

Place and Role of the Institution of Advocacy in the Dynamics of Resolving Legal Conflicts

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ANNOTATION

The article deals with the issues of advocacy in the dynamics of resolving legal conflicts. The methods of non-state protection of subjective rights carried out by lawyers are analyzed. It is concluded that the lawyer occupies a central place in any procedure for resolving legal conflicts, is a participant in a legal conflict, without being its direct subject.

KEY WORDS: *conflict, dispute, lawyer, defender, legal assistance, consultations, clarifications.*

In modern conditions of the development of a civilized society, it is impossible to imagine the resolution of legal conflicts without the provision of legal assistance to opposing entities¹. This is due both to objective factors, for example, a large amount of normative material that regulates the behavior of subjects, and subjective ones, for example, the lack of skills in handling this material, the lack of time resources to carry out this activity independently, and others².

In this regard, the main burden of finding the necessary regulatory information, ensuring the legality of the behavior of subjects in the process of resolving legal conflicts falls on the shoulders of professional lawyers - lawyers.

The bar is a legal institution that includes independent, voluntary, professional associations of persons engaged in advocacy, and individuals engaged in private practice as a lawyer. The bar in accordance with the Constitution of the Republic of Uzbekistan provides legal assistance to citizens of the Republic of Uzbekistan, foreign citizens, stateless persons, enterprises, institutions, organizations³.

According to Article 3 of the Law of the Republic of Uzbekistan dated December 27, 1996 No. 349-I "On the Bar", a citizen of the Republic of Uzbekistan who has a higher legal education and who has received a license for the right to engage in advocacy in the prescribed manner can be a lawyer in the Republic of Uzbekistan.

Persons recognized in the established manner as incapable or partially capable, as well as those who have an outstanding or unexpunged conviction are not allowed to practice as a lawyer⁴.

A lawyer is not entitled to engage in other types of paid activities, except for:

¹ Чудиновская Н. А. Некоторые аспекты участия адвоката в арбитражном процессе // Арбитражный и гражданский процесс. – 2013. – №. 12. – С. 16-21.

² Барышова М. В. и др. Социальное предпринимательство: научные исследования и практика. – 2019.

³ Глашев А. А. Некоторые практические проблемы участия адвоката в гражданском и арбитражном процессе // Проблемы экономики и юридической практики. – 2006. – №. 1-2. – С. 172-174.

⁴ Ibratova F. TERMS IN CIVIL LAW AND THEIR APPLICATION IN LEGAL PROTECTION OF CITIZENS IN THE REPUBLIC OF UZBEKISTAN.

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- scientific and pedagogical activity;
- activities in the Chamber of Advocates of the Republic of Uzbekistan and its territorial departments;
- activities as a patent attorney and mediator;
- activities as an employee of the legal service of state bodies, economic management bodies, state enterprises, institutions and organizations on a contractual legal basis;
- activities as a judge in arbitration courts and international commercial arbitrations (courts).

A person who has received a license in accordance with the established procedure has the right to practice law individually by opening his own law office, or to form a law firm with other lawyers (partners) or on the basis of membership of a bar association, or to join one of such existing law firms, or to engage in advocacy while working in a legal office⁵. A lawyer has the right to carry out his activities only in one lawyer formation.

In order to provide legal assistance to individuals and legal entities, a lawyer:

- gives advice and explanations on legal issues, oral and written information on legislation⁶;
- draws up applications, complaints and other documents of a legal nature;
- carries out representation in court, other state bodies, before individuals and legal entities in civil, economic and administrative cases and cases of administrative offenses⁷;
- participates at the stage of inquiry, preliminary investigation and in the criminal court as a defense counsel, representative of the victim, civil plaintiff, civil defendant;
- provides legal services to entrepreneurial activities;
- carries out representation in the arbitration court and international commercial arbitration (court)⁸.

A lawyer may also provide other types of legal assistance not prohibited by law.

In our opinion, there are two main ways of non-state protection of subjective rights, carried out primarily by lawyers:

- direct participation in the protection of the violated right - manifests itself when the defender acts as a direct subject of legal relations. In this case, we are talking about the provision by lawyers of legal assistance to clients; the performance of lawyers as participants in civil and criminal proceedings; participates in dispute resolution as a mediator⁹;
- initiation and provision of the human rights process - manifests itself when the defender is not directly involved in legal relations, but initiates legal relations in the law enforcement sphere with the participation of competent persons. So, for example, a lawyer has the right to bring complaints against the actions (inaction) and decisions of the inquirer, investigator, pro-curator, court and participate in their consideration by the court.

⁵ Гуртовой О. О. Правовые и организационные основы деятельности адвоката в арбитражном процессе : дис. – М., 2010.–21 с, 2010.

