



The Importance of the Lawyer's Participation in Proceedings at the Highest Instance in Civil Courts

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Abstract: *This article analyzes the specific aspects of the lawyer's participation in the higher courts, his tasks and the obstacles that the lawyer may face. In addition, foreign experience in these issues is studied, and the question of applying its positive aspects to the national legislation is highlighted.*

Keywords: *lawyer, representative, appeal, cassation, reopening of judicial acts that have entered into legal force upon discovery of new facts, mandatory participation of a lawyer, lawyer's fee.*

According to the Civil Procedure Code of the Republic of Uzbekistan, citizens and legal entities have the right to participate in court through a representative. This right is available to them at all stages of the process. Even if the citizen did not get a representative in the first instance, he can participate in the proceedings through a representative or together with him in the higher instances. Only lawyers can engage in professional activity as a representative in court proceedings [1]. Analyzing the activities of lawyers in higher instances, some questions arise regarding their activities:

The person who used the services of a lawyer in the first instance wants to use his services in the higher instance, so will the relationship between the lawyer and the trustee continue or should a new contract be concluded with the lawyer?

What are the duties of a lawyer who did not participate in the first instance, and what are his rights and obligations when he participates in the higher instance?

Is it necessary to establish the mandatory presence of a lawyer in higher instances?

Advocacy activities are carried out because of an agreement (agreement) on the provision of legal assistance concluded between a lawyer and a trustee (person under protection). Payment for legal services is carried out based on a voluntary agreement (contract) between the lawyer and the trustee (person under protection) [2]. If citizens and legal entities want to use the services of a lawyer at a higher instance, they will have to conclude the above agreement with a lawyer again. Can a lawyer refuse to participate in a higher instance? Of course, since the relationship between the trustee and the lawyer is a civil legal relationship, the lawyer who participated in the first instance may not participate in the higher instance. In addition, even if the participants of the proceedings did not use the services of a lawyer at the first instance, they can use the services of a lawyer at the higher instance. In some foreign countries, the presence of a lawyer at the highest instance is mandatory. For example, Section 2, Chapter 4, Paragraph

78 of the Code of Civil Procedure of the Federal Republic of Germany defines the procedure for mandatory representation of parties by a lawyer, according to which the "Landgerichten", i.e. "land" or regional courts, and the "Oberlandesgerichten" ", that is, in higher (regional) courts, the parties must be represented by a lawyer. If the Supreme Regional Court is established in the country based on Part 8 of the Law "On the Constitution of Courts", the parties must also participate here through a lawyer. Before the Federal Court, a lawyer approved by the Federal Court [3] must represent the parties.

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 new cases, review the court act. Petitions for review are accepted for court proceedings only if a lawyer draws them up. Persons participating in the case in the cassation procedure and the additional cassation procedure, as well as in the re-examination of the court act based on newly discovered cases, can participate in court sessions only with 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 the lawyer in the proceedings with the written application of the persons participating in the case[4].

If a lawyer participates in a case in which he did not participate in the first instance, he must explain the case in detail. For this, the lawyer of the Civil Procedure Code of the Republic of Uzbekistan

He can use the right "to get acquainted with case materials" mentioned in Article 40. Because a lawyer as a representative is a person participating in the case according to Article 39 of the Criminal Code. While preparing the case for consideration at the appellate instance, the lawyer can collect new evidence and present it to the court according to Article 396 of the Criminal Procedure Code, but he does not have this opportunity in cassation according to Article 416 of the Criminal Procedure Code.

If a person who gives confidence and has the right to complain about court documents gives a lawyer a power of attorney, the lawyer can sign the complaint himself and must attach the power of attorney to it.

The lawyer (representative) who filed the appeal has the right to complete, change or withdraw the appeal before the court of the appeal instance enters the consultation room. Such a waiver may be accepted by the court if it does not contradict the law or if it does not contradict someone's rights, freedoms and interests protected by law. The power of attorney should indicate the use of these rights [5, 133].

One of the problems faced by the lawyer in proceedings at the higher instance is that it is not possible to appeal against the decision of the court to suspend the appeal. According to Article 400 of the Criminal Procedure Code, an appeal can be filed against the decision of the court of first instance in two cases:

1. In cases stipulated by the Civil Procedure Code;
2. In cases where the court is ruling prevents further movement of the case.

Article 388 of the Criminal Procedure Code does not state that an appeal can be filed against the decision to suspend the appeal. Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated October 25, 2019 No. 19 "On the rulings of the Court of First Instance on Civil Cases"

Clause 15 lists rulings that can be appealed separately from the decision of the court in the procedure of appeal or cassation. In this list, there is a ruling on "returning an appeal", but there is no such ruling in the current Civil Procedure Code.

Why do we need to appeal the decision to stay the appeal? In the event that the decision of the court of first instance was wrongly decided on the issue of state duty, we will have to pay state duty for 50% of the rate paid when filing the claim [7]. When an appeal is filed, 50% of the state tax specified in the decision

must be paid; otherwise, the court of first instance will issue a decision to leave the appeal inactive. In essence, if the dispute is about the incorrect calculation of the state duty, how correct is it to make a ruling on leaving the complaint inactive because the state duty has not been paid in the specified amount. In this case, the participants of the proceedings or the lawyer must pay the state duty that he/she considers to be wrong and appeal again on this issue. Otherwise, the person who filed the complaint is considered to have filed a complaint and his case will not be considered in higher instances. Because, as we said above, there is no ruling on returning an appeal in the current Civil Procedure Code, so we cannot take any action.

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