

## PRINCIPLES OF ATTORNEY ETHICS

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In legal literature, much attention is paid to the problem of the combination and interaction of such major social regulators as morality and law. This problem is of great importance in the areas of lawmaking and law enforcement. It acquires particular urgency in administering justice, when legal criteria for assessing conflict situations are inadequate and recourse to conscience, honor, moral duty is not only natural, but inevitable. One of the first Russian lawyers to attract attention to this problem was A. F. Koni. He is the author of the work entitled "Moral principles in the criminal process", to which even now experts are turning with gratitude. [1, 22]

Both society and the state have long realized the need to introduce an additional, moral criterion, which must be met by a person professionally carrying out the protection of the rights and legitimate interests of citizens. In the course of the great reforms of the middle of the XIX century, the government of Alexander II in order to raise the prestige of the legal profession, increase public confidence in lawyers, improve the efficiency of the legal profession worked out and legally fixed in the Judicial charters of 1864 the requirements for applicants for the status of lawyer. An applicant who formally met the requirements of the law on educational and age qualifications, having the necessary experience and work experience, could nevertheless be denied the assignment of attorney status if he did not have the moral qualities necessary for the proper performance of his attorney duties. At the same time, the refusal to confer the status of a lawyer due to non-compliance with the moral criterion could not be appealed by the claimant in court.

For example, Professor E. A. Krasnikova identifies four principles of the legal profession as an institution: the principle of legality, the principle of independence, the principle of self-government, the principle of equality of lawyers. [2, 56]

The principles of professional ethics of a lawyer are the most general, guidelines that develop and supplement the norms of public morality that are binding on all in relation to the specific conditions of advocacy. Being a kind of social norms, they have important regulatory significance in relationships that are inaccessible, as a rule, to legal control. The principles of professional ethics of a lawyer include ethical requirements developed by the practice and approved by the lawyers community regarding the personality of a lawyer, his attitude to the law, the court, law enforcement and other authorities in whose system the bar works, the relationship of a lawyer with clients (clients, defendants) and colleagues professions. The bodies of the lawyer community of many foreign countries and Kazakhstan make considerable efforts to develop the rules of professional ethics of a lawyer and control their observance by all members of the lawyer community. In carrying out their professional activities, lawyers, including lawyers, deal primarily with legal norms; it is them that they investigate and use in resolving a particular issue. However, often only legal norms are not enough, and it becomes necessary to search for other social norms, primarily moral norms, often specific ones, born in a special system of relations. This justifies the emergence of such scientific fields as judicial and advocate ethics.

The principles of advocate ethics are the most common provisions relating to the rules of moral and ethical nature, which should guide lawyers in their professional activities. The principles of attorney ethics are not designed to regulate each specific situation that may arise in the work of a lawyer. They are the main guidelines according to which a lawyer must work out the rules of conduct in his daily activities.

In our opinion, the most important principles of attorney ethics include both the general requirements of public morality, which acquire an increased burden in the field of professional attorney relations, and some specific rules. The first are honesty, rationality, good faith, justice, humanism, responsibility, respect for the honor and dignity of a person, and more. The second group of principles consists of moral requirements for the personality of a lawyer, for means and methods of protection, respect for the law and the court, as well as the moral rules for the relationship between a lawyer and a client, a lawyer and colleagues, a lawyer and other participants in the process.

General ethical requirements and principles are provided for in the Code of Professional Ethics of Lawyers of the Republic of Kazakhstan dated September 26, 2014. [3]

Consider some of them:

➤ **Honesty**, as a principle of attorney ethics, is the fundamental beginning of the professional activity of a lawyer when building a relationship between a lawyer and his colleagues, government and non-

government bodies, principals, and the media. Often the concept of "honesty" is used as a synonym for truthfulness. In this sense, this concept is used, in particular, by Professor N.N. Polyansky, who noted that "the duty to be truthful ... for a member of a lawyer corporation seems or should be an obligation in the field of good morals of a corporation". [4, 42] A lawyer is obliged to honestly, reasonably and conscientiously defend the rights and legitimate interests of the principal (defendant), not only to appear, but also to be a supporter of truth and justice.

However, it seems that truthfulness does not fully exhaust the content of the principle of honesty. In addition to reporting only truthful, subjectively true information in the practice of advocacy, the principle of honesty presupposes a subjectively honest attitude to expressing individual assessments, personal opinion, own legal position, honest, decent, moral behavior of a lawyer in relationships with people around him: colleagues, trustees, court, representatives of law enforcement, government agencies, the media. The honesty of a lawyer is based on the concept of "honor." The honesty of a lawyer is closely intertwined with the legal principle of the legitimacy of advocacy. Under no circumstances should a lawyer contribute to dishonest, unlawful, dishonest behavior of the principal, colleague, participant in the process, official. The principle of honesty should be the governing when a lawyer chooses a course of conduct in a situation where the law is silent, and the person who applied for legal assistance is trying to fraudulently use the imperfection of the law for immoral, immoral purposes. The principle of honesty also implies the full informing of the person who applied for legal aid about the prospects of his case. A lawyer does not have the right to conceal from his client the weakness of his legal position, all the difficulties that may arise in one or another course of events.

