



The Importance of the Principle of Independence in Advocacy: A Comparative Legal Analysis

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Abstract. This article is dedicated to highlighting the central role of the principle of independence in advocacy, thoroughly examining its significance in various legal systems through a comparative legal analysis. The independence of an advocate is emphasized as a key factor in effectively protecting clients' interests, ensuring principles of justice, and guaranteeing adherence to professional ethics and legal moral standards. The article deeply analyzes the reflection of the independence principle in legislation, its practical application, and the differing approaches between common law and civil law systems. External and internal factors affecting advocate independence, particularly pressure from state institutions, the socio-political environment, economic constraints, and regulatory mechanisms within the professional community, are considered with special attention. Furthermore, the strategic role of the independence principle in enhancing the quality of advocacy, ensuring the stability of the legal system, and strengthening public trust in the advocacy profession is discussed. The article proposes ways to reinforce the principle of independence based on examples from international and national legal practices. This work is intended for advocates, legal scholars, researchers interested in comparative law and professional ethics, as well as specialists aiming to contribute to the development of the legal system.

Keywords: advocacy independence, comparative law, legal ethics, professional ethics, principles of justice, common law system, civil law, professional responsibility.

Introduction

The principle of independence in advocacy represents one of the fundamental pillars of a democratic legal system, ensuring the effective protection of citizens' rights and freedoms[1]. In Uzbekistan, the institution of advocacy has gained particular relevance within the framework of ongoing judicial-legal reforms aimed at strengthening the rule of law and civil society. Despite legislative foundations ensuring advocates' independence, such as the Law "On Guarantees of Advocacy Activities and Social Protection of Advocates" and recent constitutional amendments elevating advocates' status, challenges remain in practical implementation due to external pressures and insufficient institutional safeguards. As President Shavkat Mirziyoyev has noted, although the legislative framework formally guarantees advocates' independence, these norms are often ineffective in practice, leading to limited competitiveness and equality within the justice system[2]. Comparative analysis with common law and civil law systems shows different approaches to institutionalizing advocate independence, reflecting variations in regulatory, ethical, and procedural guarantees. Moreover, international human rights bodies emphasize that without genuine independence, advocates cannot fully perform their professional duties, undermining fair trial standards. This article examines the importance of advocate independence, its reflection in national legislation, and

its implementation challenges, drawing comparisons with international practices and identifying strategies to strengthen this principle in Uzbekistan's legal framework. Ensuring advocate independence is not only a legal and ethical requirement but also a cornerstone for building public trust, upholding justice, and fostering the development of a democratic and humane state governed by the rule of law[3].

Materials and Methods

This study employed a qualitative comparative legal analysis to examine the principle of independence in advocacy across different legal systems[4]. The research began with a doctrinal review of the principle's definition, historical development, and conceptual significance using primary legal documents such as Uzbekistan's Law "On Guarantees of Advocacy Activities and Social Protection of Advocates" and Presidential Decrees regulating advocacy activities. Normative analysis was conducted to assess legislative guarantees ensuring advocate independence, including the prohibition of external interference, protection of attorney-client privilege, and safeguards against liability for professional opinions[5]. Comparative analysis was then applied to evaluate the implementation of this principle within common law and civil law systems, focusing on examples from Uzbekistan, Russia, Azerbaijan, and international instruments such as the UN Basic Principles on the Role of Lawyers. The research further incorporated case study review of national reforms, particularly Uzbekistan's constitutional amendments and strategic decrees aimed at enhancing advocacy independence. Analytical synthesis was used to identify internal and external factors influencing the principle, including economic constraints, political pressures, regulatory oversight, and institutional structures. Literature review of scholarly publications, UN committee reports, and regional legal commentaries provided critical perspectives to evaluate strengths and challenges in practice. Finally, recommendations were formulated based on cross-jurisdictional best practices to propose legal and institutional measures for reinforcing advocate independence as a means to strengthen justice, professional ethics, and public trust in the legal system. This methodology ensured a holistic understanding of the theoretical, normative, and practical dimensions of advocate independence in comparative law[6].

