

Protection of vulnerable women in divorce cases through the representative

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ABSTRACT

The article identifies that women with limited cognitive, behavioral or physical abilities and who are victims of domestic violence are disadvantaged people in society. They can be protected and supported when participating in divorce cases through a representation mechanism, namely through a legal representative or an authorized representative.

By analyzing current legal provisions and practical application of the law, the article clarifies inadequacies, thereby providing basic solutions for the practical and effective protection of disadvantaged women in divorce cases through representatives.

The article mentions disadvantaged women in the following two groups:

Group one, a group of women with limited cognitive, behavioural, or physical abilities. Including: A group of women who have lost their civil act capacity; a group of women who have difficulty in cognition and behaviour control; a group of women with disabilities, physical and mental impairments but not to the extent that they have lost their civil act capacity or have not yet reached the level of difficulty in cognition and behaviour control; Group two, group of women who are victims of domestic violence.

Inadequacies and solutions are proposed to solve the following four basic problems:

The first problem, the woman has a mental illness or other diseases that is unable to perceive and control her behavior. However, no one asked the Court to issue a decision declaring the loss of civil act capacity. Therefore, there is no representative in divorce cases.

The second problem, the women who have difficulty in awareness and control of behavior do not have representatives to participate in the proceedings in the case.

The third problem, the women who are victims of domestic violence are not authorized to sign the petition.

The fourthly problem, the woman who is a victim of domestic violence is not allowed to authorize another person to participate in the proceedings in a divorce case as prescribed in Clause 4, Article 85 of the 2015 Civil Procedure Code.

Key words: vulnerable women, divorce case, legal representative

INTRODUCTION

A vulnerable person has stated the Vietnamese Dictionary as one who is “in a disadvantageous position. Being vulnerable, loser”¹. According to the general awareness, the advantaged are those who, whenever they participate in a social or legal relationship, always face plenty of disadvantages than others with the same situation. The disadvantaged people can be mentioned as disabled people, children, the elderly, the poor, people with extreme disadvantages, ethnic minorities, people of other gender groups (not male or female)...

Thus, to define a vulnerable person is usually the determination of age, gender, physical and mental defects, and limitations, etc., leading them to have difficulties and disadvantages in life, in a social relationship, or legal life. However, not all above – mentioned

situations are vulnerable. Some people are not in the above cases, they can perceive and control their behaviour, but they are still weak in certain social and legal relationships. In a certain social relationship, regardless of the circumstances (group of people, a person), these subjects face disadvantages and disadvantages, then they must be identified as the weak². So are women in general considered vulnerable? In Vietnam, the Law on Legal Aid 2017 has expanded from 6 to 14 groups of subjects entitled to free legal aid from the State but does not include women. Vietnam also does not have any legal documents identifying women as vulnerable.

Women are still considered a disadvantaged group in society. Within the framework of the project “Strengthening the law and justice in Vietnam” co-funded by the European Union and the United Nations Development Program (UNDP), the Ministry

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of Justice organized a consultation workshop on the draft Report. An assessment of the current status of awareness and legal needs of disadvantaged groups organized in Hanoi on December 19, 2019, identified women, ethnic minorities, people with disabilities, and children as the most vulnerable groups, the weakest and most vulnerable.

Within the scope of the article, the author determines that "weak people" here are not all but only disadvantaged women in the following two groups:

Group one, a group of women with limited cognitive, behavioural, or physical abilities. Including: A group of women who have lost their civil act capacity (a woman suffering from mental illness or suffering from other diseases that cannot perceive and control her behaviour)³; a group of women who have difficulty in cognition and behaviour control (adult women due to physical or mental condition but not able to perceive and control behaviour but not to the point of incapacitation of civil activity)⁴; a group of women with disabilities, physical and mental impairments but not to the extent that they have lost their civil act capacity or have not yet reached the level of difficulty in cognition and behaviour control.

Group two, group of women who are victims of domestic violence. Domestic violence is violence or other abuse in a domestic setting, such as in marriage or cohabitation. Domestic violence is often used as a synonym for intimate partner violence, which is committed by one of the people in an intimate relationship against the other person. It takes multiple forms, including physical, verbal, emotional, economic, religious, reproductive, and sexual abuse, which can range from subtle, coercive forms to marital rape and to violent physical abuse...

