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PERSONS IN LABOR DISPUTES ON THE REINSTATEMENT AND THEIR PROCEDURAL AND LEGAL STATUS

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ABSTRACT

The article deals with the issues of subjects of civil procedural legal relations, their civil procedural legal capacity and personality, persons and parties involved in labor disputes on the reinstatement, their procedural and legal status and ways to improve this institution, current trends, problems in legislation and ways of addressing them.

KEYWORDS

Labor dispute, reinstatement, persons involved in the case, procedural legal capacity, legal personality, parties, current trends, national legislation, problems and ways of addressing them.

INTRODUCTION

Civil procedural legal relations are relations between the court and the persons participating in the case, which arise as a result of the consideration of a specific civil case and are regulated by the rules of civil procedural law.

In the theory of civil procedural law, various opinions 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 involved in the case; persons facilitating the administration of justice [1, p 64] M. K. Treushnikov, expressing his opinion on the division of subjects of civil procedural legal relations into three groups, as above, includes in the first group, i.e. a group of persons resolving civil



cases, along with the court, the bodies for the execution of judgments [2, p. 37]. Unlike the scientists mentioned above, M.S. Shakaryan divides all subjects of civil law relations into the following two groups:

- 1) courts: a judge considering cases in a single and collegiate composition;
- 2) participants in the process: persons participating in the case; justice facilitators [3, cp. 46].

Analyzing the above opinions, we can conclude that since the execution of judgments is not vested with the authority to administer justice in civil cases, such as the courts, it would be wrong to classify the enforcement bodies of judgments in the first group as a mandatory subject of civil procedural legal relations.

Also, agreeing with the opinion of the lawyer S.A. Yakubov, who conducted a special study of the parties in a civil process, it would be wrong to include courts and judges in the composition of the subjects of civil procedural legal relations. According to S.A. Yakubova, the Code of Civil Procedure divides the subjects of civil procedural legal relations into two groups: persons participating in the case and persons assisting in the administration of justice [4, p. 6].

THE MAIN FINDINGS AND RESULTS

In our opinion, the court is an obligatory subject of civil procedural legal relations, as an important body of state power, the court administers justice, presides over the trial, conducts the trial. In addition, a civil case is initiated only if the judge accepts a statement of claim, procedural actions are taken to consider and resolve the case in court, and a final decision on the case is made. In addition, Chapter 6 of the current Code of Civil Procedure is entitled “Participants in civil proceedings” and the legislation does not include judges in the list of participants in civil proceedings.

At the same time, the composition of the subjects of civil procedural legal relations is changing, and, as Professor Sh.Sh. Shorakhmetov, the circle of subjects of civil procedural relations is determined by the goals and objectives of their participation in the process [5, p. 49]. In addition, Professor M.M. Mamasiddikov noted that the change in the circle of subjects depends on the stages of the process and the implementation of procedural actions leading to the involvement of a particular person, as well as on the nature of the legal relationship and its subjective composition [6, p. 102]. However, the above features do not apply to the judge, who has the authority to consider and resolve the case in court. Because the judge in any case will be present at the consideration of the civil case, and without his participation there will be no civil process itself.

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

Persons participating in disputes on reinstatement may be: parties, third parties, their representatives, the prosecutor, public authorities, organizations and persons involved in protecting the rights and legally protected interests of other persons in the case (Article 39 of the Code of Civil Procedure).

The correct determination of the procedural status of the parties, i.e. the plaintiff and the defendant, who have a special status among the persons involved in the case, is an important factor in the correct and timely consideration and resolution of cases in the courts for reinstatement.

The peculiarity of the parties to a labor dispute is that its parties are the parties to the employment contract. Therefore, in the legal literature there is an opinion that in this category of cases third parties who do not file

independent claims should not be involved, and the participation of third parties who do not file independent claims should be limited [7, p. 203].

