

THE IMPORTANCE OF THE PARTICIPATION OF A LAWYER WITH THE JUDICIARY AND LAW ENFORCEMENT IN CRIMINAL PROCEEDINGS

Tulaganova Gulchehra

1. Tashkent State University of Law, Uzbekistan Email: g.tulaganova@tsul.uz

2. Editor at Portal International Scientific Journals Tadqiqot.uz Republic of Uzbekistan

Abstract. *This article analyzes the involvement of the court, law enforcement and a lawyer in criminal proceedings. At the same time, it was noted that it is important for lawyers to strengthen their participation in the evidentiary process based on advocacy tactics and strategies in their work. In the concluding section, it is noted that it serves to ensure the principle of adversariality, while providing an opportunity to further strengthen the defense function of the lawyer.*

Keywords. *Court, lawyer, law enforcement, prosecutor's office, criminal procedure, law.*

Introduction. On April 4, 2018, in accordance with the Law of the Republic of Uzbekistan “On amendments and additions to some legislative acts of the Republic of Uzbekistan in connection with the adoption of measures to strengthen the guarantees of rights and freedoms of citizens in judicial proceedings,” amendments and additions to our criminal and criminal procedure legislation included. On the implementation of the Action Strategy, the Decree of the President of the Republic of Uzbekistan dated November 30, 2017 No 5268 “On additional measures to strengthen the guarantees of the rights and freedoms of citizens in judicial and investigative activities.” The decree stipulates that defense counsel has the right to collect and present evidence in a criminal case, which must be attached to the criminal case file, as well as compulsorily examined and evaluated during the inquiry, preliminary investigation and trial. On the basis of the Decree of the President of the Republic of Uzbekistan dated May 12, 2018 No 5441 “On measures to radically increase the efficiency of the Bar and expand the independence of lawyers” specialization of lawyers was established to improve the quality and efficiency of legal services.

Improving democratic institutions and their implementation is an urgent issue in the process of laying the foundation for the rule of law. In the same way, the participation of a professional lawyer in criminal procedural law plays an important role in ensuring the protection of the rights and freedoms of the individual. Article 26 of the Constitution of the Republic of Uzbekistan states that “Everyone charged with a criminal offense shall not be presumed guilty until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense. In court, the accused will be provided with all the conditions to defend himself.” Under this article of the Constitution, every person is guaranteed his innocence until proven guilty. “ 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. 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 accordance with the Law “On Advocacy” and the Law “On Guarantees of Advocacy and Social Protection of Advocates”, the lawyer's independence, professional ethics, legal secrecy and oath, the use of methods and means not prohibited by law should be relied upon. The defense counsel must enjoy equal rights with the prosecutor in criminal proceedings [2] and act on an equal footing in accordance with the adversarial principle. It should be noted that it is in the direct interest of the lawyers to prove the innocence of the person and the exclusion of their participation in the process will be the basis for the annulment of the decision and the judgment. Defense counsel is a person who guarantees the rights and interests of the suspect, accused (other participants in the proceedings) in criminal proceedings [3], and provides them with legal assistance in the criminal proceedings.

The objectivity of the evidence is growing as a result of the lawyer's use of the achievements of modern science and technology. Today, with the emergence of new types of crimes, the need to use a lot of evidence in the tactics and strategy of a lawyer means that the lawyer needs additional evidence, including an expert opinion. Article 53 of the CPC, entitled “Rights and obligations of a lawyer” to participate in the investigation and to ask questions to experts, specialists, to provide written comments on the conduct of the investigative action in which he participated, to collect and present information that can be used as evidence [4] and to identify circumstances that deny or mitigate suspicion or accusation According to the content of this norm, the lawyer must be directly involved in all investigative actions, in particular, in the examination process, because the defense counsel to monitor the methods used in the conduct process and the survey of the facility, and in this case may ask questions to the experts. However, this is a very rare phenomenon in practice. Furthermore, the content of the first part of this article stipulates that a defense counsel may participate only during the interrogation of the suspect and the indictment against the person [5], but in respect of the accused he may participate not only during the interrogation but also in other investigative actions. This means that according to this norm of the CPC, the suspect is given the opportunity to participate in the case only during the interrogation. This situation can lead to many misunderstandings in practice. For this reason, it is necessary to determine the right not only of the accused but also of the suspect to participate in other investigative actions. In our opinion, after the first part of Article 53, entitled “Rights and obligations of the defense counsel”, the defense counsel should, with the permission of the inquiry officer, investigator, prosecutor and the court, request information from the expert who conducted the investigation. have the right to receive it in writing. ” it is necessary to enter the so-called norm. Pursuant to this norm, Article 6 of the Law on Advocacy, entitled “Lawyer's Rights”, provides for “requesting and obtaining in writing, with the consent of the client, expert opinions, references or advice on issues necessary for the provision of legal assistance;” with the consent of the client, it is advisable to include the words “from the inquiry officer, investigator, prosecutor and the court or expert” after the words. In practice, when a lawyer [6] sends a letter requesting a copy of an expert opinion from an expert institution, Article 67 of the CPC does not provide for the non-disclosure of information obtained in connection with the examination. In this case, this suggestion is reasonable, given that disclosure should

be applied to persons other than those involved in the process. There has been much controversy over the involvement of a lawyer in the evidentiary process, and the presentation of objects and documents in the CPC is also a form of evidence gathering [7].

