

ADVOCATES AND LEGAL ADVISERS IN CIVIL PROCEEDINGS IN KAZAKHSTAN: IS ADVOCATE MONOPOLY REQUIRED?

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Abstract

This paper intends to assess the feasibility of introducing a lawyer's monopoly in Kazakhstan. The main purpose of the study is to analyze the current legal provisions of the Republic of Kazakhstan regarding judicial representatives authorized to provide legal assistance on behalf of civil proceedings. The work examines foreign experience from the point of view of the applicability of best practices. The study notes the shortcomings of the recently adopted legislative acts of the Republic of Kazakhstan in the field of regulation of advocateship. Attention is focused on the fact that it is the legal profession that should serve as the key to the effective implementation of the constitutional right of citizens to receive qualified legal assistance. An advocates' monopoly on judicial representation will contribute to the establishment of a single ecosystem that consolidates special professional groups and independent lawyer associations capable of providing qualified legal assistance.

Keywords

Advocate Monopoly, Advocateship, Institution of Legal Representation, Legal Representative, Qualified Legal Assistance

I. Introduction

The institution of court representation is one of the fundamental components of procedural law, serving as both a mechanism for obtaining qualified legal assistance and a tool for enforcing the right to judicial protection guaranteed by the constitutions of almost all states in the world (Riabov, 2021). In relation to individual subjects (minors, incompetent and disabled citizens), the use of judicial representation is a necessary way to ensure the protection of their rights, freedoms and legitimate interests in court (Zaikov, 2020). Besides, other citizens can take advantage of this institution for completely different reasons, including due to lack of time, necessary legal knowledge, and reluctance to meet with the opposite party (Rhode, 2015).

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The issue of granting professional lawyers an exclusive right to court representation in general or in specific case types, the so-called ‘advocate monopoly’ (AM), has long been a separate jurisprudence and legal protection discourse (Riabov, 2021). The primary distinction between general advocate representation (whether as a member of the legal profession or not) and legal representation (as qualified legal representation) is the confirmed practical experience, professional qualification, and responsibility details. Regarding assistance quality, it is important to remember that representatives acting by proxy are not generally bound by formal rules or professional and ethical standards. Meanwhile, the advocate is legally, morally, and professionally responsible to the client, and their reputation guarantees the quality of their services (Levin, 2013; Riabov, 2021). However, despite the alleged advantages, which typically include a guarantee of high service quality, there is still some debate surrounding the topic. During her many years as a professor at Stanford University, a well-known US lawyer, D. Rhode, pointed out that American law has a kind of paradox. The latter is demonstrated by the fact that there is an oversupply of lawyers in the states but that low- and middle-income individuals have difficulty accessing legal services. She stated that the solution is to allow non-professionals to provide routine services such as uncontested divorce and simple bankruptcy. The solicitor insisted that AM must be split to provide legal services. She also pushed for more money to be allocated for legal assistance programmes and for lawyers to work more pro bono or volunteer hours (Hagerty, 2021; Rhode, 2015).

As for many countries, this issue is also relevant for the jurisprudence of Kazakhstan (hereinafter referred to as the Republic of Kazakhstan, RK). Despite the importance and significance of improving the legal framework governing judicial representation, it went for a long time without receiving the attention it deserved from legislators. However, when changes were made to this area, they proved fundamental and were heavily criticised by domestic and international legal scholars.

When the Law of the Republic of Kazakhstan No. 195-I ‘On Advocate Activity’, which had been in force for twenty-one years and regulated the activities of advocates while emphasising their status, was repealed in 2018, a new Law of the Republic of Kazakhstan No. 176-VI ‘On Advocate Activity and Legal Assistance’, took its place. Advocates were somewhat taken aback by the amended law because they had anticipated that the forthcoming changes would increase the scope of their rights and were unprepared for the legislator’s decision to go a different route. Eventually, advocateship did not increase their rights and, by extension, did not serve the purpose of providing skilled legal assistance, which was the original intention and a function that is frequently used abroad in the delivery of legal services and court representation. Simultaneously, the legislator has designated legal advisers (or legal consultants) as distinct subjects of the legal services market. In doing so, the legislator created the category of professional representation, which could significantly lower the quality of certain legal services while presumably increasing their accessibility. Other changes made to the Republic of Kazakhstan’s civil law included the elimination of the Republican Collegium of Advocates’ membership fee, the self-regulation of legal advisers, and the requirement that those providing legal services carry professional liability insurance.

There is also still debate going on regarding additional upcoming changes, which are primarily intended to tighten up the activities of advocates and the application process for joining the bars. At the same time, legal advisers are excluded, which has piqued the interest of civil procedure law scholars. According to the legislator's intent, the proposed changes aim to ensure everyone's right to professional legal assistance by broadening the circle of people authorised to provide legal representation. It should be noted that the law's adoption should help to improve the process for obtaining qualified (competent) legal assistance following the predictions of its socio-economic, political, legal, and other effects (Republic of Kazakhstan, 2017). The government's initiatives, however, give rise to logical scepticism because most newly introduced subjects offer legal services. Additionally, the significance and function of advocateship as an institution of civil society are rendered irrelevant.

According to international law, advocates only have the right to legal representation under AM. According to the applicable jurisdiction, statutory AM implies that only an advocate is qualified to defend the rights and represent the interests of both natural and legal persons in civil, administrative, criminal, and commercial proceedings (including all or certain categories) (Jadalhaq et al., 2023; Riabov, 2021; Sen, 2019).

Regarding the primary objective of AM, it is not intended to provide a competitive advantage to anyone. In contrast, as a particular type of advocateship organisation, it is meant to improve the quality of legal services by making the solicitor personally invested in the case's success. An unqualified advocate may face disciplinary action or other liability in this situation, which could damage their professional standing. At the same time, introducing AM suggests that lawyers who do not have the status of an advocate, real-world experience, or the appropriate skills and knowledge but still offer legal services will be taken out of the shadow turnover (Riabov, 2021).

Recent research on AM and the expansion of legal representation rights focuses on issues such as AM features in the United States (Dunlap, 2013), AM and legal representation in Canada (Trabucco, 2018), AM deregulation (Steinberg et al., 2020), AM and the access to justice crisis (Sen, 2019), comparative legal aspects of AM in selected European countries (Levin, 2013), and issues of qualified legal assistance in former Soviet countries (Gurbanova et al., 2020).

