



THE LEGAL STATUS OF THE DEFENDER IN CRIMINAL PROCEEDINGS, THE COSTS INCURRED IN THEIR INVOLVEMENT AND THE ASPECTS THAT SHOULD BE TAKEN INTO ACCOUNT WHEN COVERING THE COSTS

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Abstract

Issues related to the participation of the defense attorney in criminal proceedings, as well as existing costs of involving the defense counsel by the preliminary investigative authorities and the court, and the problems of their subsequent transfer to the prisoner.

The article stipulates issues related to the participation of the defense attorney appointed in criminal proceedings, as well as ensuring the participation of the investigator, investigator, prosecutor or lawyer who provides legal aid at the expense of the state in the manner prescribed by the Law of the Republic of Uzbekistan "On the provision of legal aid at the expense of the state" in the manner prescribed by the Law of the Republic of Uzbekistan "On the provision of legal aid at the expense of the state", the imposition of state funds paid to the lawyer on the prisoner, The existing problems in this process have been analyzed and proposals for improving the legislative acts have been noted.

Keywords: Procedural costs, participation of the defender, Provision of legal aid at the expense of the state, transfer of costs to the state account, attribution of costs to the defendant.



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In recent years, the state pays great attention to the further development of the institution of literature, strengthening the legal status of lawyers, increasing the efficiency of their activities by providing them with additional rights and privileges.

The newly revised Constitution **now enshrines the legal status of lawyers in the same way as that of judges and prosecutors.**

In our Constitution in the new edition, **a separate chapter has been introduced** about the institution of the legal profession. This chapter contains articles 141 and 142.

According to Article 142 of the General Command, it is established that the lawyer in the performance of his professional duties is not allowed to interfere in his activities, the lawyer must be provided with conditions for impartial and impartial meeting with the person under his protection, consultations, the lawyer, his honor, dignity and professional activities are protected by the state and protected by law.

The Constitution of the Republic of Uzbekistan states that the accused has the right to be provided with every opportunity to defend himself (Article 28, Part 1). Everyone is guaranteed the right to qualified legal assistance. (Part 1 of Article 29 of the Constitution of the Republic of Uzbekistan).

By revealing and clarifying these constitutional principles, Article 24 of the Criminal Procedure Code of Uzbekistan (hereinafter referred to as the JPK) states that the suspect, accused and defendant have the right to self-defense, provide them with all opportunities to defend themselves, the right to be protected is provided to the investigator, investigator, prosecutor, court to explain the rights granted to him, and to explain to him the rights granted to him It is provided with an obligation to take measures aimed at having a real opportunity of using all the means and methods provided by the law for protection from charge.

In addition, this article states that the suspect, accused and defendant are entitled to legal aid at the expense of the state in cases provided for by the JPK and other laws (Article 24 of the JPK and Article 9, Part 1, paragraph 4 of the Law on Legal Aid at the expense of the State).



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Also, according to Article 49 of the JPK, **the defender** is a person who is authorized to **protect the rights and legitimate interests of suspects, accused, defendants in the manner prescribed by law and to provide them with the necessary legal assistance.**

Lawyers can participate in the case **as defense** attorneys. It is allowed for a lawyer to participate in a case **only after** he shows the lawyer's ID and presents a **warrant confirming** his competence to conduct a particular case.

The participation of the suspect, accused, close relatives or one of the defendant's legal representatives as well as a lawyer may be allowed at the request of the suspect, accused person, defendant by decision of the inquirer, investigator or judicial verdict.

The participation of the defender in the case **is allowed** at any stage **of the criminal procedure**, and when a person is detained, his right to freedom of movement is actually limited.

Article 53 of this Code sets out the rights and obligations of the defender , according to which **the defender:**

know what the person is suspected or accused of;

participation in the case after the presentation of the attorney's certificate and the presentation of the warrant confirming the competence to conduct a particular case;

participation in the interrogation of the suspect, presence at the announcement of charges against the person, and participation in other investigative actions carried out during the interrogation of the accused, as well as with their participation, and asking questions of the suspects, accused, witnesses, experts, experts;

participate with the permission of the investigator or investigator in the conduct of other investigative actions;

provide written comments on the conduct of the investigation in which he participated;

filing a petition and refusal;

to collect and present evidence in accordance with part two of article 87 of this Code;



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familiarize yourself with all the materials of the criminal case after the completion of the inquiry or preliminary investigation with the documents relating to procedural actions carried out with the suspect or accused, and write down the necessary information from it, receive technical copies of materials and documents from their account or otherwise record the information specified in them;

familiarization with information containing state secrets, trade secrets or other secrets, if necessary for the exercise of protection, in the manner prescribed by law;

participate as a party during the preliminary hearing in a case by the court;

making complaints about the actions and decisions of the investigator, investigator, prosecutor and court;

familiarize themselves with the minutes of the court session and express their opinions on it;

knowledge of complaints, protests filed in case and objections to them;

has the right to **participate in the hearings of the court of appeal, cassation and revision instance.**

