

## HISTORY AND DEVELOPMENT OF ADVOCACY IN KAZAKHSTAN

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*A brief history of the legal profession in Russia is described as a prerequisite for the emergence of the legal profession in Kazakhstan, its current position in the system of legal relations and various approaches to it.*

**Key words:** constitution, judicial reform, decree, declaration, corporate unity, lawyer, attorneys at law.

*Мақалада Қазақстандағы адвокатураның пайда болуының алғышарты ретінде Ресейдегі адвокатураның қысқаша тарихы, оның құқықтық қатынастар жүйесіндегі қазіргі жағдайы және оған әр түрлі көзқарастар сипатталған.*

**Тірек сөздер:** конституция, сот реформасы, декрет, декларация, корпоративтік бірлік, адвокат, адвокат алқаби.

*Описывается краткая история адвокатуры России как предпосылка возникновения адвокатуры в Казахстане, ее нынешнее положение в системе правовых отношений и различные подходы к ней.*

**Ключевые слова:** конституция, судебная реформа, указ, декларация, корпоративное единство, адвокат, присяжные поверенные.

As you know, the activities and legal status of the legal profession as a whole cannot be understood without studying the history of its formation, formation and development. This also applies to the advocacy of Kazakhstan, the history and formation of which is closely linked with the history of the advocacy of Russia and the legislation of the Russian Empire, where the judicial reform of 1864 played its role.

On the territory of Kazakhstan, the Institute of the Bar has a history of rather complex formation. This is due to the fact that in the course of the reforms of 1867-1868, the courts of biys and courts of kaziyev were retained, deciding specific cases taking into account national and religious characteristics. When resolving disputes, the court of biys was guided by the norms of customary law and sharia, and the court of the qazis was guided only by the rules of sharia.

The judicial reform of 1864, carried out by Alexander II, is considered the most democratic. Since the court was separated from the administrative power, from the influence of officials. Established democratic principles of equality of all before the law and court. The court became public and open. For the first time, jury trials and the irremovability of judges appeared. The Judicial Charters of 1864 created an original and effective system of justice.

In addition, the laws of 1864 provided for an organizational structure for attorneys at law, consisting of a general meeting and a council elected by that meeting. Along with the attorneys at law, private attorneys were involved in civil and criminal cases. This institution emerged as a result of counterreforms in 1874, initially as a temporary measure [1].

Meanwhile, the institution of the legal profession in the Kazakh society itself had certain historical traditions. The sources of Kazakh customary law known today make it possible to conclude that peculiar institutions of protection existed on the territory of present-day Kazakhstan even before the colonization of the Russian Empire, some of which survived until the 1920s.

The well-known Russian researcher of the legal profession E.V. Vaskovsky noted that a lawyer is a "public figure", that the profession of a lawyer is a "public office", and the legal profession is an "institution of public law."

The striving of society for fair justice initiated the creation of the institution of public judicial presence and protection of the interests of a private person, which is the legal profession. The term "advocatus" comes from the Latin word "advocatio", meaning seeking help, legal protection.

The position of the legal profession depends, on the one hand, on the general cultural and political climate in the country, and on the other, on the judicial system. In general, the organizational, legal and functional foundations of the legal profession remained unchanged until the fall of 1917, when, as a result of political events, both the judicial system and the sworn advocacy were destroyed.

Thus, all elements of the institution of the legal profession developed in proportion to the peculiarities of social relations, political, economic and cultural conditions, as well as the legal foundations that were prerequisites in the corresponding periods of time.

That is, the issue of organizing the legal profession and increasing its role in realizing the right to defense became the subject of a lively discussion that arose in connection with the discussion of the draft Constitution of the USSR in 1936 [2].

After the adoption of the Constitution, the most important stage in the development of the Soviet legal profession was the Regulation on the Bar of the USSR, approved by the Council of People's Commissars of the USSR on August 16, 1936. It resolved the main issues of the activity and organization of the Bar in accordance with the newly adopted Constitution and legal acts issued on its basis. The regulation returned the civil title of "advocate" (first appeared in 1864), at one time replaced by the term "member of the college of defenders". Despite all the difficulties in organizing the legal profession, in Kazakhstan, as far as possible, work was carried out to train lawyers. So, in 1936, 141 people were already in the collegia of lawyers [3].

Based on the stated in the history of the development of the legal profession in Kazakhstan, the following patterns have been identified:

1. There has always been a need to achieve a fair balance between the accusatory and protective functions of the criminal process;
2. As a consequence of this desire, the lawyer gradually turned from an advocate and solicitor into a professional advocate, which undoubtedly met the requirements of democratic international standards;
3. The strengthening of the status of the legal profession radically changed the state of prevention of the ancient evil - corruption.

