SOME ISSUES OF PARTICIPATION OF THE DEFENDER IN THE PRE-TRIAL STAGE OF THE CRIMINAL PROCESS

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Abstract: *this article is devoted to the issues of the defender's participation in the pre-trial stage of criminal proceedings. The rights and obligations of the defender, the implementation of legal relations arising in the process, as well as the functions performed by the defender, represent in themselves the legal nature of his participation in the criminal process. Achieving full compliance with the print of the argumentative principles at the pre-trial stage of criminal proceedings and ensuring the equality of the defender is manifested as the main development trend of the criminal process. In this regard, the proposal to equalize the powers of the defender and interrogator, investigator and prosecutor, to give the same legal status to the evidence collected by them is put forward in this article.*

Keywords: *defender, criminal proceedings, argumentative principles, equal rights, proof, preliminary investigation, pre-trial stage of the criminal process, investigator.*

Today, the development of the Bar is known as a special focus of large-scale reforms in the judicial system. In particular, significant work is being done to strengthen the role and importance of advocacy as one of the effective institutions to protect the rights, freedoms and legitimate interests of individuals and legal entities. Particular attention is paid to the development of this sphere in a number of normative and legal acts adopted in recent years, as well as in the form of new legislation developed today. These include the Law of the Republic of Uzbekistan from April 4, 2018 of No. ZRU-470 "About modification and additions in some legislative acts of the Republic of Uzbekistan in connection with adoption of measures on strengthening of guarantees of the rights and freedoms of citizens in judicial activity" Decree of the President of the Republic of Uzbekistan dated May 12, 2005 No. PF-5441 "On measures to radically improve the effectiveness of the Bar Institute and increase the independence of lawyers". Also, the Decree of the President of the Republic of Uzbekistan dated February 1, 2019 No. P-5650 "On making amendments and additions to some documents of the President of the Republic of Uzbekistan, as well as invalidation of some of them". As a result of legislative changes, there are some positive changes in the practice. In particular, measures are being taken to ensure the proper functioning of the principle of parties' disputes at all stages of legal proceedings, and the necessary legislative basis for effective professional activities of lawyers is being established.

However, it still requires a lot of tasks to turn a lawyer's office into a fully-fledged human rights protection institution.

According to statistics released by the Chamber of Advocates of the Republic of Uzbekistan, today there are about four thousand advocates in Uzbekistan. This means that, the proportion of advocates serves legal aid avarage eight thousand two hundred citizens. If you look at the same numbers in developed countries, particularly in Germany, we can see that there are five hundred citizens per advocate. This shows that there is a need to create extensive rights and powers in our country to develop this area and advocates to operate effectively [1].

In this context, it is our main objective to focus on the evidence-based activities of the defense and defense advocates whose reform is relevant today and to investigate the role of the institution at the pre-trial stage. It is well known that the question of the legal status of the defense attorney is important in the prosecution of criminal cases. According to Dr. Tulaganova, Doctor of Jurisprudence, "at the initial stage of the investigation, two inseparable tasks need to be solved, on the one hand, to ensure high efficiency in the detection, investigation and disclosure of crimes, and on the other, the investigator's involvement. the rights and lawful interests of citizens subject to criminal prosecution must be guaranteed" [2, p. 3]. The results of the current legal status of the advocate in relation to participation in criminal cases show that there are still enough problems to be solved in this area. The current trend of criminal proceedings calls for increased disputes between the parties in a more restrictive civil procedure. This is particularly important in the pre-trial phase of criminal proceedings. This may be explained by the fact that at the pre-trial stage of criminal proceedings the investigator appears to be the principal person having all the means and methods of proof guaranteed by the state. The defense advocate is not included in the list of persons who are conducting evidence in accordance with article 86 of the Criminal Procedure Code of the Republic of Uzbekistan. This means that the defense attorney is not a subject of proof. Although the CPC has several rights-based defense attorneys, it does not allow the defense advocate to obtain complete information about the crime.

Russian scientist Vishnevskaya commented on this situation: "When the parties can prove their validity by presenting their objections to any claim, fact and evidence in the criminal procedure equally and actively and

that the criminal proceeding is considered to be controversial only when it is able to gather and present evidence that will enable it to establish the truth and facilitate a fair trial" [3, p. 12].

In criminal proceedings, including the pre-trial stage, it is effective only when there is a dispute between the parties. The power of the dispute is determined by the active actions of the parties. For this, the parties must have equal rights and powers.

