

Legal support of the participation of foreign lawyers in the criminal proceedings of Russia and Kazakhstan as border regions

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Abstract. The article analyzes the regulatory legal acts of the national legislation of Kazakhstan and Russia, their bilateral treaties, and conventions. The provisions of these regulations regulate issues of international cooperation in the field of criminal justice with the participation of representatives of the legal community. Based on their analysis and taking into account the needs of practice, the proposals are formulated to further improve the legal basis for the participation of lawyers in criminal proceedings. These proposals are presented to improve the legal basis for the participation of lawyers in criminal proceedings carried out in the territories of border states, Kazakhstan and Russia.

Keywords: participation, lawyers, rights, criminal proceedings, advocacy

1. Introduction

In contemporary conditions of the development of world relations, serious prerequisites are being created for the lawyers of the Russian Federation to enter the international level in the course of their professional activities. [1].

The internationalization of socio-economic relations affects the contemporary life of society in all areas, including advocacy. Going beyond the jurisdiction of a single state, it becomes transboundary in nature. The legislation of the Russian Federation and the Common Wealth of Independent States (CIS) countries is historically focused on the domestic nature of advocacy and has no extraterritorial effect. Outside the state in which the lawyer received his legal status, he can perform legal actions only within the limits established by the law of the state in whose territory he acts as a foreign lawyer. At the same time, the legal regimes of activity of lawyers established by the national legislation of states are far from identical in their content. In particular, this is confirmed by the results of a study of the provisions of the legislation of the border regions, the Russian Federation and the Republic of Kazakhstan (RK).

The regulatory legal acts and agreements in this sphere are not perfect in their content. Often, they are contradictory, their interpretation sometimes causes difficulties, which leads to the ambiguity of their semantic meaning and as a result, complicates the enforcement process. As a result, the realization of the rights by the foreign lawyers is not fully ensured.

The purpose of this study was to analyze the forms of participation of the foreign lawyers in the course of criminal proceedings in the territories of border regions. As well as the task of the study is to

analyze the legal framework ensuring their advocacy in the above-mentioned field and to find ways to improve them in terms of improving the efficiency of regulating their relations.

2. Materials and Methods

During the work on the article, the authors analyzed the results of previous studies on the problems of the activities of foreign lawyers in criminal proceedings in the Russian Federation and other countries. The most significant of them are: the doctoral dissertation of A. G. Volevodz; PhD dissertations of M. V. Davydov, K. E. Mikhaylenko, and M. R. Voskobitova. In addition, we studied and other scientific works and analytical documents of Russian and foreign scientists, advocacy communities on this subject [sources].

During the research, the formal legal method allowed to study the provisions of the regulatory documents, including those adopted by the EurAsEC, CIS, as well as international treaties, acts of international organizations, normative legal acts of the Russian Federation and the Republic of Kazakhstan.

A comparative legal research method allowed to make a comparative analysis of these legal documents and provide a number of proposals for their improvement. Sociological methods were used to collect empirical material and substantiate the findings of the study. Modeling and forecasting methods contributed to the development of measures aimed at further developing the forms of participation of the foreign lawyers in criminal proceedings carried out in border regions.

3. Results

On the basis of historically established strong ties, traditions of good communication and friendship, a number of international treaties, agreements and other acts were concluded between the Russian Federation and the Republic of Kazakhstan. The beginning was laid on May 25, 1992, when the Treaty of Friendship, Cooperation, and Mutual Assistance was concluded between the Russian Federation and the Republic of Kazakhstan [2].

Later, in order to implement the provisions of the Treaty, the Russian Federation and the Republic of Kazakhstan signed the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal matters. In the Russian Federation, the Convention entered into force on December 10, 1994, and it was on May 19, 1994 in the Republic of Kazakhstan. Article 8 of the Convention permits the application of the legislation of the country in the execution of an order to provide legal assistance to the requested institution. At the request of the requesting institution, it can also apply the procedural rules of the requesting Contracting Party, as long as they do not contradict the legislation of the requested Contracting Party [3]. We believe that the execution of these instructions is fully extended to the Law Associations of the Russian Federation and the Republic of Kazakhstan. Although specifically, in the mentioned bilateral acts, there are no provisions regulating the order of their interaction.