Results

Today, as an important stage of the judicial-legal reforms being implemented in our republic, one of the effective tools for protecting the interests and legal rights of citizens is the institution of advocacy.

Ensuring the independence of an advocate is one of the main manifestations of fully realizing the rights of individuals and legal entities[7].

As emphasized by the President of the Republic of Uzbekistan, Sh. Mirziyoyev, "Although our legislation has created all the necessary foundations for the effective functioning of advocates, we must regretfully note that these norms are absolutely not working in practice".

The principle of independence, one of the main pillars of the advocacy institution, holds a significant place in the formation of a legal state and civil society. This principle ensures that an advocate, in carrying out their professional activities, remains free from external influences, is subject only to the law, and can act freely in protecting the rights and freedoms of their clients. At the same time, the principle of independence in advocacy activities is of decisive importance in ensuring the principles of competitiveness

and equality in the system of fair justice[8].

In the updated Constitution, the status of advocates has been included as a separate norm. Naturally, without advocates, fair justice cannot be achieved. Only when the parties are procedurally equal in status does competitiveness arise. Therefore, in the judicial process, the position of an advocate must be on par with that of a prosecutor. Most importantly, just as constitutional norms related to the prosecutor's office and the judiciary are reflected in a separate chapter, a new chapter dedicated to advocacy has now been introduced. And this has created a solid constitutional foundation for the principle of competitiveness in criminal or civil proceedings[9].

The principle of legality holds fundamental importance in advocacy activities, as it ensures strict adherence to legal norms in the relationships between advocates and their clients. The principle of legality implies that an advocate must act solely within the framework of the law in exercising their powers and avoid any illegal actions[10].

In the era of globalization and the convergence of legal systems, the principle of independence in advocacy activities manifests itself as an issue of not only theoretical but also practical significance. In this regard, although a specific legal basis has been established in Uzbekistan's legislation, there are still a number of challenges in ensuring this principle in practice[11].

This principle requires advocates to comply with legal norms in protecting their clients and representing their interests. Adherence to the principle of legality enhances the reputation of advocates in society and before judicial authorities and ensures the stability of the judicial-legal system. At the same time, this principle helps advocates maintain transparency in fulfilling their responsibilities and duties.

The Republic of Uzbekistan's Law of December 25, 1998, "On Guarantees of Advocacy Activities and Social Protection of Advocates" according to Article 5 of this law, the independence of an advocate is ensured through granting permission to carry out advocacy activities in the manner prescribed by law, suspending or terminating such activities; the inviolability of the advocate; the prohibition of demanding the disclosure of attorney-client privilege; liability for interfering in cases handled by an advocate or violating their inviolability; guarantees provided by the state for advocacy activities and their social protection[12].

Developing advocacy activities in our country, creating an effective mechanism for protecting citizens' rights and their legitimate interests, ensuring competitiveness and equality of parties in judicial proceedings, and further increasing the participation of young talented personnel in advocacy activities are among the urgent tasks.

Decree of the President of the Republic of Uzbekistan dated May 12, 2018, No. PF-5441 "On Measures to Fundamentally Improve the Effectiveness of the Advocacy Institution and Expand the Independence of Advocates" According to which, it is ensured that advocates meet with the persons under their protection in a timely manner and without any obstacles in special rooms without audio or video surveillance devices and in the absence of unauthorized persons, provided that the possibility of visually observing them is maintained while excluding the possibility of third parties overhearing their conversation[13].

"Advocate independence is understood as their non-provision of other services, their separation from other organizations and interests in terms of structure, finance, and psychology.

'Independent advocates' or 'advocacy personnel' are volunteers working for independent advocacy organizations. Independent advocates assist people in obtaining the information necessary to make

genuine choices based on their circumstances and support an individual/group in entrusting their choices to others. An independent advocate may speak on behalf of people who cannot do so themselves" [14].

