

ISTIR 10.79.91

UDC 343.1

DOI: 10.54649/2077-9860-2025-3-88-98

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Tashkent State University of Law,****THE RIGHT TO DEFENCE IN THE CRIMINAL PROCEDURE
OF THE REPUBLIC OF UZBEKISTAN: LEGAL FRAMEWORK,
IMPLEMENTATION CHALLENGES, AND PROSPECTS FOR
IMPROVEMENT****Abstract**

This article undertakes a comprehensive examination of the procedural regulation and practical implementation of the criminal defense function. Employing descriptive and comparative methodologies, the author rigorously analyzes relevant legislative acts, scholarly legal and academic literature, and the diverse perspectives of legal experts. The study identifies the critical importance of ensuring the right to defense for suspects, accused persons, and defendants. It emphasizes that their procedural rights must be intrinsically linked with the corresponding obligations of the inquirer, investigator, prosecutor, and court to facilitate the effective exercise of these rights. The article conceptualizes the guarantee of the right to defense for suspects, accused persons, and defendants as a cohesive body of procedural rights. These rights empower individuals to defend themselves against charges, either personally or through the assistance of a defense lawyer. The research highlights the crucial obligation to clearly explain these rights to individuals and to implement measures that provide them with a genuine opportunity to utilize all legally stipulated means and methods to mount an effective defense against the charges leveled against them. This obligation is explored as a fundamental guarantee within our criminal procedural legislation. Finally, the concluding section of the article offers scientific and theoretical proposals aimed at enhancing the provision of the right to defense in criminal proceedings, alongside practical considerations for improving current legal practice.

Keywords: criminal process, defense function, defense lawyer, attorney, suspect, accused, defendant.

Introduction

Significant reforms are underway to align judicial and investigative practices with international standards. These changes are crucial for unconditionally safeguarding the rights and freedoms of individuals within criminal procedural relations. This commitment is notably articulated as the 86th objective of the "Uzbekistan – 2030" Strategy, which was approved by Presidential Decree No. PF-158 on September 12, 2023. This objective specifically aims to "Increase the level of access to justice by strengthening the independence of the judiciary and ensuring transparency in its activities"¹.

Article 29 of the Constitution of the Republic of Uzbekistan stipulates that "Everyone is guaranteed the right to qualified legal assistance. Legal

assistance is provided at the expense of the state in cases stipulated by law. Every person has the right to use the assistance of a lawyer of their choice at any stage of the criminal process, and in case of detention, from the moment their right to freedom of movement is practically restricted"². These specific legal norms affirm that the defense function is one of the main functions of the criminal process. Its subjects include suspects, accused persons, defendants, defense lawyers, public defenders, civil defendants, and their representatives. In our opinion, the right to defense in criminal proceedings must be unconditionally ensured. Ensuring this right is an obligation of the state and is considered a crucial condition for fair justice.

According to Article 2 of the Criminal Procedure Code of the Republic of Uzbekistan, the objectives of the criminal process include not only

¹ Decree of the President of the Republic of Uzbekistan No. PF-158 dated September 12, 2023 "On the Uzbekistan – 2030 Strategy". URL: <https://lex.uz/ru/docs/6600413> (accessed: 04.06.2025).

² Constitution of the Republic of Uzbekistan. – Tashkent, 2023. URL: <https://lex.uz/docs/6445145> (accessed: 04.06.2025).

the swift and full disclosure of crimes, the identification and exposure of culprits, and the proper application of laws, but also the fair punishment of every person who has committed a crime and ensuring that no innocent person is subjected to liability or unjustly tried. "Stemming from this objective of the criminal process, one of the important directions of criminal procedural activity is the protection of the rights and legitimate interests of persons involved in the commission of a crime" [1].

Our current legislation has introduced a number of amendments and additions aimed at liberalizing the judicial and legal system and further strengthening the independence of the advocacy, which is the most important component of ensuring human rights protection. This includes ensuring equality of rights between the prosecution and defense in criminal proceedings, the introduction of the concept of a witness's lawyer into legislation, and strengthening the lawyer's rights to collect and present evidence, obtain copies of relevant materials and documents in the case or record information contained therein in another form, meet confidentially with the person under defense without restriction on the number and duration of meetings, without the permission of state bodies and officials responsible for criminal proceedings. Furthermore, the payment of legal assistance expenses to lawyers participating in criminal cases on an appointment basis by law enforcement agencies, at the expense of the state, has been legally enshrined [2]. This has created a foundation for the effective functioning of the constitutional norm guaranteeing citizens the right to receive qualified legal assistance at any stage of the judicial process. It is noteworthy that, in accordance with this law, the defense lawyer is granted the right to provide qualified legal assistance at any stage of the criminal process, completely independent of state bodies and officials responsible for conducting the criminal case.

Furthermore, legislative amendments have eliminated norms that previously mandated defense lawyers to obtain written authorization from law enforcement agencies for participation in a case and to secure permission for meetings with their clients. Currently, a lawyer's certificate and a warrant issued by the bar association suffice for these purposes. It is imperative to acknowledge the legislative establishment of liability for any actions aimed at obstructing a lawyer's professional activity or influencing their position vis-à-vis their client.

