



(REVIEW ARTICLE)



Institute of legal representation in Kosovo

Kastriote Vlahna * and Hajredin Kuçi

Faculty of Law (Private-Civil Law), University of Pristina 'Hasan Prishtina', Pristina, Republic of Kosovo, Europe.

World Journal of Advanced Research and Reviews, 2022, 13(03), 405–409

Publication history: Received on 04 February 2022; revised on 19 March 2022; accepted on 21 March 2022

Article DOI: <https://doi.org/10.30574/wjarr.2022.13.3.0148>

Abstract

Representation is an institute of law in general and of private law in particular, according to which the parties can transfer their rights to another party which can act in its name and on its behalf. Based on the fact that it is a very current institute, we have tried to present in the paper some of the essential data related to representation. Therefore, in general, the content of the paper talks about representation and its types, emphasizing that they are legal representation and contractual representation or the one by proxy, for which we emphasize that representation by proxy and contractual representation are one. Issue which is presented in brief points further in the content of the paper.

Keywords: Institute of representation; Legal representation; Contract representation; Power of attorney

1. Introduction

One of the biggest dreams of people has been to make it possible for a person to be in two different places at the same time. It is clear that physically such a thing is impossible. Fortunately, however, the law has found a way to legally do what cannot be done physically. Using representation / representation, a person can be legally located in more than one place at the same time. In this view, the representative is a person who is given the power to be "you", within the confines of the tasks assigned to him: everything the representative hears, you have heard, everything the representative says you have said, everything the representative did you did. In other words, you are legally responsible for the actions of the representative, when the actions are performed Within the framework of the tasks assigned to him. Almost no one can avoid representation. This is true, not only for business situations, but also for completely normal life situations, say e.g. when someone returns to the library the book received from their friend. The modern rights of all countries recognize the right to carry out legal work through representation. But the right to represent was also in Roman law, in which the parties could perform some of the legal work through representatives. But if each of the parties wanted to proceed through a procurement representative, his name had to be placed on the formulas instead of the person being represented, before the case could be accepted. In this way the representative became the concrete party in the process and the judge would give a decision for or against him.

2. The Notion of representation-(meaning)

Natural or legal persons usually carry out legal work themselves, but natural or legal persons, for legal reasons (e.g. lack of capacity of a natural person) or factual reasons (e.g. absence from the place of cannot perform certain legal actions himself, but must do so through a representative who performs such legal work in his name and on his behalf, always within the authority given by the representative or the law. Representation is also a legal institute of civil law, which means the performance of certain legal work in the name and on behalf of another [1]. We say that representation is also an institute of general civil law since we encounter it in other rights, as well as in legally binding and procedural matters. The definition of representation is given in civil procedure as well as regulated by the law on civil procedure

* Corresponding author: C Kastriote Vlahna
Private-Civil Law, Faculty of Law, University of Pristina 'Hasan Prishtina', Pristina, Republic of Kosovo.

based specifically on the entities that can be represented and the types of representation. According to the Civil Procedure, we have representation in the contentious process when a person who is not a party to the trial performs procedural actions on behalf of the party, with direct effect on the party and against him. Here the representation is direct, because the person who performs the procedural actions performs them both in the name and on behalf of the represented party [2]. According to the law of contentious procedure it is stated: that the party which has the procedural capacity is represented in the procedure by its legal representative [3]. The institute of representation is also regulated by the law of relations of obligations of the Republic of Kosovo in articles 72 to 84. According to which it is stated: representation is a legal institute where the person authorized by law, administrative act, or by declaration of will performs legal actions, respectively legal work in the name and on behalf of another to whom, usually with remuneration.

2.1. Effects of representation

Representation creates rights and obligations for the representative and not for the representative. The expression ``On behalf of someone else`` means that the rights and obligations from the legal action taken by the representative act directly on the other person who is called represented, and not on the person who gave the statement, i.e. who has performed the legal action [4]. Representation, not only implies the connection of legal work on behalf of another to whom but also implies on behalf of another to whom it means that the rights and obligations as well as the property effect achieved through legal work undertaken by the representative create benefits or consequences on the property measure of the represented [5].

2.2. Subjects of the Institute of Representation

There are three (3) parties to the legal work performed through representation: the represented; the representative and the third person with whom the legal work is related.

2.2.1. The representative

Is the person who gives authorizations for the legal work to be concluded in his name and on his behalf.

2.2.2. Representative

The representative is the person who declares his / her will to enter into legal work in the name and on behalf of another.

2.2.3. Third person (co-contractor of the representative)

The third person (co-contractor of the representative) is the person with whom the representative enters into legal work in the name and on behalf of the representative [6].

3. Types of Representation

Representation is divided into: legal representation and contractual representation, depending on whether the representative is determined by legal provision or by contract.