In the legal literature, there are various disputes about the compatibility of the concepts of “subjects of labor relations” and “parties of labor disputes” or about the existence of a clear boundary between them. In particular, according to the legal scholar L.Yu. Rakhimkulova, the concept of the subject of labor relations has a much broader meaning, and the term “parties” is used more within the framework of civil procedural law [8, p. 39].

One of the brightest representatives of labor law, legal scholar A.A. Inoyatov, in his scientific works, analyzing the characteristics of labor disputes, widely used the term subjects of labor disputes [9, p. 351].

Indeed, in the field of substantive law, it is customary to call the participants in legal relations “subjects”. In particular, the title of Chapter II of the Labor Code is “Subjects of labor relations”. Chapter 6 of the Code of Civil Procedure of our country is entitled “Participants in civil proceedings.” Chapter 6 of the EPC of the Republic of Uzbekistan is also called “Participants in economic legal proceedings”[10], etc.

At this point, we will analyze the correlation and similarity of the terms “subjects” and “parties” in labor law and civil procedural law.

For example, the right of an employee to work is a material right, i.e. a labor right under which a citizen enters into an employment relationship with the employer to exercise this right, enjoys other rights, such as compensation for harm caused to health or property in connection with work, in employment conditions. All this is the realization of the employee’s own material right.

However, if the employer violates the law in the exercise of labor rights, that is, terminates the employment contract with the employee in violation of the law or issues an order to transfer the employee to another job, requires the employee to perform work not specified in the employment contract, then the employee has the right to apply to the court with a statement about reinstatement.

In turn, unlike substantive law, a different procedure for considering and resolving an employee’s claim in court has been established. That is, civil procedural legal relations are conducted under the guidance and guidance of a judge in the manner prescribed by procedural legislation: a claim is filed, the requirements and objections of the parties are identified, evidence is presented, a case is prepared and appointed, the case is heard in court, a decision is made, etc. This indicates the presence of significant differences in the implementation 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 set of actions to ensure compliance with the law. All this reflects the essence of the difference between substantive and procedural law.

In a word, the substantive legal norm includes the norms of behavior that form the rights and obligations of subjects, their legal status, as well as their obligations.

At this stage, analyzing the terms “subjects” and “parties” in labor law and civil procedural law, agreeing with the opinion that “subject” is a broader concept than the concept of “sides” in legal literature, the parties to legal relations always have the status subject, but not all subjects entering into legal relations cannot have the legal status of the parties [11, p. 57], we present the following evidence.



According to the second part of Article 33 of the Code of Civil Procedure of the Republic of Uzbekistan, applications regarding organizations are submitted to the court at the place of their registration. This means that claims for reinstatement at work will be filed with the court at the place of registration of the employer. In this case, the correct question arises, if the dismissal order is issued by a separate division of the organization that has the right to hire, which court should the employee apply to: the court at the place of registration of the employer or the court at the place of registration of a separate division of the organization that has the right to hire?

At this point, it is also important to clearly determine which court to apply to the court at the location in order to correctly identify the defendant in the case. After all, according to paragraph 3 of the first part of Article 195 of the Code of Civil Procedure, if the case is not under the jurisdiction of this court, the judge returns the application and the documents attached to it to the plaintiff.

In this case, issuing an order to dismiss an employee by a separate structural unit of an organization that has the right to hire is not enough for him to become a party to civil proceedings. This situation may, in some cases, lead to the involvement of the wrong defendant in reinstatement disputes. It should be noted that the resolution of a dispute involving the wrong defendant will eventually lead to the annulment of the judgment. Here is an example.

A. filed a claim with the Interdistrict Civil Court of Mirzo Ulugbek District against the regional branch of Engelsanoatinvest for reinstatement and recovery of wages for the period of forced unemployment against the company's management. The court granted his request. The decision of the court was canceled by the court of appeal, the case was sent for a new trial. The

decision of the court of appeal was canceled by the decision of the Supreme Court, the decision of the court of first instance was left unchanged. After a second cassation appeal, the Judicial Collegium for Civil Cases of the Supreme Court of the Republic of Uzbekistan dated February 15, 2022 canceled the decision of the Court of Cassation and upheld the decision of the Court of Appeal on the following grounds.