The need to establish a professional institution for the protection of the rights and liberties of the state's citizens and economic entities, as well as the ongoing debates over the appropriateness of the use of AM within the context of the world's legal discourse, make the research topic relevant to Kazakhstan's government lawmaking initiatives. This study aims to evaluate the viability of AM introduction in Kazakhstan. The study's primary goal is to examine current Kazakhstani laws regarding court representatives permitted to offer legal services by proxy in civil proceedings. The paper then focuses on the growing significance of the advocate's role in court representation as a guarantee of competent legal assistance.

II. Literature Review

Contemporary international studies related to the topic of advocates monopoly are devoted to such issues as comparative legal aspects of the implementation of AM (Lavitskaya, 2020), political and legal initiatives to institutionalize the advocates monopoly in particular European countries (Riabov, 2021), consideration of issues of introducing AM in some CIS countries with critical perspective (Kaluzhskikh, 2017; Vereshchagin, 2017), the role of judges in deregulation of the lawyer's monopoly (Steinberg et al., 2020). Kazakh studies devoted to the current research object are characterized by a smaller subject coverage and range of research questions due to the novelty of these issues for Kazakh law. Existing works are devoted to the issues such as advocates monopoly and improving legislative regulations of the advocate institute in the Republic of Kazakhstan (Au and Kinsfather, 2019), particular issues of legislative regulation of the institute of judicial representation in the Republic of Kazakhstan (Zhamburbaeva, 2022), problems and prospects of the Institute of legal representation in the state (Sultanov, 2021). In general, it can be noted that the issue of AM implementation is of greater interest for developing countries, where the process of establishing individual elements of democratic institutions is in progress. At the same time, a review of works on this topic suggests that the number of studies on this topic is very small, despite the fact that the topic continues to remain relevant. If in Western countries the existing system of functioning of the institution of advocateship is relatively unchanged (Abel, 1985), then many countries often continue to be in the process of choosing the best model. In particular, this applies to the countries of the Central Asian region. As a rule, most comparative legal studies include an examination of only those countries that belong to the same legal family as the researcher. However, examining the chosen sources reveals that only a few countries of the Romano-Germanic legal family, such as the Republic of Kazakhstan, employ similar subjects as legal advisers. Therefore, it was decided to include more than one legal family to complete the picture.

III. Methodological Framework

The regulatory and legal framework of this study is formed by the acts of the Republic of Kazakhstan and other countries that regulate the activities of judicial representatives, including the Constitution of the Republic of Kazakhstan, the Law of the Republic of Kazakhstan 'On Advocate Activities and Legal Assistance', the Civil Procedure Code of the Republic of Kazakhstan, the Civil Procedure Code of Georgia, the Law of Romania 'On Legal Advisers', the Law 'On Advocateship and Advocate Activities in the Republic of Belarus', the French Law of 31 December 1971 Reforming Certain Judicial and Legal Professions, the Code of Civil Procedure of the Netherlands, the United Kingdom Courts and Legal Services Act 1990 and the Legal Services Act 2007, and Solicitors Act of Ireland.

The study's methodological foundation combines comparative legal analysis and content analysis. The comparative legal method within the framework of this work is aimed at studying the regulatory and legal framework of the considered states in a comparative perspective. The content analysis method involves studying the theoretical interpretation

of legal regulation for the research object. The object of the study is legislative regulation in the field of advocateship and legal assistance, the status of a lawyer in the Republic of Kazakhstan and a number of foreign countries. The work examines the feasibility of introducing in the Republic of Kazakhstan the exclusive right to judicial representation – the so-called advocates monopoly, for the abovementioned category of the legal representatives. The study of this issue is carried out in the context of an analysis of foreign approaches and practices.

Latter ones are represented by the countries of the Romano-Germanic legal family (France, Germany, and a number of post-Soviet countries, particularly in the Central Asian region) and the Anglo-Saxon legal family (USA, Canada, Australia). The main body of the paper is organised into two sections: Results and Discussion. The Results section contains two subsections: one introducing the ‘advocate monopoly’ in Kazakhstan against the backdrop of foreign practices, and the other reviewing Kazakhstan’s new advocateship and court representation legislative regulation. In light of these objectives, the research scope is limited to reviewing and analysing the legal regulation of advocateship and legal representation in Kazakhstan and other countries of the continental and common law legal families.

IV. Results

Advocates monopoly implementation: Initiatives of Kazakhstan in the framework of international experience

From a layperson’s perspective, legal assistance and advocate activities have historically been equated, although these concepts are distinct from one another from a legal expert’s viewpoint. The formal standard of professional qualification, however, also plays a significant role in this distinction (Abel, 1985; Davis, 2007). Advocateship is currently one of the most important social institutions still developing and improving, as it is one of the main elements and attributes of the justice system, judicial protection, and representation. An advocate is defined as ‘a person qualified and authorised under national law to appear in court and act on behalf of their clients, to practise law as an advocate, to appear in court, or to advise and represent their clients in legal matters’, according to the Council of Europe Committee of Ministers Recommendation on the Freedom of the Exercise of the Profession of Lawyer (Committee of Ministers of the Council of Europe, 2000). It is common knowledge that, depending on the jurisdiction, an advocate is not the only member of the legal profession with the right to represent clients. Court representation can also be provided by people with a specialised legal education but are not qualified to act as advocates (referred to as ‘legal counsels’ or ‘legal advisers’) or by people who do not have such education. Typically, a formal professional qualification that imposes additional legal and moral responsibility is what distinguishes legal services (court representation) from advocate activity (Gurbanova et al., 2020). However, regardless of one’s level of education, moral character, or professional experience, anyone may represent oneself in court on general grounds. On the one hand, this situation may sometimes make court representation services more accessible, but on the other hand, it could have a detrimental effect on the standard of services offered.

One of the most controversial things about being an advocate is the so-called ‘advocate monopoly’, which is when advocates are the only ones who can represent people in court (some categories of cases may be excluded). The benefits and drawbacks of the introduction of AM have long been the topic of contentious debates in the legal professions of different nations. Generally speaking, they come down to a quest for the right mix of service availability and quality (Kirby, 2022; Sen, 2019).

The judicial community is interested in how professional representation works because, from the justice system’s perspective, it inevitably improves the standard of justice as representation in court becomes more professional. When determining the legal position, it is crucial for the judge to engage in a conversation with an entity that is familiar with legal terminology and able to respond competently to the situation, and who will draught and provide a comprehensive list of documents and legal arguments with citations to the applicable legislation. Professional litigators are the only ones who can guarantee an authentically adversarial process (Momotov, 2017).

Despite the academic debate, the world’s most developed nations employ a ‘monopolistic’ approach to the legal system. This significantly contributes to separating the advocate profession into a distinct legal profession with its own unified set of rules and standards. With this perspective, the standard of legal services should rise.

