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PERSONS ENGAGED IN ADVOCACY AND CITIZENS WHO GUARANTEE THE IMPLEMENTATION OF SUCH ACTIVITIES

In this article, we will discuss the concept and modern forms of procedural agreement, one of the new institutions of legal proceedings. In addition, the types of procedural agreements issued in the Criminal Procedure Code, in accordance with the new law, provide for the participation of lawyers in criminal proceedings.

Protection of individuals from criminal prosecution specified in Part 2 of Article 70 of the Criminal Procedure Code of the Republic of Kazakhstan is carried out by lawyers.

Advocacy is the property of lawyers, that is, a class of people who have devoted themselves to this profession. The most complete concept of advocacy is as follows: advocacy is a professional organization that provides legal assistance to the population and legal entities on the basis of the law.

The purpose of the article is to improve the Criminal Procedure legislation and legal practice in criminal cases in accordance with the accumulated theoretical and practical knowledge in this area, as well as the norms of the Criminal Code. The comparative legal analysis of subjects, participants of procedural record-keeping is made. The work illustrates the legal institutions of subjects, namely representatives of the accused party to protect violated human rights and freedoms.

Relevance of the research topic: the effectiveness of the criminal process in the process of fraud of a suspect, accused, a defense lawyer.

Key words: justice, accused, criminal process, lawyer, defense attorney.

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Адвокаттық қызметпен айналысатын тұлғалар және мұндай қызметті жүзеге асыруға кепілдік беретін азаматтар

Бұл мақалада адвокаттардың іс жүргізудің жаңа институттардың бірі процестік келісім түсінігі және қазіргі кездегі нысыандары қарастырылады. Сонымен қатар қылмыстық процестік кодексте берілген процестік келісім түрлері, жаңа заңға сәйкес адвокаттардың қылмыстық процесте қатысуын қарастырады.

Қазақстан Республикасының Қылмыстық процестік кодексінің 70-бабының 2-бөлігінде аталған жеке тұлғаларды қылмыстық қудалаудан қорғауды адвокаттар жүзеге асырады.

Адвокатура – бұл адвокаттардың меншігі, яғни өздерін осы мамандыққа арнаған адамдар класы. Адвокатураның ең толық түсінігі келесідей, адвокатура-бұл заң негізінде халыққа және заңды тұлғаларға заңгерлік көмек көрсететін кәсіби ұйым.

Мақаланың мақсаты – осы саладағы жинақталған теориялық және тәжірбиелік білімге, сондай-ақ ҚПК нормаларына сәйкес, қылмыстық істер бойынша қылмыстық іс жүргізу заңдарын және құқықтық тәжірбие жетілдіру. Процессуалдық іс жүргізу барысына қатысушылары мен субъектілерге салыстырмалы құқықтық талдау жасалды. Зерттеу жұмысында субъектілердің құқықтық институт ретінде саналатын қорғаушының ролі мен ерекшеліктері талқыланып қарастырылған, атап айтқанда адамның бұзылған құқықтары мен бостандықтарын қорғау үшін айыпталушы тараптың өкілдері талданған.

Зерттеу тақырыбының өзектілігі қылмыстық процесс барысында күдікті, айыпталушы, қорғаушы-адвокат, қылмыстық процестің тиімділігі.

Түйін сөздер: әділдік, айыпталушы, қылмыстық процесс, адвокат, қорғаушы.

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**Лица, занимающиеся адвокатской деятельностью, и граждане,
гарантирующие осуществление такой деятельности**

В данной статье рассматривается понятие и формы процессуального соглашения, одного из новых институтов судопроизводства адвокатов. Кроме того, виды процессуального соглашения, предусмотренные уголовно-процессуальным кодексом, предусматривают участие адвокатов в уголовном процессе в соответствии с новым законом.

Защита от уголовного преследования физических лиц, указанных в части 2 статьи 70 Уголовно-процессуального кодекса Республики Казахстан, осуществляется адвокатами.

