



 Research Article

PARTICIPATION OF A JUDGE'S ASSISTANT (COURT SECRETARY) IN THE ECONOMIC PROCESS: NATIONAL AND FOREIGN EXPERIENCE

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ABSTRACT

In this article, the main concepts, opinions and comments of national and foreign legal scholars regarding the assistant judge and clerk of the court session, the legal basis of the activity of the assistant judge (clerk of the court session), the necessary requirements for the assistant judge and the clerk of the court session, their relationship with the persons who implement justice, opinions on the staff of the judicial apparatus, the participation of the assistant judge and clerk of the court session in the court session, duties and powers based on the experience of foreign countries, the rights and obligations of the assistant judge (secretary of the court session), responsibility, grounds for self-rejection, court the order of the meeting, national and foreign experience, proposals for improving the legislation.

KEYWORDS

Assistant judge, judicial court, protocol, economic process, necessary requirements, arbitration, arbitration court, self-withdrawal.

INTRODUCTION

Today, the benefits given to entrepreneurs, the reduction in taxes and other payments, lead to an increase in their number. This is an important step for the economic power of the country. If there are many and rich entrepreneurs, the people and the state will be rich and powerful. Therefore, protection of the rights and interests of entrepreneurs is carried out through the courts. Economic courts are the support of an entrepreneur. The right to legal protection is increasing. Every business entity (foreign investor) has the right to legal protection.

Based on this, the number of business entities (foreign investors) is increasing day by day, and disputes between them are also increasing. Such disputes are being resolved by economic courts. In the economic process, it is necessary to create the opportunity to use the translator in order to ensure the rights and interests of the business entity (foreign investors) and to assist them in the court process.

This article analyzed all the processes related to the participation of the assistant judge (secretary of the court session) in the economic process as an object of research.

MATERIAL AND METHODS

Historical, analytical-analytical, comparative, analogical, structural-functional, modeling methods are used within this article.

According to Article 52 of the Code of Economic Procedure, the judge's assistant (senior assistant) - the secretary of the court session performs the actions necessary to prepare cases for trial, informs the persons participating in the case about the time and place of the trial and checks whether they have come to court, determines the reasons for non-appearance and informs the judge about it, keeps a record of the

procedural actions being performed, prepares for the judge's court session and conducts it, as well as sends the court document for execution performs all other tasks. During the implementation of the procedural actions specified in the first part of this article, the judge's assistant (senior assistant) participates as the secretary of the court session. [1]. These concepts are presented in the same way in the Code of Civil Procedure and the Code of Criminal Procedure. The duties of a judge's assistant are mentioned in the career instructions of the employees of the judicial apparatus of the judicial branches approved by the Directorate of the Supreme Court. In addition to the tasks specified in the code, technical works are also detailed in it. In particular, after the summary part of the court decision is published, it is stated that he should receive a receipt of the consent of the parties to publish it in full text on the Internet and attach it to the case documents.

RESEARCH RESULTS

The opinions of legal scholars on the participation of the assistant judge (senior assistant) - the secretary of the court session are analyzed, concepts related to the activity of the assistant judge are clarified and the author's rate is given. Based on this, suggestions and recommendations are made.

Officials of the economic court, the judge's assistant, the clerk of the court session form another separate procedural group of the economic process participants. The peculiarity of this group is that these persons enter into procedural legal relations as employees of the economic court apparatus. There are conflicting opinions about whether a judicial assistant (secretary of the court session) is a person who administers justice or an employee of the judicial apparatus. If the persons in question do not have procedural legal relations with the arbitration court, it



remains unclear with whom they should enter into procedural legal relations.

