FUNCTIONAL CLASSIFICATION OF SUBJECTS ENSURING THE RIGHT TO QUALIFIED LEGAL ASSISTANCE IN UZBEKISTAN

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Abstract: This article examines the system of subjects involved in ensuring the constitutional right to qualified legal assistance in Uzbekistan. Particular attention is paid to the distinction between direct providers of legal assistance and institutions performing organizational, coordinating, protective, preventive and auxiliary functions. Based on a functional approach, the article proposes a classification of relevant subjects into seven groups: infrastructure, coordination, public-guarantee, mediation-navigation, preventive, subsidiary and specialized professional subjects. The proposed approach aims to clarify institutional interaction and improve the effectiveness of constitutional guarantees of access to qualified legal assistance.

Keywords: qualified legal assistance, constitutional rights, legal aid, advocacy, access to justice, legal aid providers, institutional mechanism, functional classification.

Introduction

The right to qualified legal assistance occupies an important place in the system of constitutional guarantees for the protection of human rights. Its significance is determined not only by the possibility of obtaining professional legal advice or representation, but also by its relationship with access to justice, judicial protection and the effective exercise of other rights.

The Constitution of the Republic of Uzbekistan expressly guarantees everyone the right to receive qualified legal assistance. It also establishes that, in

cases provided by law, legal assistance shall be provided at the expense of the state. The Constitution further guarantees the right to choose legal counsel at any stage of criminal proceedings and establishes additional guarantees for persons whose liberty has been restricted.

The constitutional recognition of this right requires not only its formal proclamation but also the establishment of an effective institutional mechanism for its implementation. In this context, an important methodological problem arises: which institutions should be regarded as subjects ensuring the right to qualified legal assistance, and what functions do they perform within the relevant mechanism?

Traditional approaches tend to identify the advocate as the primary subject of qualified legal assistance. Such an approach is justified insofar as professional representation and defence constitute core forms of qualified legal assistance. At the same time, the actual realization of the constitutional right depends on a considerably broader institutional environment.

For example, the state establishes the general legal framework; competent public authorities organize particular mechanisms of state-funded legal aid; courts and law-enforcement bodies perform procedural functions; professional associations ensure professional self-government; and civil society organizations may contribute to legal information, consultation and referral.

Therefore, the institutional structure of the right to qualified legal assistance cannot be fully explained solely through the category of "provider".

International approaches also demonstrate that legal aid systems may involve different categories of actors. UNODC materials, for example, distinguish lawyers as specialized providers while recognizing the complementary role of trained non-lawyers, educational institutions, NGOs and other organizations in the delivery of legal aid.

The purpose of this article is therefore to develop a functional classification of subjects participating in the mechanism for ensuring the right to qualified legal assistance in Uzbekistan.

Methodology

The study employs systemic, formal-legal, institutional, functional and comparative-legal methods.

The systemic method is used to examine qualified legal assistance as an element of the broader constitutional mechanism for the protection of human rights and to identify the relationship between individual institutional components.

The formal-legal method is applied to analyse the constitutional and legislative foundations of legal assistance, including the legal regulation of state-funded legal aid and the professional status of advocates.

The institutional method is used to identify the principal public and professional institutions involved in the implementation and guarantee of the right to qualified legal assistance.

The functional method constitutes the principal methodological basis of the study. Rather than classifying institutions exclusively according to their formal legal status, the research identifies them according to the function they perform within the broader mechanism of ensuring the right.

The comparative-legal method is used to examine international approaches to the organization and delivery of legal aid, including the involvement of lawyers, non-governmental organizations, legal clinics and other actors.

The research is based on the Constitution of the Republic of Uzbekistan, legislation governing advocacy and state-funded legal aid, international legal instruments, UN materials, academic literature and comparative legal research.

Research Results

1. The need for a functional approach to the classification of subjects

The concept of a “subject of qualified legal assistance” should be distinguished from the concept of a “subject ensuring the right to qualified legal assistance”.

These categories are not identical.

A provider of qualified legal assistance is primarily concerned with the direct delivery of professional legal assistance to an individual.

