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System of protection the rights and interests of an individual in criminal pre-trial proceedings

Abstract: System of protection from criminal prosecution consists from mutually associated elements, which include the main principles and terms of criminal proceedings, participation of a defender and representatives, personal protection and ensuring of the rights.

Structural elements of a system of protection of the rights and interests of an individual in criminal pre-trial production are analyzed.

It is given suggestions on changing and supplementing of criminal procedure legislation.

Keywords: pre-trial production; criminal process; defence; rights and interests; an individual; lawyer; procedural activity; participation, ensuring.

According to article 7.0.27 of the CPC of Azerbaijan Republic (further, the CPC), a defence is procedural activity, which has a goal to refute or mitigate an accusation of a suspected individual in committing a crime, to protect his rights and freedoms, and also to restore violated rights and freedoms of an individual who illegally prosecuted. Suspected or accused individual, their defender and civil defendant are a defence party [7, p. 9].

Right to defence is guaranteed by the Constitution and the CPC, international treaties, participant of which Azerbaijan Republic is.

According to article 61 of the Constitution, "… everybody has the right to be provided by a competent legal assistance. The law provides also free legal assistance. Everyone should be provided by legal assistance when detained, arrested or accused in crime committing" [4, p. 16].

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According to clause “b” and “c” of paragraph 3 of article 6 of the European “Convention for the Protection of Human Rights and Fundamental Freedoms”, everyone charged with a criminal offence has the following minimum rights: … to have adequate time and facilities for the preparation of his defence; to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require … [5, p. 167].

Article 19 of the CPC says that in course of criminal prosecution an inquirer, investigator, prosecutor or court are obliged to take measures to ensuring the rights of a victim, suspected or accused individual to obtain a competent legal assistance that is meant: to use assistance of a defender before detention, custodial placement or first interrogation as suspected or accused individual; to obtain clarification of his rights; to have adequate time and facilities for the preparation of his defence; to defend himself in person or through legal assistance of his own choosing, if he has not sufficient means to pay for legal assistance, to get it free [7, p. 18].

Consequently, we may conditionally consider that a system of defence from criminal prosecution consists on mutual-linked elements, which include the main principles and terms of criminal proceedings, participation of a defender and representatives, personal protection and ensuring of the rights.

The Law of Azerbaijan Republic “On lawyers and advocacy” does not contain a “lawyer” notion, but it says that advocacy is an independent legal institution, which provides competent legal protection (art. 1) on the defence the rights, freedoms and legal interests of individuals and legal entities, renders them effective legal assistance (art. 3) [6, v. 6, p. 41-43].

According to article 92 of the CPC, only a lawyer, who has the right to carry out an advocacy on the territory of Azerbaijan Republic, may participate as a defender in criminal process. Number authors and we believe that this is wrong, as, from one hand, it monopolizes the activity and from other one, it contradicts to the basic international documents and restricts the right to defence [7, p. 75].

The CPC of Russian Federation allows participation as defenders the lawyers without indication of their membership, and sometimes – on a court decision or resolution as a defender together with a lawyer is allowed to be one of the close relatives of an accused individual or another person, who is petitioned by the accused. This approach is considered to be more right [9, p. 140]. It is necessary to note that the CPC of Azerbaijan, which was effective until 2000 (art. 57), provided the same rules of defence [12, p. 37].

In compliance with article 2 of the Federal Law "On advocacy and the Bar in the Russian Federation", a lawyer is an individual who, according to the law, granted with a status a lawyer and the right to carry out advocacy. The lawyers of foreign states may provide the legal assistance on territory of Russian Federation in respect of the issues of the legislation of the country only after their registration in federal body of the executive justice powers [9, p. 212].

According to article 42 of the CPC of Estonia, a defender in criminal process is: a) a lawyer, and also other individuals who are granted permission of a body, carrying out criminal production. They should correspond to educational requirements established for contractual representative, and act in compliance with an agreement signed with a client (contractual defence counsel), or b) a lawyer who is appointed by the Bar of Estonia on petition of an investigative body, prosecutor's office or a court (appointed defender counsel) [10, p. 23].