Notably, a significant proportion of the amendments and additions introduced to the Criminal Procedure Code (CPC) in recent years have specifically focused on enhancing the right to de-

fense¹. These changes have aligned the national legislation with the most advanced international legal standards, facilitating the implementation of "Miranda" and "Habeas Corpus Act" principles. Concurrently, the requirements for engaging in advocacy have undergone substantial modifications. Extensive reforms were introduced through the Law of the Republic of Uzbekistan dated December 31, 2008, "On Amendments and Additions to Certain Legislative Acts of the Republic of Uzbekistan in connection with the Improvement of the Advocacy Institute" [3]. This specific law redefined the legal status of lawyers, granting them the authority to meet with their clients an unlimited number of times and for unlimited duration, without the permission of any official. Furthermore, it empowered them to collect and present information usable as evidence in accordance with Article 87, Part 2 of the CPC.

Despite these advancements, a primary challenge in the implementation of the defense function remains the effective exercise of the powers granted to defense lawyers by law. This article aims to analyze the legal framework governing the right to defense in criminal proceedings in Uzbekistan, examine the practical implementation of defense lawyers' powers, identify existing problems and conflicts in law enforcement practice, and propose ways to enhance the effectiveness of the defense function.

Materials and Methods

The materials for this study comprise a comprehensive range of normative legal acts of the Republic of Uzbekistan that define the legal status and scope of activity of defense lawyers in criminal proceedings. The primary sources include the Constitution of the Republic of Uzbekistan, the Criminal Procedure Code of the Republic of Uzbekistan, the Law "On Advocacy" dated December 27, 1996, the Law "On Guarantees of Advocacy Activities and Social Protection of Advocates" dated December 25, 1998, and the Law of the Republic of Uzbekistan dated December 31, 2008, "On Amendments and Additions to Certain Legislative Acts of the Republic of Uzbekistan in connection with the Improvement of the Advocacy Institute". The analysis also incorporates Presidential Decree No. PF-158 approving the "Uzbekistan – 2030" Strategy² [1].

The doctrinal basis of the research includes scientific publications and academic works ad-

¹ Criminal Procedure Code of the Republic of Uzbekistan approved by the Law of the RU of 22. 09.94 № 2013-XII Entered into force from 1 April 1995. URL: https://www.vertic.org/media/National%20Legislation/Uzbekistan/UZ_Criminal_Procedure_Code.pdf (accessed: 04.06.2025).

² Decree of the President of the Republic of Uzbekistan No. PF-158 dated September 12, 2023 "On the Uzbekistan – 2030 Strategy". URL: <https://lex.uz/ru/docs/6600413> (accessed: 04.06.2025).

addressing the concept and essence of the defense function in criminal proceedings. Key scholarly contributions analyzed include the works of Z. Zinatulinn, Kalinkovskiy K.B. and V.D. Adamenko, A.M. Larin, Yu.I. Stetsovskiy, and L.V. Makarov, which provide theoretical foundations for understanding the nature and timing of the defense function.

The empirical base of the study consists of survey results conducted among investigators and lawyers regarding conflicts during investigative actions, as well as original survey data collected by the author from one hundred lawyers concerning the moment of their entry into cases involving detained suspects. Additionally, the study draws upon Resolution No. 17 of the Plenum of the Supreme Court of the Republic of Uzbekistan dated December 19, 2003, "On Judicial Practice Concerning the Application of Laws on Ensuring the Right to Defense for Suspects and Accused Persons", and comparative research data from Russian scholars O.I. Tsokolova and A.N. Reznikov.

The methodological framework of the work is based on a combination of general scientific and special legal methods. The formal-legal method was used to interpret the content of legal norms defining the rights, duties, and guarantees of defense lawyers, as well as the procedural mechanisms for their implementation. The historical-legal method allowed for the examination of the evolution of legal regulation from 1999 to the present, tracing the progressive expansion of defense lawyers' rights and the reduction of barriers to their participation. The comparative-legal method was employed to contrast different scholarly views on the defense function and to contextualize Uzbek practice within broader post-Soviet legal developments. A systemic analysis was conducted to identify conflicts and gaps in legislation and law enforcement practice, particularly regarding the timing of defense lawyer entry and the handling of waiver situations. Finally, the sociological method (surveys) was used to gather empirical data on actual law enforcement practices and practitioner perspectives.

Results and Discussion

1. The Legal Status and Powers of the Defense Lawyer

A defense lawyer is a person authorized to exercise the protection of the rights and legitimate interests of suspects, accused persons, and defendants in the manner prescribed by law, and to provide them with necessary legal assistance [2]. A defense lawyer is allowed to participate in the case at any stage of the criminal process, and in the case of detention, from the moment the person's right to freedom of movement is prac-

tically restricted. Even close relatives of the suspect may be allowed to participate as a defense lawyer alongside the advocate, upon the petition of the suspect, accused person, or defendant, by a decision of the inquirer, investigator, or a court ruling.