The Protector has the following responsibilities:

use all means and methods provided by law to clarify the suspicion or accusation or mitigate responsibility, and provide the necessary legal assistance to the suspect, accused or defendant;

not to hinder the establishment of the truth by the destruction of evidence, falsification, attempts to persuade witnesses and other illegal actions;

is obliged to observe order during the investigation of the case and the court **hearing.**

From the moment of conclusion or **appointment of an agreement to participate in the case**, an attorney does not have the right to refuse to perform the function of a defender.

According to Article 50 of the JPK, the defense participates in criminal proceedings **on 2 different grounds:**

1) On the basis of a contract on the **proposal of the suspect, accused, defendant, their legal representatives, as well as other persons at the request or consent of the suspect, accused, defendant;**



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2) At the expense of the state as a defense attorney of a suspect, accused or defendant in the manner prescribed by the Law of the Republic of Uzbekistan "On legal assistance at the expense of the state" **on the basis of decisions or decisions** of the investigator, investigator, prosecutor or court.

Part 1 of Article 51 of the Criminal Procedure Code of the Republic of Uzbekistan sets out the circumstances of compulsory participation of the defender (twelve in total). It states that unless a defense attorney has been invited by other persons at the request of the suspect, accused, defendant or with their consent, the investigator, investigator, prosecutor or court must ensure the participation of the defender in the criminal proceedings in the cases and in the manner prescribed by law.

At the same time, according to Article 50 of the JPK, the investigator, the prosecutor or the court shall take measures to ensure the participation of a lawyer who provides legal aid at the expense of the state as a defender of the suspect, accused or defendant in the manner prescribed by the Law of the Republic of Uzbekistan "On the provision of legal assistance at the expense of the state". The investigator, investigator, prosecutor make a decision on the provision of legal assistance at the expense of the state, and the court makes a ruling and establishes the time for the lawyer to start work.

The decision of an inquirer, investigator, prosecutor or court on provision of legal aid at the expense of the state is entered into the "Legal Aid" information system.

A lawyer who provides legal assistance at the expense of the state is automatically selected through the "Legal Aid" information system.

When engaging a lawyer who provides legal assistance at the expense of the state, from the moment of confirmation of the lawyer's participation in the case, he must be given at least four hours to start work.

The lawyer selected through the "Legal Aid" information system and confirming his participation in the relevant case is obliged to start work on legal assistance at the expense of the state within the time frame established by the decision of the inquirer, investigator, prosecutor or court ruling.

In the cases stipulated by the Law of the Republic of Uzbekistan "On providing legal aid at the expense of the state," a lawyer can be engaged to participate in



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the work on the basis of the queue schedule of lawyers who provide legal aid at the expense of the state.

Thus, the provisions of Article 51 of the Criminal Procedure Code are aimed at implementing the provisions of the Constitution of the Republic of Uzbekistan and are subject to unconditional execution by officials of the bodies of inquiry, preliminary investigation and the court.

It should be noted that in cases provided for by the Law of the Republic of Uzbekistan "On legal assistance at the expense of the state", insufficient attention is paid to the fact that in the future the issues **related to the involvement of a lawyer in criminal proceedings** are paid by the judicial investigative authorities in the form of a procedural output.

In particular, according to Article 9 of the Law of the Republic of Uzbekistan "On the provision of legal aid at the expense of the state", **in accordance with the Criminal Procedure Code** of the Republic of Uzbekistan the participation of a lawyer in a criminal case is defined as individuals entitled to receive legal aid at the expense of the state.

According to Article 26 of this Law, it states **that financing of legal aid from the state budget of the Republic of Uzbekistan and** other sources not prohibited by law shall be carried out.

However, pursuant to Clause 4 of Part 1 of Article 318 of the JPK, **the procedural costs are provided as consisting of the** fee payable to the defence counsel for the provision of legal assistance in the event that the defendant is exempt from payment **under Article 50 of this Code.**

In this case, **the amounts paid for participation in criminal proceedings on the basis of appointment to a lawyer** are included in the procedural costs.

That is, in accordance with Article 50 of the JPK, **it is noted that the investigator, investigator, prosecutor or court takes measures to ensure the participation of a lawyer who provides** legal aid at the expense of the state as a defender of the suspect, accused or defendant in the manner prescribed by the Law of the Republic of Uzbekistan "On the provision of legal assistance at the expense of the state".



