



# CHALLENGES AND OPPORTUNITIES IN ENHANCING THE LEGAL STATUS OF DEFENSE LAWYERS: PROMOTING ACCESS TO JUSTICE AND RIGHTS PROTECTION

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<p><b>Received:</b> December 10<sup>th</sup> 2023 <b>Accepted:</b> January 7<sup>th</sup> 2024 <b>Published:</b> February 14<sup>th</sup> 2024</p>	<p>The present scientific article examines issues related to assessing the state of legality and legal culture in the context of protecting individual rights and the development of the legal aid institution in the country. Special attention is given to the importance of providing the population with effective and qualified legal support, enabling citizens to actively and successfully defend their rights and lawful interests. Particular emphasis is placed on the role of the lawyer in criminal proceedings, where they may act on the side of defense or represent the interests of third parties. The authors underscore the invaluable significance of the lawyer's activities, as they are capable of ensuring justice for both the accused and victims through defense and representation in legal proceedings. The article is grounded in a regulatory framework, including Article 141 of the Constitution of the Republic of Uzbekistan, dedicated to the legal profession. The authors highlight the role of the state as a guarantor of the right of every individual to receive qualified legal assistance, providing lawyers with conditions for unhindered and confidential interaction with their clients.</p>
<p><b>Keywords:</b> legality, legal culture, protection of individual rights, legal aid institution, judicial defense, guarantees of fair justice, adversarial principle, equality, professional legal assistance, criminal proceedings, attorneys, representation, protection of the principal's interests, state guarantees, confidentiality of interaction</p>	

One of the indicators of the state of the rule of law in the country and the law enforcement culture in general is the protection of individual rights at the proper level, as well as the level of development of the institution of legal assistance provided to the population, which allows the parties to legal relations to actively and skillfully defend their rights and interests protected by law. The guarantees of fair justice, namely, ensuring everyone the right to protect their rights and interests, compliance with the principle of competition and equality, are far from being fully ensured, which creates the need to organize professional legal assistance to the population for the purpose of judicial protection of the rights and legally protected interests of citizens, as well as preventing arbitrariness on the part of officials who abuse their powers and violate the state-guaranteed rights of participants in the process.

One of the forms of provision of qualified legal assistance by lawyers is the representation or protection of the interests of the client in criminal proceedings. In criminal proceedings, a lawyer can act on the side of the defense, the prosecution, as well as third parties - witnesses and civil plaintiffs.

The role of a lawyer in a criminal trial cannot be overestimated, because it is a lawyer, in the role of a

defense attorney, who can help the accused protect his inalienable rights, and in the role of a representative of the victim, achieve a fair punishment for the criminal.

Based on Article 141 of the Constitution of the Republic of Uzbekistan, the legal profession operates to provide professional legal assistance to individuals and legal entities[1]. The state acts as a guarantor of providing each person with the right to receive qualified legal assistance, since the lawyer in the role of defense attorney is provided with conditions for an unhindered and confidential meeting and consultation with his client.

The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems state that "legal aid is an essential element of a fair, humane and effective criminal justice system based on the rule of law" and that "it is the basis for the enjoyment of other rights, including the right to a fair trial, as a precondition for the exercise of such rights and an important guarantee to ensure fundamental fairness and public confidence in the criminal justice process." [2]

The reforms carried out in the field of advocacy served to establish equality between the prosecutor and lawyer in criminal proceedings and ensured their competitiveness with each other at all stages of legal



proceedings[3]. However, despite the constant process of reforms and the multidimensionality of the constitutional guarantee provided to everyone, today in scientific circles there is still an assertion that the status of a lawyer in criminal proceedings needs to be further improved and the continuation of the process of initiated reforms to be fully brought into line with the stated guarantees and norms of international law not only at the regulatory level, but also in practice. The role of a lawyer in criminal proceedings is permeated with the protection of those involved in this process, when he acts as a defender of his client. Despite the fact that a lawyer can occupy the following four roles in a criminal trial - the defender of the accused/defendant, the representative of the victim, the representative of the civil plaintiff and the lawyer of the witness, nevertheless, in the understanding of society, a lawyer in a criminal trial is associated with a defender of someone's rights and interests.

The defense attorney must ensure strict compliance with all procedural rules, which makes it possible, from the moment of arrest, to guarantee the observance of the rights of the client and the prevention of violations of the law against him [4]. In addition, a lawyer in the role of defense attorney must always adhere to attorney-client privilege. The reason for this may be that attorney-client privilege for the defense attorney and the accused is a necessity for a fair decision-making by the court. Attorney-client privilege is absolutely necessary to ensure fairness in legal proceedings.

