



THE CONSTITUTIONAL AND LEGAL FOUNDATIONS OF THE INSTITUTION OF ADVOCACY

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Abstract:

This article examines the constitutional and legal foundations of the institution of advocacy in the Republic of Uzbekistan. It highlights the historical development of the advocacy system, its role in ensuring the protection of human rights and freedoms, as well as its importance in the implementation of justice. Special attention is given to the legislative reforms aimed at strengthening the independence and effectiveness of the institution of advocacy.

Keywords: Advocacy, Constitution, legal framework, human rights, justice, reforms, independence of lawyers

In the Republic of Uzbekistan today, as the country follows the path of building a legal democratic state and a free civil society, the protection of human rights and the guarantee of individual freedoms have been defined as the main objectives. One of the most important principles of such a legal state is not only the protection of citizens' rights and legitimate interests, but also the prevention of any violation of human rights.

The Constitution of the Republic of Uzbekistan enshrines the fundamental rights and freedoms of citizens. According to their classification, these are divided into personal rights and freedoms, socio-economic rights, and political rights. The right to protection of the individual belongs to the category of personal rights and freedoms.

The bar association, which has undertaken the public constitutional duty of protecting the rights, freedoms, and legitimate interests of individuals, is one of the essential institutions of civil society. A comprehensive reform of the bar system in our country is required in accordance with the demands of Article 29 of the Constitution. According to the Constitution, the state must guarantee every citizen the right to qualified legal assistance. For this purpose, although the bar is a non-governmental organization, it carries out a function that the state is obliged to ensure. This, in turn, reflects the distinctive manifestation of development from a strong state towards a strong civil society. From this perspective, the bar can rightly be regarded as an important support and close partner of the state in ensuring and protecting human rights and freedoms. Lawyers who fight for rights guaranteed by law, who use their knowledge, intellect, and experience, and who do not withhold their selfless assistance even from

socially vulnerable groups of the population, naturally deserve respect and recognition.

Moreover, the assistance of a lawyer is necessary even before a legal dispute arises, just as a doctor does not wait for illness but gives advice on prevention. If an enterprise, institution, or organization has its own permanent legal advisor, this is beneficial for its lawful operation. Similarly, if every citizen had access to a lawyer, it would create the foundation for resolving many issues in our society. If people receive proper advice on how to fully exercise their rights and fulfill their obligations in a timely manner, such matters would not escalate to investigative or judicial authorities.

Indeed, when examining the essence of many disputes considered in courts, it becomes clear that they arise because citizens failed to understand their rights and obligations in time.

The full realization of human and civil rights and freedoms is possible only when individuals are properly represented and receive qualified legal defense. In other words, this function must be carried out by a special institution of civil society – the bar. The bar serves as a means of making an implicit social contract explicit, as a form of social assistance, as independent civil oversight over the proper administration of justice, as an instrument for influencing state policy in the fields of justice and lawmaking, and as a force that restrains abuses of power.

The Decree of the First President of Uzbekistan, Islam Karimov, dated May 1, 2008, "On Measures to Further Reform the Institution of Advocacy in the Republic of Uzbekistan," can be regarded as the beginning of state



policy aimed at strengthening the guarantees of the bar system and advocacy activity.¹

This decree played a crucial role in implementing the constitutional norm guaranteeing citizens the right to qualified legal assistance, ensuring the organizational independence of the bar, and raising the prestige and authority of the legal profession. On the basis of the decree, an effective, self-governing, centralized bar system was created — the Chamber of Advocates of Uzbekistan, founded on the principle of mandatory membership of all lawyers in the country.

Following the improvement of the institution of advocacy, the Law "On Amendments and Additions to Certain Legislative Acts of the Republic of Uzbekistan," which came into force on January 1, 2009, further expanded the powers and status of lawyers.

Article 1 of the Law "On Advocacy" provides the following definition: "Advocacy is a legal institution consisting of independent, voluntary professional associations of individuals engaged in advocacy, as well as individuals engaged in private legal practice."

The functions of advocacy are also defined in Article 1 of the same law: "In accordance with the Constitution of the Republic of Uzbekistan, advocacy provides legal assistance to citizens of the Republic of Uzbekistan, foreign citizens, stateless persons, enterprises, institutions, and organizations."

