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Research Article

PERSONS ASSISTING IN THE IMPLEMENTATION OF JUSTICE IN THE ECONOMIC PROCESS: A COMPARATIVE LEGAL ANALYSIS

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ABSTRACT

In this article, the circle of persons participating in the economic process, their understanding, the circle of persons assisting in the administration of justice, their concepts, the procedural status of the representatives, the status, role and powers of the assistant judge, the secretary of the court session, the opinions and opinions of legal scholars, the experience of foreign countries and national legislation and comparative analysis of civil procedural and criminal procedural legislations, as well as proposals and recommendations for improving the legislation and theoretical foundations.

KEYWORDS

Economic process, justice, supporters, representatives, expert, specialist, translator, witness, court clerk, assistant judge.

INTRODUCTION

In every country, the judiciary is a reliable protector of business entities. As a result, it is impossible to imagine without the participation of persons participating in the case in the protection of the rights and legal interests of business entities and in evaluating and

proving the evidence. Evidence of their involvement can serve as a means of determining the true circumstances of the case. These evidences are obtained on the basis of testimony of witnesses, conclusions of experts, advice (explanations) of

experts and translation of an interpreter. Using incorrect information as evidence can lead to illegal decisions or miscarriages of justice.

Today, the following problems related to the scope of persons assisting in the administration of justice remain in the court: determining the scope of these persons, the issue of whether or not to include a judge's assistant (secretary of the court session) in the scope of these persons, analysis of the scope of persons based on civil procedural and criminal procedural rights and other issues remain relevant.

In this article, as the object of research, all the processes related to the circle of persons assisting in the implementation of justice in the economic process were analyzed.

MATERIAL AND METHODS

In solving these problems, it is important to clarify the issue using the following methods: historical, analytical-analytical, comparative, analogical, systematic-functional, modeling methods are used.

The main part

The circle of persons assisting in the implementation of justice in the economic court is mentioned. According to it, according to Article 40 of EPC, the court, persons participating in the case, and persons assisting in the administration of justice are mentioned as common participants in conducting economic court cases. We will focus on the circle of persons who are one of these participants, whose participation is considered to be of less importance for the court - persons who assist in the implementation of justice. Based on Article 51 of the EPC, it is established that along with the persons participating in economic court proceedings, persons assisting in the administration of justice — witnesses, experts, experts and translators may participate [1].

Also, after this article, the article dedicated to the assistant judge is cited. The point of contention is that the legislator mentioned this article after the persons who assist in the administration of justice.

Research results

The opinions of legal scholars on the scope of persons assisting in the administration of justice are analyzed, as a result of researching their activities, the participation of these persons is improved, and suggestions and recommendations are made to the existing legislation.

In the science of economic procedural law, there is no single approach to clearly defining the subjects participating in economic court proceedings and determining their position in the economic courts.

In particular, V.V.Yarkov calls the arbitration (economic) court and other subjects participating in the proceedings both “participants of arbitration (economic) proceedings”^{1} and “subjects of arbitration (economic) procedural law”. M.K.Treushnikov divides these two terms: “subjects of arbitration (economic) procedural legal relations”^{2} and “participants of arbitration (economic) proceedings”. These entities have procedural rights, are charged with procedural obligations, and perform certain procedural actions. He notes that the “participants of the arbitration (economic) process” includes the arbitration (economic) court. Proceduralist scholars propose to distinguish different groups of participants in the process, sometimes they are called “subjects of arbitration (economic) and civil procedural law”, “participants of procedural legal relations”. In particular, M.S.Shakaryan proposes to divide all subjects of procedural legal relations into two groups: 1) judicial bodies and their officials and 2) all participants of the procedure (including: persons

participating in the case and other subjects of the procedure}{3}. Pursuant to Article 40 of EPC, it is established that the court, persons participating in the case, and persons assisting in the administration of justice are participants in economic court proceedings{4}.

In this regard, M.K.Treushnikov proposes to distinguish the participants of the process based on the tasks and goals of their activities: 1) entities that implement justice - courts; 2) subjects participating in justice - persons participating in the case and 3) subjects assisting justice and normal resolution of disputes{5}. A similar separation was put forward by E.A.Treshcheva{6}.