In recent years, the issue of improving the quality of legal services has become relevant in Kazakhstan due to government initiatives to reform the legal services sector by adapting foreign experience and best practices. However, since adopting the Law of the Republic of Kazakhstan ‘On Advocate Activity and Legal Assistance’, the legislator has refrained from creating an ‘advocate monopoly’ in the legal services industry, modernising it instead by instituting a ‘professional monopoly’ in the legal representation process. When the Council of Europe asked Mr. Rytis Jokubauskas to formulate an expert opinion on the aforementioned draft law, experts from other states criticised such an innovation (Republic of Kazakhstan, 2017).

Many countries, to varying degrees, follow this model: AM is the exclusive practice of professional legal assistance by those who hold the status of an advocate. A more general definition of AM is an organisation of professionals delivering competent legal assistance under a standard (Gurbanova et al., 2020).

The reform of the advocateship, as a sphere of professional activity, in the Republic of Kazakhstan mainly covers two areas: one part of the specialists insists on a lawyer’s monopoly in the provision of legal services, the other – contrary – offers to keep the right to represent the interests of citizens in courts for lawyers and persons with a legal education. Experts consider the restructuring of the legal market as a logical step towards the high-quality institutionalization of the legal profession, since advocates have special access to the profession: due to passing qualifying exams and internships, and exclusively advocates bear disciplinary responsibility for poor-quality legal assistance. Supporters of the AM idea believe this is the ideal way to establish uniform legal assistance standards and enhance the performance of courts and law enforcement agencies. Appropriate professional experience, specialised knowledge, and adherence to professional standards are the cornerstones of

an advocate's work, ensuring the overall stability of the legal market (Au and Kinsfather, 2019; Lavitskaya, 2020).

Introducing the exclusive right of advocates to represent their clients in court is a crucial step for a democratic state that seeks to protect the rights and interests of its citizens effectively and competently. Decades have passed since the implementation of advocates' exclusive rights in several European countries (Gurbanova et al., 2020). The rapidly evolving international legal interaction calls for developing new approaches to match the level and tendencies of a modernising society. Because of this, the experience of other countries can serve as a useful illustrative example. Therefore, determining the true function of AM in the world is a necessary objective.

Most comparative legal studies include an examination of only those countries that belong to the same legal family as the researcher. However, examining the chosen sources reveals that only a few countries of the Romano-Germanic legal family, such as the Republic of Kazakhstan, employ similar subjects as legal advisers. Therefore, it was decided to include more than one legal family to complete the picture.

In various countries, in addition to advocates, a term that is translated according to each language (advocate, abogado, advogado, asianajaja, bengoshi, mohamy, dikigoros recht-sanwalt, lögmaður) and having similar functions, there are other names of representatives with different functions: solicitor (a person providing legal advice and preparing legal documents) and barrister (a person who represents their clients in court) (Australia, most of Canada (except Nova Scotia, Quebec), Hong Kong (China), Ireland, Malaysia, New Zealand, Nigeria, Portugal, Singapore, the United Kingdom). It is worth noting that while the terms 'advocate' and 'lawyer' are somewhat interchangeable, the admission process to the ad hoc advocate's associations and the uniqueness of signs make it more appropriate to classify them as 'advocate' in the Republic of Kazakhstan.

AM strictly follows criminal proceedings. In civil proceedings, however, professional representation is the most prevalent requirement for excluding non-professionals and shortening proceedings.

Advocates are the only class of people who meet the statutory requirements entitling them to both practising law (including counselling) and being present in court according to the laws of Algeria, Argentina, Armenia, Austria, Brazil, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, Greece, India, Israel, Jordan, Latvia, Lebanon, Lithuania, Mexico, Morocco, Nigeria, Portugal, Qatar, Syria, and Turkey (Council of Europe, 2018; International Bar Association, 2014).

Only advocates who act as defence lawyers in criminal cases in Kazakhstan's neighbouring Kyrgyz Republic require an advocate's licence; lawyers wishing to practise civil law are not required to obtain an advocate's licence (International Bar Association, 2014). Azerbaijan, a neighbouring country to Kazakhstan in Central Asia, restricts the use of AM to cases only involving the Supreme Court (International Bar Association, 2014).

The areas of work assigned to advocates in Uzbekistan law are ambiguous. However, only licensed advocates are permitted to provide legal assistance to anyone, including representation in court (Republic of Uzbekistan, 2018). In civil cases in Georgia, only licensed advocates have the right to appear before the Court of Appeal or the Supreme

Court. Except for state authorities, self-government bodies, employees of organisations, and those handling cases on behalf of these bodies and organisations, it is forbidden for someone to exercise representative powers in courts of appeal and cassation if they have not passed the bar exam for the position of advocate and have not joined the Georgian Advocates Association (Article 440 of the Georgian Civil Procedure Code) (Parliament of Georgia, 1997).

The law of Belarus mentions legal advisers as well. In this regard, it should be noted that legal advisers and advocates are both required to be citizens of the country to begin practising law, whereas there is no such requirement for legal advisers licensed in Kazakhstan, in contrast to advocates. Advocates have the right to provide legal assistance, including legal representation, to individuals or legal entities on any issue within their professional competence (Republic of Belarus, 2011). The legal adviser is only allowed to offer for-hire legal services in commercial and corporate law, as well as issues involving the commercial activities of natural persons. These services may include advice, document preparation, profile expertise, and legal position preparation. Until 2012, legal advisers could represent their clients in commercial courts. However, the new law ‘On Advocateship and Advocate Activity in the Republic of Belarus’ restricts advocates and civil servants from appearing in any Belarusian court.

Some EU countries’ legislation, particularly in Spain, Italy, and Denmark, provides for the exclusive right of advocates to represent parties in most categories of cases. Only advocates are permitted to attend court proceedings and provide legal advice under Panamanian, Paraguayan, and Taiwanese laws (International Bar Association, 2014).

Legal advisers practise alongside advocates in Romania and Kazakhstan. While advocates defend the rights of legal and natural persons, legal advisers only protect the state and other public authorities or institutions. Article 4 of the Law ‘On Legal Advisers’ defines the activities envisaged for these individuals: advice and representation before a state body, institution, or employing organisation, whereas Article 3 of the Law ‘On Advocates’ describes the activities envisaged for advocates, which are slightly broader than those envisaged for legal advisers. Thus, advocates are authorised to provide legal advice and draught legal documents, assist and represent clients in court, and protect and represent natural and legal persons in their dealings with public authorities, institutions, and any Romanian or foreign organisation (International Bar Association, 2014).

