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ҚАЗАҚСТАН РЕСПУБЛИКАСЫ
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ВЕСТНИК

НАЦИОНАЛЬНОЙ АКАДЕМИИ НАУК
РЕСПУБЛИКИ КАЗАХСТАН

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NAS RK is pleased to announce that Bulletin of NAS RK scientific journal has been accepted for indexing in the Emerging Sources Citation Index, a new edition of Web of Science. Content in this index is under consideration by Clarivate Analytics to be accepted in the Science Citation Index Expanded, the Social Sciences Citation Index, and the Arts & Humanities Citation Index. The quality and depth of content Web of Science offers to researchers, authors, publishers, and institutions sets it apart from other research databases. The inclusion of Bulletin of NAS RK in the Emerging Sources Citation Index demonstrates our dedication to providing the most relevant and influential multidiscipline content to our community.

Қазақстан Республикасы Ұлттық ғылым академиясы "ҚР ҰҒА Хабаршысы" ғылыми журналының Web of Science-тің жаңаланған нұсқасы Emerging Sources Citation Index-те индекстелуге қабылданғанын хабарлайды. Бұл индекстелу барысында Clarivate Analytics компаниясы журналды одан әрі the Science Citation Index Expanded, the Social Sciences Citation Index және the Arts & Humanities Citation Index-ке қабылдау мәселесін қарастыруда. Web of Science зерттеушілер, авторлар, баспашылар мен мекемелерге контент тереңдігі мен сапасын ұсынады. ҚР ҰҒА Хабаршысының Emerging Sources Citation Index-ке енуі біздің қоғамдастық үшін ең өзекті және беделді мультидисциплинарлы контентке адалдығымызды білдіреді.

НАН РК сообщает, что научный журнал «Вестник НАН РК» был принят для индексирования в Emerging Sources Citation Index, обновленной версии Web of Science. Содержание в этом индексировании находится в стадии рассмотрения компанией Clarivate Analytics для дальнейшего принятия журнала в the Science Citation Index Expanded, the Social Sciences Citation Index и the Arts & Humanities Citation Index. Web of Science предлагает качество и глубину контента для исследователей, авторов, издателей и учреждений. Включение Вестника НАН РК в Emerging Sources Citation Index демонстрирует нашу приверженность к наиболее актуальному и влиятельному мультидисциплинарному контенту для нашего сообщества.

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ABOUT SOME PROBLEMS OF STATE REGULATION OF THE INSTITUTE OF LAWYERS IN THE KYRGYZ REPUBLIC

Abstract. The general characteristic of genesis and evolution of institute of legal profession in the Kyrgyz Republic, decentralization of the government, practice of application of conflict-of-laws rules and also humanity as principle of the law is presented in this article. The legal profession in the Kyrgyz Republic is the institute of civil society, protecting the rights and freedoms of the citizens, appeared in the framework of the criminal proceedings. Until current time this institute kept the independence of the state and law; was considered the most developed in the territory of the Post-Soviet states of Central Asia. Lawyers of the Kyrgyz Republic had considerable autonomy from executive power, were not under excessive guardianship of bodies of own self-government, possessed full legal practice, guarantees of the activity and could send their duties with relative professional and creative freedom. At the same time, the legal profession supposes the main functions, remained the organizational forms, and created in the old Soviet curves. Being the institute of official provision, the legal profession kept monopoly only for protection in criminal and administrative cases.

Keywords: lawyer, institute of legal profession, defender, human rights, legal procedure, professionalism, civil society, self-government, legal services, the qualified legal assistance.

The citizen of the Kyrgyz Republic, who has a higher legal education and obtained a license to practice law, who is necessarily a member of the Bar Association and provides legal assistance on a professional basis within the framework of the legal profession regulated by the Law, can be an Attorney at Law in Kyrgyz Republic. A person, who has a conviction for an intentional crime, recognized in the established order as incompetent or severely incapacitated, expelled from the Bar Association, dismissed from law enforcement bodies for committing a disciplinary offense - within one year from the date of dismissal, as well as the person, whose license is terminated in accordance with the procedure established by the Law, cannot be Attorney at Law.

In accordance with the Law of the Kyrgyz Republic "On advocacy and legal assistance", which was adopted in July, 14, 2014, "the lawyers may have assistants and trainees. Lawyer's assistants are entitled, under direction and responsibility of the lawyer, to carry out his instructions. A person who meets the requirements established by law and who has expressed a desire to undergo the training on probation may apply for admission to the training on probation to the Presidium of the Bar Association. A list of which is established by the regulation on the training on probation procedure for lawyer trainees, developed and approved by the Republican Bar Association in coordination with the authorized body" [1].