⁶ Брянская О. Л. и др. Инновации, тенденции и проблемы в области экономики, управления и бизнеса. – 2020.

⁷ Прокофьев М. Г. Некоторые проблемы участия адвоката в арбитражном процессе //ПРИОРИТЕТНЫЕ НАПРАВЛЕНИЯ РАЗВИТИЯ НАУКИ И ОБРАЗОВАНИЯ. – 2019. – С. 80-83.

⁸ Панченко Л. С. Особенности участия адвоката при рассмотрении гражданских и арбитражных дел Верховным Судом Российской Федерации //Цивилистика: право и процесс. – 2019. – №. 4. – С. 136-140.

⁹ Дудник Д. В. и др. Научные основы финансовой, кредитно-денежной и ценовой политики. – 2021.

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A lawyer has the opportunity to take part in resolving legal conflicts both in the form of law enforcement and in a consensual form, which is enshrined in the current legislation¹⁰.

Within the framework of the procedural form, the direct participation of the defender (human rights organization) in the process of resolving the case on the merits by the law enforcement body is assumed. Specific actions carried out within the framework of this form are provided for and regulated, first of all, by the criminal procedure and civil procedure codes).

Within the framework of the consensual form, the direct participation of the person providing protection in the legal process to resolve the case is not expected. In this case, the activity of the defender is aimed at reaching a compromise without involving state structures and the mechanism of state coercion¹¹.

In the last decade, the right to legal assistance has been consolidated both at the national level of most states and at the international level. So, for example, according to paragraph 3 of Art. 14 of the International Covenant on Civil and Political Rights, everyone accused in criminal proceedings has the right to defend himself in person or through a defense counsel chosen by him. This right implies the ability of the accused to turn to any lawyer for help in defending and protecting his rights at all stages of criminal proceedings¹².

In modern theory, the right to legal assistance refers to the constitutional guarantees of human rights and freedoms and the constitutional guarantees of justice. This right implies that anyone who needs qualified legal assistance can receive it.

The right to legal assistance in the modern sense is much broader than the right to the assistance of a lawyer in a criminal (and judicial) process. Legal assistance may be required in any life situation, often unrelated to litigation¹³.

Despite the fact that modern Russian legislation does not provide for the participation of a lawyer in the conciliation procedures indicated in the previous paragraph, they are not prohibited by him. Thus, we can assume that such a possibility exists and can be implemented if necessary. A lawyer can participate in conciliation procedures both in order to protect the interests of one of the opposing parties, and as a neutral mediator or consultant.

The institution of advocacy in modern society performs two main functions: regulatory and protective¹⁴.

The regulatory function of the bar is manifested in the provision of legal advice to clients, and is as follows:

1) providing advice and information on legal issues, both orally and in writing;

¹⁰ Перфилов В. П., Кумаев Р. ОСОБЕННОСТИ УЧАСТИЯ АДВОКАТА В АРБИТРАЖНОМ ПРОЦЕССЕ //ФУНДАМЕНТАЛЬНАЯ И ПРИКЛАДНАЯ НАУКА: СОСТОЯНИЕ И ТЕНДЕНЦИИ РАЗВИТИЯ. – 2021. – С. 89-92.

¹¹ Григорьева Т. А. О некоторых аспектах участия адвоката в арбитражном процессе //Цивилистика: право и процесс. – 2020. – №. 4. – С. 109-114.

¹² Ibratova F. B., Erezhevov B. I., Ortikov S. S. ECONOMY, ORGANIZATION AND MANAGEMENT OF ENTERPRISES, INDUSTRIES, COMPLEXES //Editorial team.–2019. – 2019. – Т. 1. – С. 13-19.

¹³ Петрина М. С. Проблемы участия адвоката в арбитражном процессе //Цивилистика: право и процесс. – 2020. – №. 4. – С. 123-128.

¹⁴ Esenbekova P., Ibratova F., Davronov D. LEGAL ISSUES OF ELECTRONIC EVIDENCE IN THE ECONOMIC PROCESS //Norwegian Journal of Development of the International Science. – 2021. – №. 76-2. – С. 20-24.

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2) drawing up applications, complaints, petitions and other documents of a legal nature¹⁵.

The protective function carried out by the bar is most clearly manifested in criminal proceedings, since the rights of persons against whom prosecution is being carried out are violated quite often.

Legal assistance provided by a lawyer can be aimed at solving various immediate problems. This assistance is provided in the following areas:

- clarification to the client of his legal status within the framework of law enforcement or consensual procedures¹⁶;
- clarification of the essence of the legal qualification of the actual circumstances of the case;
- clarification of circumstances mitigating or excluding legal liability, as well as circumstances aggravating punishment and liability¹⁷;
- assistance in the preparation of procedural documents or agreements reached during the negotiations;
- clarification of the rights and obligations of participants in the procedure for resolving a legal conflict.

