

LEGAL SERVICES FOR COLLECTION OF EXPENSES: PROBLEMS AND PROPOSALS

Firdavs Bekzodovich Jumayev

Student of Samarkand Legal Technical College

Annotation: This article discusses the issues related to the recovery of costs for legal services, and a comparative analysis of the issues of recovery of fees for legal services by the economic court. Also, the experience of foreign countries on charging fees for legal services was studied, and certain suggestions were made for the national legislation.

Keywords: economic court, legal service, representation, law, lawyer, costs, charging fees, national legislation.

Introduction: The activity of the courts is aimed at ensuring the right of the persons participating in the case to protect their rights and legal interests in any way provided for in the Code of Economic Procedure. One of the methods of protection of civil rights is to protect one's own rights, but in most cases, this method of protection is carried out by using the services of representatives and lawyers. This requires certain expenses. The introduction of the institution of reimbursement of costs incurred for representation serves to fulfill the tasks of the state, such as protection of violated or conflicting rights of enterprises, institutions, organizations and citizens in the field of economy and prevention of violations. In practice, various issues arise regarding the application of the institution of reimbursement of expenses incurred for representation. The courts, based on the gaps in the legislation, have to independently interpret the norms of the law in one or another case. This sometimes leads to the formation of conflicting court practices on one issue.

Payments made for the assistance of an economic procedural legal representative are not assessed as court costs. That is, according to Article 116 of the Code of Economic Procedure, Court expenses consist of postal expenses related to sending court notices and court documents, expenses related to court-ordered expert examination, summoning of witnesses, on-site examination of evidence, expenses related to conducting the court session in the video conference mode, as well as other expenses related to the hearing of the case [1].

Article 136 of the Civil Procedure Code is called reimbursement of expenses incurred for the assistance of a representative, and it is provided that the court shall recover reasonable amounts of the expenses incurred for the assistance of the representative from the other party in favor of the party in whose favor the decision was made [2].

Article 110 of the Arbitration Procedural Code of the Russian Federation also strengthens the rule provided for in the above-mentioned civil procedural legislation. In the decision of the Supreme Arbitration Court of the Russian Federation dated December 21, 2004, it was recommended to assess the reasonableness of the cost to the representative, taking into account the complexity and size of the case, the application of foreign legislation and the need to demand evidence, the time spent on preparing materials [3].

In accordance with the Code of Civil Procedure of Kazakhstan and the Code of Arbitration Procedure of the Russian Federation, expenses related to the hiring of representatives are included in the category of court costs.

In the USA and Japan, unless otherwise stipulated in the contract, regardless of which party the court decision was issued in favor of, each party shall bear the expenses incurred for the assistance of the representative.

THE MULTIDISCIPLINARY JOURNAL OF SCIENCE AND TECHNOLOGY

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In Russia, Kazakhstan, Moldova, Belarus and the United Kingdom, if the decision is made in favor of the party, the court will recover from the other party reasonable amounts of expenses incurred for the assistance of the representative.

In France, Belgium, the Netherlands, Italy, Spain, Poland and Hungary, such costs are recovered from the party in favor of which the decision was made, but the amount recovered does not depend on the amount of the fee paid to the representative. In such a case, only the part of the cost that is proven to be spent on the representative and necessary will be recovered.

In Germany, Sweden and Denmark, the amount of recovery of expenses incurred by the representative is determined by law.

The recovery of expenses incurred by the plaintiff for representation in court on behalf of the defendant is one of the factors that prompts the defendant to take measures to resolve the dispute before the court, and in the future, under the influence of the risk for the defendant, he will try to solve the case without bringing it to court and fulfill his obligations.

In this case, different practices have been formed in the courts in determining reasonable amounts of costs for the assistance of the representative and evaluating them. There are two different approaches by experts regarding the nature of these costs. Some consider that it should be rejected because the Economic Procedure Code does not provide for the collection of expenses for the representative and that it should not be collected as damages based on Articles 14, 1023 of the Civil Code, since it is not directly related to the restoration of the violated right, others consider it as damage aimed at restoring the directly violated right and find it expedient to collect [4, 5].

It will be necessary to study the issue of implementing the norms of civil procedural legislation aimed at regulating these relations into economic procedural legislation or their unification. Accordingly, it is necessary to pay attention to the following aspects that may arise in practice when creating legal norms related to legal services.

There is a rule that says "Your immunity ends when the independence of another person begins." Therefore, every person should take into account that he does not affect the rights and legal interests of another person when using the representative service. Let's say, when the claimant informs the defendant and there is an opportunity to resolve the conflicting legal relationship, if a claim is presented to the court, in this case, to what extent is it correct to recover the costs incurred for the representative?

In addition, if the plaintiff wants to exercise his rights through the representation of several persons to participate in the case, this is not prohibited in the legislation. In such a case, the costs to be recovered from the defendant are evaluated based on what criteria? Can this situation be assessed as an unreasonable expense by the court? The level of fees for legal services is one of the problems in the evaluation of the interest to be protected.

In our opinion, we believe that it is appropriate to take into account the standard of expenses for a business trip specified in regulatory legal documents, transport service costs, the time required for the preparation of documents submitted to the court by a qualified specialist, the amount of fees paid for lawyers in a similar case in the same area, the price of legal services provided by statistical authorities, the duration and complexity of the case. A person who claims the amount of reasonable expenses should prove it in accordance with Article 68 of the Code of Economic Procedure [6].

