REPUBLIC OF AZERBAIJAN

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ABSTRACT

of the dissertation for the degree of Doctor of Science

LAWYER INVESTIGATION IN THE CRIMINAL PROCEDURE OF THE REPUBLIC OF AZERBAIJAN: THEORETICAL BASIS, LEGAL SUPPORT, FORENSIC ASPECTS

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GENERAL CHARACTERISTICS OF THE WORK

The relevance of the subject and the extent of its previous studies. The new Criminal Procedure Code (CPC) of the Republic of Azerbaijan, adopted on July 14, 2000 and entered into force on September 1, 2000, can be considered as a logical consequence of post-independence judicial and legal reforms and hereupon as a law determining next main directions. In this sense, with the adoption of the new CPC, many new and progressive ideas of law have been established in the normative order, and at the same time, the new CPC determined new responsibilities before the science of criminal procedure law, taking into account the embryos of ideas about legal institutions. It should be noted that implementation mechanisms, which unequivocally reflects the priority of human rights and freedoms, the adversarial form of criminal proceedings, the priority of special interests over state interests and advanced legal ideas like these, have not been fully developed in new the CPC, and there are also norms and legal institutions that need to be improved and, in some cases, harmonized with the country's Constitution. In our opinion, the amendments and changes made by the Milli Majlis of the Republic of Azerbaijan to the criminal procedure legislation on a regular basis, verification of the constitutionality of the articles of the Constitution and the occasional discovery of contradictions between them by the Plenum of the Constitutional Court of the Republic of Azerbaijan reaffirm the said views. However, it should be noted that the happening, which is focused on is due to more objective reasons, because the normative and technical base of the current criminal procedure legislation of the Republic of Azerbaijan dates back to the Soviet era while it is based on modern world, especially European standards. As a result of this situation, inconsistent categories, instead of ensuring mutual realization, lead to mutual contradictions. Undoubtedly, one of the main tasks facing the science of criminal procedure law in modern times is to develop legal and regulatory mechanisms that are consistent with these ideas and ensure their implementation.

The Institute for Advocacy Research is also one of the new ideas brought to the national legal system after independence. On the positive side, the Republic of Azerbaijan is the only CIS state that has directly established the right of a lawyer to "conduct an independent investigation".[1] In other CIS countries, it is possible to speak only of the indirect establishment of such a lawyer's right.

Article 15, Part II of the Law of the Republic of Azerbaijan "On Advocates and Advocacy" dated December 28, 1999 (hereinafter - the Law "On AA") directly establishes the right of a lawyer to conduct independent investigations and some of its means. This idea is also reflected in Article 92.9.5, 92.9.9, 143.3, etc. of the CPC. found its manifestation in the criminal process. However, it should be noted that although the cited article instructs the defense counsel to collect evidence in accordance with the Code, these rules are not enshrined in the Code or “the Law on AA”, and this leads to the fact that the ideas viewed remain declarative, are not implemented in practice and, indirectly, restrict the rights of defense of victims of criminal prosecution.

In addition, it should be considered that the collection of the evidence of legal assistance is not only the right of a lawyer hired as a defense counsel, the Law on AA gives this right to all lawyers, therefore, lawyers acting as representatives in criminal proceedings should not have less rights than lawyers acting as defense counsel. It should be noted that Article 102.6.4 in the CPC also gave the victim, the civil plaintiff and the civil defendant's representative the right to present evidence.

The viewed norms logically raise questions: in what procedual order should the lawyers involved in criminal proceedings collect, formalize and present evidence in connection with their legal assistance, and by what normative and technical means should this procedural rule be regulated in criminal procedure legislation?

We believe that the lack of unequivocal answers to these questions in theory and legislation so far is the most convincing

[1] *Рагулин А.В.* Профессиональные права адвоката-защитника в Российской Федерации и зарубежных государствах. М.: Юрлитинформ, 2012, с. 143-251.

evidence of the need for scientific research of the lawyer's investigation in criminal proceedings.

It should be noted that as the problem viwed in the post-Soviet space has been actualized since the 90s of the last century, the topic studied in the scientific works of classical Soviet authors was not much considered. In the Soviet system of the concept of search-type criminal proceedings, lawyers, as a rule, acted as defenders. Defendants were recruited at the end of the pre-trial investigation and carried out their activities mainly in court. Therefore, the defendant's evidence activity was understood as collecting those in favor of the commissioner and drawing the court's attention to this evidence of which were selected by the body of a primary investigation and included to the materials of the criminal case.[1]

In general, there were very few authors in the Soviet-era doctrine of criminal procedure law who considered lawyers involved in criminal proceedings as subjects of proof until the 1990s, but in any case there were proponents of this approach.[2] Although, in late 1980s and early 1990s, the suppoters began to multiply who backed the idea based on the independence of the defense attorney in criminal proceedings and "the process of invertigation of a defense attorney", "parallel operation", the defender's pre-process activity" and other ideas started to be put forward and substantiated.[2]

Relatively later (since the late 1990s), almost all CIS countries have adopted a new CPC, established a form of litigation, expanded the guarantees of human rights and freedoms in criminal proceedings, and in this regard, defense attorneys were given quasi-powers to collect and present evidence "independently." However, in the investigation of the new criminal procedure laws of the post-

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[1] *Строгович М.С.* Курс советского уголовного процесса. М.: Изд. АН СССР, 1958, с. 136.

[2] *Горя Н.* Принцип состязательности и функции защиты в уголовном процессе // Советская юстиция, 1990, № 7, с. 22-23; *Гриненко А.В*. Поисковая деятельность защитника // Адвокатская практика, 2002, № 5, с. 31-32; *Ларин А.М.* Доказывание и предпроцессуальная деятельность защитника / В сб. "Адвокатура и современность" Отв. ред. Славин М.М. М.: АН СССР, 1987, с. 84-93.

Soviet states, the mechanisms for the realization of these institutions were not fully considered and, for this reason, the authors began to pay attention to individual elements of advocacy in their articles and theses.[1]

During that period, dissertation researches were conducted, which expressed attitudes, particularly, on the right of the defense counsel to independently gather evidence and realization means of the lawyer's investigation to one level or another. The study of these dissertation researches allows to classify them into different groups.

Thus, in some of the dissertation researches on this problem, the participation of defense lawyers in the proof process was approached in a very general way. For example, there is no independent chapter or paragraph in A.I. Mesherin's dissertation on the collection of evidence by a lawyer in his dissertation on the specifics of the defense of a criminal case.[2] Although V.S. Popov's dissertation is also devoted to the participation of the defense counsel in the trial and the trial, it does not provide an independent chapter or paragraph on the powers of the defense counsel to gather evidence.[3] In the third chapter of the dissertation, dedicated to the understanding of a lawyer in a criminal case, O.V. Golovanova indirectly touched on the lawyer's independent evidence activities.[4]

In some of the dissertations, the content of which addresses the problem we have studied, independent paragraphs are devoted to issues related to the research of a lawyer. For example, V.V

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[1] *Жунусканов Т.Ж.* Проблемы адвокатского расследования в процессе осуществления защиты по уголовному делу // Адвокатская практика, 2010, № 3, с. 40-42; *Игнатов С.Д.* Авторское видение проблемы адвокатского расследования // Научные труды РАЮН, в 3 томах, 2009, № 9, Том 3, с. 898-902; *Мельников В.Ю.* Адвокатское расследование в состязательном уголовном процессе // Адвокатская практика, 2010, № 4, с. 30-33.

[2] *Мещерин А.И.* Особенности познания защитником обстоятельств уголовного дела. Дисс. ... к.ю.н., Ставрополь, 2002.

[3] *Попов В.С.* Участие адвоката-защитника в процессе доказывания на стадии предварительного расследования и в суде первой инстанции. Дисс. ... к.ю.н., Челябинск, 2005.

[4] *Голованова О.В.* Адвокатское познание по уголовному делу. Дисс. … к.ю.н., Нижний Новгород, 2008.