Article 79 of the Dutch Code of Civil Procedure says that an advocate must represent everyone involved in a civil case in court. The district court, an exception, rules on relatively simple and inexpensive cases (up to 5,000 euros). Citizens can represent themselves without the assistance of an advocate in this jurisdiction (International Bar Association, 2014). In Norway, the law states that anyone can provide legal assistance to the extent necessary to provide quality and comprehensive assistance; however, to participate in court proceedings, an advocate’s licence is required (International Bar Association, 2014).

Unless expressly stated otherwise, Japanese advocates (*bengoshi*) are granted the exclusive right to provide legal services and the unrestricted right to appear before all courts (Federal Chamber of Advocates of the Russian Federation, 2018). In addition to *bengoshi*, there are a number of other types of practitioners: court scribes (*shihoshoshi*) deal with registration

and cash deposit at the Law Office and prepare documents for filing with courts and prosecutors; tax advocates (zeirishi) prepare tax returns, represent clients before the tax authority and provide advice on tax matters; patent advocates (benrishi) represent clients in all matters relating to patents, utility model rights, design rights and trademarks before the Japan Patent Office and the Ministry of Economy, Trade and Industry; and administrative scribes (gyoseishoshi) handle documents to be filed with administrative agencies (International Bar Association, 2014).

The distinction between ‘avocat’, ‘avoué’ (advocates of appeal courts), and ‘conseil juridique’ has been abolished under French law (legal advisers). According to French Law No. 71-1130 of 31 December 1971, reforming certain judicial and legal professions, only advocates have the authority to provide legal assistance, represent parties, draught procedural documents, and participate in cases during the cassation stage (Government of France, 1971). However, in general, AM is not absolute in France. Advocate involvement is not necessary for many specialised situations. In particular, advocates are not required in commercial courts that handle business disputes (International Bar Association, 2014). Simultaneously, in any case category, appellate proceedings in France require the participation of a professional representative, with the proviso that this is mandatory unless otherwise expressly provided for by the law (Government of France, 2023).

In Germany, AM is also rather conventional. However, hiring an advocate is required in certain cases, typically family and civil cases, where the amount of the claim exceeds the statutory limit. Additionally, both land disputes and cassation proceedings require the participation of a qualified advocate. However, the participation of an advocate is not required in special proceedings involving labour and tax disputes (International Bar Association, 2014). Like the Kazakh lawyer, the Rechtsanwältin has the sole authority to represent clients before German courts and give all-encompassing general legal advice. These rights are shared with a variety of other professional lawyers in areas such as taxation, pension advice, insurance, claims collection, patent issues, and other areas of legal assistance.

The requirements for a licence to practise law as an avocat or défenseur judiciaire (court advocate) in the Democratic Republic of the Congo differ significantly, as does the scope of practice to which they are entitled. The défenseur judiciaire has a limited practice and can only appear in local courts; they are not permitted to appear in appeal courts. Only the avocat is authorised to assist and represent clients, initiate proceedings on their behalf, submit opinions, and appear in court.

In Pakistan, an interestingly consistent system of access to the courts operates, with four classes of these representatives: an advocate (Advocate) who is entitled to practice in the district or lower courts of the relevant province; an appellate court advocate (Advocate High Court) who, after two years, can apply for certification to a second instance; a Supreme Court advocate (Advocate Supreme Court) who only gains access to that instance after a successful ten-year practice in the previous instance; and a senior advocate of the Supreme Court (Senior Advocate Supreme Court), which is equivalent to the title of Queen’s Counsel in the United Kingdom, available after fifteen years of practice,

obtained by invitation or application, but not received by every specialist (International Bar Association, 2014).

Advocates in Iceland need to spend at least five years practising in the lower courts before they can represent clients in the National Court, and another three years before they can appear before the Supreme Court (Court of Iceland, 1998).

According to Thai law, three categories of citizens are permitted to provide legal representation: ‘Tee Pruk Sa Khot Mai’ (legal advisers), who may have legal training but do not have a formal licence, and ‘Ni Ti Korn’, citizens who have legal training but are not registered and work independently, typically in academia or government. Only licensed advocates may appear in court, file a complaint or answer a complaint, file an appeal or answer to an appeal for both the Court of Appeal and the Supreme Court, file a motion, petition, or make statements in court on behalf of another person.

Solicitors are the same as legal advisers in Anglo-Saxon countries, and advocates are known as barristers. The Solicitors Act 1954, for example, governs this type of representative in Ireland. Solicitors are authorised to collect, draught, or prepare documents pertaining to personal, movable, or immovable property located outside the state, as well as to prepare for any actual or anticipated legal proceedings involving such property. A solicitor is also responsible for applying for or filing an application for the registration of rights, receiving instructions, and drafting or preparing documents to support or oppose the issuance of wills or letters of administration. Barristers, on the other hand, reserve the right to appear in Irish courts (International Bar Association, 2014).

The US and UK’s experiences, which have historically set the bar for Western jurisprudence, deserve special consideration. The legal community in the United Kingdom comprises the same actors described above, with powers identical to those granted to them in Ireland. Due to the unique characteristics of the British advocateship system, the traditional definition of an advocate under continental law is divided into a number of subcategories, most notably solicitors and barristers. Before the Courts and Legal Services Act of 1990 and the Legal Services Act of 2007, solicitors were the main point of contact between their clients and the legal system. They hired barristers when they needed to do direct court work or represent their clients in court. During this time, a solicitor acted as a mediator between the client and the barristers. The distinction between the two categories of professional representatives significantly shrunk after the passage of the aforementioned Acts (Suleimenov, 2021). Barristers subsequently gained the authority to communicate with clients directly. Only barristers are allowed to represent clients in the higher courts under British law, while solicitors are allowed to do so in the lower courts. However, solicitors are typically responsible for drafting procedural documents.

