

# THE ROLE OF A LAWYER IN ENSURING THE PROTECTIVE FUNCTION OF THE REPUBLIC OF UZBEKISTAN IN CRIMINAL PROCEEDINGS

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**Abstract.** *This article examines the importance and role of ensuring the protective function of the criminal process, and also analyzes the issues of the defense's involvement in juvenile cases. It has also been proved that the active and sincere participation of the defense counsel, the application of all methods and means provided by law in the interests of his client, is important in a fair trial in favor of the accused.*

**Keywords.** *Criminal proceedings, law, defense counsel, court, prosecutor's office, defendant.*

**Introduction.** Judicial and legal reforms, which are an integral part of the socio-political process carried out in our country to build a democratic state governed by the rule of law and a strong civil society, serve to ensure in practice the constitutional principle of man and his rights and freedoms. As stated in the Resolution of the President of the Republic of Uzbekistan dated May 14, 2018 No PP-3723 "On measures to radically improve the system of criminal and criminal procedure legislation", the creation of an effective system of criminal and criminal procedure legislation ensures law and order, human rights and is one of the priorities for the reliable protection of freedoms, public and state interests, peace and security. At the same time, the resolution noted a number of systemic problems and shortcomings in this area, in particular, non-compliance with the requirements of criminal procedure in the process of proving the criminal process, effective protection of citizens' rights, freedoms and legitimate interests. the existence of legal gaps that impede the rule of law at the stage of In the Decree of the President of the Republic of Uzbekistan dated February 7, 2017 No 4947 "On the Strategy of further development of the Republic of Uzbekistan" developed an action plan "Improvement of legal aid and services" as a priority of further reform of the judicial system There are aspects directly related to the research work.

In particular, in order to strengthen the role of the lawyer in the evidentiary process, we can see that special attention has been paid by the lawyer to the improvement of the mechanism of collecting evidence and adding it to the criminal case file. It was also noted that the inadmissibility of the use of factual information as evidence is determined by the inquiry officer, investigator, prosecutor or court on its own initiative or at the request of the parties. Although the procedural actions of lawyers as participants in the evidentiary process are reflected in our legislation, the implementation of these norms in practice is slow.

"According to the fourth part of Article 49 of the Criminal Procedure Code of the Republic of Uzbekistan, the participation of a defense counsel is allowed at any stage of the

criminal proceedings, and when a person is detained, his right to freedom of movement is restricted." The tasks of criminal proceedings include not only the speedy and complete detection of crimes, finding and exposing the culprits, ensuring the proper application of the law, but also the fair punishment of every person who commits a crime and the non-prosecution and unjustified trial of any innocent person. (Article 2 of the CPC of the Republic of Uzbekistan). Given this task of criminal procedure, one of the important areas of criminal procedural activity is the protection of the rights and legitimate interests of persons involved in the commission of a crime. In the process of proving according to the criminal procedure legislation, the criminal case should be thoroughly and impartially investigated in all circumstances, all the circumstances that mitigate and aggravate the defendant's guilt [1] and acquittal [2], exclude, the legal method, means prescribed by law. they must be given the opportunity to defend themselves, and their personal and property rights must be protected. (Article 24 of the CPC of the Republic of Uzbekistan). In addition, the prosecutor must remove any unlawful restrictions on the rights of the accused. The bodies of preliminary investigation and prosecution shall ensure the exercise of the defendant's constitutional right to defense by performing the above-mentioned actions.

The right of the accused to protection is related to the presumption of innocence and is based on the innocence of the accused, the right to protection is important not only in denying the charge, but also in correctly classifying the criminal offense [3] and resolving issues important to the accused. The procedural importance of defense is manifested in the fact that it is primarily a means of exercising the rights and legitimate interests of the accused.

It also assists in the performance of criminal judicial functions, the purpose of which is to serve as one of the guarantees of the establishment of the truth in the case. The defense attorney's participation in the case may be suspended from the time the indictment or confession or detention report is drawn up. In practice, investigators may find it necessary to invite a defense attorney to a hearing and not provide him or her with all the materials of the case.