Yaselskaya was one of the first authors to justify the need to give defense attorneys the right to conduct independent gathering of evidence and methods of gathering information by defense counsel in criminal cases in the fourth chapter of the dissertation, entitled "Independent activity of the defense counsel in gathering evidence in criminal proceedings".[1]

After that, in the first paragraph of the second chapter of F.G. Shakhkeldov's dissertation, he touched upon the forms and methods of obtaining and presenting evidential information by the defense council in the preliminary investigation.[2] In the first paragraph of the second chapter of L.V. Makarov's dissertation, he made a comparative-legal and historical analysis of the possibility of gathering evidence of the accused and his defense counsel.[3] In his work I.I. Schalyakho devoted the third paragraph of the first chapter to the collection of evidence by the defense attorney.[4] The first paragraph of the second chapter of A.D. Aksenov's work involves the participation of the defense counsel in collecting evidence.[5] The second paragraph of the third chapter of G.G. Skrebets's dissertation deals with the discovery, obtaining and presenting information related to the criminal case by the defense counsel.[6] In the third chapter of Y.V. Kronov's dissertation on "Methods of participation of the defense counsel in obtaining specific types of evidence", he studied the use of special knowledge by the defense counsel, as well

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[1] *Ясельская В.В.* Деятельность адвоката-защитника по собиранию доказательств на стадии предварительного расследования. Дисс. … к.ю.н., Томск, 1999.

[2] *Шахкелдов Ф.Г.* Участие защитника в доказывании на предварительном следствии. Дисс. ... к.ю.н., Москва, 2001.

[3] *Макаров Л.В.* Участие обвиняемого и его защитника в уголовно-процессуальном доказывании. Дисс. … к.ю.н., Саратов, 2002.

[4] *Схаляхо И.И.* Участие защитника в доказывании по уголовным делам. Дисс. … к.ю.н., Краснодар, 2006.

[5] *Аксенов А.Д.* Участие защитника в уголовно-процессуальном доказывании. Дисс. ... к.ю.н., Москва, 2009.

[6] *Скребец Г.Г.* Участие адвоката-защитника в формировании доказательств на стадии предварительного расследования. Дисс. ... к.ю.н., Екатеринбург, 2008.

as the role of the defense counsel in obtaining material evidence and other documents.[1]

In a number of dissertation researches on the subject, independent chapters are devoted to issues related to lawyer research. For example, A.D. Geroyev devoted the second chapter of his dissertation entirely to the forms of participation of the defense counsel in criminal proceedings. Along with the indirect forms of evidence collection by the defense counsel, the author also explores some direct forms (collecting and presenting material evidence, obtaining explanations from individuals, and inviting experts) within that chapter.[2] The second chapter of I.S. Kraskova's case comprises the procedural and tactical features of the defense attorney's participation in the pre-trial stages of the criminal proceedings. In this chapter, the author has covered such issues, in the form of independent paragraphs, as interrogation of individuals (recieving explanation) with their consent, the defense attorney's requests for documents, obtaining objects and documents that can be used as evidence, defense attorney's use of special knowledge in criminal proceedings.[3]

In addition, it should be noted that in recent years, there are independent dissertation researches devoted to not only defense attorneys' participation in the procedual process, in the general sense, but also the process of collecting evidence. For example, I.Y. Milova is one of the first authors to conduct an independent dissertation study on the participation of defense counsel in the collection of evidence during the preliminary investigation. He approached the defense as the subject of evidence, and also devoted the independent chapters to the lawyer's practice on participation in investigative

[1] *Кронов Е.В.* Участие защитника в доказывании по уголовному делу. Дисс. ... к.ю.н., Москва, 2010.

[2] *Героев А.Д.* Участие адвоката-защитника в доказывании на предварительном следствии. Дисс. … к.ю.н., Москва, 2004.

[3] *Краскова И.С.* Защитник как субъект доказывания на досудебных стадиях уголовного процесса. Дисс. ... к.ю.н., Москва, 2008.

actions and the problems of improving the lawyer's participation in the process of collecting evidence and its legal basis.[1]

In a dissertation work, G.I. Aleynikov tried to investigate theoretical and practical issues of the defense's evidence collection activities during the pre-trial investigation under Russian and Ukrainian law. In that research work, issues such as the theoretical basis of the defense's evidence-gathering activities, the practical features of the defendant's evidence-gathering activities in the pre-trial investigation stage, the legal, organizational and tactical directions of improving the defense-gathering activities in the pre-trial investigation were studied in the form of independent chapters.[2]

In the third chapter of R.Z. Yenikeyev's dissertation on the evidence problems in the activity of the defense attorney in juvenile cases, a general description of the forms of the defense attorney's activity about evidence in juvenile cases is given, as well as independent and non-independent forms of defense attorney's actions on proving facts are viewed in independent paragraphs.[3]

S.D. Ignatov's work is interesting because it focuses on the criminological basis of the lawyer's work on gathering evidence and presenting it to the court. In that work, the author touched upon issues such as legal and theoretical-criminological bases of the defense attorney's activity on collecting and submitting evidence to the court, as well as methodological bases of using tactical forensic recommendations on collecting and submitting evidence to the court.[4]

M.Kh. Bitokova's dissertation research is entirely devoted to the defense attorney's authority to gather evidence and its

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[1] *Милова И.Е.* Участие адвоката-защитника в собирании доказательств на предварительном следствии. Дисс. … к.ю.н., Самара, 1998.

[2] *Алейников Г.И.* Теоретические и практические вопросы деятельности защитника по собиранию доказательств в стадии досудебного следствия по законодательству Украины и России. Дисс. … к.ю.н., Москва, 2004.

[3] *Еникеев Р.З.* Проблемы доказывания в деятельности адвоката-защитника по делам о преступлениях несовершеннолетних. Дисс. … к.ю.н. Уфа, 2004.

[4] *Игнатов Д.С.* Криминалистические основы деятельности адвоката-защитника по сбору доказательств и представлению их суду. Дисс. … к.ю.н., Ижевск, 2004.

implementation in criminal proceedings.The author devoted separate chapters of his dissertation to such issues as the legal nature of the defense counsel's evidence collection activity, the development of the institution of the defense counsel's evidence collection activity in Russian and foreign legislation, and the role of the defence counsel in gathering evidence in modern Russian criminal proceedings.[1]

D.M. Yanbayeva's dissertation is devoted to the participation of the defense counsel in the process of collecting evidence at the stage of preliminary investigation. Separate chapters of the reseach work encompasses procedural and epistemological problems of the defense attorney's participation in collecting evidence, procedural means of the defense attorney's influence on the investigator to form opinions during the collection of evidence are covered.[2]

At present, only three monographs (dissertations) on the investigation of lawyers in criminal proceedings have been written in the CIS. They are M.A. Osmakov's dissertation "Investigation of a lawyer in modern criminal proceedings", Y.G. Martinchik's "Investigation of a lawyer in criminal proceedings. Theoretical and methodological bases of the investigation of a lawyer" and P.P. Kiselyov's monograph "Lawyer Criminal Investigation: Theoretical and Applied Aspects" (the last work was also defended in 2018 as a candidate's dissertation).[3]

However, the study of modern legal literature shows that in theory a unified concept of investigation of a lawyer in criminal proceedings has not yet been developed, a comprehensive study of

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[1] *Битокова М.Х.* Право собирания доказательств защитником и его осуществление в уголовном судопроизводстве. Дисс. … к.ю.н. Москва, 2008.

[2] *Ямбаева Д.М.* Участие защитника в собирании доказательств на стадии предварительного расследования. Дисс. к.ю.н., Саратов, 2008.

[3] *Киселёв П.П.* Адвокатское уголовное расследование: теоретические и прикладные аспекты. Монография. Москва: Евразийский научно-исследовательский институт проблем права, 2013; *Мартынчик Е.Г.* Адвокатское расследование в уголовном процессе. Теоретико-методологические основы доктрины адвокатского расследования. Учебное пособие. М.: Юнити-Дана, 2009; *Осьмаков М.А.* Адвокатское расследование в современном уголовном процессе. Дисс. … канд. юрид. наук. Владимир, 2007.

the system of tools of the investigation of lawyers and their legal regulation has not been studied.

In the following parts of the dissertation we will see in more detail that in theory there are authors who consider the lawyer's investigation as a form of preliminary investigation, as a single procedural action, as part of pre-trial proceedings, as a means of protection from only criminal prosecution, etc. There are also authors who suggest that the lawyer's investigation be established in the system of basic concepts of criminal procedure law, and some suggest that this institution be regulated by making additions and changes to certain norms of the CPC.

There is no monograph in the national legal literature on the problems of the investigation of a lawyer in criminal proceedings and the problems on the specific mechanism of its legal regulation.

