

LAWYER'S ACTIVITY IN THE ECONOMIC PROCEEDINGS OF THE
REPUBLIC OF UZBEKISTAN: THEORETICAL AND APPLIED ASPECTS

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Abstract: This article is devoted to the peculiarities of the participation of a lawyer in legal proceedings in economic cases. The relevance is determined by the growing role and importance of the institution of advocacy in modern society. In this article, we will consider the features of the activities of a representative lawyer in the economic process, which are determined by its organizational, legal and procedural status.

Key words: economic procedure, judicial protection, litigation, representation, advocacy, lawyer's activity.

The activity of a lawyer-representative in economic cases has a number of legal features, which are primarily related to his organizational and legal or procedural status. As an organizational and legal side, they are due to his membership in a lawyer corporation, procedural as a subject of economic proceedings. These features are manifested in the fact that a representative lawyer in a economic case carries out his work, being a professional lawyer who has assumed the obligation to provide qualified assistance at the request of the principal and the indication of the law.

A representative lawyer, carrying out his activities in economic proceedings, performs certain functions, solves problems and helps to achieve the goals established by economic procedural code and the Law "On advocacy" (hereinafter referred to as the Law on advocacy)¹. The goals and objectives set for a lawyer can be realized using a wide range of methods and means of advocacy that are not available to representatives who do not have lawyer status. Poor-quality legal assistance, untimely and ineffective, may serve as grounds for holding a lawyer liable in accordance with the Law on advocacy.

Focusing on Art. 3 of the Law on the advocacy, it can be stated that a lawyer is a person who has received the status of a lawyer and the right to exercise the functions

¹ Law of the Republic of Uzbekistan "On advocacy". <https://lex.uz/docs/4528029>.

of a lawyer. Based on this, we can say that a lawyer must be professional, competent and prepared for public speaking.

Another feature of the activity of a lawyer in the economic process is that it is carried out by him as an independent professional adviser on legal issues. As an “advisor” of a party or a third party, a lawyer retains independence, acts according to his conviction in accordance with the norms of law, lawyer ethics, morality and ethics, since he is a subject that performs a public legal role in the trial.

One of the types of legal assistance provided by a lawyer is a consultation, the procedure for which consists of a number of stages. The consultation is preceded by an interview process. It should be noted that the term "interviewing" has received international recognition and lawyers around the world understand it as an interview with a client in order to obtain information of legal significance. Interviewing is the skill of obtaining information and facts from the client in order to make the correct advice. Lawyers must apply the law to legally significant facts in order to give the client the right advice. The law is contained in the relevant available official sources. The client knows the facts and has his own view of them. The lawyer must clarify all the facts. The lawyer is responsible for the full and correct clarification of the circumstances in order to apply the relevant law.

Important qualities for a lawyer are the ability to listen and observe. In order to effectively resolve the problem, the lawyer asks clarifying questions regarding the essence of the case and the actions that the client has already taken on his own. The lawyer's advice should cover the following issues:

- substantive-legal aspect of the dispute;
- the citizen's right to sue;
- final advice on the case.

The advice that a citizen receives during a consultation should have certain characteristics:

- 1) legality, correct reference to the rule of law and its interpretation;
- 2) accessibility in the form of presentation (i.e., the consultation should be understandable to the client);
- 3) specificity, expressed in the designation of possible ways to solve the problem;
- 4) effectiveness - (following the results of the consultation, a clear picture of all the circumstances of the case should be formed, and the prospects for the movement of the case should also be outlined).

It should be noted that counseling should be considered as a single logical process, which can be conditionally divided into the following stages:

meeting with the client, establishing his identity and finding out the purpose of contacting a lawyer, as well as an offer to get advice on specific legal issues;

conclusion of an agreement on a one-time consultation of the client and payment for the consultation;

designation of the problem as a whole and a detailed description by the principal of the current legal situation, on the one hand, and clarification by the lawyer of all the circumstances of the case and other aspects, on the other;

summarizing the information provided by the client and preparing for the issuance of a legal opinion;

providing the principal with comprehensive information on issues relevant to the disputed legal situation; making by the client a choice of one of the options proposed by the lawyer for solving the problem;

explanation to the principal of the procedure for the implementation of legally significant actions according to the chosen option;

finding out from the client the presence of additional questions with subsequent answers to them.

It is necessary to pay attention to the fact that the degree of importance of the consulting activity of a lawyer is determined by:

firstly, its demand in the legal services market;

secondly, counseling always acts as the first stage in the provision of any legal assistance to a client who has contacted a specialist with a specific legal problem.