With the entry into force of the Criminal Procedure Code of the Republic of Uzbekistan, and the Laws "On Advocacy" dated December 27, 1996, and "On Guarantees of Advocacy Activities and Social Protection of Advocates" dated December 25, 1998, the defense side gained broad powers from the earliest stages of the investigation. For instance, in accordance with Article 53, Part 1, and Article 87, Part 2 of the CPC, the defense lawyer is granted the right to collect and present information that can be used as evidence. Furthermore, pursuant to Article 69 of the CPC, they are given the right to involve a specialist in the manner prescribed by law. Additionally, according to Article 111, Part 2, Clause 2, and Article 487, Part 2, Clause 8 of the CPC, testimonies given by the suspect or accused during pre-trial proceedings without the participation of a defense lawyer, including cases where they waived their right to a defense lawyer, shall be recognized as inadmissible evidence (a serious violation of the criminal procedural law) if these testimonies are not confirmed by the suspect or accused in court [3].

Therefore, the defense lawyer is considered the main subject exercising the defense function, as this role is typically carried out by advocates whose primary profession is providing legal assistance [4, p. 8]. A defense lawyer is permitted to participate in the case from the moment an accusation is declared against a citizen, or from the moment a decision recognizing them as a suspect is announced, or from the moment they are detained.

Our current legislation guarantees the suspect's right to have a defense lawyer from the moment they are detained or informed of the decision recognizing them as a suspect, as well as the right to private meetings with the lawyer without limitation on the number or duration of such meetings. The defense lawyer is invited by the suspect, or by other persons with the suspect's request or consent. At the suspect's request, the inquirer, investigator, prosecutor, or court ensures the participation of a defense lawyer in the case. If the chosen defense lawyer is unable to commence participation in the case within twenty-four hours, the inquirer, investigator, prosecutor, or court recommends the suspect, accused, defendant, or their relatives to invite another defense lawyer or to apply to legal aid organizations designated by the Territorial Department of the Chamber of Advocates of the Republic of Uzbekistan to appoint a defense lawyer. The defense

lawyer chosen by the suspect, accused, or defendant has the right to commence participation in the case at any time. The inquirer, investigator, or prosecutor handling the case has the right to fully or partially exempt the suspect from payment for legal assistance.

To guarantee the rights of the suspect at all stages of the criminal proceedings, they must be provided with the right to defense from the earliest stages of the process, or from the moment of detention if their freedom of movement is restricted. The existence of this right enables the suspect to defend themselves against the accusation by using all means provided by law [4, p. 8]. The right of persons suspected of committing a crime to legal defense through an advocate is considered one of their fundamental rights.

2. Theoretical Foundations of the Defense Function

To answer the questions of when the defense function arises in criminal proceedings and what its essence consists of, it is expedient to review the opinions of legal scholars who have dealt with this issue.

According to Z. Zinatulinn, "The defense function in criminal proceedings arises with the emergence of the accusation (suspicion). Defense operates concurrently with the prosecution function at all stages of the criminal case where an accusation exists" [5]. Kalinkovskiy K.B. [6] and V.D. Adamenko state, "If there is no accusation, then there is no need for defense" [7]. A.M. Larin also emphasizes, "As long as there is an accusation, and procedural coercion, there must be defense against it" [8, p. 29]. According to Yu.I. Stetsovskiy, "Defense is a reaction against the accusation; wherever an accusation arises, defense operates there".

Some scholars, including L.V. Makarov, disagree with the above views: "The defense function does not arise from the accusation, but is independent of it. Defense is the conscious, purposeful activity of the accused, the suspect, as well as their defense lawyer, legal representative, public defender, civil defendant, and their representative. These are precisely the subjects of the defense function. Sometimes, the defense function is understood not only as the protection of the rights and legitimate interests of persons who are materially responsible for the suspect (accused), but also as the protection of the rights and legitimate interests of the victim, civil plaintiff, and witnesses" [9].

The above-mentioned viewpoints regarding the defense function substantiate the existence of two opposing functions in criminal proceedings: prosecution and defense. These functions are adversarial in nature, and the emergence of one gives rise to the other. Therefore, defense,

like prosecution, is an objective necessity in criminal justice administration, determined by the nature of this type of state activity.

3. Practical Conflicts and Challenges in Implementation

An analysis of survey results conducted among investigators and lawyers reveals that 61% of lawyers believe conflicts arise during investigative actions. Furthermore, 52% of respondents attribute these conflicts to imperfections in existing legislation. Conversely, law enforcement officials predominantly consider lawyers to be the initiators of conflicts during preliminary investigations. Specifically, 61% of law enforcement officers believe that suspects (accused persons) alter their testimonies and deny specific facts after meeting with their defense lawyer, thereby instigating conflict during the preliminary investigation [9].

These problematic issues have yet to find resolution at a high academic theoretical level, nor have generally accepted algorithms for the activities of investigators and lawyers in the investigation of crimes been formed in law enforcement practice.

In accordance with Article 49, Part 1 of the Criminal Procedure Code (CPC), a defense lawyer is an individual authorized to protect the rights and legitimate interests of suspects, accused persons, and defendants in the manner prescribed by law, and to provide them with necessary legal assistance. It is important to note that providing legal assistance at the pre-trial stage implies activities aimed at explaining the essence of the suspicion and accusation, clarifying rights and obligations to the suspect or accused, and collaborating to help them avoid errors and other inadmissible actions.