It is true that some authors have touched upon this problem at the level of ideas (for example, M.A. Jafarguliyev, F.M. Abbasova, M.S. Gafarov, J.I. Suleymanov, and other scientists), but they did not conduct a monographic and complex analysis of the problem, expressed approaches to only its individual issues.

The object and the subject of the research. The object of the investigation is the procedural activities of lawyers participating in criminal proceedings as defense counsel (representative, legal successor) to collect evidence in connection with the legal assistance provided to their clients. The subject of the research is special legal literature, relevant normative-legal acts and practical materials related to the researched issues.

The goal and the objectives of the research. The dissertation work was carried out in order to develop an author's concept that reflects the essence and content of the institute of bar research in criminal proceedings, as well as to develop the consept of the author defining the perspective directions of emprovment of the institute. In order to achieve this goal, the study attempts to solve the following tasks:

- to clarify the scope, essence and content of the criminal procedural functions and procedural legal statuses that lawyers can perform in the criminal proceedings of the Republic of Azerbaijan;

- to analyze, on the basis of the case law of the European Court, the importance of the lawyer's activity in criminal proceedings to realize the right to a fair trial provided for in Article 6 of the European Convention on Human Rights;

- to give a general description of national and international legal sources that provide a normative basis for the institute of bar research, to give a doctrinal interpretation of the norms related to the subject of the research, to develop concrete and substantiated proposals on improving national legislation;

- to analyze the theoretical concepts given to the lawyer research institute by the other authors, to give the author's concept to the lawyer's research in criminal proceedings;

- to develop the conceptual characteristics of the lawyer on the indicators of the subject of the investigation, the guarantee mechanism, goals and objectives, starting and ending moments, terms, formalization of the results and the importance of proof;

- to analyze the content and essence of procedural means of advocacy investigation allowed by the current legislation, to receive legal explanations from individuals and legal entities, to solicit legal inquiries, as well as to apply special knowledge in advocacy research, to suggest solutions to identified problems;

- to conduct research to expand the scope of the lawyer's research tools, to pay attention to issues such as the lawyer's examination of objects and places and collection of material evidence, collection of digital evidence in the lawyer's research and focus on issues such as application of 3D computer modeling;

- to pay general attention to the criminological aspects of the lawyer's investigation, to substantiate the possibility in theory and practice of such categories as the criminalistic tactics of the procedural means of the lawyer's investigation and the methodology of the lawyer's investigation of certain types of crimes.

Research methods. The methodology of dissertation research was formed by the main statutes of dialectical cognitive training. An important distinguishing feature of the theory of dialectical cognition is the acceptance of the social nature of cognition. According to dialectical philosophy, cognition is an endless process compising the

approach of mind to the perceived object, the movement of thought from ignorance to knowledge, from incomplete and imperfect knowledge to more complete and perfect knowledge.

Research methods include logical cognition: analysis-synthesis, comparative research, interdisciplinary research, systemic structure, situational modeling, doctrinal interpretation, inquiry of sociological opinion, generalization of experience and a number of other methods of scientific cognition.

The main provisions put forward for defense:

1. The investigation of a lawyer is, firstly, a legal right (an opportunity to behave) for persons with the status of a lawyer and regardless of the proceedings in which he participates, as well as the procedural function he performs, the right of a lawyer to conduct an independent investigation in connection with the provision of legal assistance to the client must be recognized and guaranteed. Investigation of a lawyer in criminal proceedings - is the activity of directly searching for, obtaining and submitting to the prosecuting authority the credible evidence that can be used as the fact in connection with the legal assistance provided to the client to achieve the goals of the criminal procedural function performed by the lawyer participating in the criminal proceedings.

2. Since the investigation of a lawyer in criminal proceedings is the right (opportunity) of lawyers participating in criminal proceedings as a defense counsel, representative or legal successor, its effective implementation is possible only if this right has a guarantee mechanism that meets the following scheme: "liability for non-fulfillment of this duty ← the position responsible for the right ← The right to conduct an independent investigation → Means of realization that exclude the abuse of law → The means of restoring the right in cases where these means are illegally and unjustifiably restricted."

3. As the lawyer's investigation is related to the evidentiary activity, its limits are determined by the scope of the cases (persons) in which evidence is allowed to be collected - the subject of the the evidentiary activity (*thema probandi*). The subject matter of the evidence essentially determines the extent of the lawyer's

investigation to in respect of both the persons and the facts. The determination of any circumstance through the lawyer's examination which stays beyond the scope of evidence may be considered permissible in two exceptional cases: a) substantiation of the objection on the exclusion of the subject's participation in the criminal proceedings; b) in cases where the validity of the evidence is disputed.

4. In accordance with the rule on the inadmissibility of imposing the burden of proof (*onus probandi*) on the defense arising from the presumption of innocence, it is also inadmissible to impose on the subjects of the defense party the task of determining the objective truth. However, if the subjects of the defense are interested in determining the objective truth, they should also be able to take an active part in determining the truth. In this sense, the lawyer's investigation can be seen as a tool that can significantly help to determine the objective truth. Although the activities of the defense party are not based on the task of determining the objective truth, the subjects of the defense party are obliged not to interfere in the determination of the objective truth.

5. The idea of *equality of arms* arising from the right to a fair trial, i.e. the idea of equality of legal opportunities of the parties is a key factor in determining the system and procedural form of the means of judicial investigation. The idea of equality of legal possibilities excludes any inequality in the forms of perception of the means of evidence of the parties (in terms of epistemology). Thus, the means of proof that the prosecution and the defense parties possess in the example of public authorities in criminal proceedings may differ from each other due to the form of procedure, or even must differ, because, as the state is the subject of law enforcement function, it must also be able to use the procedual tools based on the enforcment power of the state. However, such inequalities in the forms of understanding of the means of evidence of the parties (from the point of view of epistemology) are unacceptable.

6. The right of a lawyer to receive explanations from persons should be considered, first and foremost, as a means of exercising his right to "summon and interrogate witnesses in his favor on the same

conditions for the witnesses who testified against him." When an attorney recieves an explanation from any person, any act reflecting this process and its consequences is drawn up, and especially if it is written and (or) signed by the person giving the explanation as an indication of the validity of that act, there is nothing to prevent it from being used as evidence in the form of a "document" in the process.

7. A lawyer's inquiry means an official request of the lawyer about presenting data in the form of documents, references, etc. that are important for the provision of legal assistance. As a means of advocacy research, it has been proposed to add a new Article 15-1 to the Law on LAA (Lawyers and Advocacy Activities) entitled “Lawyer Inquiry” to eliminate the gap in the procedural form of the lawyer's inquiry, and a model of that article has been developed. The doctrinal model of the article envisages elements such as the legal definition of the lawyer's request, requirements for the form, content and documents to be attached to the request, the period for which the request must be answered, liability for non-response and elements like the cases that permit non-response.

8. When recearching evidence, the lawyer, first of all, personally comprehends the individual circumstances of the case and then tries to present the knowledge about these cases to the decision-making bodies on the case. However, the current criminal procedure legislation, unlike investigative actions, does not specify the course of procedural means of the lawyer's investigation and the procedural form of formalizing the results. As a solution to this problem, it was proposed to add a new article to the CPC entitled "Article 51-3. The acting of actions on the collection of evidence by a lawyer in connection with the provision of legal assistance," and a full doctrinal model of this article has been developed in the context of the case. According to the author, as a result of a perspective reform of the legislation, acts of actions taken by a lawyer to collect evidence may be included in the criminal proceedings not only as "other documents", but also as an independent type of evidence with the same epistemological basis as the protocols of investigation and court proceedings.

9. There is a wide range of possibilities for the application of a new means of evidence - 3D computer modeling, which can be used in criminal proceedings by both crime-prosecuting bodies and lawyers conducting their own investigations. In cases when it is not an integral part of the expertise, in order to investigate or clarify the circumstances relevant to the criminal prosecution, 3D modeling of the scene, event dynamics, material evidence, trace formation mechanism by means of special software in the form of an independent investigative action or procedural action aimed at collecting or verifying evidence related to the implementation of legal assistance, including visualization of statements can significantly streamline proofing. The author has developed a new doctrinal model of Article 262-1, entitled "Article 262-1. 3D computer modeling", to establish the procedural form of 3D computer modeling in CPC.