The general rule in the United States is that only advocates may serve as court representatives. There are, however, some exceptions. In some states, parties are permitted to use advocates by proxy who are not licensed as advocates in the first instance. These professionals are permitted to provide representation in cases that fall under the jurisdiction (competence) of magistrates’ courts, in cases that fall under the jurisdiction (competence) of magistrates’ courts, and in cases that fall under the category of minor offences in general jurisdiction courts. Such representation has unique characteristics, such as that it typically

only handles minor civil cases and excludes the possibility of an appeal. Non-advocates are generally not allowed to represent corporations, partnerships, or other significant legal entities under US law. There are, however, some exceptions, and in some states, the rule does not apply to trial courts. When the claim's value is minimal, the court may occasionally permit non-advocate representation (International Bar Association, 2014). In some states, a legal adviser is solely responsible for preparing procedural documents. These experts help people involved in legal disputes on their own without an advocate in jurisdictions that permit self-representation in court. These are permitted to provide general legal information regarding a client's interests, including legal (guaranteed) rights, procedures, or resolution options, but are not permitted to provide specific advice or recommendations regarding legal remedies, positions, or strategies (Solovyov, 2016). For Republic of Kazakhstan trainee advocates, the two countries listed below have an appealing regulatory framework. The person may only appear in the lower courts for a year after enrolling as a trainee advocate in the Republic of Tunisia. The powers to appear before the Court of Appeal are extended at the end of the traineeship and after admission to the list of advocates. An advocate with at least ten years' experience, at least eight of which have been spent as an advocate entitled to appear in the Court of Appeal, may apply to become an advocate entitled to appear in the Supreme Court. Only advocates are permitted to appear in all courts, with some exceptions for government officials and litigants' relatives (International Bar Association, 2014).

In Moldova, trainee advocates may also practise law, excluding criminal cases, administrative offences, and any cases before the Supreme Court. Licensed advocates and trainee advocates must provide competent legal assistance, but licensed accounting firms and unlicensed legal advisers are also available in Moldova. There is AM in criminal cases, as in most countries (Article 67 of the Code of Criminal Procedure) (Republic of Moldova, 2013). Article 75 of the Code of Civil Procedure states that parties in civil cases must be represented by advocates or trainee advocates, and employees (advocates or non-lawyers) may also represent a legal entity in court proceedings (Republic of Moldova, 2018). As was discussed earlier, Moldovan law mandates AM as the entity responsible for providing legal representation to citizens before any court. In Brazil, trainee advocates may have a similar opportunity if a licensed advocate sponsors them.

Features of advocates monopoly implementation in Kazakhstan

According to Article 13 of the Constitution of the Republic of Kazakhstan, everyone has the right to receive competent legal assistance (Republic of Kazakhstan, 1995). Following the provisions of the dedicated legislative act regulating the advocate activity, legal assistance may be provided as sharing legal information, legal advice, protection and representation of interests of natural and legal persons in courts, criminal prosecution bodies, other state bodies and non-governmental organisations in cases stipulated by the laws of the Republic of Kazakhstan, including other legal actions to protect legal interests of a client (Republic of Kazakhstan, 2018).

According to the Law of the Republic of Kazakhstan 'On Minimum Social Standards and Guarantees' (Republic of Kazakhstan, 2018), the provision of legal information, legal

advice, protection, and representation of natural persons by advocates are minimum social standards in the delivery of state-guaranteed legal assistance. Free legal assistance with a state guarantee is offered, but because budget funds are used to pay for them, the relevant state authorities must closely regulate the standard of care. Previously, this type of assistance was governed by dedicated Law No. 122-V of 3 July 2013, but it is now governed by the Law ‘On Advocate Activity and Legal Assistance’. However, neither the above regulations nor Order of the Acting Minister of Justice of the Republic of Kazakhstan No. 427 of 30 July 2015 ‘On Approval of Minimum Social Standards in the Field of State-Guaranteed Legal Assistance’ provide detailed explanations of what qualifies as competent legal assistance or the skills required of those who provide it.

Although there is no explicit definition of ‘competent legal assistance’ in Republic of Kazakhstan law, a qualitative characteristic is nonetheless seen as the key criterion. This attribute may imply that the entity providing such assistance has appropriate qualifications, as demonstrated by passing the unified qualification examination to obtain the required status. As only advocates are required to undergo a stringently regulated procedure to obtain status, they are the only individuals on this list who are qualified to provide legal assistance. Even though the law contains a relevant provision, legal advisers must still pass exams that are tailored to the requirements of the chamber they wish to join because their higher legal education and experience are insufficient to define them as qualified individuals. Hence, it is safe to say that neither those who meet the requirements for individuals eligible to receive guaranteed state assistance nor those who pay for legal services themselves have a clear understanding of what is meant by “qualified legal assistance” (or “competent legal assistance” – given translation from the Kazakh hereinafter the terms are used interchangeably) from the legislator’s definition. It is critical to introduce this term correctly, including specifying an exhaustive list of criteria for the qualification of such assistance. This will make it clearer to consumers what to anticipate from those who can offer them assistance.

According to popular belief, competent legal assistance affects the qualitative component, namely the presence of a qualification in a specific branch on the part of the entity providing it, which can be expressed, for example, by passing a qualification exam to obtain the legal status (Belik, 2009). However, it is also important to distinguish between the level of assistance provided by legal advisers and advocates who have passed the qualifying examinations overseen by the Ministry of Justice of the Republic of Kazakhstan.

Among the most objective criteria for assessing legal assistance, one should highlight the professional criterion, according to which legal assistance can be provided only by a competent person who has the necessary knowledge and skills, as well as conscientiousness in the performance of services. At the same time, such a criterion provides for the assessment of both the process of providing legal assistance and the result of the work of a representative of the legal profession. The representative’s qualifications should be determined within the context of the cases to be considered by the judiciary or the tasks to be performed by the representative. Obviously, depending on the circumstances and expediency, preference may be given to specialists in different fields and with different skill levels. Taking into account the universality of the legal profession, it should also be

understood that the specifics of legal assistance may differ depending on the specifics of the sphere of legal relations (Gurbanova et al., 2020: p. 258). While formalising these requirements is extremely challenging, one might question why they are even needed. It is fair to say that it is the client's responsibility to determine the appropriate competence of their representative in light of the specific circumstances based on the market supply for the provision of specialist services in a competitive environment. Therefore, using the result of such assistance as a gauge of its quality is somewhat conditional. The anticipated (planned) result of the service cannot be regarded as the ultimate indicator of competent legal representation, as the outcome of the case depends on numerous variables, including the actions of the opposing party and the uncertainty associated with judicial discretion. Therefore, it is impossible to conclude that the representative's knowledge and experience are the sole determinants of the client's satisfaction with the outcome (Kratenko, 2013). At the same time, a lawyer's professionalism is shown by the fact that he or she takes all the actions that are objectively necessary to protect the client's rights and legitimate interests in a particular case under specific circumstances.

