

REPUBLIC OF AZERBAIJAN

On the rights of the manuscript

ABSTRACT

of the dissertation for the degree of Doctor of Philosophy

INSTITUTE OF REPRESENTATION IN CIVIL PROCESS

Specialty: 5615.01 – “Civil process ”

Field of science: Law

Applicant: **Huseyn Vilayat Asgarov**

Baku – 2024

The work was performed at the Chair of Civil process and commercial law, Faculty of Law, Baku State University.

Scientific supervisors: Doctor of laws, Professor
Alexander Alexandrovic Merejko

Doctor of laws
Shahriyar İbrahim Aliyev

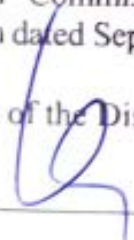
Official opponents: Doctor of laws
Volodymyr İvanovic Korol


Doctor of laws
Zaur Alirza Mammadov

Philosophical doctor of laws
Sabina Hamid Azizova



BFD 2.44 One-time Dissertation Council operating under Baku State University based on order No. 3-50/3-1-1-176/2023 of the Higher Attestation Commission under the President of the Republic of Azerbaijan dated September 14, 2023

Chairman of the Dissertation Council: Doctor of laws, Associate Professor

Turqay Imamgulu Huseynov

Scientific secretary of the Dissertation Council: Philosophical doctor of laws, Associate Professor

Alizade Gurbanali Mammadov

Chairman of the Scientific seminar:



GENERAL CHARACTERIZATION OF THE DISSERTATION

Relevance of the topic and degree of preparation. In modern times, the intensive development of the economy, the expansion of trade relations is a positive thing. However, these processes lead to various problems. The development and application of effective legal mechanisms in solving such problems arising in the civil and economic sphere is an important issue.

As in every civilized, democratic state, ensuring the rights and freedoms of people and citizens is an important issue, both in our Republic. In modern conditions, it is impossible to solve this issue without improving the national legislation and law enforcement practice in the sphere of protection of human rights and freedoms. The improvement of the institution of representation, which is a decisive mechanism in the protection of the rights and interests of legal and natural persons when considering civil disputes in courts, is a crucial and urgent issue in terms of its significant impact on the effective realization of justice in general, as well as the protection of human rights and freedoms.

The research of the problems of procedural representation in the civil process is not a new topic in civil procedural jurisprudence. The works of many prominent scientists have been devoted to this issue. Despite this, the institution of representation in the civil process, its main concepts, its place in different legal systems, its relationship with other legal phenomena, the theoretical and practical problems arising in connection with the realization of this activity in modern times have not been sufficiently investigated.

The relevance of the topic of the dissertation research is determined by the lack of a unified approach to the research of a number of topical issues arising during the activity of the representative institution in the science of civil procedural law and

judicial practice. The current civil procedural legislation of the Republic of Azerbaijan (AR) does not clearly regulate the resolution of important aspects of procedural representation in court proceedings on civil cases, and sufficiently effective mechanisms have not been created in this direction. The currently available theoretical researches on this topic only illuminate some, separate aspects of judicial representation, but there is actually no scientific work on investigating the real problems of the institution of representation in the civil process and proposing solutions.

As a whole, the centuries-old history of the institution of representation shows that representation in the civil process is a sphere that requires extensive and comprehensive research, and also contains principled approaches to determining the place of the representative during the consideration of civil cases in courts. Therefore, in the dissertation, special attention is paid to the history and understanding of judicial representation, and the consistent development of this institution in countries with different legal systems.

Adrian A.S. Zuckerman, a famous English legal scholar and professor of civil process at Oxford University, believes that unlike countries with a common law system, the participation of a representative in the civil process in the continental legal system is desirable. The main reason for this is that the civil process is conducted on the basis of the adversarial principle and the court is given the opportunity to take a completely neutral position in this process¹.

The institution of representation exists in practically all areas of law. The institution of representation in the civil process is an important constitutional guarantee of the protection of the rights and legal interests of individuals and legal entities in court. In general, this institution of law is a legal relationship in which one person

¹ Zuckerman, A. No Justice Without Lawyers -The Myth of an Inquisitorial Solution // – Oxford: Oxford Legal Studies Research Paper, – 2014. N 66, – p. 355-374.

performs procedural actions on behalf of another person, for the sake of his interests, on his behalf, within the framework of the powers granted to that person by law, and at the same time creates certain rights and duties in relation to the represented person.

Professor Rick Verhagen, who is considered one of the influential experts in the field of civil law, considers the criterion of the emergence of his authority in the matter of the status of the representative in the civil process. It is for this reason that representation can be legal (appears on the basis of a normative legal act) and voluntary (appears on the basis of a contract or power of attorney)².