3.1. Legal Representation

Legal representation exists in cases when the representative and the scope of his / her authorizations are appointed directly on the basis of legal norms. Thus, the legal representative can, on behalf of the party, perform all actions in the procedure, but if for the filing or withdrawal of the lawsuit for the assertion respectively for the withdrawal of the claim, for the conclusion of the court settlement or for the performance of actions other in the procedure, special provisions stipulate that the representative must have special authorization, he can perform these legal tasks only if he has a legal authorization [7]. Legal representative is a natural person who by law is authorized to take legal action, respectively legal work in the name and on behalf of the representative who may be a natural person or a legal person [8]. We have legal representatives when it comes to representing children in parental care and children without the ability to act up to the age of 14 or persons with disabilities to act from the age of 14 to the age of 18. Children whose parental rights are extended beyond the age of 18 have a legal representative. While children who lack parental care have legal representatives as guardians. However, there are cases when the court itself with its decision determines the legal representative [9]. Legal representation is also expressed in legal entities as a person represented by a natural person authorized under the legal norm, who will enter into legal work in the name and on behalf of the legal entity. These cases are encountered in companies, based on which they are represented according to the rules set by law and the provisions of the statute. The legal representation of the company is valid for any judicial or extrajudicial action [10].

Legal representation applies to all restrictions on the rights of representation, defined in the statute or approved by the relevant bodies of the company [11].

3.2. Representation of the contractor

Contractual representation exists when the representative is appointed by contract. Representation by contract means the authorization to determine the actions to be taken by the authorized person in the name and on behalf of the authorized person. Giving written authorization either by a natural or legal person is called a power of attorney. The power of attorney contains authorizations for the representation given by legal work (contract) authorized by the authorizer [12]. It should be noted that representation by proxy is a one-sided legal work, which comes as a result of a preliminary agreement between the representative and the represented. So for a power of attorney to be valid, however, before the power of attorney is created, a contract or a mutual legal work must be created, in which both parties have agreed to represent one party from the other.

3.3. Representation of legal entities under the statute

Legal entities are established by registration, they have the authorization for representation based on the statute by which it was established. The statute of a legal entity stipulates who is the person who has the authority to represent the legal entity, which are usually individual bodies, these legal entities may also be represented by a lawyer or any other person as a special authorized person [13].

3.4. Representation based on the act of the state body (judicial representation)

In certain cases, the natural person, as well as the legal person can be represented by a special act of the state body, for example: by decision of the Court, a representative is appointed for natural persons or for legal persons. At the moment when the Court finds that the party does not have legal representatives, or the legal representative does not have the special authorization, it will request that the competent body of custody appoint the guardian to the person with procedural incompetence.

4. Procurement Representation

In all cases, when the representation arises on the basis of the declaration of the will of the represented, it is called representation by proxy. While the person who represents on the basis of the power of attorney is called a representative by proxy and this is the person who has full capacity to act and perform legal work in the name and on behalf of the representative [14]. The question arises who can be a representative by proxy, based on the civil procedure we say that: representatives by proxy can be any natural person who has full capacity to act indefinitely. The most appointed representatives by proxy are: the lawyer, and when it comes to legal entities as their proxy representative is his legal referent [15].

4.1. Form of procedure

The form of the power of attorney depends on the form required for concluding a contract, or for any other legal work. The law stipulates that the form for a contract or any other legal work also applies to the power of attorney given for the conclusion of this contract, respectively for the undertaking of this legal work, [16]. so for example: in bilateral legal works the conclusion of the construction contract must to have a written form, therefore the affected must be written and formal in case representation by proxy is necessary.

4.2. Volume of the power of attorney (authorization)

The power of attorney or authorization can be general or specific. The general power of attorney exists when the power of attorney recipient can undertake in the name and on behalf of the power of attorney, only legal matters pertaining to the exercise of regular activity [17]. While the special authorization according to the law on the relationship of obligations states that: work that does not enter into regular activities can be undertaken by the representative only if he is specifically authorized to undertake this work or the types of work where he is part of the same [18]. But as a special rule for representation is that: `representation is excluded from those actions which, by their very nature, are reserved exclusively to the person concerned [19]. Thus, representation is not allowed when the legal action must be performed by the person himself, for example: "a will is a unilateral legal action performed by the testator himself" [20].

4.3. Exceeding the authorization

The representative can undertake only those legal works in the name and on behalf of another, for the undertaking of which the authorization has been given. In case the representative exceeds the limits of the authorization, then the representative is obliged only if he approves the exceeding of the authorization [21].

4.4. Entering into legal work by an unauthorized person

In case an unauthorized person who pretends to be authorized creates legal work in the name and on behalf of another, then this legal work related by the unauthorized person does not oblige the person represented in an unauthorized way [22].

4.5. Termination of the power of attorney

The power of attorney which is given and is provided by law it can and will be extinguished. Where are some cases that can be extinguished such as:

- With revocation, in which the power of attorney has the right to do so at any time.
- By renouncing the power of attorney, the grantor of this right.
- With the death of the natural person as receiving power of attorney or issuing power of attorney,
- With the termination of the legal person as issuing power of attorney or receiving power of attorney,
- With the removal of the power of attorney to act [23].