➤ **The principle of rationality**, according to which defense counsel and representation should be carried out by a lawyer, can be formulated in the most general way as a requirement to determine a clear proportionality of the ways and methods of providing legal assistance to the skills and experience of a lawyer, the essence of the matter that the principal addressed to the lawyer. Already when deciding on the acceptance of an assignment, a lawyer must clearly determine whether the level of his education, qualifications, and professional experience is sufficient for the quality and full protection of the principal's interests. In the event that for any reason a lawyer cannot fully protect the principal, he should not accept the order, but may recommend the principal to contact a specialist in this field. The principle of reasonableness also includes the requirement of the right choice of a lawyer for ways and means of rendering legal assistance. As a rule, there are several possible ways to resolve any life situation. Depending on the circumstances, the lawyer should perform only those actions that are most appropriate in a particular case, will allow to achieve the desired result with the least expenditure of time, effort and money of the principal.

➤ **Conscientiousness** as a principle of lawyer ethics means that a lawyer must provide legal assistance according to his conscience, that is, using legitimate means and methods that are necessary and sufficient for the speedy achievement of the desired result. Guided by the principle of good faith, a lawyer is required to maximally apply all his professional experience, qualifications, abilities, provide for all possible scenarios, take into account all circumstances in order to be ready in any situation to provide the most complete protection of the interests of his principal. A lawyer must consider all future consequences of his actions in rendering legal assistance and inform the principal of them most fully.

An advocate for the effective performance of his professional functions is endowed with sufficiently broad rights, procedural legislation gives him practically the same powers as the parties to the case. The lawyer should not only use all these rights and powers strictly in the interests of his client, but also not allow infringements of the rights and powers of other persons, that is, in good faith. Abuse of procedural rights by persons participating in the case entails adverse consequences envisaged by law for these persons. However, the legislation does not disclose the meaning of the term "in good faith", for its understanding it is necessary to use categories from the sphere of ethics.

➤ **The principle of justice** is currently intersectoral, applies to the entire system of law. It is of particular importance for the branches of law related to the consideration and resolution of legal disputes and conflicts.

Justice as such is such a broad and comprehensive category that it is difficult to define it. The principle of justice in the activities of a lawyer is based, in particular, on the following axioms:

- the realization of the right of one person should not infringe upon the realization of the right of another person;
- all are equal before the law and the court, as well as equal in the right to receive qualified legal assistance;
- the severity of the punishment must correspond to the severity of the offense.

The lawyer is obliged to build his activities in strict accordance with these principles, protecting the rights of individuals and legal entities from violations, ensuring the provision of legal assistance on the basis of equality, protecting suspects accused of unlawful conviction, seeking a punishment commensurate with the crime that mitigates the circumstances.

The importance of the principle of justice in a legal state is so great that it outgrows the boundaries of the principle of advocate ethics only and extends to the activities of all state and non-state bodies, organizations, enterprises and institutions.

➤ **The principle of humanism** is industry-wide, it is characteristic of the entire legal system of any legal social state. In the Republic of Kazakhstan, a person, his rights and freedoms are the highest value [5].

The recognition, observance and protection of the rights and freedoms of a person and citizen is the duty of the state. Humanism as a principle of lawyer ethics is manifested in the recognition and protection by lawyers of all legal means of the rights, freedoms and interests of individuals and legal entities.

➤ **The principle of responsibility** in advocacy means that a lawyer is always in one way or another responsible for the consequences of his actions. He can bear not only legal or corporate responsibility, but also moral, above all to his conscience, as well as to his colleagues, principals.

➤ **The principle of respecting** the honor and dignity of a person, the authority of state bodies and the legal profession itself.

For example, art. 13 of the Criminal Procedure Code of the Republic of Kazakhstan contains requirements for respecting the honor and dignity of the individual during the course of judicial proceedings. Frequently, the behavior of the persons involved in the process may be incorrect, disrespectful, demeaning or embarrassing to other participants in the process, but from the point of view of the law it cannot be qualified as a violation of order in a court hearing. Legal liability measures are not applicable here. It is in such cases that the ethical principle of respecting the honor and dignity of the person, the authority of the court, should become the rule of thumb. This principle should keep a lawyer from making incorrect comments, from overly emotional responses to possible disrespectful remarks from other participants in the process, and set up for a respectful, calm, constructive dialogue with opponents, despite the heavy psychological burden when the court considers difficult cases involving sometimes vital issues. . Respect by a lawyer for the honor and dignity of the client, the authority of the court and other state bodies, professional and correct behavior in any situation ultimately strengthens the authority of the institution of the bar, the formation of a trustful, respectful attitude to the lawyer from not only citizens, but also government officials , judges, prosecutors.

Based on the foregoing, it follows that the principles of advocacy ethics considered operate in combination, are applied in the aggregate, since one is unthinkable without the other. They should determine the behavior of lawyers in all situations where the law does not directly answer the question of what to do in a given situation. The principles of attorney ethics should be firmly rooted in the outlook of a lawyer, to become an organic part of his sense of justice.

#### List of used literature:

1. A.F. Koni, Moral principles in criminal proceedings, Moscow: «Госюриздат», 1956.- 425 p. (in russian)
2. E.A. Krasnikova, Ethics and Psychology of Professional Activity, Moscow: 2007.-224 p.(in russian)
3. The Code of Professional Ethics of Lawyers of September 26, 2014. [http://online.zakon.kz/Document/?doc\\_id=31643846#pos=0;](http://online.zakon.kz/Document/?doc_id=31643846#pos=0)
4. N.N. Polyansky, Truth and Lies in Criminal Defense, Moscow: «Правовая защита», 1977.-112 p.(in russian)
5. Constitution of the Republic of Kazakhstan dated August 30, 1995 (with amendments and additions as of 02.02.2011) [http://adilet.zan.kz/rus/docs/K950001000\\_](http://adilet.zan.kz/rus/docs/K950001000_)

## ИНСТИТУТ ПРАВА ОБЩЕЙ СОБСТВЕННОСТИ ВО ФРАНЦИИ

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