

QUESTION OF IMPROVING THE INSTITUTION OF REPRESENTATION IN CASES ON RECOGNITION OF A CITIZEN AS HAVING LIMITED LEGAL CAPACITY OR LEGALLY INCAPABLE

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ABSTRACT	KEYWORDS
<p>This article analyzes civil procedural legislation regarding the institution of representation in cases on recognition of a citizen as having limited legal capacity or legally incapable. The reasoning of experts in this field is presented, as well as the author’s own opinion on the issue of the participation of a representative in cases on recognition of a citizen as having limited legal capacity or legally incapable. A comparative legal analysis of the institution of representation in civil proceedings with foreign countries is also carried out. The author pays special attention to the gaps in the legislation and puts forward his own proposals for eliminating them.</p>	<p>Representative, civil process, attorney, official representative, incapacity, special proceedings.</p>

Introduction

Each person, entering into civil legal relations, acquires certain rights and obligations. There are often cases of failure by one of the parties to these legal relations to fulfill their obligations. In such cases, the party whose rights and legitimate interests were violated seeks to restore them and recover damages from the guilty party. Civil legislation traditionally distinguishes the following forms of protection of violated rights:

- non-jurisdictional (self-defense of rights, independent settlement of disputes about law through joint actions of the parties to the conflict);
- jurisdictional (by contacting an authorized body, for example, a court).

It should be noted that judicial protection of civil rights is the most reliable and effective. The right of citizens to judicial protection is guaranteed at the constitutional level. In particular, Article 55 of the Constitution of the Republic of Uzbekistan establishes that everyone is guaranteed judicial protection of their rights and freedoms and everyone, in order to restore their violated rights and freedoms, is

guaranteed the right to have their case considered by a competent, independent and impartial court within the time limits established by law¹.

According to the Civil Procedure Code of the Republic of Uzbekistan, civil courts hear cases on disputes arising from civil, family, labor, housing, land and other legal relations, if at least one of the parties is a citizen. The peculiarity of the civil process is that it is based on the principle of adversarial parties, according to which each party must prove the circumstances on which it refers.

When implementing the principle of competition between the parties, the role of the institution of representation is high. This is explained by the fact that in most cases the parties to civil proceedings are people with an ordinary legal consciousness, as a result of which they cannot apply the norms of substantive and procedural law in all cases. And in order to ensure the principle of competition, there is a need to attract lawyers who have professional legal awareness.

On the definition of the concept of representation, legal scholars put forward different points of view. In particular, S.A. Khalatov defines representation as the conduct of a case in court by one person in defense and interests of another person².

According to V.M. Sherstyuk, the legal relations that may arise in the process of representation are the relations between the representative and the represented, the representative and the court, the represented and the court.

D.B. Korotkova believes that representation should be understood as a relationship within which the representative exercises the authority received from the represented to perform legal and closely related actual actions on behalf of the latter³.

It is noteworthy that the Code of Civil Procedure does not contain a definition of the concept of representation. The legal definition of the concept of “representation” is provided for in the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan “On the application by courts of the norms of civil procedural legislation on representation”. In accordance with paragraph 2 of this Resolution, a representative in court is understood as an individual who performs procedural actions on behalf and in the interests of the principal within the limits of the powers granted, as well as assisting him in the exercise of his rights.

According to the law, the following types of representative should be distinguished in civil proceedings:

- ☐ legal representation;
- ☐ contractual representation.

The main difference between legal and contractual representation is that legal representation is mandatory when considering in court civil cases concerning the rights and legally protected interests of persons recognized in the prescribed manner as incompetent, partially capable, missing or declared dead. For legal representation to arise, the consent of the person whose rights and interests are protected is not required. And contractual representation is voluntary and carried out on the basis of a power of attorney.

¹ Конституция Республики Узбекистан // Национальная база данных законодательства, 01.05.2023 г., № 03/23/837/0241

² Халатов С.А. Представительство в гражданском и арбитражном процессе. – М.: НОПМА, 2002 - С. 55

³ Коротков Д.Б. Юридическая природа правоотношения представительства // Legal Concept. 2016. - № 3. С. 106 - 111

At first glance, it seems that the legislation regulates the issue of representation in detail, but this is far from the case. Despite the fact that large-scale reforms have been carried out in the field of civil justice, there are still a number of issues that need to be resolved. One of these issues is the participation of a lawyer in special proceedings.

