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UDK 347.963

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The Prosecutor in civil Proceedings

В даній статті досліджуються процесуальні форми участі прокурора в цивільному процесі. Право прокуророві вступити в процес на будь-якій стадії. ЦПК прокурор має право подати позов у суді першої інстанції.

Ключові слова: прокурор, цивільний процес, апеляційна скарга, суспільні інтереси, суспільство, держава, громадянин, Конституція України.

В данной статье исследуются процессуальные формы участия прокурора в гражданском процессе. Право прокурору вступить в процесс на любой стадии. ГПК прокурор имеет право подать иск в суде первой инстанции.

Ключевые слова: прокурор, гражданский процесс, апелляционная жалоба, общественные интересы, общество, государство, гражданин, Конституция Украины.

This paper investigates the procedural forms the prosecutor in civil proceedings. Law Attorney to join the process at any stage. GIC prosecutor may file suit in a court of first instance.

Keywords: attorney, Civil Procedure, the appeal, the public interest, community, state, citizen, Constitution of Ukraine.

Introduction. The definition of procedural forms the prosecutor in a civil trial is not assigned its content representational tasks related to the nature and objectives of the stages of the process and mechanism of the opening of civil proceedings in the case. Thus, the form of representation in civil proceedings the prosecutor depends on the order of its entry into the process. First, the discovery process in civil case - an appeal to the trial court with a claim to the protection of rights and legitimate interests of citizens and public interest (st.118 GIC) filing the appeal or cassation appeal against the decision of the court (Articles 292 and 324 CCP); complaint (application) for review of court decisions in exceptional or new circumstances (Articles 353 and 362 CCP), and secondly, the introduction of civil procedure in the case at any stage to provide opinions for the purpose of performance of their duties (Article 35 of the Law

of Ukraine “ On Prosecutor’s Office “ st.281 GIC).

The purpose of this paper is to study and research part of the prosecutor in civil proceedings.

Analysis of recent research. The problem has not been the subject of any theses or monographs, although some of its theoretical and practical aspects were considered such scholars as K.Husarov, M. Kosyuta, M. fetlock, N. Rudenko, M. Yakymchuk et al. However, the work of these and other authors concerning the prosecutor in civil proceedings have been met in other circumstances - to the formation of Ukraine as an independent state with the new socio- economic system and the legal system, to the Constitution of Ukraine in 1996 and numerous conceptual changes in the legislation regulating civil procedure. This gap exists even now, after the 2001 so-called small judicial reform. In existing works on objective reasons are not considered fundamental political, social, economic and legal changes that have occurred during this time.

The main material. This statement corresponds with the relevant provisions of Art. 45 Code of Civil Procedure, which specifies the shape somewhat representative of the prosecutor in the process compared to 361 of the Law of Ukraine “ On Prosecutor’s Office “. Thus, for GIC procedural forms of representation in civil proceedings the prosecutor two.

The first procedural form - a prosecutor appeals to the court of claims, complaints and petitions to protect the rights, freedoms and interests of others or the public or the public interest and participation in these cases. Consideration of these issues provided in actions, mandatory and other proceedings. (Writ proceedings, by the way, is a new institution in the civil procedural law). Note that the right of access to the courts to protect unspecified persons acting CBK does not provide, as opposed to art. 5 Code of Civil Procedure 1963 as amended on June 21, 2001 and Art. 36-1 of the above Act. Since the new Civil Procedure Code does not regulate the procedure of proceedings for the protection of unspecified persons, the prosecutor must present such claims to protect the public interest.

This means that the prosecutor is entitled to a claim (Art. 118 CPC), making an appeal (Article 292), the cassation appeal (Article 324), the appeal court decisions in exceptional circumstances (Article 353) and presentation application for revision of a judgment or court order under new circumstances (Art. 362). This is also in the form of an appeal of the prosecutor to the trial, appellate or cassation.