In other words, the bar is tasked with protecting the rights and legitimate interests of all natural and legal persons, ensuring the administration of justice, upholding and strengthening legality, and assisting in educating citizens to strictly and conscientiously observe the law, as well as to respect the rights, honor, and dignity of others. This mission derives from the goals of judicial and legal reform: "the status and importance of the bar must be significantly raised. Lawyers must, above all, ensure strict adherence to constitutional and legal norms in judicial practice, and protect the rights, honor, and dignity of their clients."² At the same time, the First President I.A. Karimov emphasized that the improvement of the bar should aim at the following goal: "People should be able to benefit from the services, advice, and recommendations of

lawyers not only when their case is in court, but also in their daily lives."³

The legal foundations of the right to defense in criminal proceedings are primarily enshrined in the Constitution of the Republic of Uzbekistan, in international documents ratified by the Oliy Majlis, in the Criminal Procedure Code, in the Law "On Advocacy," and in the decisions of the Plenum of the Supreme Court of the Republic of Uzbekistan. The International Covenant on Civil and Political Rights, adopted by the UN General Assembly and ratified by the Oliy Majlis, also serves as an international standard for regulating defense activity in our country. Article 14 of this Covenant guarantees that any person charged with a crime shall have sufficient time and facilities to prepare their defense and to communicate with a counsel of their own choosing; to be tried in their presence and to defend themselves in person or through legal assistance of their own choosing; to be informed of the right to have legal assistance assigned if they do not have one; and to have legal aid provided free of charge where the interests of justice so require and if they cannot afford to pay for a lawyer. The significance of these international norms lies in the fact that, by incorporating them into the legal system, our state undertakes the responsibility to provide legal defense for persons in need and to create appropriate conditions for the activities of defense attorneys.⁴

Several articles of the Constitution of the Republic of Uzbekistan are devoted to guaranteeing the right to defense. The Constitution and other laws recognize human life, freedom, dignity, and other inalienable rights as the highest value and guarantee their protection.

One of the prominent scholars of criminal procedure in Uzbekistan, Professor G. Abdumajidov, expressed the following view on the legal foundations of defense: "The presumption of innocence enshrined in Article 28 of the Constitution must be understood more broadly. According to Article 29 of the Constitution, this right belongs to the 'accused.' The Criminal Procedure Code of Uzbekistan has taken a serious step in this regard by guaranteeing this right even to suspects. However, in

¹ Decree of the President of the Republic of Uzbekistan No. PF-3993 of May 1, 2008 "On Measures for Further Reforming the Institution of Advocacy in the Republic of Uzbekistan." // Collection of Legislative Acts of the Republic of Uzbekistan, 2008, No. 18, Article 144.

² Karimov I.A. "Important Tasks of Deepening Democratic Reforms at the Present Stage." Speech delivered at the VI Session of the First Convocation of the Oliy Majlis of the Republic of Uzbekistan, August 29, 1996 // Thinking and

Acting in a New Way – A Requirement of the Time. Vol. 5. – Tashkent: Uzbekistan, 1997. – P. 128.

³ Karimov I.A. "The Life-Giving Source of the Supremacy of Law and Justice." Speech delivered at the ceremonial event dedicated to Constitution Day, December 5, 1998 // We Will Build Our Future with Our Own Hands. Vol. 7. – Tashkent: Uzbekistan, 1999. – P. 251.

⁴ International Treaties on Human Rights. – Tashkent: Adolat, 2004. – P. 11.



practice, there is a need to further expand the conditions for the full and effective exercise of the right to defense. Broader implementation of the right to defense fully corresponds to the requirements of the Universal Declaration of Human Rights (Article 15) and the International Covenant on Civil and Political Rights (Article 7).⁵

In Uzbekistan, those who implement the right to defense operate on the basis of the Law "On Advocacy" adopted on December 27, 1996. This law defines the purpose, functions, and tasks of the bar, its structure, rights, and obligations. According to this law, lawyers are entitled to participate as defenders during both the preliminary investigation and the trial.

In conclusion, it should be emphasized that further liberalization of the judicial and legal system, implementation of the constitutional norm guaranteeing citizens the right to qualified legal assistance at every stage of investigation and trial, further reform of the institution of advocacy, development of civil society institutions, and the effective protection of human rights and freedoms all play an extremely important role in strengthening the prestige and authority of the legal profession in our country.

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⁵ Abdumajidov G. "Personal Rights and Freedoms: The Development of Legal Norms." // State and Law. – 2000. – No. 1. – Pp. 15–16.