



CONSTITUTIONAL AND LEGAL FOUNDATIONS AND ISSUES OF THE SUBJECT COMPOSITION IN PROVIDING QUALIFIED LEGAL ASSISTANCE

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Abstract

The article analyzes the constitutional foundations of the right to qualified legal assistance in the Republic of Uzbekistan. It examines the problems arising from the absence of a legal definition of this concept, as well as controversial issues related to the range of subjects authorized to provide legal assistance. Particular attention is paid to the correlation between the concepts of “legal assistance” and “legal services,” as well as to the issue of the so-called “advocacy monopoly.” Based on the analysis of legislation and legal doctrine, the author substantiates the need for legislative consolidation of quality standards for legal assistance and considers the possibility of expanding the range of subjects providing such assistance through private legal practitioners, provided that appropriate regulatory mechanisms are established.

Keywords: Constitution, qualified legal assistance, advocacy, subject composition, advocacy monopoly, human rights, private legal practitioners, justice.

Introduction

The fundamental architecture of the Constitution of the Republic of Uzbekistan is built around the priority of human rights and freedoms. Its provisions not only proclaim these rights but also establish mechanisms for their implementation and protection. In accordance with Article 13 of the Basic Law, the democratic



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development of the state is based on universal principles recognizing the human being, their life, freedom, honor, and dignity as the highest value. The realization of these provisions is impossible without effective legal instruments, among which the institution of legal assistance occupies a key position. It serves as a constitutional guarantee enabling every person to exercise their rights freely and to rely on protection against their violation.

Qualified legal assistance represents one of the most important aspects of access to justice and an effective mechanism for safeguarding the lawful interests of individuals. The state has entrusted this socially significant function to the legal profession (advocacy). According to Article 141 of the Constitution of the Republic of Uzbekistan, the advocacy operates for the purpose of providing legal assistance to citizens, enterprises, institutions, and organizations. This provision is specified in the Law “On Advocacy,” which guarantees the right to receive legal assistance not only for citizens of the country but also for foreign nationals and stateless persons [1]. Consequently, the activities of advocates are normatively interpreted as the provision of qualified legal assistance to individuals and legal entities.

Despite the high importance of this institution, the legislation lacks a legal definition of the concept of “qualified legal assistance,” which creates legal uncertainty and restrains the development of the advocacy institution. This issue was also noted by the President of the Republic of Uzbekistan, Sh.M. Mirziyoyev, who emphasized in the Decree “On Measures to Fundamentally Improve the Effectiveness of the Advocacy Institution and Expand the Independence of Advocates” that, despite reforms, advocacy has not yet fully transformed into a reliable human rights institution enjoying full public trust [2]. In modern legal scholarship and practice, there is an active debate concerning the range of subjects authorized to provide qualified legal assistance. The central doctrinal issue remains the correlation between the concepts of “legal assistance” and “legal services,” as well as the problem of the so-called “advocacy monopoly.” Some scholars (V.N. Ivanova, A.G. Kucherena) defend the position that qualified assistance, particularly in court representation, should be provided exclusively by the advocacy as a professional corporation endowed with public-law functions and ethical standards [3]. Opponents of this view (S.I.



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Volodina, representatives of business law practice) argue for preserving a competitive market for legal services. They contend that full monopolization of judicial representation may limit access to legal protection for citizens and create artificial barriers for private legal practitioners who possess high qualifications but lack advocate status [4]. Within the academic community, a compromise model is actively discussed — the legislative implementation of the status of private legal practitioners as full-fledged providers of legal assistance, subject to standards similar to those applicable to advocates.

The quality of legal assistance is inseparably connected with the interpretation of the term itself. In constitutional legal doctrine, particularly in the works of V.L. Kudryavtsev, the essence of legal assistance is revealed through several imperatives. First, by guaranteeing the right to assistance, the state assumes the obligation to ensure a high standard of its provision. Second, the legislator links the qualification of assistance not to achieving a specific outcome in a case but to the professional activity of the provider and compliance with established standards. Third, the presence of a public interest serves as a criterion for determining the exclusive powers of advocates in certain types of proceedings [5]. At the same time, advocates bear public duties, including the provision of free legal assistance in cases stipulated by law.

It is methodologically important to distinguish between the general concept of “legal assistance” and the category of “qualified legal assistance.” The former may be provided by a wide range of persons, including legal representatives without specialized education. The latter presupposes activity performed by a person possessing a high level of professional knowledge. An analysis of national legislation and academic literature allows the conclusion that advocacy activity represents only one form or type of qualified assistance but does not exhaust it entirely. The position of I.S. Bobrakova is justified, emphasizing that advocates are called upon to protect the interests of clients by virtue of their independence from prosecutorial authorities and the courts [6].

Based on the conducted analysis, the author proposes a definition of the right to qualified legal assistance as a constitutionally guaranteed opportunity to обратиться to an advocate who bears a public duty to provide assistance, or to another competent person (where the law does not establish the exclusive status



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of advocates), for the protection of rights and interests. The powers of subjects providing assistance are realized in the forms of legal consultations, representation, claims work, and preparation of legal documents. At the same time, it is fundamentally important to understand the role of the advocate not as a “helper of the court,” but as a defender of the client’s interests who is obliged to use all lawful means of defense, including challenging judicial acts.

In conclusion, in order to enhance the effectiveness of the human rights protection system, it is advisable to legislatively define the concept of legal assistance, establish quality standards, and regulate the list of subjects entitled to provide it on a professional basis. Expanding the range of subjects through the inclusion of private legal practitioners appears promising, provided that regulatory mechanisms ensuring compliance with high qualification requirements are created. Further research into the procedural status of advocates and the elimination of legislative gaps remain necessary conditions for strengthening guarantees of citizens’ rights and building a rule-of-law state.

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