Domestic violence against women is not only against the law but also against social ethics and is condemned by the community and the world. Domestic violence not only causes serious health and physical consequences for women but also adversely affects the security, order and safe society, culture and economy of a country.

Regardless of which of the two disadvantaged women groups mentioned above, they cannot participate or participate in a limited way, are disadvantaged in the civil or pre-procedural proceedings to ensure they get their rightful rights, get justice or at least bring them fairness. Therefore, it is necessary to have a representative for the disadvantaged women mentioned above when participating in civil legal relations.

Representation in civil procedure law is when a subject participates in the legal proceedings on behalf of

and for the benefit of others in order to help the represented person protect his/her legitimate rights and interests.

Regarding legal representation (this article is limited to legal representatives of individuals): Article 136 of the 2015 Civil Code stipulates that the legal representation of individuals includes:

1. *Parents towards their minor children.*
2. *Guardian for the ward. The guardian of a person with cognitive or behavioural difficulties is the legal representative if was appointed by the Court.*
3. *The person appointed by the Court in case the representative cannot be identified as prescribed in Clauses 1 and 2 of this Article.*
4. *Persons appointed by the Court for persons with restricted civil act capacity."*

Legal representation often represents disadvantaged women in group one.

About authorized representatives (this article is limited to authorized representatives of individuals): According to the Vietnamese dictionary, authorization is "to assign others to use certain rights that the law has assigned to them"⁵. Thus, it can be understood that authorization is the act of authorizing the authorized person to perform some powers on behalf of the authorized person within the scope prescribed by law.

Authorized representation often represents disadvantaged women in the second group.

LITERATURE REVIEW AND RESEARCH METHODS

This article is based on real cases in Court and access to documents related to human rights. At the same time, based on current Vietnamese legal regulations to evaluate, analyze and offer solutions to protect disadvantaged women in divorce cases.

FINDING AND DISCUSSION

Firstly, identify a group of women with limited cognitive, behavioral or physical control and inadequacies in representing them to participate in court proceedings and then have solutions to deal with them. Adjust the current legal provisions of Vietnam, in line with reality and protect the rights of disadvantaged women.

Secondly, identifying a group of women who are victims of domestic violence with many limitations of Vietnamese law on provisions for their representatives to participate in court proceedings, including regulations human rights violations need to be remedied and rectified.

Situation and solutions

Inadequacies of the law on protecting vulnerable women with limited cognitive, behavioral or physical control in divorce cases

The first problem, the woman has a mental illness or other diseases that is unable to perceive and control her behavior. However, no one asked the Court to issue a decision declaring the loss of civil act capacity. Therefore, there is no representative in divorce cases.

A woman suffering from mental illness or other diseases which make her unable to perceive and control her behavior does not have civil procedural act capacity. Article 22 of the 2015 Civil Code on loss of civil act capacity stipulates: "When a person is unable to perceive and control his/her acts due to a mental illness or other disease, at the request of the person with related rights and interests or of the agency and relevant organization, the Court issues a decision declaring this person to be incapacitated for civil acts on the basis of the conclusion of forensic psychiatric examination".

In fact, there are many situations where a woman involved in a divorce case has a mental illness, but no one asks the Court to declare that person has lost her civil act capacity, so the vulnerable woman is not protected through a representative, the case was not resolved.

The Courts are having problems in reality about this situation and each Court applies a solution differently, but they are not thorough. Meanwhile, the direction of the People's Supreme Court answer proved to be quite superficial and unreasonable: "When there is a subject who believes that a person is a litigant in the case of loss of civil act capacity, the Court must explain and guide them to exercise their right to request a declaration of loss of civil act capacity according to the above provisions; if they have requested and the Court accepts and settles this request, the Court shall apply Point d, Clause 1, Article 214 of the 2015 Civil Procedure Code to temporarily suspend the settlement of the civil case; if they do not request it, the Court shall settle the civil case according to general procedures"⁶.

The failure to comply with the law in the above answer clearly shows that when you want to follow the "general procedure", you must first comply with the regulations on the subject, the subject's capacity, and ensure the interests of the subjects participating in the proceedings. The settlement of a civil case involving a woman who is mentally ill or suffers from another disease and cannot perceive or control her behaviour without a representative can be confirmed as illegal and a serious violation of the law proceedings.

