# ANNOTATION

**of the dissertation by Zhamburbayeva S. titled «Representation on one's behalf in civil procedural law: theory and practice of law enforcement», submitted for the degree of Doctor of Philosophy (PhD) in the educational program «8D04201-Jurisprudence»**

**Relevance of the dissertation research topic**. The relevance of this dissertation research on representation on one's behalf in civil proceedings is determined by several interrelated factors in the current development of the legal system of the Republic of Kazakhstan.

Firstly, the right to judicial protection and access to justice constitutes an inseparable system of interdependent rights, where the violation or insufficient implementation of any individual right diminishes the overall effectiveness of legal protection. This requires not fragmented, but comprehensive approaches, including the ongoing development of the institution of legal representation as a key element in the mechanism for the implementation of constitutional guarantees.

Secondly, the current legal regulation of representation on one's behalf contains inconsistencies and legal gaps. The voluntary nature of chambers of legal consultants joining the Republican Collegium, while the latter is tasked with coordinating functions, undermines the institutional capacity of the Collegium to carry out supervisory responsibilities. This may negatively affect the quality of professional activity among legal consultants.

Moreover, the absence of a legal requirement for citizenship, the fragmentation of legal aid standards, quality benchmarks, professional conduct rules, and ethical norms points to systemic imbalances in the legal mechanism regulating the activities of legal consultants. These deficiencies hinder the effective realization of the constitutional guarantee of access to qualified legal assistance and obstruct the sustainable and high-quality development of the institution of legal representation.

Thirdly, recent legislative reforms aimed at excluding individuals lacking formal legal education and practical experience from participating in legal representation have laid the foundation for the conditional professionalization of this institution. However, these changes have not provided a comprehensive solution to the regulatory challenges of representation on one's behalf, leaving both theoretical and practical aspects of its operation unresolved.

The importance of the research topic is further emphasized by the growing professional discourse between members of the bar and legal consultants, which is centered on the idea of unifying all actors involved in legal representation under the framework of the bar. These debates directly influence the content and trajectory of proposed legislative initiatives and therefore require thorough academic examination and objective evaluation.

In the context of judicial modernization, the proposed reforms should focus not on institutional consolidation of specific forms of representation, but on ensuring a high standard of qualified legal assistance accessible to all participants in civil proceedings. Thus, the study of the legal nature, systemic structure, and

developmental prospects of the institution of representation on one's behalf acquires both academic and considerable practical significance.

Fourthly, a review of foreign legal systems shows that, in most countries, non-professional representation is restricted at the appellate and cassation levels. This practice aims to ensure the delivery of qualified legal assistance, uphold procedural guarantees, and improve the quality of justice at the stages that establish unified approaches in judicial practice.

The study of alternative regulatory models of legal representation is of practical importance for the modernization of Kazakhstan's legal system, as it enables consideration of both international standards and national legal specificities. This further underscores the academic and applied relevance of improving the institution of representation on one's behalf.

Fifthly, in light of the digital transformation of society, there is a growing need to modernize the institution of legal representation with an emphasis on digitalization. This transformation seeks to align the institution with current realities and technological advancements, highlighting the high theoretical and practical significance of this direction of research.

**The purpose of the dissertation** is to identify theoretical and practical issues in the legal regulation of representation on one's behalf in civil proceedings; to conduct a comparative legal analysis of the legal status of judicial representatives under the legislation of the Republic of Kazakhstan and foreign countries; and to develop scientifically grounded theoretical provisions and practical recommendations aimed at improving the legal framework governing the institution of representation on one's behalf in civil procedural law.