In addition to scholars from foreign countries, local authors also have interesting ideas about the institution of representation in the civil process. Conducting research in this field M.D.Demirchiyeva emphasizes the criterion of professionalism in the development of the institution of representation in the civil process. The author notes that despite the fact that the possibilities of applying for judicial protection of rights and interests have expanded considerably today, it is not easy for a party who is not familiar with procedural intricacies to obtain a court resolution in his favor. The development of the adversarial principle as a principle of civil procedure leads to the fact that the party without professional representation is in an unequal position with the opposing party³.

Similar ideas can be found in the works of A.I.Aliyev. Author, analyzing the institution of representation in both the international and domestic context, notes that the main purpose of the right to use the help of a defender as one of the main elements of

² Verhagen, H.L. Agency in Private International Law, The Hague Convention on the Law Applicable to Agency / H.L.Verhagen. – Dordrecht: Martinus Nijhoff Publishers, – 1995, – p. 6.

³ Demirchiyeva, M.D. Civil proceedings. Procedural features of consideration of separate categories of civil cases: Teaching materials / M.D.Demirchiyeva. – Baku: Law, – 2008, – p. 173.

justice is to ensure the real equality of the parties⁴. As it can be seen, the author took the realization of the adversarial principle as a basis.

S.I.Aliyev notes that protection of the rights and legal interests of the subjects of legal relations is one of the main goals and tasks of the legal state. An important role in the implementation of this goal and task falls on the lawyer, a branch of the representative institution⁵.

The research of the problems of civil procedural representation, at least partially, goes beyond the scientific framework of civil procedural law, because the institution of representation reflects the specific features of not only civil process, but also other legal fields. Let us note one important point that procedural representation is a complex legal category, a complex legal institution that combines both public-legal and private-legal norms. In addition, in the event that the procedural representative simultaneously performs representative functions related to many legal relationships regulated by different legal fields (both procedural and material), then the problems of procedural representation can be both material and procedural in nature. For this reason, since the problems related to the activity of the representative in the civil process are of a complex nature, it is appropriate to take a comprehensive approach to the solution of those problems, that is, to look for appropriate solutions by approaching the unity of material and procedural legal norms. For this reason, the selected research topic is of special relevance.

When paying attention to the actual theoretical and practical problems of the activity of the institution of representation in the civil process, the following problems should be especially noted: the absence of provisions on the professional and qualification requirements of other representatives (close relatives, representatives of legal entities) in the procedural legislation, except for lawyers;

⁴ Aliyev, A.I. Human rights. Textbook / A.I.Aliyev. – Baku: Legal Literature Publishing House, – 2013, – p. 415.

⁵ Aliyev, Sh.I. Right of attorney. Textbook / Sh.I. Aliyev. – Baku: Azerbaijan Legal Reform Center, – 2012, – p. 8.

absence of specific norms regarding the determination of responsibility for the abuse of procedural rights, negligent mistakes of the representatives, etc.

The next factor that shows the relevance of the dissertation work is related to the fact that the requirements of the AR Constitution, which establishes the right of everyone to judicial protection (Article 60) and the right to receive high-quality legal assistance (Article 61), are mainly embodied in the activities of representatives in the civil process, in other words these constitutional rights are realized through the institution of representation.

Broadly speaking, the main goal of every legal state is to ensure human and civil rights and freedoms. This goal is established in the Constitution of AR (Article 12). However, without an appropriate legal guarantee mechanism, the establishment of human rights and freedoms in the Constitution is insignificant. It is from this point of view that the Constitution of AR provides for the legal guarantee of human rights and freedoms. Thus, the state of Azerbaijan guarantees the protection of everyone's rights and freedoms stipulated in the Constitution (Article 26). One of the legal guarantees of the mentioned protection is the effective functioning of the representative institution. It is from this point of view that it is very necessary and relevant to examine the problems related to the improvement of the institution of representation in the civil process from a theoretical point of view.

Another side of the issue is that representation is the determining factor for more effective and realistic realization of the principle of conflict, which is one of the general principles of law and the basis of justice. It is not a secret that in any society, including our Republic, legal literacy, ability to demand one's rights, to restore violated rights is not at the same level among all strata of the population. When faced with legal problems, people prefer to be represented by representatives. At the same time, the correct application of legal norms in the judicial process and the

participation of representatives in achieving justice are important. All these issues need detailed, theoretical research.

Before the adoption of the Law on Amendments to the Civil Procedure Code of the AR dated October 31, 2017, any person in our Republic could act as a representative in court. This situation has led to considerable material and procedural problems. After the adoption of the aforementioned Law, the number of problems has decreased. However, taking into account the wide scope of the institution of representation in the civil process, there is a need to make certain changes in the legislation.

The comprehensive study of the theoretical and practical aspects of the institution of representation in the civil process, the need to solve its existing problems, the improvement of the legislation in this sphere and the change of the established rules and traditions in judicial practice show the relevance of the selected research topic.