Адвокатура – это собственность адвокатов, то есть класс людей, посвятивших себя этой профессии. Наиболее полное понятие адвокатуры заключается в следующем, адвокатура-это профессиональная организация, оказывающая юридическую помощь населению и юридическим лицам на основании закона.

Цель статьи-совершенствование уголовно-процессуального законодательства и правовой практики по уголовным делам в соответствии с накопленными теоретическими и практическими знаниями в данной области, а также нормами УПК. Сделан сравнительный правовой анализ субъектов, участников процессуального делопроизводства. В работе иллюстрируются правовые институты субъектов, а именно представителей обвиняемой стороны для защиты нарушенных прав и свобод человека.

Актуальность темы исследования заключается в том, что подозреваемый, обвиняемый, защитник-адвокат, эффективность уголовного процесса в процессе общения.

Ключевые слова: справедливость, обвиняемый, уголовный процесс, адвокат, защитник.

Introduction

Article 3 of the Constitution of the Republic of Kazakhstan, stating that a person, his life, rights, and freedoms are the most valuable treasure of the state, thus forming a legal basis for guaranteeing every citizen the observance of his rights and legitimate interests. The observance and protection of the rights and freedoms of citizens by state bodies also depends on such an important public and legal institution as the advocacy, which determines the basic principles of the activities of persons providing professional legal assistance to citizens and organizations.

The highest body of the Bar Association is the General Meeting of members of the board, its executive body is the presidium, and the supervisory body is the Audit Commission.

The general meeting has the right to resolve any issues related to the activities of the Bar Association. In accordance with the law of the Republic of Kazakhstan "on advocacy", the exclusive competence of the General Meeting includes: adoption of the Charter of the Bar Association and making a decision on amendments to the Charter, election of the presidium, chairman of the presidium, Audit Commission, chairman of the Audit Commission, etc.

The general meeting is convened at least once a year on the initiative of the Presidium of the Bar Association.

The general meeting is considered valid with the participation of at least two-thirds of the members of the board and resolves all issues by a simple majority vote of the lawyers who took part in the voting.

For daily management and control over the activities of the Bar Association, the General Meeting elects the Presidium of the Bar Association and the Audit Commission. After the election of these bodies, the right to control their work is assigned to the General Meeting, which hears and approves a report on the activities of the bodies, heads and employees of the Bar Association.

The Presidium of the Bar Association is an executive body that operates between the General Meeting of lawyers. The presidium is elected by the members of the Bar Association by secret ballot at the General Meeting for a term of four years in the number determined by the General Meeting, depending on the number of members of the board and the scope of work.

After the election of the Presidium of the Bar Association, the chairman and his deputy are elected by secret ballot from the established composition.

The presidium, as a permanent executive body, resolves all day-to-day issues of the board's activities.

A lawyer who has been a direct member of the Bar Association for at least two years prior to the date of election may be elected chairman of the Presidium of the Bar Association.

The Audit Commission is the control and Verification body of the Bar Association. The Audit Commission, its chairman, is elected by secret ballot at the general meeting of members of the board of Trustees for a term of four years.

The Audit Commission is responsible for reviewing the financial and economic activities of bar associations, legal consultations, law offices, as well as the financial activities of individual lawyers.

