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ISSUES OF PROTECTING THE LABOR RIGHTS OF CITIZENS IN COURTS BY THE PROSECUTOR

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ABSTRACT

The participation of the prosecutor in the consideration of civil cases in court is one of the long-standing, main and lasting areas of activity of the prosecutor's office of our country.

Article 4 of the Law of the Republic of Uzbekistan "On the Prosecutor's Office" dated August 29, 2001 (in a new edition) provides for participation in the consideration of civil cases in courts, protesting judicial acts that do not comply with the law - as the main activities of the prosecutor's office [1].

KEYWORDS

Civil Procedure, courts, protesting judicial, rights, freedoms, protesting legal acts.

INTRODUCTION

In article 3 of the first Law of the Republic of Uzbekistan No. 746-XII "On the Prosecutor's Office", adopted on December 9, 1992, participation in the consideration of civil cases in courts, protesting judicial acts that do not comply with the law is also defined as one of the main activities of the prosecutor's office [2].

If we turn to history, the Civil Procedure Code of the Uzbek SSR, which was in force before the introduction of the Code of Civil Procedure of the Republic of Uzbekistan, adopted after our country gained independence, provided that prosecutors exercise control over the specific implementation of its laws in civil proceedings, it was also established that the



prosecutor at all stages of the civil process is obliged to take timely measures provided for by legislative acts to eliminate any violations of the law, regardless of who these offenses come from [3].

Article 46 of the Code of Civil Procedure of the Republic of Uzbekistan, adopted on August 30, 1997, also provides for the participation of the prosecutor in civil proceedings, according to which the prosecutor has the right to apply to the court with a statement in defense of the rights of legally protected interests of other persons, and also to participate from the beginning of the proceedings initiated on the initiative of other persons, it is also stipulated that the participation of the prosecutor in the proceedings of a civil case is mandatory in cases where it is provided for by law or when the need for the participation of the prosecutor in this case is recognized by the court, as well as in cases initiated at the request of the prosecutor [4].

According to Article 50 of the Civil Procedure Code of the Republic of Uzbekistan, adopted on August 30, 1997, if a citizen is not able to personally defend his rights, freedoms and legitimate interests in court for health reasons, age or other reasons, the prosecutor has the right to apply to the court with an application for protection of violated rights.

The prosecutor has the right to participate in the proceedings of a civil case only in cases provided for by law, as well as in cases initiated at the request of the prosecutor [5].

The activities of the prosecutor in court to protect the rights of employees are one of the most pressing issues of prosecutorial supervision. At present, such cases of violation of labor rights as employment of citizens, termination of an employment contract, dismissal, payment of wages, benefits and compensations, etc.

are common in our republic. The settlement of disagreements between the employee and the employer, who are parties to labor disputes, due to unequal opportunities, status, is considered somewhat difficult. Due to the fact that the employee is in a subordinate position in relation to the employer, and he is not always ready for a conflict with the employer, the fear of losing his job at a time when society faces big problems regarding current employment leads to the fact that the employee suffers a violation of their labor rights over time. This, in turn, also indicates that labor offenses are hidden. At the moment, the following data also show that this issue is very relevant even on a global scale: the number of people who face discrimination in labor relations is more than one hundred million, 255 million jobs were lost in 2020 alone [6], as well as \$3.7 trillion in wages [7].

On the scale of our country, one can see that from year to year the number of labor disputes in courts is increasing. For example, when performing labor tasks in the 1st half of 2020, the number of cases on which a decision was made was 43 cases on compensation for property damage to employees (54 in the corresponding period of 2021), 760 (1460) cases on reinstatement, 731 (1011) cases on the recovery of wages, while the total number of cases on labor disputes for the corresponding period of 2021 amounted to 2525, i.e. increased by 991 compared to the same period in 2020 [8].

THE MAIN FINDINGS AND RESULTS

According to the data for January-June 2022, the number of cases considered by civil courts regarding labor disputes amounted to 4974, of which in 3041 cases the claim was satisfied, in 851 cases it was rejected, in 902 cases the claim was not considered, and in 180 cases - clerical work terminated [8].



All of the above indicates that the improvement of legislative acts aimed at ensuring the participation of the prosecutor in the effective protection of the labor rights of the parties to the employment contract through the court, the study of the procedural and legal status of the prosecutor in the effective protection of labor rights, which are important social rights of citizens, the study of the procedural features of participation of the prosecutor in the consideration of cases on reinstatement in court is becoming increasingly relevant.

