

## PERSONS PARTICIPATING IN EMPLOYMENT DISPUTES ABOUT REINSTATEMENT AT WORK AND THEIR PROCEDURAL LEGAL STATUS

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**ABSTRACT:** The Article analyzes the persons involved in employment disputes about reinstatement at work and their procedural legal status. The article discusses the views expressed in the legal literature on the division in the groups of subjects of employment legal relations and civil procedural legal relations; analyzes the relationship and similarity of the terms “subjects” in Employment Law and “parties” in Civil Procedure Law; studies the legislative experience of foreign countries; prepared specific suggestions and recommendations for improving Labor Code and Civil Procedure Code of the Republic of Uzbekistan.

**KEYWORDS:** Reinstatement at work, subjects of employment disputes, court, parties, national legislation, problems and ways to solve them, improvement.

### INTRODUCTION

Civil procedural legal relations are relations between the persons participating in the proceeding and the case which arise as a result of a particular civil case and are regulated by the rules of Civil Procedure Law.

In the theory of Civil Procedure Law, different views are also put forward on the division of subjects of Civil Procedural legal relations into groups. In particular, according to Professor E. Egamberdiev, the subjects of Civil Procedural legal relations are divided into the following three groups: court, judge; persons participating in the case; persons contributing to the administration of justice<sup>[1]</sup>. M.K. Treushnikov, expressing his opinion on the division of the subjects of Civil Procedural legal relations into three groups, as above, includes in the first group, the group of persons resolving civil cases, along with the court, enforcement agencies,

executing court decisions[2]. Unlike the abovementioned scholars, M.S. Shakaryan divides all subjects of Civil Law relations into the following two groups:

- Courts: a judge who hears cases in a judicial collegium and individually;
- Participants of the proceeding: persons participating in the case; persons contributing to the administration of justice[3].

Analyzing the above considerations, it can be concluded that since the bodies, executing court decisions are not entitled to administer justice in civil cases like courts, it would be wrong to include bodies, executing court decisions to the first group as a mandatory subject of Civil Procedural legal relations. Moreover, agreeing with the opinion of the lawyer S.A. Yakubov, who conducted a special study on the parties in civil proceedings, it would be wrong to include court and judges to the list of subjects of Civil Procedural legal relations. According to S.A. Yakubov, the Civil Procedure Code (hereinafter – CPC) divides the subjects of Civil Procedural legal relations into two groups: persons participating in the case; persons contributing to the administration of justice[4].

In our opinion, the court is a mandatory subject of civil procedural legal relations, as an important body of state power, the court administers justice, presides over the judicial process, conducts court proceedings. Furthermore, a civil case is initiated only if the statement of claim is accepted by the judge, procedural actions are taken to consider and resolve the case in court, and a final decision is made on the case. However, Chapter 6 of the current CPC is named as “Participants of Civil Proceedings” and the legislation does not include judges in the list of participants in civil proceedings.

## THE MAIN FINDINGS AND RESULTS

Hence the composition of the subjects of civil procedural legal relations is changing, and as Professor Sh.Sh. Shorakhmetov rightly points out, the scope of subjects of civil procedural relations is determined by the purposes and objectives of their participation in the proceeding[5]. In addition, as Professor M.M. Mamasiddikov noted, change in the range of subjects depends on the stages of the proceeding and the implementation of procedural actions that lead to the involvement of one or another person in the work, as well as the nature of the legal relationship and its subjective structure[6]. However, the above features do not apply to a judge who has the authority to hear and decide a case in court. Because the judge will be

present at the hearing of the civil case in any case, and without his participation the civil process itself will not exist.

Thus, the subjects of civil procedural legal relations are divided into the following two groups: persons participating in the case; persons contributing to the administration of justice.

Following persons can be pointed as persons participating in the hearing of disputes about reinstatement at work: the parties, third parties, their representatives, the prosecutor, public authorities, organizations and individuals participating for the protection of the rights and legally protected interests of other persons in the case (Article 39 of the CPC).

The correct determination of the procedural status of the parties: the plaintiff and the defendant, who have a special status among the persons participating in the case, is an important factor in the correct and timely consideration and resolution of cases on reinstatement at work by the courts.