Since the range of reasonable costs is related to evaluation, it is not possible to develop criteria for application in one or another category of work. In each case, the court can make an

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assessment based on the situation of the case, its complexity and the duration of the trial. Because, whichever party the decision was made in favor of, the court will charge the other party for the costs of the representative's assistance in reasonable amounts to prevent unjustified increase of expenses for the representative.

If the defendant does not object to the requested representation fees, the right of the court to reduce the amount of the requested damages is considered controversial. In our opinion, the court can take measures to reduce representation expenses in order to maintain the balance between the persons participating in the case. Another case is the issue of recovery of costs for legal services that are higher than the amount of the claim. Such actions of the representative-lawyer are not prohibited by the legislation, besides, the legislation does not provide for a proportionality between the expenses for the representation and the amount of the claim, for example, if the amount of the claim is 5,000,000 soums, the amount of expenses incurred for the representation is 8,000,000 soums.

The plaintiff's withdrawal of the claim due to the satisfaction of the defendant's demands does not serve as a basis for rejecting the plaintiff's claim for the recovery of expenses incurred for the representation. In practice, taking into account the volume and complexity of cases, organizations also conclude contracts on providing legal assistance with other persons, regardless of the position of a lawyer in the state. In turn, the organization may hire a lawyer based on the legal service contract in order to avoid paying the fee to the temporary lawyer and to collect representation expenses in the future, abusing its rights. However, the legislation does not exclude the conclusion of such an agreement, but the existence of legal ways to abuse the legal framework and expenses incurred for the representation causes the following debates:

Firstly, if the claim is partially satisfied, does the claimant retain the right to full recovery of legal fees?

In our opinion, the costs incurred for legal services are characterized by immediacy, which means that they are not related to the size of the satisfied main claims.

Secondly, in the process of enforcement of court costs, debt collectors use the services of lawyers, which means that the costs of legal services can be assessed as damages aimed at restoring their rights.

Thirdly, in accordance with the requirements of the Code of Economic Procedure, if it is determined that the claims were filed by a person who should not be responsible for the case, the defendant will be replaced with the appropriate defendant. In this case, the first defendant can pay the costs associated with coming to court and hire lawyers. In this case, the demands of the first defendant to recover expenses related to this case are considered reasonable.

Fourthly, in some cases, being a lawyer of the plaintiff working on the basis of an employment contract for legal services, they use the services of an attorney to participate in them. The fact that this situation is a reason for rejecting the demand of the claimant to recover these costs as damages is also controversial.

Fifthly, according to Article 48 of the Code of Economic Procedure, third parties who do not file an independent claim in relation to the subject of the dispute, before the court of first instance makes a decision, if the case may affect the rights or obligations of one of the parties of these persons, may start work on the side of the plaintiff or the defendant. They can also be involved in the case at the request of the party or at the initiative of the court [7].

Third parties who do not file independent claims against the subject of the dispute shall use the party's procedural rights and assume its procedural obligations. Except for the right to

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change the basis or subject of the claim, increase or decrease the amount of claim, withdraw from the claim, recognize the claim or enter into a settlement agreement or mediation agreement, submit a counterclaim, demand the mandatory execution of a court document.

In this case, the right of third parties to use legal services and to reimburse them for the expenses incurred for their participation in the court session on his behalf is not limited by law, because third parties who do not file an independent claim in relation to the subject of the dispute use the party's procedural rights and assume its procedural obligations. Accordingly, third parties also have the right to recover these costs in the future.

Sixthly, according to Article 75 of the Law "On the Execution of Court Documents and Documents of Other Bodies", in the bailiffs' deposit account, the funds spent on the organization and execution of enforcement documents, as well as the funds of the parties and other persons participating in the enforcement proceedings, are the costs of enforcement actions [8]. Implementation costs include:

- funds spent on transportation, storage and sale of the debtor's property;
- funds spent on payment of fees to translators, specialists and other persons invited to perform executive actions in accordance with the established procedure;
- funds spent on transferring (sending) collected amounts to the collector by mail;
- funds spent on searching for the debtor, his property or a child taken from the debtor by court decision;
- funds spent on other necessary expenses incurred during the execution of the executive document.

The costs of implementation of executive actions must be confirmed by documents. Can the costs incurred by the collector for representation in the course of enforcement actions be the basis for subsequent collection from the account of the defendant? In our view, there are sufficient grounds for an award of representation costs.

Seventhly, if procedural legal succession is allowed as a result of waiving the claim in favor of another person in the process of considering the case in court, will the claim for recovery of costs for legal services be transferred to the heir?

According to Article 46 of the Code of Economic Procedure, in cases where one of the parties leaves the legal relationship determined by a dispute or court document (in the case of reorganization of a legal entity, waiver of the right to claim in favor of another person, transfer of debt to another person, death of a citizen and other cases of change of persons in obligations), the court replaces this party with his legal successor [9].

In our opinion, the legal successor has the right to recover the costs of legal services after the decision of the court is passed.

Conclusion: In conclusion, we can say that the issue of compensation for legal services in economic courts requires appropriate amendments to the normative legal documents and clarifications regarding the compensation of these expenses in the relevant Plenum decisions of the Supreme Court. Also, in order to achieve a uniform approach to the above-mentioned issue, it would be appropriate to take these circumstances into account in the process of improving the economic processual legislation.

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