law only in the court to which he is attached. In exceptional cases, only in the interest of justice, a lawyer may be allowed to work in other courts. A lawyer admitted to practice at the Federal Supreme Court of Germany is not, without exception, admitted to practice at any lower court. In Germany, there is also a practice of providing free services to citizens by lawyers, the fee for this service is paid from the federal budget. A lot of opinions and discussions, proposals and recommendations appear on the experience of foreign countries. It is important to study the positive and negative experiences of other countries.

Conclusion

Therefore, it is necessary to move to the digitization of criminal proceedings, in particular, at each stage, and to constantly expand the use of electronic technologies by lawyers in our country. Therefore, we believe that it is necessary to develop new legal bases of electronic criminal proceedings. Turning to the defense's collection of evidence, collection and presentation of evidence in accordance with the second part of Article 87 of the Criminal Code; to get familiar with the documents related to the procedural actions conducted with the suspect or the accused, after the completion of the inquiry or preliminary investigation, to get acquainted with all the materials of the criminal case and to record the necessary information from them, to take copies of the materials and

documents with the help of technical means at one's own expense, or to provide the information indicated in them in another form record; if it is necessary for the implementation of protection, to get acquainted with information containing state secrets, commercial secrets or other secrets in the manner provided by law; when the court conducts a preliminary hearing on the case and participates in the trial as a party; filing complaints against the actions and decisions of the investigator, investigator, prosecutor and the court; get acquainted with the minutes of the court session and express their opinions about it; to find out about the complaints, protests presented in the case and to express objections to them; has the right to participate in the sessions of the court of appeal, cassation instance. In our opinion, after giving suggestions and recommendations for improvement of the national legislation, it is recommended to supplement Article 53, Part 1 of the Criminal Procedure Code with the following norm: "The lawyer has the right to use photo, video and audio recording tools when gathering evidence."

Having developed a separate norm on the use of scientific and technical tools in the process of proof, the scientific and technical tools used for the collection, verification, and evaluation of evidence in the process of proof are specially produced, adapted, general technical tools together with software for the collection and evaluation of evidence in criminal proceedings. Prior to the investigation of the case, the official conducting the investigation, inquiry and preliminary investigation may use scientific and technical tools by the expert and specialist in the process of gathering, checking and evaluating evidence, on his own initiative or at the request of the defender, in accordance with the procedure provided for in this Code. We believe that it should be included that an expert can be involved to facilitate the use of scientific and technical means. The use of scientific and technical means during the investigation is recorded in the report of the relevant procedural and investigative actions and in the minutes of the court session. To sum up, the widespread use of information and communication technologies by lawyers can be used to organize the lawyer's e-mail - the necessary amount of acquaintance with the materials of the criminal case of the participants of the investigation; that is, sending applications, complaints, petitions to the investigator, prosecutor, court and later informing about the results of their consideration; - IP-telephony - to receive question-and-answer and expert advice from the investigator on the examination conducted to the expert; can be used to secure the right of a suspect or accused to use the services of a defense counsel. It is permissible to expand the circulation of electronic documents between law enforcement bodies within the framework of a single electronic system for managing cases in electronic format, and at the same time, it is permissible to provide lawyers with the opportunity to present evidence in electronic format. For this, an electronic passport (e-ID) can be used for authentication.

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