Pursuant to Article 49, Part 3 of the CPC, one of the suspect's, accused person's, or defendant's close relatives or legal representatives may be permitted to participate as a defense lawyer alongside an advocate, based on the request of the suspect, accused person, or defendant, and by a decision of the inquirer or investigator. Close relatives of the suspect or accused are understood to include their parents, siblings, spouse, children (including adopted children), grandchildren, as well as the spouse's parents and siblings.

Furthermore, the criminal procedural law stipulates that at the request of the suspect, accused person, or defendant, the inquirer, investigator, or prosecutor shall ensure the participation of a defense lawyer in the case (Article 50, Part 2 of the CPC)¹. The CPC also provides an alternative option for ensuring the defense lawyer's par-

¹ Criminal Procedure Code of the Republic of Uzbekistan approved by the Law of the RU of 22. 09.94 № 2013-XII Entered into force from 1 April 1995. URL: https://www.vertic.org/media/National%20Legislation/Uzbekistan/UZ_Criminal_Procedure_Code.pdf (accessed: 04.06.2025).

ticipation. Specifically, according to Article 50, Part 3 of the CPC, if the chosen defense lawyer is unable to commence participation in the case within twenty-four hours, the inquirer, investigator, prosecutor, or court recommends that the suspect, accused person, defendant, or their relatives invite another defense lawyer or apply to legal aid structures designated by the Territorial Department of the Chamber of Advocates of the Republic of Uzbekistan to appoint a defense lawyer. The defense lawyer chosen by the suspect, accused, or defendant has the right to commence participation in the case at any time. The inquirer, investigator, or prosecutor handling the case has the right to fully or partially exempt the suspect, accused person, or defendant from payment for legal assistance. In such cases, the expenses for the lawyer's services shall be covered by the state in the manner determined by the Cabinet of Ministers (Article 50, Part 4 of the CPC).

It is important to note that the suspect or accused person has the right to invite several defense lawyers. The procedural rights of a defense lawyer participating in the inquiry and preliminary investigation are enshrined in Article 53, Part 1 of the CPC of the Republic of Uzbekistan. Accordingly, upon commencing participation in the case, the defense lawyer gains the following rights:

To know what the person whose interests they are defending is suspected or accused of; to participate in the case after presenting a lawyer's certificate and a warrant confirming authorization to handle a specific case.

To participate in the interrogation of the suspect, to be present when an accusation is brought against a person, and to participate in the interrogation of the accused, as well as in other investigative actions conducted with their participation, and to ask questions to suspects, accused persons, witnesses, experts, and specialists.

To participate with the permission of the inquirer or investigator during other investigative actions.

To provide written observations regarding the conduct of an investigative action in which they participated; to file petitions and challenges.

To collect and present information that can be used as evidence in accordance with Article 87, Part 2 of this Code.

To review documents related to procedural actions conducted with the participation of the suspect or accused, and after the preliminary investigation is completed, to review all materials of the criminal case and make necessary notes from them, obtain copies of materials and documents using technical means at their own expense, or record the information contained therein in another form.

If necessary for the exercise of defense, to access information containing state secrets, commercial secrets, or other secrets in the manner prescribed by law.

To file complaints against the actions and decisions of the inquirer, investigator, prosecutor, and court.

The investigator, after verifying the absence of circumstances preventing the lawyer's participation in the criminal case, makes a decision to admit them, and this moment marks the beginning of the lawyer's involvement in the preliminary investigation.

4. The Timing of Defense Lawyer Entry into Criminal Proceedings

The right to defense, as one of the most crucial constitutional principles of the criminal process, grants the accused the opportunity to prove their innocence personally or with the assistance of a defense lawyer, and to present mitigating circumstances. Consequently, the current Criminal Procedure Code (CPC) of the Republic of Uzbekistan provides for the lawyer's involvement in the case from the earliest stages of the criminal process, which is a significant departure from previous periods.

As previously noted, since 2008, a defense lawyer, in accordance with Article 49, Part 4 of the CPC, can commence participation in the case at any stage of the criminal process. In the event of detention, participation is permitted from the moment the person's freedom of movement is practically restricted. However, in the period from 1999 to 2008, pursuant to Article 49, Part 3 of the CPC, a defense lawyer's entry into the case was permitted from the moment the accusation was declared against the citizen, or a decision recognizing them as a suspect was issued, or from the moment of their detention. It is known that there is a considerable time gap, often exceeding twenty-four hours, between these two legal facts. Thus, the investigator, concurrently with announcing the decision to formally charge the suspect as an accused person (Article 360, Part 4; Article 46, Part 1 of the CPC), must explain the right to defense to the accused and permit the defense lawyer to enter the case.

The CPC also provides for other timelines for the defense lawyer's entry into the case even before a decision to formally charge as an accused person is issued. According to Article 49, Part 3 of the CPC, a defense lawyer's participation in the preliminary investigation is allowed from the moment a criminal case is initiated against a specific person. This is another significant innovation in the current criminal procedural legislation, as a defense lawyer acquires a complex set of rights and obligations from the moment they enter the case. In this regard, the earlier the defense law-

yer enters the process, the more crucial it is for the tactics of both sides. In cases where a criminal case is initiated against a specific person, this person has sufficient time to invite a desired defense lawyer and receive qualified legal assistance. Conversely, if a person acquires suspect status as a result of procedural detention, it becomes mandatory to invite a defense lawyer to the case (Article 49, Part 4; Article 48, Part 1 of the CPC) [10].

