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BRINGING KAZAKHSTAN TO THE WORLD

Kazakhstan's New Legal Profession Model to Achieve Efficiency, Improve Quality of Services

BY [MARAT AKHMADI](#) IN [SOCIETY](#) ON 17 OCTOBER 2023

Editor's note: The Astana Times has launched a new section on its website that will feature articles submitted by professors and students from Kazakh universities. As a platform that values diverse perspectives and meaningful conversations, we believe the voices of Kazakh academics and students should be amplified to reach a global audience on a range of topics.

- The legal system, which has been significantly shaped by Soviet-era conventions, encountered difficulties in embracing modern Western standards founded on the principles of the rule of law.
- The legal profession should extend beyond handling and resolving criminal and administrative cases.
- There is a need to shift to a unified, strong, and impartial self-regulatory organization encompassing all practicing lawyers.
- The new model can unite current lawyers and legal consultants, establish the status of independent defense representatives, and recognize them as one of the main pillars of legal proceedings.



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On Oct. 6, Astana hosted the seventh Kazakhstan International Lawyers Forum, orchestrated by the National Bar Association. This event offered a forum for local legal professionals and international experts to discuss current challenges relevant to the legal landscape in Kazakhstan. One topic that sparked notable debate was the regulation of the legal profession. In light of this, I wish to propose my perspective on a novel model for structuring the legal profession in Kazakhstan. This model aims to be a pivotal step in refining the regulation of the profession, elevating the stature of lawyers, and augmenting the caliber of legal services.

The concept of Kazakhstan's advocacy in its modern form can be traced back to the Soviet era. While the advocacy in the Soviet Union did not function as a state entity, the legal consultation offices of Soviet lawyers held the status of a state body, similar to other governmental structures.

Legal profession in Kazakhstan after independence

By the beginning of the 1990s, the legal field in Kazakhstan resembled a Soviet-style institution with an uncertain status. After gaining independence, the legal profession did not undergo immediate reforms. However, on Dec. 5, 1997, Kazakhstan passed the law on advocacy, which legally established principles for the organization and activities of the legal profession and ensured guarantees for its members.

The transition of Kazakhstan to a new economic paradigm has substantially altered the prerequisites for the nature, extent, and quality of legal services. In accordance with the rise of the share of foreign investments in the economy of Kazakhstan, the demand for high-quality legal services increased. However, Kazakh lawyers, like the entire legal community of the country, were unprepared to operate within the standards and principles of a market-based system.

Professional qualifications of lawyers and their determinants

Discussion about the legal profession in Kazakhstan often emphasizes its role in legal proceedings, especially in the adjudication and resolution of criminal and administrative cases. Yet, it's crucial to understand that this profession's reach should transcend just these domains. Historically, both Soviet and Kazakh advocacy predominantly confined its functions to criminal and administrative affairs.

In the Soviet framework, the emphasis on public law in jurisprudence was deeply anchored in Marxist ideology, which prioritized ideology above legal scholarship. Contrary to other esteemed academic traditions of the time—like the theory of state and law, criminal law, and various other public law disciplines which resonated with Marxist principles—civil law stood in stark contrast to communist beliefs. As a result, it was largely sidelined, garnering scant attention from both scholars and students.

The consequence of this situation was the intellectual impoverishment of civil law.

Since independence, Kazakhstan has suffered the outcomes of this deficiency, which has had the most impact on the legal services market. The lack of a diverse range of civil law schools had a direct impact on the development of the legal profession in Kazakhstan. Unlike European countries, Kazakhstan's advocacy was limited to representing clients in criminal and administrative cases rather than covering all branches of law and legal services.

In the field of business, legal services were initially left unregulated after the country gained independence. The state attempted to regulate the profession of non-bar member lawyers. However, this system was only a formality and was eventually abolished.

Dualism in the legal profession

After years of long-standing disputes between the community of practicing lawyers, which includes both attorneys and consultants and the Ministry of Justice, a new law on advocacy and legal assistance was finally adopted on July

5, 2018. Despite the new legislation, the provision of legal services in Kazakhstan is still regarded as insufficiently effective.

The law on advocacy and legal assistance in Kazakhstan acknowledges a duality in the subjects providing legal services. It has sanctioned dual standards for the regulation of the legal profession: on one side, attorneys primarily engage in legal assistance in criminal and administrative cases in courts, and on the other, legal consultants.

This has led to a de jure division within the community of practicing lawyers, despite their many shared characteristics.

Despite its growth, the Kazakh legal system still grapples with considerable challenges that must be surmounted to enhance the quality of legal services available to its citizens.