After consideration of the application, the Presidium of the Bar Association takes one of the following decisions: on admission to training on probation; on refusal of admission to training on probation.

The decision on the application for admission to the training on probation must be made within five working days. In accordance with the requirements of the law, the head of the training on

probation must necessarily be appointed an Attorney at Law who has been practicing law for at least five years. Trainees undergo training within a period of six months to one year.

According to the results of training on probation, a trainee's supervisor draws up an opinion and sends it to the Presidium of the Bar Association for approval. Based on the results of consideration, the Presidium is obliged to issue a reasoned decision to give an opinion on the successful completion of the training on probation or on refusal to give such an opinion. The opinion on the successful completion of the training on probation is valid for three years from the date of its approval by the Presidium of the Bar Association. The decision to refuse to approve the opinion on completion of the training on probation must be motivated. The opinion on the refusal may be appealed to the Republican Bar Association or the court.

When the Chairman of the Presidium approves an application, a contract is concluded on behalf of the Bar Association with the trainee. The form of the contract is approved by the Presidium of the Bar Association. The contract must necessarily reflect the rights and duties of both the trainee and the head of the training on probation and the Presidium of the Bar Association. At the end of the training on probation, the presentation of the trainee's supervisor and the training on probation materials should be reviewed at a meeting of the Presidium of the Bar. Based on the results of consideration, the Presidium is obliged to issue a reasoned decision to give an opinion on the successful completion of the training on probation or on refusal to give such an opinion. An obligatory criterion for giving a positive conclusion is the degree of preparedness and mastery of the skills necessary for independent advocacy.

At the same time, the Presidium of the Bar Association independently decides the method for assessing the trainee's preparedness: by conducting a written or oral exam, or by computer testing. The issue of termination of the training contract must be considered at the meeting of the Presidium of the Bar Association. Grounds for termination of the contract for the training on probation are established by the Regulations on trainees of Attorneys at Law, approved by the Presidium of the relevant Bar Association.

The Attorneys at Law provide the following legal assistance: Give consultations and references on legal issues both orally and in writing; Make statements, complaints, petitions and other documents of a legal nature; Participate as a client's representative in civil proceedings; Participate as a defender or representative of a client in criminal and administrative proceedings; Participate as a client representative in mediation, in arbitration proceedings and in other dispute resolution bodies; Represent the interests of the client in government bodies, public associations and other organizations; Represent the interests of the client in state bodies, courts and law enforcement agencies of foreign states, international judicial bodies, non-state bodies of foreign states, unless otherwise established by the legislation of foreign states, statutory documents of international judicial bodies and other international organizations or international treaties ratified by the Kyrgyz Republic; Participate as a representative of a client in enforcement proceedings, as well as in the execution of a criminal sentence; Conduct conciliation procedures. A person who applies for help is free to choose an Attorney at Law, except for cases when an Attorney at Law is appointed as a defender in criminal cases for which his participation is compulsory, if the defendant did not choose or could not choose an Attorney at Law.

Payment of legal assistance provided by lawyers [1]. The amount of payment for legal assistance rendered by lawyers and reimbursement of expenses related to the conduct of conciliation procedures shall be established by a written agreement between the lawyer and the person who requested assistance. The conclusion of a contract is mandatory and is carried out in the manner established by the civil legislation of the Kyrgyz Republic. Receipt by a lawyer or a law firm of cash as payment for legal assistance, including oral legal advice, and expenses related to the execution of an order, is not allowed without issuing a corresponding financial document.

It is proposed that these measures will lead to an increase in the number of lawyers, as amount of costs will be reduced by more than two times. In turn, the growth of the number of lawyer corps will increase competition within it and entail a decrease in the amount of fees for rendering assistance. In addition to this, competition motivates lawyers to improve their professional level. Accordingly, the quality of legal assistance and its accessibility to the public should improve.

For implementation of "Probono", it is necessary to oblige lawyers to provide legal assistance to citizens a certain number of hours per year without a budget refund. At the same time, a lawyer will have to report quarterly to the board on provision of this assistance. "Probono" covers the sphere of providing

free legal assistance to socially vulnerable groups of the population. The system is one of the important criteria when a client chooses a lawyer. Since 2015, there has been a reduction in the number of applicants for the right to engage in notarial activities. This is due to two factors. The first is stabilization of demand and supply of notary services in the market. Market mechanisms allowed achieving full coverage of population by notary services. The second - the reform of legislation, simplification of procedures and development of technologies have reduced the demand for notarial services [1].