In accordance with Article 51 of the Charter of the Financial and Investment Company "Legprominvest", approved by the Decree of the Cabinet of Ministers of the Republic of Uzbekistan No. 179 "On the main directions of denationalization and privatization of enterprises of the Uzbek state association for the production of light industry goods ("Uzbeklegprom")" dated April 4, 1994, the chairman of the board of the company hires and dismisses directors of departments [12].

Claimant A. Despite the fact that he was dismissed by order of the head of the Uzbeklegprom branch, the court of first instance brought the chairman of the board of Legprominvest JSC as a defendant. His representative was present at the court on behalf of the chairman of the board of the company. According to Article 51 of the Charter of the Engelsanoatinvest Uzbekistan Financial and Investment Company, the court did not take into account the hiring and dismissal of the 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 the branch, thereby violating Article 3993. He made a mistake that served as the basis for the annulment of the decision referred to in paragraph 4, and, accordingly, the cassation instance canceled this decision and came to a legal opinion [13].



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

It is known that according to the second part of Article 72 of the Labor Code, the employee and the employer are parties to the employment contract. Therefore, in labor 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 called “Subjects of labor relations”, but this chapter does not define the subjects of labor relations, the status of the employee and the employer as a subject of labor relations, their characteristics, in which cases individuals can be employers, and questions related to the legal capacity and capacity of these persons are not reflected in full.

Therefore, in our opinion, it is necessary in the new edition of the Labor Code of the Republic of Uzbekistan to regulate in detail the legal status of employees and employers as subjects of labor relations, that employees and employers are subjects of individual labor relations, to recognize organizations, individual divisions of organizations and individuals who have the right employment, regardless of the form of ownership and departmental affiliation, by persons who may act as employers.

In turn, it must be established that individuals, if they are registered as individual entrepreneurs, carrying out entrepreneurial activities without forming a legal entity; if they hire domestic workers to serve them and help with household chores; if, in cases provided for by law, their professional activities are subject to registration and (or) licensing, and they have entered into labor relations with employees in order to carry out this activity, then they may be employers.

It is known that one of the important requirements for the subject of civil procedural legal relations is the presence of legal capacity and legal capacity. Article 41 of the Code of Civil Procedure provides for the norm of civil procedural legal capacity, according to which the ability (legal capacity) of all citizens and organizations to have civil procedural rights and obligations is recognized equally [14].

The terms for the emergence of civil procedural capacity for individuals and legal entities differ. For legal entities, legal capacity and legal capacity arise simultaneously and coincide with the moment of their state registration (Articles 41, 44 of the Civil Code).

In civil law, the ability of a citizen to acquire and exercise civil rights by his actions, to create and fulfill civil obligations for himself (capacity) is fully formed upon reaching the age of eighteen. Academician Kh.R. Rakhmonkulov noted that having civil capacity creates an opportunity for a citizen to exercise his subjective rights, indicating that a citizen can perform certain actions [15, p. 24].

Article 42 of the Code of Civil Procedure establishes the norms of civil procedural capacity, according to which the opportunity to exercise their rights and obligations in court belongs to adult citizens and organizations.

The rights and legally protected interests of minors, that is, citizens aged fourteen to eighteen years, as well as citizens recognized as having limited legal capacity, are protected in court by their parents, adoptive parents or guardians. However, this does not deprive minors and citizens with limited legal capacity of the right to personally participate in these cases.

However, procedural legislation provides that minors also have the right to personally defend their rights and legally protected interests in court in cases arising from

labor relations and agreements related to the disposal of wages or other income received. The issue of involving their parents, adoptive parents or guardians to provide assistance to minors in such cases is decided by the court [16].

The Civil Procedure Law grants minors the right to participate in legal proceedings by protecting their rights and legally protected interests in court in cases arising from labor relations and agreements related to the disposal of wages or other income received.