A subject ensuring the right may perform a broader range of functions. Such a subject may establish legal conditions, organize institutional mechanisms, facilitate access, provide procedural protection, conduct preventive activities or connect an individual with an appropriate professional provider.

This distinction is important because the constitutional right exists within a multidimensional institutional environment.

Consequently, the question should not be limited to determining who provides legal assistance. It should also address:

who establishes the legal framework;

who organizes the system;

who coordinates its functioning;

who provides procedural guarantees;

who facilitates access;

who provides preventive legal assistance;

who directly performs professional legal activities.

This leads to the conclusion that the institutional mechanism of qualified legal assistance should be examined through a functional rather than exclusively organizational approach.

Based on the analysis, the subjects involved in ensuring the right to qualified legal assistance may be conditionally classified into seven functional groups:

infrastructure subjects;

coordination subjects;

public-guarantee subjects;

mediation-navigation subjects;

preventive subjects;

subsidiary subjects;

specialized professional subjects.

This classification does not mean that each of these groups directly provides qualified legal assistance.

Its purpose is different: it demonstrates how different institutions contribute to the functioning of the constitutional mechanism.

The first group consists of infrastructure subjects.

At the state level, the Cabinet of Ministers plays an important role in establishing the general organizational and regulatory conditions necessary for the functioning of state-funded legal aid.

Under the Law of the Republic of Uzbekistan “On State-Funded Legal Aid”, the Cabinet of Ministers participates in ensuring the implementation of a unified state policy in this field, approves relevant state programmes and determines the amount and procedure for payment for legal aid provided by advocates at state expense.

The infrastructure function therefore concerns the creation of the general institutional and financial environment within which the right can be realized.

The infrastructure subject does not replace the advocate and does not determine the legal position of the client in a particular case.

Its function is to ensure that the institutional conditions for the realization of the right exist.

This distinction is particularly important from the perspective of the independence of advocacy.

State participation in creating the infrastructure of legal aid should not be transformed into direct administrative control over the professional legal position of an advocate.

The second group consists of coordination subjects.

The coordination function is aimed at organizing interaction between institutions participating in the legal aid mechanism.

In Uzbekistan, the development of a unified administrative and information infrastructure for legal aid has strengthened the importance of coordination.

The state-funded legal aid system operates through the specialized “Legal Aid” information system. The current legislation provides for the electronic formation of the register of advocates providing state-funded legal aid, electronic interaction between relevant institutions and automatic selection of an advocate for eligible cases.

The significance of this mechanism goes beyond technical automation.

Coordination makes it possible to connect:

the person seeking legal assistance → the competent authority → the legal aid information system → the advocate.

The coordination function therefore reduces fragmentation within the institutional mechanism.

At the same time, coordination should not be understood as professional supervision over an advocate's legal strategy.

The advocate must retain professional independence when determining the methods and means of protecting the client's interests.

The third group consists of public-guarantee subjects.

These are institutions that perform functions connected with the public protection of rights and procedural guarantees.

Within this category, the prosecution and law-enforcement bodies may be considered in the context of their legally defined procedural functions, particularly where legislation requires the involvement of counsel or provides for state-funded legal assistance.

The role of such institutions is not to provide professional legal assistance themselves but to ensure that procedural conditions exist for its realization.

This distinction is particularly relevant in criminal proceedings.

The Constitution guarantees the right of every person to choose legal counsel at any stage of criminal proceedings and, where a person is detained, from the moment the person's freedom of movement is restricted.

The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems similarly emphasize timely access to counsel and the importance of informing detained, arrested, suspected or accused persons of their right to legal assistance.

Accordingly, public-guarantee subjects perform an important procedural function: they create the conditions under which the constitutional right can be exercised in practice.

The fourth group may be designated as mediation-navigation subjects.

This group includes institutions whose principal role is not professional representation but facilitating the individual's access to mechanisms for protecting rights.

In this context, the institution of the Ombudsman may perform an important navigation function within its legally established competence.

A person whose rights have allegedly been violated may not always know which institution should be approached, what procedure should be followed or whether professional legal assistance is required.

The navigation function therefore involves:

identifying the relevant legal problem;

explaining available protection mechanisms;

directing the person towards the appropriate institution;

facilitating access to available remedies;

where appropriate, directing the person towards professional legal assistance.

