

Consideration of private prosecution cases in the courts of first instance according to international standards of procedural law: Problems and prospects for inclusive justice

Evgenia Greek

Master of Science
Caspian University
050000, 85A Dostyk Ave., Almaty, Republic of Kazakhstan
<https://orcid.org/0009-0000-7296-419X>

Saida Akimbekova*

Doctor of Law, Professor
Caspian University
050000, 85A Dostyk Ave., Almaty, Republic of Kazakhstan
<https://orcid.org/0000-0002-8209-2361>

Gulmira Nurtayeva

PhD in Law, Associate Professor
Caspian University
050000, 85A Dostyk Ave., Almaty, Republic of Kazakhstan
<https://orcid.org/0009-0007-6090-3227>

Batir Samarxodjayev

PhD in Law
Supreme School of Judges
100097, 6 Choponota St., Tashkent, Republic of Uzbekistan
<https://orcid.org/0009-0004-1990-5421>

Abstract. International standards of procedural law are increasingly influencing national legislation. This creates the need to adapt national procedures to international standards, particularly in the sphere of private prosecution. The purpose of this study was to identify ways to improve the institution of private prosecution in the courts of first instance of Kazakhstan to ensure its compliance with international standards and principles of inclusive justice. The study was based on a comprehensive application of systemic and structural, comparative legal, and formal legal methods, which enabled a comprehensive analysis of the legal framework of Kazakhstan and international standards in the field of private prosecution. The study revealed major discrepancies between Kazakh legislation and international standards, including the absence of mandatory participation of a lawyer and a prosecutor in private prosecution cases, which leads to a violation of the principle of equality of arms and restrictions on access to justice. A comparative analysis of the experience of European countries, specifically Germany, France, Latvia, and the Netherlands, revealed the key elements of successful models of inclusive justice: the Nebenkläger institution of procedural complicity in Germany, which provides victims with broad procedural rights; the French system of specialised victim support centres; the Latvian model of mandatory prosecutorial participation; and the Dutch practice of restorative justice and mediation. Based on the study conducted, a set of measures to improve Kazakh legislation was proposed, including the introduction of a state programme of free legal aid, the creation of a network of victim support centres, the development of e-justice and the introduction of mandatory prosecutorial involvement in private prosecution cases. The findings of this study can be used to reform the system of

Suggested Citation

Article's History: Received: 11.08.2024 Revised: 25.01.2025 Accepted: 26.03.2025

Greek, E., Akimbekova, S., Nurtayeva, G., & Samarxodjayev, B. (2025). Consideration of private prosecution cases in the courts of first instance according to international standards of procedural law: Problems and prospects for inclusive justice. *Social & Legal Studios*, 8(1), 105-118. doi: 10.32518/sals1.2025.105.

*Corresponding author



private prosecution in Kazakhstan and other post-Soviet countries with a view to ensuring fair and inclusive justice in line with international standards

Keywords: mediation; free legal aid; guarantees of legal practice; legal protection; social vulnerability; electronic document management

Introduction

Under the current conditions of development of the legal system of Kazakhstan, the issue of consideration of private prosecution cases by the courts of first instance according to international standards of procedural law is of particular relevance. This is driven by the need to ensure effective protection of the rights and freedoms of citizens who have become victims of criminal offences, as well as the need to modernise the judicial system according to international standards of fair trial. The significance of this study is also underlined by the fact that the institution of private prosecution is a significant mechanism for exercising the right of citizens to judicial protection stipulated in the Constitution of the Republic of Kazakhstan (1995). Furthermore, in the context of the growing number of private prosecution cases, there is a need to improve the procedural mechanisms for their consideration, considering international practices and standards.

An analysis of the scientific literature shows that researchers are interested in various aspects of consideration of private prosecution cases in the courts of first instance. R.W. Gordon (2019) conducted a thorough investigation of the procedural order of the trial of private prosecution cases and identified substantial shortcomings in the justice system in terms of ensuring equal access to legal services. The researcher not only identified the problem of ambiguous interpretation of the term “private prosecutor”, but also proposed concrete mechanisms for improving legislation on the requirements for the content of court decisions and simplifying access to justice. An important contribution was made by K. Braun (2019), who analysed the issue of active participation of victims in criminal proceedings in various legal systems. The researcher did not limit herself to theoretical analysis but developed a practical concept of protection of victims’ rights at different stages of criminal proceedings, considering the successful practices of European countries. Based on a comparative analysis of the inquisitorial and adversarial systems of justice, the researcher proposed concrete steps to improve the mechanisms of victim participation in criminal proceedings.

B. Toleubekova *et al.* (2021) presented a comprehensive study of the three-tier model of criminal procedure in Kazakhstan. Of particular value is the methodological substantiation of the need to adapt the European model to Kazakh context and the development of concrete mechanisms for such adaptation. L. Nurlumbayeva *et al.* (2021) performed an in-depth comparative legal analysis of the institution of writ proceedings, which began operating in Kazakhstan in 2018. The researchers not only identified problems in the implementation of this institution, but also proposed concrete legislative changes to improve its effectiveness. M.N. Mamaeva (2024) continued studying the issue. The researcher focused on the independence of advocacy, conducting a comparative analysis of the legislation of Kazakhstan and Uzbekistan. Her recommendations for strengthening the guarantees of the legal profession are essential to ensure effective protection of the rights of participants in criminal proceedings.

B.K. Ruzmetov (2021) presented an innovative study of human rights protection in the criminal procedure legislation of Uzbekistan. The researcher thoroughly analysed the liberalisation of criminal law policy and its effect on the status of participants in the process, proposing concrete mechanisms to expand the procedural capabilities of lawyers. Y. Yerkebulanov and B. Tukulov (2022) conducted a comprehensive analysis of the judicial system of Kazakhstan in the context of the state’s international obligations. They paid special attention to the mechanisms of enforcement of court decisions and their compliance with international standards, developing practical recommendations for improving procedural legislation.

A.A. Duisenova and N.S. Kala (2020) made a valuable contribution to the understanding of international standards of judicial proceedings, conducting a comparative analysis of the practice of human rights protection in the courts of Kazakhstan and Macedonia. The researchers not only identified problematic aspects of the implementation of international standards, but also proposed concrete mechanisms for their practical implementation. E. Akhmetov *et al.* (2024) presented fundamental research on the principles of legality and justice. Their analysis covered both the theoretical aspects of these principles and the practice of their application in administrative proceedings, which is vital for understanding the general principles of the judicial system of Kazakhstan.

G. Mukhamadieva *et al.* (2021) proposed an innovative approach to understanding private detective activity as an element of the mechanism for protecting individual rights. The researchers not only substantiated the need for legislative regulation of this institution, but also developed concrete proposals for its implementation in the criminal procedure. No less important was the study of L. Nurlumbayeva and A. Akhpanov (2023), who conducted a comprehensive analysis of writ proceedings in criminal procedure. Based on the analysis of practices, they identified systemic problems in the application of this institution and proposed concrete mechanisms for their solution, including improving the procedure for the execution of sentences and optimising the timing of procedural decisions. At the same time, despite a considerable number of studies, a comprehensive analysis of the consideration of private prosecution cases by the courts of first instance in the context of international standards of procedural law requires further investigation. This is especially true for the issues of harmonisation of national legislation with international standards, ensuring the rights of participants in the process and improving the procedure for reconciliation of the parties in private prosecution cases. The issues of procedural guarantees of the rights of the victim and the accused in private prosecution cases, as well as mechanisms to ensure the effectiveness of court proceedings in such cases, are also understudied.

The purpose of this study was to determine the current state, problems, and prospects of private prosecution cases in the courts of first instance, considering international standards of procedural law and the principles of inclusive

justice. The focus on the first instance was conditioned by the fact that it is precisely at this stage that the procedural basis for protecting the rights of the parties to the proceedings is laid down and the evidence base is formed, which may later become decisive for the outcome of the case. Furthermore, most private prosecution cases are completed in the courts of first instance, which underscores the significance of ensuring a proper trial at this stage. To fulfil this purpose, the following tasks were set:

1. To investigate the specific features of private prosecution cases in the courts of first instance and analyse their compliance with international standards of procedural law, particularly in terms of ensuring the right to a fair trial and access to justice for all categories of the population.
2. To identify the key problems of implementing the principles of inclusive justice in private prosecution cases, including social, economic, and procedural barriers affecting the judicial protection of the rights of vulnerable groups.
3. To describe current trends in the development of inclusive justice in private prosecution cases and to explore promising areas for adapting court procedures to the needs of diverse social groups following international standards.

