



LEGAL STATUS OF THE SPECIALIST IN THE CRIMINAL-PROCEDURAL LEGISLATION OF THE REPUBLIC OF UZBEKISTAN

Rashidov Bekhzod Nurboevich

doctor of legal sciences (dsc), professor.

Head of the Department of Criminal-procedural Law of the
Academy of the MIA of the Republic of Uzbekistan

Abduvakhobov Sherzodbek Abduvakhobovich

Teacher of the Department of Criminal-procedural Law of the
Academy of the MIA of the Republic of Uzbekistan

<https://doi.org/10.5281/zenodo.10665008>

ABSTRACT: Tremendous measures are being implemented to protect the human dignity, rights and freedoms, and to ensure the rule of law as part of the wide-scale reforms in our country. The constitutional reforms were carried out and a number of laws were amended in these processes. The improvement of laws, including the need to review the legal status of some participants in criminal procedural relations is necessary in this regard.

KEYWORDS: status, person's status, legal status, legal condition, communicative capacity, legal capacity, legal status of a specialist, criminal procedure.

INTRODUCTION: Currently, the need to ensure the rights and freedoms of the individual in the pre-trial and court process, to protect their legal interests by improving the legal status of the specialist in the criminal process, thereby ensuring the rule of law is essential. In this regard, it is important to review once more the legal status of the specialist in the criminal proceedings, the legal condition, legal status, communicative capacity, and the theoretical knowledge.

It is the guarantee of efficiency to use special knowledge aimed at achieving the criminal justice which is the main goal of the criminal process. Therefore, the latest innovations in science and their effective use in the fight against crime require the improvement of legal mechanisms in this regard. The effectiveness of evidence in criminal proceedings directly depends on the appropriate use of special knowledge in the process of collecting and examining evidence. The use of special knowledge in the criminal process is evident in the participation of persons with such knowledge, that is, specialists in the case.

The legal status of the subject participating in certain processes affects the content of relations in this system. One of the main issues in jurisprudence is the system of rights and obligations of the subject of relations. It is necessary to pay attention to the concept of "status of the person" and its structural aspects in a deeper study of the specialist, the legal status, and the role of specialist in proof as a participant in criminal proceedings.

It can be viewed that the terms "legal status" and "legal conditions" are used to express the rights and duties of the legal entity and to define its position in the laws and theory of the Republic of Uzbekistan. These concepts determine the role of a certain subject in social relations and the sum of his/her rights and obligations. It should be analyzed the subject in law, his/her rights and duties in order to form the concepts of "legal status".

It is perceptible that the concepts of "status" and "legal status" are given different definitions in the process of research. In particular, the **status is** (in law) - the legal status of elected persons, citizens, state agencies, organizations, institutions, international organizations formalized by a normative act, the sum of their rights and obligations [1].

The legal status of a person reflects the system of rights, freedoms and obligations clearly defined in legal norms that indicate the place and role of a person in society [2].

The legal status of the specialist, like other participants in the criminal process, is constantly changing under the influence of various processes taking place in society and the state.

The legal scholars have expressed their thoughts focusing on the legal status of the subjects of the procedure in various literatures related to the criminal procedure. In particular, M.S.Strogovich divided the content of the legal status of a person into four components: 1) the rights of a person; 2) obligations of a person; 3) guarantees of individual rights; 4) legal liability of a person for failure to fulfill the obligations [3, P.257]. It is incomprehensible that his thoughts are in full, since M.S.Strogovich did not include the "legal status and communicative capacity" in the content of a person's legal status. The obligation and liability of the person involved in the case do not arise and the person cannot use certain rights because of inexistence of the "legal status and communicative capacity"

Procedurals scientist L.D.Kokorev included the rights and obligations of a person, legal interests, procedural legal and communicative capacity, the system of various guarantees of subjective criminal-procedural rights as part of the criminal-procedural status of subjects of criminal proceedings [4, P.7-8].

S.P.Bekeshko clarifies the procedural status of the participant in the criminal proceedings as the status of the criminal proceedings arising from the tasks of the criminal proceedings and determined by the rights and obligations of this participant and their guarantees [5, P.120-121].

According to O.A.Zelenina, the procedural status is an expression of all possible connections and relations between the participants of the criminal proceedings and the state, implemented through the norms of the criminal-procedural law and guaranteed by the state [6, P.23].

We think that it can be agreed with the thoughts expressed by L.D.Kokorev, S.P.Bekeshko, O.A.Zelenina in this regard. Because these scholars defined the "legal status of a person" as a system of relations that covers legal capacity and communicative capacity, is guaranteed by the state and arises from the tasks of the criminal process.

