



THERE ARE CASES WHERE A LAWYER SHOULD BE INVOLVED IN CIVIL PROCEEDINGS: LEGAL ANALYSIS OF FOREIGN EXPERIENCE

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Annotation

A lawyer is an entity that protects the legal interests of the parties in court proceedings and performs professional activities that help the court make a fair decision. Most countries have norms that strictly require the participation of a lawyer in civil proceedings. In this article, a legal analysis of this situation was carried out and proposals were made to apply this experience to the national legislation.

Keywords: lawyer, civil proceedings, higher courts, parties in court, mandatory participation of a lawyer.

Introduction

The participation of a lawyer in civil courts is carried out according to the wishes of the parties in the court. That is, it is their right to use the services of a lawyer. Article 65 of the Civil Procedure Code of the Republic of Uzbekistan stipulates that citizens can conduct their cases in court personally or through their representatives. According to Article 67, only lawyers may engage as the representatives in the professional activity of handling cases in court[1]. The legislation of some countries defines cases in which the participation of a lawyer is mandatory in civil courts.

In particular, Article 50 of the Civil Procedure Code of the Russian Federation provides for the appointment of representatives by the court, and this article provides the following norm: The court appoints a lawyer 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 laws. The lawyer appointed by the court as the representative of the defendant in the cases provided for in this article has the right to appeal against the court decisions in this case [2]. Now let's analyze this situation according to German legislation. Section 2, Chapter 4, Paragraph 78 of the Code of Civil Procedure of the Federal Republic of Germany defines the procedure for compulsory representation of parties by a lawyer, according to which the "Landgerichten", i.e. "land" or regional courts, and the "Oberlandesgerichten", i.e.





higher (regional) courts the parties must be represented by a lawyer. If the Supreme Regional Court is established in the country on the basis of Part 8 of the Law "On the Constitution of Courts", the parties must also participate here through a lawyer. Before the Federal Court, the parties must be represented by a lawyer approved by the Federal Court.

German law also provides for the appointment of lawyers by the courts. That is, paragraph 78 b of this code is called "Lawyer appointed by the court" and according to it, if a party cannot find a lawyer who is ready to represent him, after applying with the appropriate request, by the order of the court considering the case of the parties, the lawyer will represent this party. can appoint [3]. If we analyze this situation with the legislation of Azerbaijan, Article 67 of the Code of Civil Procedure of the Republic of Azerbaijan is called "Compulsory participation of a lawyer in the process", and according to it, cassation and additional cassation appeals, as well as applications for reconsideration of the court act due to newly discovered circumstances, can only be filed by a lawyer. it is accepted to conduct court proceedings if it is made. In cassation proceedings and additional cassation proceedings, as well as in re-examination of the judicial act due to newly discovered circumstances, persons participating in the case can participate in court sessions only with a lawyer, according to the cassation and additional cassation appeals, as well as on re-examination of the judicial act due to newly discovered circumstances applications are accepted for court proceedings only if they are drawn up by a lawyer. If the persons participating in the case do not have sufficient funds to pay for the services of a lawyer in cases where the participation of a lawyer is mandatory according to this Code, the court that issued the judicial act shall ensure the participation of a lawyer in the proceedings with a written application of the persons participating in the case [4].

We can find a similar situation in Polish legislation. As provided by Art 87¹ § 1 of the Code of Civil Procedure (hereinafter CCP), representation of parties by attorneys and legal counsels is obligatory in proceedings before the Supreme Court. This applies to the proceedings initiated by a cassation appeal (Art. 398¹ et seq. CCP), an action for finding a final decision unlawful (Art. 424¹ et seq. CCP), initiated by a complaint filed at the Supreme Court (Art. 394¹ CCP), by an action for reopening proceedings brought to the Supreme Court (Art. 412 § 4 CCP). In the French system a cassation must contain a statement that the party has granted the power of attorney to a listed attorney and it must be signed by him or her. An attorney may refuse to draft the cassation and represent the party if he considers that it would be ill-founded or would not have any prospect of a positive outcome. Interestingly, even this kind of





limitation did not prevent the French Court of Cassation from excessive influx of cases, and as a consequence – a huge overload [5].

The norms providing for the mandatory presence of a lawyer in civil courts are also provided for in some legal documents of foreign countries. According to the norms of the Law of the Russian Federation of July 2, 1992 No. 3185-1 “On psychiatric care and guarantees of the rights of citizens in its provision”, when considering a complaint against the actions of medical workers, other specialists, social security and education workers, as well as medical commissions, infringing on the rights and the legitimate interests of citizens in the provision of psychiatric care to them, the participation of a representative of a person whose rights and legitimate interests have been violated is mandatory. If a person does not have a representative (legal, including), and this person does not express the intention to have such a representative, then the court appoints a lawyer for him. All costs in this case are paid by the state. [6]

Many scientists expressed their opinions in this regard in their studies. In particular, Kiryushina Svetlana Viktorovna PhD in Law expressed the following points in his: Mandatory participation of a lawyer in civil proceedings in a court of first instance should be provided for in the following cases: a) where the participation of a representative of the state (prosecutor) is mandatory; b) in civil cases affecting the interests of minor children; c) in civil cases in which the parties or third parties are poor people, disabled children, wars and hostilities [7].

To sum up, in many foreign countries, the participation of a lawyer in the higher instances of civil courts is mandatory. Applying this experience to our national legislation can have a positive effect. Because the higher authorities are the last chance to protect the rights of citizens, and losing it can destroy the possibility of restoring the violated rights of citizens. Also, making the participation of a lawyer mandatory in semi-category cases will help the courts to make a fair decision and process the case quickly and efficiently. In particular, in order to ensure the principles of competitiveness and equality of the parties in cases initiated by the prosecutor's application in civil courts, it is expedient to make the presence of a lawyer mandatory on the defendant's side. If the defendant does not have the opportunity to use the services of a lawyer, the provision of pro bono services to him in our legislation serves as a reliable guarantee of the protection of the rights of citizens [8].





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