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## **SOME PROBLEMS OF THE PROSECUTOR'S PARTICIPATION IN CIVIL COURTS**

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*Abstract. The article deals with some problems of the current civil procedural legislation regulating the status of the prosecutor, the prosecutor's initiation of consideration of civil cases by the courts, and the prosecutor's conclusion in a civil case. The fundamental nature of the status problem is explained by its close relationship with all the forms and stages of participation of the prosecutor in the civil procedure. According to the authors, the use of reference norms to indicate the position of the prosecutor does not contribute to the formation of a unified approach in understanding its role and place in the system of subjects of civil procedural relations. A critical analysis of the main points of view on this issue is given and the right way to solve it is proposed.*

*Keywords: status of the prosecutor in civil proceedings, state of health, age, other valid reasons, indefinite circle of persons, conclusion of the prosecutor.*

## **НЕКОТОРЫЕ ПРОБЛЕМЫ УЧАСТИЯ ПРОКУРОРА В СУДАХ ПО ГРАЖДАНСКИМ ДЕЛАМ**

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*Аннотация. В статье рассматриваются некоторые проблемы действующего гражданского процессуального законодательства, регулирующего статус прокурора, инициирование прокурором рассмотрения гражданских дел судами, заключение прокурора по гражданскому делу. Фундаментальный характер проблемы статуса объясняется ее тесной связью со всеми формами и этапами участия прокурора в гражданском процессе. По мнению авторов, использование референтных норм для обозначения позиции прокурора не способствует формированию единого подхода в понимании его роли и места в системе субъектов гражданских процессуальных отношений. Дан критический анализ основных точек зрения по этому вопросу и предложен правильный путь его решения.*

*Ключевые слова: статус прокурора в гражданском судопроизводстве, состояние здоровья, возраст, другие уважительные причины, неопределенный круг лиц, заключение прокурора.*

### **Introduction.**

In today's rapidly developing world, special attention is paid to the democratic rule of law and its development, the rights and freedoms of natural and legal persons and the guarantees of their protection. One of such guarantees is to ensure the competence of the prosecutor in the consideration of civil cases by the courts. Within this area of prosecutorial activity there are many problems with legislation and judicial practice. One of them is the filing of a lawsuit by the prosecutor and his legal status in doing so.

In civil proceedings, the status of the prosecutor is defined as a person participating in a case in accordance with Article 39 of the Code of Civil Procedure of the Republic of Uzbekistan. First of all, let us clarify in what form the prosecutor will participate in the civil courts. According to Article 50 of the RUz Civil Procedure Code, "if a citizen is unable to defend his rights, freedoms and legitimate interests in court in person for health, age or other reasons, the prosecutor has the right to appeal." This means that the prosecutor may bring an action against the person concerned in court if there are the above grounds. In doing so, of course, the citizen's age and health problems will be examined. After that, the question of filing a lawsuit in court will be considered, but the important thing is that in this case the age qualification of the citizen, the state of his health should not be determined. In further in-depth analysis, attention should be paid to whether young means a minor or an elderly citizen. It is also important that the application be filed in any state of health, because if the citizen is sick before the trial and recovers in court, does the prosecutor support the claim in this case? At this point, it is unknown what he will do after he leaves office. This is an obstacle to different interpretations of the rule, as well as to the formation of a uniform practice.

Also article 45 of the Criminal Procedure Code of the Russian Federation establishes that the application must be filed by the prosecutor only if a citizen is unable to appear in person in court for health, age, incapacity or other valid reasons.<sup>1</sup> In this regard, Russian legal scholars have commented on the provision that a prosecutor's application for the protection of the legal rights, freedoms and interests of a citizen must contain the grounds for the inability of a citizen to appear in court, the Code does not contain a list of excuses for not appearing in person. Courts are entitled to assess whether the above legal requirements are reasonable or not, and the failure of a prosecutor to meet this legal requirement results in the dismissal of his application by the court.<sup>2</sup>

Limitations on the right of prosecutors to initiate civil proceedings are also reflected in the Criminal Procedure Code of the Republic of Belarus. In particular, Article 81 of the Code of Criminal Procedure establishes that the prosecutor has the right to bring a civil action if it is necessary to protect the Republic of Belarus, its administrative-territorial unit, as well as the rights and legitimate interests of legal entities and citizens.<sup>1</sup>

. This means that not only in our country, but also in many CIS countries there are such restrictions.