The capability of approaching a legal expert of one's choosing for representation in court is among the fundamental tools available to citizens to exercise their right to expert legal assistance. However, as activities in this area guarantee the implementation of citizens' constitutional rights, the institution of legal representation is currently moving away from providing competent legal assistance and, in particular, calls for a revision of the procedural regulation. Both civil law and civil procedure recognise the institution of representation. Representation in civil law refers to the commissioning of a transaction by one person (the representative) acting within their authority on behalf of another person (the represented) who has entrusted them with that responsibility. However, in civil procedural law, representation refers to an action taken by one person to further the interests of another under the authority granted to them by the court on behalf of the represented (Republic of Kazakhstan, 2021). It would appear, however, that the scope of the institution of judicial representation is somewhat broader, as the representative not only aids the court in the administration of justice in civil cases but also performs the primary function of providing legal assistance for the resolution of a case in favour of the principal, preventing violation of the rights of the represented in court proceedings.

Article 57 of the Code of Civil Procedure of the Republic of Kazakhstan stipulates that citizens have the right to conduct their cases in court in person or through representatives (Republic of Kazakhstan, 2015); however, a citizen's personal participation in a case does not deprive them of the right to have a representative while the case is being considered. Self-representation, also known as the right to represent oneself in court, is a widespread phenomenon found in numerous jurisdictions (Vereshchagin, 2017). Because of how this institution works, judges' professional representation is relative instead of absolute. The following article of the Code specifies who is authorised to act as a court representative. Advocates and members of the Chamber of Legal Advisers are of particular interest under the Law of the Republic of Kazakhstan 'On Advocate Activity and Legal Assistance' (Republic of Kazakhstan, 2015). A member of the advocates' associations, possessing a higher level of legal education, a licence to practise law, and offering professional legal

assistance as part of their advocate activity are all requirements for an advocate in Kazakhstan, per the country's legal code. A legal adviser is defined by the Law 'On Advocate Activity and Legal Assistance' as a person with a higher legal education, at least two years of proven experience in the field of law, who is duly certified and who provides legal assistance. A legal adviser must also be a member of the country's Chamber of Legal Advisers (Republic of Kazakhstan, 2018).

In this instance, it cannot be ignored that advocates can only act if they are citizens of the Republic of Kazakhstan, whereas a legal adviser need only be a natural person. Hence, foreign citizens who are unaware of the applicable laws of another state may also provide legal counsel, which could make it difficult for those who have sought their counsel to exercise their constitutional right to competent representation. Because every state has its unique civil procedure, the principal might not be aware that the person before them is a citizen of another, the adversarial principle might be broken (if the other principal's representative is an advocate), and the case might unintentionally be postponed. Lack of legal knowledge does not absolve one from responsibility, particularly towards others.

When reviewing the Law 'On Advocate Activity and Legal Assistance', attention is drawn to Articles 76, paragraph 4, subparagraph 4, and 82, which state that membership in one of the Chambers of Legal Advisers is required to provide legal assistance by representing people in court (Republic of Kazakhstan, 2018). The reality is that membership in the Chambers of Legal Advisers is not required to engage in other activities that do not involve providing legal counsel in court. Hence, these individuals are not subject to the control of the Republican Legal Advisers' Association, which in turn is independent of the Ministry of Justice.

Article 20, paragraph 3 refers to natural persons capable of providing legal assistance who are not members of non-profit organisations providing such assistance based on mandatory membership in Chambers of Legal Advisers (Republic of Kazakhstan, 2018). In this situation, in addition to a lack of comprehension regarding the necessity of such individuals, the question naturally arises whether the duties and rights of legal advisers apply to them.

In addition, attention can be drawn to the contradictions of Article 76, which requires legal advisers to adhere to the rules and standards of the Chamber of Legal Advisers, as well as the Code of Professional Ethics established by the Chamber of Legal Advisers to which they belong as members (Republic of Kazakhstan, 2018). It is not specified what should be done with individuals who do not intend to engage in legal representation and who are not Chamber of Legal Advisers members.

A legal adviser does not have the authority to represent and defend clients in criminal proceedings, which is the main distinction between the legal status of an advocate and that of a legal adviser. In some ways, the basic provisions governing the activities of legal advisers are similar to those governing the activities of advocates, but the differences are significant and must be considered. It is interesting to note that even though legal advisers entered the legal services market in 2018, they were not added to the list of individuals providing state-guaranteed legal assistance until 2022. At the moment, subparagraph 2-1, which includes legal advisers, functions as a kind of supplement to paragraph 2, which

includes advocates. People on this list are connected to state advocates, the government's go-to source for assistance, so it is understandably suspicious that defence advisers have not been a part of this trust for a very long time.

Article 12 of the Law of the Republic of Kazakhstan 'On Advocate Activity and Legal Assistance' stipulates that 'in order to ensure the quality of legal assistance, only those with relevant professional training and continuously improving qualifications may provide it'. The legislator requires advocates to continuously improve their qualifications in Article 33, paragraph 13, subparagraph 7 of the aforementioned normative source (Republic of Kazakhstan, 2018). When referring to 'advanced training' the legislator refers to the following documents: The Procedure for Advocates' Professional Development and the Standards for Advocates' Professional Development approved by the Republican Conference of Advocates' Associations. Despite having a similar obligation, legal advisers are referred to the Standards for Advocates' Professional Development in Article 76, paragraph 13 of the said law because no specific standards have been created for them.

It is important to consider the fundamental differences in the powers of the individuals under consideration. An advocate has the advantage of becoming acquainted with information that is a state secret, as well as military, commercial, official, and other secrets protected by law, if this is required for protection or representation during the enquiry, preliminary investigation, or in court. Previously, there were differences in how state bodies, local governments, and legal entities responded to requests. While authorised bodies were required to respond to requests in writing within ten (10) working days, legal advisers could only be guided by the general provisions of the Law 'On the Procedure to Consider Appeals of Individuals and Legal Entities', which specified fifteen (15) working days (Republic of Kazakhstan, 2007).

Article 668 of the Code of Administrative Offences (CAO) of the Republic of Kazakhstan, titled 'Interference with Lawful Advocate Activities', establishes the liability for failing to provide the requested information upon request from an advocate. According to the article, a prosecuted official is required to pay a fine of fifteen (15) monthly calculation indices (MCI), whereas legal entities are required to pay a fine of twenty (20) MCI (Republic of Kazakhstan, 2014). The mention of not interfering with or impeding lawful activities under Article 76-1 of the special Law, for which liability is provided by the laws of the Republic of Kazakhstan, has now also honed the dignity of legal advisers without mentioning which acts are to be governed in this case. A similar provision exists for advocates, but it is found in Article 35 and refers to CAO.

