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IMMUNITÄT DES ANWALTS

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Zusammenfassung: In diesem Artikel betrachtet der Autor aus modernen Rechtspositionen die Hauptetappen in der Entwicklung der Institution der Immunität (Immunität) eines Anwalts in Usbekistan und Kasachstan. Insbesondere werden Art, Bedeutung und Wesen der Anwaltsimmunität, der Mechanismus ihrer Gewährung im prozessualen Sinne betrachtet. Im Laufe der Vorbereitung der wissenschaftlichen Arbeit wurden einige problematische Fragen der Immunität umfassend untersucht, einschließlich der Schwierigkeiten in der Praxis, Rechtsanwälte ihre Rechte auf Zeugenimmunität, Unverletzlichkeit von Dokumenten, Amt usw. zu verteidigen. Der Autor stellte fest, dass dies der Fall ist eine ganze Kategorie von Beamten, die Immunität genießen, darunter Richter und Staatsanwälte, während ein Anwalt trotz der gesetzlichen Gründe für die Einstufung dieser Personengruppe nicht in die Strafprozessordnung aufgenommen wird. Außerdem wurden Probleme bei der Wahrung der Immunität im Zusammenhang mit der Durchführung von Durchsuchungen und anderen Maßnahmen gegen Rechtsanwälte festgestellt. Basierend auf den Ergebnissen der Analyse präsentiert der Autor theoretische Schlussfolgerungen und Schlussfolgerungen.
Schlüsselwörter: Interessenvertretung, Anwalt, Verteidiger, Strafprozess, Garantien, Immunität, Arten der Immunität, Beweismittel.

IMMUNITY OF THE LAWYER

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Abstract: In this article, the author, from modern legal positions, considers the main stages in the development of the institution of immunity (immunity) of a lawyer in Uzbekistan and Kazakhstan. In particular, the types, meaning and essence of the lawyer's immunity, the mechanism of its provision in the procedural sense are considered. In the course of preparing the scientific work, some problematic issues of the operation of immunity were comprehensively studied, including the difficulties in practice of defending by lawyers their rights to witness immunity, inviolability of

documents, office, etc. The author noted that there is a whole category of officials enjoying immunity, including judges and prosecutors, meanwhile, a lawyer, despite the legislative grounds for classifying this category of persons, is not included in the Code of Criminal Procedure. Also, problems of maintaining immunity associated with the conduct of operational-search and other measures against lawyers were noted. Based on the results of the analysis, the author presents theoretical conclusions and conclusions.

Keywords: advocacy, lawyer, defender, criminal process, guarantees, immunity, types of immunity, evidence.

Introduction

The independence of advocacy is that important element that ensures the best performance of the professional activities of a lawyer, enhances trust between a lawyer and a client.

In addition, an independent advocacy is a guarantee of fair trial and the rule of law. The task of the rule of law is to ensure justice at the highest possible level. A lawyer by his service assists in achieving this goal.

The types of independence of lawyers can be listed as follows:

- independence from the state,

— independence in terms of relations with the client,

— independence in relation to third parties.

Free advocacy primarily implies independence from the state. State control and patronage by the state cannot be combined with the independence of a lawyer. The absence of the right to assess the status of admission to the bar is also a prerequisite for the independence of the bar. The independence of lawyers is also a necessary condition for the admission of any person with the necessary qualifications to practice law.

Lawyers have the immunity of the defense. And this immunity is one of the most important components of the independence of a lawyer.

With regard to lawyers, representatives of the parties, defenders, for words and texts containing insults used in petitions, statements and all kinds of documents filed with the judicial authorities in connection with the court case throughout the course of the trial, for what was said in the courtroom, a criminal the pursuit.

This is also a requirement for the integrity of the defense. This immunity applies only to words and texts containing insults. The inviolability of the defense was adopted only in relation to offenses of insults. The reason for this is that the inviolability of the defense can be regarded as the basis for compliance with the requirements of the law.

As the great jurist Molierac said: “In fulfilling our duties, we do not belong to anyone: neither the client, nor the judge, especially the authorities. We do not claim that someone is below us, but we do not recognize any hierarchical supremacy over us. There is no difference between the youngest and the oldest of us. Lawyers did not use slaves, but they did not have masters either” [1].