For instance, according to research conducted by O.I. Tsokolova in Russia on this matter, only 23% of suspects at the time of detention had agreements with a lawyer to enter the case as a defense lawyer at any time. Others were surprised by the investigator's (inquirer's) suggestion to invite a defense lawyer [11].

A similar study conducted by A.N. Reznikov in Russia to determine the moment of a defense lawyer's entry into a case during a suspect's detention revealed the following results: from the moment of detention – 7%; from the moment of delivery to the investigative body – 53%; before the first interrogation of the suspect – 19%; after the first interrogation of the suspect – 11% [10].

In a survey conducted by us among one hundred lawyers regarding the moment they entered a case when a suspect was detained, 11% reported entering from the moment of detention; 16% from the moment of delivery to the investigative body; 36% from the moment the detention report was drawn up; 29% directly before the first interrogation of the suspect; and 8% after the first interrogation of the suspect.

The investigator's (inquirer's) duties are simplified when the suspect themselves, their relatives, or other persons ensure the lawyer's participation within a short period. If an agreement is concluded directly with the suspect, the lawyer presents their certificate and a warrant confirming participation in the case to the investigator. In cases where an agreement is concluded with other persons, the investigator must ascertain that the suspect has given consent for this (Article 50, Part 1 of the CPC). In this situation, we believe it is advisable to obtain the suspect's written consent for the participation of this specific lawyer in the process. Contrary recommendations also exist: if the client does not agree to this lawyer handling the case, the refusal must be formalized in writing [11].

Results from the analysis of investigative practice indicate that the first private conversation between a lawyer and a detained person under their defense is crucial, and in some cases, tactically and psychologically decisive. Suspects in newly initiated criminal cases who have not yet met with a lawyer often provide confessional testimonies to the investigator. However, there are also instances where the suspect, after their first

official meeting with a lawyer, retracts previously given confessional testimonies. For this reason, many investigators, inquirers, and operational officers, under previously existing procedural conditions, attempted to postpone this meeting as long as possible, to communicate, converse, and conduct investigative and other actions with the suspected person without a lawyer, whenever feasible.

From a practical standpoint, restricting or delaying the commencement of a defense lawyer's participation in the case provides no advantage to the investigative body. This is because, according to Article 95, Part 3, and Article 111, Part 2, Clause 2 of the CPC, testimonies given by the suspect or accused without the participation of a defense lawyer – including cases where the right to a defense lawyer was waived – are deemed inadmissible evidence if not confirmed by the accused in court.

Therefore, the participation of a defense lawyer in the preliminary investigation, commencing from the stage of initiating a criminal case, and generally from the earliest possible periods, is in the interests not only of the defense but also of the prosecution. For this reason, it is necessary to choose more effective tactical methods for obtaining truthful testimony from the suspect, rather than resorting to unlawful resistance against the defense.

5. Mandatory Participation and Waiver of Defense Counsel

It should be emphasized that if the participation of a lawyer is not ensured by the suspect or other close persons at the time of detention, or if the suspect waives a defense lawyer due to an inability to pay, the investigator (inquirer), in accordance with Article 50, Part 4 of the CPC, is obliged to explain to the person under investigation that a lawyer can participate in the case and that all expenses related to their services will be compensated from the state budget.

In cases where the participation of a defense lawyer is mandatory, and also when the suspect has not waived the defense lawyer in writing, or when a defense lawyer has not been invited by the suspect themselves, their legal representative, or by other persons acting on the suspect's instruction and with their consent, the investigator (inquirer) ensures the participation of a defense lawyer in the criminal process in accordance with Article 51, Part 3 of the CPC. Specifically, this norm stipulates that if, at the request of the suspect, accused, or defendant, or with their consent, a defense lawyer has not been invited by other persons, the head of the legal aid structure designated by the Territorial Department of the Chamber of Advocates of the Republic of Uzbekistan must ensure the participation of a

defense lawyer in the criminal case no later than four hours from the moment the decision of the inquirer, investigator, prosecutor to appoint a defense lawyer or the court's ruling is received by the Territorial Department of the Chamber of Advocates of the Republic of Uzbekistan. However, in such cases, the suspect does not have the right to choose the defense lawyer.

Furthermore, if a defense lawyer invited by a suspect for committing a crime fails to arrive within twenty-four hours of the suspect's detention, the inquirer or investigator shall take measures to appoint a defense lawyer. It is important to note that the waiting period for the defense lawyer is calculated from the moment the suspect is detained, not from the time the lawyer was called. In many cases, the inability of the contracted lawyer to arrive becomes known immediately, not necessarily within twenty-four hours. The chosen defense lawyer might be engaged in an ongoing court process, on vacation, ill, or in other locations. In such instances, the investigator (inquirer) is not obliged to wait for twenty-four hours and is authorized to immediately invite another defense lawyer to participate in the procedural actions.

