



**ADVOCATE PARTICIPATION IN CIVIL COURT CASES: FOREIGN STATE
EXPERIENCE, PROBLEM ANALYSIS AND SOLUTION**

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Ochilboev Azizbek Bakhodirjon ugli

Master's degree

Tashkent State University of Law

Tashkent, Uzbekistan

ABSTRACT

This article examines advocate participation in civil court cases: foreign state experience, problem analysis and solutions, an advocate for the purpose of providing legal assistance to individuals and legal entities: representation in civil, economic and administrative affairs and administrative offense cases in court, in other state bodies, before individuals and legal entities implements.

Key words

an advocate, civil court, international experience, legal assistance, legal support, license.

The Law of the Republic of Uzbekistan "On Advocacy" article 5 "A *advocate for the purpose of providing legal assistance to individuals and legal entities: representation in civil, economic and administrative affairs and administrative offense cases in court, in other state bodies, before individuals and legal entities implements*". We will start our analytical work on this basis.

First, let's look at the latest reforms in our Republic in this regard. "Glorification of human dignity and active neighborhood" approved by the Decree of the President of the Republic of Uzbekistan dated January 28, 2022 "**On the Development Strategy of New Uzbekistan for 2022-2026**" № PF-60. In the State program on implementation in the year "Realization of the principles of real equality and contention of the parties in court proceedings, i.e. expanding the powers of the advocate in the procedural legislation, including the powers of gathering and presenting evidence, the human rights, freedoms and legal rights of the bar institute to fundamentally increase their capacity to protect their interests, as well as to fully satisfy the demand of residents and business entities for qualified legal services, to provide free legal assistance to citizens in need of social protection at the expense of the state, in criminal cases as well as in civil and administrative cases. Introduction of the system of representation, systematization of legal



documents related to the activities of the bar and the development of a directly applicable law, setting goals and tasks, such as strengthening the procedural status of the barrister, will initiate a new stage of reforms in the field of the bar. In fact, this state program aims to put an end to excessive bureaucracy and red tape by introducing modern information technologies to the legal profession, to establish the exchange of electronic documents with courts, law enforcement agencies and other state bodies, i.e. higher or regional based on the decision of the qualification commission, to introduce the procedure for issuing a advocate's license through the "*License*" information system, to create an electronic system "*Legal support*" that ensures the exchange of documents between advocates, courts, law enforcement bodies and other state bodies, to promote the advocate's participation in the process. The implementation of goals and tasks, such as the introduction of the "*Electronic advocate's Warrant*", which simplifies the process of registration, in turn, allows citizens and organizations to receive qualified legal assistance and protect their rights and interests protected by law with the help of professional advocates and the basics of participation of advocates in court leads to simplification.

It is known that according to Article 91 of the Law "**On Advocacy**", a deal (agreement) on the provision of legal assistance is a trust between the trust or (person under protection) the advocate consists of a civil legal contract concluded in a simple written form to provide legal assistance to the reporting person (person under protection) himself or to the person appointed by him. According to **Article 353 of the Civil Code**, an agreement between two or more persons to create, change or cancel civil rights and obligations are called a contract. According to paragraph 12 of the decision № 5 of the Plenum of the Supreme Court of the Republic of Uzbekistan dated May 14, 2010 "**On the application of the norms of civil procedural legislation on representation by courts**", in order for a advocate to start work, a advocate's certificate and it is enough to present the warrant issued by the advocates' organization, which gives the advocate's right to protect the interests of the person applying for legal assistance in court (Except for the rights provided for in the second part of Article 69 of the Criminal Procedure Code).

In fact, the following can be stated as theoretical and practical problems of contractual representation:

first of all, the participation of advocates is important in ensuring the principle of adversary and the principle of equal rights of parties in court proceedings. In this regard, legal scientist D. Khabibullaev also writes in his academic works: not all fugaros who turn to court to resolve disputed issues have a high level of legal awareness. Therefore, in order to fully implement the principle of appeal, it is necessary to involve qualified experts in the court process, that is, advocates. According to Article 67 of the Civil Procedure Code, advocates participate as



contractual (voluntary) representatives. But not all participants of the process can participate in the case through an advocate. Because the advocate's service is paid. Regarding this issue, Chapter 4, Paragraph 78 of the Code of Civil Procedure of the Federal Republic of Germany stipulates the mandatory participation of an advocate in the process as a representative of the party. According to it, the parties participate through an advocate in the landgericht and other higher courts, and the authority to act in court, conduct the case and introduce the parties are exercised through the advocate. In family cases, the parties and persons participating in the case are introduced through advocates who can participate in the case in court.

