

# The Law on Advocacy and Legal Assistance

## SECTION 1. GENERAL PROVISIONS

### Chapter 1. BASIC PROVISIONS

#### Article 1. Basic concepts used in this Law

The following basic concepts are used in this Law:

- 1) advocacy - legal assistance provided on a professional basis by lawyers in accordance with the procedure established by this Law in order to protect and assist in the realization of the rights, freedoms and legitimate interests of individuals and legal entities.
- 2) activity of legal consultants - professional activity of legal consultants in providing legal assistance in order to protect the rights, freedoms and legitimate interests of individuals and legal entities.
- 3) legal assistance - activities aimed at ensuring the implementation of the right of everyone to receive qualified legal assistance, including with the use of special legal knowledge and skills, as stipulated by paragraph 3 of Article 13 of the Constitution of the Republic of Kazakhstan, in accordance with the procedure established by this Law and other laws of the Republic of Kazakhstan.
- 4) participants of legal assistance - persons providing legal assistance, clients, other persons involved in the provision of legal assistance.
- 5) authorized state body in the field of legal aid (hereinafter - authorized body) - the central executive body that ensures the organization of legal aid, as well as control over its quality.
- 6) client - a natural or legal person (representative) who applied for legal assistance.
- 7) legal information is a type of legal assistance provided to an indefinite circle of persons by providing information on the legislation of the Republic of Kazakhstan in oral, written forms, in the form of an electronic document or in the form of visual acquaintance.
- 8) legal advice is a type of legal assistance provided to individuals and legal entities in the form of oral and written consultations, including those related to the issue of drafting statements, complaints, petitions and other legal documents.
- 9) conflict of interests - a contradiction between the personal interests of the person providing legal assistance and the interests of the client, which may lead to non-provision or poor-quality provision of legal assistance.

## **Article 2.**

Legislation of the Republic of Kazakhstan on advocacy and legal assistance

1. The legislation of the Republic of Kazakhstan on advocacy and legal assistance is based on the Constitution of the Republic of Kazakhstan, consists of this Law and other regulatory legal acts of the Republic of Kazakhstan regulating advocacy and legal assistance.
2. Legal assistance is provided in accordance with the norms of this Law and taking into account the specifics established by the codes of the Republic of Kazakhstan.
3. If an international treaty ratified by the Republic of Kazakhstan establishes rules other than those contained in this Law, the rules of the international treaty shall apply.
4. The conditions and procedure for the provision of legal assistance by individuals are established by the laws of the Republic of Kazakhstan.

## **Article 3.**

Principles of legal aid

The provision of legal assistance is based on the following principles:

- 1) the rule of law;
- 2) independence of persons providing legal assistance;
- 3) respect and protection of the rights and freedoms of the client;
- 4) providing legal assistance in the interests of the client;
- 5) preservation of professional secrecy;
- 6) compliance with the norms of professional and ethical behavior;
- 7) freedom to determine the limits and measures of legal assistance;
- 8) compliance with legal aid standards;
- 9) respect for the court, the rules of procedure and colleagues in the profession;
- 10) availability of legal aid.

#### **Article 4.**

The importance of the principles of legal aid

1. The principles of legal aid are the fundamental principles of legal aid, determining its content and providing general conditions for the implementation of the rights and obligations of participants in legal aid.
2. The principles of legal aid are interrelated and form their system. The implementation of each of the principles is carried out in cooperation with other principles of legal assistance.
3. Non-compliance with the principles of providing legal assistance entails liability established by this Law and other laws of the Republic of Kazakhstan.

#### **Article 5. Rule of law**

Legal assistance is provided on the basis of equality of all before the law, the obligation to comply with the requirements of the Constitution of the Republic of Kazakhstan, as well as this Law and other regulatory legal acts of the Republic of Kazakhstan.

#### **Article 6. Independence of legal aid providers**

Legal aid providers are independent in exercising their rights and performing their professional duties.

Interference in their activities by the Prosecutor's office, courts, other state bodies, other organizations and persons, except in cases expressly provided for by the laws of the Republic of Kazakhstan, is unacceptable.

#### **Article 7. Respect and protection of the rights and freedoms of the client**

Legal assistance is provided in order to protect and assist in the realization of the rights, freedoms and legitimate interests of individuals, as well as the rights and legitimate interests of legal entities.