From the point of view of this scholar, if a lawyer presents things and documents to an inquiry officer, investigator, prosecutor, or court, they are considered evidence. A number of other scholars say that a lawyer is not limited to gathering evidence like an investigator, but to petitioning for the inclusion of information in a criminal case.

He argues that the information provided by the lawyer becomes relevant only when it is included in the criminal case. [8] Even when a lawyer critically evaluates his right to collect information, his actions consist of a set of non-procedural actions, which makes it difficult to determine the order and ways of obtaining his expert opinion. Therefore, the information obtained from the investigator will not be directly applied to the case.[9] This view is inherently correct, and only after the investigator has examined each piece of information presented will he consider it as evidence and rely on it as evidence. Belkin said that “the law should instruct a lawyer to appoint an expert in a criminal case or to conduct an expert examination of his choice, and to participate in these processes” [10].

As for the activities of the lawyer in relation to the specialist and the expert, this process is manifested in the following: advice from the expert and the specialist to get answers to the formed questions on special knowledge; that is, the examination appointed by the investigator, the verification of its results; to evaluate the actions of the investigator on the use of specialized knowledge in investigative actions, to assist those who express their interests on the basis of expert or expert advice, and to identify errors and omissions in examinations, as well as the use of modern science and technology. In addition, the lawyer in the organization of his tactical activities serves to consult with a specialist or expert in the field of modern science and technology, to check his own versions and to form the opportunity to properly organize their plans and get results. The Code of Criminal Procedure of the Republic of Uzbekistan Considering Article 85, entitled “Proof,” proof consists of the collection, examination, and evaluation of evidence in order to establish the truth about circumstances that are relevant to a lawful, reasonable, and fair decision of a case. So, the method of proof is the collection of this evidence, according to Article 86 of the Code of Criminal Procedure, the participants in the proof are the inquirer, the investigator, the prosecutor, the court. This means that the collection, examination and evaluation of evidence is the sole responsibility of the inquiry officer, investigator, prosecutor, court. With regard to the activity of gathering evidence by a lawyer, we can say that the documents that are important for the case collected by the lawyer are evaluated by the inquiry officer, investigator, court as evidence. The defense counsel does not have to send a request for an expert examination, because it violates the presumption of innocence, ie the defense counsel is forced to prove the innocence of the suspect, the accused, the defendant [11].

It is not correct to agree with the above, as giving lawyers the power to apply for expertise in order to further expand the application of the provisions of the adversarial principle serves as a real guarantee for the lawyer's right to gather evidence in the evidentiary process. will be.

These processes take place not in the form of an expert appointment, but in the form of appealing to experts to request an expertise. In this case, the lawyer's request for an expert examination is not binding on the expert, ie the expert is not warned of criminal liability for non-compliance, and secondly, these actions are in the form of a contractual relationship. A lawyer may be able to obtain information based on specialized knowledge for an appropriate

fee for an expert examination. This norm is included in the powers of a lawyer in Article 70 of the Criminal Procedure Code of the Republic of Kazakhstan, which defines the procedure for obtaining an expert opinion on a contractual basis and filing a petition to include them in the criminal case. It is appropriate to apply this norm to our national legislation, and in Article 53 of the Code of Criminal Procedure of the Republic of Uzbekistan “Rights and obligations of a lawyer” after the words “collection and submission of information that can be used as evidence in accordance with the second part of Article 87 of this Code” to obtain an expert opinion on the basis of “the petition and to submit a petition for their inclusion in the criminal case”. Through this action, the level of application of the adversarial principle will increase as the lawyer's ability to gather information is further enhanced. Given this increase in the workload of expert institutions through this proposal, it would be expedient to introduce private expert institutions, the most effective way to prevent it, which is giving good results in foreign countries. The emergence of the private sector of expert institutions, such as medicine and one of its areas, dentistry, pharmaceuticals and other fields, will lead to progress in this area and fair competition between public and private organizations. In this procedure, it is expedient for a lawyer to appoint an expert examination on a fee basis, as opposed to criminal proceedings. This is because a lawyer is primarily concerned with the interests of the person whose interests are being protected, unlike the public authorities responsible for prosecuting a criminal case, and acts on the basis of his or her remuneration. On the other hand, through this action, the lawyer clarifies the situation on the basis of special knowledge, and the expert is rewarded according to his work for reaching a conclusion that is the result of his actions. Most importantly, it provides an opportunity for a party to quickly identify and verify the error in the expert opinion received. In addition, in these cases, the power of attorneys to appoint an expert is required, provided that the expert has the opportunity to refuse to perform the work and to resign. This is because it is expedient to include in the Code of Criminal Procedure the process of appointing a lawyer expertise on a voluntary basis.

According to Article 6 of the Law on Advocacy, entitled “Lawyer's Rights”, a lawyer has the right to request and receive written opinions of experts, references or advice from experts on issues necessary to provide legal assistance in the course of his professional activity. the code does not contain information on the expert opinion of the lawyer or the procedure for requesting the opinion of the expert in a procedural manner. The request must be in the form of an application and its execution must be contractual. It is advisable that the involvement of an expert or specialist be in the form of payment for the services of a lawyer.

In summary, current attorneys are strengthening their involvement in the evidentiary process based on advocacy tactics and strategies within their practice. This, in turn, serves to ensure the principle of dispute, while allowing our lawyers to further strengthen their protective function.

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