Y.A.Treshcheva the secretary of the court session and the assistant judge are the subjects of procedural relations of arbitration, but he believes that the secretary of the court session and assistant judges can be included in the participants of the process with procedural legal relations with the arbitration court [2]. E.A.Treshcheva emphasizes that the assistant judge, as a civil servant, exercises certain powers of the judicial body. M.I.Kleandrov proposes to distinguish assistant judges as a separate subject of the arbitration process or to classify them with the court (judges) [3]. E.A.Treshcheva, supporting this position, noted that as civil servants who ensure the implementation of the powers of arbitration courts, assistant judges, as well as court clerks in arbitration courts, do not have procedural relations with the arbitration court. Therefore, they cannot be included in ordinary participants of the process (persons participating in the case or assisting in the administration of justice) who are in procedural relations with the arbitration court. [4]. It is said that the arbitration court, its officials, the employees of the arbitration court's apparatus, who administer justice (courts, individual judges) or ensure the exercise of the powers of judges (assistant judges, secretaries of judges) are the subjects of arbitration procedural legal relations.

Another argument in favor of the above position on the specific procedural role of the judicial assistant is that, by its legal nature, the judicial assistant has no legal interest in the proceedings. In addition, if the assistant judge is a relative of the persons participating in the case, has a direct or indirect personal interest in the results of the case, or there are other circumstances that make it possible to doubt his impartiality, as well as belongs to the person

participating in the case or his representative or if he is otherwise dependent, or if he has made public statements on the pending case, on issues related to the case, the assistant is removed from the process. Thus, the requirements for the objectivity of the assistant judge are practically the same as those of the judge, which increases the importance of the procedural number.

In our opinion, there is a sufficient scientific perspective in the study of these issues, which can be implemented in the future when finalizing the procedural legislation. It should also be noted that judicial assistants are often considered future judges, who are a kind of personnel reserve for the formation of not only courts, but also the corps of arbitrators.

The assistant judge and the secretary of the court session do not enter into procedural legal relations with the persons participating in the case and other participants of the economic process, because both the persons participating in the case and other participants of the process directly enter into procedural legal relations with the economic court.

An expert, a specialist, an interpreter, a witness helps the court and the persons participating in the case to perceive the true circumstances of the case. The activities of the assistant judge and the secretary of the court session include the tasks of organizing the trial and ensuring the procedural activity of the court. Neither the assistant judge nor the secretary of the court session will help the court in determining the true circumstances of the case and evaluating the evidence. Their task, unlike other persons, is to assist the court in organizing the trial.

During the trial, neither the assistant judge nor the secretary of the court session can be asked questions, they have no right to ask questions to the participants



of the trial in order to determine the circumstances important for the case.

It is worth mentioning that, according to the Decree of the President of the Republic of Uzbekistan “On measures to fundamentally improve the structure of the judicial system of the Republic of Uzbekistan and increase the effectiveness of its activities”, the position of the secretary of the court session was terminated, and the appointed general state unit within the structure of the courts, the positions of senior assistant judge and assistant were included.

In the arbitration procedural legislation of the Russian Federation, experts, witnesses, interpreters, as well as the judge's assistant and the clerk of the court are included among the persons assisting in the administration of justice. In the arbitration process, unlike the judge's assistant and court clerk, expert, witness and translator, they have the authority (competence) and not the status of the subject of procedural law. Because they are employees of the arbitration court, and their activity as public entities in the arbitration process is determined by the scope of their powers established by law. According to the legislation of the Federal Republic of Germany, court clerks and bailiffs are included in the category of persons assisting justice [5].

Article 51 of the IPK of the Republic of Uzbekistan defines persons assisting in the administration of justice, according to which, in the conduct of economic court cases, along with persons participating in the case, persons assisting in the administration of justice - witnesses, experts, specialists and it is specified that interpreters can participate.

According to the opinion of legal scholars and the legislation of foreign countries, the assistant judge and the secretary of the court session are taken as separate

entities, assigning them special tasks, expanding their powers, and strengthening their legal status. In addition, it is believed that by increasing the number of judges, it will be possible to reduce the volume of work in the courts, but this will lead to high financial costs for the state, as the productivity of each judge will be low. At the same time, optimizing the activity of judicial bodies through the modernization of the institute of judicial assistants serves to improve the quality of justice and other judicial activities.