When providing legal assistance, actions that humiliate the honor or detract from the dignity of the client, infringe on the inviolability of his private life, violate his personal and family secrets, the secrecy of personal deposits and savings, correspondence, telephone conversations, postal, telegraphic and other messages are prohibited.

## **Article 8. Provision of legal assistance in the interests of the client**

The person providing legal assistance is obliged to properly perform his professional duties, taking the necessary measures to prevent harm to the interests of the client.

When providing legal assistance, the person providing legal assistance is obliged to explain to the client the possible results and consequences of legal assistance, including the nature and amount of financial costs.

The choice of legal assistance measures should be based on the interests of the client.

A person providing legal assistance, when performing professional duties, is obliged to take measures to prevent conflicts of interest.

## **Article 9. Preservation of professional secrecy**

A professional secret cannot be disclosed without the client's consent.

When providing legal assistance, measures are taken to preserve professional secrecy, unless otherwise provided by the laws of the Republic of Kazakhstan. The obligation to preserve professional secrecy is not limited in time.

## **Article 10. Compliance with the norms of professional and ethical behavior**

Legal assistance is provided in compliance with high professional and ethical standards. The formation of these norms is carried out by persons providing legal assistance on the basis of generally accepted norms of behavior, morality and standards of legal assistance.

## **Article 11. Freedom to determine the limits and measures of legal assistance**

The limits and measures of providing legal assistance are determined at the discretion of the person providing legal assistance and are limited if provided for by the laws of the Republic of Kazakhstan.

## **Article 12. Compliance with legal aid standards**

Standards of legal aid are provided by introducing the best practices of the quality of legal aid based on the legislation of the Republic of Kazakhstan.

In order to ensure the quality of legal assistance, persons with appropriate professional training and periodically improving their qualifications are allowed to implement it.

### **Article 13. Respect for the court, the rules of procedure and colleagues in the profession**

Legal aid providers should treat their professional colleagues in a spirit of respect, fairness and cooperation.

The provision of legal assistance should be based on respect for the court and the rules of procedure.

### **Article 14. Accessibility of legal aid**

Everyone has the right to receive legal assistance.

In cases provided for by this Law and other laws of the Republic of Kazakhstan, legal assistance is provided free of charge.

### **Article 15. Types of legal assistance**

Legal assistance is provided in the form of:

- 1) legal information;
- 2) legal advice;
- 3) protection and representation of interests of individuals and legal entities in courts, criminal prosecution bodies, other state bodies and non-governmental organizations in cases and in the manner established by this Law and other laws of the Republic of Kazakhstan;
- 4) performing other legal actions to protect the legitimate interests of the client in interaction with any persons who are participants in existing or possible legal relations with the client.

Legal information, legal advice, protection and representation by lawyers of the interests of individuals are the minimum social standards in the provision of state-guaranteed legal assistance in accordance with the Law of the Republic of Kazakhstan "On Minimum social standards and their guarantees".

### **Article 16. Forms of legal assistance**

The forms of legal assistance are:

- 1) legal assistance provided on a reimbursable basis;
- 2) state-guaranteed legal assistance;

Subparagraph 3 has been put into effect since January 1, 2019

3) comprehensive social legal assistance.

### **Article 17. Provision of legal assistance on a reimbursable basis**

Legal assistance on a reimbursable basis is recognized as legal assistance provided to individuals and legal entities for a fee on the basis of an agreement, unless otherwise established by this Law and the laws of the Republic of Kazakhstan.

### **Article 18. Legal aid guaranteed by the State**

Legal assistance provided to individuals and legal entities entitled to receive it on the basis and in accordance with the procedure provided for by this Law and other laws of the Republic of Kazakhstan, free of charge, is recognized as state-guaranteed legal assistance.

### **Article 19 was put into effect on January 1, 2019**

### **Article 19. Comprehensive social legal assistance**

1. Comprehensive social legal assistance is the provision, in accordance with the contract, of gratuitous legal assistance to the persons specified in paragraph 2 of this Article, consisting in legal support of the client from the moment of his request for legal assistance until the final legal decision on the case (resolution of the legal situation) is made in accordance with the procedure provided for by the laws of the Republic of Kazakhstan.