However, an analysis of law enforcement practice shows that these persons are almost never involved in cases in which the rights and legally protected interests of these persons are protected. This, in turn, is explained by the fact that their parents, adoptive parents or guardians are involved in the process, as well as the absence in the country's civil procedure legislation of the norm that the court should involve minors in the process. After all, minors are considered plaintiffs or defendants in the case, even though their rights and legally protected interests are protected by other persons in the process, and, of course, participation in the court case is mandatory.

The Code of Civil Procedure of most of the studied CIS countries establishes norms on the mandatory participation of minors in court proceedings. For example, Article 37 of the Civil Procedure Code of the Russian Federation [17, p. 97], Article 59 of the Code of Civil Procedure of the Republic of Belarus [18], Article 29 of the Code of Civil Procedure of Ukraine [19], Article 45 of the Code of Civil Procedure of Kazakhstan [20].

According to paragraph 8 of Article 2 of the Code of Civil Procedure of the Republic of Armenia, minors can independently express their interests in court. In cases provided for by law, they have the right to be heard in court on matters affecting their interests [21].

However, the analysis of legal literature shows that some scientists, for example, O.N. Zdrok, believes that establishing the mandatory participation of minors in the trial may in some cases affect the psychological state of the minor, so the question of their involvement in the process should be left to the court. Whereas D.Yu. Ionova proposes to establish the right not to involve minors in courts [22, p. 29].

According to another jurist, N.V. Letov, in order for a child to exercise his rights in court to protect his violated rights and legally protected interests, he must have equal procedural rights and legal capacity with other participants in the process [23].

In our opinion, minors are considered plaintiffs or defendants in a case, although their rights and legally protected interests are protected by other persons in the process. Therefore, they should be taken to court.

In our opinion, in order to ensure the full protection of the labor rights of minors in courts, it is necessary to establish in the civil procedural legislation the need for the court to involve minors in personal participation in such cases. 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 minors in courts, as well as taking into account the opinion of legislative practice and the legal literature of the CIS member states, it is proposed to state Article 42 of the Code of Civil Procedure in the following wording:

“The rights and legally protected interests of minors, that is, citizens aged fourteen to eighteen years old, as well as citizens recognized as having limited legal capacity, are protected in court by their parents, adoptive parents or guardians. However, in cases stipulated by law, minors, as well as citizens recognized as having limited legal capacity, have the right to be

heard in court on issues affecting their interests. Therefore, the court must involve minors and citizens recognized as having limited legal capacity to participate in such cases personally. If necessary, the court has the right not to involve these persons in the case”.

It is known that, in accordance with Article 39 of the Code of Civil Procedure of the Republic of Uzbekistan, parties, third parties, their representatives, applicants and other interested persons in special judicial proceedings, prosecutors, government bodies, organizations and some persons involved in protecting the rights and legally protected interests of others are recognized process participants [24].

Not all participants in the process provided for in Article 39 of the Code of Civil Procedure of the Republic of Uzbekistan participate in the dispute on reinstatement. The main reason for this is the dispute over reinstatement cases, which are considered in lawsuit proceedings. Therefore, parties, third parties, their representatives, the prosecutor, government bodies and organizations involved in protecting the rights and legally protected interests of other persons in the case are involved in this category of cases.

As noted in the legal literature, one of the features of this category of disputes is that the composition of the parties to labor disputes is strictly defined by the employment contract and the law [25, p.38]. In connection with the participation of the plaintiff-employee and the defendant-employer in a labor dispute, third parties who make independent claims in this category of cases do not participate, and third parties who do not make independent claims are allowed in accordance with Article 184 of Art.

