



LEGAL STATUS OF A LAWYER AS A REPRESENTATIVE IN CIVIL COURT PROCEEDINGS

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Abstract

The fact that the parties have the right to qualified legal assistance in conducting civil court cases is reflected in our civil procedural legislation. However, scholars continue to argue that a lawyer is a representative or a person assisting justice in civil proceedings. Russian lawyer D.M. Chechot believes that the participation of a lawyer as a representative in civil proceedings affects the administration of justice by commencing civil proceedings, changing the cause of action or admitting.

According to the civil procedural legislation of the Republic of Uzbekistan, lawyers participate in civil court proceedings as contractual representatives of parties, third parties who submit independent claims to the subject of the dispute, and third parties who do not submit independent claims to the subject of the dispute. According to Article 67 of the Civil Procedure Code of the Republic of Uzbekistan, the trustor entrusts proceedings in court to the representative according to the contractual (voluntary) representation for the protection of his rights and interests protected by law.

The following may be contractual (voluntary) representatives:

- 1) lawyers;
- 2) relatives who are closely related by genealogy or by side, as well as husband (wife) or his relatives;
- 3) employees of legal entities - on the affairs of these legal entities;
- 4) authorized representatives of non-profit organizations - on the affairs of members of these organizations;
- 5) authorized representatives of non-profit organizations authorized by law to protect the rights and interests of other persons;
- 6) one of the joint participants at the request of other joint participants;
- 7) persons allowed to participate in the case as representatives of natural persons by the court considering the case.





It is established that only lawyers can engage in professional activity as a representative in court proceedings.

As we mentioned above, in the conduct of civil court cases, lawyers participate in court as contractual representatives of the parties.

According to the legal scientist M. Mamasiddikov, lawyers appear in the court as representatives under the contract. Because the participation of a lawyer as a contractual (voluntary) representative plays an important role in protecting the violated rights and interests of citizens and organizations protected by law through the court, and in providing them with qualified legal assistance. The basis for the occurrence of this type of contractual (voluntary) representation is the agreement concluded between the representative and the principal.

In order for a lawyer to start working, it is enough to present a lawyer's certificate and a warrant issued by the organization of lawyers, which gives the lawyer the right to protect the interests of the person who applied for legal assistance in court.

In the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan "On the application of the norms of civil procedural legislation on representation by the courts", the law requires the existence of special powers to perform certain procedural actions, and the representative under the contract, including the lawyer, and the person who entered the work according to the application of the representative at the court hearing and has the right to perform these actions only if each of them is recorded in a power of attorney issued in accordance with the law. Special rights defined in the Civil Procedure Code of the Republic of Uzbekistan include:

- complete or partial waiver of claim requirements;
- change the basis or subject of the claim;
- increase or decrease the amount of the claim;
- recognition of claimants;
- conclusion of a settlement agreement;
- transfer of powers to another person (entrust to another person);
- filing an appeal against the court's decision;
- directing the writ of execution to collection;
- receiving property or money that has been levied.

It is also required for managers of legal entities whose activities are regulated by the charter to submit a document stating that they have special powers, provided that the exercise of the corresponding rights in the charter belongs to the authority of the corporate management bodies (general meeting or management). In exercising the above rights, it is considered necessary for lawyers to obtain a power of attorney from the parties during the trial. Participates in the case as a representative of natural





persons and uses the special rights of the plaintiff or defendant through notarized or equivalent power of attorneys.

If the authority granted to the representative is not part of his official duty, the costs incurred will be recovered by the court, based on fairness, in cases where they are correctly assessed in all respects.

A lawyer has the following rights and obligations, like other participants in court proceedings:

persons participating in the case to familiarize themselves with the case materials, to receive extracts from them, to apply for refusal to copy copies;

submission of evidence, participation in the examination of evidence;

ask questions to other persons participating in the case and persons assisting in the administration of justice;

to apply, submit petitions, give oral and written explanations to the court, state their views on all issues arising during the hearing of the case in court;

to raise objections against applications, petitions, arguments of other persons;

to appeal against the decision, ruling, decision and order of the court;

to demand the mandatory execution of the decision, ruling, decision and order issued by the court;

has the right to be present during the actions of the bailiff and to exercise his rights.

As a representative of the parties, the lawyer protects the rights and interests of the parties as defined in the civil procedural law in disputes involving labor, family, citizenship, and inheritance, and prevents procedural violations.

Also, the lawyers have familiarized themselves with the parties' objections and counterclaims in the courts of first instance and have the right to ask questions regarding the objections and counterclaims during the trial.

In addition, lawyers have the right to familiarize themselves with appeals (protests), cassation appeals (protests), control protests, private appeals (protests), private appeals (protests) in cassation proceedings.

The statement of claim and the application shall be signed by the claimant or his lawyer. If the statement of claim and the application is submitted by a representative (lawyer), the name (surname, first name and patronymic) and address of the representative (lawyer) are written. If the claim or application is submitted by a representative (lawyer), a power of attorney (warrant) or other document confirming his authority must be attached to the claim or application.

In turn, the defendant's lawyer can sign the counterclaim and objection and submit it to the court.





The question of participation of a lawyer in civil court proceedings is decided by the judge during the preparation of the case for trial.

It should be noted that the non-appearance of a representative of a person who has been informed about the time and place of the hearing does not prevent the consideration of the case.

If the lawyer does not appear at the court hearing due to unexcused reasons, the court shall make a private ruling on the absence of the lawyer without an excuse, and the qualification commission under the regional office of the Chamber of Advocates of the Republic of Uzbekistan will be notified accordingly.

Court negotiations in civil court proceedings consist of speeches of persons participating in the case.

Participants in court negotiations have no right to rely on circumstances not determined by the court, as well as evidence that was not examined at the court hearing.

First, the plaintiff and his lawyer speak, then the defendant and his lawyer. After the parties, the third party and his lawyer, who filed independent claims against the subject of the dispute, speak after the parties. The third party who has not made independent claims regarding the subject of the dispute and his lawyer, if the third party is participating in the case on the side of the claimant or the defendant, will speak after the claimant or the defendant.

Since the lawyer is also a person participating in the case and the law does not provide for a special explanation in the power of attorney to exercise the right of refusal, it is possible to apply for independent refusal without obtaining the consent of the person giving the trust if there are sufficient grounds.

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