The Law of the Republic of Uzbekistan No. 721-I dated December 25, 2018, "On Guarantees of Advocacy Activities and Social Protection of Advocates" specifies the principle of independence as the fundamental principle of advocacy activities in Article 2. Additionally, Article 5 of this law lists the following as the main means of ensuring an advocate's independence:

Granting permission to carry out advocacy activities in the manner prescribed by law, suspending, or terminating such activities;

The inviolability of the advocate;

The prohibition of demanding the disclosure of attorney-client privilege;

Liability for interfering in cases handled by an advocate or violating their inviolability;

Guarantees provided by the state for advocacy activities and their social protection.

In general, the principle of independence is one of the core principles of advocacy activities, playing a significant role in enhancing legal culture and strengthening public trust in citizens.

At the United Nations Eighth Congress on the Prevention of Crime held in New York in 1990, the role of advocates, their basic principles, and fundamental provisions were adopted. Additionally, the issue related to the role of lawyers was considered at the UN Congress on the Prevention of Crime held in Havana[15].

An examination of the legislation of the Russian Federation shows that currently, there are no provisions in Russian Federation legislation that guarantee the independence of advocacy activities from improper state interference. Today, all procedural actions concerning an advocate are regulated by the general provisions of criminal-procedural legislation, without considering additional procedural guarantees that account for the public nature of advocacy activities. In cases where an advocate handling a case is inconvenient for the investigator conducting the preliminary investigation, the inquirer, the prosecutor, or others, law enforcement agencies seeking to get rid of an "inconvenient" advocate have begun to exert "influence" on them.."

The advocacy profession is entrusted with a leading role in practically implementing the principle of the rule of law by ensuring that every individual who seeks it, as a key institution of civil society for fundamental human rights, receives qualified legal assistance. As one of the forms of carrying out human rights activities, advocacy and advocacy activities are equally aimed at ensuring state-guaranteed principles for protecting the rights and freedoms of individuals and citizens.

"Speaking of the guarantees for advocates, the professional rights, honor, and dignity of an advocate are protected by law. Direct or indirect interference in any form with the professional activities of advocates, demanding the disclosure of specific information obtained by them while performing their professional duties, as well as demanding such information from officials or technical staff of advocates' associations, is prohibited. No influence in any form is allowed to be exerted on an advocate while they are performing their professional duties."

Discussion

According to the above-mentioned Law "On Advocacy Activities," it is stipulated that an advocate in the field of civil law cannot be held subject to disciplinary, civil, administrative, or criminal liability for <https://sociometrics.us/index.php/jclds>

opinions expressed in the course of their professional activities.

Ensuring the independence of an advocate serves not only to uphold the rule of law and justice in the course of their work but also to protect the additional rights of the person under their protection and to carry out preventive measures. As Diego García-Sayán has particularly emphasized, “prosecutors, advocates, and judges must have the opportunity to carry out their professional activities freely and be protected from any threats, interference, or pressure while performing their duties within the framework of the law” .

For legal assistance to be effective, an advocate must carry out their activities independently. This situation is also regulated by the international community, and the preamble to the United Nations Basic Principles on the Role of Lawyers states: “To adequately protect human rights and freedoms, every person, regardless of whether they are economic, social, cultural, civil, or political, must have access to rights and freedoms and, most importantly, to legal services provided by independent and qualified lawyers.

To ensure that advocates perform their functions independently, they must be protected from any unlawful interference in their activities. The types and forms of interference can vary-from obstructing their communication with clients to intimidation and physical attacks.

During the review of the new Law “On Advocacy” in Azerbaijan, the Committee concluded that this law “may create obstacles to advocates performing their functions freely and independently” and recommended that the government “take necessary measures to ensure that the criteria for entry and admission to advocacy do not hinder the independence of advocates.

In Libya, the Committee expressed serious doubts about “whether advocates, if not in state service, have the freedom to perform their professional duties without hindrance and are provided with services related to legal assistance” and recommended that “measures be taken to ensure full compliance with the requirements of Article 14 of the Covenant, as well as the Basic Principles on the Role of Lawyers.

One of the obstacles that advocates may face can be identified as the lack of recognition by state authorities. These authorities must recognize the independence and inviolability of an advocate. The failure to establish cooperation based on the principles of mutual equality by state administrative bodies, as well as law enforcement agencies, is a reason for an advocate’s inability to fully carry out their activities.