According to E.A.Semenov, V.F.Vasyukov, A.G.Volevodz, the determination of the legal status of a participant in the criminal proceeding is manifested in the signs of the legal capacity, communicative capacity, obligation and responsibility of the subjects of the criminal proceeding in a certain period, in certain legal relations, describing the belonging of a particular participant in the criminal proceeding to one or another group should be derived from the set of elements [7, P. 9].

In this regard, the legal scientist I.L.Petrukhin also approached the issue in this way: "Each person participating in the criminal process has his/her own special status, but only some elements are common for most of the participants in the process. The status of some participants in the process is similar, but it is not acceptable to say that there is a single status of a person in the criminal process, that is, each participant in the process uses his/her own rights and assumes their own obligations" [8, P.13].

We strongly believe that I.L.Petrukhin's thoughts on this matter is credible. Because subjects participating in criminal-procedural relations have their own legal status, and the

legal status of some subjects may be similar to each other. For example, although the signs of specialist and expert are similar, their legal status is various.

Associate Professor G.S. Ismailova divided the “status” (status in Latin - position, post) into five components according to its content:

- 1) a set of rights and obligations that determine the legal status of a person, state bodies or organizations;
- 2) Mandatory and as much as possible moral standards established by the state and society;
- 3) a person’s view of the rights and obligations established in society;
- 4) form of social etiquette;
- 5) social position.

The “legal status” is the recognition of human rights and obligations established by the Constitution and laws, as well as the authority of state bodies and officials [9, P.43-44].

According to Professor Sh.A.Kulmatov, the “procedural rights and obligations in the criminal process determine the legal status of the participants in the process, their participation in the case. If procedural rights are left to the discretion of the participants, procedural obligations must be fulfilled” [10, P.25].

Professor Kh.T.Odilkoriyev notes that: “It is logically wrong if obligations are not mentioned when talking about the rights. The implementation of specific rights enshrined in the law is directly related to the fulfillment of certain defined legal obligations” [11, P.157-163].

Agreeing with the thoughts of G.S.Ismailova, Sh.A.Kulmatov, Kh.T.Odilkoriyev, it is worth noting that the legal status of a person is established by the Constitution or laws, that rights and obligations in criminal proceedings determine the legal status of a participant in the proceedings, and that legal guarantees are provided by imposing certain obligations in the exercise of rights.

M.Kh.Kadirova also stated that the participants in the process should have the relevant procedural rights and obligations defined in the criminal procedural law, exercise their rights and obligations within the set procedural time limits or refrain from doing so [12, P. 15]. M.Kh.Kadirova briefly described the content by taking into account that the participants of the process have rights and obligations.

In our view, “legal status” is a legal capacity and communicative capacity to act, its rights and obligations are defined, the rights are guaranteed by law, and has certain powers through participation in the criminal process.

The position of the specialist in the system of participants in criminal proceedings is defined in the Chapter 6 entitled “Other participants in criminal proceedings” of the Articles 69-70 of the Criminal-procedural Code of the Republic of Uzbekistan. These articles reflect the legal status of the specialist.

The “specialist” is called to assist the investigator, interrogator, prosecutor and court in finding and strengthening evidence during investigation and trial” in connection with the Article 69 of the CPC. The content of this norm can be defined more broadly, as the “specialist is a person who has special knowledge and is involved in procedural actions in order to assist in identifying, finding, recording and obtaining evidence related to the case, checking the collected evidence, as well as using technical means”.

It is necessary to differentiate between the procedural activities of a specialist and an expert, as the directions of activity are close to each other, both of them use special knowledge [13, P. 75]. Possession of special knowledge distinguishes the specialist from the participants in the criminal proceedings, the prosecution and the defense, from the court, as well as from all “participants of the proceedings” except the legal definition of an expert.

The differences in the legal status of the specialist and expert are that the specialist “has special knowledge and is involved in assisting in procedural actions”, and the expert is a person “who has special knowledge and is appointed to conduct expert research and give a conclusion”. Therefore, it is significant to distinguish the legal status of the specialist and expert according to the intention in criminal proceedings.

In this regard, A.V.Kudryavtseva stated that “these participants in criminal proceedings should be distinguished from each other according to their procedural status, i.e., the level of solving the tasks before the expert and specialist” [14, P.56]. The specialist should be involved when it is necessary to solve problems on the basis of experience and when the result is sufficient, when solving them does not require the use of laboratory equipment, complex calculations, or a long period of time [14, P.55].