To the question of the lawyer's immunity (on the example of E. Semedlyaev)

As you know, lawyers, unlike their procedural opponents, bear administrative responsibility for all offenses on a general basis. At the same time, a well-known lawyer, vice-president of the FPA of the Russian Federation, Henry Reznik, believes that the legislative regulation of administrative responsibility should take into account the legal status of a lawyer, highlighting offenses that are often associated with professional activities. These, in his opinion, definitely include:

- disobedience to a lawful order or demand of a police officer, a soldier or an employee of a body or institution of the penal system or an employee of the National Guard troops in connection with the performance of their duties to protect public order and ensure public safety;

- transfer or attempted transfer of prohibited items to persons held in penitentiary institutions or temporary detention facilities;

– violation of the requirements of the state of emergency;

– violation of the established procedure for organizing or holding a meeting, rally, demonstration, procession or picketing;

- obstruction of the lawful activities of the people's combatant.

In cases where a lawyer is suspected of committing such offenses, administrative proceedings should be terminated, and the materials should be sent to the bar association to bring the lawyer to disciplinary liability.

So, in the case of administrative detention and prosecution of lawyer E. Semedlyaev, Henry Reznik noted that “the lawyer provided legal assistance in the police department and, in full accordance with the law, used the audio recording. The police chief interfered in the professional activities of the lawyer and then used the refusal to stop the lawful action not only to bring the lawyer to administrative responsibility, but also to detain him, with elements of humiliation of personal dignity” [2].

“The court of first instance, however, first tried to get rid of the wrong case by returning it to the police,” he writes. – But on the second attempt, I completely agreed with the position of the police, “turning a blind eye” to the fact that the right to defense was exercised legally (just the ban on audio recording was illegal), that there were no exceptional circumstances for the detention of a lawyer, just as there were no

in his actions even a hint of touching state secrets, and also that the right to legal assistance does not depend on the execution of procedural documents, but arises from the moment of actual detention [3].

The court of appeal appointed 12 days of administrative arrest for continuing to audio fix the conflict between police officers and the client.

The complaint to the Supreme Court, which was signed by 80 lawyers, indicated that the lawyer was guaranteed the right to record (including with the help of technical means) the information contained in the case file, in which the lawyer provides legal assistance, while observing state and other secrets protected by law .

Lawyer Edem Semedlyaev, based on the principle of openness and publicity of police activities, using his own mobile phone, made an audio recording of his actions and the events taking place with his participation in the office of the police department in order to objectively record them.

At the same time, the legislation on administrative offenses does not contain norms that give the person conducting the proceedings the authority to allow or prohibit such a record to be made by another participant in the case, unless this concerns information constituting a state or other secret protected by law.

Also, there are other egregious facts. For example, defender Vasily Kushnir was not allowed into the Shcherbinsky police station: the officers said that the detainees themselves refused his services. At the same time, according to the lawyer, in parallel, he received messages from his clients about pressure and threats to leave him in the department for the night if they insisted on a lawyer. Kushnir was able to get into the police department only when the principals flatly refused to sign protocols and other documents. Similarly, at the Luzhniki police station, lawyer Fyodor Sirosh said that they refused to let him in until the detainees themselves gave the police an ultimatum: they refused to communicate without a lawyer [4].

Ultimately, regarding the administrative detention of the lawyer, the court indicated that it was due to his impudent behavior, indicating that he could resume illegal acts, the presence of a reasonable suspicion on the part of the policeman that he could avoid appearing at the court session. In addition, the proceedings required the personal participation of the detainee.

Procedural content of the lawyer's immunity

Features of criminal proceedings in relation to certain categories of persons in the criminal procedure legislation are understood as a set of procedural rules that determine a special procedure for bringing to criminal liability, the application of preventive measures, other measures of criminal procedural coercion and the production of investigative actions.

According to article 223 of the Code of Criminal Procedure, persons enjoying immunity upon detention include:

- deputies, members of the Senate of the Oliy Majlis of the Republic of Uzbekistan;

- Commissioner of the Oliy Majlis of the Republic of Uzbekistan for Human Rights (ombudsman), Commissioner under the President of the Republic of Uzbekistan for the protection of the rights and legitimate interests of business entities;

- judges and prosecutors [5].