The CPC of Georgia (par. 8 of art. 78) reads that foreign lawyers might be allowed to the process as defenders with consent of the Ministry of Justice [8, p. 37].

According to article 92.2 of the CPC of Azerbaijan Republic, a suspected or accused individual may have a few defender counsels. Non-participation one of them in course of production of mandatory procedural actions cannot be basis to recognize these actions illegal [7, p. 94].

Defender's participation in criminal process should be provided the following: if this is required by suspected or accused person; if suspected or accused individual cannot defend himself in person being a dumb, deaf or due to serious problems with speech, sight, hearing, serious illness, and also mental retardation etc.; if in course of

production on criminal case an exacerbation of mental illness or temporary mental disorder of suspected or accused individual is found; if suspected or accused person does not a language on which criminal proceedings is carried out; if at time of crime committing suspected or accused person was a minor; if accused is army conscript; if suspected or accused individual is forcibly placed into special medical (psychiatric facility) institution; if suspected or accused person is detained or arrested, except his refusal from a defender; if criminal prosecution is carried out at the expiration of limitation period for bringing to criminal responsibility; if it is existed contradiction between legal interests of accused individuals and one of them has a lawyer; if criminal prosecution is carried out is respect of a person who committed crime being non compos mentis; if suspected or accused individual is legally incapable [7, p. 94-95].

In our opinion, some of listed provisions are wrong. It is impossible enumeration of all physical and psychic deficiencies, which exclude personal implementation the right to defence, as it requires special knowledge and there is always danger to lose some deficiency.

Number of the authors just recognized that it should be spoken not about impossibility, and about completeness of personal implementation the right to defence, in connection with that participation of a defender counsel should be mandatory when physical and psychic deficiencies are confirmed by proper medical documents [13, p. 43].

The provision, according to which a participation of a defender is mandatory if accused is army conscript considered to be right, but a suspected army conscript should be also added to this category.

According to article 92.4 of the CPC, participation of a defender in criminal process is provided when: suspected or accused individual demands providing him with a defender counsel (on demand); first interrogation of a person, he got a notice about his detention or measure of restraint or filing accusation (physical or psychic deficiencies, he does not speak in language of criminal proceedings carrying out, a minor, he is accused in committing of especially grave crime); he is ill or legal

incapable; is made a decision about bringing him as accused (accused is army conscript or expired of limitation period); examination in a court presentation of prosecutor on placement of a suspected or accused in special medical institution (psychiatric facility); detention a suspected or accused individual and consideration in a court of prosecutor's representation about his arrest; consideration in a court of charges against accused person (in course of contradictions are between interests of accused individuals, if one of them has a defender) [7, p. 95-96].

During implementation of his powers in course of pre-trial proceedings, a lawyer has the right: to know an essence of suspicious or accusation; without any restrictions in respect of number and duration to meet and talk confidentially to his client; to take part in investigated and other procedural actions (and also with participation of his client); to remind to suspected or accused individual his rights and indicate to investigative body about violation of the law.

In course of pre-trial production a defender counsel has the right: to collect and present evidence and materials to the proper body to attach to the criminal case; to file recusations and petitions; to object against actions of a body that carrying out criminal process, and to demand including this objection into the criminal case; to familiarize with the records of investigative and other procedural actions, in which the client had participated; to lodge comments in respect of completeness and correctness of the notes in the records of investigative and other procedural actions, in which he had participated; to demand including the circumstances in a record, which should be remarked; to collect the circumstances to clarify the issues of defence of a suspected or accused person [7, p. 97-98].

In addition, a defender counsel has the right to be familiarized with resolution of a proper body carrying out a criminal process in respect of expertise appointment and expert's conclusions on it, with materials that confirmed legality of a client's detention, arrest and custody, to make copies of the documents concerning to a client when preliminary investigation is finalized; to obtain information on resolutions, which are concerned the rights and legal interests of his client, and get their copies.

Defender has the right: to lodge a complaint to the actions and resolutions of an inquirer, investigator or prosecutor; to refuse from any complaint, except appeal a conviction; on behalf of a client's name and his instruction to take part in reconciliation suspected or accused individual with a victim, and to use by other rights that stipulated with the CPC [7, p. 94].

