

**ABSTRACT**  
**of the dissertation for the degree of Doctor of Philosophy (PhD) specialty**  
**«6D030100 - Jurisprudence»**  
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**«Procedural problems of activity of the lawyer defender a the stage  
pre-judicial investigation on criminal cases»**

**Relevance of the research topic.** Paragraph one and three of Article 13 of the Constitution of the Republic of Kazakhstan establishes the following guarantees: "everyone has the right to be recognized as a subject of law and has the right to defend their rights and freedoms in all ways that do not contradict the law, including the necessary protection" and "everyone has the right to receive qualified legal assistance. In cases stipulated by law, legal assistance is provided free of charge "[1]. In accordance with these Rules, we see that the Republic of Kazakhstan is the only state that is guided by legal principles, but one of the important measures is the application of these rules in practice, ensuring the rights of individuals during criminal proceedings.

In his Address to the People of Kazakhstan "Kazakhstan in new conditions: Time for action" on September 1, 2020, the Head of State K. Tokayev noted the need to address a number of issues on public administration, healthcare, education, socio-economic and other issues. Firstly, taking into account the experience of the pandemic, the Head of state instructed to develop mechanisms aimed at ensuring a balance between the levels of legal regulation. The President noted that excessive legislative regulation of the activities of the executive branch hindered the prompt response to emerging problems, therefore he instructed to consider this issue within the framework of the Concept of Legal Policy. "Speaking of preliminary approaches to the implementation of this task, it is planned to conduct a review of legislative acts to determine detailed norms that will be revised in order to ensure flexible regulation in specific legal relations," he noted [2]. Secondly, the task is to develop approaches to ensure the sustainability of criminal and Criminal procedure legislation. To this end, the Ministry of Justice, together with law enforcement agencies, is working to develop appropriate mechanisms to ensure stability. For example, reducing the frequency of amendments to the Criminal and Criminal Procedure Codes can be achieved by strengthening the mechanisms for working out initiatives presented in this area. In addition, the Head of state separately noted the need to ensure equality of rights of a lawyer and a prosecutor in court proceedings. To fulfill this task, amendments to the draft law "advocacy and legal assistance" were developed jointly with the legal community, which expand the powers of lawyers in court proceedings [3].

Considering the legal status of a lawyer-defender, it is possible to note the level of development of the whole set of public relations, the maturity of the

democratic and legal foundations of the state, the living conditions of people, ways, boundaries of human freedom, coordination of actions and activities of everyone, prevention or resolution of conflicts and contradictions between the parties to the relationship, as well as Criminal proceedings, including: he meets the requirements of generally recognized norms of international law, whether there is a democratic direction, the nature of competition, revealing such issues, as the provision of certain norms, mechanisms and means of ensuring the institutions of Criminal procedure law, the topic demonstrates its relevance in the creation of a modern new Kazakhstan.

As for the statistics of sentences in criminal cases in the Republic of Kazakhstan, in 2019, 2355 criminal cases were considered in the courts, of which 72 persons were acquitted, in 2020 - 2699 criminal cases, of which 53 were acquitted, in 2021 - 2691 criminal cases, in respect of 35-acquittal, In the first half of 2022, 1,287 criminal cases were considered, of which 10 acquittals [4]. Behind each acquittal, one can see the result of the active, professional and comprehensive activity of the defense lawyer.

**The purpose and objectives of the study** are to study the legal foundations of the activity of a defense lawyer in criminal proceedings, to present their own conclusions on ways and methods of improving the organizational and legal forms of a professional defender at the stage of pre-trial investigation. Particular attention is paid to the specifics of the lawyer acting as a defender when considering criminal cases.

To achieve this goal, the following tasks were solved in the work:

- analysis of trends in the development of the activities of a defense lawyer;
- Study of the procedural rights of a defense lawyer during a preliminary investigation during criminal proceedings in the Republic of Kazakhstan;
- disclosure of the content and forms of possible activities of the lawyer in this direction during participation in the preliminary investigation;
- substantiation of the right of citizens to professional protection of their rights and legitimate interests in criminal proceedings;
- making appropriate amendments and additions to some norms of the Criminal Procedure Legislation in terms of the activities of the defender.

**The methodological basis of the dissertation research** is the dialectical method of cognition of social processes, comparative legal and concrete legal methods are actively used, as well as general scientific methods of analysis and synthesis, induction and deduction. At the empirical level, studies of normative legal acts, other documents, printed publications, publications in the media, etc. were used. The methodological basis of the dissertation is the provisions of the general scientific method of cognition.

The dissertation research is based on the general philosophical, theoretical, empirical method (dialectics, system method, analysis, synthesis, analogy, deduction, observation, modeling), as well as on the method of traditional legal research (formal logic, comparative jurisprudence).

**Scientific novelty of the work.** The main scientific novelty of the dissertation is a new study of procedural issues of a defense lawyer at the stage of pre-trial investigation on the basis of legal reforms carried out at the monographic level and the Criminal Procedure Code adopted in 2015.