The solution to the first problem:

First, enhancing the role of the court, using representative institutions to protect the disadvantaged. The Court has the right to consider whether the interested party has lost the civil act capacity and ask the plaintiff to bear the costs of expertise. This issue is determined to be a special case and does not violate the party's right to decide and self-determination because the Court, in addition to respecting the parties' right to self-determination, also has the duty to protect justice, human rights and citizens' rights. At the same time, both the substantive law and the civil procedure law stipulate that the Court is entitled to "actively" decide on the exercise of civil rights and obligations of the above-mentioned "disadvantaged" in some certain cases⁷. Only in this way can the disadvantaged people be protected in case they lose their civil act capacity and the case can be solved quickly and thoroughly.

Second, amendment of the law on guardianship, specifying who has related rights and interests or of the agency and relevant organisation who can act as a guardian.

First, it is necessary to overcome the disability of Article 54 of the 2015 Civil Law. According to Article 54, the Court only appoints a guardian in the following cases: "In the case of a minor, a person who has lost his or her civil act capacity, if there is no natural guardian as prescribed in Articles 52 and 53 of this Code, the commune-level People's Committee of the place where the ward resides is responsible for appointing a guardian. In case there is a dispute between guardians specified in Articles 52 and 53 of this Law about guardians or the appointment of a guardian, the Court shall appoint a guardian". Based on this provision, when there is no dispute of guardians, the Court cannot appoint a guardian.

Clause 1, Article 88 of the Civil Procedure Law 2015 has more appropriate provisions: "When conducting civil proceedings if involved parties are minors, persons who have lost their civil act capacity, persons with limited civil act capacity, people with cognitive or behavioural difficulties without the representative or their representative belong to one of the cases in Clause 1, Article 87 of this Law, the Court must appoint a representative to participate in the proceedings".

However, the appointment of a guardian and the appointment of a representative to participate in the proceedings are closely related but not identical. In order to appoint a representative to participate in the proceedings, a guardian must be appointed first. It can be seen that substantive law is a barrier to civil proceedings. Therefore, it is necessary to amend the provisions of Clause 1 Article 54 as follows: *In case*

a minor or a person who has lost his or her civil act capacity has no natural guardian as prescribed in Articles 52 and 53 of this Law, the Commune People's Committee where the ward resides is responsible for appointing a guardian. In case there is a dispute between guardians specified in Articles 52 and 53 of this Law about guardians or disputes over the appointment of guardians or guardians who are not eligible for guardianship or guardian is not allowed to authorise to the ward in specific cases, the Court shall appoint a guardian.

Once the problem of appointing a representative has been resolved, the next problem is to find a legal representative for the vulnerable woman^a. In society, there are specific job assignments for different individuals and regulations on the functions and duties of agencies and organisations, but not everyone actively stands up to protect the interests of "strangers", the woman is the weakest when the law does not specifically provide for it.

Regulations on the appointment of guardians as well as regulations on whether persons with related rights and interests of concerned agencies and organizations have the right to request the Court to declare someone incapacitated for civil acts, is a preeminent legal provision in the protection of disadvantaged women, contributing to the progress and justice in society. Referring to the U.S. Federal Code of Civil Procedure shows that in addition to a general guardian or person appointed as guardian or foster carer, there are other persons with similar obligations⁸. The US Federal Law of Civil Procedure shows that the law not only regulates wards but also a diverse system of subjects who are allowed to be guardians and guardianship becomes a popular activity. There are not only natural guardians known as public guardians with guardian and professional offices, but there are also guardians who are friends, businesses, banks, corporations or others with responsibility, who become the guardian and representative of the person who has lost the capacity for civil acts⁹.

Vietnam's law has not specified who has the relevant rights and interests here? or of the concerned agency or organisation, specifically, which organization? Currently, in Vietnam, we are just thinking that: Persons with related rights and interests here are creditors or have property relations with litigants who have lost their civil act capacity or concerned agencies. The organizations here are only agencies to protect women and children; trade unions...

^aThis problem is also posed for people who have difficulty in perception and behavior control.

According to the present authors, there is a need to expand the range of guardians. By that, any individual (friends, neighbors, relatives, benefactors) who is responsible and satisfies all qualities, would be able to become the guardian. Any responsible agencies or organizations (which can be charities, NGOs (non-governmental organizations), businesses, associations, unions...). The reason for this proposal is that the author stands on the purpose of not only protecting the rights of the weak but also for the greater benefit of the community.