The criterion that served as the basis for the classifications of M.K.Treushnikov and E.A.Treshcheva is the direction of activity of the participants in the process. It is clear that this criterion does not allow to fully distinguish the legal status of various participants of the economic process and to determine their importance for the economic process. Because it does not take into account their participation in economic procedural legal relations. In addition to the above definitions, V.V.Yarkov divides the subjects of arbitration (economic) procedural legal relations into four groups: 1) arbitration (economic) courts as dispute resolution bodies; 2) persons participating in the case who protect their own or others' rights and interests protected by law and have a legal interest in the results of the economic process; 3) representatives who ensure the participation of persons participating in the work in the economic work and represent their interests; 4) other persons (witnesses, experts, translators, etc.) assisting in the activity of providing evidentiary information to the economic court and in other cases. If we analyze each of them separately, first of all, the economic court is definitely involved in

economic procedural legal relations. The reason is that the economic procedural legal relationship cannot be established without the participation of the economic court, and all the participants of the process enter into the relationship only through the economic court. But this relationship does not arise simultaneously between the court and all the participants of the proceedings. Economic procedural legal relations arise between the economic court (economic court judge) and all persons participating in the proceedings in the process of reviewing and resolving economic disputes and other cases, reviewing court documents and their execution. Secondly, the persons participating in the case may have a material-legal relationship with each other.

At the same time, they cannot enter into an economic procedural legal relationship with each other, bypassing the economic court. Thirdly, even if all the participants of the process in economic procedural relations are only in procedural relations with the court, this situation does not create a single whole procedural legal relationship. Fourthly, the activity of the economic court, which is considered to be the main subject in economic procedural legal relations, as a subject that implements justice, is defined in legal documents. Relations between the economic court and other participants in the process are also regulated within the framework of legislation, mainly by means of the Code of Economic Procedure (hereinafter referred to as EPC). Therefore, the interests of economic courts do not conflict with the interests of other subjects of procedural legal relations. Fifth, economic procedural legal relations are established on the basis of procedural norms. Like any legal relationship, economic procedural legal relationships are created, changed and annulled on the basis of legal facts. Our research focus is on the activities of individuals who assist in the administration of justice.

These are listed as persons who cannot participate in the economic process through representatives.

These persons are considered persons assisting in the administration of justice and participate personally in the court.

In some literature, it can be seen that representatives are included in the circle of persons assisting in the administration of justice. In addition to the persons participating in the case, representatives, witnesses, experts, translators may participate in economic (currently economic) judicial proceedings^{7}. In the economic (currently economic) court, the organizations' work is carried out by their bodies and representatives acting within the scope of the powers given in their legal documents or founding documents^{8}.

Representatives of the parties are classified as judicial assistants. In science, this point is widespread, it is said that the representative should not apply to any of the persons participating in the case and to the persons who contribute to the administration of justice. There are two different views on whether representatives have a legal interest in the case. In particular, I.V.Reshetnikov thinks that the representatives have a procedural interest in the outcome of the case^{9}, that the representatives have an interest in the outcome of the case and that their interest is directly determined by the law (parents, adoptive parents, etc.), contract (lawyers) or other grounds, but always states that there may be a legal interest. The representative acts on behalf of another person - the authorized person. This means that the representative acts only within the scope of the right granted to him^{10}. According to M.S.Shakaryan, the participants of the considered process do not have an independent legal interest in the outcome of the case^{11}. The purpose of the representatives' participation in the economic process

