

OSCE STANDARDS AND THE INDEPENDENCE OF ADVOCATURA IN THE REPUBLIC OF KAZAKHSTAN

Today several defence lawyers from Kazakhstan would like to draw the attention of the international community to the problems their profession is facing and to urge the authorities of Kazakhstan to establish a constructive dialogue with the advocatura (the term implies the defence lawyer's community of Kazakhstan as a whole) and to comply with the generally accepted guarantees and principles of legal profession.

In 2010 Kazakhstan will become Chairman-in-Office for the Organization on Security and Cooperation in Europe. This important mission implies that the presiding country should duly comply with the commitments imposed by the OSCE on its participating States. The right to defence, equality of arms, the independence of the advocatura and respect for the legal status of defence lawyers are standards secured in many OSCE documents. Freedom of the legal profession is one of the elements composing the foundation of a democratic state governed by the rule of law. It is the advocatura, as an institution of civil society, that is guarding human rights and freedoms, and sometimes presents the last outpost defending an individual from arbitrary behaviour on the part of public bodies.

Lawyers feel compelled to draw the attention of the international community to the regrettable practice of persecuting and intimidating defence lawyers in connection with the carrying out of their professional duties. Persecution and intimidation are manifested in repeated attempts to deprive of their licence the defence lawyers who fulfil their duties in a principled manner. Thus, in particular, last summer a decision was passed by the investigative body of the finance police to deprive Salimzhan Musin, a defence lawyer of the Almaty City Bar, of his defence lawyer status. The grounds for such a decision was information, not corresponding to reality, about his alleged breach of law and professional conduct. Obvious outdoor surveillance of the defence lawyer Musin had been carried out for a long time, as a result of which, Musin had to apprehend a man stalking him and to hand him over to the police.

On another occasion the investigative group of the Committee on National Security ("KNS") demanded that Nurlan Beisekeyev, a defence lawyer of the Astana City

Bar, should be deprived of his defence lawyer's licence, having accused him of spreading untrue information in the mass media. However, as those accusations had not been proved the Astana City Bar rejected the claim of the investigative body.

Problems related to the activities of the advocatura include the illegal practice exercised by the bodies of national security of restricting the right of defence lawyers to be involved in a case on the grounds of their lack of access to state secrets. At the same time the legislation of the Republic of Kazakhstan does not require that defence lawyers obtain such access. The procedure of obtaining such access is governed by the Regulations which are not published in open sources. Obtaining access is only possible after undergoing a check implemented by the bodies of national security themselves. The resolving of this issue may be delayed for up to three months. The Union of Defence Lawyers of the Republic of Kazakhstan believes that these restrictions violate such fundamental rights of an individual as the right to defence and obtaining qualified legal assistance, the right to fair trial and also contradict the principles of independence of the defence lawyer profession, the inviolability of the defence lawyer's confidentiality and impermissibility of interference in the legitimate activities of defence lawyers. The said restrictions do not comply with the existing legislation of the Republic of Kazakhstan or with the norms of international treaties ratified by Kazakhstan.

In July 2009 the Head of the KNS investigative group demanded that a defence lawyer of the Almaty City Bar, Daniyar Kanafin, be stripped of his licence for the sole reason that this defence lawyer had spoken at press conferences where he challenged the lawfulness of the ban on defence lawyers being active in cases involving state secrets. The body of investigation believed that by his remarks the defence lawyer had created a negative image of the state bodies of the Republic of Kazakhstan in the eyes of the public and the international community. Such claims are absurd from the point of view of a normal lawyer since speaking at press conferences forms an integral part of the right secured by Article 20 of the Constitution of the Republic of Kazakhstan for everyone to freely obtain and disseminate information by any means not prohibited by the law. It is apparent that a defence lawyer cannot be restricted in his right to express his opinion in a public discussion on the issues of law, because this is an integral part of his profession.

The defence lawyers feel compelled to draw the attention of the international community to the repressive practices by Kazakhstani courts in which nearly 99 % of judgments bear accusatory character. Motions and complaints lodged by the defence lawyers are disregarded both on the part of the organs of investigation and prosecution, and the courts themselves. Unjustifiably judges often support the organs of prosecution. Sometimes they turn a blind eye to the obvious violations of law, human rights and democratic principles of criminal proceedings which put in doubt the conclusion that everyone in Kazakhstan is guaranteed the right to fair and impartial trial.

The defence lawyers believe that the Government of Kazakhstan as the country-OSCE Chairman in Office, should treat the provisions of the international documents regulating the legal status of the advocatura with due respect. The defence lawyers urge the state bodies to move to a constructive dialogue with the defence lawyers' professional community and jointly resolve problems existing in this area.

Defence lawyers:

Daniyar Kanafin

Alexandr Rozentsvaig

Salimzhan Musin