The second part of Article 50 of the CPC pays special attention to the issue of participation. According to him, the prosecutor has the right to participate in the consideration of a civil case only in cases provided for by law, as well as at the request of the prosecutor, while in other matters the prosecutor may not participate in the consideration of the case on his own initiative. So, in this case, the prosecutor participates in two ways. The first is in cases prescribed by law, and the second is cases initiated by the prosecutor on his own motion. The following is an analysis of the participation of the prosecutor in cases initiated on the prosecutor's own motion.

Let us discuss the opinion of scholars that the prosecutor should bring a lawsuit in court to protect the interests of others. In this connection, the proceduralist B.V. Kwartsov says: "In order to properly organize the work of the prosecutor to bring civil cases, to ensure that his activity is directed toward a specific goal, it is necessary to determine which categories of cases the prosecutor should bring before the court" <sup>2</sup>. However, while denying this, V. N. Argunov expresses a different opinion, i.e. says: "In civil cases, the prosecutor should have the right to bring an action, and this power should be an integral part of it" <sup>3</sup>. It is true that in restricting the cases in which the prosecutor has the right to bring an action, there is a great probability that the legitimate rights and interests of citizens will be violated. The views of B.V. Kwartsov in this regard are also supported by another scientist-proceduralist M.M. Mamasiddikov. Chechina, on the other hand, was adamant that the participation of the prosecutor in the process is inextricably linked to his duty to uphold the rule of law. In this regard, we agree with V. N. Argunov and N. Chechina that filing a lawsuit is one of the inalienable rights of the prosecutor and his participation in the case depends on legality, because we believe that it is not a violation of the balance on the rights of participants by limiting or protecting the interests of one party, but primarily to ensure legality, fairness, and to provide unconditional support to the judge.

In addition, in this case, we pay particular attention to whom the prosecutor should bring the issue of suit. There has been much debate about this rule as to whether he will be the plaintiff at the time the prosecutor files suit. First, some authors consider the prosecutor to be the plaintiff in a civil action. The fairness of this view is that the prosecutor has the right to bring a civil action by filing a lawsuit, so he enjoys all the rights of a plaintiff. <sup>2</sup> Of course, all this is done within the limits of the law.

The prosecutor's fukarolik process ishtiroki nazarii olimlar tomonidan tulicha talqin etiladi. The court's decisions should be taken by the prosecutor's office, and the prosecutor's office should be informed in a timely manner <sup>1</sup>. The court is not obliged to take into account the fact that it is not a court of law, but a court of law that is not a court of justice, and the court is not obliged to take into account the principles of the law and the principles of the court. The judicial processor A.A. Ferenc-Sorotsky was the prosecutor of the court and the prosecutor of the court and the party. The prosecutor, the judiciary,

and the court have been given the opportunity to make a statement in the courtroom in a transparent manner, and the prosecutor and the party have been given the opportunity to make a statement in the courtroom in a manner that is not in the interest of the party.

It is true, based on the powers of the prosecutor, we can say that the rights and obligations available to him do not give priority to any of the parties. However, M. A. Vikut, who rejected the views of the representatives of this approach, noted that the prosecutor is a party to the case, an obligatory subject of a legal dispute, who has a certain degree of subjective interest. However, we cannot agree with this theory, since, in his opinion, the prosecutor should participate in the material legal relations in which the dispute arose, have a personal interest in resolving the dispute and protecting his rights, as well as to enter into the process independently. on his own behalf. Interestingly, none of the above is manifested in the presence of the prosecutor.

In this context, we see that the participation of the prosecutor in civil courts as a plaintiff is symbolic, some authors define this position by reference to the fact that the prosecutor becomes a plaintiff only in the procedural sense<sup>1</sup>, while the plaintiff remains a citizen, rights are violated in any case<sup>2</sup>. goes However, in the interests of the state and society, such a situation is excluded, since the prosecutor protects the interests of the state and society in the matter, not on behalf of the individual. However, the Code of Civil Procedure of the Republic of Uzbekistan does not provide for a prosecutor to bring an action in the interests of the state.