is to represent the interests of the parties, third parties, applicants or interested parties, and to ensure the protection of the legal interests and rights of the participants of this process in the economic court. The difference between representatives and persons assisting in the administration of justice is not only procedural legal relations with the economic court, but also material legal relations stipulated by the contract or other basis of representation with the persons they represent, participating in the case, the main purpose of which is to administer justice to the economic court. It is not about helping to increase, but about helping the represented person to protect his rights in court proceedings. The question of whether the representatives of parties, third parties, applicants belong to the procedural group of "persons participating in the case" or "persons assisting in the administration of justice" or whether they occupy a special place among all participants of the economic process remains open^{12}. The point of view that the representatives do not belong to the persons participating in the case, nor to the persons who assist in the administration of justice, but constitute an independent group of participants in the economic process seems reasonable^{13}. Based on this, we can say that all the persons participating in the work are organized as a small group by the representatives participating in the work. The peculiarity of their legal status is that these subjects have the goal of protecting the interests of other persons - parties, third parties, claimants, interested persons in the process on their behalf. They also direct the court's activity to a certain result desired by the party (the third party, the plaintiff), as well as other persons involved in the case. Interest in the case, the activity of the subject during the case review is aimed at the development of the case process. Procedural interest, that is, the activity of any representative in the economic process is aimed at encouraging, is expressed in the direction of judicial

activity to issue a judicial act that satisfies the claims (the plaintiff's representative) or excludes it (the defendant's representative) in the implementation of the law or the authority provided to him^{14}. A.V.Vanyarho concluded that representatives should be included in the list of persons participating in the case^{15}. Of course, their legal status differs from the status of other persons involved in the case. In our opinion, the entry of representatives into the economic process, unlike those who assist in the administration of justice, does not depend on the discretion of the court, but is determined only by the will of the persons participating in the case.

It is necessary to clarify the legal status of the assistant judge (secretary of the court session), who is considered another participant in economic court proceedings. Because the officials of the economic court, for example, the judge's assistant (secretary of the court session) form another separate procedural group of economic process participants. The peculiarity of this group is that this person enters into procedural legal relations as employees of the economic court apparatus. If we pay attention to the Criminal Procedural Code (hereinafter referred to as CPC), the secretary of the court session is clearly defined as the state bodies and officials responsible for conducting criminal proceedings. In particular, there is a chapter titled "state bodies and officials responsible for conducting criminal proceedings"^{16}. This chapter includes exactly the judge's assistant (court clerk). This clearly and clearly defines where his place should be. However, in the Economic Procedure Law and even in the Civil Procedure Code (hereinafter referred to as the Civil Procedure Code), there are different considerations regarding the determination of the position. V.V.Petrova assessed the position and role of the judge's assistant in the arbitration (economic) court and believes that the status of the judge's

assistant is insufficiently regulated by law. The author also believes that more procedural duties can be assigned to the judge's assistant in order to truly assist the judge in discharging him from judicial proceedings^{17}. According to M.I.Kleandrov, judges' assistants should be separated as a separate group (separate entity) or classified as a group of entities like a judge^{18}. E.A.Treshcheva clerk of the court session and assistant judge are subjects of arbitration (economic) procedural relations, but he considers the clerk of the court session and assistant judges can be included in the participants of the proceedings having procedural legal relations with the arbitration (economic) court. He points out that the assistant judge, as a civil servant, exercises certain powers of the judicial body^{19}. According to Article 52 of the EPC, the judge's assistant (senior assistant) takes 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 their absence, and informs the judge about it, keeps a record of the procedural actions being performed, performs all other duties of the judge related to the preparation and conduct of the court session, as well as the execution of the court document. The secretary of the court session monitors the delivery of summonses to the summoned persons^{20}.

It is important to improve the legal status of persons assisting in the administration of justice in conducting economic court cases by studying the experience of foreign countries. These persons perform the function of assisting in the correct resolution of the dispute in the court without having any financial interest in the economic work. It is not mandatory for persons assisting in the administration of justice to participate in all stages of the process, the court may involve them in some stages of the case depending on the need.

According to Z.Esanova, persons assisting in the administration of justice are not required to participate in all stages of the process, the court may involve them in some stages of the case depending on the need{21}.