So, the current Code of Civil Procedure does not provide for the mandatory participation of a lawyer when declaring a person incompetent or partially capable. Despite the fact that, according to Article 29 of the Basic Law of the country, everyone is guaranteed the right to receive qualified legal assistance, the Code of Civil Procedure does not stipulate in what order and by whom the rights and legitimate interests of citizens will be protected, in case of abuse of the rights and legitimate interests of the person in respect of whom the issue is being considered on recognition as incompetent or partially capable (for example, in personal interests), by participants in civil proceedings (the court and legal representatives), and this issue remained open.

Having carried out a comparative legal analysis of civil procedural legislation with foreign countries, we can note that in some countries a procedure has been introduced for the mandatory participation of a lawyer in such categories of cases. For example, in Art. 62 and 325 of the Civil Procedure Code of the Republic of Kazakhstan establishes that when resolving the issue of declaring a person incompetent or partially capable, the participation of a lawyer as an official representative is mandatory, and this issue is resolved by the court when preparing the case for trial. This procedure is also provided for in Art. 251 of the Code of Civil Procedure of the Republic of Armenia, as well as in Art. 82 and 363 Civil Procedure Code of Georgia.

The same procedure must be introduced into the Civil Procedure Code of the Republic of Uzbekistan. Article 66 of the Code of Civil Procedure should be supplemented in the following order: *«When considering cases on declaring a person incompetent or partially capable, in which this person also participates, an official representative - a lawyer - acts as his representative in the prescribed manner»*.

Also, Article 312 of the Code of Civil Procedure must be supplemented and stated as follows: *«When preparing a case for trial, the court must appoint an official representative - a lawyer in the case initiated in order to protect the interests of the citizen. An official representative - a lawyer has the powers of a legal representative. In accordance with the law, legal assistance from such a lawyer is provided free of charge at the expense of the state budget»*.

By implementing this procedure, the following goals can be achieved:

Firstly, the constitutional right of citizens to legal assistance is implemented in practice;

Secondly, it is possible to prevent abuse of the rights and legitimate interests of a person recognized as incompetent or partially capable. При рассмотрении таких категорий дел обеспечивается соблюдение официальным представителем – адвокатом требований актов законодательства.

It must be emphasized that the adoption of the Law of the Republic of Uzbekistan “On the provision of legal assistance at the expense of the state” was an important step for the implementation of the constitutional norm on the provision of legal assistance. This Law guarantees free legal assistance to certain categories of citizens when they act as plaintiffs or defendants in civil courts. However, such assistance is provided to low-income persons and the issue of providing legal assistance to a person recognized as incompetent or partially capable remains open. In turn, there is a possibility of abuse of

the rights and legally protected interests of a person recognized as incompetent or partially capable by participants in civil proceedings.

The next important problem is the issue of acquiring the status of a lawyer. The Law of the Republic of Uzbekistan “On the Bar” establishes that a person who has at least three years of experience in the legal profession as an employee of the legal service of state bodies, economic management bodies, state enterprises, institutions and organizations, in the position of a judge, investigator, investigator or prosecutor has the right participate in the qualification exam without completing an internship at a bar association. This list of categories of persons, as an exception, can acquire the status of a lawyer without undergoing an internship.

In our opinion, establishing a narrow circle of persons who have the right to obtain the status of a lawyer without undergoing an internship is logically unfounded and limits the rights of persons with an academic degree to obtain the status of a lawyer. Statistics show that in our country the number of lawyers is not enough to fully meet the needs of the population for legal assistance (there are only 4 thousand lawyers for a population of over 34 million in Uzbekistan). If we compare these indicators with developed countries of the world, we can understand the essence of the problem. For example, in the USA there is one lawyer for every 260 citizens, in Italy - 265 citizens, in Germany - 510 citizens, in Azerbaijan - 670 citizens, in Holland - 905 citizens, in France - 1,500 citizens, in Kazakhstan - 4,000 citizens.

To eliminate this problem, it is necessary to make a corresponding change to the legislation. In particular, Article 3¹ of the Law of Uzbekistan “On Advocacy” must be stated as follows: *«A person who has at least three years of experience in the legal profession and/or has an academic degree in the legal profession has the right to take part in the qualification exam without undergoing an internship»*.

This change allows employees of justice agencies and legal assistants with at least three years of experience, as well as teachers with an academic degree, to take part in the qualification exam without undergoing an internship in legal formations. This, in turn, contributes to the full satisfaction of citizens’ needs for legal assistance, and also ensures the implementation of the principle of competition in practice.

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