The international conventions and recommendations of the International Labor Organization, the Constitution of the Republic of Uzbekistan, the Labor Code, the Code of Civil Procedure, the Law “On the Prosecutor’s Office”, which are the current legal acts regulating the activities of the Prosecutor’s Office to protect the labor rights and legitimate interests of employees, establish the procedural rights of the prosecutor in civil process and legal means of their implementation. However, the current Labor Code does not contain a special provision providing for guarantees related to ensuring the labor rights of employees. Consequently, Article 8 of the current Labor Code is limited to the fact that the protection of the labor rights of every person is guaranteed, and that this protection is carried out by the bodies that verify and control compliance with labor legislation, as well as by the bodies that resolve labor disputes. . Therefore, it is proposed to include in the Labor Code a separate article providing for a guarantee of ensuring the fulfillment of labor rights and labor duties, and to establish in it the means and methods to ensure the fulfillment of labor rights and labor duties. It is the establishment of these means and methods that serves as the legal basis for the implementation of prosecutorial supervision over the implementation of labor legislation. In this regard, as means and methods

to ensure the fulfillment of labor rights and labor duties, it is proposed to establish the following:

Realization of the rights of employees and employers established in labor legislation and other regulations that include relations on labor rights, as well as in an employment contract;

Fulfillment of the obligations of employees and employers established in labor legislation and other regulations, which include relations on labor rights, as well as in an employment contract;

Protection of labor rights of employees and employers and restoration of violated rights;

The responsibility of the employer for violation of labor legislation, labor rights of employees, as well as the responsibility of the employee for violation of labor duties.

The study of the legislative experience of foreign countries on the protection of the labor rights of citizens by the prosecutor in the courts is important. According to Article 133 of the Constitution of the Republic of Azerbaijan [9] and Article 40 of the Civil Procedure Code of the Republic of Azerbaijan [10], if it is necessary to protect the rights of citizens, the prosecutor has the right to apply to the court with a statement or participate in the trial at any stage of the case. The prosecutor is obliged to participate in civil proceedings when the need for the participation of the prosecutor in the case is provided for by law or recognized by the court.

In Armenia, the prosecutor has the right to apply to the court in order to protect the interests of the state (Article 103 of the Constitution, part 3 of Article 37 of the Code of Civil Procedure) [11]. The prosecutor has the right to protest against court documents in a case considered with his participation (Part 3 of Article 28 of

the Law “On the Prosecutor’s Office”). At the same time, the Prosecutor’s Office of Armenia does not have the authority to protect the labor rights of citizens in court [12].

In accordance with the first part of Article 124 of the Constitution of the Republic of Moldova, the prosecutor’s office protects the rights and freedoms of citizens, promotes the administration of justice [13]. In accordance with Article 71 of the Civil Procedure Code of the Republic of Moldova and Article 9 of the Law “On the Prosecutor’s Office”, if it is necessary to protect the rights and legitimate interests of minors, the elderly, disabled people who cannot independently defend their rights, the prosecutor has the right to go to court [14].

In this case, the prosecutor has procedural rights and obligations, in addition to the right to conclude an agreement as a participant in the process.

The legislation of the Republic of Kazakhstan also provides for the participation of the prosecutor in civil proceedings, mainly in order to protect the interests of the state. For example, Article 4 of the Law of the Republic of Kazakhstan “On the Prosecutor’s Office” defines the tasks of the Prosecutor’s Office, according to which the Prosecutor’s Office performs the following tasks within the framework established by law:

- 1) Protection and restoration of the rights and freedoms of man and citizen, the legitimate interests of legal entities, society and the state;
- 2) Identification and elimination of violations of the law, the causes and conditions that contribute to them, as well as their consequences;

3) Coordination of the activities of law enforcement and other state bodies to ensure their legality, law and order and the fight against crime;

4) Other tasks established by the laws of the Republic of Kazakhstan and documents of the President [15].