10. In general, in the near future, the range of evidence-gathering tools related to the provision of legal assistance by the lawyer in criminal proceedings can be expanded through giving the lawyer the right to inspect, collect material evidence, collect digital evidence (copy digital data) and use 3D computer modeling.

11. In the line of imrpoving a number of articles necessary for the legal regulation of the institute of barrister investigation in the criminal proceedings of criminal-procedual legislation in force in the case, more precisely, Articles 19.4.2, 19.4.3, 90.1, 91.1, 92,3, 9.5.3, 92.9.9, 92.12, 96.1, 124.2.4, 143.3 of the CPC, new legislative proposals have been put forward each of which, in a sense, can be considered as an article presenting to provide defence.

The scientific novelty of the research. The dissertation reflects the first complex research work devoted to the procedural-legal and criminological aspects of the investigation of the lawyer in the criminal process of the Republic of Azerbaijan. In the dissertation, procedural actions that perform as a means of legal research (explanation by a lawyer, giving a lawyer inquiry, use of special knowledge in advocacy) are analyzed as independent institutions, the provisions that should serve as a legal regulation of these ways are discussed, deficiencies and contradictions have been

identified, and well-founded proposals have been made, for the first time, to improve these norms.

For the first time, the perspective of a lawyer collecting material and digital evidence, examining objects and places by the lawer, and using 3D computer modeling is examined. In the research work, models of a number of new articles were developed for approval in the legislation of the Republic of Azerbaijan.

Theoretical and practical significance of the research. Both the individual results and the general content of the research have theoretical and practical significance. The theoretical significance of the dissertation is expressed in its content in the doctrinal interpretation of a number of provisions of criminal procedure law, in conducting theoretical generalizations in the case and in expressing the author's position on most of the issues addressed. The ideas and suggestions formulated in the dissertation can serve as a theoretical basis for further research in this area. The practical significance of the work is explained by the fact that its results and the whole content can be applied in a number of practical areas. The whole text of the dissertation can be used as a textbook in the process of teaching various subjects at the bachelor's and master's degrees in law faculties of universities. Legislative proposals formulated and substantiated in the text of the case can be widely used in the work of the Milli Majlis of the Republic of Azerbaijan to improve the relevant legislation. Also, the considerations expressed in the dissertation can be useful directly in the activities of advocacy and judiciary as doctrinal recommendations.

Approbation and application. The main content and results of the study are reflected in the monograph "Investigation of the lawyer in criminal proceedings" published in Baku in 2018. That monograph was recommended for use by lawyers as a practical tool by the decision of the Presidium of the Bar Association of the Republic of Azerbaijan dated June 11, 2018 and was republished at the expense of the Bar Association.

Some of the main results were obtained in journals such as “Государство и право” and “RUDN Journal of Law”, which are included in *the Russian Science Citation Index* (RSCI) database on

the *Web of Science* platform, and some in journals like "Пробелы в Российском законодательстве" and "Bulletin of the Academy of Advocacy of Ukraine", accordingly, related to the periodicals recommended due to legal sciences in order to entitle scientific degree and scientific title by the Higher Attestation Commissions of the Republic of Ukraine, and some in the materials of international scientific conferences on the subject of "Актуальные проблемы защиты публичных и частных интересов в Российской Федерации и Азербайджанской Республики" (Москва, Воронеж, 13 декабря 2013 г.) and "Development of modern technologies and scientific potential of the world" (London, July 29, 2019) held in foreign countries. In addition, scientific articles devoted to various aspects of the dissertation topic were published in periodicals recommended for publication in the Republic of Azerbaijan, as well as in the materials of various national and international conferences held in the Republic of Azerbaijan. The content and results of the work were used in the teaching process by the teachers of "Criminal Procedure" and "Criminology and Forensics" departments of Baku State University, as well as "Law-1" department of State Academy of Management under the President of the Republic of Azerbaijan, recommended the content to students as an additional resource, the comments given in the dissertation were used to explain to students the content and meaning of some norms of the current criminal procedure legislation. The dissertation was evaluated by the Presidium of the Bar Association of the Republic of Azerbaijan and it was concluded that the lawyers participating in criminal proceedings as defense counsel and representatives can effectively use in their practical activities the generalizations made in the dissertation, comments on the legislation, practical recommendations aimed at improving the practical work, the general content of the case can be useful in the retraining of lawyers.

The main results obtained are widely used in the author's personal practice during the lectures on "Evidence of the lawyer in criminal proceedings" in the compulsory trainings held at the Academy of Justice of the Ministry of Justice of the Republic of Azerbaijan for admission to the Bar Association. As one of the main

results of the study, legislative proposals on amendments and additions to the Law on CPC, CAO (The code of administrative offences) and LAA has been sent to the Office of the Milli Majlis of the Republic of Azerbaijan.

The organization where the dissertation work is carried out. The dissertation work was carried out in the "Criminal law and criminal procedure" department of the Institute of Law and Human Rights of ANAS.

The total volume of the dissertation with a sign, indicating the volume of the structural units of the dissertation separately.

The total volume of the dissertation comprises 471,192 characters, excluding gaps, appendices and bibliography. The volume of separate structural units of the dissertation, excluding gaps in the text, is as follows: introduction 30 712, Chapter I 80 567, Chapter II 92 577, Chapter III 92 757, Chapter IV 122 511, Chapter V 32 917, conclusion 14 099 characters.

MAIN CONTENT OF THE WORK

The **introductory** part substantiates the relevance of the research topic, the level of scientific development of the topic, the object and subject of the research, its goals and objectives, methodology, the provisions submitted for defense, scientific novelty, theoretical and practical significance of the research results, approbation and general scope of the work.

Chapter I of the dissertation is entitled **Correlation of advocate activity and criminal procedural activity** and includes three paragraphs.

As stated in the first paragraph of the first chapter **General provisions of advocate activity in the Republic of Azerbaijan** in the Order of the President of the Republic of Azerbaijan "On additional measures for the development of advocacy in the Republic of Azerbaijan" dated February 22, 2018, it emphasizes the importance of establishing a strong and influential advocacy institution for the reliable defence of human rights and freedoms and

the effective functioning of the judiciary of justice. This chapter notes that the institution of advocacy (legal representation) in Azerbaijan has its own historical roots and gives a brief excursion into history. The establishment of state independence of the Republic of Azerbaijan, the opening of a new page in the history of advocacy in Azerbaijan, the adoption of the new Law "On LAA" dated on December 28, 1999, as well as the principles of advocacy are analyzed.

The second paragraph of the first chapter, entitled **Procedural activity of the lawyer as a defense counsel in criminal proceedings**, states that the activity of the lawyer in criminal proceedings is associated, first of all, with the function of defense. Here, the legal definition of defense in Article 7.0.27 in the CPC distinguishes the main objectives of this activity and states that, in fact, defense activity should be understood as protection from both suspicion and accusation. To refute suspicion or accusation, the defence party must be active and take certain actions to achieve this goal, but this should never result as charging the defense party with the task of proving the innocence (onus probandi) of the prosecuted person. To refute a suspicion or accusation, the defense does not need to provide "counter-evidence" equal to the indictment, and if the defense party can produce reasonable doubt on the authenticity of that evidence, it is sufficient for the evidence to be "invalid." When discussing the objectives of defense activities, it is expedient to distinguish between the objectives of mitigation of accusation and mitigation of punishment (criminal liability) and view the latter as an independent goal of defense activities. In each case, the mitigation of the charge is related to a quantitative or qualitative change in the legal description of the act declared in the official indictment and referred to the person being prosecuted. But mitigation of punishment (criminal liability) does not affect the legal definition of the officially declared charge and, as a rule, is decided at the discretion of the court.

The defense activities carried out in criminal proceedings both protect the rights from being violated in general and are aimed at restoring the rights that have been violated for one reason or another.

The content of the defense function in criminal proceedings comprises the action of realizing activities aimed at legally improving the condition of the procecuted person in every form, that is completely or partially refuting doubt produced against him/her, mitigating the doubt or accusation, as well as punishment and criminal liability declared officially and restoring violated rights of the person who has been illegally prosecuted, and the activity with criminal-procedural character made by certain subjects that of round defined through law.