For a long time, the researcher studied theoretical researches and the materials of judicial practice on the consideration of cases related to the participation of a court representative in various aspects and made a generalization in this sphere. Such activity allows to get closer to the research of the presented dissertation topic, to make necessary changes to the existing procedural legislation and practice of law enforcement.

Finally, one of the factors showing the interest in the topic is that the more effective the representative's activity in the civil process is, the more significant improvements can be made in people's legal thinking, in people's ability to defend themselves legally, and at the same time in the level of professionalism of the provided legal service. For this reason, we believe that the necessary scientific-theoretical base should be created for wide use of the possibilities of the representative institution in AR, which has chosen the path of democratic, legal state-building.

In the dissertation, a number of domestic legal scientists conducting research in these and close areas – M.A.Movsumov,

M.D.Demirchiyeva, S.S.Allahverdiyev, T.I.Huseynov, S.I.Aliyev, B.H.Asadov, A.H.Huseynov, B.C.Karimli, A.I.Aliyev, A.I.Sadigov, A.G.Mammadov, L.H.Huseynov, V.Ibayev, R.Kazimov; from foreign scientists, first of all, from russian sciences S.A.Alekseyev, E.V.Vaskovskiy, M.A.Vikut, A.H.Golmsten, A.S.Gordon, M.A.Gurvich, V.N.Ivakin, I.M.Ilyinskaya, K.I.Komissarov, L.F.Lesnitskaya, K.I.Malyshv, E.L.Nevzgodina, B.I.Novitskiy, I.S.Pereterskiy, Y.K.Osipov, S.V.Polenin, I.V.Reshetnikova, V.A.Ryazanovskiy, V.Ryazentsev, E.Salogubova, V.N.Sheglov, K.S.Yudelson, T.Yablochkov, V. V.Yarkov; european and american scientists A.A.Merejko, Abraham H.Julian, Born Gary, A.Brown, D.Campbell, M.Cappelletti, J.Gordley, Keare J. Korrin, Carpi Federico, M.A.Lupoi, A.Cassese, M.Dillon, L.Garland, S.Rice, Taruffo Michele, H.L.Verhagen, R.Verkerk, R.Zimmermann, A.Zuckerman, K.Zweigert and other researchers.

The issue of the institution of representation in the civil process has not been studied separately at the dissertation level in AR legal science. However, the problems related to the institution of representation were also touched upon in a general and superficial way while studying different areas of civil procedural law in the scientific research works of individual authors. Thus, in M.D.Demirchiyeva's "Civil procedural law. Teaching-methodical instruction" (Baku, 2005); "Civil court proceedings. In the textbook "Procedural features of consideration of separate categories of civil cases" (Baku, 2008); B.H.Asadov's book "Commentary on the Civil Procedure Code of the Republic of Azerbaijan" (Baku, 2002); M.A.Movsumov's work "Civil procedural law of Azerbaijan and Russia: experience of systematic and comparative legal analysis" (St. Petersburg, 2005); In the book "Commentary of the Civil Procedure Code of the Republic of Azerbaijan" by A.H.Huseynov and B.C.Karimli (Baku, 2010); In the textbook "Civil Procedural Law" (Baku, 2011) by M.Movsumov, only general issues related to the institution of

representation in the civil process were analyzed, concrete theoretical or practical problems were not touched upon.

Object and theme of research. The object of the research is the public relations that appear within the framework of representative activity in civil litigations. Special attention is paid to solving actual theoretical and practical problems of civil procedural representation in AR. The subject of the research is international legal acts in the field of representation in civil proceedings, decisions and resolutions of international organizations, decisions of international judicial bodies, customary norms, legislation of various states and legal norms established in the legislation of AR.

Goals and tasks of the research. The goal of the research is to conduct a comprehensive research of its existing theoretical and practical problems, their solution options and, in general, the various elements of this institution in order to increase the effect of the institution of representation in the civil process. As a result of the conducted analysis, it is to propose the activities of specific mechanisms, the possibility of implementing additions and changes in the legislation.

In order to achieve the stated goals, **the following tasks** have been defined in the research:

- To analyze the historical development of procedural representation, as well as to research issues related to the place of this institution in different legal systems;

- To look at the process of creation and development of the representative institution studied within the framework of the legal system of different states;

- To reveal the criteria that create conditions for the development and at the same time limitation of the institution of judicial representation at the stage of modern development of the society;

- Comparatively analyze the differences of opinion in the literature regarding the concept of representative institution in the civil process;

- To determine various legal relations whose subject is a procedural representative;
- Develop a theoretical-legal model of procedural representation as a complex interdisciplinary institution of law;
- To justify that the provision of legal assistance in the civil process is the main task of the representative institution;
- Determining the main directions for improving the provision of high-quality legal assistance;
- Classification of the representative institution in the civil process according to various characteristics and division into types;
- Revealing the problematic aspects of the lawyer's activity in the civil process;
- Determining of the problems arising in connection with the participation of legal representatives in the civil process;
- To determine the place of the representative institution in the system of AR civil procedural legislation;
- Comparative legal approach to the history and current situation of the formation of the representative institution in AR;
- To identify the current theoretical problems of the institution of representation in the civil process of AR by revealing the material and procedural legal aspects;
- To determine ways to solve the practical problems that arise during the implementation of the representative institution in the civil process of AR.