Materials and methods

The theoretical and methodological framework of this study included a set of interrelated concepts and approaches in the field of criminal procedure law and inclusive justice. The study was based on the fundamental principles of the rule of law, equal access to justice, and procedural fairness prescribed in international legal instruments. The conceptual framework of this study was formed based on the analysis of international standards for the protection of victims' rights in criminal proceedings, the principles of inclusive justice, and mechanisms for ensuring procedural equality of the parties. Particular attention was paid to the concept of restorative justice and its implementation in private prosecution cases, as well as to the theoretical foundations of ensuring the rights of vulnerable groups in criminal proceedings.

The study applied a system of interrelated methods of scientific cognition, which enabled a comprehensive approach to the investigation of the issue. The historical method helped to examine the evolution of the institution of private prosecution in relation to the development of human rights concepts and the principles of inclusiveness, to analyse the transformation of the role of the victim in criminal proceedings from a passive participant to an active subject of procedural relations, and to explore the dynamics of the development of procedural guarantees of the rights of participants in criminal proceedings. The systemic-structural method was employed to identify the interrelationships between various elements of the private prosecution system, analyse the structure of procedural mechanisms for protecting victims' rights, systematise barriers to access to justice, and build a comprehensive system of recommendations for improving legislation. This method was also used to investigate the interaction of various subjects of the criminal procedure and the mechanisms for ensuring their procedural rights. The comparative legal method was used to compare the provisions of Kazakhstan's national legislation with international standards, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the International Covenant on Civil and Political Rights (1966), and Directive of the European Parliament

and of the Council No. 2012/29/EU (2012), analysing models of inclusive justice in Germany, France, Latvia, and the Netherlands (as countries that demonstrate distinct successful approaches to modernising the criminal justice system and protecting victims' rights) and identifying progressive elements of international practices suitable for implementation. This method helped to identify the specific features of legal regulation of private prosecution in various legal systems and to determine the most effective mechanisms for protecting victims' rights, as presented in Code of Criminal Procedure (StPO) (1950), Law No. 2000-516 of Strengthening the Protection of the Presumption of Innocence and the Rights of Victims (2000), Criminal Procedure Law of Latvia (2009). The formal legal method was employed to interpret the provisions of national and international law, to analyse the legal constructions of Criminal Procedure Code (CPC) of the Republic of Kazakhstan (2014), Criminal Code of the Republic of Kazakhstan (2021), Law of the Republic of Kazakhstan No. 176-VI "On Advocate Practice and Legal Assistance" (2018) and procedural mechanisms, to identify gaps in the legal regulation of private prosecution, as well as to formulate proposals for improving the legislation.

The study was conducted in three consecutive stages, each of which had its specific tasks and methodological tools. The first stage involved the review of the theoretical foundations of the institution of private prosecution in the courts of first instance, analysis of the national legislation of Kazakhstan and systematisation of international standards in the field of criminal justice, which allowed forming the theoretical framework of this study and determining the key areas of further analysis. The second stage involved identifying procedural, economic, and socio-cultural barriers to the consideration of cases in courts of first instance, assessing the feasibility and effectiveness of existing legal protection mechanisms, and systematising the problems of access to justice, which helped to identify the principal issues in the area of ensuring inclusiveness of justice. The third stage involved studying foreign practices of inclusive justice, assessing the possibilities of adapting international practices, and developing recommendations for improving legislation, which allowed formulating concrete proposals for improving mechanisms for protecting victims' rights.

Results and discussion

Theoretical legal principles and specific features of consideration of private prosecution cases in the courts of first instance of Kazakhstan. The institution of private prosecution is a key element of criminal procedural law, which entitles the victim to initiate criminal prosecution of the person who committed the crime against them. This mechanism allows the victim to apply directly to the court with a request to bring the perpetrator to criminal liability, bypassing the pre-trial investigation stage, which is usually carried out by law enforcement agencies. This approach contributes to the implementation of the principle of access to justice, as it enables a person to protect their rights and interests directly, without the intermediation of state authorities. In the international context, the institute of private prosecution is viewed as one of the ways to ensure the right to an effective remedy. Specifically, Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) guarantees everyone the right to an effective remedy for violations of their rights and freedoms.

This means that member states must provide mechanisms that allow an individual to apply independently to the competent national authorities to redress violations. Although Kazakhstan is not a member of the Council of Europe and, accordingly, is not a signatory to the European Convention on Human Rights, the state recognises and implements international human rights standards through its participation in other international treaties and conventions, including the International Covenant on Civil and Political Rights (1966).

According to a comparative study of legal systems conducted by J. Barth (2022), the effectiveness of the private prosecution institution largely depends on the procedural guarantees provided to victims and their accessibility to diverse social groups. J. Barth's research shows that developed legal systems usually provide a wide range of procedural rights to victims in private prosecution cases, including the right to free legal aid and the mandatory participation of a professional representative, which is particularly important for ensuring inclusiveness of justice.

In the Republic of Kazakhstan, private prosecution is regulated by the CPC of the Republic of Kazakhstan (2014). Pursuant to Article 32 of the Code, private prosecution cases are initiated exclusively at the request of the victim or their legal representative and are subject to termination in case of reconciliation between the victim and the accused. This is in line with the principle of discretion, according to which the initiative in criminal proceedings belongs to the victim, not to the state represented by law enforcement agencies. However, an analysis of the provisions of the CPC of the Republic of Kazakhstan (2014) indicates certain problems in the regulation of the institution of private prosecution in Kazakhstan, specifically, the legislation does not stipulate the mandatory participation of a lawyer or prosecutor in private prosecution cases. This can lead to situations where the victim, lacking sufficient legal knowledge and experience, is unable to defend their rights and interests in court effectively. I. Nahorny (2023), in his study of access to justice, highlighted that the absence of mandatory participation of a lawyer or prosecutor in private prosecution cases creates substantial barriers to the right to a fair trial. According to his findings, in countries without mandatory legal aid in private prosecution cases, the success rate of such cases is drastically lower than in countries where such aid is guaranteed by law. The lack of professional legal aid can be an obstacle to a fair trial and lead to a violation of the principle of equality of arms, which is fundamental to criminal proceedings. The principle of equality of arms is prescribed in Article 14 of the International Covenant on Civil and Political Rights (1966), ratified by Kazakhstan in 2006, which guarantees everyone the right to a fair and public hearing by a competent, independent, and impartial tribunal. This means that both parties to the proceedings – both the victim and the accused – must have equal opportunities to present their arguments and evidence, and to receive the necessary legal aid.

International criminal justice standards emphasise the need to ensure effective access to justice for victims. For example, the Directive of the European Parliament and of the Council No. 2012/29/EU (2012) obliges European Union member states to ensure that victims have access to information, support, and services, and to provide free legal aid where necessary for effective access to justice. This document emphasises the significance of the state's role in supporting victims and ensuring their rights in criminal

proceedings. The issue of ensuring the equality of parties in criminal proceedings attracts considerable attention of researchers. In their studies, G.S. Mendlow (2021) and B. Hasbrouck (2021) paid special attention to the issues of interaction between the state and victims in criminal proceedings. G.S. Mendlow (2021) noted that classical crimes, such as assault, are primarily offences against individuals, not the state, but the legal system deprives victims of the right to initiate or intervene in the criminal process, reducing their role to that of witnesses or bystanders. According to the researcher, such a system overturns the usual structures of responsibility, where victims of offences have a higher moral status than any third parties. B. Hasbrouck develops this idea by emphasising the need to reform the prosecutorial system to ensure true justice. The researcher criticised the excessive discretion of prosecutors and their tendency to maximise convictions rather than seek justice. B. Hasbrouck proposed the concept of a "fair prosecutor" based on the principles of protection of civil liberties, equal protection, and procedural rights of all participants in the criminal procedure.