The quintessence of criminal proceedings is the procedural equality of the parties in the collection of evidence [4, p. 3], said Russian lawyer AS Urgalkin. He believes that during the preliminary investigation, a large amount of information about the crime and violation of the rights of the defense party in the collection of these data will lead to a violation of the defense function in court. From these points of view, the basis for a just and equitable court ruling is that the parties at the pre-trial stage will be able to act on an equal and controversial basis.

So what other rights and powers should a defense lawyer have to enable him / her to perform his or her defense function properly? The answer to this question is:

According to Article 49 of the Criminal Procedure Code of the Republic of Uzbekistan, the law defines a person who has the authority to protect the rights and lawful interests of suspects, defendants and defendants and provide them with legal assistance. In practice, however, the defender acts not only as a representative of the rights of the suspect, accused and defendant, but also as a defender of the rights of the convicted and acquitted. For this reason, it is advisable to broaden the scope of those who are defending their interests in this Article of the Code. Commenting on this article, Professor Tulaganova comments: "It should be noted that legal assistance at the pre-trial stage should be understood as an effort to help clarify the nature of suspicion and prosecution, rights and obligations, as well as the right to avoid errors and other undesirable acts" [4, p. 3]. It should be noted that during the preliminary investigation, in some cases, the witness also appears as a suspect. For this reason, it is preferable to cooperate with the defense attorney in explaining the rights and obligations to the witness, as well as on the right to avoid mistakes and other undesirable acts, as indicated to the suspect. Therefore, as we have seen in Article 66 of the CPC, it is appropriate that the witness protects the rights of the witness as a defense advocate and not as a advocate, and to include the witness in the body of legal protection under Article 49. Analyzing this situation under the law of foreign countries, a number of foreign countries, in particular article 66 of the Criminal Procedure Code of the Republic of Kazakhstan and Article 45 of the Criminal Procedure Code of Ukraine, also have the right of defense in accordance with the law: witnesses, suspects, defend the rights and legitimate interests of the accused, the defendant, the convict and the acquitted.

On another note, in the second and fourth paragraphs of Article 49, participation of a defender in the case is allowed after he / she has presented the advocate's certificate and has issued an order stating that he is authorized to handle the case. It is stated that defense counsel is allowed to participate in the case at any stage of the criminal procedure, and when a person is detained, his right to freedom of movement is limited in practice. However, there are cases when an official in charge of investigating a particular criminal case interrogates a suspect in the presence of a public defender on duty, and a record of that is made. In order to avoid such a situation, **the defense clerk must immediately notify the state agency conducting the proceedings, after concluding an agreement with the principal, and provide an order stating that he is authorized to proceed. The order submitted must be taken immediately by the state body responsible for the prosecution, and no inquiry or investigation shall be permitted from the time of receipt of the order with the person defending the order, without the presence of the defense attorney**; it is desirable.

Advocate Allan Pashkowski, in a legal explanation of the current practice of involvement in the case, often calls on law enforcement officials to refuse a defense counsel assigned to a suspect or defendant, disregards the existing procedures for selecting a defense attorney, and unlawfully influences investigators. "reaching out" to a lawyer acting under a bargain, threatening the accused, threatening the accused's relatives (including during the trial), using threats against the accused, giving false information about the legal consequences of the criminal liability, slandering the lawyer acting on the agreement (which will soon be known to the lawyers), "Instructing" the defendant in his absence that the defendant has not yet seen him, and usually the defendant often refuses his legal services, a. It should be noted that such cases as misleading and outright deception of the victim are numerous and are observed at every step [5, p. 32]. An investigator, prosecutor, or court may urge an inquiry officer,suspect Article 50 of the CPC by an **inquiry officer investigator, prosecutor, or court to invite a suspect, accused or defendant to work for the purpose of eliminating unlawful acts of a suspect, accused, or defendant that are contrary to the legitimate rights and interests of the accused**. **If such an action is found, the suspect, accused or defendant may refuse the defense lawyer at any time during the proceedings under Article 52 of the new section**, which states that such circumstance would serve as the basis for the prosecution. Such waiver shall be allowed only on the initiative and at the discretion of the suspect, accused or defendant, in the presence of the defense counsel, and shall be supplemented with new sentences.