The scope and procedure for providing comprehensive social legal assistance are established by the Chambers of Legal Consultants, the Republican Bar Association. Information on the scope and procedure for providing comprehensive social legal assistance is sent to the authorized body.

The provision of comprehensive social legal assistance is one of the forms of implementation of social responsibility and is carried out voluntarily.

2. Comprehensive social legal assistance can be provided:

- 1) persons in a difficult life situation, in accordance with the Law of the Republic of Kazakhstan "On Special social Services";
- 2) persons entitled to targeted social assistance;
- 3) participants of the Great Patriotic War and persons equated to them;
- 4) disabled persons of the first and second groups;
- 5) seniors by age;

6) elderly and disabled people living in medical and social institutions (organizations) for the elderly and disabled of general type;

7) other persons who are in a difficult social and financial situation.

Comprehensive social legal assistance is not provided for disputes related to entrepreneurial activity in the framework of civil proceedings.

3. Making a significant contribution to the provision of comprehensive social legal assistance is stimulated by the state in accordance with the procedure approved by the Government of the Republic of Kazakhstan.

### **Article 20. Persons providing legal assistance**

Legal assistance is provided within its competence:

1) state bodies;

2) lawyers, notaries, private bailiffs, legal consultants;

3) individuals who provide legal assistance and are not members of non-profit organizations of persons providing legal assistance based on mandatory membership in chambers of legal advisers.

### **Article 21. State policy in the field of legal aid**

1. The state policy in the field of legal assistance is provided by a set of organizational, legal, socio-economic, technical, informational, accreditation, licensing, control and other measures implemented in order to guarantee the rights of individuals and legal entities to receive legal assistance.

2. The main directions of the state policy in the field of legal aid are determined by the President of the Republic of Kazakhstan.

3. The law may establish the basis, procedure and conditions for the activity of the state bar in the Republic of Kazakhstan.

### **Article 22. Competence of the Government of the Republic of Kazakhstan**

Government of the Republic of Kazakhstan:

1) develops the main directions of state policy in the field of legal aid;

2) establishes the amount of payment for state-guaranteed legal assistance provided by a lawyer and reimbursement of expenses related to legal advice, protection and representation, as well as conducting conciliation procedures;

3) performs other functions assigned to him by the Constitution of the Republic of Kazakhstan, this Law, other laws of the Republic of Kazakhstan and acts of the President of the Republic of Kazakhstan.

### **Article 23. Competence of the authorized body**

Authorized body:

- 1) ensures the implementation of the state policy in the field of legal aid;
- 2) coordinates the activities of persons providing state-guaranteed legal assistance;
- 3) develops drafts of regulatory legal acts on the provision of legal assistance;
- 4) monitors the legislation of the Republic of Kazakhstan on advocacy and legal assistance, the completeness of the scope and quality of legal assistance;
- 5) carries out international cooperation in the field of legal assistance;
- 6) coordinates the standards of legal assistance;
- 7) coordinates the criteria for the quality of legal aid;
- 8) develops and approves quality criteria for the provision of state-guaranteed legal assistance;
- 9) is the administrator of budget programs for all types of state-guaranteed legal aid;
- 10) ensures the functioning and development of the system of state-guaranteed legal aid;
- 11) ensures publication at least once a year in periodicals distributed throughout the territory of the Republic of Kazakhstan, and posting on its Internet resource information about the system and the main results of the provision of state-guaranteed legal assistance;
- 12) develops and approves the accounting procedure for state-guaranteed legal assistance in the form of legal advice provided by a lawyer;
- 13) approves the rules for payment of state-guaranteed legal assistance provided by a lawyer and reimbursement of expenses related to legal advice, protection and representation, as well as conducting conciliation procedures;
- 14) monitors the quality of legal assistance provided by the state guaranteed;
- 15) supervises the activities of chambers of legal consultants;
- 16) provides legal information to the public about the persons providing legal assistance, mechanisms, grounds and conditions for providing legal assistance;
- 17) develops and approves the standard charter of the Chamber of Legal Consultants;
- 18) maintains a register of chambers of legal consultants;



19) develops and approves a standard insurance contract for professional liability of lawyers in coordination with the National Bank of the Republic of Kazakhstan;

20) develops and approves a standard contract of professional liability insurance of legal consultants in coordination with the National Bank of the Republic of Kazakhstan;

21) exercise other powers provided for by this Law, other laws of the Republic of Kazakhstan, acts of the President and the Government of the Republic of Kazakhstan.