Again, according to Article 239 of the Code of Criminal Procedure, there is a category of officials, a preventive measure in the form of detention or house arrest in respect of which can be applied only after agreement with their top management:

1) a deputy of the Legislative Chamber and a member of the Senate of the Oliy Majlis of the Republic of Uzbekistan - with the consent of the relevant chamber of the Oliy Majlis of the Republic of Uzbekistan or its Kengash;

2) Commissioner of the Oliy Majlis of the Republic of Uzbekistan for human rights (ombudsman) - with the consent of the chambers of the Oliy Majlis of the Republic of Uzbekistan;

21) Commissioner under the President of the Republic of Uzbekistan for the protection of the rights and legitimate interests of business entities - with the consent of the President of the Republic of Uzbekistan;

3) a deputy of the Jokargy Kenes of the Republic of Karakalpakstan, a deputy of the regional, Tashkent city, district and city Kengash of people's deputies - with the consent of the Jokargy Kenes of the Republic of Karakalpakstan, the corresponding Kengash of people's deputies;

4) judges of the Constitutional Court of the Republic of Uzbekistan - with the consent of the Constitutional Court of the Republic of Uzbekistan, judges of the Supreme Court of the Republic of Uzbekistan, the Court of the Republic of Karakalpakstan, regional and Tashkent city courts, administrative courts of the Republic of Karakalpakstan, regions and the city of Tashkent, inter-district, district, city courts for civil cases , district, city courts for criminal cases, inter-district, district, city economic courts, inter-district administrative courts and military courts of the Republic of Uzbekistan - if there is an opinion of the Supreme Judicial Council of the Republic of Uzbekistan with the consent of the Plenum of the Supreme Court of the Republic of Uzbekistan;

41) a member of the Supreme Judicial Council of the Republic of Uzbekistan - with the consent of the Supreme Judicial Council of the Republic of Uzbekistan;

5) the prosecutor and the investigator of the prosecutor's office - with the consent of the Prosecutor General of the Republic of Uzbekistan [5].

The inclusion of these norms in the Criminal Procedure Code puts officials with a certain amount of immunity in a special position before the law and court with other citizens and the power of their implementation of special functions that require additional guarantees that contribute to the independent and independent implementation of their duties.

However, all this can be attributed to lawyers as well. But, in this list, for unknown reasons, they are absent. Meanwhile, Article 6 of the Law “On Guarantees of Advocacy and Social Protection of Lawyers”, by the way, also called “Inviolability of a lawyer”, states that a criminal case against a lawyer can be initiated by the Prosecutor General of the Republic of Uzbekistan, the prosecutor of the Republic of Karakalpakstan, the prosecutor region, the city of Tashkent and equivalent prosecutors.

A measure of restraint in the form of detention or house arrest can be applied to a lawyer by a district (city) court for criminal cases at the request of the Prosecutor General of the Republic of Uzbekistan, the prosecutor of the Republic of Karakalpakstan, prosecutors of regions, the city of Tashkent and equivalent prosecutors [5].

These persons have a number of advantages in deciding whether to initiate criminal prosecution against them, on choosing a preventive measure, on conducting operational-search and investigative actions, as well as when applying other law restrictive measures. These benefits are different for the different specified categories of persons. A special procedure is aimed at creating a system for guaranteeing their activities. It specifies the provisions of the legislation regulating the powers, functions and measures to protect the inviolability of persons with procedural immunity.

The lawyer as a special subject has not yet been included in the Code of Criminal Procedure, although this is the most important condition for reforming the judicial system, a significant and essential factor for building a rule of law state in which the rights and legitimate interests of citizens are the highest value.

The guarantees of the independence of a lawyer include prohibitions: to interfere in any way with the lawyer's activities carried out in accordance with the law, or to interfere with this activity; hold the lawyer liable in any way (including after the suspension or termination of the status of a lawyer) for the opinion expressed by him in the course of advocacy, unless the court verdict that has entered into legal force establishes the guilt of the lawyer in a criminal act (inaction); demand from the lawyer, as well as from the employees of lawyer formations, the Chamber of

Lawyers, information related to the provision of legal assistance in specific cases, to make seizures and seizures, to seize postal and telegraph correspondence, to listen in on telephone conversations without a corresponding court decision, to apply other measures of influence in relation to lawyer.

Granting procedural immunity to a lawyer is an additional guarantee of protecting the rights and legitimate interests of citizens in the course of a lawyer's professional activities. A lawyer is the only independent subject of qualified legal assistance, protected by legal immunity, attorney-client privilege, and guarantees of non-interference in professional activities.