According to Article 6 of the Law of the Republic of Uzbekistan dated December 27, 1996 No. 349-I “On the Bar”, when exercising professional activities, a lawyer has the right:

- represent the interests and protect the rights of individuals and legal entities on their behalf in all bodies, enterprises, institutions and organizations whose competence includes the resolution of relevant issues;
- collect and present evidence that is subject to inclusion in the materials of a criminal case or a case of an administrative offense, as well as mandatory assessment during the pre-investigation check, inquiry, preliminary investigation and consideration of the case in court or in the bodies considering cases of administrative offenses, and other authorized persons bodies;
- request and receive certificates, characteristics and other documents necessary in connection with the provision of legal assistance from state and other bodies, as well as enterprises, institutions and organizations that are obliged, in accordance with the procedure established by law, to issue to the lawyer the documents requested by him or their certified copies¹⁸;
- request with the consent of the principal (client) and receive written opinions of experts, references-consultations of specialists on issues necessary for the provision of legal assistance;
- interrogate persons in possession of relevant information and obtain written explanations with their consent;
- present the collected materials to the courts and other state bodies that carry out proceedings on the case of his principal (client)¹⁹;

¹⁵ Рябышев С. А. УЧАСТИЕ АДВОКАТА НА СТАДИИ ВОЗБУЖДЕНИЯ ДЕЛ О БАНКРОТСТВЕ ГРАЖДАН //СОВРЕМЕННАЯ ЮРИСПРУДЕНЦИЯ: АКТУАЛЬНЫЕ ВОПРОСЫ, ДОСТИЖЕНИЯ И ИННОВАЦИИ. – 2018. – С. 203-205.

¹⁶ Ибратова Ф. Б., Чориев М., Собиржонов О. ПРАВОВЫЕ ВОПРОСЫ УЧАСТИЯ В ЭКОНОМИЧЕСКОМ ПРОЦЕССЕ ПРОКУРОРА, ГОСУДАРСТВЕННЫХ ОРГАНОВ И ИНЫХ ЛИЦ //International journal of professional science. – 2022. – №. 5. – С. 14-22.

¹⁷ Степанова Д. Н., Бызова А. А. Участие адвоката в гражданском судопроизводстве по делам, связанным с нарушением антимонопольного законодательства //Наука. Общество. Государство. – 2020. – Т. 8. – №. 2 (30). – С. 211-219.

¹⁸ Ibratova F. B. et al. Effective and Reasonable Implementation and Application of the Principle of Ability to Be Heard Under Foreign and National Legislation of the Republic of Uzbekistan //Middle European Scientific Bulletin. – 2021. – Т. 18. – С. 485-501.

¹⁹ Сафина А. А. Некоторые проблемы участия адвоката в арбитражном процессе //International & Domestic Law. – 2022. – С. 680-682.

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- take at his own expense copies of materials and documents or fix in another form using technical means the information contained in the case in which the lawyer provides legal assistance, without disclosing information constituting state secrets, commercial or other secrets;
- meet without hindrance with his client (client) in private, in conditions that ensure confidentiality (including during his detention), without limiting the number of visits, their duration and without the permission of state bodies and officials responsible for the proceedings²⁰;
- make petitions and file complaints to officials and receive reasoned responses from them in writing;
- insure the risk of their professional property liability ²¹;
- request, with the consent of the principal, in economic, civil and administrative proceedings when preparing a case for trial or during trial, an examination on a contractual basis by state forensic institutions and non-state forensic organizations;
- demand that the expert opinion be attached to the case file and its assessment by the court in the totality of the evidence available in the case²².

Thus, it can be stated that a lawyer occupies a central place in any procedure for resolving legal conflicts (both law enforcement and consensual). He is a participant in a legal conflict, without being its direct subject. The role of a lawyer in the conflict resolution process, however, depends on whether he acts on the side of one of the warring parties or is a neutral participant, acting as an intermediary or consultant.

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²⁰ Ибратова Ф., Миркамилова М., Каршиева Ф. ЗНАЧЕНИЕ, РОЛЬ И СУЩНОСТЬ МЕДИАЦИИ В ЭКОНОМИЧЕСКИХ СПОРАХ //International journal of professional science. – 2022. – №. 4. – С. 11-17.

²¹ Толмачева Т. Е. Участие адвоката в делах по защите прав и законных интересов участников корпоративных отношений //Цивилистика: право и процесс. – 2018. – №. 2. – С. 289-291.

²² Babakulovna I. F. Grounds for the introduction of bankruptcy procedures for an individual entrepreneur or an individual who has lost the status of an individual entrepreneur //International journal of professional science. – 2022. – №. 1. – С. 5-9.

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