Materials and methods

Head of state K. Tokayev in his address to the people of Kazakhstan on September 1, 2020 «Kazakhstan in New conditions: time of action» noted the need to address several issues on public administration, health, education, socio-economic and other issues. First, taking into account the experience of the pandemic, the head of state was instructed to develop mechanisms aimed at ensuring a balance between the levels of Legal Regulation. The president noted that excessive legislative regulation of the activities of the executive branch hindered the prompt response to emerging problems, so it was instructed to consider this issue within the framework of the concept of Legal Policy. Speaking about the preliminary approaches to the implementation of this task, it is planned to conduct an audit of legislative acts to identify detailed norms that will be revitor to ensure flexible regulation in specific legal relations, the minister said. Secondly, the task is to develop approaches to ensure the stability of criminal and Criminal Procedure legislation. For this purpose, the Ministry of Justice, together with law enforcement agencies, is working to develop appropriate mechanisms for ensuring stability. For example, reducing the frequency of amendments to the criminal and criminal procedure codes can be achieved by strengthening the mechanisms for working out the initiatives proposed in this area. Third, together with interested bodies, work is underway to clarify the concepts of “administrative” and “criminal” offenses. “The new concept of “administrative offense “should include in the Administrative Code the components of an administrative offense; determine the size and type of administrative sanctions; criminalize or eliminate certain components of the Criminal Code.” Fourth, the head of state separately noted the need to ensure equality of rights of a lawyer and a prosecutor in court proceedings. To fulfill this task, together with the advocacy community, amendments to the draft law on advocacy and legal assistance have been developed, which will expand the powers of lawyers in court proceedings.

“As part of the state legal reform in the Republic of Kazakhstan and connection with the adoption of the law” “on advocacy and legal assistance”, the legal situation of a lawyer in sovereign Kazakhstan will radically change, and the relevance of the topic will increase in the context of the formation of an independent legal state.”

Discussion and results

In accordance with the amendments that have entered into legal force of the law of the Republic of Kazakhstan “on advocacy and legal assistance”, as well as in accordance with Article 76 of Chapter 5 “status of a legal adviser”, “rights and obligations of a legal adviser”, a legal consultant is obliged to be a member of one of the chambers of legal consultants to provide legal assistance in the form of representation of the interests of persons in the courts.”

The relevance of the research topic is determined by the fact that the task of creating a rule of law, the process of democratization of society, and the problems of strengthening the legal rights of citizens require a new approach to the activities of the advocacy and lawyer-defender in criminal proceedings.

According to Article 7 of the world declaration of human rights, “before the law, all people have the right to equal and equal protection.” The International Covenant on Civil and Political Rights also provides for the norm that “states undertake to provide any person with effective means of legal protection if the rights and freedoms of this person recognized by the Covenant are violated.”

As we can see, the Constitution of the Republic of Kazakhstan, declaring the right of citizens to judicial protection, has assumed the obligation to create conditions in which the state can ensure the freedom of the individual as much as possible. This, in turn, implies a reduction in measures of influence on law-abiding citizens by the state, leaving them the right to judicial protection of their rights and legitimate interests.

Advocacy in the Republic of Kazakhstan is designed to support the implementation of a person’s rights guaranteed by the state and enshrined in the Constitution of the Republic of Kazakhstan for judicial protection of their rights, and freedoms and obtaining qualified legal assistance.

Today, increasing the importance of advocacy in Kazakhstan depends on various factors. This is the process of democratization of society, deepening market relations, and developing the judicial and legal system. At the same time, insufficient de-

velopment of important institutions of civil society, such as law enforcement public associations, trade unions, the low legal culture of the population, and imperfection of legislation cannot affect the activities of Kazakhstan's advocacy. Undoubtedly, the above-mentioned mutually conditioned and interrelated factors require a certain scientific and theoretical understanding to understand the specific role and place of advocacy in these processes.

Every citizen has the right to defend his rights and freedoms in court in all ways that do not contradict the law, including using his right to apply to a professional lawyer who has the legal knowledge and necessary skills in protecting and representing citizens and organizations.

The provision of legal assistance by lawyers to citizens and organizations can be carried out in various ways and means that are not prohibited by law. However, the common tasks of the Bar Association and the activities of Public Associations of lawyers are to ensure the protection of the rights and legitimate interests of citizens and legal entities and to strengthen the independence of the bar as a public legal institution.