The absence of mandatory prosecutorial involvement in private prosecutions in Kazakhstan also raises concerns from the standpoint of international standards. According to the Guidelines on the Role of Prosecutors (1990), prosecutors should take an active part in criminal proceedings to ensure fairness and protect the public interest. They should act impartially and objectively, promote the truth, and ensure that the rights of all participants in the procedure are respected. The involvement of the prosecutor may be particularly relevant in private prosecution cases, where the victim may not have sufficient resources or knowledge to effectively pursue the case (Bocheliuk *et al.*, 2020). The procedural order for the consideration of private prosecution cases in the courts of first instance in Kazakhstan is determined by the CPC of the Republic of Kazakhstan (2014). After the victim files a petition for the initiation of a private prosecution case, the court is obliged to consider it and decide whether to initiate or refuse to initiate the case. In this case, no pre-trial investigation is carried out, and the case is immediately forwarded to court. This approach has both advantages and disadvantages. On the one hand, it enables a quicker consideration of the case and a faster delivery of a judgement, which is in line with the principle of swift justice. On the other hand, the absence of a pre-trial investigation may result in insufficient evidence collection and complicate the establishment of the truth in the case.

Unlike the courts of first instance, the consideration of private prosecution cases in the appellate and cassation instances has its specific features. According to the provisions of the CPC of the Republic of Kazakhstan (2014), the appeal proceedings are one of the key stages of reviewing court decisions, which ensures that the rights of the parties to the procedure and the legality of court acts are respected. The right to appeal against a verdict or ruling of the court of first instance is granted to the accused, their defence counsel, the victim, civil plaintiff, civil defendant, as well as their representatives under Article 431 of the CPC. A special feature of the appellate proceedings is the possibility of requesting and examining new evidence, which is regulated by Article 438. However, the submission of new evidence is allowed only if the party substantiates the impossibility of its submission during the trial in the first instance. In this context, professional representation is important, as the correct

formulation of an appeal and preparation of supporting materials require a thorough understanding of procedural rules and judicial practice. At the same time, while in the court of first instance the victim can independently support the prosecution, in the court of appeal their interests often require the involvement of a representative or a lawyer.

The cassation proceedings are aimed at checking the correctness of the application of substantive and procedural law, rather than the factual circumstances of the case. Pursuant to Article 452 of the CPC of the Republic of Kazakhstan (2014), the cassation instance considers only matters of law, without evaluating new evidence and establishing factual circumstances. The participation of a lawyer in cassation proceedings is not mandatory, but its expediency stems from the complexity of preparing a cassation appeal, which requires a detailed analysis of the application of legal provisions. The institution of reconciliation of the parties in cassation does not apply, which is in line with the general purpose of this stage of proceedings. Another specific feature is that the prosecutor is entitled to file appeals and cassation appeals even if they did not take part in the trial of the case by the court of first instance. This is regulated by Article 435 of the CPC and is aimed at ensuring the rule of law and protecting the interests of victims. Overall, the procedural specifics of the appeal and cassation proceedings prescribed by the CPC are aimed at ensuring the principle of legality and the exercise of the rights of all participants in the procedure.

International practice emphasises the significance of conducting a full pre-trial investigation to ensure a fair trial. For example, the Fair Trial Standards (Amnesty International, 2014) emphasise the need for a thorough and objective investigation of crimes to ensure justice and protect the rights of all parties to the procedure. A lack of proper investigation can lead to a violation of the right to a fair trial guaranteed by international legal instruments. Furthermore, the absence of mandatory participation of a lawyer in private prosecution cases in Kazakhstan may negatively affect the quality of the trial. A victim who does not have a legal education may not know all the nuances of procedural law, may be unable to properly formulate their claims and pres-

ent evidence. This can lead to the situation where despite having sufficient grounds to bring the accused to justice, the court may refuse to satisfy the victim's claims due to procedural errors or insufficient evidence.

It becomes apparent that Kazakhstan's legislation on private prosecutions needs to be improved to ensure its compliance with international standards. According to V. Colvin and P. Stenning (2018), the prosecutor in modern legal systems is a powerful yet mysterious figure who, acting outside the court and often outside public scrutiny, acts as a real "gatekeeper" of the criminal procedure, capable of limiting judicial discretion in sentencing, opening the way to alternative measures, and even denying access to the criminal justice system. That is why it is necessary to introduce mechanisms that would provide victims with access to free legal aid. This can be achieved by introducing mandatory participation of a lawyer in private prosecution cases or by providing victims with the opportunity to receive free legal advice and support. It is also important to consider mandatory participation of a prosecutor in private prosecution cases. The prosecutor's involvement can contribute to a more objective and comprehensive review of the case, ensure compliance with the law, and protect the rights of all parties to the procedure. The prosecutor, as a representative of the state, has the necessary knowledge and experience to effectively conduct a criminal case, collect and present evidence, and monitor compliance with procedural rules (Amelin, 2024).

Furthermore, attention should be paid to the possibility of using alternative dispute resolution methods in private prosecution cases. International standards, such as the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (2002), encourage the use of restorative justice and mediation as a way to resolve conflicts between the victim and the accused. The introduction of such mechanisms into national legislation can contribute to more efficient and humane resolution of criminal cases, reduce the burden on the judicial system and restore social justice. In the context of a comparative analysis of Kazakhstan's national legislation and international standards on private prosecution cases, the following aspects can be highlighted (Table 1).

Table 1. Comparative analysis of the national legislation of Kazakhstan and international standards on private prosecution cases

Procedural aspect	Regulation in Kazakhstan	International standards	Recommendations on harmonisation
Right to legal aid for victims	Does not mandate the participation of a lawyer; the victim represents themselves in court independently (Criminal Procedure Code..., 2014)	Free legal aid for victims is required, especially in complex cases (Directive of the European Parliament and of the Council No. 2012/29/EU, 2012)	To introduce mechanisms to provide free legal aid to victims in private prosecution cases, including through state programmes or support from NGOs
Prosecutor's participation	The participation of the prosecutor is not mandatory; the prosecutor may not take part in the case (Criminal Procedure Code..., 2014)	Prosecutors should be actively involved in the criminal procedure to protect the public interest and ensure justice (Guidelines on the Role of Prosecutors, 1990)	To introduce mandatory participation of the prosecutor in private prosecution cases to ensure the objectivity and legality of the procedure
Reconciliation of the parties	Reconciliation between the victim and the accused is a ground for termination of the criminal case; mediation procedures are not regulated in detail (Criminal Code of the..., 2021)	The use of restorative justice and mediation as alternative dispute resolution methods is encouraged (Resolution of the UN Economic and Social Council No. 2002/12, 2002), which is a ground for dismissal of a criminal case both in Kazakhstan and in the EU	To develop and implement clear procedures for mediation in private prosecution cases, including the participation of qualified mediators and ensuring voluntary participation of the parties

Table 2, Continued

Procedural aspect	Regulation in Kazakhstan	International standards	Recommendations on harmonisation
Protection of the rights of the accused	Guaranteed by the legislation; however, the absence of professional prosecution may lead to a violation of the principle of adversarial proceedings (Criminal Procedure Code..., 2014)	Need to strike a balance between the rights of the victim and the accused; principle of equality of arms (Amnesty International, 2014)	To ensure equality of arms through the participation of professional lawyers from both parties, to introduce mechanisms to monitor the observance of the procedural rights of the accused

Source: compiled by the authors

Table 1 demonstrates the substantial discrepancies between Kazakhstan's national legislation and international standards in the area of private prosecution. The gap is particularly noticeable in the areas of legal aid and prosecutorial involvement, where Kazakh legislation lags far behind international requirements. A positive aspect is the existence of a mechanism for reconciliation of the parties, but it requires more detailed regulation and the introduction of modern mediation practices. The key problem continues to be the imbalance in ensuring the rights of the parties to the process, which needs to be addressed systematically through the implementation of the proposed recommendations. The harmonisation of national legislation with international standards will not only increase the efficiency of the private prosecution institution, but also ensure an adequate level of protection of the rights of all participants in the criminal process.