Research methods. The methodological basis of the research work is the categories and principles of dialectics, including general theoretical and special scientific methods generally accepted in the science of law. Formal-logical method, comparative legal method and historical method, systematic analysis method were used in the dissertation. In addition, specific sociological and other scientific methods were also applied in the research work.

The following main new scientific provisions are presented to the defense. In the dissertation, the following new scientific propositions expressing the scientific novelty of the research are submitted for defense:

1. The legal system regulating the civil process is usually composed of international and national legal acts. In relation to our republic, the relevant rule is in force. The fact is that the legal system regulating the civil process in AR consists of national legislation and international legal norms that improve this legislation. It should be especially emphasized that international legal acts played an important role in the formation of this legislative system. Due to the fact that civil procedural law is a form of realization of special (civil) rights, consideration of civil cases in courts in terms of protection of human rights is carried out against the background of interaction of international and national law. In this case, priority should be given to the norms of international law under the condition of protection of the general order of AR (public order).

2. Sometimes in the legal literature, the concepts of "civil process" and "civil court proceedings" are equated, or even considered as synonyms. A comparative study of legal literature and legislation suggests that these concepts differ from each other in terms of content and essence. The point is that the civil process is a broad concept, but the concept of "civil court proceedings" has a narrower scope compared to the concept of "civil process" and includes the consideration and final decision of civil disputes only in the course of the court, that is, the consideration of the civil dispute in the course of the court only and contains the solution.

3. The institution of representation acts as one of the important guarantees of the real and full realization of rights and the performance of duties by the subjects of the right. Representation expands and eases the possibilities of obtaining and realizing subjective rights and duties, and

sometimes acts as the only basis for participation in relevant legal relations for citizens with no capacity or limited capacity.

4. The institution of representation in the civil process is a complex legal institution that has its own historical development trend and embodies substantive and procedural legal norms. This legal institution emerged due to the fact that the subject could not speak independently in court due to objective reasons. The development trends of procedural representation allow us to conclude that the institution of representation has developed on a constantly rising line due to the increase in demand for it.

5. Representation in the civil process is a broad concept and is legal assistance provided by capable persons for the purpose of protection of civil rights and freedoms of legal and natural persons, or restoration in case of violation. The main goal of the institution of representation in the civil process is to achieve full satisfaction of the legal and legal interests of individuals and legal entities.

6. The representative institution embodies the legal aid activity by acting as the main element of the mechanism for ensuring the human and civil rights and freedoms stipulated in the Constitution of the Republic of Azerbaijan. As a rule, receiving legal assistance includes procedural guarantees of personal rights and freedoms and combines procedural and legal aspects expressed in the protection of rights and interests. In this regard, the right to receive legal assistance is interconnected with other procedural rights established in the Constitution of the Republic of Azerbaijan and ensures their implementation.

7. One of the specific features of representation in civil proceedings is that representatives act in favor of the represented and sometimes completely replace them in civil court proceedings. In addition, the representative participating in the civil process is divided into two types: mandatory (legal) and voluntary representation by carrying out activities on the implementation of relevant powers on behalf of the represented. In the first case (legal representation), the

representation arises independently of the will of the represented, but in the second case, the will of the represented is the main one.

8. The legal status of lawyers on their activity in the civil process is defined in the civil procedural legislation. A lawyer can exercise the procedural powers given to him by the person he defends. These powers are divided into two groups: general and special. Since the general powers cover the set of general procedural actions performed by the attorney, there is no need to indicate them in the power of attorney issued to the attorney. As for special powers, it should be noted that these powers must be specified in the power of attorney given to the attorney, because the implementation of some procedural actions is aimed at the emergence, change and termination of procedural rights and duties.

9. International legal, constitutional, material-legal and procedural-legal preconditions for the development of procedural representation are distinguished. These conditions include: consideration of the institution of representation by international law as guaranteeing the equality of all before the law and the right of access to court. The special emphasis on free legal aid in international legal acts and the existence of an independent legal profession are the guarantee of the provision of the appropriate level of specialized legal aid. The right to judicial protection and the provision of high-quality legal assistance are guaranteed by the AR Constitution and these rights are not limited. In addition, conditions such as the improvement of traditional areas of law and the formation of new ones, and the activation of the principle of dispute also play a determining role in the current development of this legal institution.