The amount of payment for legal assistance rendered by lawyers and reimbursement of expenses related to the conduct of conciliation procedures shall be established by a written agreement between the lawyer and the person who requested assistance. The conclusion of a contract is mandatory and is carried out in the manner established by the civil legislation of the Kyrgyz Republic. Receipt by a lawyer or a law firm of cash as payment for legal assistance, including oral legal advice, and expenses related to the execution of an order, is not allowed without issuing a corresponding financial document.

Advocacy - is a qualified legal assistance provided on a professional basis by lawyers in accordance with the Law "On Advocacy", in order to protect and facilitate realization of rights, freedoms and legal interests of citizens, as well as the rights and legal interests of legal entities [1].

Citizen of Kyrgyz Republic can become an advocate if he/she: has a higher legal education; passed the probation period and attestation in college of advocates or passed the exam in Qualification Commission under Kyrgyz Republic Superior Judicial Council, successfully passed the probation period in the court, received a positive review by the plenary session of regional or equivalent court or by the judge who terminated his authority or by dismissed from the bodies of prosecutor and investigator with work experience as a prosecutor or investigator no less than 10 year except persons dismissed by negative reasons; got a license for the right to implement lawyer activity.

Getting of license for advocacy is carried out in three stages, which include probation period - to get necessary skills, attestation and getting of license. To complete a probation period for conduction an advocacy. If you have decided to become an advocacy you need to address to the territorial college of advocates with following documents: application on the admission to complete probation period; copies of identity document of Kyrgyz Republic citizen; copy of diploma on higher legal education; copy of labor book or other document, confirming work experience on legal specialty; medical references from psychiatric and substance abuse clinics; reference on criminal record.

Organization of probation period is carried out by the presidium of advocates' college in accordance with the Provision on the order of probation period completion by probationer of advocates. Therewith probation period is carried out under the guidance of advocate who has advocacy work experience no less than 5 years. Duration of probation period is from 6 month to one year. Probation is carried out for a fee, amount and terms of payment for the organization of probation period is pointed in the agreement.

In order topass attestation for dealing with advocacy, according to the Rules of passing an attestation by persons pretending on dealing with advocacy for passing the attestation you need to send following documents to the territorial bodies of justice: application; copy of identity document of Kyrgyz Republic citizen; decision on probation (issued be advocate);copy of diploma on higher legal education (notarized copy- in case of non-provision of the original for checking);medical references from psychiatric and substance abuse clinics; reference on criminal record; decision on probation (not provided in case of formalizing of decision in electronic form.

The documents will be considered by a special Commission for certification of persons pretending on advocacy. The Commission consists of seven members, including 3 advocates, candidatures of which are identified by the presidium of Advocates College of regions, cities. According to the results of consideration of the materials the Commission makes a reasonable decision on the admission or denial of admission to the attestation. The conduction of attestation is free.

After the Commission will examine the materials and make a decision on the admission to attestation, territorial justice authorities will notify you about the place, date, time, procedure for certification no later than 10 calendar days before its conduction. In the bodies of Justice Attestation is carried out if necessary but not less than 1 time per quarter. Attestation consists of two stages - passing of computer test on Kyrgyz Republic legislation knowledge and checking of applicant's knowledge on examination cards. Attestation can be passed as in Kyrgyz language so in Russian one. The next day after passing the attestation the Commission makes a reasonable decision on passage of failure of attestation. This decision will

be valid during 6 years. In case of attestation failure you may pass it second time but not earlier than in one year. Decision of Commission can be disputed by judicial process.

Advocate license is suspended for the period: work in civil service; execution of deputy powers of the Kyrgyz Republic Parliament, deputy of Kyrgyz Republic Parliament, realizing his activity on regular or free basis, paid at the cost of budget funds; compulsory military service; exclusion of advocates from the members of college by the reason of systematic non-payment of duties and in other cases, considered by the Order of college; actual unavailability of premise realizing the professional activity individually without legal entity registration; holding of business or other paid activity by the advocate except teaching, research and creative activity; non-execution of the powers by advocate on the basis of his application in which he points the terms of suspension.

