

The Role of Barrister in Modern Criminal Proceedings

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Abstract: This article describes the liberalization process of the criminal law legislation in the Republic of Uzbekistan and improvement of the organizational forms of preliminary investigation and the criminal process. The Uzbek model of modernization of democratic reforms and the formation of criminal law legislation, taking into account the world experience, as well as the identity and traditions of the republic, are defined in the form of strategic goals of Uzbekistan. Author opened the important components of criminal procedural activity and the role of advocates in proving process of the criminal cases. The defender in the proof process should be understood as a set of rules and techniques used to effectively influence the decision-making by the investigator and the court with the help of this information. Main differentiation of evidence into accusatory and exculpatory depends on their attitude to the prosecution and acquittals indicate the absence of a crime event, the innocence of the accused or mitigate his punishment. Proving is a direct and indirect cognitive and certifying activity regulated by the Criminal Procedure Code of the Republic of Uzbekistan for collecting, checking and evaluating evidence by an inquirer, investigator, prosecutor and court in order to establish the truth about the circumstances that are necessary for the correct resolution of the case.

Key words: criminal law, liberalization process, investigation, criminal procedural activity, Criminal Procedure Code, investigator, prosecutor and court.

Currently, due to the liberalization of the criminal law legislation of the Republic of Uzbekistan, there is a need to improve the organizational forms of preliminary investigation and proof mechanisms by expanding the functions of a barrister in the criminal process of the Republic of Uzbekistan. It is noteworthy that the Uzbek model of modernization of democratic reforms and the formation of criminal law legislation, taking into account the world experience, as well as the identity and traditions of the republic, are defined in the form of strategic goals of the Concept of the President of the Republic of Uzbekistan Sh.Mirziyoyev, which was announced at a joint meeting of the Chambers of the Oliy Majlis of the Republic of Uzbekistan.

In particular, the Head of State outlined the need to ensure the rule of law, including expanding the powers of the defender in criminal proceedings and ensuring the adversarial nature of the prosecution and defense in court proceedings. The Constitution of the Republic of Uzbekistan guarantees the right of everyone to receive qualified legal assistance, which at all stages of the criminal process can be really provided only if the defender is a professional lawyer- barrister. A barrister acquires the procedural status of a defender from the moment of his special legal personality, i.e. after appearing before the investigator and presenting a warrant for participation in a criminal case. This fact is preceded by the adoption by the defender of the protection of the person against whom the criminal proceedings are being conducted.

The most important component of criminal procedural activity is proving. The reliable establishment of a socially dangerous act that took place in the past in all its legally significant features is carried out by proving, which is a process of cognition. Each of the circumstances included in the subject of proof, as well as other circumstances relevant to the criminal case, can be established (proved) by the inquirer, investigator, prosecutor and court only with the help of evidence. Within the framework of criminal procedural proof, the efforts of each subject of proof - and in our case, this is the defender-should be directed to the implementation of special cognitive activity aimed at establishing the circumstances that make up the subject of proof.

The participation of the defender in the proof process should be understood as a set of means provided to the defender by the criminal procedure law in the form of powers to obtain and submit evidentiary information aimed at establishing mitigating and justifying circumstances, as well as a set of rules and techniques used to effectively influence the decision-making by the investigator and the court with the help of this information. In accordance with Article 81 of the Criminal Procedure Code of the Republic of Uzbekistan, evidence is

any information on the basis of which, in accordance with the procedure provided for by law, a court, a prosecutor, an investigator, an inquirer establish the presence or absence of a socially dangerous act, the guilt of the person who committed this act, other circumstances subject to proof, as well as other circumstances that are important for the correct resolution of a criminal case.

When determining evidence, it is customary to proceed from the unity of evidentiary information (its content) and the procedural source (its procedural form). This is always a form of performing actions provided for by procedural law and making decisions provided for by law, and at the same time a form of procedural consolidation of these actions and decisions (protocol, resolution, ruling, sentence).