#### **Article 24. Unified information system of legal aid**

The unified information system of legal aid is an information system designed to automate the legal profession and the activities of legal consultants.

Confidentiality is ensured during the operation of the unified information system of legal assistance.

## **SECTION 2. STATE-GUARANTEED LEGAL AID**

### **Chapter 2. THE SYSTEM OF STATE-GUARANTEED LEGAL AID**

#### **Article 25.**

Persons providing State-guaranteed legal assistance and the procedure for its provision  
State-guaranteed legal assistance is provided:

1) state bodies free of charge in the form of legal information within their competence in accordance with the procedure established by the Law of the Republic of Kazakhstan "On Access to Information";

2) lawyers in accordance with the procedure established by this Law;

3) notaries free of charge in the cases and in the manner prescribed by the Law of the Republic of Kazakhstan "On Notaries";

4) by private bailiffs free of charge in the execution of a socially significant category of cases in the cases and in the manner prescribed by the Law of the Republic of Kazakhstan "On Enforcement Proceedings and the status of bailiffs".

In cases stipulated by the laws of the Republic of Kazakhstan, legal assistance guaranteed by the State may be provided free of charge by other persons.

## **Article 26.**

Persons entitled to receive State-guaranteed legal assistance

1. All individuals and legal entities have the right to receive free legal assistance guaranteed by the state in the form of legal information.
2. Legal assistance guaranteed by the state in the form of legal advice, as well as protection and representation of the interests of individuals in courts, criminal prosecution bodies, other state bodies and non-governmental organizations is provided in accordance with the procedure established by this Law and the legislation of the Republic of Kazakhstan.:
  - 1) a person brought to administrative responsibility in accordance with the legislation of the Republic of Kazakhstan on administrative offenses;
  - 2) to the plaintiff in accordance with the civil procedural legislation of the Republic of Kazakhstan;
  - 3) suspect, accused, defendant, convicted, acquitted, victim in accordance with the criminal procedure legislation of the Republic of Kazakhstan;
  - 4) individuals on issues of alimony recovery, pension and benefits assignment, rehabilitation, refugee status or oralmana, minors left without parental care. Lawyers, if necessary, draw up written documents of a legal nature.
3. The persons referred to in paragraphs 1 and 2 of this Article have the right to receive state-guaranteed legal assistance in the territory of the Republic of Kazakhstan, regardless of their place of residence and location.

## **SECTION 4. PROVISION OF LEGAL ASSISTANCE BY LEGAL CONSULTANTS**

### **Chapter 5. THE STATUS OF A LEGAL CONSULTANT**

#### **Article 75. Legal consultant**

1. A legal consultant is an individual who has a higher legal education, at least two years of work experience in a legal specialty, has passed certification, is a member of the Chamber of Legal Consultants and provides legal assistance.
2. A legal consultant may provide legal assistance independently, engaging in private practice in the form of individual entrepreneurship or without state registration as an individual entrepreneur, as well as on the basis of an employment contract with a legal entity.

### **Article 76. Rights and obligations of a legal consultant**

1. A legal consultant has the right to provide a person who has applied for assistance with any legal assistance that he needs, in the manner and under the conditions determined by the legislation of the Republic of Kazakhstan.
2. A legal consultant on his own behalf enters into a written contract for the provision of legal assistance with the person who applied to him.

In the case of legal assistance provided by a legal consultant acting on the basis of an employment contract with a legal entity, a written contract for the provision of legal assistance to the client is concluded by a legal entity.

3. A legal consultant, acting as a representative, is entitled to:
  - 1) represent the rights and interests of persons who have applied for legal assistance in courts, state, other bodies and organizations whose competence includes the resolution of relevant issues;
  - 2) to request and receive from all state bodies, local self-government bodies and legal entities the information necessary for the provision of legal assistance;
  - 3) in the manner and within the limits established by the legislation of the Republic of Kazakhstan, independently collect the factual data necessary for the provision of legal assistance, as well as submit them to state bodies and officials;
  - 4) get acquainted with the materials concerning the person who applied for legal assistance, including procedural documents, court cases, and record the information contained therein in any way not prohibited by law;
  - 5) request expert opinions on a contractual basis to clarify issues arising in connection with the provision of legal assistance and requiring special knowledge in the field of science, technology, art and other fields of activity;
  - 6) submit petitions, bring complaints in accordance with the established procedure against decisions and actions (inaction) of state authorities, local self-government, public associations, organizations, officials and civil servants infringing on the rights and legally protected interests of persons who have applied for help;

7) use all means and methods not prohibited by law to protect the rights and legitimate interests of persons who have applied for legal assistance;

8) conduct conciliation procedures;

9) provide comprehensive social legal assistance;

10) perform other actions that do not contradict the legislation of the Republic of Kazakhstan.