10. The specialization of professional representatives, specifically lawyers, is an important issue in terms of the improvement of the institution of representation as a whole. It should be noted that this practice has already been applied in our Republic, at least partially, in relation to judges. Thus, separate judicial boards operate in appeal and cassation instances, and since 2019, administrative and commercial courts

have also been separated. I would also like to mention one important point that currently there are more than 2,200 lawyers working in our country, while the number of judges is less than 600. For this reason, specialization among lawyers in the fields of law would have significantly contributed to the increase in the effectiveness of the institution of representation, as well as to the effective protection of the legal system and human rights and freedoms in general.

Scientific novelty of the dissertation. The scientific novelty of the dissertation should be related to the fact that this work is the first complex research work at the dissertation level related to the theoretical and practical problems of the institution of representation in the civil process in AR legal science. In the dissertation work, a comprehensive, comparative analysis of the institution of representation in the civil process was carried out, and concrete proposals were put forward for the improvement of this institution.

Another aspect of the scientific novelty is that the research work was carried out on the basis of the comparative analysis of the wide normative-legal complex, judicial practice, national legislation of different states and existing differences of opinion in the legal literature.

Theoretical and practical significance of research. The results summarized and substantiated in the dissertation expand the theoretical validity and understanding of representation in civil court proceedings, distinguish the conceptual problems of this legal institution and can be used in solving various problems of the civil process, as well as in norm-making activities. In our opinion, the results of the research work are of special interest for the fields of constitution, civil law, civil procedural law, state and legal theory, advocacy law.

The practical importance of the research work is related to the systematization, expansion and deepening of knowledge about civil procedural law. The author suggests the improvement of the legislative framework in the relevant sphere, the reference of international norms by the courts during the consideration of civil cases, and the

development of mechanisms that enable the effective execution of the legally binding court decision. The research work can be used in civil procedural law, international civil procedural law, the practice of reviewing civil cases in courts, providing legal assistance.

Approbation and application. A number of issues related to the important aspects of the dissertation were published in journals and international conference materials published in AR and abroad.

The name of the institution where the dissertation was performed. The dissertation was completed at the Department of "Civil process and commercial law" of the Baku State University.

The structure of the dissertation. The dissertation consists of an introduction, 3 chapters covering 10 paragraphs, a conclusion and a list of references. The dissertation consists of 212875 characters, including Introduction 21779, main content 165588, conclusion 12716, reference list 12822 characters.

MAIN CONTENT OF THE RESEARCH

The introductory part of the research substantiates the relevance of the topic, explains the degree of scientific elaboration, object and subject, goals and objectives, scientific novelty of the work, new scientific provisions and practical significance, approbation of research results and structure of research.

The first chapter is called "Emergence of the institution of representation in the civil process, its concept and its place in the legal system" and consists of three paragraphs.

In the first paragraph, issues related to the formation and development history of the institution of representation in the civil process are researched.

Like other legal institutions, in order to examine and analyze all aspects of the institution of representation in civil proceedings, its history must first be studied. The formation of the institution of representation in

the civil process has ancient historical roots, and the formation of this legal institution took place in a unique form in different countries. Sometimes it is indicated that the history of representation begins with ancient Greece, Roman law, and in some sources even from earlier times. Before the institution of representation in antiquity, personal participation in court proceedings required the presence of certain written documents, which had to be drawn up according to law and other legal norms, which made the situation somewhat complicated for ordinary people.

In medieval European states, the institution of judicial representation developed at a different pace.

In modern times, the main trend of legal representation, especially advocacy, in European countries and the United States is related to its internationalization process. This process appeared primarily as a result of the globalization processes taking place in the modern world. Another reason is the need for the internationalization of the legal profession as a result of the increase in the number of court cases of an international nature.

In the second paragraph, issues related to the concept and subjects of the institution of representation in the civil process are researched. When researching the issues related to the concept of the institution of representation in the civil process, it is considered appropriate to analyze the essence of the representation in general, the necessity of the representative's participation in the civil process, the research and comparative analysis of the theoretical ideas and doctrines existing in various legal literatures.

Professor Mattias Kilian of the University of Cologne notes that legal representation is the representation of any person by a professional lawyer (licensed professional lawyer, barrister, solicitor, attorney, etc.) in court proceedings on various cases. The author also distinguishes mandatory (mandated) representation. In this type of

representation, the person represented has the right to be heard in court and to use procedural rights⁶.

The analysis of the legislation of foreign countries with developed and rich legal experience and the analysis of the problems in the judicial practice of civil cases in the modern era gives reason to think about the implementation of certain changes related to the institution of representation in the civil procedural legislation of Azerbaijan.

In the third paragraph, examined the special place of the institution of representation in civil proceedings in different legal systems: the comparative analysis of the Romano-Germanic and Anglo-Saxon legal systems. Each legal system is unique, but comparative jurisprudence makes it possible to clarify their similarities and differences and to define a typology of legal systems.