This is caused by the following factors: 1. The activity of the assistant judge is aimed at directly supporting the activity of the judge. 2. The high requirements for a candidate for the position of assistant judge allow him to be considered a qualified court employee who is capable of performing sufficiently competent and responsible work. 3. The experience of foreign countries in organizing the activities of assistant judges shows that this institution is widely used in various types of court activities. 4. Judges' assistants act as the main personnel reserve for judges. Although initially the activity of assistant referee was considered as a consultant, assistant work, intellectually it should not be much different from the work of a referee, but in practice, the assistant referee began to be involved by referees to perform auxiliary activities. Also, the rights and obligations of assistant judges are not defined by law, which allows judges to define the scope of their powers at their discretion.

N.V.Kuleva expressed the opinion of the assistant judge on the legislative determination of the right to sign procedural documents that do not affect the constitutional rights of citizens, as well as various requests and letters.

I.V. Reshetnikova, relying on her foreign experience, believes that "expanding the powers of the assistant judge will be an important help for judges at the stage

of starting proceedings and at the stage of preparing the case for trial. At the stage of preparing the case and trial, assistants can perform procedural actions under the guidance of the judge”[6]. M.L.Skuratovsky suggests that “judge assistants should be interviewed independently, set deadlines for the presentation of necessary evidence, and set other non-judicial functions in the preparation of the case”. [7]. O.I.Vilyak explained to the parties and persons participating in the case their procedural rights and obligations, to assist the parties in obtaining the necessary evidence and voluntary settlement of disputes before the court, "in many ways, they have a preparatory or auxiliary character and do not lead to direct legal consequences , believes that". The author suggests that their case be transferred to a judicial assistant under the supervision of a judge [8].

In view of the above, the specific features of the legal status of judicial assistants and court clerks in other countries are of particular interest. Thus, in the People's Republic of China, assistant judges have a legal status close to that of judges (this also applies to their procedural equality). Thus, according to Article 2 of the Law of the People's Republic of China “On Judges”, judges include employees who exercise their judicial powers in accordance with the law, including chairmen of judicial commissions, deputy chairmen and judges, chief justices and assistant chief justices [9]. The Supreme People's Court is divided into special people's courts, such as divisions, judges and their assistants, local courts of various levels, and military courts.

In Germany, a position similar to the Russian assistant judge - secretary of the judicial apparatus (der Rechtspfleger) - belongs to high-ranking official positions. Initially, the introduction of this position in German courts, as well as in Russia, was due to the

need to free the judge from regular court proceedings. His powers are defined by the Assistant Magistrate Act of 1969. The clerk of court (der Rechtspfleger) participating in civil proceedings performs some of the functions of a judge assigned to him by law. A three-year special legal education is mandatory for clerks, which includes a special training course culminating in an exam. With the development of the institution of the secretary of the judicial apparatus, his powers also expanded. Thus, at present, for example, in insolvency proceedings, it is the responsibility of the secretary to ensure the smooth running of the proceedings, to hold meetings of creditors and to resolve complaints. [10].

Legal clerks are a kind of analogue of Russian assistant judges in the United States. Their main task is to study legal issues and prepare procedural documents for the case. However, the duties of the clerks are not limited to this, because studying the legal issues in the case, conducting legal research, preparing briefs in the case, and preparing orders and conclusions on certain issues are very large procedural and organizational powers. Some judges are in the habit of discussing pending cases with lawyers and even consulting with them about possible solutions. Often, law clerks file documents, arrange courtroom calls, and perform other tasks for the judge[11].

The organizational functions of secretaries are varied and unique. Thus, in US small claims courts, clerks can assist non-legal litigants in filing a case, drafting a pleading, explaining the procedure for filing it, explaining the time frame and procedural rules of the case, and obtaining judgments and enforcement. Interested individuals who wish to obtain more complete information are encouraged to use the popular computer program, which contains answers to the most frequently asked questions and a detailed



operating manual. In the clerk's office, you can also watch a video program that clearly explains the procedure of the trial. Almost all courts have printed publications containing sample lists of evidence for certain categories of disputes, from the main stages of the case - from the filing of the application to the execution of the decision [12].