Article 2 of the Federal Law "On Lawyer's Activities in the Russian Federation" of May 31, 2002 states that legal aid by a lawyer of a foreign state in the territory of the Russian Federation on the law of the foreign state is allowed. However, the lawyers of foreign states are not allowed to provide legal assistance in the territory of the Russian Federation on matters related to the state secret of the Russian Federation. And it is especially emphasized that the lawyers of foreign states that carry out advocacy in the territory of the Russian Federation are registered by the federal executive body in the field of justice in a special register. Without registration in the specified register, the implementation of advocacy by lawyers of foreign states on the territory of the Russian Federation is prohibited [4].

Article 46 of the Law "On Advocacy and Legal Aid of the Republic of Kazakhstan" of July 05, 2018 establishes how the powers of a foreign lawyer who carries out *правы* activities on the basis of a relevant international agreement ratified by the Republic of Kazakhstan is to be certified. From this it follows that the legislation of the Republic of Kazakhstan allows for the participation of foreign lawyers, but it stipulates that such activities should be carried out on the basis of an international treaty ratified by the Republic of Kazakhstan.

The same article of the law regulates the issue of advocacy by the lawyers of the Republic of Kazakhstan outside of its borders, and it indicates that a lawyer has the right to engage in advocacy throughout the territory of the Republic of Kazakhstan, as well as outside. A lawyer has the right to engage in advocacy outside the territory of the Republic of Kazakhstan if it is necessary to fulfill an accepted assignment and does not contradict the legislation of the respective states and international treaties ratified by the Republic of Kazakhstan [5].

The issue of mutual recognition of legal status was discussed in the framework of EurAsEC. At the event, which was held in Dushanbe in September 2011, the decision was made to work on a draft agreement on cooperation between the ministries in the field of advocacy. As a result, on September 21, 2012, the agreement was signed. However, the adoption of this agreement did not remove all the problems arising in the way foreign lawyers exercise their rights. This agreement defines only the directions and principles of interaction in the field of advocacy [6]. In particular, the adopted act did not resolve issues relating to the interaction of lawyers of the Russian Federation and the Republic of Kazakhstan in the exercise of their professional activities, the fulfillment of their instructions, etc.

In recent years, the active development of forms of interaction between the attorneys' communities of states and legal entities of states has been noted. The following forms are of great importance: international practical conferences, online seminars, professional development of Russian lawyers abroad, international scientific exchange, preparation of analytical materials on the regulation of advocacy in foreign countries, consolidation of the forces of law firms from the CIS and Baltic countries [7].

So, in May 2016 in St. Petersburg at the International Legal Forum, the Charter of Fundamental Principles of Advocacy was adopted. Russia and Kazakhstan became one of its participants. The Charter proclaimed the fundamental principles of the legal profession, the obligation of states to implement them in national legislation, mutual support and the intention to unite their efforts for the benefit of the legal profession and in the name of the protection of human rights [8].

However, only one mention in international and national acts that the lawyers have the right to practice law on the territory of each other's states, indicating interaction between the attorneys' communities of states, does not solve the difficulties, problems, and restrictions faced by lawyers of the Russian Federation and the Republic of Kazakhstan.

We find a confirmation of this in the law enforcement process. So, in 2017, a lawyer of the Republic of Kazakhstan, providing legal assistance to citizens of Kazakhstan in the Russian criminal proceedings, faced a restriction of their rights as an attorney and completely removed her from the circle of participants in criminal proceedings. Since, the court found that it illegally carries out advocacy in the territory of the Russian Federation, while the court sent the case for further investigation. And this is despite the fact that the lawyer of the Republic of Kazakhstan registered in a special register of lawyers maintained by the Ministry of Justice of the Russian Federation, received a certificate, and collected by legal means and methods to carry out its activities [9].

The study of the aforementioned normative legal acts, other documents and the practice of their application allowed us to identify areas for the development of international and national legislation on the activities carried out by lawyers of foreign countries.

4. Discussion

The question of the limits of advocacy of defense counsel in criminal proceedings is quite controversial. On this basis, the issue of the normative regulation of the rights of defense counsel in a criminal case to commit actions that do not contradict the law also in foreign countries remains unresolved.

In a number of forensic studies, the scope of rights and powers granted to a particular person is usually called the "normative model of a person's professional activity", which is difficult to establish. Yu. P. Garmaev explains this by the fact that this model of the powers of the defense attorney in criminal proceedings is governed by the norms of various branches of legislation, including constitutional, international, criminal procedure, as well as legislation on advocacy. He rightly points

out that the activities of a defender in criminal proceedings are still regulated only in the most general terms, largely without specifying powers, responsibility, without clearly defining the criteria of legality, admissibility, and ethical behavior of a lawyer in criminal proceedings [10]. This problem requires resolution.