Advocacy in the Kyrgyz Republic is aimed to cooperate to realization of human rights to juridical protection of one's rights, freedoms and obtainment of competent legal assistance state-guaranteed and provided by the Constitution of the Kyrgyz Republic. Advocacy manages attorneys' activities connected with criminal defense, cases of administrative violation as well as legal representation of criminal and civil cases and administrative violation, and delivery of other types of legal assistance in order to protect and assist in realization of rights, freedoms and citizens' legitimate interests and rights and legitimate interests of legal entities as well. Legal assistance provided by attorneys in the framework of their current advocacy cannot be considered as entrepreneurial business. Lawyer activity is the qualified legal aid rendered on a professional basis by lawyers is regulated by the present Law, in order to protect and assist in the realization of the rights, freedom and legitimate interests of individuals, and also the rights and legitimate interests of legal entities.

Advocacy Legislation of the Kyrgyz Republic is based on the Constitution of the Kyrgyz Republic consists of the Law and other normative legal acts of the Kyrgyz Republic regulating advocacy. In case when international agreement ratified by the Kyrgyz Republic provides regulations variant from ones in this Law then there enforced the regulations of the international agreement. Big role now play the special officials- mediators, which help to decide all the conflicts, collisions before the court procedure.

Mediation - a procedure in which an impartial third party helps to understand and resolve the conflict of interest that has risen in between the other two opposing sides. The advantage of this method of dispute resolution is that the mediator helps the parties to develop their own terms of agreement between them.

The potential scope, purposes and practices of court-connected mediation are identified through an examination of mediation theory and particular issues that arise within the context of the formal justice system. All theoretical and practice models of mediation promote a degree of mediation's core features of responsiveness to the individual disputants, self-determination and cooperation. These features of mediation are realized when some key opportunities are extended to disputants within the mediation process. The opportunities are: to explore individual disputants' interests and preferences regarding the content of discussions, for disputants to participate directly during the mediation process and to work cooperatively to respond to the conflict. It is concluded that there is no reason why mediation cannot deliver these key opportunities within the context of the litigation system. Court-connected mediation has broad potential and may promote a variety of purposes and incorporate a range of practices.

Let say few words about decentralization of powers in Kyrgyz Republic. In the past, political centralization has become a source of tyranny. The more that power is centralized in the hands of a single individual or group of people, the more likely it becomes that those in power will make decisions that are not in the best interest of the people they govern. A decentralized political system, on the other hand, shifts power away from a governmental center so that it is closer to being in the hands of the people. For this reason, one of the many merits of decentralization is that it gives individual citizens more control over their own lives by allowing them more say in legislation and other governmental actions. An advantage of government decentralization is that it takes power out of the hands of the few and puts it in the hands of the many, thereby giving individual citizens a stronger voice [2, p.10].

When you think of government, you probably think of political systems that are centralized in some way. One immediately recognizable historical example of political centralization is the Kyrgyz Republic. A decentralized government is an organized political structure that distributes some or all of the governmental power to different points throughout a state. The purpose of a decentralized political system is to

make citizens more active in the decision-making process in their government, therefore allowing individual people to exercise more power over their own lives.

Although the concept of a decentralized political system brings to mind elections by popular vote and small-town government, many modern, functioning national governments operate under varying degrees of decentralization. Representative democratic practices can also be a part of decentralized government even if citizens send their chosen representatives to speak for their interests in centralized seats of power.

In addition to protecting citizens from governmental overreach, the numerous merits of decentralization include ease of access to citizens, a decrease in the bureaucratic burdens of centralized government and an increase in speed in policy implementation.

In decentralized governments, citizens have access to governmental offices that are closer to them. These offices can meet their individual needs. One example of this in the Kyrgyz Republic is local passport offices in major cities and the ability for post offices to act as de facto passport offices should the need arise.

Additionally, with greater decentralization comes a decrease in costs. Maintaining government bureaucracy requires both manpower and funding. By decentralizing power, individuals at the far ends of the web of decentralization can accomplish more with less because they have fewer citizens to manage.

One modern example of decentralized governance is the Kyrgyz Republic government. The Kyrgyz Republic delegates many of its powers to the individual cities, even though a centralized government operates in the country. The centralized government has the ability to enact laws and wage war, but in order to do so; laws must be voted on by Parliament, which is made up of people, who were elected democratically by their constituencies. The representative democracy embodied by Parliament and its powers is a form of decentralized government. The Supreme Court of the Kyrgyz Republic and the presidency are forms of centralized power. However, the power of these two central branches is greatly checked by Parliament.