So, an element of advocacy is counseling, the significance of which lies in the fact that this type of activity gives him the opportunity to assess the preliminary level of complexity of the case and form an initial idea about the client (meaning the characteristics of his personality in terms of the degree of sincerity, solvency and good reputation in relationships), and the client - to navigate the current legal situation. Undoubtedly, the practical significance of consulting lies in the fact that this type of lawyer's activity allows the client to focus on concluding an agreement on the provision of legal services in connection with a specific legal situation, as well as to obtain approximate information about upcoming legal services (and their cost), a list of which depends on the complexity of the work and the information received about the client. And, of course, consulting is a source of material income for a lawyer.

It is also important to analyze some theoretical and practical aspects of the lawyer's work at the stages of initiating and preparing an economic case.

The acceptance of an order to conduct a case is closely related to the concept of a legal position in a case, since this is the result of a positive assessment of the client's material and legal position. The degree of effectiveness of a legal position in a case can be made dependent on certain qualities that it must meet:

- 1) conciseness;
- 2) compliance with the law, evidence and common sense;
- 3) persuasiveness.

When developing a position on the case, the lawyer conducts an analysis of the case, the position on which has factual and legal aspects. The first component of the position implies a clear and precise presentation of events and facts of reality. The second component is related to legal requirements that must be correctly substantiated in order to achieve a positive outcome for the principal.

From the moment of acceptance of the order for judicial representation, the duties of a lawyer include maintaining a dossier - (lawyer proceedings in an economic case), which reflects all materials of legal significance.

When preparing for the case, attention should be paid to the need for the lawyer to determine the subject of proof and the range of evidence to be collected for submission to the court. Lawyers may request certificates, characteristics and other documents necessary in connection with the provision of legal assistance (the rules that a lawyer must remember in this case are contained in Articles 71, 72, 73 of the Economic procedure code of the Republic of Uzbekistan)². When preparing for representation in court, a lawyer must analyze many points, in particular, the possibility of resolving the issue of deferring or installment payment of court costs or reducing their size.

According to Article 61 of the Economic procedure code of the Republic of Uzbekistan, the institution of professional representation will be introduced in economic courts. Only lawyers can be engaged in professional activities in conducting cases in court as a representative³.

As we know, the right to apply to the court is exercised, including by filing a claim, and in cases of non-claim proceedings, by filing an application. In this regard, it should be emphasized that at this stage the correct preparation of the relevant documents is important. Undoubtedly, the drafting of procedural documents is one of the main professional skills of a lawyer, like every lawyer. The possession of such a skill in its general sense implies a set of in-depth industry knowledge in the legal specialty, the ability to think logically and competently evaluate a specific disputable situation, its factual and legal aspects, and, in addition, mastery of the rules of writing.

At the stage of preparation for participation in the case, the lawyer selects, researches, evaluates facts and evidence, forms a legal position on the case, which is further reflected in writing - a statement of claim, the requirements for the form and content of which are defined in the norms of the Economic procedure code of the Republic of Uzbekistan (Article 149, 150 and 151). Here it is possible to make a remark that the requirements for the exact indication of the court and participants in the process make it possible to check the jurisdiction and legal capacity, as well as to ensure subpoenas. In addition, the claims of the applicant and the circumstances on which

² Economic procedure code of the Republic of Uzbekistan. <https://lex.uz/docs/5535151>

³ Ибратова Феруза Бобокулова. Экономическое процессуальное право Республики Узбекистан (Общая часть): (учебник). Том 1. – Ташкент: «Innovatsiya-Ziyo», 2020. – с. 97

these claims are based must be clearly stated, since this point is of great importance for the correct resolution of the dispute. If witnesses are expected to participate in the trial, then at the end of the statement of claim there should be a request to summon them to court with the exact indication of these persons and their addresses, as well as the facts on which each of the witnesses will testify. In addition, when filing a statement of claim, a petition for securing a claim may be filed, if necessary.

The language and style of presentation of procedural documents is also of great importance - not only for the case, but also for characterizing the professionalism of the lawyer himself (everyday, slang expressions, hackneyed speech stamps, tautological phrases, etc. should be avoided).

Filing a claim is an important action on which much will depend in the future; in some cases, the judge may return the statement of claim or leave it without movement. It is important to emphasize that in the exercise of his activities it is advisable for a lawyer to analyze the relevant rulings of the judge for their legality and validity.

At the final stage of preparation for participation in the case, the duties of a lawyer include explaining to the principal the features of the judicial procedure, his rights and obligations, setting out recommendations on behavior in court, preparing the principal for giving explanations and possible questions of the court and other participants in the process.

Finally, it is necessary to reveal the features of the participation of a lawyer in a trial in an economic case.

In general, judicial proof is the activity of establishing the circumstances of a case through forensic evidence. Judicial evidence is usually considered as information about facts obtained in the manner prescribed by law, on the basis of which the court establishes the presence or absence of circumstances substantiating the claims and objections of the parties, as well as other circumstances that are important for the correct consideration and resolution of the case. As you know, this information can be obtained from the explanations of the parties and third parties, the testimony of witnesses, written and material evidence, audio and video recordings, expert opinions. Evidence obtained in violation of the law has no legal force and cannot be used as the basis for a court decision.