When examining the responsibilities, it should be noted that advocates are subject to significantly more requirements than legal advisers, including the need to report on the accomplishment of the written legal assistance contract at the client's request and to carry out other tasks mandated by the law and the terms of the signed contract. According to the sequence of duties, advocates must obtain professional indemnity insurance under Article 33, paragraph 4, subparagraph 4. In contrast, the corresponding provision for legal advisers is paragraph 4, subparagraph 14 (Republic of Kazakhstan, 2018), which is grossly incorrect given the importance of this obligation to the principals. Importantly, legal advisers have only been required to insure their activities since the amendments

introduced on 1 January 2020. Before this date, neither these amendments nor Article 77 ‘Insurance of Legal Advisers’ existed. In other words, this obligation arose less than two years after legal advisers entered the legal services market. It should be recalled that the purpose of insurance for individuals engaged in self-employed professional activities is to organise the protection of property interests in the event of possible compensation to third parties. One can only speculate how many trustees have been left without compensation due to the subpar legal representation provided by these people due to the long-standing absence of this provision.

In addition to the foregoing, it should be noted that advocates are obligated to sign a non-disclosure agreement at the client’s request and to maintain the confidentiality of any information learned in the course of providing legal services. The advocate is not permitted to disclose such information without the client’s permission, whereas a confidentiality agreement with the client only binds legal advisers. Legal secrecy refers to applying the professional secrecy principle, which is central to the conduct of every member of the legal profession and serves as a pledge of trust between them and their clients. Notwithstanding Article 77-2, the need for the confidentiality of client information does not significantly complicate legal advisers’ practices. According to Article 33, paragraph 11, advocates are not permitted to hold public office or engage in entrepreneurial or other paid occupations without risking expulsion from the advocates’ associations (Republic of Kazakhstan, 2018). In contrast, legal advisers are not proportionally restricted in such activities and are permitted to earn additional income.

The legislator has established numerous Chambers of Legal Advisers in an effort to foster competition and prohibit the formation of legal assistance monopolies. Chambers of legal advisers have the authority to establish their own rules of professional conduct and Code of Professional Ethics (Zhamburbaeva, 2022: p. 143). As early as 2017, the Expert Opinion referred to the multitude of Chambers of Legal Advisers with different ethical standards, rules for legal services, and requirements for entry into the profession as contradictory and inconsistent (Zhamburbaeva, 2022).

A member of the Chamber of Legal Advisers may be a person who not only satisfies the requirements of Article 75 but has also been attested. Article 83 of the Law states that the Chamber of Legal Advisers may impose additional requirements on its members. In contrast, Article 80 states that the Chamber shall establish its own admission rules and requirements (Republic of Kazakhstan, 2018). With this contradiction, it is only natural to ask why the Chamber would only allow for an attestation that consists of a thorough test if it had established its own admission rules and requirements. Even ignoring the error of interpretation and common understanding, the limits of including additional requirements are unclear.

Only those with a valid advocate’s licence are exempt from attestation before engaging in a legal adviser’s practice. However, legal advisers themselves are not on this exempt list and must go through the standard multistep process required to become licensed advocates. This provision again emphasises the disparity between the qualifications and levels of expertise of said individuals.

The procedure for resigning from the Chamber of Legal Advisers requires separate consideration. Membership is terminated upon application by the legal adviser themselves applying to resign from the Chamber and on the grounds expressly outlined in the Charter of the Chamber (Article 83, paragraph 5), the provisions of which may not be severe enough in respect of those who break the law. Meanwhile, the legislator has remained extremely strict and detailed regarding advocates. The list is quite long and comprehensive, so membership ends when, for example, an advocate is declared to be incapable or to have limited capacity, goes missing, loses citizenship in the Republic of Kazakhstan, passes away, is exempt from criminal responsibility for a deliberate crime, or if a court sentence of conviction for a deliberate crime has taken effect in their case (Republic of Kazakhstan, 2018).

V. Discussion

Theoretical analysis has shown unequivocally that the legislator regulates advocates and legal advisers quite differently. Nevertheless, the latter are subject to blatant regulatory easing that could harm the standing of those who provide legal services and the public's perception of the administration of justice. The existence of stringent requirements for both those who wish to become advocates and those who are already advocates serves only as a filter for determining the level of professional competence.

Several primary arguments for and against AM can be identified on a broader scale. First and foremost, there is widespread agreement that AM will safeguard citizens' effective exercise of their constitutional right to competent legal assistance (Knake, 2018). A consensus exists that it is in the best interest of advocates to provide competent legal assistance to their clients, with a particular emphasis on their providing bona fide services. Failure to comply could result in disciplinary action (liability), including disbarment (Bakayanova, 2015; Lavitskaya, 2020). AM would encourage grouping legal experts in a particular legal field to provide competent legal assistance while giving them the necessary background for professional development. The typically negative connotation of the term 'monopoly' should not be interpreted as discouraging competition. Instead, it is anticipated that rising competition levels will lead to improved service quality. As a result, a party using the services of an advocate will benefit from all procedural protections offered by the law, such as, among other things, the non-denial of applicable rights and freedoms in both scope and content, and the non-infringement of individual and citizen procedural rights. In the meantime, engaging in activities in a more competitive environment boosts professional motivation and promotes career advancement (Lavitskaya, 2020). As a supporting argument, it should be noted that AM exists in all countries traditionally regarded as setting jurisprudence standards (the United States, Canada, some EU countries, particularly France and Germany) (Gurbanova et al., 2020).

At the same time, there are several arguments against using AM. Obtaining advocate status is particularly complicated by potential and actual bureaucratic issues and potential corruption issues. Furthermore, there is a widespread belief that AM impedes access to justice (Hagerty, 2021; Rhode, 2015; Steinberg et al., 2020). Many countries, for example, have provisions in their primary laws stating that human rights cannot be restricted and that

every citizen is free to choose their representative. Clearly, AM limits citizens' access to these rights. Among other things, AM might result in more state regulation of advocateship, even though this is against the fundamental rule of advocate independence (Levin, 2013). It is also mentioned as a counterargument against the introduction of AM that hiring advocates to represent clients in minor cases may not be justified, both in terms of material costs and time and effort. Furthermore, exercising citizens' rights to competent legal assistance may not be possible in small settlements due to a lack of advocate staff (Riabov, 2021).

Notably, legal representation advocate monopoly has received a range of opinions from experts. Nevertheless, if one examines all the existing advantages and disadvantages of implementing AM 'in vacuum', i.e. without reference to law enforcement practice, it is evident that the advantages far outweigh the disadvantages. In the end, the applicant's main objective is to get competent assistance, and the advocate's main objective is to give that assistance. Regardless, the AM model's advantages or disadvantages in a specific jurisdiction can only be assessed after formally registering and implementing it.