The right to defence is provided by the provisions about mandatory participation of a defender counsel in criminal process and with procedure of recall of the defence attorney. According to this procedure, this decision of suspected or accused person should be fixed in protocol if the latter lodged a written statement, which should filled a voluntary by a client and under presence of new appointed defender (lawyer) who signs also this protocol. In case a suspected refuses to be served by a defender and does not want to write the statement, his action is fixed in protocol and signed by a lawyer and official of detained center [7, p. 97].

The right to a defender's choice means that suspected or accused individual chooses a defender counsel himself. Human Rights Committee determined that the right to defender's choice was violated when court had restricted the right to choice with only two appointed lawyers [15, p. 110].

The right to a defender's choice might be limited if a lawyer violates professional ethics, is a subject of criminal prosecution or refuses to fulfill procedural rules. So, the European Commission did not recognize violations of the European Convention when the lawyers (defenders), who were chosen by suspected individuals, had been banned participating in defence as they had been suspecting in the same crime as the suspected ones [15, p. 110]. In addition, suspected or accused person has unlimited right to defender's choice when the expenses are paid by a state [15, p. 11-14].

According to the principle 8 of the Basic Principles on the Role of Lawyers, the principle 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the rule 93 of the Standard Minimum Rules for the Treatment of Prisoners, all arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to

communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials [5, p. 47, 54, 99].

According to the principle 6 of the Basic Principles on the Role of Lawyers, any persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services [5, p. 76].

According to the principle 16 of the Basic Principles on the Role of Lawyers, lawyers: a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; b) are able to travel and to consult with their clients freely both within their own country and abroad; and c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics. According to the principle 18 the Basic Principles on the Role of Lawyers, lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions [5, p. 50].

Thus, a system of defender’s participation in pre-trial criminal proceeding consists from consultations of a defendant, participation in procedural actions, collection of evidence, lodging the petitions and appeal of actions and decisions of prosecution party and court, affecting the rights and interests of a defence party.

Let’s consider the elements of the system and try to determine how they are correlated to each other, with other provisions of the law and whether they provide the goals and tasks declared.

Consultation of a defendant by lawyer is: to explain the provisions of the law; to assess the evidence; to develop the tactics of actions under production of investigative measures, the main of which is an interrogation. Before going to an interrogation lawyer and defendant determine what volume and kind of information

the latter gives to an investigator, and the main, should it full or partly correspond to reality.

According to the explanatory dictionaries, under deception, falsehood is understood intended distortion and concealment of the truth; untruth, false presentation etc. [14, p. 282, 367, 378].

Article 15 of the CPC says that in course of criminal prosecution to get testimonies through deception and application other illegal actions violating the rights of individuals interrogated are forbidden. Thus, the law refers deception to illegal actions. But, a lawyer (defender) does not carry out criminal prosecution. According to article 38 of the CPC, this is a duty of an inquirer, investigator and prosecutor [7, p. 27].

Production of interrogation and other investigative actions is prerogative of the inquirer, investigator and prosecutor, and a lawyer takes part in these actions only through lodging questions and objections. Information passed by the lawyer to other participants of a process is not the testimonies. According to article 126.1 of the CPC, testimonies are recognized information in written and verbal forms that received from suspected, accused, victim and witnesses by a body carrying out a criminal process. According to article 7.0.5 of the CPC, the bodies carrying out a criminal process are offices of inquire, investigation, prosecutor and the courts, which are implemented criminal production and prosecution [7, p. 7].

Consequently, the analysis of procedural part of the problem allows asserting that there are no procedural (legal) prohibitions on a deception for a defender.

According to the law, suspected and accused individuals do not bear a criminal responsibility for giving obviously false testimonies, except the cases of obviously false denunciation [11, p. 249]. Sometimes, a content of their testimonies are formed with participation of a lawyer, who will have regardless of his will take part in their correction. Before this a defence party determines general position of their protection, which may vary in the following forms: a) absolute denial; b) partial confession and c) full confession of accusation.

We are talking just about varying of the forms as in a certain stages of process an absolute denial of accusation can turn to partial confession; full confession - to partial or full confession etc. Correspondingly this content of the testimonies will be changed or refusal to give them will happen.