4. The legal consultant is obliged to:

1) comply with the requirements of the legislation of the Republic of Kazakhstan on advocacy and legal assistance, as well as the requirements of the rules and standards of the Chamber of Legal Consultants;

2) comply with the rules of the Code of Professional Ethics established by the Chamber of Legal Advisers, of which he is a member, as well as pay the fees established by this Law;

3) be guided in professional activity by the principles of providing legal assistance;

4) be a member of one of the chambers of legal consultants to provide legal assistance in the form of representation of the interests of persons in the courts;

5) inform the client about the impossibility of his participation in the provision of legal assistance due to the occurrence of circumstances preventing its provision;

6) ensure the safety of documents received from the client and third parties when providing legal assistance;

7) provide the client with information about membership in the Chamber of legal advisers;

Subparagraph 8 of paragraph 4 comes into effect from January 1, 2020

8) submit, at the request of the client, a copy of the professional liability insurance contract of the legal consultant;

9) at the request of the client to submit an extract from the register of members of the Chamber of legal advisers, of which he is a member;

10) enter into an agreement on non-disclosure of confidential information with the client, if the client does not object to this;

11) perform any actions not prohibited by law to establish factual circumstances aimed at ensuring the rights, freedoms and legitimate interests of the client;

12) at the request of the client, keep copies of documents that were used in the provision of legal assistance on paper or electronic media or in the form of electronic documents for three years from the date of completion of legal assistance;

13) constantly improve their skills;

Subparagraph 14 of paragraph 4 comes into effect from January 1, 2020

14) to carry out professional liability insurance.

5. If the legal consultant is in an employment relationship with a legal entity, the obligations provided for in the sub-paragraphs 5), 6), 8), 10) and 12) of paragraph 4 of this article, are assigned to this legal entity.

6. A legal consultant is prohibited from taking a legal position on the case that worsens the situation of the person who applied for help, using his powers to the detriment of the person whose interests he represents.

7. A legal consultant is prohibited from providing legal assistance in the event of a conflict of interest.

A legal consultant is obliged to refuse to provide legal assistance in cases where:

there is a conflict of interests between the client and the legal consultant, his close relatives, as well as in the presence of other circumstances constituting a conflict of interests;

there are grounds provided for by the procedural legislation of the Republic of Kazakhstan.

## **Article 77 comes into force on January 1, 2020**

### **Insurance of the activity of a legal consultant**

1. A legal consultant is obliged to conclude a contract of professional liability insurance for obligations arising as a result of causing harm to third parties to whom legal assistance is provided in accordance with the contract.

A legal consultant does not have the right to start providing legal assistance in the absence of a professional liability insurance contract.

If a legal consultant is in an employment relationship with a legal entity, the obligation to conclude a professional liability insurance contract for a legal consultant is assigned to this legal entity.

2. The object of professional liability insurance of a legal consultant is the property interests of the policyholder (insured person) related to his obligation, in accordance with the procedure established by the legislation of the Republic of Kazakhstan, to compensate for damage caused to third parties who, in accordance with the contract, are provided with legal assistance as a result of carrying out activities.

3. An insured event under the contract of professional liability insurance of a legal consultant is the fact of the occurrence of civil liability of the policyholder for compensation for damage caused to the property interests of third parties to whom legal assistance is provided in accordance with the contract, as a result of professional mistakes made by the insured person in providing legal assistance.

**Professional errors for the purposes of this article are understood as:**

- 1) skipping procedural deadlines;
- 2) incorrect paperwork;
- 3) failure to inform the person to whom legal assistance is provided in accordance with the contract about the consequences of legal actions that have caused harm to him;
- 4) loss or damage of documents received by the policyholder (insured person) from the client for the provision of legal assistance;
- 5) unlawful disclosure of information that became known to the insured person in the process of providing them with legal assistance.

