

**Conference of Kazakh Lawyers Stronger When United: New Challenges and Expectations
“Representation of Lawyers in Court as a Regulated Profession: The Principle of Equality of
Arms”
Speech Draft**

Dear Colleagues,

I would like to begin my speech with stating that I am so glad to be with you in Turkey’s fellow country Kazakhstan. I would also like to thank the organizations which have contributed in this event to the International Bar Association and the Republican Collegium of Advocates of Kazakhstan with which we have begun collaborating under the umbrella of Union of Lawyer Associations in Turkish-Speaking and Fellow Countries. As the President of the Union of Turkish Bar Associations which is the trade association of 79 bars and approximately 100 thousand lawyers across Turkey, I salute you all, our dear friends. We are extremely glad to see that our Kazakh colleagues are making efforts to become organized, and that the Republican Collegium of Advocates of Kazakhstan is able to hold this important international event just a few years after its foundation.

Dear Colleagues,

Turkish Lawyers Act assigns the duty of “defending and protecting the rule of law and human rights, and making these concepts function” to Bars freely representing the independent defense which is one of the three constituent elements of jurisdiction, and to the Union of Turkish Bar Associations of which I am the President.

Dear Colleagues,

The main duties of bars, which are the organized power of lawyers, are to defend the rights of citizens and protect the honor and prestige of the legal profession. Bars should be independent in order to perform these duties. And bars can only be truly independent with the grant of the power of self-regulation and having a flow of income independent from the state budget.

Assurances the lawyers are provided with to do their job are by no means personal privileges. That is to say that the rights written in capitals in international legal texts, constitutions or acts hardly mean anything unless they are offered to people to enjoy. A lawyer’s job is to put these

rights into people's use. At this point, lawyers are the members of a profession which makes the man living in the society an individual.

Dear Colleagues,

Regardless of their regimes, each and every state has established organizations and assigned officers to settle disputes throughout history.

In other words, be it a totalitarian, authoritarian or democratic, each state has courts established to settle disputes. On the other hand, an effective independent defense, which is a constituent element of jurisdiction, can only be seen in democratic states of law.

The duty of courts in democratic states of law is to distinguish right from wrong and the innocent from the guilty through judicial means. By judicial means, I mean ways and channels set by legal rules complying with global criteria. At this point, we encounter the concept of right to a fair trial. The aim of the contemporary penal procedure is to try and find the truth in a way that by no means cause those who enjoy their democratic rights and freedoms to have fear, or even worries, by strengthening each and every individual's right to legal security without tarnishing anyone's name or suppressing and intimidating the society.

So if one disregards the judicial means and the right to a fair trial included therein and has a mindset such as "truth will be achieved at all costs", then truth can never be found, and furthermore, the process of investigation and prosecution breaches the peace more than the investigated or prosecuted crime does. That is because in each case where we deviate from the judicial means and breach the right to a fair trial, not only the individuals being investigated or facing prosecution but also the third persons begin to worry about their fundamental rights and freedoms, as well as their legal security.

It should be noted that, a person may assure that they will not commit any crime all their lives, and keep their word. No one, however, can be sure if they are to be tried one day. And this is why the rules of contemporary penal procedure protects, based on the presumption of innocence, the suspect and defendant until proven guilty, and other individuals of the society who should know that they could also be accused or tried at some point in their lives.

In the societies where the right to a fair trial has not been internalized by legal practitioners and thus is often breached, individuals live with the fear that their fundamental rights and freedoms can be breached by the state, begin hesitating to express themselves, and see the instrument of state not as a tool at their service but as a “big brother”.

Fair trial can only be ensured by the defense which is independent, effective and authorized in accordance with the principle of equality of arms, i.e. a lawyer.

That is because truth can only be reached through the adversary system. Sure enough, this system requires two parties which are equally powerful. That is to say that the principle of equality of arms is the indispensable condition of finding the truth and thus the adversary system.

Following are the rights and principles deemed necessary by the ECHR for the principle of equality of arms to gain functionality while discussing this principle within the framework of the right to a fair trial in Article 6 of ECHR:

Right to access the evidence, right to examine or have examined witnesses against oneself and to obtain the attendance and examination of witnesses on one’s behalf under the same conditions as witnesses against oneself, right to trial through adversarial system, right to silence, right to receive a reasoned decision, and right to defend oneself in person which makes it possible to examine witnesses and have free assistance of an interpreter.

Beginning with the politicians in particular, each and every individual should internalize the following:

- There can be no fair trial in the absence of an effective and independent defense authorized in accordance with the principle of equality of arms.
- If there is no fair trial, one cannot distinguish the innocent from the guilty and the right from the wrong.
- Fair trial requires impartial, independent, accountable and transparent courts.
- Separation of powers is the indispensable condition for this.

- There can be no democracy in the absence of the separation of powers.

It follows from the above statement that for us lawyers, separation of powers and democracy are indispensable professionally as well.

I am grateful for the invaluable works of IBA aiming at reinforcing the rule of law.

And I would like to say thank you to the Republican Collegium of Advocates of Kazakhstan for hosting this event.