Thus, to increase the effectiveness of the institution of private prosecution in Kazakhstan and its compliance with international standards, it is necessary to implement a set of measures to improve the legislation and practice of its application. This includes the introduction of mechanisms for providing free legal aid to victims, mandatory participation of the prosecutor in private prosecution cases, development of mediation procedures, and ensuring equality of parties in the procedure. Implementation of these measures will help strengthen the rule of law, increase public confidence in the judicial system, and ensure inclusive justice.

Problems of implementing the principles of inclusive justice in private prosecution cases. Inclusive justice is a fundamental principle of the modern legal system, which aims to ensure equal access to judicial mechanisms for all citizens, regardless of their social status, economic opportunities, or physical characteristics. According to the Universal Declaration of Human Rights (1948), everyone is entitled to an effective remedy. This concept emphasises the need to create conditions under which everyone can effectively exercise their rights and freedoms through judicial protection. Inclusiveness in justice implies adapting court procedures and institutions to the needs of diverse populations, including ensuring language accessibility for ethnic minorities and migrants who may not have a sufficient command of the national language, as well as physical accessibility of court buildings for persons with disabilities (Millienko, 2023). Furthermore, the availability of specialised support services, such as psychological counselling or legal advice, contributes to the fuller involvement of citizens in the legal process. International standards, such as Access to Justice for All (2016), emphasise the need to overcome barriers to full participation in legal processes.

Recent international research confirms the systemic nature of the problems with implementing the principles of

inclusive justice, which is particularly acute in private prosecution cases. According to B.C. Elder *et al.* (2024), existing measures to ensure access to justice are often only reactive, focusing on the provision of interpreters in courts, but do not address the fundamental problem of the “linguistic gap” between a person and legal aid. In Kazakhstan, this problem is particularly acute due to the multinational composition of the population and specific regional features of the linguistic environment. A. Truong (2022) found that this situation complicates access to justice in private prosecution cases for members of linguistic minorities, which is also typical for Kazakhstan, where the language barrier often becomes a formidable obstacle to initiating and maintaining prosecution independently. A. Deseau *et al.* (2023) emphasised that such barriers to access to justice have not only individual but also macroeconomic consequences – their study of 105 countries showed a correlation between improved access to justice and economic growth, which is particularly relevant for Kazakhstan with its diverse ethnicity and geography. J. Monkelbaan (2023) added that existing economic systems often exacerbate inequalities in access to justice due to the high cost of legal services and the complexity of court procedures. In the context of Kazakhstan, this is further exacerbated by the large geographical dispersion of the population and the uneven distribution of legal resources between urban and rural areas.

Despite advances in the implementation of the principles of inclusiveness, there are systemic problems that limit citizens' access to justice. The complexity and intricacy of judicial procedures create major obstacles for citizens, which is particularly noticeable in Kazakhstan compared to developed legal systems where, as H. Genn (2019) noted, simplified mechanisms for self-representation are in place. Economic barriers, including the cost of legal services and court fees, pose a major challenge in Kazakhstan, where the free legal aid system is less developed than in the countries studied by Food and Agriculture Organization (FAO) (Right to food..., 2011). Cultural and social barriers in Kazakhstan are conditioned by its multinational composition and traditional social practices. According to the U.S. Department of State's Country Report on Human Rights in Kazakhstan 2022 (Rand, 2024), ethnic minorities face considerable difficulties in various spheres of life, with notably low representation in government – only two of the 23 cabinet members were not ethnic Kazakhs. Some human rights activists have noted that ethnic minorities are increasingly marginalised from the country's social and political mechanisms. The report also highlights the problems of women facing domestic violence. A study by the Ministry of National Economy cited in the report found that most victims of partner violence never report their experiences due to social stigma. The police usually intervene only in life-threatening cases, and law enforcement

often encourages reconciliation between the parties. NGOs note that the lenient penalties for domestic violence – an administrative offence with a maximum sentence of 15 days of detention – do not deter even previously convicted offenders. Law enforcement's response to domestic violence continues to be problematic. Even when victims reported violence, activists claimed that the police were reluctant to take action, sometimes failing to issue restraining orders and trying to dissuade victims from filing complaints. This created an environment of impunity for aggressors.

Vulnerable groups, such as persons with disabilities, ethnic minorities, migrants, and women survivors of violence, therefore, require special attention and face added barriers to accessing justice (Apakhayev *et al.*, 2024). Persons with disabilities may have limited physical access to court buildings if they are not equipped with ramps, lifts, or other

accessibility features. There may also be a lack of adapted materials, such as documents in Braille or the ability to receive information in audio format. According to the Convention on the Rights of Persons with Disabilities (2006), states must ensure that justice is accessible to persons with disabilities on an equal basis with others. Women who are victims of violence often face gender stereotypes and insufficient support from law enforcement agencies, which can lead to doubts regarding the effectiveness of judicial protection or fear of repeated victimisation. The Committee on the Elimination of Discrimination against Women (2017) recommends the implementation of gender-sensitive approaches in justice, including specialised training for judges and court staff. To systematise the overarching barriers to access to justice and the mechanisms for overcoming them, it is suggested to consider the table below (Table 2).

Table 2. Barriers to access to justice and strategies to overcome them

Barrier	Barrier characteristics	Negative consequences	Mechanisms for overcoming	Expected outcomes
Procedural complexity	Excessive formalisation of court procedures; complex legal terminology; lack of unified forms of procedural documents; multi-stage procedures	Inability to defend rights independently; dependence on professional legal aid; increased time for consideration of cases; increased number of judicial errors	Development of standardised forms of procedural documents; creation of interactive instructions; introduction of electronic document filing services; simplification of procedures for certain categories of cases; automation of routine processes	Increased level of independent access to justice; reduced timeframe for consideration of cases; reduced workload of courts; optimisation of court procedures
Economic constraints	High court fees; extensive legal aid costs; costs of expert examinations and supplementary procedural steps; transport costs	Refusal to go to court due to financial inability; inequality of opportunity in the judicial process; selective justice; limited access to evidence	Differentiation of court fees; expansion of the free legal aid system; creation of funds to support vulnerable groups; introduction of deferred payment mechanisms; subsidisation of expert examinations	Ensuring equal access to justice regardless of financial status; increasing trust in the judicial system; expanding opportunities for the protection of rights
Physical accessibility	Lack of infrastructure to meet the needs of persons with disabilities; geographical remoteness of courts; limited access to electronic services; lack of special equipment	Inability to attend court hearings in person; extra transportation costs; psychological discomfort; restriction of the right to a fair trial	Modernisation of judicial infrastructure; introduction of remote forms of participation; creation of mobile courts; development of e-justice; provision of special equipment	Provision of universal access to justice; optimisation of judicial processes; increase in the efficiency of judicial proceedings; integration of vulnerable groups
Socio-cultural barriers	Language limitations; cultural differences; religious characteristics; gender stereotypes; educational level	Discrimination; lack of trust in the justice system; ineffective protection of rights; cultural conflicts; social exclusion	Provision of translation; culturally sensitive staff training; implementation of anti-discrimination practices; creation of specialised units; intercultural mediation	Increased cultural competence of the judiciary; equal treatment; increased trust in justice; social inclusion
Institutional distrust	Bias in the judiciary; corruption risks; low transparency of processes; insufficiently qualified staff; bureaucracy	Refusal of legal protection; search for alternative ways to resolve conflicts; social tension; legal nihilism	Increasing transparency of judicial processes; introduction of ethical standards; strengthening of public control; systematic training of staff; digitalisation of processes	Restoration of trust in the judiciary; improvement of the quality of justice; strengthening of the rule of law; institutional modernisation

Source: compiled by the authors based on M. Kristoffersson (2021), Kristoffersson (2021), C. Gormley and N. Watson (2021), M.N. Haque and A. Sharifi (2024)