It is appropriate to note that a number of changes have occurred in the legislative experience of Uzbekistan regarding the participation of the prosecutor in civil proceedings. In particular, as defined in Article 46 of the former Civil Procedure Code of the Republic of Uzbekistan (CPC), the prosecutor has the right to apply to the court with a statement in defense of the rights and legally protected interests of other persons, and also has the right to participate from the beginning of the proceedings initiated on the initiative other persons. The participation of the prosecutor in the proceedings of a civil case is mandatory in cases where it is provided for by law or when the need for the participation of the prosecutor in this case is recognized by the court, as well as in cases initiated at the request of the prosecutor [16]. However, in the second part of Article 50 of the Code of Civil Procedure of the Republic of Uzbekistan, approved by the Law of the Republic of Uzbekistan No. 460 dated January 22, 2018, it is established that the participation of the prosecutor in the proceedings of a civil case is mandatory in cases where this is provided for by law or when the need for the participation of a prosecutor in this case is recognized by the court, as well as in cases initiated at the request of the prosecutor [17]. However, the Law of the Republic of Uzbekistan dated January 12, 2021 No. 661 “On amendments and additions to the Civil Procedure Code of the Republic of Uzbekistan in connection with the improvement of the institute for the review of court decisions” amended and supplemented Article 50 of the Code of Civil Procedure of the Republic of Uzbekistan. According to



which, it is established that the prosecutor has the right to participate in the proceedings of a civil case only in cases where this is provided for by law, as well as in cases initiated at the request of the prosecutor. The obligatory participation of the prosecutor in the proceedings of a civil case is excluded in cases where the court found it necessary for the participation of the prosecutor in the case. It is also provided that the prosecutor, on his own initiative, cannot participate in the proceedings initiated at the request of other persons [18].

Against the background of the reduction of the powers of the prosecutor in civil cases, by order of the Prosecutor General of the Republic of Uzbekistan dated September 11, 2020 No. 222, an amendment was made to order No. 124 “On further improving the effectiveness of the participation of the prosecutor in the consideration of civil reinstatement at work [19]. However, Article 9 of the current Labor Code of the Republic of Uzbekistan provides that supervision over the precise and uniform enforcement of labor laws on the territory of the Republic of Uzbekistan is carried out by the Prosecutor General of the Republic of Uzbekistan and prosecutors subordinate to him, and Article 268 provides that the prosecutor has the right to apply to the court with an application for consideration of a labor dispute [20].

According to the Constitution of the Republic of Uzbekistan [21] and the law “On the Prosecutor’s Office” [22], it is established that the bodies of the Prosecutor’s Office of the Republic of Uzbekistan exercise their powers, regardless of any state bodies, public associations and officials, obeying only the law. Bodies of prosecutors for the period of their powers suspend membership in political parties and other public associations pursuing political goals.

As one of the main activities of the prosecution authorities, participation in the consideration of civil cases in courts, protesting legal acts, and the main tasks of prosecutors participating in this process, is to achieve a lawful, justified and fair court decision through the powers established by law, as well as strengthening the rule of law, ensuring the rule of law, the rights and freedoms of citizens, the effective protection of legally protected interests of society and the state [23].

Previously, the Code of Civil Procedure of the Republic of Uzbekistan dated August 30, 1997, the powers of the prosecutor to consider cases in civil proceedings were ensured by:

Firstly, applying to the court with a statement in defense of the rights and legally protected interests of other persons;

Secondly, participation from the beginning of the proceedings initiated at the initiative of other persons;

Thirdly, participation in cases where this is provided for by law or when the need for the participation of a prosecutor in a given case is recognized by the court (Article 46 of the Code of Civil Procedure)

However, the Law of the Republic of Uzbekistan dated January 12, 2021 No. 661 “On amendments and additions to the Civil Procedure Code of the Republic of Uzbekistan in connection with the improvement of the institute for the review of judicial decisions” [24] to the text of Article 50 of the Code of Civil Procedure, newly adopted and entered into force on April 1, 2018, changes and additions were made, which somewhat reduced the participation of the prosecutor in civil proceedings. In particular, the right of the prosecutor to participate in the court session in all cases, the procedure for the participation of the prosecutor in the

case in cases where the court considered it necessary for the participation of the prosecutor in this case was canceled. Now it has been established that the prosecutor has the right to participate in the proceedings of a civil case only in cases provided for by law, as well as in cases initiated at the request of the prosecutor. It also provides that the prosecutor may not, on his own initiative, participate in the proceedings initiated on the basis of applications from other persons.

Now, even if the court deems it necessary to involve the prosecutor in the case, the ability and authority of the judge to involve the prosecutor in the case has been officially abolished by law. This also caused a change in the forms of participation of the prosecutor in the civil process.

Previously, i.e. before the adoption of the aforementioned Law of the Republic of Uzbekistan No. 661 [25], the prosecutor participated in the civil process in the following two forms:

- 1) Applying to the court with a statement in defense of the rights and legally protected interests of other persons;
- 2) Participation from the beginning of the proceedings of the case, initiated at the initiative of other persons, to express an opinion on the content of the case (Article 50 of the Code of Civil Procedure).