According to article 91.5.17 of the CPC, accused person has the right to confess his guilty or not, i.e. he determines his own defence position, but a lawyer (defender) participates directly in the most cases [7, p. 87].

As rule, an experienced lawyer does not impose his opinion on a client (defendant). Analyzing together with client the details, explaining possible consequences, a lawyer suggests him to be determined himself with defence position.

It is everything clear when a form of a defence is chosen the refusal on testimonies giving or full confession of accusation. An issue is a harder when a client chooses full or partial refusal of accusation through giving testimonies. Regardless of guilty or non-guilty of a client, faith or unfaith of a lawyer in trustfulness of client's testimonies, he (a lawyer) is obliged to participate in forming of a defence position; otherwise a client can refuse on his services.

Loss of clients and professional competence is a sufficient but not the main circumstance in dispute about right to lie of a lawyer.

It seems that deprivation of a defender the means of criminalistical tactics, in which a deception is an integral element, emasculates of defence essence. It was justly noted in juridical science that there was not and there is not in criminalistical tactics a method, recommendation, combination etc., in which base a deception or lie have not been. “History of criminalistical tactics, especially its soviet period, is characterized by unsuccessful attempts to find moral substantiation admissibility of lie and deception or camouflaging synonyms that any case is doomed on a failure, as it had been in vicious circle of interlinked Jesuitical notions and provisions” [17, p. 144].

In addition, it is necessary to note that M.S. Strogovich justly wrote: “... deception and lie are not to be such, and are become only more qualified and amoral” [16, p. 20].

Resuming above stated, we may assert that criminalistical tactics is an integrated part of a defence, and a deception - an integrated part of criminalistical tactics. Bounds and forms of its using by a lawyer depend on his moral features; application of them is allowed to say about his tactical abilities, but not deceitfulness and amorality.

Analysis of the norms of law and practice shows that a lawyer's right to participate in investigative or other procedural actions, made with participation of suspected or accused individual is not properly regulated by the CPC, and this excludes its proper using.

So, article 232.2 of the CPC "Interrogation of a suspected individual" says that in cases provided by article 92.3 of the CPC, during interrogation of suspected an investigator is obliged to provide in advance a participation of defender counsel. The same provisions are contained in the article 233 "Interrogation of accused individual", article 235 "Confrontation", article 236 "Inspection", article 239 "Identification of a person", article 240 "Identification of the items", article 244 "Individuals participating under production of a search and seizure", article 251 "An order of property's arrest" and other [7, p.p. 239, 240, 242, 244, 248, 252, 259].

But, an order of a lawyer's notification in respect of forthcoming production of investigative action is not provided by the CPC. As rule, the lawyers are notified by a letter or on phone, sometimes through sms. But, these forms notifications are not excluded an opportunity of timely lawyer's participation in production of investigative action, i.e. they restrict his rights to participation [13, p. 107].

Therefore, it seems significance to supplement the CPC with provisions regulating an order of lawyer's notification, and also to change provisions concerning to a defender's replacing.

So, according to article 92.15 of the CPC, "... an inquirer, investigator or prosecutor has the right to demand on a head of the Bar to replace a defender by other one ... if for 6 hours after detention or arrest of a suspected or accused chosen defender (lawyer) has not come to meet him, and if for a long time (not more than 5 days in each course) a defender does not come for participation in investigative or

other procedural actions, which implementation are provided by criminal process, and a body, which carrying out of it, does not have time to postpone the actions' fulfillment" [7, p. 97].

Meanwhile, according to article 232.1 of the CPC, an interrogation of suspected person should be produced at once after his detention, and no one will wait the five days of a lawyer in order to produce inspection, search or other investigative action [7, p. 239].

From our point of view, the main is that participation of a defender is led down to passive observance and the right to demand supplements to a protocol, but not to ask questions to suspected, witnesses and other participants of investigative experiment and other.

At the time, article 235.4 of the CPC says that "... individuals who invited on confrontation may participate in interrogation and with permission of investigator to ask questions to each other" [1, p. 242]. But this provision is non-specifically and can be interpreted with deferent ways. Consequently, it should be included in the law a lawyer's right to ask questions to individuals who are interrogated in confrontation, experiment and checking of the testimonies. In addition to this to apply to a lawyer the general rules of interrogation, and then we will obtain a real, but not declared opportunity a defender's participation in collection of evidence.