To our estimation, the thoughts of A.V. Kudryavtseva are expedient. Although the legal status of an expert and a specialist in criminal-procedural relations are close to each other, it allows us to understand the differences in their participation and their place in legal relations by analyzing their rights and obligations.

Professor I.R.Astanov listed the differences in the participation of the specialist and expert in the criminal process in his research. In particular, he mentioned the following:

“Firstly, the specialist’s opinion is advisory and once again strengthens the confidence of the experienced investigator in his actions. The investigators also have such knowledge in some cases; and expertise sometimes helps to restore already lost evidence, which many people do not have access to;

secondly, a specialist, unlike an expert, does not conduct research, but only helps to identify, obtain and strengthen evidence; and the expert gives a conclusion on the result of the research and is responsible for its authenticity;

thirdly, if a criminal case is initiated as a result of the expert conclusion, the expert is personally responsible for such actions; and the investigator is responsible for the specialist’s actions that lead to the initiation of a criminal case, the reason is specialist’s opinion has the form of advice” [13, P.77-78]. In this regard, we agree with the thoughts of Professor I.R.Astanov.

The specialist and expert may actually be the same person, but they differ according to their participation in the criminal process, that is, the task they perform. The objective (goal, duties) of the expert in a criminal proceeding is to conduct an examination and give a conclusion based on the results of the conducted research, and the expert may interrogate and testify him/her.

The task of a specialist can be understood through his areas of activity. The specialist participates in the process for the following purposes: 1) to assist the investigator, interrogator, prosecutor and court in finding and strengthening evidence during the investigation and trial hearing; 2) for the use of scientific and technical tools (recorder, video recorder, film recording equipment and other equipment) during investigation and court proceedings.

In addition, some investigative actions may be entrusted to a specialist. For instance, in cases where there is a need to determine a person's intoxication or other physiological state by stripping a person or identifying scratches, bruises, and blisters on the body, as well as, by using methods that do not require expertise, including the testimony is conducted by a doctor or other specialist medical worker according to the order of the investigator, interrogator or court [15, P.103]. The specialists can participate as persons to be appointed for inspection [15, P.137].

The specialists may be involved to assist with measurements, photography, filming, video recording, plans, schematics, drawings, molds and copies of traces during the inspection [15, P.98].

The legal status of the specialist can be found out based on the study of the set of procedural rules that determine his/her role in the legal relations of the criminal process, by separately expressing the legal designations of the specialist, such as the communicative capacity, legal capacity, rights and obligations, duties.

"The requirement for a participant in the criminal proceedings to exercise criminal-procedural status is linked to the legal capacity and communicative capacity" as defined in the legal references [6, P.25].

Legal capacity consists of two components as law capacity and communication skill. It is estimated that the person can fully be legal subject based on the fact of having these two components of legal capacity at the same time. Citizens have legal capacity at birth, and full communicative capacity at the age of 18 [16, P.35].

Communicative capacity (in law) is the ability of a citizen or legal entity to acquire rights and create obligations by its actions. The citizen's communicative capacity can be full or incomplete. The person acquires full communicative capacity upon reaching 18 years of age. 14 to 18 years of age and minors under 14 do not have full communicative capacity. Minors of this age are allowed to perform actions provided for by law with the consent of their legal representatives or independently [17].

Legal capacity is the ability (possibility) of a person to act as the owner (possessor) of subjective rights and obligations. Legal capacity is the ability of a person to realize his subjective rights and legal obligations with his conscious, voluntary actions, as well as to take liability (to be responsible) for his crimes [18, P.310-311].

The realization of the capacity to act depends entirely on certain circumstances in contrast to the legal capacity that appears in all citizens at the same time, regardless of any factor. Firstly, the subject of legal relations must be sane, that is, he must understand the consequences of his/her actions, control the actions; secondly, he must be of legal age, i.e. 18 years of age. Legal capacity accompanies a person throughout the life, and communicative capacity arises from a certain age [7, P.12].

Legal capacity is the ability of the subject to use the rights and freedoms established for him, as well as to fulfill obligations and exercise powers, according to associate professor E.T.Khojiev. The communicative capacity is the ability of individuals to acquire and exercise rights by their decisions and actions (inaction), create obligations to themselves and other individuals, fulfill them, and have the ability to ensure rights and freedoms [7, P.40-41].

Legal capacity and communicative capacity are mutually compatible for many subjects in criminal proceedings. At the same time, they have legal capacity and communicative capacity, to clearly define, they are subjects of law. It is illogical for the subject to be an expert or a specialist, to have procedural legal capacity, but at the same time not to have the communicative capacity [7, P.13].