Practical experience indicates situations where a suspect genuinely waives the right to qualified legal assistance. In these cases, the waiver of a defense lawyer is formalized in writing. If such a waiver occurs during investigative actions, it is documented in the protocol, in accordance with Article 52, Part 1 of the CPC.

When a suspect waives the appointed defense lawyer, investigative actions may proceed without their participation, with the exception of cases where the presence of a defense lawyer is mandatory (Article 50, Part 3 of the CPC). However, according to Article 52, Part 2 of the CPC, the waiver of a defense lawyer is not binding upon the inquirer, investigator, prosecutor, or court.

A conflict arises when a suspect completely waives the participation of a defense lawyer or the assistance of a specific appointed lawyer involved in the case. In our opinion, in such situations, the investigator (inquirer) should not yield to the suspect's will, because their duty is to provide the suspect with a lawyer if the suspect themselves or other persons with their consent have not invited one. This is because, in this instance, the suspect's opinion and consent regarding the appointed lawyer's participation in the case are not of procedural significance. If the subject waives the assistance of a lawyer and the law does not stipulate the mandatory nature of this situation, the investigator must formalize the waiver in writing as a separate document or record it in the detention or investigative action protocol.

However, in cases stipulated in Article 51, Part 1 of the CPC, i.e., where the lawyer's participation

is mandatory, the suspect's waiver of a defense lawyer may be obtained in writing. Nevertheless, despite the person under investigation waiving the right to qualified legal assistance, the lawyer must continue their participation in the procedural actions. In such cases, the investigator (inquirer) should tactically strive to resolve any conflict between representatives of the defense side.

It should be emphasized that, pursuant to Article 52, Part 3 of the CPC, the waiver of a defense lawyer does not deprive the suspect, accused, or defendant of the right to subsequently request permission for a defense lawyer to participate in the case. Such a request must be granted in all instances. A petition for the participation of a defense lawyer during the court investigation is resolved by the court, taking into account the circumstances of the case and in the interests of ensuring the defendant's right to defense. The defense lawyer's entry into the case during the court session does not serve as a basis for recommending the court investigation.

Concurrently, the provisions of Article 53, Part 1 of the CPC also apply to cases where the defense lawyer enters the case from the moment other procedural coercive measures directly affecting the rights and freedoms of the person suspected of committing a crime are applied or procedural actions are carried out. In our opinion, such a basis stems from the following provision in Article 53, Part 1 of the CPC: The defense lawyer: ... has the right to participate in the interrogation of the suspect, to be present when an accusation is brought against a person, and to participate in the interrogation of the accused, as well as in other investigative actions conducted with their participation, and to ask questions to suspects, accused persons, witnesses, experts, specialists; to participate with the permission of the inquirer or investigator during other investigative actions; to provide written observations regarding the conduct of an investigative action in which they participated; to file petitions and challenges.

Paragraph 16 of Resolution No. 17 of the Plenum of the Supreme Court of the Republic of Uzbekistan dated December 19, 2003, "On Judicial Practice Concerning the Application of Laws on Ensuring the Right to Defense for Suspects and Accused Persons", emphasizes that the defense lawyer, according to law (Article 53 of the CPC):

Firstly, is provided with sufficient rights to protect the rights and interests of the person under their defense, and these rights cannot be restricted in any way by state bodies responsible for conducting the criminal case.

Secondly, the defense lawyer is entitled to participate in all investigative actions conducted with the participation of the person under their defense, including when the suspect or accused

is being explained their rights and interrogated, during on-site verification of testimonies, experiments, identification procedures, confrontations, attestations, exhumations, seizures and searches, inspection of material evidence, attachment of property, and interrogations by the prosecutor.

Thirdly, from the moment the defense lawyer is granted permission to participate in the criminal case, they have the right to review the protocol of detention, the decision on applying a preventive measure, the protocols of investigative actions conducted with the participation of the suspect or accused, and other documents declared (or required to be declared) to the suspect or accused. This right of the defense lawyer also applies to reviewing protocols of investigative actions conducted before the person under their defense was recognized as a suspect or accused. The inquiry and investigative bodies are obliged to notify the defense lawyer in advance about the date, time, and place of investigative actions to be conducted with the participation of the suspect or accused.

6. The Content and Scope of the Right to Defense

Therefore, the right to legal assistance in criminal proceedings is guaranteed at any stage of the process. The right to defense acquires genuine legal significance when its implementation is guaranteed. Article 24 of the CPC places an obligation on the inquirer, investigator, prosecutor, and court to explain the rights granted to the suspect, accused, and defendant, and to take measures aimed at ensuring they have a real opportunity to use all means and methods provided by law to defend themselves against the charges. This constitutes an important guarantee aimed at ensuring the right to defense in our criminal procedural legislation [12].

The content of ensuring the right to defense includes the following:

The suspect, accused, and defendant, as participants in the criminal process, possess a range of procedural rights that enable them to effectively manage their own defense and protect their legitimate interests against the charges brought against them.

The suspect, accused, and defendant may avail themselves of the assistance of a defense lawyer, and in certain cases where the lawyer's participation is mandatory, they may receive this assistance directly on a legal basis.