The second problem, the women who have difficulty in awareness and control of behavior do not have representatives to participate in the proceedings in the case.

The regulation on people with difficulties in cognition and behavior control in the 2015 Civil Law is a new regulation of Vietnamese law. This regulation has created an important legal corridor to solve practical problems and difficulties, including divorce cases involving this special subject. However, the regulation on people with difficulties in perception and behavior control in the 2015 Civil Code is also revealing some limitations.

According to Clause 1 Article 23 of the 2015 Civil Law, people with difficulties in cognition and behavior control are as follows: "Adults due to their physical or mental condition so they are not able to perceive and control their behavior but have not yet lost their civil act capacity, at the request of this person, the person with related rights and interests, or the concerned agency or organization, based on a forensic psychiatric examination, the Court shall decide to declare this person to be a person with difficulties in cognition and behavior control and appoints a guardian, determines the guardian's rights and obligations".

Thus, in which case it is understood that due to their physical or mental condition that they are not able to perceive and control their behavior but have not yet lost their civil act capacity, the law does not stipulate clearly leading to difficulties in application. Especially people with disabilities, people with severe disabilities, deaf-mute, blind, etc., are they considered people with difficulties in perception and behavior control?

If women in the above-mentioned physical conditions are the party in the divorce case but the Court does not determine that they are people with difficulties in cognition, behavior control and does not appoint the guardian so they will not have a representative to participate in the proceedings at the Court. One thing is for sure, in the divorce case, the people who women have to face are their husband, who holds their own weakness, but these women have no mechanism to be

protected. This leads to great inequality in civil procedure relations in particular and in social relations in general.

Situation:

The first case: Mr. Nguyen Van A and Ms. Quach Thi K got married in 2004, in 2005 Ms. K went to work abroad in Korea. Due to working in a toxic environment, Ms. K was deaf and mute and returned to Vietnam in 2015. While working in Korea, Ms. K sent Mr. A money to buy 02 plots of land for saving and about 01 billion VND. Mr. A at home has legalized papers in his name, and the money that Ms. K sent back is held by Mr. A. Ms. K was deaf and mute and lost her work capacity, so Mr. A filed for divorce to the Court. Due to lack of money, she could not hire a lawyer or ask a representative. She also did not receive support through the legal aid system because she could not prove that she was in financial difficulty because she had just returned from a labor export and had a big house^b. Ms. K requested the Court to declare that she was a person with difficulties in cognition and behavior control and wanted the Court to appoint a guardian, the Court refused on the grounds that she was not a person with difficulties in cognition and behavior control. As a result, at the mediation sessions and especially at the trial, Ms. K was unable to present her opinions directly and was able to argue with Mr. A about the problems in the case. Therefore, Mrs K inevitably received an unfair sentence.

The second situation: Ms. Nguyen Thi Mai C, who was born in 1986, is a tea picker, on July 21 of 2019, while picking tea, she was burned by a 35KV high voltage power line managed by TN Power Company. After that, she had to cut both her arms. Seeing that Ms. C was seriously injured, her husband, Mr. Q, did not take care of his wife and lived with another woman as husband and wife. The purpose of Mr. Q not to divorce is to receive insurance money and compensation from Ms. C. Frustrated, Ms. C decided to divorce, she asked someone else to file for divorce, but no one witnessed her signing the divorce for her. (Because she is an ethnic minority, the customs and habits of Ms. C's place do not want to be involved in litigation, partly because of Mr. Q's pressure, so no one helps her as a witness to sign the petition). When filing for divorce, the People's Court of TN City requested to amend and supplement the petition following the provisions of Clause 2, Article 189 of the 2015 Civil Procedure Law, but she could not supplement, so the Court returned the petition for Ms. C.

^bVietnam's National Assembly, Article 7 of the 2017 Law on Legal Aid provides free legal aid from the State to people with disabilities provided they have financial difficulties.

The solution to the second problem:

The solution to this problem is to concretize the regulations of the law. Through analyzing legal regulations and looking at real-life situations, it is necessary to list severely disabled women, people with total paralysis, people who are deaf and mute at the same time, and people who are blind are those who have difficulties in cognition and behavior control and they have the right to request the Court to issue a decision to declare that they have difficulty in cognition and behavior control and appoint a representative to protect them.

