

The Concept of an Improper Defendant in a Civil Proceeding and the Conditions Under Which it can be Replaced



Olimjon Khamitovich Ismoilov

Applicant Graduate School of Judges under the Supreme Judicial Council of the Republic of Uzbekistan

ABSTRACT: The article analyzes the concept of an inappropriate defendant in a civil process, and the conditions for their replacement, its features, approaches expressed in the legal literature on this issue, as well as the legislative experience of foreign countries. As a result of the analysis, proposals were made to improve the national legislation defining the concept of an inappropriate defendant in civil proceedings and the procedure for their replacement..

KEYWORDS: Civil Process, Parties, Plaintiff, Defendant, Improper Defendant, Improvement.

INTRODUCTION

Civil cases can be considered correctly and in a timely manner only if the courts correctly determine the nature of the legal relationship between the parties in the acceptance of claims and the participation of the parties involved in the process. In short, the correct determination of the composition of the parties involved in the case will ultimately ensure a lawful, reasonable and fair decision on the case. That is why in civil proceedings there is an institute of replacement of a party who is not involved in the case. The analysis shows that as a result of judges' failure to always correctly determine the nature of the legal relationship, the criteria of law, the means of evidence, the scope of the parties involved in the case, all this leads to the collection of evidence, the involvement of relevant persons in the case. are among the factors that may lead to the postponement of the hearing and the violation of the deadlines for consideration of civil cases in court.

According to the general rule of civil procedure, the plaintiff is required to state in his statement of claim the circumstances on which he bases his claims and the evidence supporting them, in other words, to provide evidence to prove the existence of a disputed legal relationship (Article 189 of the CPC). However, as Professor Sh.Sh. Shorakhmetov noted, the judge still does not know that the rights or legally protected interests of the person (citizen and organization) who applied to the court with the application were violated by the person named in the decision. the existence of such a situation is assumed, and it is roughly determined who is the plaintiff and who is the defendant [1. 106].

Therefore, as rightly noted in the legal literature, sometimes during the preparation of the case for trial or during the proceedings, it can be determined that one or both parties are not the subject of the disputed legal relationship [2. 119-120].

Indeed, in civil proceedings in court, in some cases, the responsible party in the proceedings may appear to be a party not involved in the case due to erroneous involvement in the case. In such cases, the Code of Civil Procedure provides that if a court finds that a claim has been filed against a person who is not liable for the claim, he may, with the consent of the plaintiff, replace the non-involved defendant with an involved defendant before the decision is made (Article 46 of the CPC).

An analysis of the reasons for falling into the position of non-labor parties in civil proceedings shows that the main reasons for this are the difficulties in determining the actual circumstances of the case as a result of complexities in the structure of substantive relations [3. 174-189]. M. Mamasiddikov also notes in his works that the nature of labor relations plays a special role in determining the specifics of cases on compensation for material and moral damage caused by labor, the subjects of these legal relations determine the composition of persons involved in litigation [4. 65]. According to N.A. Gramoshina, the specifics of resolving the issue of involving the party involved in the case will depend on the norms of substantive law [5. 8]. The analysis shows that, in fact, issues related to whether or not the defendant is involved in the civil proceedings are determined by law.

THE MAIN FINDINGS AND RESULTS

Even in the legal literature, the definitions given to a defendant who is not involved in the case show that more attention is paid to whether or not he or she is a subject of a substantive relationship. For example, according to V.V. Yarkov, a party who is not involved in the case is a person who was initially assumed to be the subject of the disputed legal relationship, but in fact is not

The Concept of an Improper Defendant in a Civil Proceeding and the Conditions Under Which it can be Replaced

involved in the case at all [6. 63]. M.S. Shakaryan, on the other hand, defines the non-involved party as a person to whom the presumption that the dispute over the case materials is the subject of a legal relationship is excluded [7. 88].

Thus, the question of whether or not the defendant is involved in the case depends on the composition of the subjects of the legal relationship in dispute.

Based on the above, it can be concluded that a non-involved party in civil proceedings is not the subject of a material-legal relationship as a result of the examination of existing documents in the case, i.e. it is understood that he or she does not have a subjective right or legitimate interest or legal liability. For example, according to Article 989 of the Civil Code of the Republic of Uzbekistan, a legal entity or a citizen compensates for the damage caused by his employee in the performance of his duties (service, position). This indicates that a legal entity or citizen should be involved in the case, not the injured employee. The party involved in the case is a person with procedural legal capacity and enjoys all the procedural rights of the party and assumes the obligations [8].

Approved by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated July 15, 2009 № 200 "On improving the procedure for seizure, sale or destruction of property transferred to state revenue", if the property is sold or transferred for processing, the return of the value of the property shall be paid by the financial authorities at the same rate of interest as previously allocated from the relevant budget and relevant accounts of government agencies within ten days from the date of application.

In case of lack of funds to the relevant accounts of government agencies, the return of the missing part shall be made by the financial authorities from the relevant budget funds, with subsequent recovery of the funds from the special account of government agencies.

Refund of the value of the destroyed property shall be made by the financial authorities from the relevant budget within ten days from the date of application.

The source of return of the value of the property for the part to be returned from the relevant budget is the amount of current revenues received by this budget from the sale of property transferred to the state revenue. In case of lack of the specified current receipts, the head of the financial body has the right to decide on payment of the insufficient part of funds at the expense of receipts on the corresponding sections and paragraphs of the income of the state budget of the Republic of Uzbekistan [9].

As we can see, the involvement of which body as the respondent involved in a particular civil case depends more on the nature of the case.

In the legal literature, there are also scholars who have a negative view of the institute of non-partisan substitution. For example, according to I. Zeytsev, the replacement of a party not involved in the case is largely achieved through the efforts of the courts and a number of other procedural means, leading to delays in court proceedings, requiring procedural costs. The author emphasizes that the replacement of the party is carried out on the initiative and on the terms of the court, and considers it inconsistent with the principle of freedom (dispositive) in civil proceedings. In this process, the interested parties are passive, while the initiative to change the party should be initiated by the person whose rights and legitimate interests were initiated in order to protect the rights and legitimate interests of the party, change the subject and basis of the claim, dismiss, argues that the right to change a party should be given to the party itself, not to the court. According to I. Zeytsev, the only positive aspect of the replacement of the wrong party is that the plaintiff does not pay the state duty again when the wrong party is replaced [10].

Previously, Article 42 of the Criminal Procedure Code of our country provided for the replacement of a plaintiff who was not involved in the case. According to him, if the court found that the claim was filed by a person who had no right to advance it, with the consent of the plaintiff, the original plaintiff could be replaced by the plaintiff involved in the case [11]. However, it can be seen that the arguments put forward in the legal literature that it is not expedient to replace plaintiffs not involved in the case have now found a legal basis in the civil procedure legislation of some Commonwealth States. In particular, Article 41 of the Criminal Procedure Code of the Russian Federation, entitled "Replacement of a non-involved defendant", completely abandons the norms on replacement of a non-involved plaintiff [12]. Lawyer S.V. Nikitin comments on this innovation in the CPC of the Russian Federation: Unlike the CPC of 1964, the possibility of replacing a plaintiff who is not involved in the case, that is, a person who does not have the right to sue under the substantive law, was denied" [13. 104-105]. According to another lawyer, D.B. Abushenko, the norm in Article 41 of the Criminal Procedure Code of the Russian Federation excludes the possibility of replacing not only plaintiffs, but also third parties with independent claims [14. 142-143].

In other words, if the plaintiff is recognized by the court as a non-plaintiff and the plaintiff does not wish to enter the proceedings, the proceedings will continue regardless of whether the plaintiff agrees or not, and norms for making a decision the court will eventually refuse to satisfy the plaintiff's claim. According to the legal scholar M.S. Shakaryan, if the plaintiff, who is not involved in the case, demands the acceptance of his statement of claim and consideration of the case, the judge will have to accept his statement of claim and consider the case in context. If, as a result of the hearing, the court finds that the plaintiff is not really involved in the case, then it will issue a decision to refuse to satisfy the plaintiff's claim [15. 86].

The Concept of an Improper Defendant in a Civil Proceeding and the Conditions Under Which it can be Replaced

It should be noted that the rules providing only for the replacement of the defendant, which is not relevant to the case, are also provided for in the CPCs of Kazakhstan [16], Ukraine [17] and Estonia [18]. It can even be seen that the replacement of the plaintiff and the non-plaintiff in the CPC of the Republic of Georgia is described in separate articles [19. 106].

From the above, it can be seen that in the civil procedure legislation of some countries (Russian Federation, Kazakhstan, Ukraine, Estonia) the institute of replacement of the plaintiff, which is not involved in the case, has been abandoned. In this regard, we consider the advantages of the provision of these rules in the legislation on civil procedure. First, the waiver of the procedure for replacing a plaintiff that is not relevant to the case in civil procedural law precludes different approaches by courts in enforcing the law in law enforcement practice. The analysis of case law allowed for cases of termination of proceedings if some courts found that the plaintiff was not involved in the case.

Here is an example. Z. the defendants filed a lawsuit against the Karasuv city state notary office and M. alleging that the sale and purchase agreement was invalid. The court rejected the claim. The presidium of the district court found Z. to be a plaintiff not involved in the case, annulled the decision, and terminated the proceedings. By the decision of the Judicial Board on Civil Cases of the Supreme Court, the decision of the presidium of the regional court was annulled and the decision of the court of first instance was upheld. Pursuant to the sixth part of Article 42 of the previous CPC, the case is considered substantively if the third party plaintiff does not enter the process with independent claims, and the plaintiff, who is not involved in the case, does not waive the claim. X. whose rights were violated as a result of the dispute, Z. who did not file an independent claim on the case, did not start work when he was involved as a plaintiff, and was not involved in the case and did not waive his claim. The court of first instance ruled in accordance with the law and resolved the case correctly [20. 19-20].

Second, the analysis shows that under Article 42 of the previous CPC, if the court finds that the claim was made by a person who has no right to advance it, and the original plaintiff agrees to be replaced by another person, but the plaintiff does not want to proceed, it is not clear how the court will decide in this case. In practice, however, in this case, the court ruled that the plaintiff had waived his claim and dismissed the proceedings.

However, this situation deprives a person who is found not to be involved in the case in the future of the right to file a lawsuit in this case. All of the above indicates that it is appropriate to exclude the norms relating to the replacement of a plaintiff that are not relevant to the case from the civil procedural law.

When talking about the terms of replacement of non-parties involved in the case, the question arises at what stage of the civil process this issue can be resolved. According to the legal literature, there are the following stages of the civil process: initiation of civil proceedings; preparation of the case for trial; to consider and resolve the case in court; to file appeals and protests against court decisions, rulings and decisions; enforcement of court decisions. The analysis shows that it is expedient to prepare the defendant who is not involved in the case for trial and to replace the case at the trial and resolution stages. It should be noted that some decisions of the Plenum of the Supreme Court of the Republic of Uzbekistan provide clarifications on the stages of the process of replacement of a party not involved in the case. In particular, paragraph 11 of the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan dated April 28, 2000 № 7 "On some issues of application of the law on compensation for moral damage" states that if during the trial it is established. In accordance with the requirements of Article 46 of the CPC, an explanation is given as to whether the defendant who is not involved in the case has the right to replace the defendant who is involved in the case or to involve this person as an additional defendant [21].

In the ideas put forward in the legal literature, the process of replacing the non-working party with the involved party begins with the preparation of the case for trial [22. 107]. However, the civil procedure legislation of the country does not provide clear norms on the stage at which the replacement of a defendant not involved in the case is allowed. In particular, in the process of reviewing court decisions on appeal, cassation and review, the question arises as to whether the replacement of parties not involved in the case is allowed under Article 46 of the CPC.

According to the legal literature, in the preparation of civil cases for trial in the courts of first instance, or in the process of substantive consideration of the case, it is permissible to replace the parties who are not involved in the case [23. 590]. If we analyze the civil procedure legislation of some foreign countries, for example, the civil procedure legislation of the Russian Federation, Kazakhstan, Estonia provides for the replacement of a defendant who is not involved in the preparation of civil cases for trial in the courts of first instance.

According to the legal literature, in particular, in the opinion of I. Zeitsev, the replacement of a party who is not involved in the case should be allowed only at a meeting of the court of first instance. In his view, in practice, the courts almost never apply the CPC norms, which provide for the replacement of a party who is not involved in the case. One of the main reasons for this is that if the involvement of a party not involved in the case is determined, it is more convenient for the courts to make a decision to dismiss the plaintiff's claim than to replace him with the party concerned. In this regard, I. Zeitsev argues that the courts are far from accusing, because the replacement of a party not involved in the case is not a procedural obligation, but a right, and the civil procedure law does not provide for any sanctions (coercive measures) for non-application of the above article [24].

The Concept of an Improper Defendant in a Civil Proceeding and the Conditions Under Which it can be Replaced

Another lawyer, V.M. Zhuykov, argues that the institution of substitution, which is not involved in the case, is of great practical importance, because it allows to correctly determine not only the legal status of a particular participant in civil proceedings, but also the procedural consequences [25].

The legal literature argues that the party not involved in the case is strictly a legal term. Because it is based on substantive legal indications that the party is not the owner (subject) of the rights and legitimate interests for which the court must make a decision. Thus, since the defendant who is not involved in the case is, in a substantive and legal sense, the plaintiff is a person who is not liable for the claim, it is always argued that he will succeed [26].

The fourth part of Article 46 of the CPC provides for the resumption of the proceedings after the replacement of the defendant not involved in the case. This begs the right question. Will the stage of preparation of the case for trial be resumed after the replacement of the defendant who is not involved in the case, or will the proceedings be started immediately? It is known that Chapter 22 of the Criminal Procedure Code is called "Judicial proceedings", which sets out the rules of procedure after the case is ready for trial. In addition, paragraph 7 of the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan dated August 24, 2018 № 26 "On preparation of civil cases for trial" explains that the general and reduced terms of consideration and resolution of civil cases provided for in Article 207 of the Criminal Procedure Code from the date of termination, with the addition of the date on which the decision was made or the decision to leave the application without consideration, to terminate the proceedings, to transfer the case to another court [27]. This means that the stage of preparing the case for trial will not be repeated after the replacement of the defendant who is not involved in the case. However, failure to prepare the case for trial after the replacement of the defendant may lead to inaccurate definition of the nature of the legal relationship between the parties, the legal criteria they regulate, resulting in errors in determining the basis of the lawsuit, evidence, scope of persons involved in the case. These can lead to the collection of evidence in the case, the postponement of the hearing to involve the relevant persons in the case, and the violation of the time limits for civil proceedings.

The civil procedure legislation of some countries studied, in particular, Article 41 of the Criminal Procedure Code of the Russian Federation and Article 50 of the Criminal Procedure Code of the Republic of Kazakhstan. Therefore, based on the above, it is proposed to add the fourth part of Article 46 of the Criminal Procedure Code of our country with the sentence "after the replacement of the defendant not involved in the case, the preparation of the case for trial and its consideration begins from the beginning."

We know that the replacement of a party who is not involved in the case may also have an impact on the jurisdiction of the civil case. For example, Article 33 of the CPC sets out the general rules of jurisdiction, according to which applications are submitted to the court where the defendant resides or is permanently employed. Applications against organizations are submitted to the court where they are registered.

If the defendant who is not involved in the case is replaced and the defendant who is involved in the case is involved, then the jurisdiction of the case may also change based on the above rule. However, Article 46 of the CPC does not address this issue. In our opinion, the court should resolve the case substantively, even if it involves the defendant involved in the case and in this connection changes the relevance of the case to the court. Indeed, Article 31 § 1 of the CPC provides that a court may decide on the merits of a case which it has accepted in its proceedings in accordance with the rules of jurisdiction, even if the case later falls under the jurisdiction of another court.

CONCLUSION

Based on the above, it should be noted that the institution of replacement of non-parties is of great practical importance, as it allows to correctly determine not only the legal status of a particular participant in civil proceedings, but also the procedural consequences. After all, civil cases can be considered correctly and in a timely manner only if the courts correctly determine the nature of the legal relationship between the parties in the acceptance of claims and the participation of the parties involved in the process.

In order to further improve the institution of replacement of the defendant in civil proceedings, Article 46 of the Code of Criminal Procedure stipulates that if the court finds that the claim filed in the first instance court or in the course of the trial is made against a person who should not respond to the plaintiff's application, the court may issue a ruling on the replacement of the defendant, prepare the case for trial after the replacement of the defendant and resume the trial, and if the plaintiff does not agree to replace the defendant with another person, the court it would be expedient to envisage norms that should be seen.

REFERENCES

- 1) Шорахметов Ш.Ш. Ўзбекистон Республикасининг Фуқаролик процессуал кодексига шарҳлар. –Тошкент: ТДЮИ нашриёти. 2010. -106 бет.
- 2) Мамасиддиқов М.М. Фуқаролик процессуал ҳуқуқи. Умумий қисм / Олий ўқув юрти талабалари учун дарслик. Масъул муҳаррир ю.ф.д., проф. О.Оқюлов. –Тошкент: ТДЮИ нашриёти. 2010. –Б. 119-120.
- 3) Скобелкин В.Н. Гражданско-процессуальные правоотношения. -М., 1999. -С. 174-189.

The Concept of an Improper Defendant in a Civil Proceeding and the Conditions Under Which it can be Replaced

- 4) Мамасиддиқов М.М. Меҳнатга оид етказилган моддий ва маънавий зарарани судда ундиришнинг назарий ва амалий муаммолари // Монография. Масъул муҳаррир проф. Ш.Шорахметов. –Тошкент: АҚХМИ. 2008. – 65 б.
- 5) Грамошина Н.А. Процессуальные особенности рассмотрения и разрешения дел о возмещении вреда, причиненного источником повышенной опасности. Автореф. дисс. канд. юрид. наук. -М., 1980. -8 с.
- 6) Гражданский процесс / Учебник. Отв. ред. проф. В.В.Ярков. -М.: Волтерс Клувер, 2004. -63 с.
- 7) Гражданское процессуальное право: Учебник / С.А.Алехина, В.В.Блажеев и др.; Под ред. М.С.Шакарян. - М.: ТК Велби, Изд-во Проспект, 2004. -88 с.
- 8) Ўзбекистон Республикасининг Фуқаролик кодекси // <http://lex.uz/docs/180552>
- 9) Ўзбекистон Республикаси Вазирлар Маҳкамасининг 2009 йил 15 июлдаги “Давлат даромадига ўтказиладиган мол-мулкни олиб қўйиш, сотиш ёки йўқ қилиб ташлаш тартибини такомиллаштириш тўғрисида”ги 200-сон қарори билан тасдиқланган “Давлат даромадига ўтказиладиган мол-мулкни олиб қўйиш, сотиш ёки йўқ қилиб ташлаш тартиби тўғрисида”ги Низом // <http://lex.uz/docs/1498818?otherlang=3>
- 10) Зайцев И. Надо ли суду заменять ненадлежащую сторону? // Ж. Российская юстиция. 1999.
- 11) Ўзбекистон Республикасининг 1997 йил 30 августдаги Фуқаролик процессуал кодекси // <http://lex.uz/docs/186105#219564>
- 12) Гражданский процессуальный кодекс Российской Федерации от 14.11.2002. №138-ФЗ // www.consultant.ru.
- 13) Комментарий к Гражданскому процессуальному кодексу Российской Федерации (постатейный) / под ред. Г.А.Жилина. –М.: ТК Велби, 2005. –С. 104-105.
- 14) Комментарий к Гражданскому процессуальному кодексу Российской Федерации / Под общ. ред. Первого заместителя Председателя Верховного Суда Российской Федерации В.И.Радченко. -2-е изд., прераб. и доп. –М.: Норма, 2006. –С. 142-143.
- 15) Гражданское процессуальное право: Учебник / С.А.Алехина, В.В.Блажеев и др.; Под ред. М.С.Шакарян. - М.: ТК Велби, Изд-во Проспект. 2004. -86 с.
- 16) Гражданский процессуальный кодекс Республики Казахстан. <http://online.zakon.kz>.
- 17) Гражданский процессуальный кодекс Украины // kodeksy.com.ua.
- 18) Гражданский процессуальный кодекс Эстонии. Правовые акты Эстонии, 2005, № 18. -С. 1368-1406.
- 19) Гражданский процессуальный кодекс Грузии от 14 ноября 1997 года. №1106-ІС.
- 20) Ўзбекистон Республикаси Олий судининг суд амалиётидан. –Тошкент, Ўзбекистон Республикаси Олий суди, 2002 йил, 2-сон. –Б. 19-20.
- 21) Ўзбекистон Республикаси Олий суди Пленумининг 2000 йил 28 апрелдаги “Маънавий зарарни қоплаш ҳақидаги қонунларни қўллашнинг айрим масалалари тўғрисида”ги 7-сонли қарори (Ўзбекистон Республикаси Олий суди Пленумининг 2003 йил 19 декабрдаги 20-сонли ва 2006 йил 3 февралдаги 5-сонли қарорларига асосан киритилган ўзгартириш ва қўшимчалар билан) // <http://lex.uz/docs/1449509>
- 22) Шорахметов Ш.Ш. Ўзбекистон Республикасининг Фуқаролик процессуал кодексига шарҳлар. –Тошкент, ТДЮИ нашриёти, 2010. -107 бет.
- 23) Гражданский процесс / Учебник. Отв. ред. проф. В.В.Ярков. -М.: Волтерс Клувер, 2004. -590 с.
- 24) Зайцев И. Надо ли суду заменять ненадлежащую сторону? // Ж. Российская юстиция. 1999.
- 25) Жуйков В.М. Проблемы гражданского процессуального права. М, 2001. -С. 27-29.
- 26) Жуйков В.М. Проблемы гражданского процессуального права. М, 2001. -С. 27-29.
- 27) Ўзбекистон Республикаси Олий суди Пленумининг 2018 йил 24 августдаги 26-сонли “Фуқаролик ишларини суд муҳокамасига тайёрлаш тўғрисида”ги қарори // <http://lex.uz/>