Opening of the Civil affairs predetermined the need to protect the interests of the state or a citizen, but art. 45 Civil Procedure Code does not specify when such circumstances occur, and entitles them to the prosecutor to determine in each case independently of any matter under the jurisdiction of the court. This indicates fakultatyvnist this form of the prosecutor in civil proceedings. However century. 33 Law of Ukraine “ On Prosecutor’s Office “ is set to an imperative rule that in order to protect the interests of the state and citizens, who for health or other valid reasons, are unable to protect their rights, the prosecutor or his deputy makes or supports victim filed a civil suit for damages caused by the crime. The above is an exception to the general provisions on the right of the prosecutor to court on your own.

By the analyzed forms of representation prosecutor also include the provisions of Part 4. 46 Code of Civil Procedure, which provides for the right of the prosecutor, who was not involved in the case to address whether there are grounds for filing the appeal or appeal, application for review of a decision due to exceptional or new circumstances, become familiar with the case in court.

The second procedural form - providing the prosecutor representing the interests of the citizen and the state in the manner prescribed by the Code of Civil Procedure and other laws in any stage of the civil process, that is, when its part recognized as indispensable by his request, and on appeal to the Court of others. For example, in Art. 281 Code of Civil Procedure provides that thing on the provision of mental health services by enforcement or termination of outpatient mental health care, hospitalization compulsorily treated in the presence of a person whom settled this question, it is representative of the mandatory participation of the Prosecutor and others who applied. In fact, it is expected entry prosecutor in civil procedure for giving an opinion in the case (Article 35 of the Law of Ukraine " On Prosecutor's Office "), although direct Articles 45 and 46 of the current Code of Civil Procedure, as opposed to art. 121 Code of Civil Procedure 1963, this form of representation prosecutor in civil proceedings do not involve [9].

The main material. Given the right of the prosecutor to join the process at any stage, the legislator, in our opinion, was referring to the following scheme. By GIC prosecutor may file suit in a court of first instance. Whether from the case he has the right to appeal against decisions of the appellate court as well as in cassation and others. However, the introduction of the prosecutor in civil litigation at any stage does not mean its right, for example, enter the case being considered by the trial court on the pleadings stage. During the stages of civil procedure in the sense of § 2 of Art. 45 Civil Procedure Code must be understood : the trial court of first instance (the first stage), the trial court of appeals (the second stage), etc. This implies that the prosecutor has the right to enter the case by filing a claim, appeal or cassation decision application (complaint) a new trial under exceptional or new circumstances and so on.

Thus, the violation of the prosecutor of the case in civil proceedings caused the need to protect the rights and legitimate interests of citizens and the public interest, but art. 45 Civil Procedure Code does not specify when such circumstances occur, and entitles the prosecutor to establish them in every case to any matter under the jurisdiction of the civil proceedings. This, as already noted, indicating that the first procedural form - the discovery process, the prosecutor in the case - characterized fakultatyvnisty. The exception to this rule is Article 33 of the Law of Ukraine " On Prosecutor's Office " , which is mandatory and specifies that in order to protect the interests of the state and citizens, who for health or other valid reasons, are unable to protect their rights, prosecutor or his deputy submits whether the victim filed a civil suit for damages caused by the crime.

Summarizing the above, we can state : an introduction to the process of the prosecutor in the case possible on their own initiative, and as required by law. Introduction to the process on their own initiative is optional, at the request of law - mandatory. The nature of the expression on the part of the prosecutor in the civil trial in the case - the method of entry into the process is determined by the type of such participation - participation optional (optional) and imperative (mandatory).