The inquirer, investigator, prosecutor, and court are obliged to explain to the suspect, accused, and defendant their procedural rights and obligations, and to create conditions for them to manage their defense interests, personal rights, and material rights.

The inquirer, investigator, prosecutor, and court have obligations regarding the protection and ensuring of the personal and material rights of the suspect, accused, and defendant: not to disclose their private life if not necessary, not to commit acts that infringe upon the dignity and honor of these persons or endanger their health, to apply appropriate measures for establishing guardianship over their minor and orphaned children, to take measures to preserve the property and residence of these persons, and to arrange meetings with their relatives after the preliminary investigation is completed.

According to procedural scholars in our country, ensuring the right to defense for suspects, accused persons, and defendants includes:

a) The legal establishment of the obligations of inquiry bodies, investigation, prosecution, and the court aimed at protecting the interests of the suspect, accused, and defendant, as well as explaining and ensuring the exercise of their rights.

b) The legal establishment of means aimed at enabling the defense lawyer, either invited by the suspect, accused, or defendant, or appointed by the investigator or court, to use all means and methods of defense provided by law to identify circumstances that exonerate the suspect, accused, or defendant, or mitigate their liability.

c) The legal establishment of means that allow the suspect, accused, or defendant to restore their violated rights and to raise the issue of responsibility for officials who violated these rights.

Thus, ensuring the right to defense for the suspect, accused, and defendant acquires full meaning when combined with their procedural rights and the obligations of the inquirer, investigator, prosecutor, and court to ensure the exercise of these rights. However, ensuring the right to defense is not merely a single procedural right. Ensuring the right to defense for the suspect, accused, and defendant is understood as the sum total of all procedural rights that grant them the right to defend themselves against the charges, either personally or with the assistance of a defense lawyer. The suspect, accused, and defendant are provided with several rights to effectively exercise their right to defense directly. For this purpose, a person brought to criminal liability is granted rights such as knowing what they are accused of, giving testimonies and explanations, reviewing evidence, filing complaints against the actions of officials conducting the case, and reviewing case materials.

Conclusion

The analysis conducted in this study demonstrates that the right to defense in criminal proceedings in Uzbekistan has undergone significant progressive development, particularly through

legislative reforms initiated since 2008. These reforms have substantially expanded the powers of defense lawyers, eliminated unnecessary bureaucratic barriers, and aligned national legislation with international standards such as the "Miranda" and "Habeas Corpus Act" principles. The current legal framework provides defense lawyers with extensive rights to collect and present evidence, participate in investigative actions, and maintain confidential communications with clients without restriction.

However, despite these legislative advancements, several challenges persist in the practical implementation of the defense function. Survey data reveals that conflicts between defense lawyers and law enforcement officials remain common during investigative actions, with a majority of respondents attributing these conflicts to imperfections in existing legislation. The divergence in perspectives between lawyers and investigators regarding the causes of conflict suggests a need for clearer procedural guidelines and improved mutual understanding of respective roles and responsibilities.

The timing of defense lawyer entry into criminal proceedings emerges as a critical factor influencing both the effectiveness of defense and the legitimacy of subsequent procedural actions. Our survey of one hundred lawyers indicates that in only 11% of detention cases does defense counsel enter at the moment of detention, while in 29% of cases entry occurs only immediately before the first interrogation. This delay potentially compromises the suspect's ability to receive timely legal advice and may affect the admissibility of evidence obtained during this period. The legislative provision recognizing as inadmissible any testimony given without defense counsel participation, if not subsequently confirmed in court, serves as an important safeguard, but its effectiveness depends on consistent application by law enforcement and judicial authorities.

The issue of waiver of defense counsel presents particular complexity. While the law permits suspects to waive their right to legal assistance, such waivers must be documented in writing and do not bind the court or investigative bodies in cases where defense counsel participation is mandatory. The four-hour deadline for appointing defense counsel through legal aid structures represents a significant improvement, but practical implementation challenges remain regarding the quality of representation in such appointed cases.

The theoretical debate regarding the nature and timing of the defense function, while academically significant, finds practical resolution in the constitutional guarantee that every person has the right to use the assistance of a lawyer

of their choice at any stage of the criminal process, and in case of detention, from the moment their right to freedom of movement is practically restricted. This formulation appropriately recognizes that defense is not merely a reaction to formal accusation but an independent function that must be available whenever state power restricts individual liberty.

Based on the findings of this study, several recommendations can be proposed for further strengthening the right to defense in Uzbekistan's criminal justice system:

First, there is a need for enhanced training programs for both investigators and defense lawyers focused on developing cooperative rather than confrontational approaches to criminal proceedings. Such training should emphasize the mutual benefits of proper defense participation, including the avoidance of evidence being deemed inadmissible.

Second, clearer procedural guidelines should be developed regarding the implementation of the twenty-four hour period for the arrival of chosen defense counsel, including standardized procedures for documenting communications with defense lawyers and for appointing substitute counsel when necessary.

Third, the legal framework governing waiver of defense counsel should be further clarified to ensure that waivers are truly informed and voluntary, and that investigators receive clear guidance on when to accept waivers and when to insist on defense participation despite waiver.

Fourth, mechanisms for ensuring quality control in appointed defense cases should be strengthened, including regular monitoring of appointed counsel performance and provision of adequate compensation to ensure qualified representation.

