

SOME ASPECTS OF IMPROVING THE LEGAL FRAMEWORK OF THE PROSECUTOR IN CIVIL PROCEEDINGS

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ABSTRACT: This article analyzes the powers of the prosecutor in civil proceedings, its legal basis, the legislative experience of foreign countries on this issue. As a result of the analysis, proposals are substantiated aimed at improving the basis for the participation of the prosecutor in the civil process.

KEYWORDS: Civil process, prosecutor, legal framework, powers of the prosecutor, participation in court, grounds, improvement.

INTRODUCTION

In Uzbekistan organizing of prosecutor office, it's activity, as well as, authority of prosecutor were established by the Constitution of the Republic of the Uzbekistan, The law "On the prosecutor office" and other legal acts.

The prosecutor office as independent state body will supervise strictly and uniform observance of laws on the territory of the Republic of Uzbekistan. According to the Constitution of the Republic of the Uzbekistan, The Procurator-General of the Republic of Uzbekistan and the procurators subordinate to him shall supervise the strict and uniform observance of laws on the territory of the Republic of Uzbekistan [1].

According to 2 article of the Law on "The prosecutor office" of the Republic of Uzbekistan, the main tasks of the prosecutor office of the Republic of Uzbekistan are to ensure the rule of law, strengthen the rule of law, protect the rights and freedoms of citizens, protect legal interests of society and the state, the constitutional system of the Republic of Uzbekistan, and prevent offenses [2].

The prosecutor office is considered one of the main constitutional organ, which protect human rights, legal interests of society and the state. Giving the constitutional status to the prosecutor office connects to the role of protecting interests of human, society and the state, providing ensure the rule of law and justice.

Before the profession day of the prosecutors, on 07th January, 2017 year when the president of the Republic of Uzbekistan Shavkat Mirziyoyev met with the prosecutors said that “People can tolerate everything, however, can not tolerate injustice. The role of the prosecutor office should be the high in the sphere of providing justice”.

We have to confess that from the independence of Uzbekistan, activity of the prosecutor office was reformed several times. Especially, adopting the decree of the President of the Republic of the Uzbekistan on 18 April 2017 year, on “Strengthening the role of prosecution bodies in the implementation of socio-economic reforms and modernization of the country, ensuring reliable protection of human rights and freedom” is important step to developing activity of the prosecutor office. According to this document, power of the prosecutor office involved in order to carry out Action strategy of Uzbekistan’s Five-Area Development in 2017-2021 years - to ensure the rule of law in country, democracy, strengthen the rule of law related to carrying out social-economic reforms, as well as, protecting rights and freedoms of human.

Under this decree, Department of Supervision over the implementation of social legislation, Department of Supervision of Economic Legislation, Department of Legal Protection of Business Entities were established as well as changed to other components in the structure of the General Prosecutor office.

THE MAIN FINDINGS AND RESULTS

According to decree the President of the Republic of Uzbekistan on 29 may 2017 year, “ On strengthening payment discipline in the field of electricity and natural gas supply and consumption, as well as the executive system of execution” The Bureau of Enforcement under the Prosecutor General's Office of the Republic of Uzbekistan has been established and its task is to ensure the unconditional execution of court documents and documents of other bodies, illegal connection to the electricity, gas transmission and distribution networks, detection, elimination, prevention of looting and a number of other tasks. After one year in accordance with the Decree of the President of the Republic of Uzbekistan on April 17, 2018 year "On measures to radically improve the system of public administration in

agriculture and water management" Inspectorate for Supervision of Agro-Industrial Complex and Food Security under the General Prosecutor's Office was established [3]. On 7 may 2018 Resolution of the President of the Republic of Uzbekistan "On measures to organize the activities of the Inspectorate for Control over Agro-Industrial Complex and Food Safety under the Prosecutor General's Office of the Republic of Uzbekistan" was adopted.

The analysis of the changes in the legislation on the activities of the prosecutor's office shows that these changes are primarily aimed at protecting the constitutional rights and interests of citizens, the interests of the state and society, the rule of law and the rule of law in the country.

Given the importance of the role of the prosecutor's office in the successful implementation of the above tasks, January 8, 2016 was designated as the Day of Prosecutors of the Republic of Uzbekistan in accordance with the Law "On the establishment of the Day of Prosecutors of the Republic of Uzbekistan".

In the process of liberalization and democratization of the judicial system in the country, special attention is paid to the activities of the prosecutor's office and the improvement of their legal status.

In recent years, the legal framework governing the activities of the prosecutor's office has been improved, a number of amendments have been made to the legislation on their legal status, and priority has been given to strengthening the powers of the prosecutor's office to protect human rights. Now the prosecutor's office has a new legal status and carry out it's activity as a defender of human and civil rights, state and public interests. In this regard, it should be noted that the norms on the participation of the prosecutor in civil proceedings are improving.