In the legal literature and practice, there is a debate about some contradictory rules regarding the right of the applicant to get acquainted with the case materials and receive copies of the current legislation after the defense is allowed to participate in the case [4]. The fact that this right is fully exercised in cases where the preliminary investigation has been completed and presented to the accused for review of all the materials of the case does not, of course, be disputed. At the same time, the provision of the law that the accused cannot be acquainted with the case materials until the end of the preliminary investigation remains unenforceable in practice. This is because the defense counsel has the opportunity to disclose to the defendant [5] the information known to him from his acquaintance with the case file. On top of that, it is natural given that it is necessary to clarify certain circumstances with the accused. All of the above leads to the conclusion that the law should be equated with the rights of the accused in this regard. Consequently, the investigating authority should not be afraid to acquaint the accused with the case file if it has gathered sufficient objective evidence on which it is indeed the basis. This increases the responsibility of the investigator once again to conduct a full, comprehensive, objective investigation of the case and to have a full basis for it during the indictment. The defense counsel's duty is to actively protect the defendant's procedural rights from any restriction during the preliminary investigation. A defense attorney who has been involved in the case since the time of the indictment must first read the investigator's decision to prosecute him as a defendant. Here he must focus all his attention on whether there is a basis for the accusation. However, some defense attorneys are superficially familiar with the decision to prosecute as defendants and rely solely on the investigator's conclusion. However, whether the crime provided for in the Criminal Code has actually taken place, whether there is an intentional or negligent offense, whether there are

aggravating and mitigating circumstances, the time, place, method and other circumstances of the crime, whether the damage was correctly identified, the qualification is correct. etc. It is important to determine. Each accusation must be strictly individualized and stated. Sometimes defense attorneys rely on presumptive information about the age of the accused in investigative materials, medical reports, and do not seriously investigate the situation. As a result, there are cases when a person makes a mistake in determining the age of the subject and is illegally prosecuted. Often, defense attorneys ignore serious flaws in the investigator's decision to prosecute as a defendant. However, the elimination of such shortcomings is the main duty of the defender. The defense counsel must also, if necessary, make a request to observe that the criminal case has been translated correctly and completely and, if necessary, to invite another qualified interpreter. The indictment must be signed by the investigator, interpreter and defendants. The absence of these signatures leads to a violation of one of the basic principles of justice and becomes the basis for a petition for re-conviction [6].

Therefore, the law stipulates that the explanation of the nature of the declared charge must be confirmed in the decision signed by the accused and the investigator. When the accused refuses to sign the indictment, the investigator must inform the prosecutor. In our opinion, the reasons for the defendant's refusal to sign the decision should be fully stated in the protocol, as it is important both in terms of the interests of the accused and in terms of the prosecutor's control over the preliminary investigation. It is known that the defense attorney involved in this case is also interested, and it is necessary to determine whether there are any violations of the rights of the accused. If there are cases of violation of the rights of the accused, the defense counsel should inform the investigator and, if necessary, apply to the supervising prosecutor to eliminate it.

Defendants should take into account their age, personality, and mentality when participating in the prosecution of juveniles. Defendants of first-time offenders, especially minors, may agree to all clauses of the charge, even if their loss or misrepresentation is unfamiliar to them. In order to prevent such a situation, it is advisable to arrange a one-on-one meeting with the defense counsel to determine the attitude of the accused to the charges, to clarify the necessary facts and circumstances, to explain the content of the charges, to determine his identity. Once the charge has been announced, the investigator must explain to him his rights as a defendant and record this in the initial interrogation record. Special attention should be paid to the fulfillment of the requirement of the law of the defense participating in the case that the interrogation be held during the day. This is because unnecessarily questioning defendants, especially minors, at night can lead to serious violations by the investigator. Faced with the fact of full confession of the accused, the defense attorneys, who did not try to determine the circumstances, causes, motives of the crime, are absolutely wrong. This is because many cases, such as homicide-related crimes, are important in determining whether the crime was committed intentionally or negligently, whether it was committed as a matter of urgency or as a last resort, and other similar circumstances. All of the defendant's testimony, especially his or her confession testimony, should be examined through a critical approach and comparison with other evidence. Because the accused may confess to an act actually committed for various personal reasons or for other reasons, the defense counsel should be especially proactive when in doubt about this situation and avoid being unjustifiably prosecuted. Contradictions and changes in the defendant's testimony should also not be overlooked by the defense. The defense counsel must determine the cause of these discrepancies and changes and convince the defendant that only correct testimony will lead to a fair trial [7]. This should be done not on the basis of assumptions, but through an in-depth analysis of the defendant's testimony by comparing it with other materials in the case. The defense counsel should not ignore the defendant's claims that other persons were involved in the crime or that the crime was committed by a

completely different person in terms of strengthening the defense. Because? this is important in choosing the right means of protection. The specification of the testimony of the accused in order to determine the place and role of each participant in the crimes committed by the group requires special attention from the defense. It should be noted that often defendants unreasonably refuse to testify during interrogation. In this case, the defense counsel must determine the reason for the refusal and explain to the defendant that his testimony is important for the proper resolution of the case. The defense counsel may participate in the interrogation of the accused and, with the permission of the investigator, ask questions about the circumstances of the case, the identity of the accused. These questions should be clear, concise, and goal-oriented.

