



Representation by Power of Attorney According to Legislation and Legal Practice

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Abstract: The word representation comes from the English word advocacy, which also means calling, mediation, and search. Alternatively, the word advocacy is derived from the English root (ad - towards, towards, for; voca - voice, word, calls, speaks). In this context, representation represents giving voice to groups that traditionally have not been consulted (have been silent) in the decision-making process. This also defines the role of specific citizens' associations and networks of citizens' associations for representation, as well as mediators between marginalized groups and decision-makers. These organizations give voice to members and target groups through their representation. Representation in this context of civic organization is a relatively new term in the Republic of Macedonia. The concept of representation, however, is not new. In the literature you can find a lot of different information, while some of them are presented in the following text: "Advocacy is an act or process of supporting a certain goal or issue. Advocacy campaigns include a series of targeted activities aimed at build support for a particular cause or issue We advocate for a particular cause or issue because we want to: build support for the cause or issue, influence others to support it, or try to influence or change relevant law, which is related to the matter for which we represent. Based on local legislation as well as in other countries, representation can be legal and by proxy. Regarding legal representation, the law itself determines that for natural persons who do not have the ability to act. legal representatives act on their behalf, while when it comes to representation by power of attorney, it is an issue that requires a broader clarification regarding power of attorney, this is due to the fact that in practice from everyday life representation by power of attorney. it is quite necessary for the subjects to act for them, whether a lawyer or another person. This is almost a relief for people who have the obligation to be in two work activities at the same time, or for people who do not know the specific issue well and in these cases authorize another person to deal with that issue specifically with the relevant action. More broadly related to representation and representation by power of attorney in particular will be discussed in the content of this paper.

Keywords: representation, representation by power of attorney, power of attorney, transfers of rights.

INTRODUCTION

Representation is a process, which includes a series of political actions implemented by an organized group of citizens with the aim of changing power relations. The aim of representation is to achieve concrete political changes for the benefit of the affected parties involved in the process. These changes can occur in the public or private sector. Effective representation is implemented according to the strategic plan and in reasonable time frames. "Representation consists of different



strategies, which aim to influence the decision-making process at the local, regional, national and international levels, while more specifically: Who decides - elections, appointments, selection of policy makers, courts, ministers, advisory bodies, executive directors, administrators, etc. What has been decided - policies, laws, national priorities, services, programs, institutions, budgets. How it is decided - citizens' access to information and the process, as well as the level of consultations, responsibility and service of decision-makers to citizens and other affected parties. Policies and decisions are solutions for concrete problems. Effective representation requires accurate understanding and analysis of the concrete problem as well as a (logical) rational proposal for its solution. It follows from this that there is no single and comprehensive definition for representation. The same depends on the nature of the issue or problem for which it is represented as well as on the context in which the representation takes place. Based on practice both by the court and in other institutions, in most cases, if not all, legal work is carried out with the help of representation. In this case, it is about legal representation or representation by proxy. From this we understand that the legislation allows the responsibilities of the entities to be transferred to another entity. [1] When we talk about the responsibilities, we say that they are transferred to the legal representatives, since it is a legal obligation that the parent, guardian or person who adopts is responsible for all the actions taken by the child who is under their care. While the subjects of the right who are over 18 years old and have the ability to act fully, that is, they can be the bearers of rights and obligations and answer for them themselves, but there are cases that the same cannot be present in it at the same time in two places, or at the same time to carry out two work activities, and for these cases the law also allows representation by Power of Attorney, on the basis of which the power of attorney acts in the name and account of the power of attorney for the authorizations assigned to him the last to the contractor. The power of attorney as a document issued by the power of attorney will be discussed in more detail in the content of this paper.

I. Representation by Power of Attorney

I.1. Power of attorney as a written document

A power of attorney is a document made in the presence of a notary that says that a person authorizes another person to perform a certain legal action as if he were present. [2] With a power of attorney, the represented determines with his will the nature and volume of the authorization. KCSH expressly provides that "Power of Attorney is a document in which the representative, with his free will, has determined the nature and volume of the fees given to him by the representative" (Article 70). So, in all cases where representation arises based on the will of the represented, it is called representation by proxy. While the person who represents on the basis of a power of attorney is called a representative with a power of attorney and this is the person who has full capacity to act and perform legal affairs in the name and on behalf of the representative. [3] The written document in which the authorization that the grantor gives to the authorized is ascertained, is called an authorization. So, the authorization is the written document which serves the authorized person as an identity card that can carry out legal work with third parties. Therefore, the granting of authorization by the person giving power is not a contract for authorization, but can only serve as proof that a contract for authorization has been concluded. [4] A representative with a power of attorney, in addition to a natural person, can also be a legal entity.