According to its procedural form, the evidence must meet the following mandatory conditions: 1) they are obtained as a result of the activities of authorized officials and state bodies; 2) obtained from a source provided for by law (Part 2 of Article 81 of the Code of Criminal Procedure); 3) obtained in accordance with the procedural procedure established by law, i.e. evidence obtained in violation of the law has no legal force; 4) are fixed in the manner provided for by the criminal procedure law.

Depending on the specific features of the evidence (source of origin, relevance to the subject of proof, etc.), they can be divided (classified) into the following groups: initial and derivative; accusatory and exculpatory; direct and indirect; personal and material.

The differentiation of evidence into accusatory and exculpatory depends on their attitude to the prosecution. Acquittals indicate the absence of a crime event, the innocence of the accused or mitigate his punishment (even if found guilty by a court verdict).

The primary purpose of proof in criminal proceedings is to clarify the actual circumstances of the case, to reliably establish the event of the crime and the persons who committed it.

Experts, specialists, witnesses and other persons who perform certain procedural duties in accordance with the procedure established by law are involved in the collection and verification of evidence. The collection and verification of evidence is carried out through interrogations, confrontations, presentation for identification, seizures, searches, inspections, experiments, expert examinations and other investigative and judicial actions provided for by law.

Certain rights to participate in evidentiary activities are granted to all participants in the process on the part of the prosecution and on the part of the defense.

In the course of evidentiary activities, the protection of the rights and legitimate interests of citizens and legal entities should be ensured.

It seems to us that Article 85 of the Criminal Procedure Code of the Republic of Uzbekistan needs to be clarified, from the content of which it is difficult to draw a conclusion about who has the duty of proof, what is the role of non-governmental subjects of the criminal process in it. These shortcomings can be eliminated if the analyzed article is stated in the following wording: "Proof consists in the collection, verification and evaluation by the inquirer, investigator, prosecutor and court of evidence in order to establish the circumstances provided for in Article 81 of the Code of Criminal Procedure. Other participants in criminal proceedings on the part of the prosecution and the defense participate in proving through the application of petitions, participation in the production of investigative actions and decisions related to proof".

Taking into account the above, we believe that "proving is a direct and indirect cognitive and certifying activity regulated by the Criminal Procedure Code of the Republic of Uzbekistan for collecting, checking and evaluating evidence by an inquirer, investigator, prosecutor and court in order to establish the truth about the circumstances that are necessary for the correct resolution of the case". Today, the legal profession as an institution of civil society is designed to promote the establishment of a balance of various forces in society, strengthen the self-consciousness of all members of this society, and establish control by the population of the country over the activities of state authorities, other state bodies and organizations.

The fact that the bar is not included in the system of state authorities and local self-government bodies is confirmed by the fact that in organizational terms the bar is not subordinate to any authorities, its activities are financed not from the state or local budgets, but at the expense of funds earned by barristers themselves, lawyers by their status are not officials, civil servants, but self-employed citizens. The functioning of the bar

is the main way to ensure article 44 of the Constitution of the Republic of Uzbekistan, which states: "Everyone is guaranteed judicial protection of his rights and freedoms, the right to appeal to the court against illegal actions of State bodies, officials, and public associations".

Next, for our article we will consider the criminal legislation procedure of some CIS countries.

The actual data that are important for the correct resolution of the criminal case are established by: the testimony of the suspect, the accused, the victim, the witness, the witness entitled to defense, the expert, the specialist; the conclusion of the expert, the specialist; material evidence; protocols of procedural actions and other documents".

Information obtained in violation of the requirements of this Code is inadmissible evidence, has no legal force and could not be used as the basis for a decision on the case, as well as used to prove any of the circumstances specified in Article 83 of this Code».

The legal basis for the participation of a defender in criminal proceedings is determined by the norms of international law, the constitutional guarantee of every citizen to receive qualified legal assistance, criminal procedure legislation, the Law of the Republic of Uzbekistan "On Advocacy".