The doctrinal basis of representation in the countries of the Anglo-Saxon system is based on the theory of identification (doctrine of identity). According to this theory, the representative is, in a sense, the alter ego of the represented, and receives powers from the represented and acts within those powers⁷.

In the Romano-Germanic legal system, civil procedural law determines the criteria based on the powers granted to the representative in his legal status. On this basis, representation is divided into legal and voluntary types. If the legal representation arises from the instructions of the law, the voluntary representation arises based on the contract. This trend is also typical for the Azerbaijani legal system.

The second chapter is entitled "Types of the institution of representation in civil process and the legal status of representatives" and consists of three paragraphs.

⁶ Matthias, K. Representation in Court Proceedings. Comparative Aspects and Empirical Findings // CCBE / PECO / IBA, –Kiev: – 5-6 june, – 2015, – p. 3.

⁷ Pelichet, M. Rapport sur la loi applicable aux contrats d'intermédiaires // Conférence de la Haye de droit international privé. Actes et documents de la Treizième session. – 5 avril, – 1978, – p. 15.

In the first paragraph researched the representation in civil proceedings on public grounds and under the founding act.

Public representation implies the participation of a citizen in a defined public association or a direct indication of the law on the possibility of representing his interests by a public organization (for example, by consumer associations). In this case, the organization's charter provides for the possibility to appear in court on behalf of its member. Of course, the organization cannot directly act on behalf of its member in the process. An employee of the organization may be involved in this case to represent his interests in the process. For this, a power of attorney issued by the head of the organization is required⁸.

When examining the issues related to public representation, it is also necessary to mention the issues related to free or free legal aid. The right to receive legal assistance is of great importance from the point of view of protection of human rights and freedoms.

In the second paragraph, the problems related to the activity of the lawyer in the civil process are researched.

According to the AR CCP (Code of Civil Procedure), lawyers whose authority has been confirmed in the manner determined by the legislation participate as lawyers in civil proceedings on the territory of the Republic.

A lawyer's activity in civil court proceedings is characterized by many features. These characteristics are determined by the legal and procedural legal situation of the lawyer⁹. Such features are collectively reflected in the following criteria specific to a lawyer: 1) performs civil procedural activities as a professional lawyer with sufficient knowledge and experience; 2) accurately knows his leading role in the civil process in general and in a specific case; 3) has a wide arsenal of protective

⁸ Krieger, J. The Oxford Companion to Comparative Politics / J.Krieger, C.N. Murphy, – Oxford: Oxford University Press, – 2013, – p. 25.

⁹ Nevskaya, M.A. Advocacy and notary office. Lecture notes / M.A.Nevskaya, M.A.Shalagina, – M.: Eksmo, – 2007, – p. 125..

measures provided by law for the fulfillment of his professional goals and duties, 4) is well aware of his responsibility for the quality of work¹⁰.

In the third paragraph researched the issues related to the participation of legal representatives in the civil process. Although AR civil and civil procedural legislation does not give a specific definition of legal representation, it has established sufficient norms regarding legal representatives. Those norms are mainly included in AR civil, civil procedural and family codes. The analysis of the relevant norms of the mentioned codes gives grounds for making such a general opinion about legal representation - the representation in court of the rights and interests of natural persons who are considered to be incapacitated, fully incapacitated or limited in capacity can be considered as legal representation in civil proceedings.

Guardianship and patronage should be mentioned among the most common concepts when researching issues related to legal representation. The participation of a legal representative in a civil process for the protection of rights and the legal interests of a minor is not limited by the narrow framework of judicial representation.

The third chapter is entitled "The development trend of the representative institution in the AR civil process: theoretical and practical problems" and includes four paragraphs.

In the first paragraph, the issues related to the system of civil procedural legislation of AR are researched.

The system of civil procedural legislation is related to the sources of civil procedural law. According to Article 48 of the Constitution of AR, as determined in Article 1.1 of the CCP of the AR, the system of civil procedural legislation includes legal acts containing the norms of civil procedural law, the Constitution, CCP of the AR, laws, and international agreements.

¹⁰ Demidova, L.A. Advocacy in Russia. Textbook / L.A.Demidova. – M.: Legal House Justitsinform, – 2006, – p. 88.

The main normative-legal act in the sphere of regulation of civil procedural legal relations is the CCP of AR approved by the AR Law on the approval and entry into force of the AR Civil Procedural Code dated December 28, 1999, No. 780-IQ. In the theory of civil procedure, the civil procedural code is usually called the civil procedural law.

The civil process is the subject of joint regulation of domestic civil procedural legislation and international legal norms. The civil process involves various and multifaceted actions, but each of them serves the ultimate goal - the administration of justice in a specific civil case.

In the second paragraph, issues related to the emergence of the institution of representation in AR: historical-legal perspective are researched.

The formation and development of the representative institution in Azerbaijan, which has ancient historical roots, stands out for its uniqueness.