The presented systematisation of barriers to access to justice reveals the multidimensionality of the issue and the interconnection between various types of barriers to access to justice. According to A. Adams-Prassl and J. Adams-Prassl (2020), effective overcoming of barriers requires an integrated approach. This is especially true in Kazakhstan, where the interdependence of different types of

barriers creates more complex obstacles than in EU countries. A comparative analysis of the situation in Kazakhstan and the EU countries shows that problems with access to justice are more pronounced in Kazakhstan. Specifically, the lack of unified forms and electronic services complicates the judicial process, while in Germany, the electronic system *besonderes elektronisches Anwaltspostfach (beA)* operates

for the secure exchange of documents between courts and lawyers; in Austria, the ERV (Elektronischer Rechtsverkehr) platform provides digital communication between courts, lawyers, and citizens, including filing lawsuits and receiving court decisions (Bundesrechtsanwaltskammer: beA & ERV, 2024). The situation with economic barriers is more critical due to the lack of a developed system of free legal aid, unlike in the US and EU, where effective financial support mechanisms are in place. Physical accessibility is still a problem due to the large territory and uneven infrastructure development, although in the EU this problem has been partially solved by the e-justice system. Socio-cultural barriers are particularly relevant due to the multinational composition of the population, while mechanisms to overcome them are less developed in Kazakhstan compared to the EU, which has specialised cultural mediation programmes in courts, provides professional interpreters from rare languages and systematically trains judicial personnel in intercultural communication (Voitenko, 2023). For example, in Austria, the Task Force “Dialogue of Cultures” (2024) serves as a conceptual centre and initiator of various intercultural and interreligious dialogue initiatives, promoting intercultural understanding and cooperation. Furthermore, the Netherlands introduced the best practice for translation and interpretation in criminal proceedings (de Rechtspraak, 2016), which provides guidance on the role and responsibilities of interpreters, judges, and other participants in the trial, including in the context of intercultural communication.

Notably, the proposed mechanisms for overcoming barriers must be adapted to the specifics of the Kazakh legal system. For instance, the digitalisation of court proceedings in Kazakhstan, while solving the problem of physical accessibility, faces further challenges due to the uneven development of digital infrastructure in different regions of the country. According to the study by G. Dauliyeva and A. Yeraliyeva (2022), the development of digital public administration is accompanied by insufficient interaction between elements of the e-government infrastructure, a lack of qualified personnel and considerable cybersecurity risks, which directly affects the pace and quality of e-justice implementation in various regions of the country. Furthermore, the preventive nature of many of the proposed mechanisms should consider the local specific socio-cultural features and legal traditions of Kazakhstan. For instance, the Kazakhstan e-justice portal (2024) allows submitting documents in two languages – Kazakh and Russian, considering the language needs of the population of different regions. In rural areas, programmes of mobile courts and counselling centres operate to integrate traditional conflict resolution mechanisms with the formal judicial system. Mediation centres attached to regional courts conduct reconciliation procedures while accommodating local customs and traditions, which is crucial in family disputes and cases of protection of honour and dignity. A systematic approach to the implementation of these mechanisms should consider the specifics of various categories of cases, special regional features, and resource capacities of the judicial system, which will enable maximum efficiency in ensuring access to justice for all categories of the population (Venkatachalam, 2023).

To overcome the identified problems, a comprehensive system of procedural mechanisms should be introduced. First and foremost, court procedures should be simplified by developing accessible and understandable procedural

documents, including standardised forms and instructions for self-filing of claims, which will help citizens without legal education to better understand the process and document requirements. Strengthening the system of free legal aid by expanding the categories of persons entitled to it and ensuring its quality will contribute to greater access to justice. Law of the Republic of Kazakhstan No. 176-VI (2018) could be supplemented with provisions guaranteeing funding and quality control of the services provided. Physical and informational accessibility of courts should be ensured through the adaptation of buildings for persons with disabilities and the introduction of electronic services, such as e-Justice, which allow for online filing of documents and receipt of information on the status of cases. Electronic services also help to overcome geographical barriers for residents of remote regions. Introducing specialised training programmes for judges and court staff on working with vulnerable groups will help to increase understanding and sensitivity to their needs, prevent discrimination, and ensure fair trials. Such programmes should include training in intercultural communication, gender equality, and ethics.

Ethnic minorities and migrants may face language barriers and cultural misunderstandings in Kazakhstan, where the CPC stipulates that although the right to an interpreter is guaranteed for participants in proceedings who do not speak the language of the proceedings, in practice this right is often exercised only for the accused, while the victim is forced to provide translation of documents and oral communication independently, requiring the judicial system to provide translation services and cultural adaptation of processes. Lack of access to interpreters or materials in their native language complicates their participation in court proceedings. This underscores the need for a systematic approach to ensuring language accessibility of court proceedings and cultural competence of court personnel. Implementation of the principles of inclusive justice in private prosecution cases requires a comprehensive approach, including regulatory changes, organisational measures, and educational activities. Overcoming existing barriers to access to justice will help protect citizens' rights and build trust in the judicial system. The introduction of procedural mechanisms aimed at ensuring inclusiveness is a prerequisite for building a fair and effective justice system in modern society.

International practices and prospects for the development of inclusive justice in private prosecution cases. International practices in the field of private prosecution cases demonstrate the need to harmonise national legal systems with international standards that ensure accessibility and fairness of trials. In this context, the examples of the European Union countries, where the issue of inclusiveness of justice is a priority, are noteworthy. Particularly important in this regard is Directive of the European Parliament and of the Council No. 2012/29/EU (2012), which sets minimum standards for the rights, support, and protection of victims of crime, and stipulates that all victims are entitled to free legal aid where necessary for effective access to justice. This is a crucial guarantee of the principle of equality of arms, as without legal aid, victims may be unable to represent their interests in court effectively. This approach demonstrates the recognition of the significance of professional legal aid as a key tool for overcoming procedural barriers.

In Germany, private prosecution cases are governed by the provisions of the Code of Criminal Procedure of

Germany (1950), which grants victims broad rights to take part in criminal proceedings, including the ability to engage a lawyer at every stage of the proceedings. According to A.Y. Pratomo *et al.* (2021), the effective exercise of the rights of participants in criminal proceedings requires not only proper legal regulation, but also the creation of relevant infrastructure and access to legal aid. Notably, in such cases, the victim has the status of a “Nebenkläger” (co-plaintiff), which allows them to take an active part in the trial, provide evidence, and appeal against court decisions. Furthermore, German legislation stipulates that free legal aid is provided in cases where the victim is unable to pay for a lawyer, which is another crucial aspect of ensuring inclusive justice. The German experience shows that the involvement of a lawyer gives victims more confidence in their rights and opportunities, which contributes to increased trust in the justice system.

France also demonstrates successful practices aimed at ensuring inclusiveness in criminal proceedings. The Law of France No. 2000-516 (2000) greatly expanded the rights of victims by enabling them to take part in the trial and represent their interests through legal counsel. A significant element of the French model is the establishment of specialised victim support centres that provide legal aid and psychological counselling. Such centres work in close cooperation with the judiciary, which allows victims to receive comprehensive support even before the trial begins. According to a comparative study by K. Braun (2019), this integration of support services into the French inquisitorial justice system allows for effective protection of victims’ rights at all stages of criminal proceedings, from pre-trial investigation to sentencing. The introduction of these mechanisms has considerably improved access to justice, especially for

vulnerable groups, and has become a model for other countries. In the context of post-Soviet states, it is worth highlighting the experience of Latvia, where the implementation of inclusive justice principles was achieved through reforms aimed at adapting to European standards. The Criminal Procedure Law of Latvia (2009) stipulates the right of victims to free legal aid and the mandatory participation of a prosecutor in cases of particular public importance. These provisions ensure equal opportunities for all parties in the trial and create conditions for prompt and fair consideration of cases. The specific feature of the Latvian model is the widespread use of electronic services, which greatly simplifies the submission of documents and obtaining information on the progress of the case, especially for those living in remote areas.

A comparative analysis of inclusive justice models allows identifying several key elements that may be useful for Kazakhstan. Firstly, ensuring access to free legal aid is a prerequisite for the right to a fair trial. The experience of EU countries shows that such services can be financed both from the state budget and through cooperation with non-governmental organisations, which ensures the flexibility and sustainability of the system. Secondly, the mandatory participation of a prosecutor in private prosecution cases, as prescribed by international standards (Guidelines on the Role of Prosecutors, 1990), can greatly increase the level of objectivity and legality of the proceedings. The involvement of the prosecutor is critical to ensure that the procedural rights of both parties are respected, especially when the victim lacks the knowledge or resources to effectively defend their interests. As presented in Table 3, successful models of inclusive justice demonstrate strong benefits that can be leveraged to improve the private prosecution system in Kazakhstan.

