



## ASSESSMENT OF THE STATEMENTS OF THE PARTIES, THIRD PERSONS AND THEIR REPRESENTATIVES IN CIVIL PROCEEDINGS

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### **ABSTRACT**

*The statements of the parties, third persons and their representatives play a significant role in the consideration of civil cases in court. The statements of these subjects, as a means of proof, are of primary importance in revealing the true state of cases and resolving the dispute. In this regard, the statements need to be received, documented and evaluated in the manner prescribed by law.*

The article highlights some views on the methods and procedures for obtaining statements from the parties, third persons and their representatives, as well as the principles of assessment.

**KEYWORDS:** parties to the proceedings, third persons (parties), their representatives, statements of the parties, assessment of the evidence, court, participants in the civil proceedings

It is obvious that participation of persons involved in civil proceedings plays an important role in the production of civil proceedings. Related literature demonstrates that procedural scholars have come up with different views on the rights and obligations, responsibilities of the participants in civil proceedings, (and in some cases) the requirements imposed on them.

It should be noted that the Code of Civil Procedure of the Republic of Uzbekistan (hereinafter the Code) reflects the scope of participants in civil proceedings (Article 39) and their rights and obligations (Article 40).

Pursuant to Article 43 of the Code "the plaintiff (claimant) and the defendant are parties to civil proceedings. A plaintiff is a person who has filed a lawsuit (or a lawsuit has



been filed in his interest) to protect his or her violated or disputed rights or legitimate interests. Defendant is a person against whom the claim is made”<sup>1</sup>.

Civil proceedings are conducted on the basis of adversarial proceedings and equality of the parties (Article 10 of the Code)<sup>2</sup>.

It is stipulated in the Code that the parties (the plaintiff and the defendant) shall have equal rights and equal obligations in civil proceedings. Notably, the participants of the civil proceedings have the following rights (Article 40 of the Code): to get acquainted with case materials, to get notes from and take copies of case materials, to file a request about denial, to present evidence, to participate in the examination of evidence, to ask questions to other participants and to persons supporting the administration of justice, to complain, to submit requests, to present oral and written statements to the court, to state arguments on all issues arising during the trial, to protest against the complaints, requests, arguments of other persons, to appeal against court acts (protest), to demand compulsory execution of court acts, to be present at the execution of actions by the state executor and to exercise his rights, as well as to have equal exercise of other procedural rights provided by<sup>3</sup>.

As cited above, civil proceedings are usually conducted by two parties, the plaintiff and the defendant, and the main task of the court is to resolve the dispute between them. Occasionally, in addition to the parties, there appear other people interested in resolving the dispute.

Sh.Sh.Shorakhmetov states that “The interests of such persons shall be regarded as a legal interest, as the court decision issued to a certain extent may affect their civil and substantive rights; as a result of the resolution of the case in court, they may be subject to certain rights or obligations. Thus, these individuals may engage in civil proceedings in order to protect their rights or may be invited by the court to participate in the proceedings. That is why they are called third persons (parties)”<sup>4</sup>.

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<sup>1</sup> Code of Civil Procedure of the Republic of Uzbekistan. National Database of Legislative Acts of the Republic of Uzbekistan <https://lex.uz>

<sup>2</sup> Code of Civil Procedure of the Republic of Uzbekistan. National Database of Legislative Acts of the Republic of Uzbekistan <https://lex.uz>

<sup>3</sup> Code of Civil Procedure of the Republic of Uzbekistan. National Database of Legislative Acts of the Republic of Uzbekistan <https://lex.uz>

<sup>4</sup> Sh.Sh.Shorakhmetov. Civil procedural law of the Republic of Uzbekistan. Course book. The Ministry of Justice of the Republic of Uzbekistan, Tashkent State Institute of Law - Tashkent. Adolat, p.529



Third persons (parties) are divided into two types, depending on nature of the interests of individuals and the consequences associated with the decision of the court:

- third parties with independent claims to the subject of the dispute;
- third parties who do not make independent claims to the subject of the dispute.

According to the Code (Article 71), any factual information, which can be the basis for the determination by the court (in the manner prescribed by law) whether there are circumstances justifying the claims and objections of the parties, should be identified by the statements of the parties and third persons as well as their legal representatives, testimony of witnesses, written and material evidence, expert opinions, and specialist advice.