It is known that one of the main activities of the prosecutor's office is to participate in the consideration of civil cases in the courts, to protest against illegal court documents (According to 4th article of the law on "The prosecutor office"). Although the activity of the prosecutor's office in enforcing the law is somewhat similar to the courts, the courts focus on the administration of justice, and the prosecutor's office assists the courts in all aspects of the administration of justice.

Although there are similarities in the oversight function of the court and the prosecutor's office in the proper implementation of the law, the courts and prosecutors have different approaches to carrying out these functions.

It should be noted that in connection with the adoption of the new Code of Civil Procedure of the Republic of Uzbekistan[4] (January 22, 2018), there have been changes in the role of the prosecutor in civil proceedings. Now, in civil proceedings, the prosecutor's office fulfill a number of tasks, which were set by law, actively participates in the judicial process and helps to ensure a lawful and fair decision, ruling and decision on the case.

Indeed, unlike other participants in civil proceedings, the grounds on participation of prosecutor in a case do not always depend on the scope of the person whose interests are being protected by the court.

For example, the prosecutor's application for declaring illegal of legal document does not require the identification of who, what kind of rights and legitimate interests have been violated, or the submission of documents proving that the citizen can not file an application for declaring a legal document independently.

In short, in order to ensure the prosecutor's authority to enforce the laws relating to civil proceedings, the prosecutor strictly adheres to the principle of the independence of the courts and the rule of law, and promotes the administration of justice by civil courts.

With the development of various legal relations in our society, the number of appeals to the civil courts has increased, and the number of civil cases arising from various, more complex legal relations that need to be resolved in court has increased. The need for proper and timely, effective protection of the interests protected by law demonstrates the urgency of the prosecutor's participation in civil proceedings.

According to statistics, the number of civil cases and court orders issued in the courts of first instance has increased several times over the past year. For example, in the first half of 2020, the number of civil cases and court orders issued in the courts of first instance in Uzbekistan amounted to 122,772, while in the first half of 2021 this figure almost doubled to 234,477. Although the number of judges working in inter-district courts has increased by 50 times in the first half of 2021 compared to the first half of 2020, the number of civil cases and judicial decisions issued in the first half of 2020 is not higher than in the first half of 2020. (120792/234400) [5].

Such a large volume of work of judges in civil cases, as well as serious disparities in the structure of district courts, their territorial distribution, the number of judges, affect the quality of the review of civil cases.

Deficiencies in this regard lead to the untimely execution of court decisions, the ineffectiveness of enforcement, which reduces the scope of justice, leading to serious objections from the population.

In this situation, all government agencies, including the prosecutor's office, are required to take full advantage of the law enforcement function. Because, the main tasks of the prosecutor's office are to ensure the rule of law, strengthen the rule of law, protect the rights and freedoms of citizens, the interests of society and the state protected by law.

In addition, as noted in the legal literature, the prosecutor's office is recognized as a body that can take measures to protect the violated rights and legitimate interests in quickly, competently and free of charge [6].

In order to improve and increase the effectiveness of our national legislation, it is important to study and compare foreign experience. In particular, the legislative experience of foreign countries in the participation of prosecutors in civil proceedings and in-depth study of scientific research in this area will help to find new materials to enrich our legislation, to solve some problems facing our national civil procedure legislation.

At the same time, the convergence of the positive aspects and aspects of the civil procedure legislation of different countries, the unification of more similar legal institutions will also contribute to the acceleration of international legal integration.

In addition, comparative analysis allows to get acquainted with the effective methods used in a particular area or area of civil procedural legislation during the study of civil procedural legislation of foreign countries.

However, in the process of introducing the experience of another development state in the field of lawmaking into our national legislation, of course, the form of government of that country, the state and timing of the field under study, the reasons for the adopted regulations must be taken into account.

Therefore, a comparative legal analysis of the experience of developed countries, in particular, the United States, Germany, France, the United Kingdom, the Commonwealth of Independent States in the civil procedure legislation on the participation of prosecutors in civil proceedings. The review will play an important role in further improving the legislation, further clarifying the procedural status of the prosecutor in civil proceedings, and identifying modern trends in the participation of the prosecutor in future civil proceedings.

In order to correctly determine the legal status of the prosecutor's office in civil proceedings in foreign countries, it is necessary to determine place of the prosecutor's office in the system of public authorities. After all, the system to which the prosecutor's office belongs determines the scope of its powers.