In disputes about the reinstatement at work, the central place among the participants in the trial is

occupied by the parties, i.e. the plaintiff is the employee and the defendant is the employer. As Professor M.M. Mamasiddikov, it is the parties that are the source of disputes arising from civil law relations, civil cases are initiated on their initiative, it is the conclusion of an amicable agreement between them that entails the termination of the proceedings, and so on. The parties play a central role not only in the civil but also in the economic process. In particular, in his studies K.S. Avezov puts forward the opinion that among the persons participating in economic relations, the parties occupy a separate and main place, because, in the consideration of any cases in court, there must be parties, a disputable relationship also arises between them, they come into the legal field as two opposite sides on the subject of the dispute [26, p.10].

According to Article 43 of the Code of Civil Procedure, the plaintiff (applicant) and the defendant are parties to the civil process. The plaintiff is a person who applied to the court or filed a claim in order to protect his violated or disputed rights or legally protected interests. The defendant is the person against whom the claim is brought.

As noted above, in labor disputes, the plaintiff - the employee and the defendant - are the employer, and the dispute between them arises over the application of labor law, and the dispute refers to civil courts. Whoever filed a claim for reinstatement (prosecutor, trade union), the employee is recognized as the plaintiff, and the employer as the defendant.

Lawyer D.A. Safina admits that even in cases of dissatisfaction with the decision of the commission on labor disputes, the employer initiates a case in court, he will still be considered a defendant, the consideration of labor disputes by the commission on labor disputes and in court take place in a single system, it turns out that the parties who have received

the status of a plaintiff and the defendant at the beginning of procedural legal relations, until the end of the trial they retain their status [27, p. 194-195]. However, one cannot fully agree with this opinion of the scientist. Because the employer is dissatisfied with the decision of the commission on labor disputes, and if a civil case is initiated as a result of filing a lawsuit, he will receive the status of a plaintiff in the case, not a liability. Indeed, according to Article 43 of the Code of Civil Procedure, a plaintiff is a person who has applied to the court for the protection of his violated or disputed rights or legally protected interests, and in this case, the plaintiff is the employer who has applied to the court. In this case, the person against whom the claim is brought, i.e. the employee, is liable. In addition, the opinion of the legal scholar D.A. Safina does not apply to reinstatement cases. This is due to the fact that the labor dispute committee is not authorized to consider disputes about reinstatement.

One of the important conditions for the exercise of the right to apply to the court in order to protect violated rights and legitimate interests in court is the presence of procedural capacity.

The opportunity to exercise their rights and obligations in court belongs to adult citizens and organizations. The rights and legally protected interests of minors, that is, citizens aged fourteen to eighteen years, as well as citizens recognized as having limited legal capacity, are protected in court by their parents, adoptive parents or guardians. However, this does not deprive minors and citizens recognized as having limited legal capacity of the right to personally participate in such cases (Article 42 of the Code of Civil Procedure).

One of the features of labor disputes is that, in addition to the above rule, minors have the right to personally defend their rights and legally protected interests in court in cases arising from labor relations and

agreements related to the management of wages or other income (part three of Article 42 GPC).

In addition, a minor may not have legal capacity in cases arising from other categories of legal relations (for example, civil, housing, etc.), but he has the right to exercise his procedural rights and obligations in full in labor cases [28. 14].

At the same time, in the legal literature on the case of the restoration of minors to work, various opinions are put forward about the age of the plaintiffs' procedural capacity. In particular, according to the opinion of the legal scholar M.M. Mamasiddikova, the procedural capacity of minors in labor matters begins from the moment of their employment, i.e. from the day they realize their working capacity [29, p.38]. Another group of scientists argues that the worker's ability to work follows from his procedural capacity [30, p.6]. At first glance, the opinions expressed by the above-named scientists may seem different, but a general conclusion can be drawn from them. That is, the ability of minor plaintiffs to exercise their rights and obligations in court, that is, civil procedural capacity begins from the moment they are hired in the manner prescribed by law.

According to article 77 of the Labor Code of the Republic of Uzbekistan, employment is allowed from the age of sixteen. In order to prepare young people for work, it is allowed to hire students from general education schools, secondary specialized, vocational educational institutions to perform light work that does not harm their health and moral development, does not violate the learning process, in their free time from study - upon reaching the age of fifteen from written consent of one of the parents or one of the persons replacing parents [31].