The Declaration of Independence of the Azerbaijan Democratic Republic, announced on May 28, 1918, did not establish any norms regarding the right of citizens to receive legal assistance.

The Regulation "On Advocacy of the Azerbaijan SSR" approved by the Law of the Azerbaijan SSR dated November 13, 1980, consisting of 9 chapters and 30 articles, was considered the field normative base of the legal regulation of advocacy activities for that period.

After the independence of Azerbaijan, the issues related to the regulation of the legal profession were for some time implemented through the Soviet legal norms and the 1978 Constitution of the Azerbaijan SSR.

In the third paragraph, the material and procedural legal aspects of the institution of representation in the civil process of AR are researched: issues related to theoretical problems.

It is considered more appropriate to attribute the following issues to the main goals of the institution of judicial representation in AR civil proceedings: 1) regulation of the activities of persons providing

court representative services; 2) direct regulation of the activities of the court representative (both in mutual relations with the attorney, the court, and other persons).

Judicial representation is a widespread concept in the modern Azerbaijani civil process, besides, it is a complex, comprehensive legal institution founded and declared by the norms of the civil procedural legislation in force, the purpose of which is to ensure the implementation of the main principles of Azerbaijani law. By the basic principles, here, first of all, a fair trial, everyone's right to legal aid; ensuring the protection of the interests of the power of attorney; it is about the effective implementation of legal principles.

In the fourth paragraph researched the implementation of representation in AR civil proceedings: practical challenges. Today, there are a number of rather serious issues that have not been resolved in the field of civil procedural law.

First, experience shows that the modern system of training of professional legal personnel is actually not capable of providing society with "good" specialists in the field of procedural law.

Secondly, we believe that one of the existing problems in this field is related to the lack of sufficient knowledge and skills of the persons (except lawyers) who perform the activity of providing court representation services.

Thirdly, it is necessary to mention abuse of representatives as the next urgent problem of the institution of representation.

In the final part of the dissertation, the important proposals and results obtained in connection with the research can be generally expressed as follows:

1. In the dissertation research, the most important criteria for the allocation of procedural representative activity at the modern stage were revealed. Among such criteria, the criterion of professionalism of the provided services should be especially mentioned, precisely according to the criterion of professionalism, representation activities

in the civil process can be distinguished on a professional and non-professional basis. For example, in our Republic, the service provided by a lawyer is considered professional, and the representation provided by a legal representative or a close relative is considered unprofessional. It has been proven that depending on the nature of the civil procedural representation activity shown in practice, the extent of powers of a specific court representative can be more clearly determined. Thus, a professional court representative (for example, a lawyer) should be more responsible when performing representative activities in civil proceedings. At the same time, let's note that it is considered possible for a civil procedural representation lawyer to have a more serious, professional and responsible approach to the case being considered, unlike other representatives. The professionalism of the representative is a factor that works directly for the benefit of the persons whose rights are protected.

2. Representation is a system-creating element of the civil process. In many cases, it depends on the representative's situation whether the civil process is assigned to one or another system. The procedural representative should be attributed to the persons participating in the case, because he has an independent legal interest in the process, expresses his will and is provided with certain rights and duties. Determining the responsibility of the representative and attorney participating in the civil process should be carried out individually, and guilt, intention and cause-and-effect relationship should be determined similarly. Bringing the representative to responsibility should not lead to the responsibility of the person giving the power of attorney and vice versa.

3. More specific, differentiated approaches are required in the field of regulation of the researched activity in the conditions of high development of social relations, as well as the implementation of justice. We suggest that in such a situation, the criterion of professionalism should be taken as the main criterion of approach to

the representative institution. It is true that since January 1, 2018, representation in courts is mainly carried out by lawyers, but representation in court by legal entities and close relatives has not been affected. This allows non-professionals to re-enter the court process. For this reason, we suggest that only persons with knowledge and skills in the procedural sphere should participate in court proceedings. In this case, citizens will have more confidence in protecting their rights and restoring them in case of violation. At the same time, it is possible to effectively realize the principle of friction.

4. It is appropriate to develop and adopt the draft Law on Free Legal Aid in order to provide free legal aid in civil court proceedings for those with low financial security. At the same time, we consider it appropriate to coordinate organizational work and develop new institutional mechanisms in this direction.

5. According to the currently valid civil procedural legislation of the AR, to be more specific, according to Article 67 of the AR CCP, in the procedure of cassation and additional cassation, as well as when the court act is reviewed for newly opened cases, the persons participating in the case can only participate in court sessions together with a lawyer. they do. From the content and essence of this article, it can be concluded that a person who cannot be represented by a lawyer cannot apply to the Supreme Court of the Republic of Azerbaijan, and can also speak freely in court. In our opinion, the mentioned norm is not in accordance with Articles 60.1 and 61.1 of the Constitution of AR. Thus, the aforementioned Article 67 of the MPM of the Republic of Azerbaijan contradicts the constitutionally based "Administrative and judicial protection of rights and freedoms" (Article 60) and "The right to receive legal aid" (Article 61), effectively preventing those rights creates an obstacle to its realization. In addition, the mentioned rights are guaranteed for everyone in the international legal acts supported by AR. Therefore, we propose to amend the relevant article of the AR CCP.