**Research objectives.** To achieve this goal, the study sets and addresses the following specific objectives:

- To examine the theoretical and legal foundations of representation on one's behalf as a form of judicial representation by revealing its essence, legal nature, and characteristics from the standpoint of civil procedural theory, and to formulate a clear definition of the institution of judicial representation;

- To define the concept of «legal assistance» based on the criteria that the activities of the subjects listed in Article 20 of the Law of the Republic of Kazakhstan «On Advocacy and Legal Assistance» must meet;

- To explore the specifics of the professionalization of representation on one's behalf in court and to identify quality criteria for legal assistance that correspond to the qualifications of a judicial representative, as well as to define the concept of «qualified legal assistance»;

- To carry out a comparative legal review of the classification of judicial representatives under the legislation of foreign countries in order to identify common trends and features of legal regulation in various jurisdictions and to determine possible directions for improving the national legislation;

- To identify problems related to the insufficient effectiveness of oversight over the activities of legal consultants and to develop scientifically based proposals and recommendations for optimizing the functioning of legal consultants' chambers;

- To develop recommendations for the integration of blockchain technology into the system of judicial representation in civil cases, aimed at ensuring transparency and enhancing the quality of legal assistance provided by lawyers and legal consultants.

**Research methods**. The following research methods were employed in the study: to examine the unique characteristics and interconnections of various aspects of the legal phenomenon under investigation, methods of analysis and synthesis were applied. The historical and legal method was used to trace the evolution of the institution of judicial representation within the civil procedure system, taking into account its historical development. The formal legal method proved essential for defining terminology and ensuring the accuracy and consistency of legal concepts throughout the research. The comparative legal method was employed to compare the legal norms and practices of representation on one's behalf in the Republic of Kazakhstan with international standards and the legal systems of other countries. The statistical method was applied to determine the number of professional actors permitted to participate in judicial representation on one's behalf in accordance with civil procedural legislation. To assess and interpret the collected data and to formulate well-reasoned conclusions and recommendations for improving the institution of representation, the research utilized the analytical method.

The use of these methods enabled a comprehensive examination of the issues raised in the dissertation, facilitated the achievement of the research goal and objectives, and contributed to the development of proposals for enhancing the institution of representation in the civil procedural law of the Republic of Kazakhstan.

**Key provisions submitted for defense.**

1. Due to the absence of a definition of «representation on one's behalf in court» in the theory of civil procedural law, the following original definition is proposed: «representation on one's behalf in court is a type of judicial representation arising from the norms of civil procedural law and confirmed by a power of attorney or other legally recognized document, under which an authorized person (representative) provides qualified and other legal assistance, ensuring the protection of the rights and interests of the principal at all stages of the civil process».

2. The Law of the Republic of Kazakhstan «On Advocacy and Legal Assistance» contains a contradiction between the definition of «legal assistance» and the list of subjects authorized to provide such assistance. According to subparagraph 3) of Article 1 of the Law, legal assistance is defined as activity aimed at obtaining qualified legal assistance. However, Article 20 lists subjects including state bodies, notaries, private bailiffs, and individuals who do not belong to mandatory-membership non-profit organizations – entities that provide legal assistance which does not fall under the category of «qualified legal assistance» as defined in paragraph 3 of Article 13 of the Constitution of the Republic of Kazakhstan.

This inconsistency necessitates a revised definition of «legal assistance» as follows:

«3) legal assistance is the activity carried out by entities vested by law with the functions of legal information, consultation, and the performance of other legal actions aimed at protecting the rights, freedoms, and legitimate interests of individuals and organizations.»

3. It is proposed to introduce a legal definition of «qualified legal assistance» into the Law of the Republic of Kazakhstan «On Advocacy and Legal Assistance». Accordingly, it is recommended to supplement the conceptual framework of Article 1 with a new subparagraph 3-1), as follows:

«3-1) qualified legal assistance is professional activity aimed at implementing the right, guaranteed by paragraph 3 of Article 13 of the Constitution of the Republic of Kazakhstan, to receive qualified legal assistance in accordance with this Law and other laws of the Republic of Kazakhstan.».

4. Considering that the judicial activities of the cassation instance and the Supreme Court of the Republic of Kazakhstan shape legal practice and significantly influence the positions of courts of first and appellate instances, participation in such proceedings requires a high level of professional training not only from judges but also from legal representatives. Taking this into account, as well as foreign experience (France, Belgium, Iceland, Georgia, Australia, Luxembourg, Thailand, Pakistan, etc.), it is deemed reasonable to establish by law that representation in the courts of cassation and the Supreme Court of the Republic of Kazakhstan be carried out exclusively by advocates.