The peculiarity of the parties of cases on disputes about reinstatement at work is that the parties are the parties to the employment contract. Therefore, the legal literature suggests not to allow to participate the third parties making independent claims on the subject matter of the dispute; and to limit participation of third parties who do not file an independent claim[7].

In the legal literature, there are various disputes about the compatibility of the concepts of “subjects of employment relations” and “parties in employment disputes” or what is the clear boundary between them. In particular, according to the legal scientist L.U. Rahimkulova, the concept of the subject of employment relations has a much broader meaning, and the term “parties” is mostly used within the scope of Civil Procedure Law[8].

One of the brightest representatives of Labor Law, legal scholar A.A. Inoyatov, in his papers, analyzing the description of labor disputes, widely used the term subjects of labor disputes[9].

However, in cases where the employer violates the law in the exercise of labor rights, i.e. terminates the employment contract with the employee in violation of the law or issues an decision to transfer the employee to another job, requires the employee to perform work not specified in the employment contract, the employee has the right to apply to the court with a request for reinstatement of his violated rights.

In turn, in contrast to material law, a different procedure is established in the process of consideration and resolution of the employee’s claim in court. That is, the civil procedural legal relationship under the heading and guidance of a judge is carried out in accordance with the

procedure established by procedure law: a lawsuit is filed, the parties' claims and objections are defined, evidences are presented, the case is prepared and appointed, judicial decision is made, etc. This shows that there are significant differences in the exercise of their rights by participants in procedural and labor legal relations, its specific features, the nature of the relationship between the parties, the specifics of a series of actions for the implementation of the law. All this reflects the essence of the difference between material and procedural law.

In short, the material legal norm includes the norms of behavior that shape the rights and obligations of the subjects, their legal status, as well as their liabilities.

In accordance with the second part of Article 33 of the CPC of the Republic of Uzbekistan, applications against organizations are submitted to the court situated in the place where the organizations have been registered. This means that claims on disputes about reinstatement at work shall be filed in the court of the place where the responsible employer is registered. In this case, if the dismissal order was issued by a separate subdivision of the organization entitled to hire, a legitimate question arises about which court should the employee apply to: the court where the employer is registered or the court where the separate subdivision of the organization entitled to hire?

At this point, it is also important to clearly define to the court located in the place of which organization to apply in order to correctly identify the defendant involved in the case. Indeed, according to paragraph 3 of the first part of Article 195 of the CPC, if the case does not fall within the jurisdiction of this court, the judge returns the application and the documents attached to it to the plaintiff.

In this case, the issuance of an order of dismissal of an employee by a separate structural unit of the organization, which is entitled to hire, is not sufficient for it to be a party to civil proceedings. Such situations may in some cases lead to the involvement of an improper defendant in the hearing of employment proceedings. It should be noted that the resolution of a dispute without the participation of the improper defendant in the case, ultimately leads to the annulment of the judicial decisions issued by the court. Follow mentioned case is an example for this matter.

A. person had filed a lawsuit in the inter-district civil court against the regional branch of Stock company "Yengilsanoatinvest" with the claim for reinstatement at work and recovery of wages for the period of unemployment caused by compulsory termination.

The court approved A's claim. By a ruling of the Court of appeal instance, the judicial decision was cancelled and the case was remanded for reconsideration. The decision of the Appeal Court was cancelled by the decision of the Supreme Court, and the decision of the Court of first instance was upheld. Following a repeated cassation protest, the Judicial Board for Civil Cases of the Supreme Court of the Republic of Uzbekistan cancelled the decision of the Court of Cassation and upheld the ruling of the Court of appeal on the following grounds.

According to the Article 51 of the Charter of the Stock company "Financial Investment Company of Uzbekistan Yengilsanoatinvest" approved by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 179 of April 4, 1994 "On the main directions of degovernment and privatization of enterprises of the Uzbek State Association for the production of light industry goods ("Uzbekyengilsanoat")" the chairman of the board of the company hires and dismisses directors of departments[10].

Although the plaintiff A. was dismissed by the order of the head of the Uzbekyengilsanoat branch, the Court of first instance held the chairman of the board of the Yengilsanoatinvest Stock company liable. The court was represented by a representative of the company's chairman.