The term “decentralization” embraces a variety of concepts which must be carefully analyzed in any particular country before determining if projects or programs should support reorganization of financial, administrative, or service delivery systems. Decentralization- the transfer of authority and responsibility for public functions from the central government to subordinate or quasi-independent government organizations and/or the private sector - is a complex multifaceted concept. Different types of decentralization should be distinguished because they have different characteristics, policy implications, and conditions for success.

Types of decentralization include political, administrative, fiscal, and market decentralization. Drawing distinctions between these various concepts is useful for highlighting the many dimensions to successful decentralization and the need for coordination among them. Nevertheless, there is clearly overlap in defining any of these terms and the precise definitions are not as important as the need for a comprehensive approach. Political, administrative, fiscal and market decentralization can also appear in different forms and combinations across countries, within countries and even within sectors [3].

Political decentralization aims to give citizens or their elected representatives more power in public decision-making. It is often associated with pluralistic politics and representative government, but it can also support democratization by giving citizens, or their representatives, more influence in the formulation and implementation of policies. Advocates of political decentralization assume that decisions made with greater participation will be better informed and more relevant to diverse interests in society than those made only by national political authorities. The concept implies that the selection of representatives from local electoral jurisdictions allows citizens to know better their political representatives and allows elected officials to know better the needs and desires of their constituents.

Political decentralization often requires constitutional or statutory reforms, the development of pluralistic political parties, the strengthening of legislatures, creation of local political units, and the encouragement of effective public interest groups.

Administrative decentralization seeks to redistribute authority, responsibility and financial resources for providing public services among different levels of government. It is the transfer of responsibility for the planning, financing and management of certain public functions from the central government and its agencies to field units of government agencies, subordinate units or levels of government, semi-autonomous public authorities or corporations, or area-wide, regional or functional authorities.

All the participants of public relations, regulated by law, are obliged to respect and strictly follow the instructions of legal norms, in order to observe the rights of not only entitled but obliged to specific subjects of legal relations. It is an essence of a legal order in the state. However existence of legal collisions endangers protection of legal order and public safety as the central problem of activity of the government and the state in general as the institute, urged to provide such relations in society at which its forward, progressive development is carried out.

The law enforcement bodies carry out a specific function of the state function of rule of law, promoting and protecting the rights of man and citizen. State function on protection of a law and order and the rights of citizens can be characterized as the activity of the state directed on ensuring exact and full implementation of its legislative instructions by all participants of the public relations. But how is it possible to provide an accurate and complete implementation of mandatory rules and regulations, if the regulations contradict one another. Precise and steady performance of contradictory and mutually exclusive norms someone's rights are necessarily infringed or otherwise deprived and this contradicts not only the meaning of legal regulation, but also common sense. Special danger on this way is legal collisions as the quintessence of the confrontation of legal norms.

As for the collision norms in the jurisprudence, in the encyclopedic dictionary of S.I.Ozhogov and N.Y.Shvedova the following definition is given: "A collision is conflict of any opposite forces, interests, aspirations", F.A.Brokgauz and I.A.Efron define a collision more narrowly –"Collision is a conflict of legal norms (laws or the statuses) occurring in the case when the judge should decide a case on the individuals without residence within the local law, property that is in this range, the acts or transactions made by the prisoners or in another county under the action other than the local laws". N.M.Korkunov concluded that: "conflicts are possible, as between the multi-temporal, succeeding each other in the same state laws as well as between different points the laws of different states". Conflicts between laws arise in the case; "if the fact is committed in the scope of a law, it has to be discussed under the domination of another law". In this case, one and the same fact would be subject to two different laws: one - the place or the time of its commission, the other - the place or time of their discussion. This is called conflicts of laws, multi-local and multi-temporal".

Wiener J. points out that: "between separate normative acts conflict can arise. Such contradictions called collisions"[3, P.64]. According to the author, these definitions are too narrow nature of legal conflicts, focusing on a certain criterion, showing legal collisions.

At the same time it should be stressed that the number of our scientists more broadly fit the definition of the concept and essence of legal collisions. Bruce E. Meyers on interprets the legal collision more than just a difference or conflict between the provisions of law, including the definition of all the contradictions that appear in the process of enforcement and implementation, competent subjects (authorities and officials) their powers [4]. The author, considering the types of defects in law, antinomy, unnecessary duplication and gaps in the law - comes to the conclusion that the legal conflict is the relation between the norms arising about the regulation of one of the actual situation [4]. Such understanding of legal collision includes instances of conflict of laws, and the cases of differences, their discrepancy, which allows to refuse determine the defects of the law as «textually and legal conflicts" that clutter the meaning and the essence of the phenomenon.