It seems that it was this rule that gave rise to the discussion that is currently unfolding in the legal press about the recognition or non-recognition of the information collected by the barrister as appropriate evidence.

An analysis of the views expressed in the literature shows that the opinions of both practitioners and theorists on this issue are divided.

There is a point of view according to which the information collected by the barrister is recognized as evidence and meets the requirements imposed on them.

A different point of view is held by the authors, who claim that the information collected by the defender cannot be evidence due to the fact that they do not meet the admissibility requirement.

Some scientists generally come to the conclusion that the new criminal procedure legislation did not revolutionize the existing evidentiary law, and the declaration of the right of a barrister to collect and present evidence did not significantly change the former legal position of a barrister as a subject of proof.

In particular, having defined for the defender the methods of collecting evidence - obtaining objects, documents and other information; interviewing persons with their consent; requesting documents from state authorities and organizations, the legislator does not regulate a clear procedure for these actions and securing evidence, as well as the procedure for transferring them to the investigator and evaluation criteria.

To begin with, it is appropriate to consider the history of the legal profession and its importance today. The position of a barrister is one of the most ancient jobs. For the first time, representatives of this profession appeared in ancient Rome. In that era, they were called patrons. Often they did not have a sufficient level of knowledge, for that reason they were often ridiculed by philosophers. The first associations and qualification examinations for barristers appeared before our era in the Ancient Rome in the era of the Empire, under the Emperor Leo.

Those times are considered as the period of birth and beginning of the development of this profession. In Ancient Russia, the courts came from the will of the Gods. For a long time, the very concept of defenders was not there. The first mention of barristers of those times dates back to the 15th century. They were called "attorneys". It was believed that everyone had the right to have such a representative in court. The development of the institute of advocacy began in Poland and Lithuania, which at that time were part of Russia. In the 18th century, the first requirements for barristers appeared: they must be noblemen, have a clear conscience and learn from experienced representatives of the profession. No further education was provided. In that era, they were already called "solicitors".

The first institute of solicitors appeared in the 19th century. The barrister is an old royal servant, later a palace rank. The name "S." is borrowed from the word "cook", i.e. to do, to work. Information about them dates back to the XVII century, when they were in the courtyards of stables, fodder, bread, sytenny, etc. There were also S. of palace, who were in charge of the palace clerical affairs in the villages and protected

the peasants of the palace from insults; S. from life, granted from the city nobles; S. with a dress, etc. Especially for the personal services of the emperor, there were people who went after him "with cooking", i.e. with his hat, towel, and so on. At the entrance of the emperor to the church, they carried a chair and a stool for him; they kept a hat in the church; on campaigns they carried a shell and a sword; during the emperor's winter trips around the suburbs of Moscow, they were assigned to the "potholes" to keep the cart on the potholes; during dinners, they put dishes in front of the boyars and neighboring people, etc.

Since that time, the rapid development of the profession begins, with the presentation of certain requirements for specialists and the prohibition of activities without obtaining a certificate.

Nowadays the legal profession is very well developed in various states. In many countries, there are a lot of legal specializations and branches of activity of barristers. This profession is considered as one of the most prestigious and popular. The legal profession as a legal institution in any state is designed to promote the unity of the theory and practice of the application of law, to strengthen the legal protection of rights and freedoms guaranteed by Constitutions, laws and other normative acts.

Although the verification of evidence falls within the competence of the inquirer, investigator, prosecutor and court, it is obvious that a barrister, by virtue of his professional duties and with the help of his procedural powers, has a real opportunity to influence the process of verifying the reliability of evidence. In addition, the participation of the defender in the proof directly depends on the development of his defense tactics, which should meet the principle of continuity at the stages of pre-trial and judicial proceedings.

At the same time, it is important that the defender, participating in the activities of proving, always takes an active position that allows him to adequately participate in the collection of evidence in a criminal case, thereby preventing the occurrence of investigative errors and protecting the rights and legitimate interests of citizens.

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