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At the same time, it is noted that according to Section 320 of Article 1 of the JPK, **procedural costs**, including **the fee paid to the lawyer**, can also be recovered from the conviction by the court.

However, these norms are not sufficiently understood by practitioners and are understood to involve lawyers in criminal proceedings "**on a free basis**".

Payments made from the state budget remain non-refundable.

Analyzing the experience of foreign countries in this **area, the following can be seen:**

According to Article 132 of the Code of Civil Procedure of the Russian Federation, the costs associated with the participation of the competent authorities on the basis of the appointment of the defender at the expense of the state **are defined as procedural expenses** and, as a general rule, are collected from the prisoner **in accordance with the results of the case.**

According to Article 177 of the Code of Civil Procedure of the Republic of Kazakhstan, the amounts paid for legal assistance provided by the defense in connection with the exemption of a suspect, accused or defendant from the payment of **legal aid fees or** participation in an inquiry, preliminary investigation or trial with the appointment of a lawyer are set out as a procedural expense.

And according to Article 174 of this Code, in cases provided for by this Code, the **costs** of remuneration of lawyers are covered **from the state budget if the lawyer participated** in pre-trial proceedings or as an appointment defense attorney **or as a representative of the victim (private prosecutor)** without concluding a contract with the client.

On the basis of Article 163, Article 163 of the Code of Civil Procedure of the Republic of Belarus, procedural costs, including **costs related to the participation of the defense attorney in the case**, are charged to the prisoner.

The articles of the JPK of the Republic of Georgia regarding procedural costs also stipulate that the costs for the services of a lawyer executed at the expense of the state shall be reimbursed directly by the accused, defendant or prisoner.

According to Article 367 of the Criminal Code of the Republic of Latvia, **procedural costs** shall include sums paid to witnesses, experts, specialists,



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translators, **as well as the services of a lawyer**, and these costs shall be recovered from the prisoner.

The Criminal Procedure Legislation of the Republic of Estonia and the State Legal Aid Legislation stipulate that procedural costs in criminal cases are borne by the prisoner, and this type of expenses includes the provision of legal aid at the expense of the state.

In addition, in paragraph 9 of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated November 24, 2009 No. 13 "On the practice of collecting procedural costs in criminal cases", the courts should note that procedural costs **related to the amounts to be paid to the translator and the lawyer 's services are also procedural costs**, if the convict **is** exempt from paying fees for legal assistance, to be transferred to the state account.

In paragraph 10 of this resolution, the courts in deciding the issue of collection of procedural costs, along with procedural legislation, the Law of the Republic of Uzbekistan "On the provision of legal aid at the expense of the state", the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated November 21, 2024 No. 774 "On the procedure for attracting and remunerating lawyers providing legal assistance at the expense of the state" Appendix No. 1 **states the need to comply with the Regulation** "On the procedure for attracting and remunerating lawyers providing legal aid at the expense of the state."

However, in these norms the provision of legal aid at the expense of the state leads to confusion in the courts due to the fact that there are no rules regarding the subsequent calculation of procedural expenses and the collection from the prisoner.

Based on the above-mentioned situations, in order to solve the existing problems and further develop the industry, **the following is proposed:**

- Paragraph 4 of part 1 of Article 318 of the Criminal Code of the Republic of Uzbekistan

provides not only for cases related to the defendant, but also for the accused legal aid at the expense of the state. At the same time, the amount of payments for legal assistance at the expense of investigators and interrogators is to be filed



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with the attachment of the **indictment** (*Article 380 of the JPK*) and the indictment (*Article 38112 of the JPK*);

– to explain in detail the specific mechanisms related to the **collection of procedural costs** in criminal proceedings, including the full or partial exemption of **prisoners on the basis of participation and** who do not have the financial means to pay for the payment;

– **the introduction of provisions on the collection of fees from prisoners as a procedural expense of fees for lawyers involved** in criminal proceedings in the Law of the Republic of Uzbekistan "On legal assistance at the expense of the state";

• Additions to the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated November 24, 2009 No. 13 "On the practice of collection of procedural expenses in criminal cases", **providing for specific procedures for the collection of fees for lawyers involved in criminal proceedings from prisoners as a procedural expense;**

– ensuring the integration into the "Legal Aid" **information system**, which used in practice by judicial bodies in order to automate the process of **definition, calculation, acceptance of relevant documents, payment and collection of legal aid in the investigative process;**

– development of a methodological manual for investigators, investigators, prosecutors and judges **aimed at collecting procedural costs, including fees for lawyers involved in criminal proceedings**, in which details the procedure for reimbursement of public costs.

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