Table 3. Comparative analysis of inclusive justice models in private prosecution cases

Country	Model of inclusive justice	Key elements	Implementation outcomes	Possibility of adaptation in Kazakhstan
Germany	Victim participation through the institution of procedural complicity Nebenkläger	The victim is entitled to take an active part in the trial as a party to the prosecution, to present evidence, call witnesses, and engage a lawyer; legal aid is free of charge for those with insufficient financial resources	Increased trust in the judicial system; ensuring procedural equality of the parties; active involvement of victims in court proceedings	Requires changes in legislation and allocation of funds to provide legal aid to victims
France	Victim support centres	The centres provide victims with comprehensive support: legal, psychological, and social aid; cooperation with law enforcement agencies and courts to ensure access to justice	Reduced repeated victimisation of victims; expedited access to necessary support and services	A network of support centres needs to be established, which requires funding and integration with government agencies
Latvia	Mandatory participation of the prosecutor	Prosecutor’s involvement in private prosecution cases is mandatory; victims have access to free legal aid; active use of electronic platforms for submitting documents and information	Increase the efficiency of court proceedings; reduce the workload of courts; increase the transparency and fairness of judicial proceedings	Adaptation is possible through the digitalisation of court procedures and changes to legislation that involve the participation of the prosecutor
The Netherlands	Restorative justice and mediation	Active use of mediation programmes to reconcile the parties; involvement of professional mediators to reach a compromise and restore social justice	High level of victim satisfaction with the procedure; reduced burden on the judicial system; effective conflict resolution	Requires training of professional mediators, resources to implement mediation programmes, and public acceptance of these practices

Source: compiled by the authors based on Code of Criminal Procedure (StPO) (1950), Law of France No. 2000-516 (2000), Criminal Procedure Law of Latvia (2009), Resolution of the UN Economic and Social Council No. 2002/12 (2002), Guidelines on the Role of Prosecutors (1990)

The analysis of international approaches to private prosecutions in Table 3 shows the significance of establishing inclusive mechanisms that ensure access to justice for all participants in the procedure. One of the key characteristics of successful legal systems is the introduction of mechanisms that allow victims to effectively exercise their rights. For example, in European countries, special emphasis is placed on providing legal aid to victims, enabling them to effectively take part in the trial, provide evidence, and defend their interests. Germany and France offer comprehensive approaches to victim support, including legal aid and psychological counselling. As K. Braun (2019) noted, this approach reduces repeated victimisation and increases trust in the justice system. Victim-centred models of justice also include the use of modern digital technologies that provide quick and convenient access to court services. E-services are an essential element of modern justice, especially in countries where geographical or social barriers impede access to court. According to the European Commission's Report on Justice (EC report..., 2024), the digitalisation of justice in Latvia has substantially improved the efficiency of the system: the introduction of electronic document management, online filing of applications, and digital case tracking through the e-Case portal has made the country the third fastest in the EU in terms of the speed of first instance proceedings. Another promising area of development is the introduction of mediation practices that focus on restoring justice and reaching a compromise between the parties. International practices demonstrate that the use of restorative justice reduces the burden on the judicial system and promotes social reconciliation (Moroz & Horislavska, 2024).

A study of successful models of inclusive justice reveals that the introduction of mediation and restorative justice procedures could also be beneficial for Kazakhstan. International standards, such as the aforementioned Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (2002), emphasise the significance of the participation of the victim and the accused in the process of restoring social justice. The use of mediation as an alternative way to resolve conflicts can reduce the burden on the judicial system and provide a more flexible and humane resolution of disputes. For instance, in the Netherlands, the judicial system actively uses mediation – according to P. Bartusiak (2020), when a case is received, the court sends a letter to the parties with recommendations on the possibility of mediation and a self-test questionnaire. If the parties answer at least one question in the questionnaire in the affirmative, the case is sent to mediation for up to three months, and only if reconciliation cannot be reached is it returned to court. This system confirms the priority of the restorative approach in Dutch justice. According to B. Vaňatová (2021), practice shows that mediation is an effective alternative to dispute resolution, as it allows for a quick and cost-effective solution, and the agreements reached are better suited to the interests of both parties and have a longer-lasting effect.

The implementation of international practices in Kazakhstan should incorporate the specific national features of the legal system and social needs. The legislation of the Republic of Kazakhstan requires substantial improvement in terms of legal aid delivery and the involvement of a prosecutor in private prosecution cases. Adaptation of such practices can be achieved through the development of new

legislative initiatives or amendments to the Criminal Procedural Code (2014). For example, the creation of state programmes to provide free legal aid requires a systematic approach and adequate funding. According to R.W. Gordon (2019), the successful implementation of such programmes depends on the institutional capacity of the state to ensure not only formal access to legal aid, but also its genuine effectiveness. The experience of developed legal systems shows that the mandatory participation of qualified lawyers in private prosecution cases, backed by adequate state funding and organisational support, is an integral part of ensuring equal access to justice and effective protection of the rights of all parties to the process. Furthermore, it is worth considering the possibility of establishing specialised support centres for victims of crime that could provide comprehensive legal, psychological, and social support.

However, the implementation of such initiatives requires a systematic approach and support from government agencies, the judiciary, and civil society. Successful implementation of the reforms will depend on the quality of training of judges and other process participants, which requires regular training and educational programmes. Specifically, judges need to be equipped with knowledge on working with vulnerable groups, including training on gender equality, intercultural communication, and anti-discrimination practices. This will contribute to a more responsive and inclusive judiciary that will be able to respond effectively to the needs of citizens. Thus, the adaptation of international practices in Kazakhstan may open new opportunities for improving the private prosecution system. The introduction of mechanisms for free legal aid, mandatory participation of the prosecutor, and mediation programmes will help to strengthen the rule of law and ensure fair trials for all citizens.

Conclusions

The study provided comprehensive research of the theoretical legal framework and specific features of private prosecution cases in the courts of first instance of Kazakhstan, as well as the problems of implementing the principles of inclusive justice in this category of cases. The study achieved its objective through a thorough analysis of national legislation, international standards, and practical aspects of ensuring access to justice, which helped to formulate a systemic vision of the issue and identify ways to improve the existing mechanisms for protecting the rights of victims in criminal proceedings. The findings of the study showed that there are substantial gaps in the current criminal procedural legislation of Kazakhstan which adversely affect the effectiveness of victim protection. First of all, it was found that there are no sufficient guarantees of legal aid and procedural mechanisms for the protection of victims' rights, which is fundamentally different from the practices of European countries, where such guarantees are legislatively established and supported by the relevant implementation mechanisms.

The comparative analysis revealed that the legal aid system in Kazakhstan requires extensive improvement, especially regarding the participation of a lawyer and a prosecutor in private prosecution cases. Unlike European countries, where comprehensive mechanisms for supporting participants in the criminal procedure are in place, including specialised centres for victims of crime and mediation programmes, the Kazakh system does not provide an adequate level of procedural guarantees. The study showed that the key systemic

problems include insufficient procedural regulation of the status of the victim, the lack of effective mechanisms for reconciliation between the parties, and limited access to justice for vulnerable groups, which is particularly acute due to language, economic, and physical barriers.

The study of international practices has helped to identify effective mechanisms for overcoming the identified problems. Specifically, the study analysed such successful models as the Nebenkläger institution of procedural complicity in Germany, the French system of specialised crime victim support centres, the Latvian practice of mandatory prosecutor participation, and the Dutch model of restorative justice. Based on this analysis, it was determined that a comprehensive approach to ensuring inclusiveness of justice should be implemented, which should include not only the improvement of procedural rules, but also the development of judicial infrastructure, professional development of

judicial officers, and the introduction of modern information technologies.

The principal limitation of this study was the lack of empirical data on the effectiveness of the various models of legal aid to victims. Considering the rapid development of information technologies and the growing role of e-justice in ensuring access to justice, a promising area for further research is to investigate the effect of digitalisation on the adaptation of court procedures to the needs of diverse social groups and to develop relevant mechanisms for the implementation of e-justice in private prosecution cases.

Acknowledgements

None.

Conflict of interest

None.