After examining the new 'On Advocates and Legal Assistance' Law of the Republic of Kazakhstan, it can be argued that the legal act requires a thorough revision and substantial modifications. Enshrining the status of advocates is one aspect of this, as it could lead to a monopoly on their activities in both criminal and civil proceedings, as is the case in most other countries. A similar rule should be added to the Code of Civil Procedure by excluding legal consultants from the relevant Article and instead authorising persons trained as advocates to provide limited representation in civil proceedings (with a strictly fixed claim value and only in the first instance). To eliminate the identified contradictory provisions highlighted in the study, radical changes and additions to the rules governing the activity of legal consultants in specialised law are required. In addition, it is necessary to provide them with an activity niche that entails advising applicants and preparing the required legal documents, excluding legal representation by proxy.

Based on the experiences of the countries examined in this paper, implementing AM in Kazakhstan may help improve the quality of legal services in their market to some extent. However, the realistic extent to which they can be improved depends on a number of factors, all of which should be addressed at the legislative level. In the view of foreign legislators, advocates are representatives of the legal community within the context of legal proceedings based on a global evaluation of the foreign experience. The role of legal advisers and other individuals who perform similar tasks but under different titles are essentially limited to direct interpretation and, in many cases, solely to document preparation assistance without directly participating in the judicial process, as implied by the term 'advising' in their titles.

Advocates in the countries under review must have a specific level of education (in some, a bachelor's degree in law is sufficient, whereas, in others, a master's degree and a doctorate in law are required). Furthermore, theoretical knowledge alone may not be sufficient, and candidates may be required to attend specialised academies or courses besides internships. Internships can range in length from a few months to several years, with additional requirements such as good health and a successful, well-established reputation. The culmination

of their extensive training before engaging in the direct activity is acquiring a licence, which implies a monopoly over a particular type of activity.

Researchers and advocates' community representatives emphasise that the high demands placed on advocates, as well as strict disciplinary practices, are a guarantee of professionalism and integrity. It is interesting to note that attempts to establish a 'quasi advocateship' are mentioned in documents from the International Union (Commonwealth) of Advocates that are relevant to the field and topic of this paper when researching the perspectives of legal communities in former Soviet countries. They imply that this parallel institution of advocateship education conflicts with international standards and practice and may lead to the demise of the established institution of advocate activity (Gurbanova et al., 2020: p. 261).

The ability of the plaintiff to be properly represented and that of the defendant to organise the defence both play a role in the quality of justice. Both functions must be carried out with the assistance of a trained, competent professional who can provide professional and ethical safeguards within the scope of their practices (Council of Europe, 2018). However, in the case of Kazakhstan, where previously advocates acted as professional commissioned representatives in civil proceedings, the reasons for adding legal advisers to the Code of Civil Procedure are unclear. The legislator could have given them the same functional duties as solicitors, i.e. limited to drafting legal documents and submitting them to the relevant authorities while leaving the niche of legal representation to advocates.

The analysis of international practice leads to the conclusion that the so-called monopolistic approach to the advocate profession has helped to separate the solicitor profession into a separate legal profession with its own unified rules and standards. Ultimately, an advocate's job requires adherence to strict moral standards and rules of conduct, which prevents unethical behaviour during the proceedings. This can be seen when a representative acting through a proxy may have engaged in actions intended to abuse procedural rights, disrupt court proceedings, and, in some cases, exert pressure on justice without fear of repercussions.

If non-professionals are involved, the proceedings will proceed more slowly and unevenly due to advocates' lack of authority as sole representatives in civil proceedings. This may also occur when working with a legal adviser who only has documented seniority (chambers do not verify seniority when enrolling members by looking at tax deductions, for example) and pertinent legal education, as opposed to an advocate who has worked hard to earn this status. This standard, which ensures a minimum level of quality, must be met for the constitutional guarantee of competent legal assistance to be implemented. The client should be confident that they have contacted the proper legal community representative, who agrees to keep the information given to them confidential and will not work against the principal's interests. The principal and any other consumer of the offered services must have faith in the training and credentials of the representative who will deliver the most comfortable outcome in the current legal situation. The consumer of legal services should not have to guess, given that many people lack legal literacy and consider advocates and legal advisers interchangeable.

VI. Conclusion

Considering the decision of the Kazakh leaders to introduce institution of legal representatives from a critical point of view, one should say that the latter could be regarded as nothing other than the institution of quasi-advocateship. Based on the results of the work, there is reason to say that such a decision by the authorities may harm the quality of legal services. This, ultimately, confirms international experience, which gives priority to the lack of alternatives to the legal profession as the only institution of judicial representation capable of ensuring proper legal representation.

The development of legal assistance legislation in the Republic of Kazakhstan differs somewhat from that of other countries. The Law ‘On Advocate Activity’, which was in effect until 2018, was one of the first in former Soviet countries and governed advocateship issues for decades. The Law ‘On Advocate Activity’ connected the concept of competent legal assistance with advocateship and clarified how it was organised. It was successfully implemented until the adoption of a new law that focused on both members of the advocateship community and subjects entirely unrelated to it – legal advisers – and who were thus completely new to Kazakhstan’s legal system.

The Republic of Kazakhstan shall adapt the institution of court representation by proxy to adopt the trends observed in many other well-established procedural systems. Thus, in most countries, the legislator favours advocates over other actors, limiting the latter to small disputes and document drafting. The procedure that governs court representatives is flawed and has a significant, primarily negative, impact on the quality of legal assistance provided in civil proceedings.

Because this institution and its supporting institutions significantly influence how the public views justice, it is crucial that court representation and its actors are properly regulated. On this basis, the legislator details a warning to advocates in Article 34 of the Law of the Republic of Kazakhstan ‘On Advocate Activity and Legal Assistance’ about liability related to intentional delaying of a case, unlawful methods of legal assistance, offences related to noncompliance with professional rules and standards, and issues allowing to commit any actions contrary to the principal’s interests.

It is, therefore, implicitly clear that, even among legal advisers, advocates are favoured regarding quality and fairness. However, these actors require appropriate status and legislative approval. When one considers the requirements placed on advocates, introducing an advocate monopoly for court representation is a disproportionate guarantee from the state to provide competent legal assistance. These requirements, however, provide a functional system for screening out unprofessional representatives who violate civil rights and interests and harm the reputation of the professional community they represent.

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