M.K. Suleimenov understands legal collisions as «the contradiction between the legal norms, regulations, and institutions and claims, actions for their change of violation, rejection» [2, p.17]. Later, the scientist has put forward, in our view, a more expressive and at the same abstract definition, according to which "legal collision is a contradiction between the existing legal order and the intentions and actions to change it". Proposed definition of legal collisions contains a wider and more systemic understanding of this phenomenon. Traditional interpretation of the legal conflict as a clash of norms does not disappear, but the only and universal becomes one of the aspects of the definition.

According to the scientist, a legal collision is expressed: a) in contrasting the differences of legal opinions and positions in legal thinking; b) in a clash of norms and regulations within the legal system, both in industry and in the federal aspects; c) of misconduct within the mechanism of public authority between the state and other institutions and authorities; d) in the differences between the rules of international laws; e) in disputes between states and the contradictions between the norms of national and international law. In our opinion, this definition covers almost all kinds of legal collisions, as well as an

indication of their characteristics, allowing to distinguish legal collisions from similar, similar terms (conflicts, fiction). In addition, in our opinion, this definition allows to see and recognize the conflict as a conflict at the junction of the legal field and the idea of justice, which legislating is intended to build, as the confrontation between the aspirations and interests reflected in the existing legal regulations and their real provision.

From the above it can be concluded, that concept of collision and competition law norms are not subject to identification. Of course, these concepts are similar in content, but you cannot identify them. The existence of the norm is stipulated by the nature of the legal regulation. Competition arises if necessary concretization of legal norms, which are abstract in nature to a certain type of social relations. Multidimensionality of approaches to the definition of legal conflicts, their diversity and heterogeneity necessitates their classification. This issue has been studied by scientists such as A.Kh.Saidov, P.S.Dagel, N.I.Matuzov, V.V.Smirnov, Y.A.Tikhomirov, and others. Most scientists have the same position as their vision of legal collisions is much the same.

Collisions of competence can be expressed in that certain state agencies, officials and other parties, possessing powers to implement them fully or, on the contrary, are beyond its competence, ignoring the competence of other subjects. Although it may be a deformation of status or extralegal formation of the government or public body, the organization, the official.

The reasons of occurrence of legal conflicts, the study which we will spend the next, you can select the conflicts arising due to the development of social relations, i.e. the influence of objective factors, and the conflicts arising due to low legal technique, combat tactical interests in the apparatus of state power, insufficient level of legal culture of the population and, in particular, legislators, etc.) i.e. the influence of subjective factors.

The conditional admission for the truth, as a deliberate falsity of the accepted provisions are a legal fiction only the outer form, which is vested in the creation of new legal norms. Actually, legal fiction is in its content, just the rule of law, regulating the relationship between objective reality. In spite of the legal fictions, their aims and forms they have the conditional nature. The contradiction lies between the real state of certain facts and the decision of judicial body, which is conditional on their presence or absence. However, it is difficult to agree with the statement that collisions of any fictions - in generation of confusion, where the person is wrong, has a false idea about the existence or absence of certain facts.

Since when considering the question of the definition of legal collisions, revealing their essence as a legal phenomenon, the author pointed to a narrowing of the subject of the study when looking at them from the traditional positions and tied his position with Y.A. Tikhomirov, then the classification given to these scientists, we also seem the most appropriate nature of the phenomenon.

Today speedy and stable provision of legitimacy can and should be regarded as a priority goal and primary task, because of the collision between the laws and other normative legal acts have become commonplace. They have created a fertile ground for abuse of the various authorities' deformation of economic and social relations, and violations of law and order.

It should be remembered that all the laws passed by-laws and other regulations must, among other requirements for the acts of this kind, to answer the idea of justice and humanity, respect for human rights and freedoms. And these same ideas of social justice, equality, freedom, non-moral categories, but more often included in the concept of law, were offset by a few years of endless political, economic, social and cultural reforms in the country.

The law-abiding state in the country - one of the main objectives of the government. On the one hand, the rule of law is possible only if effective laws passed by the government, and strict observance of the rule of law (in the first instance, the government institutions and persons in authority), on the other hand, the rule of law requires the observance of the laws directly by the people, and it can be achieved in two ways - the planting of fear of authority and the law, and the inevitability of cruel punishment, and the formation of a law-abiding consciousness, belief in the need to respect the law". In the Law of the Kyrgyz Republic "About mediation" of July 28, 2017 has fixed: "Court-connected mediation carries an aura of authority, particularly where it is conducted on the court premises, the mediator is an officer of the court and the disputants‟ legal advisors control the mediation process" [5].