Valid CPC contains mutually exclusive provisions, according to which a lawyer (defender) has the right to collect evidence (art. 92.9.9 of the CPC); the collection of evidence is carried out through interrogation, confrontation, search, seizure, inspection and other procedural actions, which are implemented by an inquirer, investigator, prosecutor and court, but not a lawyer (art. 143.1 of the CPC); inadmissible acceptance as proofs: information, documents and items, which are taken by individuals who do not have the right to fulfill the investigative actions (art. 125.2.5 of the CPC) [7, p.p. 93, 157, 144].

Lodging an appeal in order of judicial control over the actions and decisions of prosecution party and a court, which are concerned the rights and interests of defence

party, is the basic structural element of the system of a defender's participation in pre-trial proceedings.

Notion “control” (checking, and also watching with purpose of checking) and “supervision” (observance with purpose of watching, checking) [14, p. 251, 322] in Russian have similar significance. This is a reason, which explains interpretation differentiation of special production in form of judicial control (supervision) in various Criminal Procedure Codes (further, the CPC) of Azerbaijan Republic. Thus, the CPC published in 2001 by “Yuridicheskaya literature”, prepared by E. Mammadov, a head of working group, says about judicial control, and the CPC the published in 2007 the same publishing house says about judicial supervision [7, p. 437].

The CPC of 2010 of the “Ganun” publishing house and all others editions of the code in Azerbaijani is written “nəzarət” that means in legal documents “supervision”. In spite of it there is no common point of view among the scientists on this issue.

So, is it supervision or control and whether this is important in existed realities? It seems that the both of these notions mean the same kind of activity, which implementation presupposes presence one more activity - pre-trial criminal production. But, a court does not fulfill permanent supervision (control) in all stages of passing, and only interferes when receives some petitions, complaints of other participants of process on specific issues of proceedings.

Obviously, due to unfounded assertions, the Russian lawmaker classifies considered judicial activity to the procedures of examination of complaints and petitions [9, p. 56-58] and receiving of permission on production of investigative actions (art. 165 of the CPC of RF) [9, p. 77], defining, in advance, the powers of a court in this part (art. 29 of the CPC of RF) [9, p. 14-15] that seems more correctly.

The CPC of Georgia also refers this activity to the complaints (chapter 30). Part 4 of the article 242 of the CPC of Georgia reads: “Complaint may be lodged on any actions or decisions of an inquirer, investigator or prosecutor, which, on opinion of complainant, are illegal or unfounded. It may be complained: violation the right of accused to defence and rights of a victim, other violation of the law in course of

inquire and preliminary investigation, unfounded rejection of petitions, refusal in satisfaction of demand on production of investigative actions, violation of procedural dates, application of the measures of procedural coercion, using inadmissible methods of investigation and inadmissible evidence, rejection in bringing on criminal case and other actions or decisions of the investigative bodies that deprive rights, freedoms and legal interests of process' participants" [8, p. 101-102].

In addition, according to article 243 of the CPC of Georgia, "... it is not appealed resolution of a court in respect of production of investigative actions, operational search measures during inquire and preliminary investigation and taking in custody and application of procedural measures of coercion, which restricting constitutional rights and freedoms of a man" [8, p. 102].

According to article 230 of the Estonia, "... in case of disputing of the actions of investigative body or prosecutor, which violated the rights of a person, and discord with resolution of State Prosecutor's office, an individual has the right to lodge complaint to a judge" [10, p. 123].

According to article 136 of the CPC of Estonia, prosecutor's office and accused or his defender may lodge complaint on resolution on custody, refusal in custody, prolongation of custody time in order provided with chapter 15 of the CPC (Production on complaint resolution on decision) [10, p. 67].

Article 137 of the CPC of Estonia provides judicial control over substantiation custody [10, p. 67].