To this end, the following amendment is proposed to subparagraph 2) of part 3 of Article 57 of the Civil Procedure Code of the Republic of Kazakhstan:

««Representatives of persons referred to in parts one and two of this Article shall be:

2) in the courts of cassation instance and the Supreme Court of the Republic of Kazakhstan – persons referred to in subparagraph 1) of part one of Article 58 of this Code.».

5. It is considered appropriate to establish a unified coordination system for the activities of legal consultants by creating the Republican Chamber of Legal Consultants. Currently, due to the voluntary nature of joining the Republican Collegium of Legal Consultants, not all regional chambers are its members, which contradicts the coordinating functions of this organization. In this regard, the following changes are proposed:

- rename Article 78-1 of the Law of the Republic of Kazakhstan «On Advocacy and Legal Assistance» from «Republican Collegium of Legal Consultants» to «Republican Chamber of Legal Consultants»;

- revise paragraph 1 of Article 78-1 as follows: «The Republican Chamber of Legal Consultants is a non-profit organization based on mandatory membership of the chambers of legal consultants of regions, cities of republican significance, and the capital…».

Furthermore, considering that the multiplicity of chambers complicates oversight, including maintaining a unified Register of Legal Consultants, it is

proposed to limit the number of chambers to one per region, city of republican significance, and the capital. Accordingly, by analogy with bar associations, it is recommended to supplement Article 78 with paragraph 3:

«In the territory of a region, city of republican significance, or the capital, one chamber of legal consultants shall be established and shall operate. It shall not have the right to create structural subdivisions (branches or representative offices) in the territory of another region, city of republican significance, or the capital.».

6. In the current context of digitalization, and in order to improve the quality of qualified legal assistance while maintaining professional confidentiality, it is advisable to implement blockchain technology through a specialized platform for advocates and legal consultants.This platform would allow for the secure exchange of information with other automated systems, including databases of judicial decisions, claims, and summaries of court practice, using cryptographic encryption methods to enhance data security and reliability. Interaction between system participants would accelerate access to essential information and optimize the process of providing legal assistance.

The use of blockchain technology could also facilitate the maintenance of registers of advocates and legal consultants, as well as the organization of their certification processes, thereby ensuring transparency.

The application of a private blockchain would allow for the execution of smart contracts between the client and the representative, speed up the exchange and signing of documents, monitor the fulfillment of obligations by the parties, and carry out transparent transactions verified by network participants using digital signatures.

**Description of the main research findings.**

Despite the existence of a considerable number of scholarly works dedicated to representation on one's behalf in civil procedural law, many issues – particularly those related to its legal regulation in light of recent legislative changes – remain insufficiently explored. This study is of scientific novelty, as it presents the first comprehensive examination of representation on one's behalf within the civil procedural law of the Republic of Kazakhstan, taking into account the updated range of actors authorized to perform such representation.

The dissertation explores the fundamental components of representation, including the grounds for its emergence and termination, the legal status of the representative, and the specific nature of their procedural powers.

Clarifications and original authorial commentary are provided on a range of procedural terms and concepts that constitute the content of representation in civil proceedings. In particular, an original definition of the term is proposed. The study also addresses current legal norms, identifying legal inconsistencies and gaps.

In addition, the research summarizes existing doctrinal and practical approaches to improving the mechanism of representation on one's behalf, which are further developed with original arguments and conclusions aimed at enhancing the effectiveness of legal protection for individuals and organizations.

Solutions are proposed for optimizing procedural aspects, including the procedure for granting representatives access to higher judicial instances,

supported by an analysis of international regulatory experience. The study substantiates the need for the further professionalization of judicial representation in the Republic of Kazakhstan.