In most states of the former USSR (Russia, Azerbaijan, Kazakhstan, Tajikistan, Latvia, etc.), the legislator provides that the rights of a defense counsel are not formally limited. A defense counsel has the right to perform any actions, including the use of means and methods of protection not prohibited by law. The Code of Criminal Procedure of the Republic of Kazakhstan allocates over a dozen of professional rights of defense attorney expressly provided for in its provisions. These rights are not directly enshrined in the legislation of the Russian Federation and do not contradict it, which means that they can be exercised by domestic advocates in the framework of their professional activities in the Republic of Kazakhstan. In the Russian Federation, the lawyers can also take them into the “arms” [11].

Among the specialists involved in the issues under consideration, the problem associated with the insufficient development of mechanisms for the implementation of the rights of lawyers engaged in advocacy in the territory of another state is the most attention. In particular, most of the provisions of the above-discussed international acts, agreements, normative legal acts of the Russian Federation and the Republic of Kazakhstan concerning the activities of foreign lawyers are declarative in nature.

Positive work in this direction is underway. In December 2017, the Third Annual Forum of Lawyers of Kazakhstan was held. At this forum, the draft Model Law “On advocacy” for the CIS countries was discussed. The project establishes the basic principles of the legal profession, determines the legal basis of advocacy, as well as the rights and duties of a lawyer, regulates other matters related to the activities of a lawyer [12]. However, at present, the document is not adopted, and its proposals remain at the level of the project and its discussions. In the same 2017, for discussion at the Public Council under the Ministry of Justice of the Russian Federation, a draft law was introduced proposing amendments to the Law on the Advocacy of the Russian Federation regarding the regulation of the participation of foreign lawyers in the provision of legal assistance in Russia. Developed project establishes requirements for foreign lawyers [13]. However, to date, these proposals have not been submitted to the current legislation on the Bar of the Russian Federation, which means problems in the activities of lawyers of foreign states remain. Issues of advocacy in criminal proceedings are much more extensive, and the standards set out do not cover the diversity of this work.

So among lawyers, the following issues are widely discussed: the need to implement harmonization of the legislation of the CIS member countries, the development of a special federal law on the activities of foreign lawyers in the Russian Federation and draft model agreement between the APF and foreign self-regulatory organizations. When developing these acts, we must proceed from the need for a permitting procedure for admitting a foreign lawyer to carry out activities on the territory of the Russian Federation on an ongoing basis, periodically confirming the status of an alien (at least once every two years), and a number of other requirements [14].

Our conclusions on how to improve the legal framework of the studied field of international cooperation are based on the needs of modern lawyers' communities of states to ensure the rights of citizens to receive a qualified legal assistance. And our findings complement the results of previous studies. In our opinion, at the level of the General Law in the field of advocacy for the CIS countries, legislation on the Bar of the Russian Federation, by-laws, it is necessary:

- To determine the requirements for the lawyers of foreign countries-subjects of cross-border cooperation in the field of advocacy;
- To fix the conditions for providing a legal assistance by the lawyers of foreign countries in the territory of the Russian Federation and the CIS countries;
- To specify the rights and obligations of lawyers of foreign states;
- To regulate the rules of conduct for foreign attorneys in the territory of the Russian Federation;
- To establish provisions on the procedure and grounds for disciplining the foreign lawyers;

- To develop analytical materials on the methods and means of activity of lawyers of foreign states.

5. Conclusion

In terms of conducting necessary legal reforms, the Republic of Kazakhstan is one of the first places among the former Soviet republics. New codes and laws most often coincide conceptually with the relevant Russian legislation, because the general model acts are used as the basis. At the same time, at the present stage, the development of the Kazakh legal system is independent and quite creative, original character. On the other hand, the problems of modern advocacy of the Republic of Kazakhstan are similar to the problems typical of Russian advocacy. Consequently, the experience of this state in addressing specific issues in the field of advocacy must be taken into account.

The scope of the lawyers' authority of the Russian Federation and the lawyers of Kazakhstan differs significantly. The powers of the attorneys of the Republic of Kazakhstan are quite wide and vary in comparison with the rights of Russian attorneys. In this regard, the issue of unification of the status of lawyers of foreign states is acute. Further development of the interstate cross-border cooperation in the field of criminal justice with the participation of the legal community is possible only through its proper uniform legal support.

In conclusion, we proposed directions for improving the legal framework of international cooperation in the field of ensuring the activities of foreign lawyers in criminal proceedings. The proposed directions can be used in the rule-making activities of the legislative and law enforcement agencies of the border states, as well as in the activities of law communities.

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