The defense attorney is allowed to participate in the case at any stage of the criminal process, and when a person is detained - from the moment of actual restriction of his right to freedom of movement [5]. This requirement stems not only from national legislation, but from international standards. According to the Miranda Rules "Miranda warning", which protect the rights of suspects and accused in criminal proceedings, any detainee must be explained and ensured the right to defense by a lawyer.

Also, the national legislation of Uzbekistan ensures the protection of the rights and freedoms of all participants in criminal proceedings, including witnesses. The law, along with defining the rules for providing detainees and convicted persons with professional legal assistance, introduced the institution of a "witness lawyer"[6].

Lawyer I.A. Nasonova believes that the task of defense in criminal proceedings is to defend the rights, freedoms and legitimate interests of those participating in criminal proceedings and other interested parties [7]. The

fundamental principles of the criminal process - ensuring the suspect, accused and defendant the right to defense and adversarial proceedings in court - are another confirmation that it is the defense attorney who completes the "triangle of participants in the process" - prosecution, defense and court. Consequently, other forms of participation of a lawyer in criminal proceedings are expressed in the form of representation and do not constitute defense.

On this issue, the closest to us is the view of legal expert V.A. Vladimirov, who believes that since in criminal proceedings the defense opposes criminal prosecution, and the function of implementing it in the interests of the suspect (accused, defendant) is performed by the defense attorney, other ways of defending the rights and interests other persons cannot be considered protection, and along with protection, the concept of "representation" has been formed in law, which has its own content [8].

One cannot underestimate the importance of the participation of a lawyer during the pre-investigation check, which consists of ensuring the rights of the applicant or potential suspect and monitoring the conduct of all actions in accordance with procedural norms. There are differences across countries and jurisdictions in how the criminal process is structured and what rights are afforded to suspects, accused persons and their defense attorneys at various stages. In some systems, lawyers are given the right to participate in pre-investigation proceedings, while in others this opportunity may be limited. In general, the participation of a lawyer in the pre-investigation examination is considered one of the key elements to ensure a fair process. This gives suspects or accused persons the right to legal representation at the early stages of the criminal process and helps protect their rights.

The principles of human rights and fair trial, enshrined in various international documents, generally emphasize the importance of the participation of a lawyer at all stages of the criminal process, including pre-investigation. Please note that on the basis of Article 87 of the Criminal Procedure Code of the Republic of Uzbekistan, the defense attorney has the right to collect and present evidence in a criminal case, which is subject to inclusion in the materials of the criminal case, as well as mandatory assessment during the pre-investigation check, inquiry, preliminary investigation and consideration of the criminal case. cases in court. This evidence may be collected by: interviewing persons with relevant information and obtaining written explanations with their consent; sending requests and receiving certificates, characteristics, explanations and other



documents from government and other bodies, as well as enterprises, institutions and organizations [9].

Lawyers note that it is considered appropriate to allow a lawyer, in order to collect evidence and provide defense, to carry out procedural actions such as inspection, personal search and seizure, appointment of an examination, and audits to be carried out in the presence of a lawyer. Therefore, the intention is to allow lawyers to conduct their own investigation. In this regard, one should remember the requirement of the criminal process, which implies that the inquiry officer, investigator or court has the opportunity to obtain evidence through a series of investigative actions - search, seizure. Any evidence collected in violation of the requirements of criminal procedure legislation will be considered inadmissible. In addition, scientists A. Davletov, L. Yusupova note that "the defense attorney is not at all the subject of collecting evidence, since due to the public investigative nature of our criminal proceedings, this right falls within the exclusive competence of state authorities" [10]. Based on this, we can say that a lawyer, when providing legal assistance to his client in criminal proceedings, is obliged to comply with the requirements of criminal procedural legislation and the requirements of attorney-client privilege, among other things. The lawyer ensures that the entire process complies with the procedural rules established by law. It protects the rights of the accused at every stage of the criminal process, such as the right to defense, integrity and the right to a fair trial.

Thus, from the above we can conclude that despite the wide discussion and scale of the problem of the participation of a defense attorney in criminal proceedings, today there are still quite a lot of gaps that are factors hindering the development of this industry. Guarantees of a lawyer's participation ensure the defendant's fundamental right to defense. The presence of a qualified attorney can balance the relationship between the parties and ensure a fairer trial. The participation of a lawyer helps prevent arbitrary actions on the part of law enforcement agencies. A lawyer can monitor compliance with procedural rules and ensure that the defendant is not subject to undue pressure or violation of his rights. Guarantees of lawyer participation help create equal opportunities for the defense and prosecution. This promotes a more balanced and fair judicial process. Thus, guarantees for the participation of a lawyer in criminal proceedings contribute not only to the protection of the rights of defendants, but also ensure the integrity and fairness of the judicial system as a whole.

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