However, the question arises as to whether a minor worker can be incompetent in other categories of cases in court arising from labor relations.

When answering such questions, one should take into account the specifics of a labor dispute, especially the features of the legal capacity and capacity of the parties to this category of disputes. Therefore, it is advisable to fix the features of labor legal capacity and legal capacity in a separate article of the Labor Code of the country. According to it, the ability to have labor rights and obligations (working capacity) and the ability of a citizen (individual) to acquire and exercise labor rights, take on and fulfill labor duties (working capacity)) of all citizens should be equally recognized in the Republic of Uzbekistan as foreign citizens, persons without citizenship, unless otherwise provided by the legislation of the Republic of Uzbekistan or international treaties, it is proposed to determine the simultaneous occurrence of the ability to work and legal capacity of a citizen (individual) from the age of sixteen. This indicates that the minor has procedural capacity in court in other categories of cases arising from labor relations, and eliminates disputes on this issue.

Here we will pay attention to another controversial issue related to the composition of persons participating in labor disputes.

It is known that the new Code of Civil Procedure of the Republic of Uzbekistan, which entered into force on April 1, 2018, includes Chapter 6 entitled "Participants in civil proceedings". Previously, the Code of Civil Procedure of August 30, 1997 contained Chapter 5, entitled "Participants in Proceedings", which included the parties, third parties, their representatives, the prosecutor, government bodies, organizations and persons involved in protecting the rights and legally protected interests of other persons [32]. Unlike this

norm, although in Chapter 6 of the new Code of Civil Procedure the parties, third parties, their representatives, applicants and other interested persons in special proceedings, the prosecutor, other persons participating in the protection of rights and legally protected interests are recognized as persons, the norms relating to "representation in court", are placed in a separate chapter 7. It is difficult to understand whether the legislator intended to show that representation in court has a separate legal status from participants in civil proceedings, or representation in court does not belong to the category of persons participating in the case.

In our opinion, the legislator took into account the experience of the civil procedural legislation of foreign countries in terms of the division of representation in court. Consequently, the issues of representation in court in the Code of Civil Procedure of the Russian Federation are provided for in Chapter 5, separate from Chapter 4 of the Code, entitled "Persons participating in the case and other participants in the process." There are specific reasons for this. Because, according to Article 34 of the Code of Civil Procedure of the Russian Federation, representatives of the court are not part of the persons participating in the case. Parties, third parties, prosecutors, persons who have applied to the court for the protection of the rights, freedoms and legitimate interests of other persons provided for in Articles 4, 46 and 47 of this Code, or participating in giving an opinion, applicants in a special proceeding and other interested persons who are persons involved in the case [33].

CONCLUSION

Thus, based on the fact that representatives in court are not included in the list of persons participating in the case, they are defined in a separate chapter. However, Article 39 of the Code of Civil Procedure of



the Republic of Uzbekistan, entitled “Persons participating in the case”, recognized the parties and representatives of third parties as participating in the case, so there was no need to establish representation in court in a separate section. In addition, although representation in court is defined in a separate chapter, it is natural to conclude that a separate chapter should be allocated to other persons participating in the case independently (for example, the prosecutor).

The situation is similar in the Code of Civil Procedure of the Republic of Kazakhstan. That is, according to Article 43 of the Code of Civil Procedure of the Republic of Kazakhstan, representation in court is not included in the list of persons participating in the case, and Chapter 7, separate from Chapter 5 “Persons participating in the case”, provides for representation in court. Chapter 6 is entitled “Other Persons Involved in the Case” and establishes rules related to the consultant, court clerk, bailiff and interpreter, as opposed to persons participating in the case [34].

Based on the foregoing, it can be concluded that there are insufficient grounds for singling out judicial representation in Chapter 7 of the Code of Civil Procedure of the Republic of Uzbekistan and the inappropriateness of separating it into a separate chapter, since judicial representatives are also involved in the case (Article 39).

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