Legal conflict reflects the changes in the legal system or some of its elements, objective the modernization of state institutions, serves as evidence of the natural contradictions of normal development and

functioning of the state and legal institutions, and may express a just claim to a new legal order or the protection of the constitutional system, the legitimate opposition to the arbitrary, illegal acts and actions, i.e. all sorts of violations of the law. In this connection the problem of the effectiveness of legislation, determine the effectiveness of law enforcement and currently represents one of the priorities and future directions in the Russian legal science [6, P.68]. So, in that sense, which is embedded in the concept under consideration, it can be considered a generic, basic. The collision is not just a one-time act or action, or both cross-sectional committed. This procedure and the analysis of available laws and other acts and documents contained in the evaluation of public law, public institutions, economic systems, and the confrontation of interests, as reflected in the existing legal provisions and their real security and interests of citizens, officials, government agencies, political parties, social movements, expressed in other state law claims and activities.

In this context we would like to stress about humanism. Humanism is an approach to life based on reason and our common humanity, recognizing that moral values are properly founded on human nature and experience alone. While atheism is merely the absence of belief, humanism is a positive attitude to the world, centered on human experience, thought, and hopes.

In our culture, people are so accustomed to the idea of every law having a lawmaker, every rule having an enforcer, every institution having someone in authority, and so forth, that the thought of something being otherwise has the ring of chaos to it. As a result, when one lives one's life without reference to some ultimate authority in regard to morals, one's values and aspirations are thought to be arbitrary. Furthermore, it is often argued that, if everyone tried to live in such a fashion, no agreement on morals would be possible and there would be no way to adjudicate disputes between people, no defense of a particular moral stand being possible in the absence of some absolute point of reference.

But all of this is based on certain unchallenged assumptions of the theistic moralist - assumptions that are frequently the product of faulty analogies. It will be my purpose here to take a fresh look at these assumptions. I will try to show the actual source from which values are originally derived, provide a solid foundation for a human-based (humanistic) moral system, and then place the burden on the theist to justify any proposed departure. Unthinkingly, people often assume that the universe is run in a fashion similar to human societies. They recognize that humans are able to create order by creating laws and by establishing means of enforcement. So, when they see order in the universe, they imagine that this order had a similar humanlike source.

When mediation is court-connected the influence of the external standard of legal norms also impacts on disputants' self-determination of the content of mediation. The prioritization of legal norms may reduce the importance of the individual needs and interests of the disputants regarding outcome. The focus becomes those objective standards in relation to which few disputants are experts.

When a lawmaker is said to be needed for every law, the result is an endless series, since someone must be the lawmaker of the lawmaker's laws. Because such a series is uncomfortable to moral philosophers and theologians, at some point they declare that "the buck stops here". They argue for an ultimate lawmaker, one who has no one who makes laws for him. And how is that done? The point is made that the buck has to stop somewhere, and a supernatural god is thought to be as good a stopping place as any.

Law, however, is not necessarily the same as morality; there are many moral rules that are not regulated by human legal authorities. And so the question arises as to how one can have a workable set of moral guidelines if there is no one to enforce them. Laws and rules are generally designed to regulate activities that can be publicly observed. This makes enforcement easy. But breaches of moral principles are a horse of a different color. They often involve acts that are not illegal but simply unethical and can include acts that are private and difficult to observe without invading that privacy. Enforcement, therefore, is almost totally left to the perpetrator. Others may work on the perpetrator's emotions to encourage guilt or shame, but they have no actual control over the perpetrator's conduct [7].

Humanists usually believe in the existence and importance of moral value. Humanists tend to have a particular interest and concern with moral and ethical issues. Most Humanists believe that actions can be objectively morally right or wrong. So far as knowledge of right and wrong is concerned, Humanists place strong emphasis on the role of science and/or reason. In particular, they usually suppose that our ethical framework should be strongly informed and shaped by an empirically grounded understanding of what human beings are actually like, and of what enable them to flourish. Obviously, when a Humanist offers

moral justifications, they will justifications rooted in something other than religious authority and scripture.