The above can be included in the steps of initiating proceedings and preparing the case for the court session: explaining to the parties and persons participating in the case their procedural rights and obligations, assisting the parties in obtaining the necessary documents, evidence, as well as voluntary settlement of disputes before the court (mediator functions). These procedural actions are mainly preparatory or auxiliary in nature and do not lead to direct legal consequences, for example, they do not decide the case on the merits or end the legal proceedings. They can be entrusted to an assistant under the supervision of a judge. At the stage of preparing the case for court, there is a need to take into account the foreign experience of transferring a number of powers of the judge to his assistants [13].

In the "Law on Courts" of the Republic of Georgia "Assistant Judge and Clerk of the Court". [14] there is an article in which the judge's assistant accepts citizens, their complaints and applications, prepares cases for hearing at the court session, selects relevant legal literature and case law materials, drafts relevant documents and performs other tasks within the scope of the judge's powers as assigned by the judge. Cases are heard in court with the participation of the secretary of the court session. In the legislation of the Republic of Armenia, Chapter 2, Section 11, the status of judges is mentioned and it mentions the employees of the judicial apparatus. In it, each judge of the first instance and the appellate court has one assistant and

one clerk [15], the chairman of the court of cassation instance, judges and chairpersons of collegiums each have two assistants, the assistant of the judge and the secretary are court officials attached to the judge. Clerk of the court session of the Code of the Republic of Belarus "On the Judiciary and the Status of Judges" (the clerk of the court session is an assistant judge) [16] civil and criminal cases and, in necessary cases, administrative offense cases are heard in courts of first instance with the participation of the secretary of the court session (secretary of the court session - assistant judge). In the economic courts of the first instance, cases are heard with the participation of the secretary of the court session - assistant judge. The rights and obligations of the secretary of the court session (the secretary of the court session - the assistant judge), the procedure for his participation in hearing cases are determined by law.

According to the legislation of the Republic of Moldova, "the structure of the courts" is mentioned. In it, the assistant judge is a court officer who helps the judge in the performance of his duties. Each judge is assisted by an assistant judge [17]. A person with a legal or equivalent higher education and at least one year of work experience in a legal specialty can be a judge's assistant. The judge's assistant performs the following powers: a) selects regulatory documents necessary for the judge and collects other information related to the consideration of the case assigned to him by the judge; b) summarizes the legal issues of the cases assigned to the relevant judge and develops recommendations on issues related to the interpretation and application of the law; c) checks the availability of documents to be submitted by the process participants; d) drafts procedural documents according to the judge's instructions; e) ensures personalization of court decisions and publication on the court's website; f) participates in working groups and commissions within

the scope of their powers; g) performs other powers related to the administration of justice according to the assignment of the judge. Civil and criminal cases, and other cases provided for by law, are heard by the secretary of the court session with the participation of the secretary of the court session. The procedure for organizing the activities of secretaries of court sessions, their rights and obligations are determined in accordance with legal documents.

According to Article 155 of Section 4 of the Law of the State of Poland, assistant judges and senior assistant judges can be employed in courts. When it comes to assistant judges, it includes senior assistant judges [18]. The judge's assistant carries out actions related to the preparation of court cases and actions related to the administrative activities of the courts. The requirements for becoming an assistant judge are set. He: 1) was a citizen of the Republic of Poland; 2) an honest person; 3) completed higher education in the field of law and received a master's degree or completed higher legal education abroad recognized in this country; 4) is 24 years old; Candidates are listed through a selection process aimed at selecting the candidate who has the broadest knowledge and the highest skills, abilities and general abilities necessary to perform the duties of a judicial assistant. The position of senior assistant judge can be held by the following persons: 1) who has worked as an assistant judge for at least ten years and has a positive conclusion, or 2) a prosecutor who has passed the exam. In order to motivate the assistant of the judge, the following can be given: 1) a special allowance for temporarily increasing the tasks or additional tasks; 2) awards for outstanding work achievements. Also, he must study for 12 months in an apprenticeship course for judicial assistants. After completing the apprenticeship, the judge's assistant is hired for a certain period of time under an employment contract [19]. Judges,

prosecutors, notaries or persons who have passed the bar exam are exempted from the obligation to complete the apprenticeship for assistant judges.