There are several reasons for the need to act through representation in civil proceedings. Some of these are:

- lack of knowledge, insufficient knowledge of legal norms, or need of reliable protection even if the person giving confidence is aware of the procedural actions;
- inability to engage in professional activities;
- incapacity or limited legal capacity (in such cases, the legal representative or contractual representative appointed by the legal representative also acts on behalf of the person);
- lack of opportunity to participate in court proceedings (going to work, business trip or vacation to a foreign country);
- being in a temporary sanatorium or treatment facility and similar situations in everyday life.

From the point of view of common sense, the activity of a representative on behalf of the person giving trust in the above-mentioned and other similar cases will shorten the duration of the procedure, facilitate court proceedings, ensure that the interests of the person giving trust are not harmed, and the implementation of the fiduciary protection function creates the ground. We should also emphasize that today, along with the expansion of the scope of work through representative activity, society and innovations - legislative norms also require changes. It is known that the most effective way to introduce new norms is to study the achievements and shortcomings of developed foreign countries and adopt only those aspects that correspond to our legislation in their implementation. If we look at the activity of representation in civil proceedings of foreign countries, we can observe the uniqueness. For example, in Article 50 of the Civil Procedure Code of the Russian Federation, "The court appoints an advocate as a representative in the absence of a representative of the defendant whose place of residence is unknown, as well as in other cases provided for by federal law. The advocate appointed by



the court to represent the defendant in this case has the right to appeal against court decisions.

We can see the same norm in the legislation of the Republic of Belarus. Article 77 of the Code of Civil Procedure of the Republic of Belarus provides for cases in which a representative is appointed by the court.

"The court appoints a representative to a party or a third party in the following cases:

1. *absence of an incapacitated person or a third-party representative;*
2. *absence of the defendant's representative whose place of residence (location) is unknown;*
3. *the representative does not have the right to conduct court proceedings on the grounds established by the Marriage and Family Code of the Republic of Belarus;*
4. *other cases established by law.*

According to Article 58 of the Civil Procedure Code of the People's Republic of China, "parties, legal representatives may appoint one or two representatives to conduct the case. Advocates, close relatives, persons recommended by relevant public organizations in the place of residence of the parties, as well as recommended by the people's court other citizens may be represented in court". Article 60 of this code states that "If the powers of the representative are changed or revoked, the party whose powers have been changed must notify the people's court in writing, and the people's court must notify the other party. "According to Article 58 of the Civil Procedure Code of Ukraine, "a party, a third party, as well as a person who is legally entitled to apply to the court in the interest of a person, may appear in court in person (the way of self-representation with) and can participate through a representative". According to the fourth part of Article 60 of this Code, "a representative may simultaneously represent several plaintiffs or several defendants or the interests of several third parties, if there is no conflict of interest between them".

Article 56 of the Civil Procedure Code of the Republic of Armenia specifies the circumstances in which a representative must draw up a special power of attorney. According to this article: "A power of attorney for court proceedings gives the representative the right to perform any procedural action on behalf of the principal, with the exception of:

1. sign the statement of claim;
2. agree to conclude an arbitration agreement and submit the dispute to arbitration;
3. full or partial waiver of claims;
4. full or partial recognition of claims;
5. change the basis and subject of the claim or one of them;



6. conclusion of settlement agreement;
7. conclusion of a reconciliation agreement;
8. participation in the conciliation procedure with the participation of a licensed conciliator;
9. transfer of authority to another person (transfer of trust);
10. receiving court notices and procedural documents;
11. complaining about court documents;
12. to submit an application for issuing a writ of execution".

To perform each of the actions specified in part 1 of this article, these powers must be clearly specified in the power of attorney given to the representative. Analyzing the experience of foreign countries, we can say that the time has come to improve our civil procedural legislation, expand the powers of the representative institution, involve representatives in civil court cases, and introduce changes and additions. In order to improve our legislation, we can put forward the following suggestions. First of all, as the third part of Article 65 of the Civil Procedure Code of the Republic of Uzbekistan, "In order to protect the interests of the defendant in the court, in the event that the defendant is unable to participate in the court proceedings due to the fact that the place of residence (address) is unknown an advocate is appointed by the court. The advocate appointed by the court as a representative of the defendant has the right to appeal against the procedural documents of the court in this case" in the interpretation of the norm should be included.

Among the persons who can participate in the court as a contractual (voluntary) representative in the resolution of administrative disputes, the law lists advocates in the first place (Article 60 of the Code of Administrative Court Proceedings). Advocates whose main task is to provide legal assistance to citizens and organizations and who are members of a public organization devote most of their activities to protecting the rights and legal interests of persons whose disputes are being resolved in court. As we said above, such protection is implemented by their participation in the court proceedings as a representative.

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