On the etymological meaning of the word "immunity"

The term "immunities" in its common sense is usually disclosed with the help of such closely related synonyms as "special rights", "privileges", "benefits", "advantages", etc. In turn, in the encyclopedic dictionaries and dictionaries of the modern Russian literary language, the listed names of this concept are given definitions containing its essential features [7, 8, 9, 10, 11].

In such a situation, the task of defining the concept of immunity in criminal proceedings is, as it were, simplified and reduced to highlighting only the identified essential features. But the issue is complicated by the fact that the concept of immunity is used to define a legal category and therefore has a legal meaning, significance and corresponding legal features.

Therefore, to reveal the concept of immunities in the criminal process means to reveal not only and not so much its common meaning as its legal features, but due to the transient nature of any legal phenomenon, its etymology and origin. The word "immunity" comes from the Latin word "immunitas" - liberation, deliverance [12], independence, resistance [13].

Since such privileges are not personal, but public, their main goal and task is to ensure the independence, equality, competitiveness of the parties in criminal proceedings, the creation of a favorable environment and conditions for the commission of relevant offenses. functions and powers vested in lawyers with procedural immunity [14].

With regard to legal provisions providing for the immunity of judges, lay judges, prosecutors, investigators and other persons, the immunity of listed persons is based on similar guarantees. Judges, people's assessors, prosecutors, investigators and lawyers enjoy criminal procedural immunity due to their special status in criminal, civil, economic and administrative proceedings. The immunity of the listed persons guarantees the proper fulfillment of their procedural obligations related to the conduct

of a preliminary investigation, the administration of justice and the protection of the rights and legitimate interests of citizens.

A case is being considered on the initiation of a criminal case and (or) criminal prosecution, detention, involvement as a suspect in an event against a special subject with the subsequent application of a measure of restraint. A decision is made on precautionary measures, and before that, the procedure for depriving them of immunity (immunity) is determined. Only after the initiation of a criminal case against a particular subject can the issue of choosing a measure of restraint and conducting a special investigation be decided.

Unfortunately, we have to state that the legal profession is currently in a state of crisis and this crisis is associated with increasing pressure from law enforcement agencies, the prosecutor's office and the courts. Reforming the bar is one of the most important conditions for judicial reform in general.

Evidence, such as the withdrawal of a lawyer's case from the pre-trial detention center under the pretext of tracking the suspect's correspondence, indicates that not a single meeting of a lawyer with a client would have taken place without total video and audio monitoring by opposing structures. This is especially well known in "sensation" cases. Modern tools and technologies allow you to control every word, not only spoken, but also written by a lawyer and his client to each other.

Since the prison authorities have the opportunity to transmit the content of the conversations of lawyers with their clients through common law enforcement agencies, the right to defense is effectively reduced to nothing.

The Law "On Advocacy", as, in fact, the Criminal Executive Code, provides for the right of a lawyer to freely meet with his client in private, in conditions that ensure confidentiality (including during his detention).

However, as the analysis of lawyer practice for the last period of time shows, the preliminary investigation bodies, the bodies carrying out operational-search activities, significantly violate the provisions of the legislation on inviolability and observance of lawyer secrecy.

Investigators are actively making attempts to interrogate lawyers as witnesses in criminal cases, to draw up procedural documents that record the results of investigative actions with their participation that were not actually carried out, etc.

As an analysis of lawyer practice shows, investigative bodies and bodies carrying out operational-search activities allow significant violations of the provisions of the current legislation aimed at ensuring lawyer-client privilege. This is a gross violation of Articles 6 and 7 of the Law “On guarantees of advocacy and social protection of lawyers”. They often pursue the goal of either preventing this or

that lawyer from defending a criminal case, or by any means, including illegal ones, to collect evidence of the guilt of the suspect (accused)

Problems of protection of lawyer's immunity

One of the guarantees for the preservation of attorney-client secrecy is the established part 2 of Art. 7 of the Law, it is prohibited to demand from the lawyer of his assistant and trainee any explanations or testimony about the circumstances that are the subject of attorney-client secrecy, as well as to provide any materials about them for use in operational-search activities, criminal proceedings, cases of administrative offenses and other cases.

In case of violation of this prohibition by the bodies conducting the preliminary investigation and the judiciary, the current legislation provides for the recognition of evidence obtained in this way as inadmissible.

In all other situations, the lawyer is considered by the current legislation as a private person and if he knows any circumstances that are important for the investigation and resolution of the criminal case, he can be called to testify and interrogate.