Fifth, continued attention should be paid to the practical implementation of the rule rendering testimonies given without defense counsel inadmissible if not confirmed in court, including consistent application by all courts and investigative bodies.

In conclusion, the right to defense in Uzbekistan's criminal proceedings is firmly established in constitutional and procedural law, and significant progress has been made in aligning this right with international standards. The remaining challenges relate primarily to practical implementation and the need for cultural change in the relationship between defense and prosecution. Addressing these challenges through continued legislative refinement, enhanced training, and consistent judicial oversight will further strengthen the right to defense and contribute to the broader goal of ensuring fair and effective criminal justice in Uzbekistan.

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ӨЗБЕКСТАН РЕСПУБЛИКАСЫНЫҢ ҚЫЛМЫСТЫҚ ІС ЖҮРГІЗУІНДЕГІ ҚОРҒАНУ ҚҰҚЫҒЫ: ҚҰҚЫҚТЫҚ НЕГІЗДЕРІ, ІСКЕ АСЫРУ МӘСЕЛЕЛЕРІ ЖӘНЕ ЖЕТІЛДІРУ МӘСЕЛЕЛЕРІ

Аңдатпа

Мақалада қылмыстық процестегі қорғау функциясын процестік реттеу және оны тәжірибесін жүзеге асыру мәселелері кешенді түрде зерттелді. Сипаттамалық және салыстырмалы әдістерді қолдана отырып, автор қолданыстағы нормативтік құқықтық актілерді, ғылыми-заңи әдебиеттерді және құқық саласы мамандарының түрлі көзқарастарын жан-жақты талдады.

Зерттеу барысында күдіктілердің, айыпталушылардың және сотталушылардың қорғану құқығын қамтамасыз етудің айрықша маңыздылығы айқындалды. Олардың процестік құқықтары анықтаушының, тергеушінің, прокурордың және соттың тиісті міндеттерімен өзара тығыз байланыста болуы тиіс екендігі негізделді, себебі дәл осы өзара байланыс аталған құқықтарды тиімді жүзеге асырудың алғышарты болып табылады.

Мақалада күдіктілердің, айыпталушылардың және сотталушылардың қорғану құқығын қамтамасыз ету олардың өздеріне тағылған айыптаудан жеке өзі немесе қорғаушының көмегі арқылы қорғануға мүмкіндік беретін процестік құқықтардың тұтас жиынтығы ретінде қарастырылды. Сонымен қатар бұл құқықтарды тұлғаларға нақты және түсінікті түрде түсіндірудің, сондай-ақ заңда көзделген барлық құралдар мен тәсілдерді пайдалану арқылы тиімді қорғануды жүзеге асыруға нақты мүмкіндік беретін шараларды қабылдаудың маңыздылығы атап өтілді. Аталған міндет қылмыстық іс жүргізу заңнамасындағы негізгі кепілдіктердің бірі ретінде қарастырылады.

Қорытынды бөлімде қылмыстық сот ісін жүргізуде қорғану құқығын қамтамасыз етуді жетілдіруге бағытталған ғылыми-теориялық ұсыныстар мен құқық қолдану тәжірибесін жетілдіруге арналған практикалық ұсынымдар берілді.

Түйінді сөздер: қылмыстық процесс, қорғау функциясы, қорғаушы, адвокат, күдікті, айыпталушы, сотталушы.

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ПРАВО НА ЗАЩИТУ В УГОЛОВНОМ ПРОЦЕССЕ РЕСПУБЛИКИ УЗБЕКИСТАН: ПРАВОВЫЕ ОСНОВЫ, ПРОБЛЕМЫ РЕАЛИЗАЦИИ И ПЕРСПЕКТИВЫ СОВЕРШЕНСТВОВАНИЯ

Аннотация

В статье осуществлено комплексное исследование процессуального регулирования и практической реализации функции защиты в уголовном процессе. С использованием описательного и сравнительного методов автор анализирует действующие нормативные правовые акты, научную юридическую литературу, а также различные точки зрения специалистов в области права.

В работе обосновывается особая значимость обеспечения права на защиту подозреваемых, обвиняемых и подсудимых. Подчеркивается, что их процессуальные права должны находиться в неразрывной связи с соответствующими обязанностями дознавателя, следователя, прокурора и суда, обеспечивающими реальную возможность эффективного осуществления этих прав.

Гарантия права на защиту рассматривается как целостная совокупность процессуальных прав, предоставляющих лицу возможность защищаться от предъявленного обвинения лично либо с помощью защитника. Особое внимание уделяется необходимости разъяснения этих прав и созданию условий, обеспечивающих реальную возможность использования всех предусмотренных законом средств и способов защиты. Данная обязанность анализируется как одна из фундаментальных гарантий уголовно-процессуального законодательства.

В заключении сформулированы научно-теоретические предложения по совершенствованию механизма обеспечения права на защиту в уголовном судопроизводстве, а также практические рекомендации, направленные на повышение эффективности правоприменительной деятельности.

Ключевые слова: уголовный процесс, функция защиты, защитник, адвокат, подозреваемый, обвиняемый, подсудимый.