References

- [1] Abdrasulov, E., Akhmetov, Y., Abdrasulova, A., Tapakova, V., & Mutalyapova, A. (2024). Legal basis for the application of the principles of legality and justice in the system of administrative proceedings of the Republic of Kazakhstan. *Statute Law Review*, 45(2), article number hmae026. doi: 10.1093/slr/hmae026.
- [2] Access to justice for all. (2016). Retrieved from <https://www.undp.org/justice/access-to-justice>.
- [3] Adams-Prassl, A., & Adams-Prassl, J. (2020). Systemic Unfairness, access to justice and futility: A framework. *Oxford Journal of Legal Studies*, 40(3), 561-590. doi: 10.1093/ojls/gqaa017.
- [4] Akhmetov, Y., Abdrasulov, Y., Imambayeva, G., Akhmetova, A., & Alikulova, G. (2024). Analyses of the principles of legality and justice in administrative proceedings of the Republic of Kazakhstan. *International Journal of Public Law and Policy*, 10(5), 1-11. doi: 10.1504/ijlap.2024.139020.
- [5] Amelin, O. (2024). Features of the prosecutor's procedural guidance during the investigation of criminal offences in the field of official activity. *Scientific Journal of the National Academy of Internal Affairs*, 29(4), 9-21. doi: 10.56215/naia-herald/4.2024.09.
- [6] Amnesty International. (2014). *Fair trial manual*. London: Amnesty International Publications.
- [7] Apakhayev, N., Adilova, K., Bugybay, D., Toktybaev, A., & Kopbayev, D. (2024). The problem of protecting the rights and legitimate interests of the child in the family and outside it. *Danube*, 15(3), 221-236. doi: 10.2478/danb-2024-0013.
- [8] Barth, J. (2022). *Criminal prosecution in American history: Private or public?* *South Dakota Law Review*, 67(2).
- [9] Bartusiak, P. (2020). *Court mediation: The experience of the Netherlands*. Retrieved from <https://law.chnu.edu.ua/prysudova-mediatsiia-dosvid-niderlandiv/>.
- [10] Bocheliuk, V.Y., Denysov, S.F., Denysova, T.A., Palchenkova, V.M., & Panov, N.S. (2020). Psychological and legal problems for ensuring human rights. *Rivista di Studi sulla Sostenibilita*, 1, 235-245. doi: 10.3280/RISS2020-001014.
- [11] Braun, K. (2019). *Victim participation rights: Variation across criminal justice systems*. Cham: Palgrave Macmillan. doi: 10.1007/978-3-030-04546-3.
- [12] Bundesrechtsanwaltskammer: beA & ERV. (2024). Retrieved from <https://www.bea-brak.de/>.
- [13] Code of Criminal Procedure of Germany (StPO). (1950, September). Retrieved from <https://www.gesetze-im-internet.de/stpo/BJNR006290950.html>.
- [14] Colvin, V., & Stenning, P. (2018). *The evolving role of the public prosecutor: Challenges and innovations*. New York: Routledge. doi: 10.4324/9780429467547.
- [15] Committee on the Elimination of Discrimination against Women. (2017). *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*. Retrieved from <https://digitallibrary.un.org/record/1305057?v=pdf>.
- [16] Constitution of the Republic of Kazakhstan. (1995, August). Retrieved from https://www.akorda.kz/ru/official_documents/constitution.
- [17] Convention on the Rights of Persons with Disabilities. (2006, December). Retrieved from <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>.
- [18] Criminal Code of the Republic of Kazakhstan. (2021, July). Retrieved from <https://adilet.zan.kz/rus/docs/K1400000226>.
- [19] Criminal Procedure Code of the Republic of Kazakhstan. (2014, July). Retrieved from <https://adilet.zan.kz/rus/docs/K1400000231>.
- [20] Criminal Procedure Law of Latvia. (2009, March). Retrieved from <https://m.likumi.lv/ta/en/en/id/107820-criminal-procedure-law>.
- [21] Dauliyeva, G., & Yerallyeva, A. (2022). Challenges and risks of digitalization of public administration. In G. Mutanov & A. Serikbekuly (Eds.), *Digital transformation in sustainable value chains and innovative infrastructures* (pp. 177-188). Cham: Springer. doi: 10.1007/978-3-031-07067-9_17.
- [22] de Rechtspraak. (2016). *Best practice interpretation and translation criminal justice*. Retrieved from <https://www.rechtspraak.nl/SiteCollectionDocuments/20160129-Best-practice-vertolking-en-vertaling-strafrechtspraak.pdf>.
- [23] Deseau, A., Levai, A., & Schmiegelow, M. (2023). *Access to justice and economic development: Evidence from an international panel dataset*. Retrieved from https://arnaudeseau.github.io/files/a2j_and_growth_shrlll.pdf.

- [24] Directive of the European Parliament and of the Council No. 2012/29/EU “On Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA”. (2012, October). Retrieved from <http://data.europa.eu/eli/dir/2012/29/oj>.
- [25] Duisenova, A.A., & Kala, N.S. (2020). *Human right to a fair trial under international law and national law of the republic of Kazakhstan*. Retrieved from <https://surl.li/clpcws>.
- [26] EC report: Latvia leads the way in digital solutions and accessible justice. (2024). Retrieved from <https://tm.gov.lv/en/article/ec-report-latvia-leads-way-digital-solutions-and-accessible-justice>.
- [27] Elder, B.C., Soldatić, K., Schwartz, M.A., Barney, J., Howard, D., & McGee, P. (2024). Barriers experienced by first nations deaf people in the justice system. *Journal of Deaf Studies and Deaf Education*, 29(4), 541-554. doi: 10.1093/jdsade/ena021.
- [28] European Convention for the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://www.echr.coe.int/Documents/Convention_ENG.pdf.
- [29] Genn, H. (2019). When law is good for your health: Mitigating the social determinants of health through access to justice. *Current Legal Problems*, 72(1), 159-202. doi: 10.1093/clp/cuz003.
- [30] Gordon, R.W. (2019). Lawyers, the legal profession & access to justice in the United States: A brief history. *Daedalus*, 148(1), 177-189. doi: 10.1162/daed.a.00551.
- [31] Gormley, C., & Watson, N. (2021). Inaccessible justice: Exploring the barriers to justice and fairness for disabled people accused of a crime. *Howard Journal of Crime and Justice*, 60(4), 493-510. doi: 10.1111/hojo.12433.
- [32] Guidelines on the Role of Prosecutors. (1990, September). Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/roleofprosecutors.aspx>.
- [33] Haque, M.N., & Sharifi, A. (2024). Justice in access to urban ecosystem services: A critical review of the literature. *Ecosystem Services*, 67, article number 101617. doi: 10.1016/j.ecoser.2024.101617.
- [34] Hasbrouck, B. (2021). *The just prosecutor*. *Washington University Law Review*, 627.
- [35] International Covenant on Civil and Political Rights. (1966, December). Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.
- [36] Kazakhstan e-justice portal. (2024). Retrieved from <https://e-justice.kz/>.
- [37] Kristoffersson, M. (2021). *Legal tech and sustainable development: Cost as a barrier to equal access to justice and the use of legal tech solutions*. In *Law and sustainable development: Swedish perspectives* (pp. 69-94). Uppsala: Iustus Förlag.
- [38] Law of France No. 2000-516 “On Strengthening the Protection of the Presumption of Innocence and the Rights of Victims”. (2000, June). Retrieved from <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000765204/>.
- [39] Law of the Republic of Kazakhstan No. 176-VI “On Advocate Practice and Legal Assistance”. (2018, July). Retrieved from <https://adilet.zan.kz/eng/docs/Z1800000176>.
- [40] Mamaeva, M.N. (2024). Guarantees of independence of the legal profession in the Republic of Kazakhstan and the Republic of Uzbekistan. *International Journal of Law and Criminology*, 4(3), 22-33. doi: 10.37547/ijlc/Volume04Issue03-05.
- [41] Mendlow, G.S. (2021). *The moral ambiguity of prosecution*. *Yale Law Journal*, 130(5), 1146-1187.
- [42] Miliienko, O. (2023). Examining administrative court actions to mitigate issues of internal displacement resulting from ineffective government policies. *JUS Rivista di Scienze Giuridiche*, 5, 223-257. doi: 10.26350/18277942.000150.
- [43] Monkelbaan, J. (2023). *Exploring barriers to justice and sustainability in economic systems: Root causes and potential remedies*. Retrieved from https://quno.org/sites/default/files/resources/QUNO_SJES_Root%20causes_SEP%202020.pdf.
- [44] Moroz, I., & Horislavskaya, I. (2024). The legal and penitentiary system as repressive apparatus: Legal methods of protecting a civil and political rights. *Law. Human. Environment*, 15(2), 85-100. doi: 10.31548/law/2.2024.85.
- [45] Mukhamadiev, G., Alimkulov, Y., & Aryn, A. (2021). Private detective work as a guarantee of the realization of individual rights and freedoms in criminal proceedings. *Journal of Actual Problems of Jurisprudence*, 98(2), 84-92. doi: 10.26577/japi.2021.v98.i2.08.
- [46] Nahornyi, I. (2023). *State guaranteed legal aid in the context of the right to fair trial*. Retrieved from https://lawscience.com.ua/web/uploads/journals/pdf/27_4_2022.pdf#page=39.
- [47] Nurlumbayeva, L., & Akhpanov, A. (2023). Writ proceedings in criminal cases: A comparative legal study of Kazakh legislation. *Access to Justice in Eastern Europe*, 1(18), 136-146. doi: 10.33327/AJEE-18-6.1-n000112.
- [48] Nurlumbayeva, L., Akhpanov, A., Sembekova, B., Ashimova, E., & Mergenbaeva, N. (2021). *Writ proceedings in criminal cases in the context of comparative jurisprudence*. *Journal of Legal, Ethical and Regulatory*, 24(6).
- [49] Pratomo, A.Y., Ma'ruf, U., & Witasari, A. (2021). Implementation of criminal action prosecution online in realizing principle of fast prosecution, simple & low cost. *Jurnal Daulat Hukum*, 4(2). doi: 10.30659/jdh.v4i2.15737.
- [50] Rand, D.H. (2024). *Bureau of democracy, human rights, and labor*. Retrieved from <https://www.state.gov/wp-content/uploads/2023/02/415610-KAZAKHSTAN-2022-HUMAN-RIGHTS-REPORT.pdf>.
- [51] Resolution of the UN Economic and Social Council No. 2002/12 “Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters”. (2002, July). Retrieved from <https://www.refworld.org/legal/resolution/ecosoc/2002/en/27056>.
- [52] Right to food making it happen: Progress and lessons learned through implementation. (2011). Retrieved from <https://www.fao.org/4/i2250e/i2250e.pdf>.
- [53] Ruzmetov, B.K. (2021). Protection of human rights in the criminal procedure legislation of the Republic of Uzbekistan and improved reforms taking into account foreign experience. *Psychology and Education Journal*, 58(1), 1102-1115. doi: 10.17762/pae.v58i1.860.
- [54] Task force “Dialogue of cultures”. (2024). Retrieved from <https://www.bmeia.gv.at/themen/auslandskultur/intercultural-achievement-award/task-force-dialog-der-kulturen/>.
- [55] Toleubekova, B., Khvedelidze, T., & Kalkaeva, N. (2021). Methodological bases of the three-link model criminal proceedings

