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Research Article

INSTITUTIONAL STATUS OF ADVOCACY STRENGTHENED AT THE CONSTITUTIONAL LEVEL

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ABSTRACT

The status of the institute of advocacy is strengthened at the constitutional level for the first time in a separate chapter in the updated text of the Constitution. Unquestionably, further strengthening the institute of advocacy, and elevating its status and reputation in society is one of the key objectives of the current judicial reforms carried out in recent years.

KEYWORDS

Unquestionably, further strengthening the institute of advocacy, and elevating.

INTRODUCTION

Advocacy is an important component of administration of justice. In the UN Basic Principles of the Role of Lawyers (adopted at the UN Congress), the improvement of the institute of advocacy is recognized as a primary condition for democratic and legal development.

An effective justice system requires not only independent and impartial courts, but also independent lawyers (advocates). The administration

of justice is heavily dependent on the work of advocates. Without the legal aid provided by advocates, people’s rights to a fair trial and effective means of protection would be gravely undermined .

The nature of the Advocacy Institute as a non-governmental, non-commercial sector separated from the state authorities requires to act in a balance of interests with the administrative and law-enforcement

bodies of the state, exactly in proportion to their functional activity.

In particular, the state itself is interested in strengthening the institute of advocacy, which is a non-state and non-commercial system in nature. Because one of the most important functions of the state is to provide every person with qualified legal assistance. The need for qualified legal assistance requires the state to comprehensively develop the institute of advocacy in the interests of society.

In the text of the revised Constitution, the institute of advocacy is described in a separate chapter, according to Article 141:

“Advocacy operates to provide qualified legal assistance to physical persons and legal entities.

Advocacy activities are based on the principles of legality, independence and self-management.

The organization of advocacy activities and its procedure are determined by law”.

In particular, the organization of the activity of the institute of advocacy on the principles of legality, independence and self-management is being strengthened as a constitutional rule. That is, the organizational-institutional independence of the institute of advocacy is fully determined by law and is protected by the state. At the same time, the institute of advocacy does not lose its essence as an institution of civil society, on the contrary, its status is recognized at the constitutional level. A system of self-governance without any interference by the state is guaranteed for the institute of advocacy.

Naturally, a question arises as to what is the reason for such attention to the institute of advocacy today.

It should be noted that currently the number of advocates (lawyers) practicing in Uzbekistan is 4 577.

Таъкидлаш жоизки, айни пайтда республика бўйича 4 577 нафар адвокат ўз касбий фаолиятини юритмоқда. This means that there is an average of one lawyer per 8,500 people. Unfortunately, such a situation shows that the corpus of advocates in our country is not enough today, and means the need to seriously increase the level of qualified legal services to our citizens.

It is necessary to solve the problem of the shortage of lawyers (advocates) - increase the number of lawyers due to the several reasons including number of civil, economic and administrative disputes in the courts has increased significantly due to the increasing level of socio-economic relations in the country, a new category of crimes are appearing, and in general, the level of legal culture of the population has increased, the people are striving for quality protection of their rights and legal interests.

Undoubtedly, there is a great need for qualified lawyers and advocates in our society. Right now, the only way to make this area of law appealing to young attorneys is to protect advocates' professional activities in a thorough and, most crucially, realistic manner.

An independent, bold approach of the advocates to their profession will ensure the entry of qualified and competitive professionals into the field. This is the main factor that directly affects the quality of legal aid provided.

What is meant by independence of advocates? The independence of the advocate consists of integral guarantees (which require each other), including the inviolability of the advocate; prohibiting the

requirement to disclose the advocacy secret; responsibility for interfering with the advocate's activity or violating the advocate's privacy; providing them with guarantees of advocacy activity and social protection by the state. All these guarantees are stipulated in our updated Constitution.

It should be highlighted that so far, a number of measures have been taken to ensure the independence of advocates. For instance, the process of granting a license to advocates has been simplified. Also, it has been established that a advocates' license can only be suspended or revoked (withdrawn) by court. Initiating a criminal case against an advocate can be carried out only by the prosecutor of the Republic of Karakalpakstan, regions, and the city of Tashkent. Such authority was removed from the scope of authority of prosecutors at lower levels.

At the same time, the constitutional guarantee of the advocate's independent professional activity will undoubtedly have a positive effect on the citizens' access to justice. Presence of atmosphere of the adversarial proceedings for the adoption of a legal and fair judgment in the court, that is, the equality of procedural opportunities of the advocate and the prosecutor, hearing of the case under adversary is crucially important.

Article 141 of the newly revised Constitution guarantees the institutional importance and organizational independence of the advocacy. In addition, a number of new provisions are envisaged in Article 142 of the Constitution, which describes what guarantees are created for the advocate, who is a source of qualified legal assistance to citizens. Each of them specifically suggests that the legal and

procedural standing of the advocate is being significantly improved.

“It is not allowed to interfere with the activities of an advocate while he is performing his professional duties.” What is the significance of this rule?

Undoubtedly, such a norm will have a significant positive impact on the advocacy activities. Of course, it should be noted that the advocate's witness immunity and the prohibition of interference in his activities are also defined in the laws and procedural legislation related to the activities of advocates. However, the constitutional enactment of these laws improves the likelihood that they will be directly followed. Because the constitution is being directly applied in this case, the investigators, prosecutors, and courts are all subject to stringent regulations are obliged to provide these guarantees of the advocate! Why is it crucial to make these participants of the proceedings subject to this obligation?

According to the practice of judicial investigation, interference with the professional activities of advocates, various direct and indirect pressures in the conduct of their defense position are more likely to be observed in the course of criminal proceedings.

For example, as the UN special rapporteur on the independence of courts and lawyers, Diego García Sayan, noted in his report on Uzbekistan, there is a shortage of lawyers in the country, the shortage of lawyers severely affects access to justice, especially outside Tashkent, and lawyers continue to encounter several obstacles in obtaining access to clients, in particular during pretrial detention .

The constitutional guarantee ensures that the advocate is shielded from such dangers, free and bold to exercise initiative within the bounds of his authority,

and unaffected by outside pressures. It is obvious that the level of legal support offered by an independent attorney who performs his defense in a strong and stable manner will undoubtedly be high.

“The advocate shall be provided with the conditions for unhindered and free meeting with the person under his protection, and giving him advice.”

In this regard, it is important to say that the need for this guarantee arises at the very beginning of the participation of the advocate in the criminal proceedings - as soon as the person is detained on suspicion of committing a crime. That is, when a person's freedom of movement is restricted, he must be provided with a advocate immediately. It is also legally guaranteed that a person can meet with a defense council in person before the first questioning.

However, it should also be recognized that the investigative process demonstrates that there are numerous issues with upholding the rights outlined in the Criminal Procedure Law. The fact that the investigating authorities have created a number of circumstances that hinder the advocate and the person who is under his protection from taking a primary position on the charge is one of the key issues raised by many advocates. For instance, refusing to allow the meeting to be open due to the investigative detention center's internal norms, extending the meeting's time with various justifications, attempting to cut the meeting's time short due to a lack of an advocate's room, etc.

As a result of such obstacles, the advocate loses a strong defense position by not being able to establish the primary and most important communication with the person under his protection, and the person in custody is more likely to give confessional statements

under the severe psychological pressure of criminal prosecution.

In order to put an end to such situations, it is extremely important to establish a strict constitutional rule that “The advocate shall be provided with the conditions for unhindered and free meeting with the person under his protection, and giving him advice.”

“An advocate, his honor and dignity and professional activity are under the protection of the state.” What is the essence of this guarantee?

Through such a provision, the state undertakes to ensure the protection of advocates in cases of threat to their safety, creates conditions for them to fully use all the opportunities necessary for the performance of their professional duties.

At the same time, the state protection of the process of the defense council (advocate) collecting and presenting evidence within his professional powers ensures the advocates's free and independent activity. In this regard, the protection of the advocates' honor and dignity by the law is specially recognized, which protects not only the person under protection, but also the advocate himself/herself from various pressures and threats, and the influence of illegal actions.

In conclusion, independent advocacy is a necessary prerequisite for achieving effective justice. After all, the true adversarial proceedings by the parties in a court case can only be made in an atmosphere where equal procedural opportunities are guaranteed, competitive debate is encouraged, and strong positions are negotiated between the attorney and the prosecutor. The wider the scope of legal relations and the higher the quality of legal aid in society, the higher the level of rule of law and obedience to the law in the state.

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