In civil proceedings, the prosecutor was evaluated as a party to the case under Article 40 of the Code of Criminal Procedure. Article 51 of the Code of Criminal Procedure defines the rights and duties of the prosecutor. According to this article:

This means that the prosecutor enjoys the aforementioned rights and obligations during the trial.

In this case, we conduct a comparative analysis of the rights and obligations of the prosecutor and the other persons involved in the case.

The prosecutor, like other participants, defends his position by familiarizing himself with the materials of the case, obtaining extracts from it, providing information about court documents, presenting evidence, participating in their examination. The rights of other participants do not differ from the rights of applicants, motions, oral and written explanations to the court, presentation of their arguments, conclusions on all issues arising in the course of court proceedings.

In this regard, article 245 of the Code of Criminal Procedure provides that the prosecutor must give his opinion on the case, according to which "the prosecutor involved in the case shall give his opinion on the merits of the dispute after the trial. It is stressed, however, that this does not include cases initiated by a prosecutor for the protection of the rights, freedoms, and legally protected interests of others. The same issue is debatable, with some claiming that the existence of this norm disturbs the balance of interests of participants, i.e. "it must be recognized that, according to the analysis of judicial practice, most civil proceedings concern legal relations between a

citizen and a citizen. Citizens involved in legal relations as plaintiffs and defendants are equal before the law.

In accordance with article 72 of the CPC on the obligation to present evidence, each party must prove the circumstances on which it bases its claims and objections. In this case, the participation of a representative of an influential public authority - the prosecutor in the trial as a party to each other, and the opinion of one or the other party on the outcome of the case, although legitimate, to a certain extent affects the principle of equality of parties... From these considerations we may conclude that the participation of the prosecutor leads to a violation of equality. However, we take a different approach to this issue because, first, the prosecutor's opinion is advisory in nature, and the purpose of the prosecutor's opinion in court is not to violate equality or to protect the interests of the same person, but to ensure the legality and fairness of court documents. According to Professor Shorakhmetov, in whatever form the prosecutor is involved in the case, he always ensures his authority to implement the law in court, not judicial activity, and remains a facilitator of justice. Consequently, the prosecutor must oppose any violation of the rights of any party in the process, regardless of which party's rights are protected in the process. In addition, the prosecutor, regardless of the original course of action, protects the interests of the party who is ultimately acquitted after a dispute in court.<sup>2</sup> Yes, of course, the prosecutor's job is only to ensure legality and to protect the rights and interests of the citizen.

Article 51 of the Code of Criminal Procedure also provides that the prosecutor shall exercise all his rights and interests when filing an application in the interests of the plaintiff. However, the plaintiff does not have the right to change, increase or decrease the subject matter of the claim without his or her consent. In addition, if the prosecutor withdraws the lawsuit without substantiating the claim, the claimant has the right to request that the case be continued.

Otherwise, the prosecutor cannot request a continuation of the case because the plaintiff has waived this requirement.

From the above it can be concluded that the participation of the prosecutor in civil proceedings does not differ from the rights and obligations of other persons involved in the case, does not give him priority, does not violate the principle of equality of interests any person is a person who contributed to the relevant release. Even if it is considered that the protection of the interests of that person at the time of filing an action violates equality, the prosecutor does not protect the interests of that person, but the legitimate interests of the citizen<sup>1</sup>, if the case is not within the law the prosecutor has the right to reject the claim. It is therefore completely unfounded to argue that the participation of the prosecutor in civil proceedings should be limited.

Based on the above, we can make the following suggestions:

1. Based on the above analysis, our national legislation should clarify the basis of the concept of "health," as in health care, whether a citizen has a chronic illness or is of a temporary nature, clear criteria must be established.



2. In addition, the age limit is not clearly defined, the sentence should be replaced with "young and incapacitated elderly".

3. the definition of the phrase "other reasons" would also help form a unified practice in the law, and avoid different interpretations.



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