It should be agreed that the activity of a lawyer involves, among other things, the protection of the rights and legitimate interests of the suspect, the accused from possible violations of the criminal procedure law by the bodies of inquiry and preliminary investigation. For this purpose, in particular, the lawyer is present at the presentation of charges against his client. The violations of the requirements of the criminal procedure law revealed by him at the same time must be brought to the attention of the relevant officials and the court in the interests of the principal, that is, such information cannot be considered as a lawyer's secret. Accordingly, the court has the right to ask the lawyer questions regarding the violations of the criminal procedure law that have taken place, without examining the information confidentially entrusted by the person to the lawyer, as well as other information about the circumstances that became known to him in connection with his professional activities.

The inadmissibility of disclosing attorney-client secrets is also guaranteed by the foreseen restrictions of the operational-search and investigative bodies on the performance of operational-search measures and investigative actions against a lawyer (including in residential and office premises used by him to carry out advocacy): such measures and actions are only permissible on the basis of the sanction of the Prosecutor General of the Republic of Uzbekistan, the prosecutor of the Republic of Karakalpakstan, the prosecutor of the region, the city of Tashkent and equivalent prosecutors.

This rule applies to the entire spectrum of advocacy and has no restrictions on place and time. The premises to which the protection extends are: a) office buildings of the bar associations used for advocacy; b) other premises in which lawyers carry out advocacy on the basis of special agreements (contracts); (c) residential and non-residential premises owned by lawyers practicing law in the form of a law firm, such as a bureau.

Information, objects and documents obtained in the course of operational-search measures or investigative actions (including after the suspension or termination of the status of a lawyer) can be used as evidence of the prosecution only in those cases when they are not included in the lawyer's proceedings on the cases of his principals. .

It should be borne in mind that the preservation of professional secrecy by a lawyer ensures the immunity of the principal. The immunity of the principal is a special legal state of inviolability of the rights and interests of the principal in connection with contacting a lawyer and receiving qualified legal assistance. Compliance with the immunity of the principal is the most important guarantee of the exercise of the constitutional right to qualified legal assistance.

The presence of witness immunity is aimed at preserving the information entrusted by the client to the lawyer, as well as other information received in connection with the provision of legal assistance. Thus, the confidentiality of a lawyer's secret is ensured by the presence of witness immunity of a lawyer, and witness immunity guarantees the independence of the latter.

Witness immunity of a lawyer means that any third parties are prohibited from requesting information from a lawyer that contains attorney-client privilege. Unfortunately, for a long time this ban was very often violated, mainly by law enforcement agencies. This violation could be expressed in calling a lawyer as a witness in a case in which he acts as a defender.

As is known, summoning the defender of the accused or suspect for interrogation as a witness excludes the possibility of his further participation in the criminal case as a lawyer (clause 1, article 79 of the Code of Criminal Procedure). Often, the investigating authorities used such a “scheme” to remove an “overactive” lawyer from the case.

The issue of the relevance of evidence that was obtained as a result of the seizure of electronic media in relation to users of the Internet site is not subject to judicial assessment.

Meanwhile, in our opinion, in the authorized resolution on the conduct of a search in lawyers' premises, the object of the search and the data that serve as the

basis for its conduct should be specified so that the search does not lead to obtaining information about those clients who are not directly related to criminal case.

In addition, when conducting a search in relation to a lawyer, it is necessary to take measures to ensure the preservation of lawyer secrecy. First, such a search can be carried out only if there is an appropriate sanction. Secondly, the resolution must list the objects that caused the conduct of this investigative action, and which are subject to seizure by the investigating authorities. At the same time, it is prohibited to seize the entire lawyer's file, as well as to record in any way the data contained in it.

Another common violation of a lawyer's immunity is the illegal search of the lawyer himself. Thus, the correspondence of a suspect or an accused person in custody is subject to censorship, while “letters containing information that may interfere with the establishment of the truth in a criminal case or contribute to the commission of a crime, executed in secret writing, in cipher, containing state or other secrets protected by law, are not addressed to the addressee. are sent, the suspects and the accused are not handed over and transferred to the person or body in charge of the criminal case.

With reference to the specified norm, employees of the pre-trial detention center can conduct searches of lawyers, seize letters from a suspect or convicted person, and sometimes even the entire lawyer's file. Such actions lead to a violation of attorney-client secrecy and the inviolability of a lawyer.