According to the law, the investigator may reject this or that question posed by the defense counsel to the accused. In this case, the defense counsel must demand that this situation be reflected in the interrogation record, which will then allow the investigator to complain about the unreasonable actions. During the interrogation by the defense investigator, especially during the interrogation of a minor, the defense counsel must pay attention to the strict observance of the requirements of the law relating to this investigative action. No illegal action, threats, false promises, etc. shall be allowed during the interrogation of the accused. The defense counsel must express his strong objection to such facts, and, if necessary, refuse to prosecute such an investigator and raise the issue of prosecution. The defense counsel himself should use only lawful methods and means to defend the accused. Unfortunately, some defense attorneys believe that instead of providing qualified legal assistance to the juvenile defendant, their duties were performed simply by signing official investigative documents. The involvement of the educator, the adolescent psychiatrist, in the interrogation of adolescents is important in assessing their reaction to the circumstances surrounding the investigation in determining the true motive for their actions. This ensures that they receive accurate testimony on the case. The involvement of a child psychology specialist in the interests of juvenile protection has been virtually unexplored in theory. Therefore, it would be expedient for lawyers, together with psychologists, to develop a methodology for the participation of educators and psychiatrists in court and investigation [8].

The fact that the interrogation of the accused is an important procedural document is recorded in the interrogation report. This means that the defender must pay special attention to this document as well. However, some advocates see this as redundant. In practice, even seemingly insignificant details seem to be important. For example, the incorrect indication of the age of the accused in the interrogation report may lead to a violation of the statutory requirement that a person under a certain age may not be prosecuted. In addition, the defense counsel should prevent the intentional questioning by some investigators of the statement, the violation of the responsibility given to them, and, if so, require the addition of comments and corrections to the statement. The transcript may be written using technical recording equipment and may be accompanied by an audio or video recording. The use of technical means, including audio recording, requires strict procedural guarantees, which prevent the possibility of falsification, violation, or psychological influence on the accused [9].

The application of the above and other technical means, the procedure and conditions of their use, the results obtained, the means of application shall be recorded in the protocol and the participants in the investigation shall be informed about the use of these means. In addition, the defense should ensure that the tapes recording the investigative action are re-broadcast to the accused, taped, sealed, and secured with appropriate signatures to prevent further tampering or other counterfeiting after the demonstration. The defense attorney should pay special attention to the transcript of the interview conducted through interpreters. In this case, the interpretation must be in full accordance with the testimony of the accused. The

defense counsel should keep in mind that in this case, the defendant only confirms the accuracy of the oral translation, not the accuracy of the statement with his signature. If the educator is involved in the interrogation of the juvenile defendant, he or she may review the transcript of the interrogation and make a written comment on the completeness and accuracy of the entries made in it. In this case, before the start of the interrogation, the investigator must explain to the teacher his rights and make a note in the protocol. All of this is important in protecting the rights of juvenile defendants. If the defendant wishes to record his or her testimony in his or her own handwriting, the defense attorney must approve it. There is a norm in our current legislation that the charge can be amended and supplemented. However, some investigators do not attempt to change the charge by including these facts in the case, even when circumstances are identified that invalidate part of the announced charge or mitigate liability. In doing so, they either do not want to do so or come to the conclusion that the trial verdict will be changed by the appropriate mitigator of the court in the case. Therefore, if the defense counsel finds any of the above mitigating circumstances, it is necessary to change the charge or to request the investigator to remove part of it, in order to achieve the appropriate amendment. Defendants must ensure that the supervising prosecutor alleviates the situation of the above defendant or that part of the charge has been dropped. However, the annulment of the new decision by the prosecutor does not mean that the previous conviction was mechanically reinstated. In this case, the previous conviction must be re-announced to the accused. In addition, absolutely all case materials must be provided for the accused and his defense counsel to get acquainted [10]. Without getting acquainted with all the materials, it is a bit difficult to properly assess the amount of evidence gathered in the case, to understand the whole nature of the declared charge and to ensure the legitimate interests and right of defense of the accused. The law stipulates that these materials must be sewn and numbered as a guarantee that the defendant and the defense counsel are familiar with all case materials.

Many types of scientific and technical means can be used in conducting investigative actions. At the same time, the defense should pay attention to what technical means and methods were used to find, strengthen and verify the evidence. Defendants should be familiar with the specialized literature and seek the necessary advice from experts. The active and sincere participation of the defense counsel in these investigative actions, the use of all methods and means provided by law in the interests of his client, play an important role in the fair resolution of the case in favor of the accused.

The defense should try to get acquainted with the case materials in the presence of the accused as much as possible. This is especially important in the case of juveniles or defendants with any physical or mental disabilities. In doing so, the defense counsel shall explain to the accused the content of the accusation, the vague terms, the rule of law, the content and significance of certain investigative actions and evidence.

In short, along with the prevention of the above-mentioned cases and their consequences, they serve the full exercise of the protective function in criminal proceedings and the interests of justice.

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