- (based on materials of the republic of Kazakhstan). *Journal of Actual Problems of Jurisprudence*, 99(3), 38-49. doi: [10.26577/japj.2021.v99.i3.04](https://doi.org/10.26577/japj.2021.v99.i3.04).
- [56] Truong, A. (2022). *Linguistic legal deserts: Addressing language access in the United States legal system for limited English proficient Asian Americans and Pacific Islanders*. *Boston University Law Review*, 102(4), 1441-1489.
- [57] Universal Declaration of Human Rights. (1948, December). Retrieved from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.
- [58] Vaňatová, B. (2021). *Mediation in the Netherlands as a quick and effective solution to disputes*. Retrieved from <https://nlchamber.cz/mediation-in-the-netherlands-as-a-quick-and-effective-solution-to-disputes/>.
- [59] Venkatachalam, S. (2023). *Exploring the horizons of access to justice: An analysis of disabled women who are subjected to violence in India*. Retrieved from [https://research-information.bris.ac.uk/ws/portalfiles/portal/389292384/Final Copy 2023 12 05 Venkatachalam S PhD Redacted.pdf](https://research-information.bris.ac.uk/ws/portalfiles/portal/389292384/Final%20Copy%202023%2012%2005%20Venkatachalam%20S%20PhD%20Redacted.pdf).
- [60] Voitenko, A. (2023). Political neutrality as an indicator of professional prosecution. *Law Journal of the National Academy of Internal Affairs*, 13(1), 74-85. doi: [10.56215/naia-chasopis/1.2023.74](https://doi.org/10.56215/naia-chasopis/1.2023.74).
- [61] Yerkebulanov, Y., & Tukulov, B. (2022). Kazakhstan. In *Governing law and dispute resolution in the oil and gas industry* (pp. 348-359). Cheltenham: Edward Elgar Publishing. doi: [10.4337/9781786434654.00035](https://doi.org/10.4337/9781786434654.00035).

Розгляд справ приватного обвинувачення в судах першої інстанції за міжнародними стандартами процесуального права: проблеми та перспективи інклюзивного правосуддя

Євгенія Грек

Магістр права

Каспійський університет

050000, просп. Достик, 85А, м. Алмати, Республіка Казахстан

<https://orcid.org/0009-0000-7296-419X>

Саїда Акімбекова

Доктор юридичних наук, доцент

Каспійський університет

050000, просп. Достик, 85А, м. Алмати, Республіка Казахстан

<https://orcid.org/0000-0002-8209-2361>

Гульміра Нуртаєва

Кандидат юридичних наук, доцент

Каспійський університет

050000, просп. Достик, 85А, м. Алмати, Республіка Казахстан

<https://orcid.org/0009-0007-6090-3227>

Батир Самарксоджаєв

Кандидат юридичних наук

Вища школа суддів

100097, вул. Чопонота, 6, м. Ташкент, Республіка Узбекистан

<https://orcid.org/0009-0004-1990-5421>

Анотація. Міжнародні стандарти процесуального права все більше впливають на національне законодавство. Це зумовлює необхідність адаптації національних процедур до міжнародних стандартів, зокрема у сфері приватного обвинувачення. Метою цього дослідження було визначення шляхів удосконалення інституту приватного обвинувачення в судах першої інстанції Казахстану для забезпечення його відповідності міжнародним стандартам і принципам інклюзивного правосуддя. Дослідження ґрунтувалося на комплексному застосуванні системно-структурного, порівняльно-правового та формально-юридичного методів, що дозволило здійснити всебічний аналіз нормативно-правової бази Казахстану та міжнародних стандартів у сфері приватного обвинувачення. Дослідження виявило основні невідповідності казахстанського законодавства міжнародним стандартам, серед яких відсутність обов'язкової участі адвоката і прокурора у справах приватного обвинувачення, що призводить до порушення принципу рівності сторін і обмеження доступу до правосуддя. Порівняльний аналіз досвіду європейських країн, зокрема Німеччини, Франції, Латвії та Нідерландів, дозволив виявити ключові елементи успішних моделей інклюзивного правосуддя: інститут процесуальної співучасті *Nebenkläger* у Німеччині, який надає потерпілим широкі процесуальні права; французька система спеціалізованих центрів підтримки потерпілих; латвійська модель обов'язкової участі прокурора; нідерландська практика відновного правосуддя та медіації. На основі проведеного дослідження було запропоновано комплекс заходів щодо вдосконалення казахстанського законодавства, включаючи впровадження державної програми безоплатної правової допомоги, створення мережі центрів підтримки потерпілих, розвиток електронного правосуддя та запровадження обов'язкової участі прокурора у справах приватного обвинувачення. Результати дослідження можуть бути використані для реформування системи приватного обвинувачення в Казахстані та інших пострадянських країнах з метою забезпечення справедливого та інклюзивного правосуддя відповідно до міжнародних стандартів

Ключові слова: медіація; безоплатна правова допомога; гарантії адвокатської діяльності; правовий захист; соціальна вразливість; електронний документообіг