An analysis of foreign legislation shows that if the prosecutor's office is part of the Ministry of Justice or the judiciary, it is responsible for prosecuting offenders, supporting public prosecution in court, and ensuring legality in detention facilities. If the prosecutor's office belongs to a separate independent system subordinated to the Parliament or the President, then in addition to the above-mentioned functions, the prosecutor's office also has the function of general control over the rule of law, the rights and freedoms of citizens and the legally protected interests of society and the state [7].

In the legal literature, there are cases of classification of the prosecutor's office from its position in the system of state bodies:

1. The prosecutor's office in the system of Ministry of Justice (Belgium, Germany, Denmark, Israel, Holland, Poland, Rumania, Syria, USA, France, Estonia, Japan and others);
2. The prosecutor's office is part of the judiciary and is part of the judiciary (magistracy) located in the court. (Azerbaijan, Bulgaria, Georgia, Spain, Italy, Indonesia, Colombia, Latvia);
3. There is no prosecutor's office at all (Great Britain, India);
4. The prosecutor's office is separated into a separate independent system and is accountable to the country's parliament or president, or both of them (Egypt, People's Republic of China and others) [8].

Therefore, as rightly pointed out in the legal literature, don't have to hurry to copy from the prosecution system of another state. Because, neither well-known legal scholars nor practitioners of foreign countries consider this or that legal system as exemplary, or they do recommend to follow its example.

However, the following two aspects of the prosecutor's involvement in civil proceedings are now more prevalent in the legal literature and in the legal practice of foreign countries: The first direction is the restriction of the rights of the prosecutor, and the second is the strengthening and expansion of his powers and functions in the sphere of protecting the rights [9].

It should be noted that in the legal literature there are also ideas about limiting or completely excluding the participation of the prosecutor in civil proceedings [10].

In our opinion, in the context of economic, political and judicial reforms being carried out in our country and important to protect the rights and freedoms of citizens, the interests of society and the state requires special attention to the participation of prosecutors in the process of hearing and resolving civil cases. Therefore, the participation of the prosecutor in the civil process should be allowed, perhaps there are objective requirements which were described above for participation in this process. Furthermore, as pointed out in the legal literature, it is unreasonable to limit the prosecutor's powers to protect the rights and legitimate interests of low-income, socially vulnerable groups at a time when access to lawyers is limited [11]. Especially, while the provision of free legal assistance by lawyers in civil cases in our country is not legally regulated, those in need of social protection should apply to the prosecutor's office to protect their violated rights and legitimate interests.

Resolving the issue of the need for the participation of the prosecutor in civil proceedings will largely depend on the nature of the prosecutor's interaction with the court and the persons involved in the case, as well as the content of the law enforcement functions of the prosecutor's office.

When we analyze the legal basis for the participation of the prosecutor in civil proceedings in the courts, it becomes clear that these grounds are divided into substantive and procedural.

For example, Article 50 of the Code of Civil Procedure Code of the Republic of Uzbekistan provides an example of the procedural and legal basis for the participation of a prosecutor. It can be shown that if citizen has not opportunity to protect his rights and freedom in civil proceedings, prosecutor has the right to apply to the court with an application for protection of violated rights, freedoms and legitimate interests of citizen.

In addition, according to Article 310 of this Code, an application filed by a prosecutor to declare a citizen limited capacitated as a result of alcohol, drug or psychotropic substance abuse or incapacitated due to mental disorder (mental illness or mental retardation) is also intended to be initiated on.

The proceedings of the missing court case may be reinstated by the court, according to the petition of parties and the prosecutor, as well as on the initiative of the court (Article 340).

According to Article 304 of the Code of Civil Procedure, the court hears adoption cases with the participation of the adoptive parents (recipients), representatives of the guardianship and trusteeship authorities, as well as the prosecutor. According to Article 307 of the Code of Civil Procedure, cases on finding a citizen missing or declaring a citizen dead must be heard in the presence of a prosecutor.

The case on recognition of a citizen as having limited legal capacity and the case on recognition of a citizen as legally incapable (Article 313), The case on hospitalization of the person in a psychiatric hospital or on extension of the period of hospitalization (Article 318) the case of involuntary hospitalization of a person in a specialized department of a TB hospital or extension of the hospitalization (Article 322), the case of declaring a minor fully capable (Article 325), the case on recognition of property (item) as ownerless (Article 329) are considered in the presence of a prosecutor.

The material and legal basis for the participation of the prosecutor in civil proceedings is set out in other legislative acts of the country.]

According to article 268 of this Code, a prosecutor has the right to apply to the court with an application for a labor dispute, along with an employee, a trade union or other employee representative body, an inspector of labor law and an employer.

Under articles 51-54 of the Family Code, Prosecutor has the right to appeal to the court to declare a marriage invalid. The procurator shall have the right to demand that the marriage with a person declared incapable be declared invalid, and the court shall consider the case in the presence of the procurator and the guardianship and trusteeship authority.