Indisputably, inclusion in new CPC of Azerbaijan of 2000, the section in part of judicial supervision is a factor, which positively influence onto functionality of criminal procedure legislation (art. 1 of the CPC), fulfillment of the tasks and reach of the goals of criminal proceedings. Nevertheless, analysis of the norms of the CPC regulating implementation of judidcial supervision shows they are not perfect, contradict to each other, have a declarative nature, not approved by practice.

According to article 442 of the CPC, judicial supervision carries out in its frames appropriate court of the first instance on a place of forcied conducting of

investigative actions, application of the measure of procedural coercion or implementation of operational and search measure.

In order of fulfillment of judicial supervision a judge examines single-handedly:

- petitions and presentations on forcied conducting of investigative actions, application of ther measures of procedural coercion or implementation of operational and search measures, which are restricted the rights to freedom, inviolability of home, personal integrity, protection of privacy and confidentiality (including privacy of family, correspondence, telephone talks, postal and other information), and also the state, professional and commercial secret;

- complaints on procedural actions or resolution of a body carrying out a criminal process.

Issues refering to judicial supervision and rules of their realization are provided by the articles 443-454 of the CPC [7, p. 437-438].

Article 449 of the CPC "Appealing to a court of the procedural actions or resolutions of a body carrying our a criminal process" says that procedural actions or resolutions of a body of criminal process may be appealled in a court that fulfills a judicial supervision: in connection with refusal to accept statement about crime (art. 439.3.1); detention and arrest (art. 449.3.2); volation of the rights of a detained person (art. 44.3.3); application of torture or other brutal treatment to imprisoned individual (art. 449.3.4); refusal in bringing a criminal case, suspension production on criminal case or dismissal of a case production (449.3.5); forced conducting of investigative action, application of measure of procedural coercion or implementation of operational and search action without court decision (449.3.6) and rejection of an accused (suspected) defender from criminal process (449.3.7) [7, p. 446-447].

Under relative lucidity of the provisions indicated in the articles 449.3.1, 449.3.3, 449.3.4, 449.3.5, 449.3.6 и 449.3.7 of the CPC, it is not quite understandable what a lawmaker imply under actions and decisions in respect of detention, arrest; whether he includes only organizational and administrative issues or also procedural ones; whether he keeps in mind all rights of arresting accused individual or only connected with conditions of custody etc.

If article 449.3.2 of the CPC indicates all rights of detained and arrested individuals, i.e. suspected and accused persons provided in articles 90 and 91 of the CPC then it should be written so; but, then what about article 449.3.3 of the CPC on violation of detained person's rights?

In 2013 a court of Sabail District of Baku without examination returned four times the complaints of a defender of accused Dadashev on refusal of an investigator to attach to a case the proofs collected by a lawyer. He motivated his decision by absence the appropriate provisions in article 449.3 of the CPC [3].

At the same time, a court of Narimanov District of Baku recognized legally similar actions of an investigator who refused to attach to a case the materials, which were presented by a defender of arrested Piraliyev [2].

Thus, there is not unified opinion among the judges carrying out judicial supervision in respect of article 449 of the CPC. This creates disorder in actions and decisions of the law users.

By the way, according to article 451 of the CPC, in compliance with results of legality of procedural actions or resolutions of a body carrying out a criminal process, a judge makes one of the two resolutions: on recognition of appealed action or resolution either legal or illegal and subjected to cancel [7, p. 448].

Consequently, decisions of Sabail court of Baku about returning complaints by applicant were illegal on a few parameters, but Baku Court of Appeal had not taken attention on these "trifles".

Here, we should point out that due to incorrectness of norms of the law a lot judges under decisions of a body of criminal process are understood only written resolutions. If they are absent then complaints are not examined or decisions of investigators are recognized legal.

Thus, Narimanov court of Baku did not examine a complaint of Piraliyev on non- admittance to a process his defender in one course, and it recognized legal such actions of investigator in connection with absence of written resolution in case of accused Mahmudov [2].

There are a lot of such examples and collisions in legislations in respect of considered issue. But it is enough these examples to assert that defender's participation in criminal process and fulfillment his function on protection of the rights and interests of people is not provided by the law.

First and actual step to eliminate this situation would be providing a defence party with the right to appeal any actions of prosecution and court, which, on opinion of a complainant, are illegal and unfounded.

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