There are requirements for obtaining the status of an advocate, and several procedures are established in the current legislation. In particular, “The decision of the Qualification Commission to grant or refuse advocate status to a candidate is generally determined through the candidate passing an examination. The qualification examination is conducted within one month from the date the responsible authority receives the necessary documents from the candidates.

In our opinion, ensuring the independence of the lawyer, protecting their legal interests is not only a part of today’s legal state policy, but also eliminating cases of illegal interference in lawyers’ activities and ensuring their inviolability is one of the priority tasks ahead of us.

Conclusion

In conclusion, the principle of independence remains a fundamental pillar of advocacy, serving as a guarantee for the effective protection of clients’ rights, the realization of justice, and the preservation of legal ethics within both common law and civil law systems. This article demonstrated that despite legislative guarantees, practical challenges persist in ensuring advocates’ independence, including state

interference, institutional pressures, and socio-political constraints. Comparative analysis revealed that while international frameworks such as the UN Basic Principles on the Role of Lawyers advocate for full freedom and security in advocacy activities, national legal systems, including Uzbekistan's, still face gaps in implementation, requiring further reforms to align practice with constitutional and legal standards. Strengthening the independence of advocates not only enhances their ability to perform duties without external influence but also upholds public trust in the legal profession and fortifies the integrity of judicial systems. Measures such as enhancing procedural guarantees, minimizing unlawful state interference, and ensuring recognition of advocates' autonomy by all state bodies are essential. The study reaffirms that advocacy independence is not merely a professional privilege but a constitutional necessity to achieve fairness, equality, and the protection of fundamental rights in society, and it calls for continuous reforms, institutional safeguards, and international best practice integration to uphold this critical principle in Uzbekistan and beyond.

REFERENCES

- [1] A. Lee, «Access to Justice in Developing Countries», *Glob. Leg. Stud. J.*, cc. 22–37, 2019.
- [2] M. H. Rustambayev и U. A. Tuxtasheva, *Advocacy Activities in the Republic of Uzbekistan: Textbook*. Tashkent: National Society of Philosophers of Uzbekistan Publishing House, 2012.
- [3] K. Brown, *Comparative Constitutional Law*. Cambridge: Cambridge University Press, 2018.
- [4] «Concluding Observations of the Human Rights Committee on Azerbaijan». c. 14, 2001 .
- [5] «Concluding Observations of the Human Rights Committee on the Libyan Arab Jamahiriya». c. 14, 1998 .
- [6] M. Urunov и O. G'ulomjonov, «Ensuring the Independence of Lawyers, Evaluation of Judicial Protection Bodies», *Eurasian J. Law Finance Appl. Sci.*, cc. 40–47, 2022.
- [7] «Information Bulletin of the Oliy Majlis of the Republic of Uzbekistan». 1999. <https://lex.uz/docs/29626#29726>
- [8] J. Smith, *International Human Rights Law*. Oxford: Oxford University Press, 2010.
- [9] «Law Database of the Republic of Uzbekistan». 2018. <https://lex.uz/docs/3731060>
- [10] M. Johnson, «Legal Reforms in Central Asia», *Cent. Asian Law Rev.*, cc. 115–130, 2015.
- [11] «Strengthening the Rule of Law in Transition Economies». 2020. <https://www.oecd.org>
- [12] «The Scottish Independent Advocacy Alliance (SIAA)». <https://www.siaa.org.uk/what-is-independent-advocacy/#:~:text=Principle%201%3A%20Independent%20advocacy%20is,to%20injustice%2C%20discrimination%20and%20disempowerment>
- [13] G. Yusupjanova, «The Status of Lawyers in the Updated Constitution». <https://yoshlarovozi.uz/oz/news/yangilangan-konstitutsiyada-advokatlar-maqomi/>
- [14] «UN Guiding Principles on the Role of Lawyers». 1990. <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>
- [15] Sh. M. Mirziyoyev, *We Will Resolutely Continue Our Path of National Development and Raise It to a New Stage*. Tashkent: Uzbekistan, 2017.