In the post-war period, the organizational forms of the work of the legal profession in our republic remained unchanged, the People's Commissariat of Justice of the Kazakh SSR exercised general guidance over the activities of the collegia, and the presidiums were directly supervised by the elected bodies of the collegia themselves. There was an acute shortage of qualified personnel in the legal profession, its material base was poorly developed, there were serious shortcomings in the legal regulation of the activities of its employees. It was necessary to strengthen the legal profession, improve its organizational forms, raise its authority [4].

To this end, on December 25, 1958, the Fundamentals of Legislation on Judicial Proceedings were adopted, according to which the Bar Association was recognized as voluntary associations of persons engaged in advocacy and acting on the basis of the Regulations approved by the Supreme Soviet of the Union Republic. That is, each union republic was obliged to adopt its own Regulation on the Bar. Thus, Kazakhstan adopted the Regulation on the Bar, which on July 5, 1960 was approved by the Supreme Soviet of the Kazakh SSR. Another important event was the adoption on November 30, 1979 of the Law on the Bar in the USSR. This normative legal act regulated the organization and activities of the Soviet legal profession on an all-Union scale. On the basis of this Law, in each union republic, the Regulation on the Bar was developed, including in Kazakhstan, which was approved on November 13, 1980 [4].

The organization carrying out activities to protect the rights, freedoms and legal interests of individuals and legal entities is the Bar Association. The collegium of advocates is created by persons entitled to engage in advocacy. According to the Law of the Republic of Kazakhstan dated December 5, 1997 "On advocacy", the collegium of advocates is a non-profit, independent, professional, self-governing and self-financed organization of advocates created to provide qualified legal assistance to individuals and legal entities, to express and protect the rights and legitimate interests of advocates[5].

The adoption of these acts was due to the need to ensure a uniform regulation of the activities of the legal profession and a simultaneous increase in the role of the advocates' collegia, granting advocates greater independence in a number of issues. The tasks of the legal profession, the procedure for admission to members of the collegium and exclusion from it were determined, measures were taken to improve the organizational activities of the collegiums, the features were taken into account and guarantees of advocacy were formulated, etc. All this undoubtedly raised the role and importance of the legal profession in the Soviet justice system, increased the quality of the types of legal assistance provided to citizens and organizations, and contributed to the realization by the latter of their constitutional rights and legitimate interests. As a result, many of the provisions of the Regulations subsequently operated with some amendments and additions, and then formed the basis of the current Law of the Republic of Kazakhstan dated July 5, 2018 "On advocacy and legal assistance"[5].

In this sense, the purpose of the state should be manifested in the fact that by its activity it is called upon to create actual, organizational, legal preconditions for the use by citizens and their organizations of the opportunities provided by law in order to satisfy a wide variety of interests and needs, which are guided by the norms of the Constitution of the Republic of Kazakhstan, which have supreme legal force and direct effect throughout the territory of the Republic. Ultimately, all this will allow us to determine the place, role and significance of the legal profession in building a legal and democratic state [6].

Currently, in Kazakhstan, the legal basis for the activities of the legal profession is the Constitution of the Republic, the Law of the Republic of Kazakhstan "On advocacy and legal assistance" dated July 5, 2018 № 176-VI of other regulatory legal acts of the Republic of Kazakhstan regulating advocacy. The procedural rights and obligations of lawyers in the exercise of their defense and representation in cases of individuals and legal entities are established by the laws of the Republic of Kazakhstan.

Thus, today the legal profession is an established institution of civil society, which has its own way of development, rich traditions, which makes its worthy contribution to the administration of justice, protection of the rights and freedoms of citizens. The Bar is a voluntary association of persons engaged in advocacy. It is a professional, independent, self-governing organization designed to provide qualified legal assistance to citizens and organizations.

In accordance with the law, the Bar organizes the activities of defense lawyers in criminal cases and representation in criminal, civil, administrative and other cases, as well as providing other types of legal assistance in order to protect and assist in the implementation of the rights and legitimate interests of citizens and legal entities.

#### **REFERENCES:**

1. Collection of legislation of the Kazakh SSR (1920 - 1936). Alma-Ata
2. Law of the Republic of Kazakhstan dated December 5, 1997 N 195 "On advocacy", as amended by of July 4, 2014
3. USSR Constitution of December 5, 1936
4. The Constitution of the Republic of Kazakhstan [adopted at the republican referendum on December 25. 1995, according to comp. on Feb 2 2011]. Almaty: Zheti zhargy, 2013.
5. Law of the Republic of Kazakhstan dated July 5, 2018 "On advocacy and legal assistance"
6. Bulgakbaev A. Soviet advocacy. Almaty: Kazakhstan 2010