M.A.Gurvich stated that persons such as witnesses, experts, translators and specialists who assist in the administration of justice are participants in service-assistant (assistant) legal relations, and their position is a neutral position in relation to the resolution of the dispute in one way or another, and a claim (application) or characterized by the lack of a strong willed direction to defend objections or to resist a claim (petition){22}. Based on the national legislation (differences in CPC and CPC), while considering the distinguishing aspects of persons assisting in the implementation of justice in economic proceedings, according to Article 54 of the CPC, persons assisting in the implementation of justice - witnesses, experts, specialists, translators, written and physical evidence Custodians, enforcement officers and conservators are persons who assist in the administration of justice{23}. This difference can be explained by the fact that the number of subjects is greater than in other codes. There is a separate Chapter 6 in the criminal procedural law entitled "other persons participating in the criminal proceedings" and it describes in detail the participation of witnesses, experts, interpreters, specialists and witnesses (we support this provision) {24}. Therefore, in contrast to the provisions (norms) of these two codes, Article 51 of the EPC provides for the participation of witnesses, experts, specialists and translators as persons assisting in the administration of justice. In another aspect, we can see that in CPC, the legislator brought "other participants of the criminal process (persons who assist in the implementation of justice in CPC and CPC) and their rights and obligations to the level of a separate chapter and regulated by it. In this regard, according to M.M.Mamasiddikov's opinion about the

persons assisting in the implementation of justice, he stated that these persons and their rights and obligations are not included in the same system. And in order to eliminate this aspect and to bring the norms into one system, he believes that it should be expressed in a separate chapter called "Persons who assist in the administration of justice"{25}. Even in the codes of many foreign countries, it is distinguished as a separate chapter. (Russian Federation and Tajikistan, Ukraine, Turkmenistan, Moldova, Kyrgyzstan, Belarus, Kazakhstan, Lithuania, Czech Republic).

In the experience of foreign countries, as witnesses, experts, experts and translators, the secretary of the court session is mentioned in the Republic of Tajikistan, unlike the Republic of Uzbekistan, the participation of experts is not included {26}. In the Republic of Ukraine, an assistant judge, a clerk of a court session, a bailiff are additionally listed {27}. In the Republic of Turkmenistan, the participation of experts and witnesses is not reflected in the Code, but the phrase "other persons" can be found {28}. In the Russian Federation, the judge's assistant and the secretary of the court session are also included {29}. In the Republic of Moldova, if the participation of experts is not provided, representatives may participate {30}. Representatives of the Kyrgyz Republic may participate, but experts are not expected to participate {31}. In the Republic of Belarus, it is included that state bodies, local state authorities and self-government bodies can participate {32}. In the Republic of Kazakhstan, a bailiff, a court clerk is included {33}. It should be mentioned that in the legislation of some foreign countries, assisting persons are not mentioned in any chapter or article, and there is no information about whether they are a person participating in the case or a assisting person. In particular, the participation of witnesses, experts, specialists and translators in the Republic of Turkey is mentioned{34}.

In the Republic of Lithuania, other participants in the process (witnesses, interpreters, translators and experts) are persons who do not have a legal interest in the final outcome of the case participating in the proceedings in accordance with the procedure established by law {35}. In several countries, it is established that a witness, expert and interpreter will participate (in the Republic of Poland {36}, the Republic of Hungary {37}, Republic of Federation Germany {38}, the French Republic {39}, Republic of Korea {40}, Republic of China {41}, Canada {42}, Republic of Czech {43}, Republic of Bulgaria {44}. Republic of Italy only the presence of a witness is envisaged {45}. In Great Britain {46} and in Japan {47} witnesses and experts may be present.

CONCLUSION

Based on the above, in conclusion, as a result of this research, we have seen that the scope of persons assisting in the administration of justice, determining their differences from other participants and the features related to their participation in the economic court have been covered. 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, we can divide the participants of economic court proceedings into the following three groups: 1) economic courts; 2) persons participating in the work; 3) persons assisting in the administration of justice.

Secondly, the authors were defined as witnesses, experts, specialists and translators, who are involved in the case by the economic courts (judges), who are not interested in the outcome of the case, and who assist in the implementation of justice.

Thirdly, in the opinion of the researcher, it is appropriate to bring the supporting persons to a separate status and to clearly define their rights and obligations in the IPK as a separate chapter under the name "Persons assisting the administration of justice".

Fourthly, the assistant judge (secretary of the court session) cannot be included among the persons assisting in the administration of justice in the economic process, as well as including the judicial composition of the IPK (as a separate subject) in compliance with legal technical regulations and the "Secretary of the Court Session" provided in Article 52 of the IPK should be reflected in the relevant Article 191 of Chapter 3 "Composition of the Court" of this Code.

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