Assessment of the statements of the parties and third persons are subject to the principle of directness, and is carried out in accordance with the requirements of Articles 13 and 81 of the Code. The statements of the parties and third persons shall be examined in the report of the presiding judge on the case under consideration, and these explanations shall be reflected in the written statement of claim and in the objection of the defendant. After that the presiding judge determines whether the parties and third persons support the claims as well as the objections.

If the statements are given orally by the parties and third persons, the method of verification shall be listening to the statements and asking questions. If the statements of the parties and third persons are obtained by sending a court order or by a notary or by court as provision of evidence, they are examined by declaring them and presenting them to other persons involved in the case. The statements of the parties and third persons may be presented in the form of a free statement of the circumstances of the case (like interrogation of witnesses).

If the parties and third persons refuse to give statement, or if they give false statement, they will not be subject to liability for this. A.G.Kovalenko focuses on this, in comparison with other individual arguments in this regard, as a distinctive feature of the statements of the parties, and as a source of information about the facts of the disputed relationship<sup>5</sup>.

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<sup>5</sup> Kovalenko A.G. Investigation of means of evidence in civil procedure / ed. K. K. Chervyakova. - Saratov: Saratov Publishing House. University, 1989. - p. 12



The parties, third persons, and other participants in the case may ask questions to the person who gives explanation (statement). After all the evidence has been examined, the presiding judge should ask the parties and third persons if they are willing to provide additional evidence in the case.

M.K.Treushnikov highlights two most common mistakes made by judges in civil proceedings:

1) not to summon to the court or notify the persons who gave statements in the procedure of execution of the court order and provision of evidence;

2) in the course of the proceedings the judges do not study the essence of the written statements provided by the parties and third persons, and do not announce in court, however, they decide basing on them. In this way, trying to get things done quickly is considered deviation from procedural requirements<sup>6</sup>.

At first, examined the content of the claim (application), and the complains against it, then the statements during the trial. The participants of the case can use the videoconferencing mode to carry out procedural actions, in particular, to give statements and to take part in the examination of evidence. Furthermore, the participants in the case have the right to give statements even though the evidence is re-examined in accordance with the law.

The plaintiff and other persons participating in the case initiated on the motion of the prosecutor, in the manner prescribed by law, may submit to the court their statements orally and in writing on the circumstances relevant to the case. Pursuant to Article 81 of the Code, the explanations given by a lawyer in a civil case are a source of evidence, which is also examined and evaluated by the court.

Assessment of the statements of the parties and third persons is carried out in accordance with the provisions of Article 81 of the Code. It is important that courts should pay special attention to the assessment of the statements of the parties and third persons. This is because they have a special interest in the results of their work and are the subjects of the substantive-legal relations in the dispute (with the exception of third parties who do not apply with independent claims). In decision-making, the courts should limit personal perspective and emotions, and need to assess the information about the facts as evidence,

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<sup>6</sup> Treushnikov M.K. Forensic evidence. - 4th ed., Rev. and add. - M.: Gorodets, 2005. -p. 184



together with other evidence, taking into account the accuracy, sequence, and logic of the facts. The courts must examine the confession in terms of whether it is true or not (part 3, Article 81 of the Code).

What is more, the circumstances recognized and confirmed by the parties in the prescribed manner will not be re-examined by the court in the next stages of the proceedings. Providing there are grounds to believe that the confession was made for the purpose of concealing certain facts or under the influence of deception, violence, threats, misguidance, a particular circumstance recognized by the relevant party will not be accepted by the court. This is included in the minutes of the court session.

Circumstances admitted by the parties on the basis of their in-court or extrajudicial agreement, as well as circumstances with which one party agrees and the other party expresses objections, are accepted by the court as a fact that does not require further re-proof. The circumstances established by agreement of the parties shall be confirmed by their written applications. Recognition of the circumstances of the case by the parties shall be made in writing or orally. The fact of reaching an agreement by the parties on the circumstances of the case or the fact of recognition of one of the parties, as well as the content of the verbal confession of the party shall be recorded in the minutes of the court session. This is certified by the signatures of the parties or the relevant party. The agreement of the parties on the circumstances of the case, as well as the written admittance of the party shall be attached to the case file. If the facts accepted and confirmed by the parties or the relevant party in the manner prescribed by this Article are accepted by the court, they will not be re-examined in further stages.