It is worth noting that at the pre-trial stage, scholars and practitioners differ on the principles of equality of parties and the principle of contention. For example, Russian scientist M.K. Sviridov believes that this is only necessary if there is a certain conscience guarantee in the defense of the defense lawyer [6, pp. 3-6.], whereas

Yu.A.Kimovich in turn opposes the recognition of the defense lawyer as the subject of proof. In his view, these rights are exclusively the competence of the state authorities [7, p. 21]. The proponents of this idea are now common not only among the creators and practitioners of our national legislation, but also among foreign scientists. All of them think that it is inappropriate and unacceptable to delegate the power to bring evidence. Because the defender is said to be a representative of the public. It is true that, according to the CPC, those who are authorized to do so are: the inquiry officer, the investigator, the prosecutor and the judge. At the same time, Article 87 (2) of this Code establishes that the defense counsel has the right to collect and present evidence in a criminal case. This means that there is a legal basis for the defense's involvement in the pretrial investigation. At this stage, however, there is a need for an opportunity for it to operate on the principle of contention, that is, sufficient powers. Information about the criminal case collected by the defense lawyer is virtually indistinguishable from the information collected by the investigator or investigator. The main difference is that the defense lawyer is not a representative of the public authority, and that the defense counsel does not have sufficient legally guaranteed powers for the effective exercise of the defense function. In accordance with Paragraph 2 of Article 87 above, interviewing persons with relevant business information and obtaining written explanations with their consent, requesting state bodies and other agencies, as well as enterprises, institutions and organizations, and references, descriptions, explanations and other evidence. However, the fact that the defense attorney does not have any rights to conduct the expert examination poses some difficulties in the exercise of his evidence. Therefore, when filling out Section 180 of the CPC with a new third part, the defendant, accused, or defendant's defense attorneys are asked specific questions in a criminal case to be put before the expert, these questions are not subject to change. We propose that a person, an inquiry officer, investigator or court be included in a resolution or ruling on appointment of an expert examination.

As a rule, the victim of an offense is provided with an opportunity to independently or assist him or her in the process of investigating and investigating a crime by the State agency responsible for the investigation of the crime. After all, the authorities should restore and protect the rights of victims of crime. At the same time, the law requires that the suspect's rights be properly protected. However, this type of support provided by the inquiry officer, investigator and procurator is in contradiction with the nature of law enforcement agencies. For this reason, many foreign theorists, based on the rights and interests of the suspect or accused, have suggested the need for the introduction of "parallel investigation" or "lawyer investigations" into law [8, p. 102]. In this case, the lawyer's investigation implies procedural activity, that is, a process that is equivalent to an inquiry and a preliminary investigation. Russian scientist E.Martynchik is also a supporter of the introduction of the Institute of Advocacy, which he described as: the term “lawyer investigation” is a law-based, public-law activity, and the confidence of the defense lawyer at the pre-trial stage. rights of the suspect, accused, civil plaintiff and civil defendant, aimed at identifying, establishing and confirming the circumstances and facts relevant to the case in the interests of the reporting person; protection of their rights and interests. "

However, in our opinion, the information obtained as a result of the lawyer's investigation is not evidence. This is because the lawyer's investigation cannot be considered a procedural activity. The following statements by IY Foynitskoy appear as confirmation of our thoughts. According to him: "The defense search is a large part of the defense activity, but in order to do it properly, the prosecutor's office has the same power and authority to obtain a fair trial as the prosecutor's office has the power to search for the accused." The German lawyer, philosopher and political figure Ferdinand Lassal also made the same point: “the prosecutor is working with a whole team of over a hundred police officers, and the lawyer is alone on this path to achieve a lawful, reasonable and just judgment. will try and fight, ”he said, emphasizing the unequal power of the parties fighting for justice.

Summarizing the above, it can be said that the search for protection is the essence of the institution of lawyer investigations. However, many theorists and practicing lawyers oppose the institution. In particular, Russian legal scientist VI Krupnitskaya believes that equality of the parties should be expressed only when the defense side is not empowered to appeal against the illegal actions of the investigation bodies [9, p. 106]. However, it is impossible to achieve equality of the parties in criminal proceedings.

Article 85 of the CPC describes the concept of proof as evidence collection, verification, and evaluation of evidence in order to determine the facts that are relevant to a legal, reasonable and just settlement of the case. The defense attorney shall also provide evidence in the course of his or her activity by collecting, examining and evaluating evidence in order to protect the principal against illegal and unjustified accusations and to obtain a fair trial. This means that the defense must be included in the list of proof participants in Article 86 of this Code. Only then will the defendant have many rights and powers to prove it.

It can be concluded that strengthening the legal status of the defender at the pre-trial stage and the legal basis for his proof-of-work activities and the elimination of obstacles to the full functioning of his defense will not only increase the role of the defense institution in society but also prevent many problems. will serve. In this way, the equal opportunity of the parties to make evidence is legally guaranteed and the principle of contention is fully respected.

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