In our opinion, **legal capacity** is the exercise of the freedoms and rights granted to the subject in the implementation of certain legal relations, and not deviating from the limits of obligations in the implementation of the powers assigned to the subject. Communicative capacity is a system of rights and obligations arising from the ability of individuals to respond independently to their actions (inaction).

CONCLUSION: In conclusion, it is vitally important to protect human dignity, the rights and freedoms, as well as to achieve justice by improving the legal status of the specialist in the criminal procedural relations, and the participation of persons with special knowledge in the process of proceedings in pre-trial and in the process of collecting, formalizing and verifying evidence in the court process. In particular, it is expedient to obtain the opinion or conclusions of specialists as an alternative to the conclusions given by experts in the future by improving the legal status of experts with special knowledge in the process of preliminary investigation and evidence by the courts. This, in turn, leads to the formation of new types of evidence in criminal procedural legislation.

References:

1. Қаранг:Qomus.info.URL: <https://qomus.info/>
2. Шахснинг ҳуқуқий мақоми тушунчаси: таркиби ва турлари. URL: <http://fayllar.org/>
3. Строгович М.С. Избранные труды. Проблемы общей теории права. — Т. 1. — М., 1990. — С. 257.
4. Кокорев Л.Д. Положение личности в советском уголовном судопроизводстве: Автореф. дис. ... д-ра юрид. наук. — Воронеж, 1974. — С. 7-8.
5. Бекешко С.П. Процессуальное положение обвиняемого в советском уголовном процессе (общая характеристика) // Тезисы докладов на научной конференции юридического факультета БГУ. — Минск, 1966. — С. 120-121.
6. Зеленина О.А. Процессуальный статус участника уголовного судопроизводства: системно-правовой анализ [Текст]: монография. — Екатеринбург, 2014. — С. 23, 25.
7. Правовой статус и правовая регламентация участия специалиста в уголовном процессе: теоретические, процессуальные и организационные аспекты: монография / Е.А. Семенов, В.Ф. Васюков, А.Г. Волеводз; под редакцией А.Г. Волеводза. — Москва: МГИМО-Университет, 2020. — С. 9, 12, 13.
8. Петрухин И. Л. Свобода личности и уголовно-процессуальное принуждение. — М., 1985. — С. 13.
9. Давлат хизмати: ўқув қўлланма / Э. Т. Хожиев, Г. С. Исмаилова, М. А. Рахимова. Тошкент: Ўзбекистон Республикаси Президенти ҳузуридаги Давлат бошқаруви академияси, 2015. — Б. 40-41, 43-44.
10. Қулматов Ш.А. Жиноят-процессуал мажбуриятлар ва уларни бажармаганлик учун жавобгарликнинг назарий, ҳуқуқий ва амалий жиҳатлари: Юрид.фан. докт.(DSc) илмий дар.олиш учун ёзилган диссертация — Т., 2019. — Б. 25.
11. Одилқориев Ҳ.Т. Конституция ва фуқаролик жамияти. — Т., 2002. — Б. 157-163.

12. Кадырова М.Х. Жиноят процессуал муддатларни такомиллаштириш: зарурият ва имконият: Юрид. фан. номз. ... дис. автореф. – Т., 2011. – Б. 15.
13. Астанов И.Р. Жиноят ишлари бўйича махсус билимлардан фойдаланишнинг процессуал ва криминалистик жиҳатлари: Юрид.фан. докт. (DSc) илмий дар.олиш учун ёзилган диссертация – Т., 2018. Б. 75. 77-78.
14. Кудрявцева А.В. Заключение и показания специалиста как вид доказательств в уголовном процессе России // Актуальные проблемы теории и практики уголовного судопроизводства и криминалистики: Сб. статей конф. – М.: Академия управления МВД России, 2004. – С. 55-56.
15. Ўзбекистон Республикаси Жиноят-процессуал кодекси. Тошкент. – 2024. [Criminal Procedure Code of the Republic of Uzbekistan]. Tashkent.1994 yil. 146, 1873, 136-moddalar. B. 98, 103, 137. URL:<https://lex.uz/docs/111460>
16. Б.Ахраров. Ўзбекистон Республикасида юридик шахслар жавобгарлигининг айрим жиҳатлари: Одил судлов ҳуқуқий, илмий-амалий нашр.-Тошкент.,2020. 5-сон. Б.35.
17. Qomus.info onlayn ensiklopediya.
URL:<https://qomus.info/encyclopedia/cat-b/bolish-uz/>
18. Теория государства и права: учебник / под ред. А.С. Мордовца, В.Н. Синюкова. — М., 2005. — С. 310–311.