Kazakh lawyer Daniyar Kanafin noted that the role of a lawyer in criminal proceedings does not correspond to his status in criminal justice due to the unreasonably harsh nature of the latter. In this regard, the lawyer proposed a solution to these problems. Thus, in his opinion, it is necessary to exclude interference in the issues of self-government of the lawyer community, as well as to strengthen the guarantees of the inviolability of lawyers in connection with their professional activities [15].

This is possible by establishing a ban on lawyers in connection with their professional activities, listening and recording telephone conversations, any intrusion into the offices and living quarters of lawyers, overt and covert inspections, searches, seizures, perusal of lawyers' correspondence and other covert activities.

– It should be prohibited to involve a lawyer in tacit cooperation on a confidential basis with the bodies carrying out operational-search activities, and also regulate in the Criminal Procedure Code of the Republic of Kazakhstan the admission of lawyers to participate in cases related to state secrets, without demanding a “special admission” that is unconstitutional »from the national security authorities, suggests D. Kanafin [16].

For example, for legal aid in Israel, there is a mixed free legal aid model, combining elements of the model of public defenders, who are full-time civil servants, and elements of the model of private lawyers, who are under contract to the Public Defender's Office and provide protection to indigent defendants.

In the Netherlands, the so-called "social advocacy" has been created, which has 90 legal aid centers, more than 50 voluntary "legal shops" and 20 legal aid bureaus [17].

Lawyer Sergei Sizintsev pointed out not only the advantages, but also the threats of total digitalization for the legal profession. In his opinion, there are also such threats as total control over all actions and contacts of a lawyer by the state and the college, the possibility of "turning off" an objectionable lawyer and blocking his activities, and monopolizing access to clients and resources [18].

Today, the lawyer continues very often to be a democratic decoration in the still inquisitorial criminal proceedings. Appeals from defense lawyers are often either ignored or given a formal reply, and violations of the rights of the accused and their lawyers are turned a blind eye by both the prosecutor's office and the courts. Lawyers themselves sometimes become targets of persecution by their procedural opponents.

There are blatant facts of searches in the offices of lawyers, attempts to seize documents containing information related to lawyer secrecy. Lawyers complain about the implementation of special operational-search measures against them, violating not only the confidentiality of their work, but also the privacy of professional defense lawyers. There is no proper respect for the legal and social status of a lawyer [19]. The vast majority of sentences handed down by courts in Kazakhstan are of an accusatory nature [20]. In such conditions, the apt expression that the lawyer continues to remain only a miserable petitioner in the criminal process, unfortunately, continues to retain its relevance.

Practice shows that the existing mechanisms are quite effective. As noted above, lawyers can be subjected to unauthorized searches, in cases where lawyers themselves know of a violation of their legally guaranteed right to evidence, sometimes in connection with the provision of legal assistance, they can be called in for questioning. There are known facts of harassment of lawyers for their statements about the illegality of the actions of law enforcement agencies. Lawyers still have problems with unhindered access to the premises of the Ministry of Internal Affairs, the prosecutor's office, and at the entrance they are sometimes subjected to discriminatory searches that violate the personal integrity of lawyers and the inviolability of their documents.

Under these conditions, it is not easy for many lawyers to fulfill the role of a conscientious, dedicated and qualified defender. Unfortunately, sometimes there are

cases of illegal cooperation of individual lawyers with the criminal prosecution authorities to the detriment of the interests of the clients.

Confirmation of these facts are the arguments of the UN Special Rapporteur on the question of torture, who “received many complaints regarding the role of lawyers in criminal cases. By all accounts, lawyers are corrupt, inefficient, "part of the system" and unwilling to stand up for their clients' rights. As for the “public lawyers”, they are often reported to be present only at court hearings and are not trusted. In many cases, interlocutors indicated that their lawyers simply ignored allegations of torture” [21].

It is necessary to introduce into the legislation on advocacy and investigative activities a direct ban on involving lawyers in cooperation with law enforcement agencies on a confidential basis. Such cooperation not only contradicts the ethical standards of the profession of a lawyer, is immoral in nature, but also violates the principle of competition and equality of parties in criminal proceedings by creating a moral conflict, in fact, disavows the possibility of confidential communication between a lawyer and a client.