As a rule, economic cases are considered in an open court session, that is, any citizen, even if he has nothing to do with the case, can be present in the hall during the process. The session itself is divided into several parts. The participation of a lawyer at all these stages is very important. Consideration of the case on the merits is preceded by the preparatory part of the court session, in which the lawyer's task is to, taking into account the interests of his principal, assist the court in the correct solution of issues related to the necessary conditions for the trial of the case.

First of all, the issue of disqualification of any of the judges or other participants in the process is subject to resolution. When discussing with the client the issue of filing a challenge or presenting his views on the validity of the challenge declared by the opposite side, the lawyer takes into account that the challenge is allowed only on the grounds specified in the law and must be motivated, that is, contain indications of specific circumstances indicating the interest of the participants process in the outcome of the case or about their lack of impartiality.

In the preparatory part of the court session, the presence of persons notified or summoned by the court is also checked. If the client mistakenly believes that he has the right to insist on participation in the court session in the absence of the other party (which will create advantages for him due to the inability of the court to hear the explanations of this party or the testimony of its witnesses), the lawyer must not only take into account the fallacy of such a position of the principal from the point of view procedural law, but also legally competently explain this to the client. When explaining these aspects, the lawyer gives the rationale that the consideration of the case in the absence of the opposing party or in the absence of completeness of the evidentiary material significantly narrows the ability of the court to find out the judicial truth. Such factors may entail the annulment of the rendered decision due to insufficient clarification of the circumstances relevant to the case.

In the preparatory part of the court session, the issue of filing petitions by the participants in the process is resolved, while petitions can be filed both orally and in writing. The lawyer should explain to the client that it is most effective to file petitions in writing, especially in complex cases.

The second part of the court session is the consideration of the case on the merits. The content of this main part of the court session consists in the study and verification of all the factual and evidentiary material presented by the parties, as well as collected at the initiative of the court. It is noted in the legal literature that unconditional respect for the court, unflinching restraint and the strictest correctness in relation to judges is one of the basic rules of behavior for lawyers, the duty to ensure that neither words nor actions detract from the dignity of the court or give rise to insufficient respect for justice⁴.

It should be noted that at the stage of preparing the case for trial, the lawyer discusses the possibility of resolving the dispute through a settlement agreement, the conclusion of which is the result of mutual concessions by the parties.

The lawyer must first discuss with his client all issues related to his explanations in court, and explain to him that his statements will become valid only after they are confirmed by other evidence.

An important issue is the process of proof in the case, where the lawyer takes an active part in the study of material and written evidence, conducting their inspection on the spot, studying expert opinions and explanations of a specialist. It is the lawyer, as a professional lawyer who provides qualified legal assistance, who can skillfully and effectively use the rights granted to him by the power of attorney and the law. The lawyer must be correct when participating in the interrogation of witnesses, specialists

⁴ Egamberdiyev A.U., Ahmedov R.T., Mirzayev Sh.M., Fazilov F., Nikonov I., Sayfiyeva G. Advokatura. Oliy o'quv yurtlari uchun darslik. T.: TDYuU nashriyoti, 2016. 84 bet.

and experts.

The logical conclusion of the representative activity of a lawyer is judicial debate, to which the court proceeds after the examination of evidence is completed. Judicial debates consist of speeches by the persons participating in the case and their representatives. Judicial action is not only a economic procedural action, but also a creative product, a means of education, persuasion. After all, the oratory of a lawyer should give pleasure to listeners and captivate the audience.

Summarizing all the evidence examined in court, the lawyer substantiates his legal position. When speaking, he should not forget about the style of speech, the language of speech, as well as the appeal to emotions. In judicial speeches, it is impossible to go beyond the limits of proof, to refer to evidence that has not been examined in court. The speech should be short and meaningful⁵.

Consideration of an economic case by the court ends with a decision of the court. This general rule is established by Art. 176 of the Economic procedure code of the Republic of Uzbekistan.

Based on the above, we can come to the conclusion that the features of the activity of a lawyer-representative in the economic process are due to its two-sided status - organizational, legal and procedural. The public-legal role of a lawyer in economic legal proceedings and the priority right to provide professional legal assistance in economic cases are also recognized as special. The activity of a lawyer in the economic process is of fundamental and guarantee significance, which is manifested in the fact that it is the lawyer who effectively participates in the implementation of the goals and objectives of economic legal proceedings formulated by the legislator.

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⁵ Гаврилов С.Н. Процессная модель качества квалифицированной юридической помощи в контексте цифровой трансформации адвокатуры // Адвокатская практика. 2020. № 6. С. 23