ANALYSIS OF THE INSTITUTION OF JUDICIAL REPRESENTATION IN ROMAN LAW

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Abstract: *In this article, the authors conduct a retrospective analysis of the institution of judicial representation in the law of the Roman state as the foundation for the law of the Romano-Germanic legal family. The origins of the formation of Uzbek modern procedural guarantees and their historical development are revealed.*

Keywords: *retrospective analysis, Roman law, judicial representation.*

It is generally accepted that Roman law is the origin of many legal institutions of the Romano-Germanic legal family, including the institution of representation in civil litigation, which fulfills the democratic guarantee of the protection of citizens' rights.

For a long period, Roman law was alien to judicial representation and the protection of other people's rights by other persons. This was manifested in the existence of the principle of prohibition to file claims in someone else's interest – "Nemo alieno nomine lege agere potest", which literally means "Neither by agreement, nor by setting the terms of the transaction, nor by stipulation, no one can condition rights for another." This principle is reflected in the Institutions of Gaius, one of the most influential Roman jurists of the II century AD. In the Fourth Book, paragraph 82 says that "during the reign of the old court proceedings, it was not allowed to bring claims on behalf of a third person" [2]. This is explained from the position of the dominance of the concept of the individual nature of the obligation in Roman law of that period, in connection with which personal presence and active procedural activity of the parties to the trial were necessary.

Over time, the imperative rule, according to which representation in court proceedings was not allowed at all, began to "acquire" some exceptions, since the prohibition to file lawsuits on behalf of other persons ceased to meet the interests of the developing Roman society and the state, primarily the interests of the subjects of the process [3, p. 280].

In the Institutions of Justinian dating back to the VI century AD, three types of judicial representation were allowed:

1. On behalf of the people (the so-called pro populo), a magistrate could act as a representative in court proceedings. This provision has also been developed in Uzbek modern law in the form of a legal structure, according to which a prosecutor has the right to file a statement of claim in court if he finds violations of the rights, freedoms,

legitimate interests of not only one or several citizens, but even an indefinite circle of persons, the interests of the state as a whole or individual subjects of the federation.

2. For freedom (pro libertate). Such representation took place in a situation where a person considered himself to be unlawfully convicted. At its core, it is a prototype of the modern procedure of cassation and supervisory appeal of court sentences in criminal cases that have entered into force. That is, a convicted person serving a sentence, considering the sentence against him illegal, has the right to file a cassation or supervisory complaint. However, unlike modern Russian reality, in Roman law such a convict needed a representative due to the fact that only free Roman citizens could have and bear procedural rights and obligations. We are talking specifically about a free convict (it means that the convict before the court verdict had to have the status of a free Roman citizen, since if he was a slave before the conviction, then in the case of subsequent execution of the sentence, he did not have the right to appeal even through a special representative due to the specifics of his legal status – as is known, slaves were subjects, not objects of Roman law). And it is for this reason that a convicted person, but who was free before the verdict of the court, cannot be equated in case of his conviction by legal status to a slave, to an unfree person, which is why the legislation of the Roman state of that period of development provided for such a form of representation in the judicial process – "for freedom".

3. By guardianship (pro tutela). Of all the three types of legal representation allowed for disputes under the Institutions of Justinian, this type is perhaps the one that has practically not been transformed and has come down to our days virtually unchanged. The representation of minors in court proceedings remains absolutely unchanged to this day. Both in modern Uzbek law and in Roman law of the period of the Institutions of Justinian, there was a key position of the need to represent the interests and protect the rights of a minor in a judicial process by another, fully capable person. However, the forms of such representation differed. Guardianship in the Roman legal understanding is categorically different from the modern Uzbek legal understanding of this legal institution. Initially, guardianship gave the guardian full authority over the property of the ward, as well as his personality, which in modern Russian law, especially with regard to the personality of the ward, we do not observe. It is only with the passage of time and the development of social relations in Roman law that the idea appears that the guardian is not the owner of the property and personality of the ward, it is a person with whom it is possible to exercise the rights and duties of the person under guardianship, since he himself does not have an objective opportunity to do this due to age.

Roman law was also known in the form of representation "on guardianship" in addition to representing the interests of minors, also women, wasters. Of course, taking into account the Russian legal and social reality, there are no such provisions in the legislation of our state now in connection with the proclamation at the constitutional

level of equality of rights and freedoms of all citizens (including the prohibition of discrimination on the basis of sex). Spendthrifters were in fact equated with the mentally ill, their legal status had been fixed since the time of the law of the XII tables. The same source also contained a provision on the need for custody of women due to their "inherent frivolity."

Analyzing the above provisions, we can come to the conclusion that in fact there was a legal representation of those persons who, due to a number of established restrictions, could not act as an independent party in civil litigation.

Praetorian law gave a huge start to the development of the further institution of judicial representation, since the intentions (that is, the part of the praetor's formula containing the brief claims of the plaintiff of the trial) featured the name of the represented person, and the condemation (that is, another part of the formula in which the court was granted the right to convict or acquit the defendant in the case) contained the name of the procedural representative.

The key feature of judicial representation in the era of praetorian law is that it was the formal process, although it recognized the participation of a representative in the trial, but it cannot in any case be called identical to the modern position of the representative in the process: according to modern Russian legislation and established judicial and law enforcement practice, the representative acts in the judicial process on behalf of and at the expense of the represented person. In the period of the praetorian law of Rome, there was a different state of things. The representative spoke on his own behalf, but at the expense of the represented party (such a construction, however, still found expression in the Russian legal field – a concession agreement) – this is the key feature of the characteristics of the judicial representation of that period.

With the historical development of the Roman Empire, the subject composition of the institution of judicial representation expanded significantly. If earlier representation of the interests of a party in court proceedings could take place only in relation to persons who, for certain reasons (such were underage age, physical and mental health, gender, since, as we have already noted above, a woman in the ancient Roman period of the development of statehood was considered by nature frivolous and unable to defend her own rights, and even more so to act as an independent party to the judicial process) cannot defend their rights and represent their interests in court, then later, especially during the period of the dominance of the formal process in the judicial system, the representatives could be cognitors on behalf of the interested party. Moreover, researchers of Roman law note that the participation of the cognitor in the trial should have been provided by the represented persons themselves [3, p. 282].

Thus, we see that those very restrictive qualifications have disappeared — gender, age, in particular. The cognitors acted as representatives in the trial of fully capable persons — the parties to the process. Moreover, the presence of the party itself was no longer considered mandatory if it had a cognitor, that is, a representative. This is an

indicator of the transition of the institution of judicial representation to a new milestone of its development and evolution, since from that period, namely from the moment of recognition of the status of cognitors in court proceedings as representatives of the parties or the party, representation was no longer something optional, necessary only in cases strictly provided for by Roman law.

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