Such a function should not be confused with advocacy.

The Ombudsman, acting within its statutory mandate, does not become a substitute for an advocate.

The distinction between navigation and professional representation is therefore essential for maintaining institutional clarity.

The fifth group consists of preventive subjects.

Notaries may be considered within this functional category in respect of their legally established activities.

Preventive legal activity is aimed at reducing the probability of future disputes and protecting legal interests before a conflict reaches the judicial stage.

The preventive function may include legal clarification, formalization of legally significant acts and prevention of future disputes within the scope of the relevant professional powers.

The importance of this category lies in the fact that access to justice should not be understood exclusively as access to a court after a violation has occurred.

Effective legal protection may also involve mechanisms that prevent a dispute from arising in the first place.

At the same time, notarial activity should not be automatically equated with qualified legal assistance in its full constitutional meaning. The relevant institution should be assessed according to the particular function and legal nature of the service provided.

The sixth group consists of subsidiary subjects, including NGOs, civil society organizations, university legal clinics and similar institutions where they operate within the limits established by law.

The involvement of non-state actors is recognized in international approaches to legal aid.

UNODC materials note that legal aid systems may involve NGOs, community organizations, charitable organizations, professional associations, public defender institutions, private lawyers funded by the state and educational institutions. At the same time, lawyers remain the principal specialized providers of professional legal aid.

This approach is particularly important for persons who encounter legal problems but do not initially require formal representation.

NGOs and legal clinics may provide:

legal information;

initial consultation;

assistance in understanding legal procedures;

referral to competent institutions;

basic legal literacy;

assistance in preparing for further professional consultation.

However, subsidiary participation should not lead to the dilution of professional standards.

Where a case requires professional representation, preparation of procedural documents or advocacy before a court or other competent body, the individual should be referred to an appropriately qualified professional.

Thus, institutional pluralism should expand access to legal assistance without replacing professional advocacy.

The seventh group consists of specialized professional subjects, primarily advocates.

This is the central professional component of the mechanism.

Unlike infrastructure, coordination, navigation or subsidiary subjects, the advocate performs professional legal functions directly related to the protection and representation of the client's rights and legitimate interests.

The constitutional position of advocacy requires particular attention to professional independence.

The state may establish conditions for access to the profession, professional standards and mechanisms for public funding, but it should not determine the substantive legal position that an advocate adopts in an individual case.

This distinction creates an important institutional balance:

the state guarantees the conditions for professional activity; the advocate independently performs the professional function.

The state-funded legal aid system illustrates this distinction particularly clearly. Under the current legal framework, advocates are included in a specific

register of advocates providing state-funded legal assistance, while the "Legal Aid" information system may automatically select an advocate for a particular case.

The automated selection mechanism is therefore an organizational tool for access and distribution, rather than a mechanism for controlling the advocate's professional activity.

The proposed classification makes it possible to identify a structural relationship between different subjects.

The mechanism can be represented as follows:

Infrastructure → Coordination → Access/Navigation → Professional Assistance → Protection

At the same time, public-guarantee and preventive functions operate across different stages of this process.

The resulting model can be presented conceptually:

Functional group	**Primary function**	**Direct provider of qualified legal assistance**
Infrastructure	Creating institutional and financial conditions	No
Coordination	Organizing interaction and access	No
Public-guarantee	Ensuring procedural protection	Generally no
Mediation-navigation	Facilitating access and referral	No
Preventive	Preventing legal conflicts	Not necessarily
Subsidiary	Initial information, consultation and referral	Depending on legal status and function

Functional group	Primary function	Direct provider of qualified legal assistance
Specialized professional	Professional legal assistance and representation	Yes

The table demonstrates why the concepts of "subject of the mechanism" and "provider of qualified legal assistance" should not be treated as synonymous.

This differentiation also prevents the excessive expansion of the category of professional legal assistance.

The proposed functional model is based on the idea of institutional pluralism.

Institutional pluralism does not mean that every institution should perform the same legal function.

On the contrary, its purpose is to distribute functions between institutions according to their institutional capacity and professional competence.