In the conclusion we would like to note, that concept of effective advocacy as a critical part of the culture of human rights and change. Correspondingly, such an approach gives human rights advocacy a clearer objective in terms of the nature of the violation, the strategies of advocacy, the institutions of intervention and the possibility of improving the human rights landscape. Some mediators seek to minimize reliance on professional assistance by insisting on direct disputant participation and an advisory as opposed to advocacy role for professionals. However, to understand these issues as problems, we must have better tools, that work cross-culturally, that permit us to mark and map problems in appropriate contexts for which there is a need for human rights advocacy and intervention.

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ҚЫРҒЫЗ РЕСПУБЛИКАСЫНДАҒЫ АДВОКАТУРА ИНСТИТУТЫНЫҢ ТУРАЛЫ МЕМЛЕКЕТТІК РЕТТЕУДІҢ ПРОБЛЕМАЛАРЫ БЕКІТУ

Аннотация. Мақалада тегін коллизия нормаларды, сондай-ақ Қырғыз Республикасында, мемлекеттік билікті орталықсыздандыру адвокатура институтын дамуы жалпы сипаттамасы ұсынылған ізгілік, принципін қолдану практикасын ретінде құқығы бар. Қырғыз Республикасында – бұл азаматтық қоғам институты қалған азаматтардың құқықтары мен бостандықтарын қорғайтын. Адвокатура қылмыстық сот ісін жүргізу аясында. Бұл институт өзінің тәуелсіздігін мемлекеттен және постсоветтік мемлекеттердің аумағында соңғы кезге дейін бойы ең маңызды болып саналатын құқығы бойынша Орталық Азияда. Адвокаттар өзін-өзі басқару органдарының атқарушы биліктен, Қырғыз Республикасына айтарлықтай автономияны болған жоқ, бірақ әрқашан астында болған артық болмаса да, өзінің қызметі мен игеруді қорғаншылықта практикада мүмкін болған кезде кәсіби және өз міндеттерін толық көлемде таныған кепілдіктермен формальды түрде жіберуге салыстырмалы шығармашылық бостандықтары. Сонымен бірге, адвокатура, өзінің негізгі функцияларын толық тәуелсіздігі үшін жеткілікті болмаса да, бірақ өткен жылдар ішінде формаға орнатуды ұйымдастыру нысандары шеңберінде қалыптастырылған ескі кеңестік лекалоларға тағы да қалды. Ресми түрде қорғауды қамтамасыз ететін адвокатура қылмыстық және әкімшілік істер бойынша білікті заң көмегін алуға құқығы бола отырып, осы институт, іс жүзінде ғана сақтап қалды.

Түйін сөздер: адвокат, адвокатура, қорғаушы, азаматтық қоғам институты, адам құқықтарын заң қызметтерін көрсету, сот ісін, кәсібилік, өзін-өзі басқару, білікті заң көмегі.

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О НЕКОТОРЫХ ПРОБЛЕМАХ ГОСУДАРСТВЕННОГО РЕГУЛИРОВАНИЯ ИНСТИТУТА АДВОКАТУРЫ В КЫРГЫЗСКОЙ РЕСПУБЛИКЕ

Аннотация. В статье представлена общая характеристика генезиса и эволюции института адвокатуры в Кыргызской Республике, децентрализации государственной власти, практики применения коллизионных норм, а также гуманизма, как принципа права. Адвокатура в Кыргызской Республике - это институт гражданского общества, защищающий права и свободы граждан, оказавшихся в орбите уголовного судопроизводства. До недавнего времени этот институт сохранял свою независимость от государства и по праву считался самым развитым на территории постсоветских государств Центральной Азии. Адвокаты Кыргызской Республике имели немалую автономию от исполнительной власти, не находились под излишней опекой органов собственного самоуправления, обладали пусть не всегда соблюдаемыми в полном объеме на практике, но формально признаваемыми, гарантиями своей деятельности и могли отправлять свои обязанности при наличии относительной профессиональной и творческой свободы. Вместе с тем, адвокатура, отстоявшая за

прошедшие годы свою пусть не полную, но достаточную для оправления основных функций независимость, осталась в рамках организационных форм, сформированных еще по старым советским лекалам. Будучи институтом, официально обеспечивающим право на квалифицированную юридическую помощь, фактически адвокатура сохранила монополию лишь на защиту по уголовным и административным делам.

Ключевые слова: адвокат, институт адвокатуры, защитник, права человека, судопроизводство, профессионализм, гражданское общество, самоуправление, юридические услуги, квалифицированная юридическая помощь.

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