According to Article 51 of the Charter of the Financial Investment Company of Uzbekistan "Yengilsanoatinvest", the Court did not take into account the hiring and dismissal of heads of departments by the chairman of the board of the company, the dismissal of employees of the branch of the company by order of the heads of branches, thereby made a mistake that served as grounds for setting aside the decision referred to in paragraph 4 of the Article 3993 of the CPC. Thus the Court of Cassation cancelled that decision and reached a legal opinion.

This shows how important it is to strengthen the list of persons who can act as employers in the labor legislation or establish this in the Labor Code of the Republic of Uzbekistan, not in local documents or by-laws.

It is known that according to the second part of Article 72 of the Labor Code, the employee and the employer are the parties to the employment contract. Thus, in employment disputes, the employee is recognized as the plaintiff and the employer as the defendant.

It should be noted that in the current Labor Code, Chapter II is named "Subjects of labor relations", but this chapter does not include definition of the subjects of labor relations, there have not been fully reflected the status of the employee and the employer as a subject of labor

relations, their characteristics, in which cases individuals may be employers, and issues related to the legal capacity these subjects.

Therefore, in our opinion, the new edition of the Labor Code of the Republic of Uzbekistan regulates in detail the legal status of employees and employers as subjects of labor relations, the fact that employees and employers are subjects of individual labor relations, the recognition of organizations, individual structural divisions of organizations and individuals, regardless of their form of ownership and departmental affiliation, by persons who can act as employers should be established.

In turn, individuals if they are registered as sole proprietors carrying out business activities without forming a legal entity; if they hire domestic workers for self-service and assistance in running the household; if, in cases provided by law, their professional activity must be registered and (or) licensed, and they have entered into an employment relationship with employees in order to carry out this activity, they must be employers.

The time of the emergence of civil procedural capability varies for individuals and legal entities. For legal entities, legal capacity and legal capability arises simultaneously and coincides with the time of its state registration (Articles 41, 44 of the Civil Code).

In civil law, the ability (legal capability) of a citizen to acquire and exercise civil rights by his own actions, to create and perform civic duties for himself is fully formed when he reaches adulthood, that is, at the age of eighteen. According to Academician H.R. Rahmonkulov having legal capability as a citizen creates an opportunity for a citizen to exercise his subjective rights, indicating that a citizen can perform certain actions[11].

Article 42 of the CPC establishes norms of civil procedural capability, according to which the ability to exercise their rights and obligations in court belongs to adult citizens, as well as organizations.

According to paragraph 8 of the Article 2 of the CPC of the Republic of Armenia, minors can independently express their interests in court. In cases provided by law, they shall have the right to be heard in court on matters affecting their interests[12].

However, an analysis of the legal literature shows that some scholars, such as the O.N. Zdrok notes that it should be placed at the disposal of the court to decide participation of the minor in the hearing, supporting his idea with the establishment of the norm stating mandatory participation of the juvenile in court proceedings may deflect the psychological condition of the

juvenile. While D.Yu. Ionova suggests to establish the right of courts not to involve minors in the case[12].

Another jurist, N.V. Letova, argues that in order for a child to exercise his or her rights in court to protect his or her violated rights and legally protected interests, he or she must have equal procedural rights and legal capacity with other participants in the proceedings[14].

## CONCLUSION

In our view, juveniles are considered plaintiffs or defendants in the case, even though their rights and legally protected interests are protected by other persons in the process. Therefore, they have to be involved in the case by the court.

In our opinion, in order to ensure the full protection of the labor rights of minors in the courts, it is necessary to establish in Civil Procedure legislation that the court is obliged to involve minors to participate in such cases personally. If necessary, the court should have the right not to involve these persons in the case.

Therefore, in order to ensure full protection of the rights and legitimate interests of juveniles in the courts, as well as taking into account the views of the legislative practice and legal literature of the CIS member states, it is proposed to improve Article 42 of the CPC and express in following edition:

“The rights and legally protected interests of minors, i.e citizens between the ages of fourteen and eighteen, as well as citizens with limited capability are protected in court by their parents, adoptive parents or guardians. However, in cases provided by law, juveniles, as well as citizens with limited legal capacity, have the right to be heard in court on matters affecting their interests. Thus, court must involve minors and citizens with limited legal capacity to participate in such cases. If necessary, the court has the right not to involve these persons for participation in the case”.

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