The constitutional norm "every person detained, arrested, accused of committing a crime has the right to use the help of a lawyer (defender)" (according to Article 13 of the Constitution of the Republic of Kazakhstan) demonstrated true humanism, concern for Human Rights and legitimate interests.

The exercise of human and civil rights and freedoms is possible in full when they protect the consciousness of the case and are skillful and competent. Not everyone can implement such protection. In this case, impeccable knowledge of not only legislation but also the practice of applying normative legal acts, the practice of conducting cases in law enforcement agencies, etc. is required. In other words, a qualified lawyer is required to provide effective assistance. After all, citizens, as a rule, are familiar not only with the basic provisions of the legislation but also need deep knowledge in the field of law to protect subjective rights, including the procedure for its application, which requires the help of lawyers. A lawyer is a professional who effectively uses his legal knowledge and practical experience in providing legal assistance.

The right of a person to judicial protection of his violated rights and freedoms, and to receive qualified legal assistance is enshrined in Paragraphs 2 and Paragraph 3 of Article 13 of the Constitution of the Republic of Kazakhstan. In accordance with the rights granted, every citizen of the Republic of Kazakhstan, exercising his subjective right, has the

right to apply to any court, depending on the jurisdiction and jurisdiction of the disputed issue, to protect or restore the violated right.

The Bar Association is a professional community of lawyers and, as an institution of civil society, is not included in public authorities and local self-government. In this regard, the bar is the only organization of professional lawyers designed to protect and protect the interests of anyone who needs legal protection.

Advocacy is a profession of lawyers, that is, a certain type of activity that consists in defending the interests of other people in court. Only lawyers have the right to protect citizens from criminal prosecution on a professional basis. The lawyer is an independent legal adviser. The term "Advocatus" comes from the Latin word "advocacy", which means seeking help, and judicial protection. Therefore, the task of a lawyer is to help a person who asks him for legal assistance with his skills, knowledge, and experience. A lawyer who participated in criminal proceedings on the side of the person against whom a criminal case has been initiated has the procedural status of a defender.

The increase in the general level of education and culture of the population, their acquisition of socio-political experience, the development of democracy, and the promotion of its basic principles, including the protection of the rights and freedoms of man and citizen and others, all this has led to an increase in the requirements for such an important legal institution as the bar. In this context, practice shows that the Bar Association, a specially created independent, self-governing organization of professional lawyers, carries out its activities more efficiently and efficiently.

Studying the organization and activities of the Bar Association is one of the most important tasks on the way to building a legal and Democratic state proclaimed in the Constitution of the Republic of Kazakhstan.

Of course, the problems of innovations faced by the Kazakh bar and, in general, the problems of providing legal assistance to the population should be adequately addressed by law. It should be noted that today a serious regulatory framework has been created, covering many aspects of this activity. However, it is necessary to recognize that the law "on advocacy" in most cases is related to the current law of the Republic of Kazakhstan dated December 5, 1997. This law, according to many legal scientists and practitioners, is morally outdated, does not reflect real legal reality, and most importantly, does not provide an adequate level of protection of the

rights of not only citizens but also lawyers. Such a situation cannot be considered satisfactory, especially since the task of ensuring the implementation of human and civil rights and freedoms guaranteed by the state and enshrined in the Constitution of the Republic of Kazakhstan is one of the priorities in the formation and development of Kazakhstan as a democratic and legal state.

The main task of the bar is to provide legal assistance to citizens and organizations in accordance with Article 1 of the law of the Republic of Kazakhstan dated December 5, 1997 “on advocacy”, and Article 13 of the Constitution of the Republic of Kazakhstan guarantees that everyone has the right to receive qualified legal assistance. There are different types of this assistance. However, the provision of legal advice, the preparation of various legal documents, and other types of legal assistance cannot be fully identified with the provision of services and services.

In addition, legal assistance provided to citizens and organizations is ultimately aimed at protecting their rights and interests and maintaining and strengthening the rule of law.