The contract of professional liability insurance of a legal consultant may define other actions (inaction) that have caused damage to the property interests of third parties to whom legal assistance is provided in accordance with the contract, as a result of the provision of such assistance by the insured person.

4. An insured event is considered to have occurred if the damage caused to third parties who are provided with legal assistance in accordance with the contract was the result of an unintentional violation by the policyholder (insured person) of professional duties.

5. The amount of the sum insured under the professional liability insurance contract of a legal consultant is determined by its terms and conditions and must be at least a thousandfold for legal consultants operating in the territory of a city of republican significance, the capital, and for other legal consultants - at least five hundred times the monthly calculation index established by the law on the republican budget for the corresponding financial year, as of the date of conclusion of the professional liability insurance contract of the legal consultant.

The procedure and other conditions of professional liability insurance of a legal consultant are determined by agreement of the parties on the basis of a standard contract of professional liability insurance of a legal consultant.

## **Chapter 6. ORGANIZATION OF LEGAL CONSULTANTS' ACTIVITIES**

### **Article 78. Chamber of Legal Consultants**

1. The Chamber of Legal Advisers is a self-regulating, mandatory membership-based organization established for the purpose of regulating legal aid activities and monitoring the activities of its members in terms of their compliance with the requirements of the legislation of the Republic of Kazakhstan on advocacy and legal assistance, rules and standards of the Chamber of Legal Advisers, the Code of Professional Ethics, included in the register of chambers of Legal consultants, uniting at least fifty legal consultants on the terms of membership.

2. The activities of the Chamber of Legal Consultants are regulated by the Law of the Republic of Kazakhstan "On Self-Regulation", this Law, the legislation of the Republic of Kazakhstan, as well as the charter, rules and standards of the Chamber of Legal Consultants.

See: Letter of the Department of Justice of Almaty of the Ministry of Justice of the Republic of Kazakhstan dated August 20, 2019 No. 07-17/I-2767-19 "Lawyers, notaries and private bailiffs cannot be members of the Chamber of Legal Advisers"

### **Article 79. Charter of the Chamber of Legal Consultants**

The charter of the Chamber of Legal Consultants is developed on the basis of the model charter of the Chamber approved by the authorized body.

### **Article 80. Functions of the Chamber of Legal Advisors**

The Chamber of Legal Advisors performs the following functions:

- 1) establishes the rules of professional conduct and the Code of Professional Ethics;
- 2) establishes the rules and conditions for admission to the chamber;
- 3) establishes, in agreement with the authorized body, standards for the provision of legal aid, criteria for the quality of legal aid and ensures their implementation by members of the chamber;
- 4) ensures that at least once a year on its Internet resource summary and analytical information on the generated average cost of legal services rendered by members of the chamber for the previous period, starting from the date of the last posting of this information, based on data provided by members of the chamber, taking into account confidentiality requirements;

- 5) establishes the scope and procedure for providing comprehensive social legal assistance;
- 6) provides professional development of its members in accordance with the approved standards of the Chamber;
- 7) organizes information and methodological support for members of the Chamber of legal consultants;
- 8) represents the interests of its members in state bodies, non-governmental organizations, including foreign and international;
- 9) monitors compliance by members of the Chamber of Legal Advisers with the requirements of the legislation of the Republic of Kazakhstan on advocacy and legal assistance, rules and standards of legal assistance, the Code of Professional Ethics;
- 10) considers issues on bringing members of the Chamber of Legal Advisers to responsibility for violating the requirements of this Law, the legislation of the Republic of Kazakhstan on advocacy and legal assistance, rules and standards of legal assistance, the Code of Professional Ethics;
- 11) promotes the organization of professional practice by graduates of organizations after secondary, higher legal education;
- 12) summarizes the practice and develops recommendations and proposals for further improvement and development of legal aid;
- 13) maintains a register of members of the Chamber of Legal advisers;
- 14) performs other functions established by this Law, the legislation of the Republic of Kazakhstan, the charter of the Chamber of Legal Consultants.

### **Article 81. Rights and obligations of the Chamber of Legal Advisers**

The rights and obligations of the Chamber of Legal Consultants are determined by the Law of the Republic of Kazakhstan.