According to the legislation of the Republic of Tajikistan, the secretary of the court session in the court of the first instance deals with economic, civil, criminal and family cases, and in the cases provided for by the law, cases of administrative offenses are heard with the participation of the secretary of the court session. [20]. The number of secretaries of court sessions should correspond to the number of judges of these courts. There are requirements for court assistants, bailiffs, court clerks. According to it, the assistant to the chairman of the court, as a rule, a person who has a higher legal education and is able to successfully perform the tasks assigned to him can be a bailiff. The secretary of the court session, as a rule, can be a person who has secondary legal education and is able to successfully perform the tasks assigned to him.

Assistant judges in the Russian Federation have qualifications and other requirements: knowledge of the state language, 18 years of age [21], higher professional education, experience or professional work experience and professional knowledge and skills are available.

The duties of the assistant judge and the clerk of the court session (specialist court judge) may be defined in the regulation on the division of duties between the assistant judge and the clerk of the court session (specialist on the composition of the court). Assistant judge for valid reasons (business trip, temporary incapacity for work [22], vacation, etc.) in case of absence, his work is carried out by the relevant secretary of the court session or specialist of the court session. If the secretary of the court session (specialist of the court composition) is absent for the above



reasons, his duties are performed by the assistant judge. [23].

Thus, the assistant judge performs, among others, the following functions: [24], accepts court cases and other documents from the administrative department against signature; fills out statistical cards for incoming applications; registers all court documents; supervises the preparation and timely sending of copies of court documents informing or summoning the participants of the proceedings. The secretary of the court session (expert on the composition of the court) prepares minutes of the court session, forms and conducts court cases, prepares the inventory of the case within the framework of the formation of cases and distribution of copies of court documents; affixing certification stamps to copies [25], stapling copies of court documents consisting of several pages, etc.; sending copies of court documents and other procedural documents to persons participating in the case, as well as to other persons on the instructions of the judge; performs registration, conversion (packaging) of outgoing correspondence, formation and submission of court cases, compilation of case lists. Formation of court cases of the clerk of the court session (specialist of the judicial apparatus) in arbitration courts [26], oversees the distribution of court documents.

CONCLUSION

Based on the above, in conclusion, as a result of this research, we have seen that there are advantages and disadvantages associated with the participation of the assistant judge (secretary of the court session) in the economic court and other courts. We analyzed it with the experience of foreign countries and the aspects

encountered in practice. In order to solve these issues, we will present recommendations and suggestions for solving a number of existing problems and improving the legislation.

First, to introduce the concepts of assistant judge and secretary of the court session into the Law “On Courts”;

Second, the concepts of assistant judge and clerk of the court session should be separately introduced in the Economic Code of Procedure, and their rights, obligations, and duties should be clearly defined. In particular, their tasks are as follows: the assistant judge helps the judge in preparing and organizing court hearings, as well as preparing drafts of court documents. According to the presiding judge's order, the assistant judge keeps the minutes of the court session, ensures control over recording the progress of the court session using technical means, checks the attendance of the persons required to participate in the court session. Holds a meeting and performs other procedural actions in the cases and procedure provided for by the relevant code. The assistant judge has no right to perform actions that lead to the emergence, change or cancellation of the rights or obligations of the persons participating in the case and other participants of the arbitration. The secretary of the court session keeps the protocol of the court session and ensures control over recording the progress of the court session using technical means. He must fully and correctly indicate in the minutes the actions and decisions of the court, as well as the actions of the participants of the arbitration proceedings during the court session. The secretary of the court session, according to the presiding officer's order, checks the attendance of the persons who are required to participate in the court session;

Third, since the Assistant Judge (Secretary of the Court Session) is an employee of the judicial apparatus, he should be reflected in the chapter titled “Court Composition”;

Fourth, to determine the specific tasks and functions of the assistant judge and the secretary of the court session;

Fifth, assigning certain powers of the judge to the assistant judge, i.e. procedural duties other than those affecting the rights and interests of citizens or entrepreneurs, and creating a backup system for the judiciary;

Sixth, it is proposed to develop requirements for the post of assistant judge and court clerk.

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