This means that a legal office that deals with the issue of representation for the performance of legal affairs LPD of the Republic of Kosovo expressly provides in article 77 par 3 that "authorized



can also be a legal person". [5] E.g. The legal entity can also be a power of attorney, which is usually given by its individual body or the chairman of its collegial body (chairman of the board) or the employee with special authorizations. The legal entity can be a receiving power of attorney only within the limits of its legal capacity in accordance with the activity it carries out. For example, if the legal entity is authorized to conclude contracts, then its duty would be to conclude the contract in the name and on behalf of power of attorney to the grantor. The party that does not have procedural capacity must be represented by the legal representative. So, in case the party does not have procedural capacity in a valid way, only the legal representative can undertake procedural actions. Whereas the person who has procedural skills can undertake procedural actions himself, because the party has postulate skills (postulate skills mean the ability of the party who has procedural skills, to personally perform procedural actions without a representative) [6] the party does not have postulate skills which must be represented by a lawyer. [7]

I.1.1. Form of Power of Attorney

The form of the power of attorney depends on the form required for the conclusion of any contract, or for any other legal work. [8] The form of the contract is the external manifestation of the content of the contract. The form for these contracts is a special condition for its conclusion and it is expressly provided by law and a written form is usually required for the conclusion of these contracts. [9] The form provided by law for any contract or for 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. [10] The recipient of the power of attorney performs legal work on behalf of and for the account of the provider, in this case the provider of the power of attorney must give the power of attorney (authorization) in writing, just as a written form is required for the conclusion of the contract, e.g. the contract for sale and purchase must be made in writing and certified by a notary. In cases where the power of attorney does not have the form required by law, then it does not produce legal effects and the person who has such a power of attorney is considered a representative without authorization. [11]

I.2 Volume of power of attorney (authorization)

The limits of representation are defined in Article 65 of the Civil Code:

The legal representation fees are set by the provisions of the law that give this quality, while the representation fees received by the represented are set by power of attorney. Representation fees can also be derived from the circumstances in which the relevant legal actions are carried out. From the content of this article, it follows that the representation and the corresponding tax can be realized in this way:

They are determined by law and in this case it is said that the representation is legal. Representation is legal when the representative performs the representation based on the law. This type of representation is legal when the representative performs the representation based on the law. This type of representation is called mandatory representation, eg the parent is the legal representative of his minor child. In this case, the representation fees are determined by law and the representative is only obliged to implement them.

They are appointed by the representative on the basis of an act called a power of attorney. This type of representation is called representation by proxy or voluntary representation. The representation is by power of attorney or as it is otherwise called voluntary, when the



representative's duty to represent the represented is determined through an act such as power of attorney, for example the representation to perform a legal act of sale and purchase of real estate must be done by power of attorney. The representative with authorization is known to be able to undertake only the legal affairs that belong to him in the exercise of regular activity. What the authorizations of the authorized person will be depends on the will of the represented party. The representative determines by authorization the volume of the representative's authorizations. Law on Dispute Procedure article 90.1 which states that: the volume of authorizations of the representative is determined by the party itself. [12] The authorization for representation is also called a power of attorney, which is a letter (document) in which such authorization consists.

Depending on the volume of the authorization, the power of attorney can be:

1. General and
2. Special. [13]

General power of attorney - is when the party's representative can perform all the procedural actions that are triggered by the contentious process in the trial. So, according to KCSH article 71, the general power of attorney is when the represented has given the representative a power of attorney to perform various legal actions, which are related to a set of rights of the represented, except for those that have been expressly excluded. Special power of attorney - is when the represented has given the representative the authority to perform one or several certain legal actions that are characterized by a common purpose. [14] Regarding the special power of attorney, the LMD of Kosovo in article 79.3 provides that work that does not enter into regular activity can be undertaken by the representative only if he is specifically authorized to undertake this work or the types of work in which he was part of the same. This is due to the fact that the law cannot determine the work that falls under the regular work of the employer of the power of attorney because the activity delegated to the grantor can be diverse. The grantor's power of attorney in the case of granting the power of attorney (authorization) or when it comes to the special authorization, I can submit certain restrictions for undertaking work in the name and on behalf of the grantor, for example, for the person with whom I will the contract is concluded, or for the duration of the contract. In this case, such a power of attorney is called a limited power of attorney. [15] In some cases, the law itself determines what the authorizations of the representative are. As determined by the provision of Article 90 of the LPK, which states that: if the party has given authorization to the representative who is a lawyer to pursue the case in court but the volume of the authorization has not been determined, then the authorized person has the right [16]:

1. to perform all actions in the procedure, especially to file the lawsuit, withdraw it;
2. submit an answer to the lawsuit
3. affirm the claim, or give up the claim;
4. to enter into a judicial settlement;
5. to present the means of striking the decision;
6. as well as to waive this right or to withdraw such presented means;
7. but also to propose the appointment of temporary measures to secure claims;
8. submit the request for execution or insurance and perform necessary actions related to such request and



9. to accept from the opposing party the procedural expenses determined by the court. [17]

I.3. Exceeding the Authorization given in the power of attorney

In the case in which the representative transfers the authorization for representation, received from the party, to another person, we say that the representative has been substituted. There is no obstacle for the party's representative to authorize the third person to perform one or several certain procedural actions himself. The person to whom the power of attorney was transferred (substitute) represents the party, not the first representative (substitute). However, even after the transfer of the power of attorney, the relationship of the representative remains between the party and the substitute because she has given him the power of attorney. And in the procedural aspect, it should be considered that the substitute is a direct representative of the party, even in terms of the procedural actions performed by him. [18] The representative can undertake only those works for which he has been given the authorization, and in the event that the representative exceeds the works undertaken on behalf of someone else for which he has been authorized, then we can talk about exceeding the authorization. Therefore, for any case of exceeding the authorization on the part of the authorizer, the consent of the authorized person is needed for the validity of this legal work. So, when we exceed the limits of the authorization, the representative is under obligation only if he approves the overcoming of the legal works undertaken by the authorizer (LPD of Kosovo, article 75 par 1).

In the case where we exceed the authorization of the LPD of Kosovo in article 75 par. 2 states that: if the representative does not approve the contract within the period that is regularly required for this type of contract to be reviewed and evaluated, it will be considered that the approval was not given at all. This is roughly the same defined by the Civil Code, which states that: when a natural or legal person acts as a representative without having this capacity, as well as when the representative has exceeded the fees given to him, the legal action performed under these conditions is not mandatory for the person in whose name they are performed, unless he has approved it later. And when the approval is not given, the third person who has been in good faith has the right to demand compensation for damages from the representative. If the approval for exceeding the authorization, for a specific case, will have a retroactive effect even for previous cases, unless the parties agree otherwise. In the event that the other party (the party with which the legal work is connected) did not know and should not have known about the exceeding of the authorization, immediately after learning about the exceeding done, it can, without waiting for the representative to declare about the contract, I declare that I do not consider myself bound by the contract. [19] In this case, the party with whom the legal work has been concluded is allowed the right to withdraw from the contract where there is an excess of authorization by the representative. [20] In the case when the representative refuses the permission, and in this case damage is caused to the third person with whom the legal work is connected due to exceeding the authorization, they will be jointly and severally liable for the damage caused to the other person if that the other party did not know and should not have been aware of exceeding the authorization.

The damage caused by the representative, whether due to exceeding the authorization or his regular activity, can only happen in legal cases where the declaration of his will is required, for example the termination of the contract. [21]



I.4. Connection of legal work by unauthorized person

The person who acts as negotiorum gestor in the trial, because the party has not authorized him as his representative at all. A representative without a power of attorney is also considered a person whom the party has authorized for its representation, but who is unable to show the court a document containing the authorization. But there is no obstacle for the court to temporarily give such a representative the opportunity to perform procedural actions, setting a deadline for submitting the written power of attorney. [22] The court may allow the actions in the procedure for the party to be temporarily performed by the person who did not present the power of attorney, but at the same time it will order him to present the power of attorney or the approval of the party for the actions performed within the specified period. And, until the deadline for submitting the power of attorney passes, the court will postpone the final decision. If this deadline passes without success, the court will cancel the procedural actions performed by the person without a power of attorney and will continue without considering the actions performed by him. [23] In the event that an unauthorized person who becomes an authorized person, creates legal work in the name and on behalf of someone else, then this legal work related by the unauthorized person does not oblige the person represented in such a way unauthorized. But if the person represented in an unauthorized manner accepts the legal work later, then this legal work will also obligate this. [24] A contract entered into by a person as an authorized agent on behalf of another without the latter's authorization obligates the person represented in an unauthorized manner only if the latter accepts the contract later, or the party with whom the contract is concluded may demand from the person represented in an unauthorized manner to declare within the specified period whether he allows the contract or not. If the person represented in an unauthorized manner does not allow it, even in the term of the contract, it is considered as if the contract was not concluded at all. In this case, the party with whom the contract was concluded may request compensation for the damage from the person who, as a representative, concluded the contract without authorization, if at the time of the conclusion of the contract he did not know or should have known that this person did not have authorization to conclude the contract. [25]

I.5. Termination of power of attorney

Power of attorney [26] or authorization is a power of representation which the power giver with legal work carries in the authorized. The power of attorney or authorization is given in the form of legal work, either by unilateral action or by bilateral contract. The form of granting the power of attorney is also important. However, whenever it comes to the volume of the power of attorney, the principle of restriction must be taken into account. Based on this principle, the power of attorney recipient, respectively the authorized person, has the mandate to perform only the legal tasks contained in the power of attorney or authorization itself. The withdrawal of the power of attorney or the limitation of the mandate is possible even in cases where the mandate giver has waived this. On the other hand, this action can also be done with a simple declaration, so the form is not an obstacle.

Extinction of the power of attorney or authorization is expressed whenever the legal entity that had the authorization is extinguished. The power of attorney is extinguished even when the authorizing person dies. However, when it comes to a work started which causes damage to the successors, then the effect of the power of attorney continues until the completion of that work. [27] The most frequent form of cancellation is the revocation of the power of attorney, which revocation can be done by declaration without any special form and at any time. The revocation of



the power of attorney can be done even when the right of revocation has been waived by contract, because the revocation of the power of attorney is, according to the law, considered without legal effect. However, the grantor of the power of attorney, in addition to revocation, also has the right to limit the power of attorney, which means a unilateral action by which the power of attorney grantor narrows or limits the volume of the power of attorney (authorization). The power of attorney ceases with the termination of the legal entity as authorizing person, if not otherwise specified by law. The power of attorney ceases with the death of the authorizing person. The power of attorney ceases with the dismissal of the legal person, respectively with the death of the person who gave it, unless the work started cannot be interrupted without causing damage to the legal successors, or if the power of attorney is also valid in the event of the death of the person giving the power of attorney, as with his will as well as taking into account the nature of the work. [28]

II. Business authorization (trader's power of attorney)

A legal person can give a power of attorney or business authorization for concluding a contract and performing mundane tasks, but only those that belong to that activity. Characteristic of this power of attorney is time limitation or limitation to only one work or type of work. The authorizations of the commercial agent - The commercial agent is the one who has competences related to legal work for the sale of a commodity and that indicated in the authorization given by the working organization. The commercial agent does not have the competence to collect the price or to sell in installments, unless he has a special authorization for this. He is authorized to make complaints and other statements related to the execution of contracts for the authorized person. The business power of attorney can be given within the law by the organization of the united work, respectively the other legal entity and thereby authorize the authorizer, enter into contracts and perform other works that are practiced in the exercise of their business activity. The business authorizer cannot alienate or encumber immovable objects, assume promissory notes or bail obligations, take loans and develop disputes, if he has not received a special power of attorney for any such work. The business power of attorney can be limited to a certain type of work or to certain works, but these restrictions have an effect on the third party only if he knew about them or should have known about them.

The provisions on business power of attorney are applied *mutatis mutandis* to the business power of attorney of the store owner. The business power of attorney does not cease upon the death of the owner of the store, as well as if he is deprived of the ability to act. The commercial agent of the united labor organization, which deals with economic activity, is authorized to undertake only those actions related to the sale of goods and which are indicated in the authorization given by the organization. In case of uncertainty, it is considered that the commercial agent is not authorized to conclude contracts, but only to collect orders, but nevertheless the contract he concluded will remain in force, if the principal approves it later. The commercial agent who is authorized to sell the goods is not authorized to collect the price and sell on credit, unless he has a special authorization for credit sales. The commercial agent is authorized, for the principal, to receive complaints due to the lack of goods and other statements related to the implementation of the contract concluded through his mediation, as well as on behalf of the principal to take appropriate measures to protect the rights from this contract.

Concluzion

Taken in general, authorization is an institution of law in general, while of private law in particular. This is due to the fact that legal relationships which have private rights as their object can be transferred to other entities, whether it is the responsibility or the performance of any



action that belongs to the person who has the legal interest. In these cases, we say that representation is a helper for certain persons, especially when it comes to representation by power of attorney, in which the certain subject can transfer his responsibilities to someone else, so that the same person can do the work but in name and his account. In order to undertake these actions, the will of both parties must be expressed, i.e. the authorizing party and the party authorizing the other person to deal with the actions of the former. In these cases, we talk about representation by power of attorney, which for us, the power of attorney is a one-sided legal work, since it only indicates the will of the power of attorney, while to arrive at the formation of the power of attorney, both parties, i.e. the power of attorney and the power of attorney, express their will in a document that we otherwise call a contract. So, to arrive at the formation of the power of attorney, first the contract for the authorization is formed, which is considered a two-way legal work, while after that the authorization recipient presents his will in another document that we call a power of attorney. So now we can say that the power of attorney is a written document issued by the procurator, and which, based on the authorizations defined in it by the authorizing party, he must act in his name and on his behalf.

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