As a result of the conducted research, the author makes proposals to improve the legislation on advocacy and Criminal procedure legislation regarding the powers of a defense lawyer in criminal proceedings.

The dissertation defines the requirements for persons wishing to engage in defense in advocacy and criminal proceedings. The applicant notes that advocacy is an institution specially created for the protection of rights and well adapted to the implementation of law enforcement activities, especially in the field of criminal procedure, and the lawyer himself must be a person who ensures the fulfillment of the tasks facing the defender in criminal proceedings, and thereby guarantees everyone the right to receive qualified legal assistance. In this regard, the applicant makes specific proposals to improve the forms of participation of the defender in the criminal process. The dissertation substantiates the need to further expand the rights and guarantee the activities of the defender in criminal proceedings and in this regard, specific proposals are made to consolidate these guarantees in the procedural law.

**The following rules are submitted for protection:**

- advocacy as a complex dynamic legal category is a complex legal phenomenon, interrelated elements together form a system designed to ensure its effective functioning. Based on this conclusion, the applicant makes a conclusion about the author's context, about the elements of advocacy. The elements of advocacy are: the subject and the persons involved, the object, purpose, legal actions and operations, methods and methods of their implementation, professional ethics, as well as the results of the lawyer's actions;

- the author's definition of the concept of "qualified legal assistance" is given. Qualified legal assistance is the procedural activity of a defense lawyer as an independent participant in criminal proceedings, which consists in protecting the rights, freedoms and interests of persons involved in criminal proceedings, and in protecting the suspect, representing the interests of the victim, civil plaintiff, civil defendant, as well as in providing professional legal assistance to all other persons involved in the process. It is proposed to include this concept as an appropriate paragraph in Article 7 of the CPC of the Republic of Kazakhstan;

- mechanisms have been developed to implement the provisions of Article 14 of the Law of the Republic of Kazakhstan "On Advocacy and Legal Assistance", establishing the professional rights of a lawyer, including the right to independently collect factual data necessary for providing legal assistance and presenting evidence, i.e. improving the professional mechanisms of the lawyer-defender by expanding the rights of a lawyer specified in art. 70 CPC RK;

- as one of the directions for expanding the law, the author's proposal was made to the Criminal Procedure Code to prevent the disclosure of pre-trial investigation data.

Currently, the wording of Article 201 of the CPC of the Republic of Kazakhstan is written in such a way that the person conducting the pre-trial investigation warned the defender about the inadmissibility of disclosing the information contained in the case without his permission. In accordance with article 33 of the Law "On Advocacy and Legal Assistance", a lawyer must request and receive from all state bodies, local self-government bodies and legal entities information necessary for the implementation of advocacy; has the right to 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.

In this case, two provisions of the law may cause a conflict when providing legal assistance to lawyers, since the defender has the right to consult with experts during the pre-trial investigation or instruct an expert (specialist) to conduct an expert study on a paid basis with a warning about the inadmissibility of disclosure of information on the case, during which the expert must provide copies of materials withdrawn from the criminal case, or it may be necessary to provide other data obtained as a result of participation.

- a proposal has been made on the need to amend Article 175 of the Code of Criminal Procedure of the Republic of Kazakhstan regulating the list of procedural expenses with a separate item of the amounts paid to the lawyer-representative for the provision of legal assistance, entitled "receipt by the lawyer-representative, translator, specialist, expert remuneration for the work performed". The specified expenses of the victim, as well as the civil plaintiff, may be imposed on the convicted person, since the specified expenses of the participants in the specified process are reimbursed by the body conducting the criminal process directly during the criminal proceedings. They are directly related to the crime committed, therefore they arose due to the fault of the one who committed it, which means it is better to recover from the culprit.

- in order to guarantee the activity of lawyers in assisting in criminal proceedings, it is necessary to include participation in the case without the investigator issuing a resolution on the admission of a defender, since in accordance with part 8 of Article 68 of the CPC, a lawyer participates in the case as a defender upon presentation of an official certificate and a written notice of protection. In practice, the defender often cannot file a petition for investigative actions or other actions related to the performance of his duties to protect the rights of his client, since the pre-trial investigation body has not issued a resolution on his admission to participate in the case. In this case, the lawyer as a defender should not depend on the pre-trial investigation body, as this violates the right to protect the suspect. The timely participation of a lawyer at all stages of the investigation of a criminal case gives a significant advantage in creating a

line of defense or excluding the possibility of unjustified involvement of a person in the framework of criminal prosecution.

**Approbation of the results of the study.** The main results of the study were reflected in the published articles of the author. At the time of writing the dissertation, eight articles were published, including: 1 article in the Journal of Crime and Justice, which is part of the international database of Scopus, 3 articles in journals recommended by the Committee for Quality Assurance in Education of the Ministry of Science and Higher Education of the Republic of Kazakhstan, 4 articles in reports on republican and international scientific and practical conferences.

**The structure and scope of the dissertation** are determined by the subject, goals and objectives of the research and consist of definitions, designations and abbreviations, an introduction, three chapters combining eight sections, a conclusion and a list of references.