In case the petitioner is a disadvantaged or an amputee as in the above situation, the legislator has a mechanism to protect the illiterate, the visually impaired, the person who cannot file a lawsuit by him/herself, the person cannot sign the petition or sign by pressing one's finger-print by him/herself as prescribed in Point c, Clause 2, Article 189 of the 2015 Civil Procedure Code that is: They can ask someone else to make the petition and must have a person with full civil procedure capacity to testify, the witness must sign the petition for certification. Therefore, the Court should create conditions to assist the interested party in finding witnesses or have a plan to record by a report showing the contents of the lawsuit witnessed by the Court's representative.

Inadequacies of the law on protecting vulnerable women who are victims of domestic violence in divorce cases.

Women who are victims of domestic violence are the ones who desperately need someone to represent them in divorce cases, who is seen not only as a substitute for work, but also as a companion supporting marriage and family problems in the most difficult times. However, legal barriers restrict them from authorizing others to sign petitions and participate in proceedings in divorce cases.

First, women who are victims of domestic violence are not authorized to sign the petition.

In the second situation, it is found that Ms. Nguyen Thi Mai C is both a disadvantaged woman and a victim of domestic violence. For this, Ms. C can completely authorize another person to sign the petition instead of looking for witnesses but the law is not stated clearly of authorizing others to sign the petition.

The Court's view in the situation that the individual is not authorized to sign the petition and return the petition is based on emotional and logical inferences. The fact that the law does not provide for an individual woman to authorize another person to sign a lawsuit

does not guarantee human rights in civil proceedings, violates the principle of the right to self-determination of the litigant, principle of equality, seriously infringing upon the legitimate rights of citizens.

To prove the above point, the author relies on the following theoretical bases:

First, stemming from human rights in civil proceedings. Modern philosophers such as Thomas Hobbes, John Locke, Montesquieu, J.J. Rousseau, Friedrich Hayek have discussed a lot about human rights and the law, asserting that human rights are natural rights that cannot be taken away by the ruling class. Locke pointed out that: "in the 'state of nature' humans have the rights of liberty, equality and private property. These rights are rooted in the eternal and immutable nature of humans and therefore no one can change them"¹⁰. The United Nations General Assembly's 1996 International Covenant on Civil and Political Rights "Ensures that any person, whose rights and liberties as recognized in this Covenant are infringed, receive effective remedy"¹¹.

Article 14 of the 2013 Constitution stipulates: "In the Socialist Republic of Vietnam, human rights, civil rights in political, civil, economic, cultural and social are recognized and respected, protected and ensured according to the Constitution and the law. Human rights and citizens' rights may only be restricted according to the regulations of law in case of necessity for reasons of national defense, security, social order and safety, social ethics, community health" and in the rule of law "Citizens have the right to do everything that is not prohibited by law"¹².

Vietnamese law stipulates the right of individuals and legal entities to authorize other individuals to establish and perform civil transactions¹³, and there is no legal document that prohibits an authorized individual from signing lawsuit petitions. Therefore, allowing authorized individual to sign petitions does not violate the prohibition of the law and is to ensure human rights and citizens' rights recognized in the Constitution, laws and international conventions.

Second, ensure the principle of equality in civil proceedings.

Equality is one of the basic natural human rights, closely linked with people in social activities. The philosopher Montesquieu in his book *The Spirit of the Law* further developed Locke's ideas about natural rights and argued that "in the state of nature, all men are created equal"¹⁴. The philosophical view of the Enlightenment period did not identify equality of results in life but "equal rights to the law"¹⁵. Thus, equal rights to the law is very important and recognized by the whole world. Everyone is equal to the

Courts and Jurisdiction. Everyone has the right to a fair and public hearing by a competent, independent, impartial Court¹⁶. Ensuring equal rights of interested parties in civil procedure law is also a consistent policy and policy of our Party and State to create sustainability, stability and development of the legal system of Vietnam.

Article 8 of the 2015 Civil Procedure Code stipulates equality as follows: "In civil proceedings, all men are created equal before the law... All agencies, organizations, and people are equal in their work. exercise the procedural rights and obligations before the Court".

According to the guidance of the Supreme People's Court, in particular in Official Letter No. 02 / TANDTC-PC dated August 1, 2021^c, the inequality in civil proceedings becomes apparent: Courts allow legal persons to sign petitions^d, but women in need of protection do not allow them to sign. The agency did not respond to the discrepancy.