If there are grounds to believe that the agreement (conciliation) of the parties or the confession of the relevant party was made for the purpose of concealment of certain facts or under the influence of deception, violence, threats, misguidance, the court does not accept the agreement of the parties or a specific circumstance confessed by the relevant party. This requires re-proof of these circumstances. In addition, the court takes into account the conduct of the person participating in the case in the course of the proceedings. In examining and evaluating the statements of third persons and the parties, detecting and eliminating the presence of falsehood is an important issue.



Legal scholar Z.Esanova<sup>7</sup> notes that, the process of admitting the claim of the parties (in resolving the case), the degree to which an agreement has been reached, and even the arguments and objections expressed should be checked and evaluated by court.

The legal literature distinguishes the following types of deception: 1) active deception - a deception aimed at concealing or distorting the true state of affairs, which is characterized by the existence of an interest; 2) active-passive deception, which are formed as a result of some external or internal motives: fear, regret, fear of revenge, unwillingness to disclose certain information, personal perception of social and moral values, unwillingness to violate internal psychological peace, rudeness by a judge or other persons rudeness, etc. 3) passive deception is the denial of this intention and as a result making a mistake, disregard for the information provided, avoidance of instructions, etc. People whose perception and memory are emotional, people with poor memory and exaggerated expression are commonly more prone to knowingly give false testimony (statements). In obtaining and evaluating personal evidence, the judge must take into account age, gender and other characteristics of the individual's psyche, social status, specific features of professional activity, as well as communicative characteristics<sup>8</sup>.

A.G. Kovalenko suggests dividing the lie into true lies and mistakes, in which mistakes (regardless of source and cause) are divided into memory loss, fantasy, and errors in perception. In the process of studying and evaluating the relevant evidence, it is advisable for the court to use methodological recommendations developed by forensic tactics<sup>9</sup>.

Some scholars highlight other additional ways to eliminate the lie/deception: forensic examination, use of polygraphs (lie detectors) to solve certain proving issues in civil proceedings, observing the participant, control of their appearance, behavior, reaction to information, analysis of speech characteristics ((consistency, the presence of repetitions, changes in speech speed and rhythm, loss of pauses, slurred speech, strained formation of sound, rapid and shallow breathing).

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<sup>7</sup> Esanova Z. The role of individual procedural institutions in legal proceedings: the example of civil cases // Review of law sciences. - 2018. - No. 2

<sup>8</sup> Zaitsev I.M. Lies in civil proceedings // Sov. justice. - 1989. - No. 11; Fokina M.A. Testimony in the system of means of evidence in civil proceedings: author. dis. ... Cand. jurid. sciences. - Saratov, 1991

<sup>9</sup> Burnham U., Reshetnikova I.V., Proshlyakov A.D. Judicial Advocacy. - SPb. 1996. p. 134



The following proposals and recommendations are developed based on the above theoretical principles and scientific-controversial views of legal scholars (I.V.Reshetnikova<sup>10</sup>, A.G.Kovalenko<sup>11</sup> etc.) are made:

1) Further strengthening of the requirements for statements of the parties, third persons and their representatives in the civil procedure legislation (including the Code), in order to ensure that their statements are the only truth, the procedural order of swearing tell only the truth should be established.

2) It is necessary to include a rule to ensure the right to refuse to answer certain questions regarding the statements of the parties, third persons and their representatives in the Article 40 of the Code.

3) It is proposed to impose a warning or impose a fine on the parties as a measure of responsibility in order to limit the possibility of using false information in the statements of the parties, third persons and their representatives.

4) The accuracy of the statements of the parties, third persons and their representatives should be determined and the reliability of the statements should be assessed by the court. Furthermore, because explanations are important for the case and are an independent type of evidence, in the first part of Article 81 of the Code, it would be expedient to exclude the phrase “along with other evidence collected in the case”.

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<sup>10</sup> Reshetnikova I.V. Evidence law in civil proceedings. Yekaterinburg: Humanit Publishing House. University, 1997. p. 297

<sup>11</sup> Kovalenko A.G. The Institute of Evidence in Civil and Arbitration Proceedings. - M.: Norma, 2002. - p. 158