The research includes a comprehensive study of both theoretical approaches – represented in the works of domestic and foreign scholars – and the views of practicing professionals. It also involves an in-depth analysis of existing legal regulations and judicial practice. The latter includes, among other matters, cases involving the revocation of licenses for advocacy, exclusion from the bar association, removal from the register of legal consultants' chambers, and disputes regarding the legality of chamber registration. This analysis revealed a number of legal gaps and conflicts. The dissertation formulates theoretically grounded positions on these issues and offers practice-oriented recommendations aimed at improving the legal regulation of representation on one's behalf in civil judicial proceedings.

**Justification of the significance and novelty of the research results**.

This study possesses scientific novelty, as it constitutes the first comprehensive analysis of representation on one's behalf in the civil procedural law of the Republic of Kazakhstan, taking into account the updated range of actors authorized to engage in such representation.

Result 1 is novel, as the study identifies the absence of a clear definition of «representation on one's behalf in court» within the theory of civil procedural law. Based on a review of the theoretical foundations of legal regulation in this area, the author proposes an original definition of the concept. This definition reveals the essence of judicial representation as a form of qualified and other legal assistance that ensures the protection of the principal's rights and interests at all stages of civil proceedings.

Result 2 is novel, since the author, based on a comprehensive analysis of the theoretical framework, concludes that the current content of the term «legal assistance» does not fully align with paragraph 3 of Article 13 of the Constitution of the Republic of Kazakhstan, which guarantees the right of every individual to receive qualified legal assistance. A new definition of «legal assistance» is proposed, emphasizing its essential legal features as identified by the author.

Result 3 is novel, as the author introduces a clear conceptual distinction between «legal assistance» and «qualified legal assistance,» and substantiates the need to amend the conceptual framework of the Law of the Republic of Kazakhstan «On Advocacy and Legal Assistance» by adding a new subparagraph 3-1) to Article 1, defining «qualified legal assistance».

Result 4 is novel, in that the author, drawing on the best practices of certain foreign jurisdictions, proposes an original revision of subparagraph 2) of part 3 of Article 57 of the Civil Procedure Code of the Republic of Kazakhstan. This proposal is based on the necessity of ensuring a higher standard of qualified legal assistance in the cassation and supreme judicial instances.

Result 5 demonstrates novelty through the author's legislative initiative aimed at improving the coordination of legal consultants' activities. The proposal includes the establishment of a Republican Chamber of Legal Consultants, as well

as the reduction of the number of legal consultants' chambers to one per region, city of republican significance, and the capital. This addresses the current challenge of insufficient oversight resulting from the multiplicity of such chambers.

Result 6 is novel, as it formulates proposals for the implementation of a blockchain-based platform to enhance the mechanism of legal support within the framework of professional judicial representation. Blockchain technology is positioned as a trust-based infrastructure founded on the principles of transparency, immutability, and data decentralization, significantly improving the effectiveness and quality of qualified legal assistance. These characteristics make blockchain a promising tool for aligning legal services with the demands of digital transformation.

**Alignment with scientific development priorities and national programs.** The research trajectory of this dissertation aligns organically with the strategic priorities of state policy in the Republic of Kazakhstan. It is consistent with the Concept of Legal Policy of the Republic of Kazakhstan until 2030, the Kazakhstan-2050 Strategy, the National Development Plan of the Republic of Kazakhstan until 2029, the Concept of Digital Transformation, Development of the Information and Communication Technologies Sector, and Cybersecurity for 2023-2029, the Concept for the Development of Artificial Intelligence for 2024-2029, as well as the Concept for the Development of the Kazakhstani Bar for 2022-2025: «New Kazakhstan – New Advocacy». These state policy frameworks establish a comprehensive ideology of reform, within which this dissertation research acquires particular relevance and practical significance.

**Description of the doctoral candidate's contribution to each publication.** The main findings of the dissertation research have been published in 8 scientific articles, including: 1 article in a peer-reviewed journal indexed in the Scopus database; 4 articles in journals recommended by the Committee for Quality Assurance in the Sphere of Education and Science of the Ministry of Science and Higher Education of the Republic of Kazakhstan for the publication of key scientific results; 3 articles in proceedings of international scientific and practical conferences.