The solution to the first problem: Allow the individual to authorize the petition to be signed. This only needs the Court to approve a case law or simply an answer because the law has no defects in content; the limitation is in the applicator.

A comparison of foreign laws shows that many countries allow authorization to sign petitions. The Procedural Code of the Russian Federation stipulates the scope and authority of representation as follows: "The right to sign a lawsuit, the right to bring it to court, the right to request that the dispute be transferred to the Court for settlement, the right to initiate countersuit, the right to withdraw part or all of the claim, reduce the level of the claim, admit the action, change the ground or object of dispute, the right to conciliate, re-authorize another person, make a claim Forcible judgment enforcement, receipt or sanctioned money must be clearly stated in the power of attorney".

It is urgent for the Court to have guidelines for accepting the authorized individual to sign a petition to protect the basic principles of the law. At the same

^cSection 4, Part IV on civil proceedings, Official Letter No. 02/TANDTC-PC dated August 1, 2021 of the Supreme People's Court reads: "The Asset Management Company of Vietnamese Credit Institutions Nam (VAMC) has a written authorization for a credit institution with the content that the credit institution is entitled to initiate a lawsuit and participate in court proceedings to resolve a dispute over the handling of bad debts and security assets of the debt. bad, the authorized credit institution has the civil procedural rights and obligations of the involved parties. Therefore, when settling the case, the Court must convene and serve the procedural documents to the authorized credit institution, not convene and serve the procedural documents to the VAMC".

^dBank branches are allowed to sign lawsuit petitions on the basis of authorization of legal entities and are accepted and resolved by the Court.

time, contributing to protect the disadvantaged people, including women in situations of domestic violence, have support and protection through an authorized representative that they trust and choose.

Second, a woman who is a victim of domestic violence is not allowed to authorize another person to participate in the proceedings in a divorce case as prescribed in Clause 4, Article 85 of the 2015 Civil Procedure Code.

Clause 4, Article 85 of the 2015 Civil Procedure Code stipulates: "For divorce, the interested parties are not allowed to authorize another person to participate in the proceedings on their behalf". Some views support Clause 4, Article 85 of the 2015 Civil Procedure with the following arguments: For the divorce dispute, it is compulsory for the involved parties to not be authorized because the Court has grounds to settle the case. If an involved party gets a divorce, he/she is required to present his/her own marriage relationship. It is the litigant who understands the relationship arising with the other party in the process of husband and wife's cohabitation. Therefore, the authorization when the involved parties divorce will not be effective and will not thoroughly resolve the Court's marriage relationship of the parties¹⁷. There is an argument that marriage is a legal relationship associated with personal rights, which is inseparable from each participant, so when a divorce is filed, that subject must sign the petition and participate in the proceedings on their issue, which cannot be authorized by an authorized representative.

Looking at the legal provisions on marriage and family, the civil law and civil procedure of Vietnam, there are no principles or regulations that can be related to justify the provisions in Clause 4, Article 85 of the 2015 Civil Procedure Code. The provisions of Vietnamese law make it impossible for the author to not worry about the fate of women who are victims of domestic violence but are not protected through their representatives. The law is to serve life and above all to protect justice and equality in society, not to create unfounded barriers, thereby affecting the interests of citizens including women who are victims of domestic violence and being protected by the whole world. From the perspective of protecting the moral rights of individuals, especially in divorce cases, the International Code of Human Rights^e refer to each person's

^e"The International Bill of Human Rights" is a term that refers to a collection of three basic international instruments in this field, namely the 1948 Universal Declaration of Human Rights (UDHR) and two international conventions on human rights: civil and political rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (these two conventions were jointly adopted by the United Nations General Assembly in 1966).

right to marriage and divorce. The Civil Code 2015 also stipulates the moral rights in family marriage, which are the right to marry and divorce¹⁸. However, it must be distinguished that moral rights are the right to marry and divorce, not the right to sue or participate in the proceedings of a divorce case. Therefore, individuals have the right to authorize others to participate in the divorce case without affecting their moral rights.

The unreasonableness of Clause 4, Article 85 of the 2015 Civil Procedure Code is even more evident when the female litigant is abused by her husband. Forcing them to face a husband who has been a constant obsession is a torture. Not to mention the risks to life, health and spirit when they directly participate in the proceedings.