The most common form of termination is the revocation of the power of attorney, which can be revoked by declaration without any special form and at any time.

4.6. Business authorization (power of attorney of commercial traveller)

The business authorization or power of attorney of the passenger trader, is a special type of power of attorney which is regulated by the law of obligations of Kosovo, which states: Persons who under a contract with an independent company or trader perform work that require the conclusion or fulfilment of specific contracts, such as shop assistants, persons performing specific work in the food supply and hospital sector, and counter clerks, in post offices and banks, have the right to enter into and fulfil these contracts.

5. Conclusion

Referring to the theory of legal actions, in principle, the legal consequences of human actions do not go beyond the legal sphere of human actions do not go beyond the legal sphere of the author, which means that legal actions arise rights and obligations only for the person who performs them. But if all legal actions and other legal actions were performed personally and only by the interested subject, the obstacles that would arise for the establishment, change or termination of legal relations would be too great, e.g. `` if a sum were to be withdrawn to a very distant place, it might be difficult for the person to spend whole days performing the action himself; the title of legal person, in general, would be impossible to contact personally with all its clients; then a sick person or a person sentenced to imprisonment cannot perform all the actions himself; also a person who does not have the necessary legal knowledge generally cannot participate alone in performing certain actions etc. On the other hand, the person incapable of acting (minors under 14 years of age and persons who have been deprived of the capacity to act by a court decision) could not exercise their subjective rights insofar as the law itself prohibits perform the actions in person. `` All of the above will be simplified only if another entity can replace the interested party in performing one or more actions. This simplicity is made by the law itself, creating an opportunity for subjects in cases when they cannot perform legal actions themselves, to perform them through other persons, an opportunity which for the basis of the institute of representation. So from the past time periods until today, a large number of relationships are influenced by representation, starting from the relationship of a cigarette seller, respectively from the relationship in a small company with two partners to the relationship in the company giant trading [24].

Compliance with ethical standards

Acknowledgments

Special gratitude to the professor, specifically the co-author of this paper Prof. Dr. Hajredin Kuçi, for the help given, advice and cooperation in the preparation of this paper.

Disclosure of conflict of interest

Hereby, all the authors declare no conflict of interest.

References

- [1] Aliu, Abdulla, Civil Law, Pristina, 2013; 339.
- [2] Brestovci, Faik, Civil Procedure Law, I, Pristina, 2006; 87.
- [3] Law no. 03 / L-006, / On the contentious procedure; article 75, paragraph 1; article 75.2. The legal representative is appointed by law or by the act of the competent state body, given on the basis of law.
- [4] Law no. Nr. 04 / L-077, / On the relations of obligations; Pristina. 2012; 72.
- [5] Aliu, Abdulla, Civil Law, Pristina, 2013; 340.
- [6] According to the LCT, Article 50, paragraph 1, provides that `` The contract entered into by the representative within the limits of his powers directly obliges the representative and the other contracting party, as they are parties to that contract. As well as, Aliu, Abdulla, Civil Law, Pristina, 2013; 341.
- [7] Law no. 03 / L-006, / On contentious procedure, Pristina, 2008; 77: 1.
- [8] Morina. Iset & Nikçi, Selim, Commentary on the Law on Contested Procedures, /. GIZ Publication, GmbH & Ministry of Justice of the Republic of Kosovo, Pristina, 2012; 179.
- [9] Law no. Nr. 04 / L-077, / On the relations of obligations, Pristina, 2012; 72: 2.
- [10] Law No. 9901, of the Republic of Albania-On traders and trade companies, / part1. General provisions ,, title III-Representation, Tirana, date. 04.04.2008;
- [11] Shih:www.igjet.info/shoqerite_tregtare/tsht/ligje/9901/pjesa_i/titulli_iii/neni_12. Retrieved on 26.01.2015 / time 17:25.
- [12] Aliu, Abdulla, Civil Law, Pristina, 2013; 344.
- [13] Law no. Nr. 04 / L-077, / On the relations of obligations; Pristina, 2012; 782.
- [14] Aliu, Abdulla, Civil Law, Pristina. 2013; 347.
- [15] Brestovci, Faik, Civil Procedure Law, I, Pristina, 2006; 88.
- [16] Law no. Nr. 04 / L-077, / On the relations of obligations; Prishtina, 2012, article. 78. See also: Aliu, Abdulla, Civil Law, Pristina. 2013; 348.
- [17] Law no. Nr. 04 / L-077, / On the relations of obligations; Pristina. 2012; 79.
- [18] Nuni. Ardian. Civil Law, Tirana, 2009; 251.
- [19] Aliu, Abdulla, Civil Law, Pristina, 2013; 349.
- [20] Law no. Nr. 04 / L-077, / On the relations of obligations; Pristina, 2012, article 81.1 - in this case the court appoints a temporary representative from the ranks of lawyers.
- [21] Ibid.
- [22] Aliu, Abdulla, Civil Law, Pristina, 2013; 350.
- [23] Law no. Nr. 04 / L-077, / On the relations of obligations; Pristina, 2012; 83.