Cases of deprivation of parental rights are also considered at the request of the prosecutor. In addition, cases of deprivation of parental rights on the basis of claims of other persons are considered in the presence of the prosecutor, guardianship and trusteeship. (Article 80 of the Family code) [12]

As we can see, civil cases, in which the participation of the prosecutor is mandatory, are closely linked with the socio-political significance of this category of cases, the right to personal inviolability of citizens and the need to protect the legitimate interests of future generations.

The grounds for the prosecutor's participation in the case are different from those of public administration bodies, organizations and individual citizens that protect the rights of other persons.

In particular, such public authorities, while protecting the rights and legitimate interests of other persons, may file a lawsuit only in cases provided by law. If the citizens is unable to personally defend their rights, freedoms and legitimate interests in court due to the state of health, age or other reasons, the prosecutor has the right to apply to the court to protect the violated rights, freedoms and legitimate interests of the citizen (article 50 of Code of Civil Procedure).

Analysis of the legal documents of the member states of Commonwealth of Independent States shows that the grounds for the participation of prosecutor in the case are provided by special laws regulating the activities of the prosecutor's office.

For example, according to the fourth part of Article 27 of the Law of the Russian Federation "On the Prosecutor's Office", in case of violation of the rights and freedoms of citizens protected in civil proceedings, the victim can not personally defend their rights in court due to health, age or other reasons. if the violation of the rights and freedoms of a group of citizens or other circumstances of special social significance, the prosecutor shall file a lawsuit in court or in an arbitral tribunal to protect the interests of the victims and uphold it.

Paragraph 3 of Article 35 of this Code stipulates that prosecutor has the right to apply to a court or take action at any stage of the proceedings if the procedural legislation of the Russian Federation requires the protection of the rights of citizens and the legally protected interests of society or the state [13].

The first part of Article 45 of the Law of the Republic of Belarus "On the Prosecutor's Office" prosecutor participate in the consideration of cases related to the implementation of civil, business or economic (economic) activities by High court of the Republic of Belarus, High economic court, first instance of regions and Minsk economic court, military court of Belarus, economic court of regions and Minsk city and special economic courts [14].

Under legislation of Republic of Armenia, prosecutor appeal to the court in order to protect interests of the state in civil preceding. For instance, according to the Law of the Republic of Armenia "On the Prosecutor's Office", if property interests of state are violated, prosecutor or according his demand another state body or another official person appeal to the court.

Until appealing to the court on protecting interests of the state, the prosecutor will have the right to notify the relevant persons about filling lawsuit and claim on compensating for damage. (4 paragraph of 27 article).

6 paragraph of this article stipulates that if there are grounds to apply to the court to protect interests of the state, in order to prepare of the documents the prosecutor will have the following rights:

1. Carrying out inspecting in state bodies, local self-government bodies and non-profit organizations, requesting and receiving from them legal document and other information;
2. Requesting and receiving explanations from official persons of state bodies and local self-government bodies.

However, the prosecutor's authority should not be out of scope of protecting state interests. (8 paragraph of the 27 article).

We can see participation of the prosecutor in civil cases relating to protecting to state interests in legislative of the Republic of Kazakhstan.

For instance, according to the article 4 of the Law of the Republic of Kazakhstan "On the Prosecutor's Office" has the following rights:

1. Protection and restorations of the rights and freedoms of a human and a citizen, legitimate interests of legal entities, society and the state;
2. Identification and eliminations of violation of the Law, causes and conditions contributing to them, as well as their consequences;
3. Coordination of activity of law enforcement and other state bodies on ensuring legality, law and order and struggle against criminality;
4. Other tasks determined by the Law and acts of The President of the Republic of Kazakhstan.

But, paragraph 2, article 50 of Code of Civil Procedure of the Republic of Uzbekistan was changed and altered by the Law "On changes and additions to the code of civil procedure of the Republic of Uzbekistan in connection with the improvement of the institute of the review of court decisions". According to this, prosecutor has the right to attend to in cases provided by the law and in cases initiated by the appeal of prosecutor. In addition, participating in civil cases initiated by appeal of others is prohibited.

It is necessary to extend the authority of the prosecutor in civil proceedings in the next stages of improvement of the Code of Civil Procedure.

Legal scholars who conducted special research on experience of foreign countries in the participation of prosecutor in the protection of interests of the state and society in court, appreciate the role of the prosecutor in the protecting the interests of the state and society [15].

CONCLUSION

In short, it should be noted that the norms on the participation of the prosecutor in civil cases are determined by the socio-political significance of this category of cases, the right to personal inviolability of citizens and the need to protect the legitimate interests of future generations.

In addition, participation of prosecutor in consideration of cases due to urgency, legality of cases.

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