Such an approach may increase accessibility because a person does not necessarily begin their interaction with the justice system by directly contacting an advocate.

For some legal problems, the initial need may be legal information or procedural orientation. For more complex disputes, professional legal representation may become necessary.

International research also indicates that access to justice is affected by multiple barriers, including cost, limited legal capability and difficulties in finding an appropriate source of assistance. The World Justice Project's global research has examined these barriers across more than 100 jurisdictions.

Recent empirical research also demonstrates that the relationship between legal aid and access to justice is complex and that simply increasing access to legal assistance does not automatically resolve every dimension of justice.

Therefore, the institutional mechanism should be evaluated not only according to the number of providers but also according to the continuity and coordination of the assistance pathway.

Functional differentiation also has implications for the quality of legal assistance.

If all legal assistance is concentrated exclusively in one institutional channel, accessibility may be limited by geographical, financial, informational or organizational barriers.

Conversely, if too many institutions are treated as interchangeable providers of professional legal assistance, professional standards may become unclear.

The functional model attempts to avoid both extremes.

It establishes a distinction between:

accessibility and professional representation;

legal information and professional legal advice;

navigation and advocacy;

institutional coordination and professional supervision.

Such differentiation is particularly relevant in the context of state-funded legal aid.

The UNODC Handbook on Ensuring Quality of Legal Aid Services emphasizes that legal aid systems may involve different service providers but also highlights the importance of quality and professional competence in the delivery of legal aid.

Consequently, expanding the institutional network should be accompanied by appropriate quality requirements, confidentiality safeguards, accountability mechanisms and clear rules concerning referral to professional providers.

Based on the functional classification proposed above, several directions for further development may be identified.

First, legislation and subordinate regulation should more clearly distinguish between subjects directly providing qualified legal assistance and subjects participating in the broader mechanism for ensuring the relevant constitutional right.

Second, referral mechanisms between NGOs, legal clinics, public institutions and professional advocates should be further developed. Such mechanisms could prevent a person from repeatedly applying to institutions that lack the competence to resolve the relevant legal issue.

Third, information about available legal assistance should be presented in an accessible and understandable form. The effectiveness of a legal right depends not only on its formal availability but also on an individual's ability to identify and use the relevant mechanism.

Fourth, the digital infrastructure of state-funded legal aid should continue to develop while maintaining transparency, accountability and protection of personal information.

Fifth, professional standards should remain applicable to those forms of assistance that constitute professional legal representation and defence.

Finally, institutional coordination should not undermine the independence of advocacy. The organizational integration of institutions should therefore be distinguished from administrative subordination of the advocate.

Conclusion

The constitutional right to qualified legal assistance cannot be effectively understood exclusively through the activities of advocates as direct professional providers.

The realization of this right depends on a broader institutional mechanism involving public authorities, professional institutions, procedural bodies, civil society organizations and other actors performing different functions.

The article proposes a functional classification of subjects ensuring the right to qualified legal assistance into seven groups:

infrastructure subjects;

coordination subjects;

public-guarantee subjects;

mediation-navigation subjects;

preventive subjects;

subsidiary subjects;

specialized professional subjects.

The proposed classification is not intended to establish seven categories of providers of qualified legal assistance. Its purpose is to distinguish the different institutional functions through which the constitutional right is made practically accessible.

The advocate occupies a specialized professional position within this system. At the same time, the effectiveness of advocacy depends on the functioning of the surrounding institutional infrastructure.

The functional approach therefore allows two objectives to be reconciled: expanding accessibility to legal assistance and preserving professional standards of qualified legal representation.

The study also demonstrates that institutional pluralism should not be understood as replacing advocacy with non-professional actors. NGOs, legal clinics and other subsidiary institutions may contribute to legal information, initial consultation and referral, while matters requiring professional representation should be transferred to appropriately qualified legal professionals.

In this sense, the institutional mechanism of qualified legal assistance should be constructed not as a hierarchy of institutions, but as a coordinated system of functionally differentiated actors.

Such an approach may contribute to improving the accessibility, continuity and effectiveness of constitutional guarantees of the right to qualified legal assistance in Uzbekistan.

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