A significant point of contention between the two lawyer communities was the notion of the “advocate monopoly.” This concept was deliberated upon within the context of the new draft Code of Civil Procedure. It’s worth noting that the advocate’s monopoly, perceived as a safeguard for maintaining high-quality legal services, is implemented in varied forms across multiple European nations, including but not limited to Germany, France, Hungary, Denmark, Greece, the Czech Republic, Switzerland, and Türkiye.

Advocates and legal consultants, unite!

We suggest transitioning to a single, robust, and independent self-regulating body of all practicing lawyers for the regulation of the legal profession, replacing the current dual system. Our proposal is that this new organization of lawyers should serve as the unifying force for the fragmented components of the legal profession. Drawing on the experience of the above European nations, we recommend that the bar institution be redefined to function as a universal resource for providing legal assistance that caters to the interests of legal consultants and advocates.

The proposal to amalgamate two legal practice representatives under the umbrella of the new advocacy should not be misconstrued as an integration of legal consultants with the bar of lawyers. Rather, it entails merging the two existing entities into an entirely new bar institution that combines the best aspects of both.

The legislation of most European countries defines the bar as a professional association of individuals engaged in the practice of law, covering all areas of legal specialization. This means that all bar members are authorized to provide the same legal services without any distinction between public law advocacy and private law consultancy.

The bar member performs public functions aimed at ensuring the quality of justice, the observance of fairness and legality through the representation of private interests, and receives remuneration for these services.

That is, a lawyer simultaneously performs an important public, public legal function of protection, but unlike a judge and a prosecutor, the lawyer does this not at the expense of the state but as a representative of an independent, self-employed profession. In essence, being a lawyer entails a dual role: it is a public duty as it represents the universal right to defense while also functioning as a self-employed profession where services are provided for a fee.

What does the merger entail?

Our proposed model for organizing the legal profession in Kazakhstan would unite current lawyers and legal consultants, establish the status of independent defense representatives, and recognize them as one of the main pillars of legal proceedings.

This approach will significantly improve the rank of the legal profession, simplify the work of the judicial system, and increase the quality of legal services. This is because the members of the newly organized bar will now have legal and ethical obligations not only to clients but also to the justice system in their professional activities. However, to

implement this idea, it is crucial that representatives of advocacy and legal consultants understand and comprehend the philosophy of creating a new format organization through merging.

It is understandable that some Kazakh legal consultants may have concerns or hesitations about merging with lawyers. Similarly, it is not uncommon for attorneys to resist the idea of merging with other legal professionals because of the perceived differences in the level of difficulty in entering each profession.

However, it is important to keep in mind that the benefits of a unified legal profession and a strong new bar go beyond individual interests and benefits.

Unifying practicing lawyers into a single independent organization has the potential to bring about numerous benefits for both the state and the practicing lawyers. It can promote a more efficient and effective legal system, improve access to justice, and raise the quality of legal representation for private individuals. Additionally, giving Kazakhstan's new bar a well-deserved status as one of the pillars of justice can enhance public trust and confidence in the legal system.

Therefore, it may be helpful to engage in open and honest communication with both legal consultants and advocates to understand their specific concerns and to address them accordingly. Additionally, it may be helpful to engage with the whole practicing lawyers community and address their specific concerns about a potential merger, such as potential changes to licensing requirements or standards of practice. It is also crucial that the Ministry of Justice, as represented by the state apparatus, correctly understands the consolidation of practicing lawyers under a single organization without perceiving this as the emergence of a rational means of influence over either party.

The creation of a new, independent, and self-regulating organization of lawyers requires the strength and energy of both participants. It is evident that many issues pertaining to the profession, such as professional ethics, organizational principles and membership, advocates' monopoly, insurance against the risk of professional property liability, fees and reimbursable expenses, specific tax regimes, and others, can be resolved with ease when lawyers and consultants present a united front.

The members of the new Kazakhstan Bar, as a representative of an independent defense, must have a status equal to the status of other participants in the proceedings. It is imperative that crimes committed against bar member lawyers bear the same consequences as crimes committed against judges and prosecutors. The judiciary, law enforcement systems, and state apparatus must accord due respect to the rights of lawyers, just as they do for judges and prosecutors. This involves the formulation of entirely new legislation concerning the legal profession, emphasizing the necessity to abandon the current (pro-Soviet) perspective on the institution of the legal profession.

I firmly believe that unifying practicing lawyers into a singular, independent organization under the banner of the new Kazakhstan and granting it the deserved status as a critical element of justice should be a primary goal for the state and all practicing lawyers. The bar operates under the constitutional principle of ensuring the right to defense, which is the responsibility of every country that has declared itself a constitutional state.

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