The solution to the second problem: From theory to practice, it shows that, instead of directly participating, the wife can exchange and convey all the requirements, thoughts and aspirations to the authorized representative. As a representative, conflicts can be less intense compared to face-to-face meetings and still ensure the rights of vulnerable women who are victims of domestic violence. Therefore, it is necessary to consider abolishing the provision not allowing authorization to participate in the divorce proceedings in Clause 4 Article 85 of the Civil Procedure Code 2015.

CONCLUSION

The representative institution has made many advances, which is clearly reflected in the protection of the disadvantaged, including women in divorce cases, so it needs to be promoted and perfected.

The article highlights legal problems and limitations as well as limitations in the implementation of the law on representation in Vietnamese civil proceedings. The inadequacies of the law have reduced the effectiveness and meaning of the representation institution. These inadequacies also bring many difficulties to law-applicants as well as risks in the adjudication of divorce cases by the Court. More importantly, it is infringing the legitimate rights and interests of vulnerable women, who need complete legal provisions to protect them.

By proposing a number of solutions, the author wishes to have contributions to improve and further promote the institution of representation in legal life in particular and social life in general.

The author believes that the problem for further research is to determine the correct nature of representation in civil procedure law in relation to the provisions on representation in civil law towards the pos-

sibility of having a separate regulation on representation in civil proceedings.

CONFLICTS OF INTEREST

The authors declare that they have no conflicts of interest.

AUTHORS' CONTRIBUTION

- Author Nguyen Huy Hoang is responsible for the content: Author 1 is responsible for the whole content
- Author Le Vu Nam is responsible for the content: Author 2 is responsible for reviewing.

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Bảo vệ phụ nữ yếu thế trong các vụ án ly hôn thông qua người đại diện

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TÓM TẮT

Bài viết xác định nhóm những phụ nữ bị hạn chế về khả năng nhận thức, điều khiển hành vi hoặc thể chất và nhóm những phụ nữ là nạn nhân của bạo lực gia đình là đối tượng yếu thế trong xã hội. Họ có thể được bảo vệ, hỗ trợ khi tham gia các vụ án ly hôn thông qua cơ chế đại diện, cụ thể là thông qua người đại diện theo pháp luật hoặc người đại diện theo ủy quyền.

Qua phân tích các quy định pháp luật hiện hành và thực tiễn áp dụng pháp luật, bài viết làm sáng tỏ những bất cập, từ đó đưa ra những giải pháp cơ bản cho việc bảo vệ người phụ nữ yếu thế trong các vụ án ly hôn thông qua người đại diện ngày càng hiệu quả và thiết thực.

Bài viết đề cập đến những phụ nữ yếu thế thuộc hai nhóm sau:

Nhóm một, nhóm những phụ nữ bị hạn chế về khả năng nhận thức, điều khiển hành vi hoặc thể chất. Bao gồm: những phụ nữ bị mất năng lực hành vi dân sự; những người phụ nữ có khó khăn trong nhận thức, làm chủ hành vi; những người phụ nữ bị khuyết tật, bị khiếm khuyết về thể chất và tinh thần mà chưa đến mức bị mất năng lực hành vi dân sự hoặc chưa đến mức khó khăn trong nhận thức, làm chủ hành vi; Nhóm hai, nhóm phụ nữ là nạn nhân của bạo lực gia đình.

Những bất cập và giải pháp được đưa ra để giải quyết 4 vấn đề cơ bản sau:

Vấn đề thứ nhất, phụ nữ bị tâm thần hoặc mắc bệnh khác mà không thể nhận thức, làm chủ được hành vi nhưng không ai yêu cầu Tòa án ra quyết định tuyên bố họ là người mất năng lực hành vi dân sự dẫn đến không có người đại diện tham gia tố tụng trong vụ án ly hôn.

Vấn đề thứ hai, phụ nữ là người có khó khăn trong nhận thức, làm chủ hành vi không có người đại diện tham gia tố tụng trong vụ án ly hôn.

Vấn đề thứ ba, phụ nữ là nạn nhân của bạo lực gia đình không được ủy quyền ký đơn khởi kiện.

Vấn đề thứ tư, phụ nữ là nạn nhân của bạo lực gia đình không được ủy quyền cho người khác tham gia tố tụng trong vụ án ly hôn theo quy định tại Khoản 4 Điều 85 Bộ luật Tố tụng dân sự 2015.

Từ khóa: Phụ nữ yếu thế, vụ án ly hôn, người đại diện

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