6. Although the current civil procedural legislation of the Republic of Azerbaijan provides for the wide possibility of granting procedural powers to the court representative, it does not establish the necessary norms regarding the mechanism of protection of the represented person in such matters. Here we are talking about the level of knowledge and skills of persons engaged in representative activities (except lawyers). The participation of a representative in the case without the necessary qualifications, knowledge and skills not only causes unfavorable consequences for the person giving the power of attorney, but also negatively affects the justice process as a whole, makes it difficult to achieve the general goals of the case review in AR civil proceedings by extending the time periods for consideration of a specific case or in another way.

The main provisions of the dissertation are reflected in the following scientific works of the applicant:

1. The formation and development history of the institution of representation in the civil process // International scientific-practical conference on "Heydar Aliyev and legal state-building in Azerbaijan" dedicated to the 93rd anniversary of the birth of the national leader of the Azerbaijani people, Heydar Aliyev, – Baku: – 2016, – p. 267-272.

2. The significance of representation in the civil process // Materials of the VII International Scientific and Practical Conference. human security in conditions of globalization: modern legal paradigms, volume 2, - Kyiv: – February 24, – 2017, – p. 30-32.

3. Participation of legal representatives in the civil process // – Baku: Transport Law. Scientific-theoretical, experimental magazine, – December 5, 2017. No. 3, – p. 187-193.

4. Historical aspects of the emergence and development of the institution of judicial representation // – Kiev: Science and Law, – 5th September 2017. No. 4 (38), – p. 265-271.

5. Classification of the Institute of Judicial Representation in the Civil Process // Materials of the VIII International Scientific and Practical

Conference. modern university legal education and science, volume 2, – Kyiv: – February 23, – 2018, – c. 17-19.

6. The concept of the institution of representation in the civil process: theoretical-legal analysis // – Baku: Law, – 2018. No. 05 (283), – p. 51-55.

7. The system of civil procedural legislation of the Republic of Azerbaijan // – Baku: Transport law. Scientific-theoretical, experimental journal, – 2018. No. 1, – p. 166-172.

8. The place of the institution of representation in the civil process in different legal systems // – Baku: Law, – 2018. No. 06 (284), – p. 53-57.

9. Providing legal assistance in the civil process as the main task of the representative institution // – Baku: Scientific News of the Police Academy, – 2018. No. 3-4, – p. 72-77.

10. The development trend of the institution of representation in the civil process: a comparative legal analysis // – Baku: Azerbaijan Lawyer Journal, – 2019. No. 17, – p. 11-15.

11. Some issues of representation in the civil process // Materials of the 9th International Scientific and Practical Conference. Jurisprudence in the modern information space. volume 2, – Kyiv: – March 1, – 2019, – c. 17-20.

12. The institution of representation in civil proceedings: diversity of doctrinal views // – Baku: International Law and Integration Problems, – 2020. No. 3 (61), – p. 49-53.

13. Conceptual problems of the institution of representation in the civil process // – Baku: Azerbaijan Law Journal, – 2021. No. 1, – p. 33-40.

14. Development trend of the institution of representation in the civil process: a comparative-legal analysis // – Baku: Azerbaijan Prokuroru Journal, – 2021. – p. 65-75.

15. Development of the Institute of Judicial Representation in the Ancient World // Materials of the VII International Scientific and Practical Conference. human security in conditions of globalization: modern legal paradigms, volume 2, – Kyiv: – March 31, – 2021, – c. 30-32.

16. The lawyer's participation in the judicial process on administrative errors // International Symposium on Administrative Law and Administrative Court. ISALAJ-2021. – Istanbul: – May 24-26, – 2021, – p. 402-406.

17. The concept and subjects of the institution of representation in the civil process // XXI century, new challenges and modern development trends of law. International conference, – Baku: - December 21-22, - 2022, - p. 588-591.

18. The essence of the institution of representation in the civil process: theoretical approaches and normative determination // – Baku: Azerbaijan Advocate. Scientific-practical, legal journal, 2023. No. 1(22), – p. 25-30.

The defense of the dissertation will be held at the meeting of the BFD 2.44 One-time Dissertation Council operating under the Baku State University on "29" "02" "2024" at "14.30".

Address: AZ 1148, Baku, Z. Khalilov Street 33, 1 Building, Auditorium 002.

The dissertation is accessible at the Baku State University Library.

Electronic versions of the dissertation and its abstract are available on the official website of Baku State University.

The abstract was sent to the required addresses on "24" "07" "2024".

Signed for print:.

Paper format:

Volume:

Number of hard copies: