



CONSTITUTIONAL-LEGAL PRINCIPLES OF THE ADVOCACY

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Abstract. This article analyzes the emergence of the Institute of jurisprudence in the Republic of Uzbekistan, the processes of development, the strengthening of legal norms related to this institution in the newly adopted Constitution, as well as the issue of reforms envisaged in the future. The author made extensive use of the comparative-historical method of legal research when writing the article. The paper also used the legal analysis method extensively. Scientific views are put forward in the article, and the authors of scientific views are widely introduced into the bilab debate. In the article, the author cites his proposals and conclusions on the issue of further development of the Advocacy institution in Uzbekistan as a result of the analysis.

Keywords: advocacy, justice, jurisprudence, constitution, legality

In improving the organizational and legal framework of the Institute of jurisprudence, an urgent importance is attached to the study of its relationship and affiliation with the constituent and legal aspects, general and specific.

Constitutions for Democratic states in the world are a political and legal document that embodies the past, present and future of the people of each country, the aspirations of the individual and society, the main purpose and content of the activities of the state. For the first time in the world, when the Constitution was adopted in the United States, the majority of the population did not realize the importance of this document, one of its authors, T.Jefferson, in his paper "essay 26", defined a Constitution as: "a Constitution is a document that permits a prescribed authority for the power and its officials and prohibits all other action, and for citizens, it permits all action that is not prohibited". With the full support of the opinion of the statesman and scientist, the Constitution provides for the establishment of justice in any country.

The analysis shows that the Constitution of the Republic of Uzbekistan, approved on December 8, 1992, established the norm on advocacy in only Article 116. According to this, the defendant is provided with the right to protection.¹ At any stage of Investigation and judicial proceedings, the right to qualified legal assistance is guaranteed a lawyer to provide legal assistance to citizens, enterprises, institutions and organizations that operate. The organization of the lawyer and the procedure for his work are established by law.

Analysis of the development of legislation has shown that this constitutional norm regarding advocacy is reflected in Chapter XXII, which is called the "Judicial power of the Republic of Uzbekistan". This could have led to the erroneous conclusion that the Advocate is a component of the judiciary, that the Advocate is only a subject providing legal assistance in criminal cases.

¹ «Халқ сўзи» газетаси, 1992 йил 15 декабрь, 243 (494)-сон.

In the Constitution of the Republic of Uzbekistan, adopted on the basis of a national referendum on April 30, 2023, the position and authority of the bar have changed dramatically. A separate chapter XXIV entitled "Advocacy" has been introduced. In this chapter, the content of the bar, along with the principles of activity, strictly establishes the professional guarantees of a lawyer.

Scientific and linguistic analysis showed that in the Constitution of the Republic of Uzbekistan in the new edition, the word "lawyer" is reflected 4 times, and the words "lawyer" and "legal assistance" are reflected in the relevant legal norms for 3 times. In particular, Article 29 provides the norm on the participation of a lawyer in a criminal process, the help of which everyone has the right to use. This provision is embodied in Chapter VII, "personal rights and freedoms". It must be said that the norms regarding human rights guarantees were also increased 3 times in our head.²

In countries where democratic values have developed, advocacy is an important component of Justice. The "Basic principles on the role of lawyers" adopted at the UN Congress noted that the improvement of the bar institution is a primary condition for democratic, legal progress³.

After all, a solid mechanism will be needed that will restrain the deviation of state bodies from their authority when applying any norm of law. And such a force, which has been successfully tested in the history of mankind, is an independent professional association lawyer. The state, on the other hand, is interested in strengthening the bar institution, which is a non-governmental, content non-profit system. Because one of the most important bounds of the state is to provide each person with qualified legal assistance. It is worth noting that the progress of each country is directly related to the strong protection of human rights. In the legal state, this task is carried out by a lawyer, which is effectively organized, built on theoretically and practically grounded principles.

The analysis of the norms of the Constitution regarding the Institute of jurisprudence does not fully answer all questions about its legal status. However, the Constitution determines the role and role of a lawyer in a person-society-state relationship. Clarifies the base approach that characterizes the relationship between state power and advocacy.

The need for qualified legal assistance requires the state to comprehensively develop the Institute of jurisprudence in the interests of society. It was important that the main principles of advocacy were established in the Constitution. Therefore, on the basis of the results of this scientific research work, our proposals on the basis of the principles of legality, independence and self-government of the lawyer's activities were taken into account and reflected in Article 141 of the Constitution of the Republic of Uzbekistan in the new edition.⁴

It should be noted that the next important task is to bring to life the constitutive principles of the Advocacy Institute. The content of this opinion is that when organizing a

² Мирзиёев Ш.М. Янгиланган Конституциямиз Учинчи ренессансни барпо этиш йўлида мустаҳкам ҳуқуқий пойдевор бўлиб хизмат қиласи. Ўзбекистон Республикаси Президенти Шавкат Мирзиёевнинг Олий Мажлис палаталари аъзолари, сиёсий партиялар ва жамоатчилик вакиллари билан учрашувдаги нутқи. // Халқ сўзи, 2023 йил 9 май.

³ <https://www.un.org/ruleoflaw/blog/document/basic-principles-on-the-role-of-lawyers/>

⁴ Ўзбекистон Республикаси Олий Мажлиси Қонунчилик палатасининг Демократик институтлар, нодавлат ташкилотлар ва фуқароларнинг ўзини ўзи бошқариш органлари қўмитасининг 2023 йил 27 сентябрдаги 04/10-10-60-сон маълумотномаси.

lawyer, it is necessary that these principles work correctly, completely and unconditionally in practice.

In particular, paragraph 22 of the program of measures for the implementation of tasks arising from the Constitution of the Republic of Uzbekistan in the new edition, approved by the decree of the president of the Republic of Uzbekistan No. 67 of May 8, 2023, established the main task of further improvement of the bar institution and ensuring the independence of

However, as a mechanism for the implementation of this task, it was envisaged to strengthen the status of the defender in the criminal process, to act as an assistant lawyer in the structures of the lawyer to graduate course students. As the most fundamental issue, the lack of provision of mechanisms for applying the principles of the activities of the lawyer to legislation serves to establish the relevance of their research in scientific-theoretical terms.

In the legal literature, the word principle comes from the Latin "Principium" ⁵ – "primary". The principle of law is understood as its most basic rule, the idea. ⁶ Similar views were expressed by Yusuvalieva, Akhmedshayeva, and Najimov. ⁷

Thus, based on the principles enshrined in the Constitution of the Republic of Uzbekistan of the Institute of Jurisprudence, the constitutional principles of the Institute of Jurisprudence can be characterized as follows: *according to the constitutional principles of the Institute of Jurisprudence, it is the sum of constitutional guarantees that determines the organization of a lawyer's activities and his activities in order to provide qualified legal assistance.*

Analysis of the correspondence of the norms of the Constitution in the new edition shows that the separation of the principles of the Institute of jurisprudence into general and special principles mumkin.Biz based on the definition of a new chapter on the lawyer in the Constitution in the new edition, in our article we found it necessary to analyze the lawyer first on special principles, and then on general principles.

It should be noted that even before the adoption of the Constitution in the new edition, the principles of legal activity were reflected in the law of the Republic of Uzbekistan "On guarantees of legal activity and social protection of lawyers". In particular, the independence of the lawyer, strict adherence to the rules of professional ethics of the lawyer, the secret of the lawyer and the lawyer's oath, the use of methods and means that are not prohibited by law are established as the basic principles of legal activity . Apparently, new, previously non-existent principles were added to the Constitution. That is, the principle of legality, the principle of independence and self-government.

In the legal encyclopedic literature, it is noted that legality is the principle of clear and constant enforcement of constitutions and laws and other regulatory legal acts by all bodies, officials and citizens of the state⁸, Z.Islamov described the regime of ensuring order and organization in society⁹, while some scholars noted the generality of law¹⁰. H.Odilqoriev, on

⁵ Odilqoriyev X.T. Davlat va huquq nazariyasi. Darslik. – Toshkent. Adolat, 2018. B. 134.

⁶ Сайдуллаев Ш. Давлат ва ҳуқуқ назарияси. Дарслик. – Тошкент: ТДЮУ, 2018. Б. 84. //

⁷ Давлат ва ҳуқуқ назарияси. Дарслик / Р. Юсуvalieva, М. Ахмедшаева, М. Нажимов ва бошқалар. Масъул мұхаррир Р. Юсуvalieva. - Т.: ЖИДУ, 2019. Б. 384.

⁸ Ўзбекистон юридик энциклопедияси / Нашр үчүн масъул Мұхитдинов Р.А. ва бошқ.; масъул мұхаррир Н.Тойчиев. – Т.: Адолат, 2010. – Б. 615.

⁹ Исломов З.М. Давлат ва ҳуқуқ назарияси. – Т., 2007. Б. 855.

¹⁰ Давлат ва ҳуқуқ назарияси. Дарслик / Р. Юсуvalieva, М. Ахмедшаева, М. Нажимов ва бошқалар. Масъул мұхаррир Р. Юсуvalieva. - Т.: ЖИДУ, 2019. Б. 281.

the other hand, argues that legality, in a broad sense, also covers the state's activities of law-making and its viability, equal to all before the law. The theoretical views and approaches of scientists about legality show that the principle of legality is a general General general rule that applies to this entire system of law.

In our opinion, in Article 141 of the Constitution of the Republic of Uzbekistan, there are several aspects of the definition of a lawyer as a special constitutional principle. In particular:

Firstly, it is understood that lawyers have the rule of law in the activities of the self-governing body, Law structures and lawyers, the generality of law, the predominance of the norms of law established in regulatory legal acts, in a word, the rule of law in the lawyer's office.

Secondly, it should be understood that the activity of a lawyer, its organization, implementation does not contradict legislation, does not deviate from its norms, does not deviate.

Thirdly, it should be understood that in the implementation of the lawyer's activities, activities that are not prohibited by legislation should be allowed, in particular, the provision of qualified legal assistance by methods and means that are not prohibited by legislation.

From the above, the principle of legality of the activities of the lawyer can be given the following scientific-theoretical definition: the principle of legality of the activities of the lawyer is the sum of the constitutionally guaranteed rules that the rule of law in the organization and implementation of the lawyer does not contradict his legislation and is allowed to carry out

The analysis shows that it is impossible to imagine providing qualified legal assistance without ensuring the existing independence of the lawyer. Therefore, it is not for nothing that Article 141 of our main body establishes the constitutional norm on the basis of the principle of independence of the activities of the lawyer.

In the Explanatory Dictionary of the Uzbek language¹¹, the word "independence" is explained as "independent state, unrelated, non-dependent state". We believe that the essence of this definition is significant in the definition of the principle of independence of the lawyer. Because the fact that the concept of the independence of a lawyer is not defined normatively-legally determines the relevance of determining the limit of the independence of a lawyer.

The international standards on advocacy, in particular the "Basic Rules on the role of lawyers" ¹² and the international documents "On the freedom to practice the profession of a lawyer", provide for a strict ban on the interference of state bodies or other bodies in the activities of professional persons who carry out qualified legal assistance. It should be noted that these documents not only prohibit the state from interfering in the affairs of the lawyer, but also set the state the task of supporting and protecting the lawyer.

Scientists believe that the independence of a lawyer is meant, firstly, by its independence from state bodies, and secondly, by its independence from the bureaucratic

¹¹ Ўзбек тилининг изоҳли луғати: 80000 дан ортиқ сўз ва сўз бирикмаси. Ж. II. Е-М / Таҳрир ҳайъати: Т.Мирзаев ва бошқ. ЎзР ФА Тил ва адабиёт институти. – Т.: "Ўзбекистон миллый энциклопедияси" Давлат илмий нашриёти, 2006. – Б.652.

¹² Давлятов В.Х. Международные стандарты по регулированию юридической профессии: обзор и сравнительно-правовой анализ. (Информационно-аналитический материал) – Т.: "Lesson Press", 2020 . С. 87.

apparatus in the person of certain officials¹³. Other scholars have noted that the prohibition against obstructing, interfering, repressing the activities of the bar is the core of the principle of independence¹⁴. Even, G.M.Reznik expressed the opinion that "it is necessary to get rid of the illusory thoughts that the lawyer is an institution completely free from the influence of the state"¹⁵.

In our eyes, the opinions of the above scientists about the independence of the lawyer were applied in a narrow sense, making it impossible to reveal the independence of the lawyer on the basis of a holistic system.

Based on the constitutional principle on the independence of the lawyer, the norms in the legislation of the National Lawyer, The opinions and conclusions expressed in scientific research work on the lawyer, two different conceptions of the independence of the lawyer can be advanced.

First, the concept of "external independence of the lawyer". According to this concept, the bar as an organization consists of the legislative, executive and judicial branches of the system of public power, their officials, civil society institutions (political parties, non-profit organizations, etc.) signifies independence. It is desirable to call the external independence of the lawyer "institutional independence". It serves to enrich the science of national advocacy with new scientific concepts and categories.

Secondly, based on the concept of "internal independence of the lawyer", in the organization of the lawyer, in particular, in the formation of the Supreme bodies of the self-governing body of lawyers (election of delegates, voting, etc.), with participation in competency and disciplinary commissions, is understood as independence from other lawyers. We can call the internal independence of the lawyer "the functional independence of the lawyer".

Thirdly, in the essence of the concept of" personal independence of the lawyer", it is understood that the lawyer, the central subject of the lawyer, is independent of the self-governing body of lawyers, their officials, from the influence of other lawyers, individuals and legal entities in the implementation of his task (providing qualified legal assistance). This independence can be defined as the "individual independence of the lawyer".

Analysis shows that there are several types of advocacy independence according to another criterion. In particular, there are such types as organizational independence of the lawyer (independence from Justice and other state bodies), procedural independence (independence from the judiciary, prosecutor's office bodies), financial independence (independence from the state budget and other sources of Finance).

Based on the above analyzes, taking into account the conclusions about the internal, external and individual independence of the lawyer, the principle of the independence of the lawyer can be given the following author's definition: the principle of the independence of the lawyer is a guarantee of freedoms strengthened by the Constitution, which determines the possibility of organizing a lawyer, without institutional, functional and

¹³ Ўзбекистон Республикасида адвокатлик фаолияти. Дарслик. Муаллифлар жамоаси. Т.: Консаудитинформ, 2007. Б. 39.

¹⁴ Адвокатлик фаолиятининг ҳуқуқий асослари: (илмий-амалий қўлланма) / М.М.Мамасиддиқов ва бошқ.; масъул муҳаррир Ш.Х.Файзиев; ЎзР Президенти ҳузуридаги Амалдаги қонун ҳужжатлари мониторинги ин-ти. Т.: Ғафур Ғулом номидаги нашриёт-матбаа ўйи, 2009. Б. 53.

¹⁵ Резник Г.М. Закон об адвокатуре как жертва конфликта интересов // Рос. юстиция. 1998. № 3. С. 24.

One of the pressing issues is the scientific study of the issues related to the essence of the fact that the lawyer is based on the principle of self-government at the Constitution of the Republic of Uzbekistan in the new edition. Consequently, one of the most important and distinctive features in ensuring the effective functioning of the bar institution, its independence is its close connection with the introduction of the principle of self-government.

As noted in legal encyclopedic dictionaries, the concept of "self-management" ¹⁶ is a scientific concept used in the framework of a number of socio-humanitarian disciplines, including legal ones, the essence of which means that individuals participate in solving professionally important issues on the basis of general management.

On the basis of the organizational, legal aspects of the specific influence of the state on the Institute of jurisprudence, it is important to clearly define the scientific, theoretical and practical aspects of its forms and methods.

As evidenced by the studies, the interaction of lawyers and lawyers with state bodies of the self-governing body has always been one of the pressing issues. In this, it can be observed that the state seeks to control the community of lawyers and lawyers, recognizing the participation of the bar Institute in the implementation of Justice.

We agree with Salomov's opinion that self-government in the lawyer's office implies the independence of the lawyer and his activities, allowing the person to practice law, guarantees of obtaining the status of a lawyer, preventing its suspension and cancellation, the right to independently choose the organizational forms of the lawyer's professional career¹⁷.

In addition to this opinion, the balance of interests between the state and the advocacy in self-government should be ensured through the adoption of regulatory legal acts, professional and social protection of lawyers through taxation and other similar issues. After all, the full regulation of the lawyer by state bodies does not necessarily correspond to the legal nature of the lawyer¹⁸. In our opinion, the policy of the state in relation to the lawyer should be built not on the subordination of the lawyer to the state authorities, but on the basis of mutual equality and cooperation relations.

In our opinion, we must recognize that the participation of the state in the issue of regulation of the lawyer is normal and necessary. This situation is aimed at effective functioning of the bar institute, protection of state bodies from unreasonable interference in the internal affairs of the bar Institute.

Therefore, in our country, it is important to regulate the issues related to the lawyer as much as possible at the level of the law. Consequently, it is important to maintain mutual restraint and balance of interests in the participation of the state. In this case, the intervention of the state should not limit the freedom of lawyers in the performance of their professional activities and should not be an obstacle to the implementation of the duties of the lawyers self-governing body as a defender of the rights and interests of lawyers.

¹⁶ Конституциявий ҳуқук. Энциклопедик луғат. Масъул мұхаррир ва мұаллифлар жамоасининг раҳбари Б.Мустафоев – Тошкент: «Ўзбекистон нашриёти», 2006 йил. Б. 530-531.

¹⁷ Саломов Б. Ўзбекистон Республикасида адвокатлик фаолияти, унинг кафолатлари ва адвокатларнинг ижтимоий ҳимояси (тажриба ва муаммолар). ю.ф.д. илмий даражасини олиш учун ёзлиган дисс..., 12.00.11. Т.: ТДЮИ, 2005, Б.100.

¹⁸ Воробев А.В., Поляков А.А., Тихонравов Ю.В. Теория адвокатуры. М.: Гранть, 2002. – С. 176-177.

This opinion can also be substantiated by international documents on the lawyer's office. In particular, the "Basic rules on the role of lawyers"¹⁹ established that professional associations of lawyers play a vital role in ensuring the rules of Professional Standards and ethics of their members, protect their members from harassment and unjustified restrictions and encroachments, cooperate with the state and other institutions in order to achieve the interests of Justice and society.

On the basis of scientific and theoretical analysis, the principle of self-management of the activities of a lawyer can be described as follows: *the principle of self-management of the activities of a lawyer is understood as the freedom guaranteed by lawyers for activities aimed at the joint organization, implementation and solution of professionally important tasks.*

Meanwhile, in the new edition of the Constitution, it is important to analyze its general principles, based on the special principles of the lawyer. In our opinion, among these principles can be included Equality (Article 19), the rule of human rights, proportionality (Article 20), the guarantee of the right to qualified legal assistance (Article 29), protection by all means not prohibited by law (Article 55).

Studies show that legislation does not define the concept of "qualified legal aid". Only Article 7¹ of the law of the Republic of Uzbekistan "On advocacy" establishes the norm that a lawyer sends requests to provide qualified legal assistance. Article 116 of the previous edition of the Constitution provided for the guarantee of the right to qualified legal assistance at any stage of investigation and judicial proceedings

Article 141 of the Constitution of the new edition established that a lawyer will operate to provide qualified legal assistance to individuals and legal entities. In our opinion, in order to fully understand the essence of qualified legal assistance, it is advisable to analyze its structure.

In our opinion, the word "qualified" means having special knowledge in a particular field. Therefore, it can be concluded that it can be called qualified only when the knowledge, experience and skills of a particular subject providing legal assistance are confirmed in a special form in a certain way. On the other hand, A.P. Galaganov believes that qualified legal assistance is "quality" legal assistance. Legislative analysis in our country can be concluded that the task of providing qualified legal assistance is strictly for lawyers, since the requirements for special education for lawyers and knowledge and skills for providing legal assistance in obtaining the status of a lawyer are checked.

Studies have shown that there will be three important components in a qualified legal aid relationship. In particular, a qualified legal aid subject is a person (lawyer) who has the necessary knowledge in the field of material and procedural law and protects (expresses) the rights and interests of a person expressing confidence, a natural or legal person receiving qualified legal assistance, as well as the content of qualified legal assistance constituting law (its norms). All three elements are of essential importance.

The fact that legal aid is qualified is also reflected in the fact that the persons providing this assistance have the necessary knowledge, qualifications and skills. After all, the fact that the provision of qualified legal assistance "monopolically" belongs to the Institute of advocacy can also raise many questions. Legal assistance consists of an impressive, legal system of

¹⁹ It was adopted by the eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, Cuba August 27 – September 7, 1990). https://www.un.org/ru/documents/decl_conv/conventions/role_lawyers.shtml

measures, consisting in the protection of the rights and legitimate interests of individuals, and this system covers, firstly, the focus on state bodies and civil servants, including the court and law enforcement agencies, and secondly, the Prevention of the occurrence of life situations regulated by unfavorable legal norms for individuals or their mitigation of their consequences.

The need for qualified legal assistance is indicated in difficult life situations or in the circumstances of its actual occurrence. Qualified legal assistance arises in cases of conflict, controversy, where the parties are opposed by the erk-will. After all, the advocacy, its nature, its values are aimed at helping a person. In society, certain rules are formed for human survival, and it is determined by the state in a normative tone. Members of the same society – lawyers provide assistance when these rules are violated by members of the society or the risk of violation, the possibility of which arises.

Studies show that conceptual issues are defined in the new chapter on advocacy. Article 141 is notable for its role as a lawyer and its dedication to its content. In particular, it was established that a lawyer will operate in order to provide qualified legal assistance to individuals and legal entities. That is, it was strengthened that the provision of qualified legal assistance is not the responsibility of any state body, but precisely the advocacy. It is noteworthy that the status of the bar institution was strengthened at the constitutional level. It was established to guarantee qualified legal assistance to all. Consequently, qualified legal assistance is not provided by any individual or public authority, but by lawyers with the appropriate qualifications and licenses.

Based on the above and in the Constitution of the Republic of Uzbekistan, it is proposed to draft the law of the Republic of Uzbekistan "on guarantees of obtaining qualified legal assistance" in order to ensure the right to qualified legal assistance to everyone (Article 29) and to consistently implement the constitutional-legal norms on the provision of qualified legal assistance to individuals and legal entities (Article 141).

In our opinion, this bill aims to provide for such issues as the main directions of state policy in the field of qualified legal assistance, the basic principles of providing qualified legal assistance, the regulation of the field of qualified legal assistance, the powers of state bodies, the basic and additional guarantees of obtaining qualified legal assistance, state support. In conclusion, studying the scientific-theoretical and practical aspects of the constitutional-legal principles of the bar Institute, the study is important in improving the organizational and legal framework of the bar Institute.

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