Indeed, until the relevant amendments and additions are made to Article 50 of the Code of Civil Procedure, the second form of participation of the prosecutor in the civil process, that is, the form of participation from the beginning of the proceedings initiated at the initiative of other person is canceled.

In this regard, the norm, which is now provided for by Article 245 of the current Code of Civil Procedure under

the title “Opinion of the Prosecutor”, states that “the prosecutor participating in the case expresses his opinion on the merits of the dispute after judicial debate, except for cases initiated on his application in defense of the rights, freedoms and legally protected interests of others” now does not work in practice and this norm does not carry any “burden”.

However, legislative experience, as well as proposals and considerations put forward in the legal literature of foreign countries, indicate that the forms of participation of the prosecutor in trials are one of the topical issues. There are different points of view on this subject in the legal literature [26]. In particular, the following are put forward as the main forms of participation of the prosecutor in the process:

- Appeal to the court with a statement (claim);
- An introduction in order to give a conclusion to the work [27].

As noted above, at present, the first form of participation of the prosecutor in court, established in the Code of Civil Procedure of our country, provides for the form of his participation with the right to apply to the court with a statement on the protection of the violated rights, freedoms and legitimate interests of a citizen, if the citizen is not able to personally defend his rights, freedoms and legitimate interests in court for health reasons, age or other reasons; - only in cases stipulated by law. However, it should be noted that not only in the procedural legislation, even in the by-laws, it is not indicated in which cases the prosecutor files a claim (petition) in a civil court. This shows how important the issue is a detailed study of the mechanisms for implementing the rule that “the participation of the prosecutor in the proceedings of a civil case is mandatory in cases where it is provided by



law”, established in the second part of Article 50 of the Code of Civil Procedure.

It should be noted here that the question arises as to which law provides for the participation of the prosecutor in the courts in the consideration of conflict cases arising from legal relations in the sphere of labor.

Article 9 of the current Labor Code of the Republic of Uzbekistan provides that supervision over the precise and uniform enforcement of labor laws in the territory of the Republic of Uzbekistan is carried out by the Prosecutor General of the Republic of Uzbekistan and prosecutors subordinate to him, and Article 268 provides that the prosecutor has the right to apply to the court with an application for consideration labor dispute [28].

However, the Labor Code of the Republic of Uzbekistan, adopted in a new edition, does not contain a clear rule regarding the implementation by the Prosecutor General of the Republic of Uzbekistan and prosecutors of the Republic of Uzbekistan subordinate to him of supervision over the precise and uniform implementation of labor laws in the territory of the Republic of Uzbekistan. But in article 597 of the Labor Code, the prosecutor is included in the list of bodies that have the right to apply to the court with an application to consider a labor dispute. However, if the prosecutor does not file a statement of claim, the question arises whether he has the right to participate in the proceedings in court in a labor dispute initiated on the basis of a filed statement of claim by an employee, because Article 597 of the Labor Code provides for the right of the prosecutor to apply to the court with an application to consider a labor dispute. Whereas in the second part of Article 50 of the Code of Civil Procedure of the Republic of Uzbekistan, the rule is fixed that the prosecutor cannot, on his own

initiative, participate in the proceedings initiated on the basis of applications from other persons.

Therefore, in our opinion, in the second part of Article 50 of the Code of Civil Procedure of the Republic of Uzbekistan, it is proposed to exclude from the legislation the rule that the prosecutor cannot participate on his own initiative in the proceedings initiated at the request of other persons. After all, not in any civil procedure legislation of the studied foreign countries there is a norm limiting the participation of the prosecutor in the civil process in such a way.

In addition, the legal literature also emphasizes that participation in the courts of the prosecutor in labor disputes, especially when considering disputes about reinstatement, in order to issue an opinion, serves as an additional protection of human rights and the rule of law, the performance of the supervisory function of the prosecutor [29].

Researchers and practitioners who in recent years have been engaged in special research work on the participation of the prosecutor in civil proceedings also note that the participation of the prosecutor in civil cases should be determined by the socio-political significance of cases, the right of citizens to privacy and the need to protect the legitimate interests of the future generation, and proceed from the relevance, complexity, social significance of the work and the situation of law on the ground [30].