The third paragraph of the first chapter, entitled **Procedural activity of the lawyer as a representative and legal successor in the criminal proceeding**, states that although it is not traditional for lawyers as the defense function, lawyers acting as representatives of victims and special prosecutors in criminal proceedings they also assist with the implementation of the prosecution function due to the nature of the legitimate interests they represent. The opportunities of a lawyer representing the victim (private prosecutor) to participate in the prosecution depends on the type of criminal prosecution. Thus, the activity of the victim acting as a special prosecutor and his representative in the case of special accusation of criminal prosecution is a key function, in the case of public-private prosecution, and this activity carries a subsidiary character in the case of public-special accusation of the criminal prosecution, while it acquires a completely auxiliary (secondary) character when criminal prosecution is implemented as public accusation.

As a result of the reforms in the criminal procedural legislation on December 1, 2017, another status was added to the list of lawyers that can act in criminal proceedings - the legal heir of the deceased victim. The activity of a lawyer recognized as the legal successor of a deceased victim can be attributed to the representative function in terms of the functional characteristics of the activity. In other words, a lawyer recognized as the legal successor of a deceased victim and a lawyer released as a representative of the victim in criminal proceedings perform essentially the same procedural function.

One of the features of the criminal proceedings in the Republic of Azerbaijan is that witnesses also have the right to have a representative. A witness is neither a subject of prosecution nor a defense function until he or she experiences a change in legal status during the course of a procedural action, that is, until his or her condition worsens during his or her testimony. He remains as a subject assisting with the judgment of justice. For this reason, a lawyer acting as his representative may not be considered as a subject of defense and prosecution functions, but only as a subject of legal representation, legal assistance or simply a human rights function.

Chapter II of the dissertation is entitled **Issues on the participation of a lawyer in criminal proceedings in the context of Article 6 of the European Convention on Human Rights** and comprises two paragraphs.

The first paragraph of the second chapter, entitled **The role of the right to a fair trial for criminal proceedings and advocate activity**, states that Article 6 is of great importance that establishes the right to a fair trial of the European Convention "on Protection of Human Rights and Fundamental Freedoms". In the context of the right to the investigation of a fair trial, the effective participation of a lawyer (defense counsel) in criminal proceedings, above all, can be seen as a guarantee of the principle of *equality of arms*. The implicit[1] principle of equality of arms, based on the idea of a fair balance[2] between the parties to a legal dispute and arising from the nature of the right to a fair trial, requires that both parties to the legal dispute be given reasonable opportunities to express their legal position and present their evidence, as well as, it also requires that conditions be created that do not put one party at a disadvantage in front of the other.[3] Failure of establishment of the rules of criminal procedure through national legislation that ensure equality between the defense and the prosecution in terms of *equality of arms* may violate the right

[1] *Neumeister v. Austria,* 27.06.1968, 1 E.H.R.R. 91.
[2] *Dombo Beheer v. Netherlands*, 27.10.1993, 18 E.H.R.R. 213.
[3] *De Haes and Gijsels v. Belgium*, 24.02. 1997, (Ap. no. 19983/92).

to a fair trial[1], as the main purpose of these rules is to protect the abusive individual from any abuse of power, and therefore, the defense side "suffers" primarily from the disadvantages and uncertainties allowed in those rules.[2]

The adversarial principle of the right to a fair trial also plays an important role in ensuring the effective participation of a lawyer in criminal proceedings. When criminal proceedings are not conducted on the principle of adversarial proceedings, it is significantly more difficult to ensure a fair balance between the disputing parties, as there is an increased risk of the parties to defend their positions and assumptions and the "balance" between the parties' to put forward arguments are broken.[3] In terms of Article 6 of the European Convention, the adversarial principle requires that the disputing parties have access to all the evidence that is important for the final judgment, as well as to the written documents submitted and to comment on them.[4] The right of a prosecuted person to be judged in criminal proceedings in an adversarial trial is ensured by the obligation of the prosecuting authorities to acquaint the defense with all the evidence at their disposal, both the accusatory and the acquittal.[5] However, in the case law of the European Court of Human Rights, the right to access all the materials of the case is not an absolute right[6] and is sometimes considered an acceptable case (for example, to ensure national security, to protect the life and health of another person, etc.).[7]

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[1] Право Европейской конвенции по правам человека / Харрис, О'Бойл и Уорбик; [пер. с англ. Власихин В.А. и др.]. М.: Развитие правовых систем, 2016, с. 557.

[2] *Coeme and Others v. Belguim*, 22.06.2000, (Ap. no. 32492/96).

[3] *İnceoğlu S.* İnsan Hakları Avrupa Mahkemesi kararlarında adil yargılanma hakkı. İstanbul: Beta, 2013, s. 221, 249.

[4] *Feldbrugge v. Netherlands*, 29.05.1986, 8 E.H.H.R. 425.

[5] *Edwards and Lewis v. United Kingdom*, 27.10,2004, (Ap. nos. 39647/98 and 40461/98).

[6] *Rowe and Davis v. UK*, 16.02.2000, 30 E.H.R.R. 1.

[7] *Edwards and Lewis v. United Kingdom*, 27.10,2004, (Ap. nos. 39647/98 and 40461/98).

The second paragraph of the second chapter, entitled **Participation of a lawyer in criminal proceedings in the context of the minimum rights of persons accused of committing a crime**, states that in European Court practice the relationship between a lawyer's participation in criminal proceedings and the right to a fair trial manifests itself more in the stated legal positions on the matters relating to the interpretation of the rights provided for in Article 6 § 3 in the European Convention. The subject of these rights is a person "accused of committing a crime". In terms of the scope of the rights guaranteed by the Convention, the minimum rights set forth in Article 6 § 3 apply to everyone who has been de facto exposed to a criminal offense.[1] When this approach, as demonstrated by the case law of the European Court of Human Rights, draws a parallel between the definitions given to the subjects of criminal prosecution in the CPC, i.e. the suspects and the accused, obvious incompleteness of the latter is observed. The author is of the opinion that if an application or information on the commission of a crime or preparation of a crime is viewed by the competent state body; that is, if a preliminary inspection is carried out on the person[2], as well as, even if no coercive procedural measure has been applied against him, and a criminal case has been initiated against the person[3], including, banking (financial) operations that cast doubt on the legalization of criminally obtained money or other property or the financing of terrorism[4], that person must be considered a suspect and be able to exercise the relevant rights enshrined in both Article 6 of the Convention and the CPC. Similarly, Article 91.1 of the Criminal Procedure Code criticizes the legal definition of the accused and suggests a new version of the case.

After clarifying in this paragraph the definition of the subjects of the minimum rights provided for in paragraphs "a", "b", "c", "d" and "e" of Clause 3 of Article 6 of the Convention, these rights are analyzed directly. It is emphasized that Article 6 § 3 (b) of the

[1] *Çayan G.* Adil yargılanma hakkı. İstanbul: Legal Yayıncılık, 2016.
[2] *Deweer v. Belgium*, 27.02.1980, (Ap. no. 6903/75).
[3] *Angelucci v. Italy*, 19.02.1991, (Ap. no. 12666/87).
[4] *Funke v. France*, 25.02.1993, (Ap. no. 10828/84).

Convention guarantees the right of everyone accused of a crime to have sufficient time and opportunity to prepare his defense. This guarantee also applies in full sense to the lawyer (defender) of the victim.

Chapter 3 of the dissertation is entitled **Conceptual characteristics of lawyer investigation in criminal proceedings** and includes four paragraphs.

The first paragraph of the third chapter, entitled **General characteristics of national and international legal sources that provide a normative basis for the institute lawyer investigation** states that the legal basis of the institute of advocacy encompasses, first of all, the separate provisions of the Constitution of the Republic of Azerbaijan (in particular, Clause I of Article 12, Article 26, Article 50, Clause I of Article 57, Article 61, Clause III of Article 63, Clause VII of Article 125, Clauses VII, VIII and IX of Article 127). Due to its importance after the Constitution, the second normative-legal act determining the legal basis for the investigation of a lawyer in criminal proceedings can be considered CPC. After the CPC, the first Law on LAA should be mentioned when talking about the legal basis of the institute of bar research. The right of a lawyer to conduct an independent investigation and the main means of exercising this right are enshrined in Article 15 of the same Law. Also, it is Article 7, Clause III, Paragraph 2 of this Law that defines a specific "immunity" for the results of a lawyer's investigation. However, the Law on LLA is not the only law that forms the legal basis for the lawyer's investigation. It is possible to come across provisions in a number of other laws of the Republic of Azerbaijan that provide the legal basis for the institute of bar research. For example, in Article 21.3 of the Law on Forensic Science, Article 32 of the Law “on Notaries”, Article 5 of the Law on the State Register of Real Estate, Chapter III of the Law “on Access to Information”and other similar laws, it is possible to find provisions that create a legal basis for the investigation of the lawyer.