In order to eliminate abuses when lawyers join cases appointed by bodies conducting criminal proceedings, it is necessary to provide in the criminal procedural legislation a unified procedure for admitting participation in such cases only on the basis of a decision of the relevant authorized bodies of bar associations (presidiums or legal consultations), excluding the practice of independent initiative entry of a lawyer into the case without a contract for the provision of legal assistance. Collegiums of advocates need to ensure a clear regulation of the procedure for the entry of lawyers into cases by appointing the bodies conducting the criminal process.

Conclusions and offers:

1. We believe that the following amendments should be included in the legislation: “Correspondence between suspects and accused is carried out only through the administration of the place of detention and is subject to censorship, with the exception of correspondence between suspects and accused and defense counsel. Examination of the defense counsel and seizure of documents containing correspondence with the suspect and the accused without a corresponding court decision are unacceptable.”

2. The following organizational measures should be taken:

- Strengthen the guarantees of the inviolability of lawyers in connection with the exercise of their professional activities, in particular: establish a ban on wiretapping and recording of a lawyer’s telephone conversations, prohibit any intrusion into the offices and living quarters of lawyers, including public and covert

inspections, searches, seizures and other similar investigative and operational activities.

- Prohibit by law the involvement of lawyers as persons cooperating with law enforcement agencies on a confidential basis.
- Prohibit by law any criminal, civil and administrative prosecution of lawyers for lawful actions committed by them in connection with the provision of legal assistance, including for public statements by lawyers in the media and in courtrooms.
- Solve the issue of unhindered admission of lawyers to participate in cases of all categories, including cases containing state secrets, by providing a lawyer with a non-disclosure agreement.

References:

1. http://advokatura.kz/nezavisimaya-advokatura-yavlyaetsya-zalogom-spravedlivogo-sudoproizvodstva/
2. G. Reznik. Lawyers need partial immunity from administrative liability
3. The case was taken under special control // https://fparf.ru/news/fpa/delo-vzyato-na-osobyy-kontrol/
4. Grab and don't let go // https://advstreet.ru/article/khvatat-i-ne-pushchat/
5. https://www.lex.uz/docs/111463
6. https://lex.uz/docs/1321
7. Soviet encyclopedic dictionary. Ed. 4th, rev. and additional M.: Soviet Encyclopedia, 1989. S. 490, 742, 1069, 1560;
8. Ozhegov S.I. Dictionary of the Russian language / Ed. N.Yu. Shvedova. 20th ed. M.: Russian language, 1988. S. 220, 294, 516, 521;
9. Dictionary of foreign words. 15th ed., rev. M.: Russian language, 1988. S. 188, 399;
10. Legal Encyclopedic Dictionary / Ch. ed. L.Ya. Sukharev. Ed. coll. MM. Boguslavsky, M.I. Kozyr, G.M. Minkovsky and others. M.: Soviet Encyclopedia, 1984. S. 121;
11. Tikhomirov L.V., Tikhomirov M.Yu. Legal Encyclopedia / Ed. M.Yu. Tikhomirov. M., 1997. S. 177, 434.
12. Soviet encyclopedic dictionary. M., 1982. S. 490.
13. Nikolaev A. Diplomatic privileges and immunities // International life. 1983. N 8. S. 152.
14. Khudoyberdiev H. Tortishuv tamoyili: odil sudlov samaradorligini oshirishning muhim omilidir // Uzbekiston Respublikasi Oliy sudining akhborotnomasi. 2014 yil. 2-dream. - Tashkent, 2014. 25-b.

15. Kazakh lawyers ask to strengthen the guarantees of their immunity // https://online.zakon.kz/Document/?doc_id=39858012

16. D.Kanafin. Who will defend the lawyer // https://inbusiness.kz/ru/news/kto-zashitit-advokata

17. Foreign experience in the provision and provision of state-subsidized legal aid //https://online.zakon.kz/ Document/ ?doc_id=31353336

18. https://kazpravda.kz/n/kazahstanskie-advokaty-prosyat-usilit-garantii-ih-neprikosnovennosti/

19. Almaty lawyers report frequent violations of their rights. Available online at: http://1tv.kz/news/kazakhstan/29022012/advokaty

20. Human Rights Committee. One hundred and second session. Geneva, 11-19 July 2011. Available online at: http://www.ujk.kz/sojuzsudey/?sid=360

21. On the issue of the independence of the legal profession and the development of guarantees for advocacy // https://online. zakon.kz/ Document/ ?doc_id=34872845