Taking into account the above-mentioned experience of the legislation of foreign countries and the arguments of legal scholars who highly appreciate the role of the prosecutor in protecting the interests of the state and society, it is necessary to expand the scope of the prosecutor's powers when considering cases of labor disputes in civil courts at later stages.



Before talking about the participation of the prosecutor in the courts, in order to protect the labor rights of citizens, it would be advisable to dwell separately on the features of the organization of the work of the prosecutor's office to protect the labor rights of citizens in civil proceedings.

This feature is distinguished by the complexity of labor relations and the legal regulation directly related to them, the abundance and variety of violations identified in the labor sphere, etc.

With the effective protection of the labor rights of citizens by the prosecutor in court, obtaining reasoned information, providing information about offenses, violations of the law committed by the subjects of labor relations is important.

Providing the prosecutor participating in the consideration of labor disputes in court with information on violations of the law committed in the sphere of labor and other information on employment includes the following main aspects:

First, it is necessary to organize the transfer of the flow of information about violations of the law committed in the sphere of labor to the prosecutor's office. At this stage, it is required to analyze the appeals received from citizens to the prosecutor's office, as well as to collect and systematize information about violations of labor legislation and labor rights in it and submit it to the prosecutors involved in the trial.

Secondly, on the basis of the work reviewed by public organizations, supervisory authorities, the media, audit materials and courts identified through the control directions of the prosecutor's office, it is necessary to use the opportunity to obtain information about violations of the law and other information related to work in the sphere of labor.

At the same time, it should be noted that in recent years the prosecutor's office has been strengthening cooperation with the media. After all, through the media, it not only receives information about the state of legality in the field of labor relations, but also informs the general public about the results of its activities in this area. This, in turn, serves to increase public confidence in the prosecution authorities, improve the legal culture in society, and carry out work to prevent and suppress offenses.

The Prosecutor General of the Republic of Uzbekistan N.T. Yuldashev correctly noted that now the system of work with appeals in the prosecutor's office has been radically improved, the activities of the Center for Continuous Reception of Appeals in the Prosecutor General's Office have been established, and the organization of on-site receptions has become a permanent practice. Over the past 5 years, the prosecutor's office received 1 million 249 thousand appeals, 1 million 187 thousand citizens were received directly. The problems of 323,000 citizens were resolved through field receptions in remote and hard-to-reach areas. It was on the basis of appeals that the violated rights of 183,000 citizens were restored, and more than 330 billion soums of damage was recovered in their favor [31].

It is also important to obtain the following information related to conflict cases arising from labor relations and which are in legal proceedings: information about the number of cases in court, the plaintiff, the defendant, the court decision and the entry into force of the court decision.

CONCLUSION

The prosecutor is obliged to plan the activities of citizens in this area in order to effectively protect their labor rights in the courts. Consequently, the activities

of the prosecutor's office should be built on a planned basis. In the legal literature, opinions are put forward that planning the activities of the prosecutor is understood as the solution of the issue of the sequence, procedure and timing of the implementation of complex or individual types of work, taking into account existing opportunities [32].

In the practice of the prosecutor's office, violations of the labor rights of employees are often manifested in the hiring of citizens, the termination of an employment contract with employees, and also in the absence of timely payment of wages. The most common violation of labor legislation (70%) is related to the violation of the procedure for remuneration. According to statistics on the work carried out by the prosecutor's office to implement the legislation on monetary security for wages, pensions, allowances and scholarships (as of July 2022), with the intervention of the prosecutor, 1,518 people in the republic were provided with cash, and on the basis of 519 lawsuits filed to the court on this basis recovered in cash payment of wages, pensions, allowances and stipends [33].

At the same time, the following positive trends in the activities of the prosecutor's office should be noted, in particular, systemic supervision over the implementation of labor legislation has been established, special attention is paid to the work to eliminate violations in this activity, the activities of employment services to provide employment services are under constant control, protection against unemployment, recovery of unpaid wages to employees, timely termination of other identified violations of the law and, ultimately, timely and effective protection of labor rights of employees.

The measures taken by the prosecutor's office serve to significantly improve the situation with ensuring the

rights of citizens to wages and reduce wage arrears in organizations and institutions of various forms of ownership. The assistance provided by prosecutors to citizens in the protection of labor rights has been and remains a quick, effective and affordable way to protect violated rights. At the same time, it is worth noting that, taking into account research papers, scientific articles by legal scholars and practitioners, as well as changes in the current legislation, it can be concluded that the continuation of work on studying the problems of protecting the labor rights of citizens by a prosecutor in civil process is a priority.

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