In connection with the above, the terms “services” and “legal services” are not suitable for an adequate representation of what constitutes the essence of the activity of the bar. As provided for in Article 1 of the law “on advocacy and legal assistance”, this value is the provision of legal assistance to citizens and organizations.

Legal assistance provided by the bar is special, as it belongs to the sphere of protection of the rights and interests of citizens and organizations. In this sense, the bar is a law enforcement agency, and it is no less important than other state bodies (prosecutor’s office, Court, etc.).

The role of advocacy as an institution of the political and legal system in the development of the Republic of Kazakhstan is directly related to the qualitative increase in the role of law, strengthening the legal basis of state and public life.

For several years, the issue of the need to adopt a new law on advocacy and advocacy in the Republic of Kazakhstan has been widely discussed among legal scholars and lawyers. In addition, until now, a general understanding of this task has not been achieved among the advocacy community itself. In our opinion, if such a law is adopted, it should reflect only the most general provisions of the status of a lawyer, the principles of functioning and formation of Bar Associations, and issues related to the management of the board, the creation of Public Associations of lawyers and many other

“secondary” issues should be independently determined by the bar community within the forms provided for by law.

The organization and procedure of activity of the bar are based on legal principles. The principle (lat. principium Foundation, beginning)-the main, initial state of any theory, doctrine, etc., the leading idea, the main rule of activity, internal beliefs, and attitude to things that determine the norms of behavior. In order to give the concept of” principle “as complete as possible, it is necessary to highlight four main elements that characterize it both objectively and subjectively.

In the legal Sciences, principles are defined as the basic provisions on which they are formed. As the practice of the development of law shows, legal principles did not differ and were not interpreted in the normative material, they were not even verbally expressed in the legal sources of the past. Only at present, analyzing the legal sources of previous eras, they try to obtain some common, repetitive features that can be imagined as legal principles from conflicting norms and rules of law, judicial practice, and local customs of the population.

Legal principles as a system represent the most general initial provisions that form the basis of law. As a result, they should be considered in close contact with the nature of the law. Therefore, the legal principle is objective on the one hand, since the law has all the features of a historical natural social phenomenon that objectively arises, regardless of the will of specific people who have entered social life, found long-established legal forms, institutions, and, realizing their interests, must be considered with them. On the other hand, it includes a subjective initiative, since the law is the product of the creativity of people with signs of a phenomenon in relation to the world of artificial things, conscious processes, and volitional actions, that is, being objective in content, their principles in the form of legal fixation are subjective. After receiving legislative approval, legal ideas acquire regulatory significance, affecting the legal consciousness of people. In such cases, legal principles determine ways to improve legal norms, acting as a leading idea for the legislator. At the same time, several conditions must be met to ensure the actual operation of legal principles.

Conclusion

First, they should appear in many norms.

Secondly, specific legal norms should not contradict the principles proclaimed and enshrined in the articles of criminal law.

The difficulties in creating legal norms and institutions also lie in the fact that the basis of the law as a system does not always correspond to one starting position, not to one principle, but at least several, but in its content. This is due to the discrepancy of the primary links, as they reflect the real contradictions of public life.

The principles of advocacy can be called the main legal ideas that are included in all procedural norms and institutions, which determine such a construction of advocacy and advocacy, ensuring the provision of qualified legal assistance to citizens and organizations.

The main principle of advocacy is legality, which is determined by the Constitution of the

Republic of Kazakhstan, the law of the Republic of Kazakhstan “on advocacy and legal assistance” and other laws adopted in accordance with it. At the same time, the Supreme legal force of the Constitution of the Republic means that it must comply not only with normative legal acts of state bodies but also with intra-organizational acts of public organizations. It follows that the compliance of acts and decisions of the bar association with the Constitution and laws of the Republic of Kazakhstan has the essence of the principle of implementation of legality in the activities of the Bar Association in the activities of its members, bodies, and officials.

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