In addition to the European Convention on Human Rights, which deals with the basics of advocacy, in this paragraph, Code of Conduct for European Lawyers, adopted by the Plenary Session of

the Council of European Bar Associations and Legal Associations on 28 October 1988, the main principles of the United Nations "On the role of lawyers" adopted at the VIII Congress of the United Nations from August 27 to September 7, 1990, Recommendation No. 21 "On Freedom of Practice in Law" (2000), adopted at the meeting of the Committee of Ministers of the Council of Europe on October 25, 2000, No. 727, referred to member states and the author tried to look at them through the prism of research.

The second paragraph of the third chapter, entitled **Theoretical concept of the institute of lawyer investigation**, states that there is no single position in the modern legal literature on the legal nature of the invatigation of lawyers. In theory, there are authors who consider the lawyer's investigation as a form of preliminary investigation, as a single procedural action, as part of the pre-trial proceedings, as a means of protection from only criminal prosecution, and so on, also, some suggest that the lawyer's investigation be established in the system of basic concepts of criminal procedure law, while others suggest that this institution be regulated by making additions and changes to certain norms of the CPC. The author's approach is that the investigation of a lawyer should be considered, first of all, as a right granted by law to persons with the status of a lawyer, and therefore, regardless of the proceedings in which the lawyer is involved, specifically in relation to criminal proceedings, irrespective of the procedural function performed by the lawyer, the right of the lawyer to conduct an independent investigation in connection with the provision of legal assistance to his/her client must be recognized and ensured. In terms of terminology, "lawyer's investigation" should be understood as a generalizing term, ie a set of various actions carried out by a lawyer for different purposes (obtaining new evidence, refuting existing evidence, etc.). Based on the above, the following doctrinal definition is given to the investigation of a lawyer in criminal proceedings: *"Investigation of the lawyer in criminal proceedings is an activity on direct search, acquisition and submission to the prosecuting authority of credible evidence that can be used as evidence in connection with the legal assistance provided to his client to achieve the objectives of the criminal procedure*

function performed by the lawyer participating in criminal proceedings".

The third paragraph of the third chapter, entitled **The subject, the ensuring mechanism, aims and tasks of lawyer investigation** states that, as the term "lawyer investigation" suggests, its subject is a lawyer, and the role of a lawyer's assistant, in the respect of advocacy investigation, is limited to assisting a lawyer in organizational and technical matters. In accordance with international agreements to which the Republic of Azerbaijan is a party, although a foreign lawyer has been admitted to criminal proceedings in the Republic of Azerbaijan, he will not be right in lawyer investigation, i.e. carrying out the activity of collecting evidence.

Taking into account that the investigation of a lawyer is a right (possibility of conduct), it is noted that the provision of each right takes place through a special mechanism. This guarantee mechanism, based on "law", is conventionally represented schematically as follows: "Liability for non-fulfillment of this duty ← Responsible for the right ← **Right** → means of realization that excludes the abuse of law → means of restoring the right in cases where these means are illegally and unreasonably restricted".[1]

The purpose of a lawyer's investigation is, in the broadest sense, to provide legal assistance to the Commissioner. The objectives of the lawyer's investigation in a particular case overlap with those of the lawyer involved in the criminal proceedings, depending specially on his or her status (defense counsel or representative).

It is also possible to look at the tasks of the lawyer's investigation in a broad and narrow sense. Thus, in the broadest sense, the investigation of the lawyer is part of the criminal procedure of a lawyer, so his duties can be considered in the system of general responsibilities of criminal-prosecutional proceedings, including the activities of the lawyer. In a narrow sense, the tasks of the lawyer's investigation can be understood as a system of issues

[1] *Khalilov F.Y.* About the realization mechanism of lawyer investigation in criminal procedure of the Republic of Azerbaijan // Bulletin of the Academy of Advocacy of Ukraine, Kiev, 2020, Volume 17, Issue 2 (45), p. 40.

that need to be addressed in order to achieve a specific goal. In accordance with the rule on the inadmissibility of imposing the burden of proof (onus probandi) on the defense arising from the presumption of innocence, it is also inadmissible to impose on the subjects of the defense the task of determining the objective truth. However, if the subjects of the defense party are interested in determining the objective truth, they should be able to take an active part in determining the truth. In this sense, lawyer investigation can be seen as a tool that can significantly help to determine the objective truth. Although the activities of the defense are not based on the task of determining the objective truth, the subjects of the defense party carry the reponsibility not to interfere in determination of the objective truth.

The fourth paragraph of the third chapter, entitled **Moments of start and end, terms, formalization and importance as proof of the results of lawyer investigation** states that the beginning and end of the lawyer's investigation, depending on the specific tasks to be solved by the lawyer's legal assistance, is determined due to the discretion of the lawyer or the instructions of the commissioner, as well as the duration of this investigation varies depending on the number of investigative tools used during the lawyer's investigation, their sequence, duration and so on.

The protocol of the investigative action, which is an independent type of evidence, reflects the fact, conditions and procedural form of understanding the circumstances of the case and serves the knowledge obtained from this feature in the course and result of the investigative action to transfer from one authorized subject to another. In this sense, when carrying out the activity of gathering evidence the lawyer conducting the investigation, first of all, personally also understands the seperate moments of the case and then tries to present the knowledge about these cases to the decision-making bodies on the case. Therefore, within the conceptual characteristics of the lawyer's research, the issue of formalization of its results and their legal significance becomes relevant, too. Unlike investigative actions, the legislation does not specify the course of procedural means of attorney's investigation and the procedural form

of formalizing the results. Although this circumstance gives lawyers some independance in their activities, on the other hand, it deprives them of the official form of the results of these activities. The establishment of the procedural form of formalizing the course and results of the actions taken by the lawyer to collect evidence in connection with the provision of legal assistance in the law may also serve to positively solve a number of issues. Therefore, as a solution to this problem, it is considered expedient to add a new article to the CPC entitled "*Article 51-1. The acting of the collection of evidence by a lawyer in connection with the provision of legal assistance.*" In order to make the proposal more realistic, it states that is necessary to add the words "*acts of actions taken by the lawyer to collect evidence related to the provision of legal assistance*" after the words "*protocols of investigation and court proceedings*" in Article 124.2.4 of the CPC.

Chapter IV of the dissertation is entitled **Criminal procedural means of gathering evidence by advocate in connection with the provision of legal aid** and combines two paragraphs.

The first paragraph of the fourth chapter, entitled **Procedural means of advocate investigation permitted by current legislation (de lege lata)**, is itself divided into three paragraphs. The first clause of the first paragraph of the fourth chapter, entitled **Interviewing individuals and entities by advocate** states that a lawyer's right to get an explanation, as an integral part of the right to a fair trial, is one of the main guarantees of the right “to summon and interrogate witnesses in his favor on the same conditions for witnesses who testified against him”.

The right of the lawyer to receive explanations from individuals should be based on the principle of voluntariness. The lawyer may not use categories such as "duty to testify" or "responsibility for refusing to testify" to force the person from whom he seeks an explanation to engage in a dialogue with him or her, however, the lawyer must inform the person of his or her prospect of becoming a defense witness, stating that the witness may be summoned to testify before the body of primary inquiry or court in

connection with such a prospect, or be summoned to court and become a subject of "duty to testify" and "liability for refusing to testify" after being summoned as a witness by public authorities. A lawyer may obtain an explanation from any person whose statements may be considered as witness statements on a voluntary basis.

In the doctrine, the most pressing problem of obtaining explanations by the lawyer is the formalization of its course and results. The author believes that obtaining explanations by the lawyer is such a procedural tool that even the provisions of the current legislation of the Republic of Azerbaijan allow it to be used quite effectively.

Thus, the main purpose of this procedural tool is to determine the potential defense witnesses and the amount and content of information they have.

This procedural tool serves to equalize the chances of the lawyer to understand the circumstances of the case under the same conditions with the accusing party through the collection and analysis of verbal information. And to achieve this goal, it does not matter how the process and results of the explanation are formalized. In principle, the process and outcome of obtaining an explanation by the lawyer may be purely oral and generally not formalized in any form, because, firstly, as the law does not require the formalization of this process, the lawyer will not deviate from any procedural rules, and secondly, Oral information from the person on certain cases will be sufficient to achieve the above-mentioned objective, and thirdly, even if the process is somehow formalized, the person have given the explanation will still have to be summoned to court and testify as a witness. However, the author does not deny that it is more expedient to formalize the receipt of explanations by the lawyer, and even acts as a supporter. According to the author's position, regardless of the receipt of explanations and the formalization of its results in any form (act, protocol, reference, etc.), the provisions of Articles 124.2.5 and 135.1 in the CPC in force allow the use of this formalization tool as independent evidence.

The second clause of the first paragraph of the fourth chapter, entitled "**Lawyer's request**", states that the current legislation

contains specific provisions confirming the right of lawyers, including lawyers involved in criminal proceedings, to collect information and request documents, they are only the legal basis of the institute of lawyer' request. Lawyer request is an official request put forward by the lawyer on submision of data in the form of a document, reference and etc. that are important for the provision of legal assistance. However, it is considered that the failure to regulate a single procedural form of the lawyer's request through sectoral legislation could jeopardize its effectiveness as a procedural tool, because giving the request of a lawyer in the form at the discretion of each lawyer, outside the procedural form prescribed by law may cause whether the request has been made orally and thus has not received a sufficient response, or whether the request has not provided the necessary details, and the request has been assessed, for example, as an anonymous request, as well as the inaccurate formulation of the request and so the inaccurate response to the request. In this regard, the author proposes to add a new norm to the Law "On LAA" entitled "**Article 15-1. Lawyer' request**" as one of the ways to address this issue.

The third clause of the first paragraph of the fourth chapter, entitled **Application of special knowledges in the advocate investigation** states that although the role of expert assistance in the defense function is significant, it should be considered that the expert's opinion does not act as evidence in Azerbaijan's criminal proceedings, and for this reason it cannot replace the expert opinion in the proper field. As long as the procedural-legal status of the expert, his/her "opinion" and "expression" remains within the scope established by the current criminal procedure legislation, the performance of the defense function during the period, including the study of the expert's opinion (obtaining an opinion) during the lawyer's investigation, should be of a guiding nature only, in cases where the views of the expert on this or that issue are important for the defense, an attempt should be made to collect materials that can be used as evidence in the procedural sense and to obtain an expert opinion on a contractual basis.

Contrary to the expert's definition, in the expert's definition, the legislature provides for the possibility that he or she could be summoned by both the defense and the defense counsel (Article 97.1 in the CPC). The right of the defense to use the services of experts invited by him/her under the same conditions with the prosecution party is an integral part of the right to a fair trial and, along with other rights within the scope of the right to a fair trial, the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms, regardless of *the de lege lata* situation in the national legislation, should be understood as the recognition of the right of the defense to take advantages of the services of the expert invited by him/her.

According to the author, it is illogical to limit the right of a lawyer to obtain an expert opinion on a contractual basis and to study the opinion of an expert only on specific charges. Interestingly, while the law allows the defense attorney who does not have a duty of proof (*onus probandi*) to use special knowledge in special cases, it does not give such a right to a special prosecutor or his agent who is a direct subject of the duty of proof. However, the task of preparing pre-trial materials on special cases and proving the accusation in court is up to the responsibility of the subjects noted last (Articles 21.3, 88.4.1, 88.4.4, 103.5.1 of the CPC). Second, if the legislation accepts the expert opinion obtained by the defense counsel on special cases as evidence, why should the importance of the expert opinion obtained on the same procedural basis in public and public-private cases be excluded? It is also unreasonable for a defense counsel to limit the apportunities to consult with a specialist in any field with special prosecutive cases for a number of reasons, as the specialist is usually the subject involved in assisting with carrying out procedural actions. Since expert opinion (reference, certificate, act, etc.) is not considered an independent type of evidence in the criminal proceedings of the Republic of Azerbaijan (Article 124.2 in the CPC), even if they are involved by state bodies for the purpose of studying opinions, their activities does not require special procedural formalization, even if the consultation with a specialist is formalized in the form of a procedural act, it is not of importance of a proven

nature. In other words, consultation with a specialist is more of a tactical-organizational issue than a procedural one. In this case, in order to properly establish the line of defense, properly understand the essence of the expert opinion obtained by the prosecuting authority, in general, to comprehend the circumstances of the case, it is not possible to prohibit the defense counsel from seeking the expert's opinion in all cases where explanations from a specially knowledgeable person are required. Also, if it is the matter of studying the opinion of an expert, it can be done not only by lawyers acting as a defense counsel, but also by lawyers acting as representatives, as this is primarily the right of a lawyer (Article 15 in the Law on LAA). Since the study of the expert's opinion does not have a special procedural form, it is practically impossible to ensure such a ban, i.e. consultaion of the defense counsel with a specialist on public and public-private cases.

As for the defense's opportunity to obtain an expert opinion, Article 268.1.4 in the CPC provides that, in fact, the defense is given the opportunity to conduct an alternative examination in cases where the prosecution is conducted in public and public-private form, but as subjects of such examination the suspicious or accused person is indicated. It is obvious that in cases where the suspect is detained or the accused is in custody, it is impossible for them to find a person with special knowledge, enter into a contract with him and perform other actions. Even when they are free, the opportunity of the suspect or accused person without higher legal education to ask the necessary questions to persons to whom he or she applies as an expert is not convincing. This means that in most cases, the alternative examination will be appointed by the defense counsel. Simply because the acquisition of this type of evidence requires additional costs, the possibility of appointing an alternative examination by the defense counsel with the consent of the suspect or accused can be considered.

The second paragraph of the fourth chapter of the dissertation is entitled **Issues of expanding the range of means of lawyer investigation (de lege ferenda)** and combines two parts. The first clause of this paragraph, entitled **Opportunities for the lawyer to**

examine objects, locations, and collect material evidence states that visual observation and examination are one of the simplest and most common methods of understanding. Most objects in the material world (excep micro-particles) are first perceived by seeing them, touching them, and feeling their shape and structure, weight and size. Evidence is also collected in criminal proceedings based on these methods of perception. Unlike the prosecuting authorities, the law did not give the right to lawyers acting in this or that procedural status to make examination as a means of gathering evidence. However, it is not excluded that the law may directly address such a means of understanding by a lawyer, on the contrary, some provisions of the legislation give grounds to say that it is completely permissible to substantiate a certain claim based on the circumstances perceived by the lawyer as a result of the observation method in criminal proceedings (Articles 236.3, 285.1 and 333.1 in the CPC). In other words, the legislation does not preclude a lawyer from using a means of perception based on the observation method in his or her evidentiary activity, but the law simply does not specify a procedural form for this means. In this regard, if the proposal on making an act of the actions that the lawyer has collected evidence for the provision of legal assistance is implemented, the lawyer's opportunities to collect evidence-based information about objects or public places, etc., voluntarily presented to him, and afterwards to formalize this information to transfer to the prosecuting authority may be expanded.

Along with other types of evidence of the lawyer conducting his investigation, There is no doubt that the collection of material evidence (items that can be recognized as material evidence by the prosecuting authority) can help to achieve a more effective solution to the problems associated with the provision of legal assistance. Pursuant to Articles 92.9.5, 92.11.4, 102.6.4 and 102.9.4 in the Criminal Procedure Code, on the one hand, the legislation assumes the possibility that the lawyer may have items that may be important for resolving the case and gives him the right to present these items to the prosecuting authority, on the other hand, among other rights of the defense counsel related to the collection of evidence, neither

Article 92.9.9 nor Article 143.3 in the CPC provides the right for the defense to collect items that may be important for the defense of the case in one form or another. The situation is the same for the lawyers involved in criminal proceedings, as their powers to gather evidence are treated more superficially in the CPC. As the lawryer's right such as collecting items for use as evidence in the criminal proceeding has not been established, uncertainty prevails currently over this issue. The author believes that the first step in solving the problem should be the formalization of this right in the CPC.

The second clause of the second paragraph of the fourth chapter, entitled **Possibilities of collecting digital evidence and application of 3D computer modeling in the lawyer investigation** states that the spread of IT to all spheres of life has also created the conditions for crimes to be committed using these technologies, and as a result, the concept of "scene", usually understood as a material (physical) environment, can now also be comprehended as a digital environment, while the information available in the digital environment is perceived as digital evidence.[1] In the implementation of criminal prosecution in modern times, the importance of digital evidence for criminal prosecution is no less important than other types of evidence. On the contrary, the recent increase in the use of social networks and digital technical devices (smartphones, tablets, etc.) gives grounds to say that there is now more information about people and events in the digital environment than in the analog environment. In such circumstances, the relevant information may be used as evidence in the interpretation of both the prosecuting authority of crime and the legal aid lawyer. For example, speaking about the collection of electronic evidence from social networks in the framework of criminal proceedings on the example of the social network "Facebook", S. Yetim, first of all, substantiates the potential of this type of information to be used as evidence, drawing attention

[1] *Değirmenci O.* Ceza muhakemesinde sayısal (dijital) delil. Ankara: Seçkin, 2014, s. 125.

to open information, photos, shares, opinions, etc. on social networks.[1]

The author believes that for the lawyer conducting his research, the collection of open data from the Internet, as well as the taking of data from the memory of digital devices voluntarily handed over to him, can be considered a fairly effective means of collecting evidence. Compilation of an act reflecting the origin of digital information and the conditions of copying, the opportunities of collecting evidence by copying the information available in the digital environment (internet, digital device, etc.) with the involvement of an appropriate specialist, if necessary, is one of the directions that should be taken into account in the perspective of expanding the means of legal research, too.

It is also shown that modeling is one of the indirect methods of perception, which serves to acquire knowledge through the study of an artificially created pattern, i.e. model, not directly of the object of perception. 3D computer modeling involves the creation of a description of the object of perception (object, event, situation) in a three-dimensional space, digital (virtual) environment through a special computer program. In essence, 3D computer modeling, along with the creation of a digital (virtual) description of the object, event or condition under study, is also an experiment in a digital environment through manipulations of data on that image[2], and in this sense, if we approach 3D computer modeling in the context of a criminal investigation, it can also be seen as a type of investigative experiment. In terms of criminal procedure law, the main difference between 3D computer modeling and a traditional investigative experiment is that if the proceedings of the investigative experiment are the exclusive prerogative of the investigating authorities, 3D computer modeling is accessible to the lawyer both in terms of its legal admission (or, to be more precise, not prohibited) and its organization and implementation. The lawyer conducting his

[1] *Yetim S.* Ceza muhakemesi hukuku kapsamında sosyal medyadan elektronik delil toplama ve değerlendirme (Facebook örneği). Ankara: Seçkin, 2016, s. 378.

[2] *Flor N.* Virtual Crime Scene Reconstruction: The Basics of 3D Modeling // Journal of Digital Forensics, Security and Law, 2011, Vol. 6(4), p. 67-68.

research can solve the following tasks using 3D computer modeling: examination of assumptions about the dynamics of the event and the mechanism of formation of traces, which are preferred, rejected or not considered at all by the body of preliminary investigation; visualization of verbal information provided in the form of statements and explanations to the body of preliminary investigation or the lawyer himself; visualization of information in the protocols of investigative actions compiled by the body of preliminary investigation; development of virtual models of objects taken by the primary investigation body and recognized as material evidence, determination of the characteristics of the interaction of these models with each other and with the environment due to the properties included in the database; determining whether specific events are possible under specific conditions due to the properties included in the database.

As 3D computer modeling requires special knowledge and the application of special software during the lawyer's investigation, it should be carried out with the help of an IT specialist.[1]

Chapter V of the dissertation is entitled **Forensic aspects of the lawyer investigation in criminal proceedings**. This chapter shows that the activity of a lawyer in criminal proceedings and the investigation of a lawyer in criminal proceedings as an integral part of it is a full-fledged object of modern criminology.[2] When considering the lawyer's research as an object of criminology, it is necessary to pay attention to its individual criminological aspects. Thus, since the lawyer's investigation is an activity aimed at finding and gathering evidence, the provisions of forensic technology are important both for the lawyer's own investigation and for the lawyer

[1] *St. Clair E., Maloney A., Schade A.* An Introduction to Building 3D Crime Scene Models Using SketchUp // Journal of Association of Crime Scene Reconstruction, 2012, Vol. 18(4), p. 29-30.

[2] *Xəlilov F.Y.* Vəkil araşdırması müasir kriminalistika elminin obyektidir // Odlar Yurdu Universitetinin Elmi və Pedaqoji xəbərləri. Humanitar və dəqiq elmlər seriyası. Bakı, 2015, № 42, s. 13-15; *Xəlilov F.Y.* Vəkil kriminalistikası kriminalistikada yeni istiqamət kimi // Polis Akademiyasının elmi xəbərləri, Bakı, 2017, № 3-4, AR DİN Polis Akademiyası, s. 138-140.

to examine and evaluate the evidence gathered by the prosecuting authority. It is worth reminding that according to Article 15, Part II, Clause 5 in the Law “on LAA”, the use of technical means in accordance with the legislation is one of the basic rights granted to lawyers by the legislation in force. In this sense, scientific and technical means that can be used directly in the investigation of the lawyer can also be referred to the means of the forensic technique.

It is possible to fully apply the general provisions of forensic tactics to the lawyer's investigation, and most importantly, knowledge of forensic tactics can allow us to develop tactics for the implementation of individual procedural tools of lawyer investigation.

It is possible to comment on the application of the provisions of forensic methodology to the investigation of a lawyer and the development of a methodology for the investigation of various crimes in the future, along with the methodology of the investigation of individual crimes. In the most general sense, forensic methodology is aimed at streamlining and facilitating the investigation of certain types of crimes, by this logic, during proceedings on various crimes. The set of provisions that can make research by lawyers more efficient and easier can be seen as a methodology of lawyer investigation. By the way, if we intend to draw a parallel between the organizational and tactical recommendations of the investigation methodology, which are traditionally considered the most important, and the recommendations to be prepared on the methodology of the lawyer's investigation, we can note that, in addition to the interaction between the investigator and the investigative bodies, all other recommendations of the investigation methodology, i.e. the individuality of the investigation, the use of a specialist and expert assistance in the investigation, as well as the combination of actions with members of the public, can be applied to the lawyer's investigation through taking into account special features. Also, if we want to apply the provisions of a special forensic methodology to a lawyer's investigation, we believe that categories such as the forensic nature of the crime under investigation, the circumstances to be

determined by the lawyer during the investigation, the conditions under which the lawyer is investigated, the establishment and verification of the lawyer's hypotheses, the planning of the lawyer's investigation and the tactics of the lawyer's investigation tools can be used successfully.

In the conclusions, the author presents the concepts as a system of theoretical generalizations, practical recommendations and legislative proposals.

The appendices contain the results of the opinion poll conducted among the practitioners, the author's concept of the lawyer's investigation in the criminal process and copies of the acts of approbation.

The main provisions of the dissertation are reflected in the following publications of the author:

1. Понятие адвокатского расследования в уголовном процессе: краткий анализ позиций в теории // Пробелы в Российском законодательстве. Международный юридический журнал. Москва, Издательский дом Юр-Вак, 2012, № 2, с. 183-186.
2. Cinayət prosesində vəkil araşdırması: terminin formalaşma mərhələləri // AMEA Fəlsəfə, Sosiologiya və Hüquq İnstitutunun Elmi əsərləri. Bakı, AMEA FSHİ, 2012, № (1)18, s. 281-285.
3. Vəkil araşdırması cinayət-prosessual hüququn tədqiqat obyekti kimi: vəzifələrin müəyyən edilməsi / "Hüquq elminin müasir problemləri" mövzusunda II Respublika elmi-nəzəri konfransın materialları. Bakı, Təknur nəşriyyatı, AMEA FSHİ, 29-30 mart, 2012-ci il, s. 88-91.
4. Развитие идеи об адвокатском расследовании в уголовном процессе через терминологическую призму / "Azərbaycanda hüquqi dövlət quruculuğu və qanunçuluq – 2020: Gələcəyə baxış" mövzusunda Beynəlxalq elmi-praktiki konfransın materialları. Bakı, Təknur nəşriyyatı, AMEA FSHİ, 11-12 iyun 2012-ci il, s. 74-78.
5. Cinayət prosesində vəkil araşdırması zamanı xüsusi biliklərdən istifadənin bəzi məsələləri / "Hüquq elminin müasir problemləri"

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