Mandatory participation of the prosecutor in civil proceedings as required by law provided in cases concerning psychiatric care by enforcement (Article 22 of the Law of Ukraine "On Psychiatric Care "), for damages caused by the crime (Article 33 of the Law of Ukraine " On Prosecutor's Office ") and others. Participation of the prosecutor in civil proceedings is also mandatory in cases brought his claims and statements. Mandatory participation in the process is the prosecutor and if the court (judge) determines it necessary in a particular case it was determined in this ruling. Thus, if the case file there

is reason to believe that the controversial agreement reached between the parties, contrary to the interests of the state and society, but claim demand for recognition of its not declared invalid, the court may, on the basis of Article 45 of the Code of Civil Procedure § 2 recognize the necessary participation of the prosecutor in case. The decision of the court (judge) of the compulsory part of the prosecutor in the case is not appealable, and the prosecutor can not refuse its implementation [9].

The current Law of Ukraine “ On Prosecutor’s Office “ (Article 36 -1) clearly, unequivocally and in full compliance with Art. 121 of the Constitution of Ukraine stipulates that the prosecutor determines the basis for representation in court, the shape of its implementation at any stage of the proceedings, including by making appeals, complaints against judicial decisions or applications (complaints) about their review under exceptional or new circumstances. This position is confirmed by the above-mentioned decision of the Constitutional Court of Ukraine on April 8, 1999, however, due to the lack of direct guidance in procedural law, courts sometimes take the wrong position on this issue.

Consequently, the prosecutor indicated legal regulations may make representation of the interests of citizens and the state at any stage of proceedings at its discretion. However, it does not hurt the current procedural legislation of Ukraine does not always allow. Thus, Article 36 1 Law of Ukraine “ On Prosecutor’s Office “ establishes that the prosecutor involved in civil proceedings only for his statements on the protection of state interests or the rights and legitimate interests of citizens, who for health or other valid reasons can protect their rights. In addition, the prosecutor may be involved in a court in a case or enter the case on its own initiative for a ruling for the purposes of their duties. Participation of the prosecutor in the trial is currently mandatory in cases provided by law, or when the court deems it necessary. However Procedure Act does not specify the order entry process to the prosecutor on his own initiative when he did not submit claims and claims the benefit of individuals or the state.

Under the current law judge may deny the prosecutor in his right of entry into the trial at any stage in its sole discretion, contrary to the provisions of Article 45 of the Civil Procedure Code, Article 36 1 of the Law of Ukraine “ On Prosecutor’s Office “. In addition, the procedural rules do not define the criteria under which a court may declare a necessary part of the prosecutor in the process, which significantly limits its right to self determination of his entry into the litigation to protect the interests of an individual or the state.

Civil proceedings - Procedural Order (form) the administration of justice in civil matters, protection of violated or disputed rights and legal interests. In a lengthy and complex procedural content activities primarily initiated by the prosecutor, we can point out some parts or steps of: (a) the filing of a claim, (b) the institution of proceedings, (c) the proceedings before the trial, (d) hearing and resolution of the merits, (e) Correspondence proceedings, (e) to review the lawfulness and reasonableness of the approved decision on the case, (f) appeal the judgment for execution. These stages expressed meaning of justice as defined by the Law “ On the Judicial System.” However, the task of civil proceedings to protect the rights and interests protected by law will be implemented when the court decides on the claim of the prosecutor in the case of legitimate and informed decision.

Potential means of ensuring the achievement of outcomes identified other stages,

tasks and objectives are implemented in three ways : (a) appeal, (b) any appeal, (c) judicial review in exceptional and new circumstances.

CONCLUSION. Thus, the prosecutor considered the issue in a civil trial, it can be argued that in general it is legally regulated.

On the issue of representation of the prosecutor as the realization of the principle of publicity in civil proceedings, it remains a subject of discussion and debate as legislators Soviet-era and modern.

However, in Ukraine specialized literature on representation prosecutor in civil proceedings no. In a complex and long process formation in Ukraine of law in connection with the adoption of the new Civil Procedure Code needs to rethink the results of previously published papers on the problems of the prosecutor in the civil proceedings, to determine changes and novelties introduced in the domestic civil procedure law today, give them a scientifically sound analysis and appropriate legal assessment.

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