



IS IT POSSIBLE TO USE THE INSTITUTE OF AMICUS CURIAE IN THE ACTIVITY OF THE CONSTITUTIONAL COURT?

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Article history:	Abstract:
Received: December 14 th 2023 Accepted: January 10 th 2024 Published: February 14 th 2024	"An amicus curiae is someone who usually wishes to influence the outcome of a trial," as noted in the legal literature ¹ . The term amicus curiae can have different meanings. Traditionally, the most common form of amicus curiae is an unrepresented party, or person appearing to represent an interest, at the request of the court.

Keywords:

This is an individual or legal entity who, without being a participant in the judicial process, has the right, on a voluntary basis, to provide information or give opinions about the issue being discussed in court, before the adoption of a judicial act. This information may be presented either in the form of a legal opinion or in the form of a conclusion. This institution was formed in Roman law. Beginning in the ninth century, it was introduced into the English legal system, and subsequently into other common law systems. In this sense, "friends of the court" are perceived as expressing the opinion of one or another part of society on socially significant matters², groups of organized interests in resolving specific legal issues³. "An amicus curiae is someone who usually wishes to influence the outcome of a trial," as noted in the legal literature⁴. The term amicus curiae can have different meanings. Traditionally, the most common form of amicus curiae is an unrepresented party, or person appearing to represent an interest, at the request of the court.

The role of such amicus is to present the best case for the unrepresented party or interest. In such cases, his role does not differ in principle from the paid legal representative of the parties. The second form of amicus brief responds to the court's request for an attorney to appear to help develop answers to new questions of law that arise in the case, or (rarely) when a person requests permission to intervene for that purpose.⁵

Simply put, Amicus curiae is a person or organization that is not a party to the case, has no direct interest in the case, but is allowed by the court to receive information and express opinions. It can be understood that this institute is an expertise carried out by civil society. Amicus curiae - any organization engaged in scientific activity in the field of law or any legal scientist

¹ Мамедов Э. Amicus curiae как средство общественной заинтересованности. URL: http://www.iaps-ci.org/uploads/files/5Amicus_Elbrus.doc (дата обращения: 01.08.2018).

² Цибульский С. «Amicus curiae» как инструмент усовершенствования правовой системы: Доклад на Третьей международной конференции «Доступ к правосудию. Практика Amicus curiae – друга правосудия» (Украина, Киев, апрель 2005 года).

³ Эпштейн Л., Найт Дж. Стратегическая разметка территории: информационная роль Amici Curiae // Право и правоприменение в зеркале социальных наук: хрестоматия современных текстов / науч. ред. Э.Л.Панеях; лит. ред. А.М.Кадникова. М. : Статут, 2014. С.436–456, 438

⁴ Мамедов Э. Amicus curiae как средство общественной заинтересованности. URL: http://www.iaps-ci.org/uploads/files/5Amicus_Elbrus.doc (дата обращения: 01.08.2018).

⁵ HG Erasmus Superior Court Practice (1994) C4-19-C4-20; Christina Murray 'Litigating in the Public Interest: Intervention and the Amicus Curiae' (1994) 10 SAJHR 240, 241–43.



who submits initiative expert opinions to the Constitutional Court on the case under consideration⁶. The institution of amicus has become a powerful and effective tool in the development of public policy through the constitutional or supreme courts. In cases involving important constitutional or legislative policy, they are an important tool "for non-party participation in public law litigation affecting a body politic." Simply filing an amicus brief can demonstrate to the court that the case is important and covers a wider range of issues than the plaintiffs' interests.

Lord Salmon described the role of this institution as follows: "I have always recognized that the amicus curiae is intended to assist the judge to impartially interpret the law, or, if one of the parties is absent, to assist the judge to develop legal reasoning in his favor⁷. Amicus curiae opinion is always given in an open, appropriate written form, respecting the authority and importance of the court, it helps the court to consider the case comprehensively, impartially, to take into account the arguments and opinions of public organizations not previously expressed by the participants in the proceedings.

It should be noted that this institute is implemented by the independent initiative of a professional person or organization, but it does not mean that the court is obliged to take it into account. It can be important in making conclusions for the court during the review of case materials. In Italian law, amici curiae can be non-profit organizations and institutional entities that "may submit written opinions to the Constitutional Court", representing collective or dispersed interests related to the question of constitutionality⁸. The procedure, subjects and requirements of the amicus are clearly

stated in the law regulating the activities of the Constitutional Court of Italy.

The institution of amicus curiae was also introduced into some countries of the Romano-Germanic legal system (for example, Argentina); it is successfully used in international law in the field of human rights protection. Currently, the institution in question has become widespread in the practice of the European Court of Human Rights, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, as well as in the practice of the courts of the European Union⁹

In accordance with Russian legislation, since 2017, an institution similar to amicus curiae - initiative scientific conclusions - was reflected in the Constitutional Court Regulations. Scientific organizations and legal scholars had the right to express their opinions to the court on their own initiative. According to the amendments of January 28, 2021, the norms related to this institution were removed. The press service of the Constitutional Court of the Russian Federation assured that even after the rules are changed in 2021, such conclusions will not be ignored by the court¹⁰.

Armenian constitutional law does not have the concept of amicus curiae. The Constitutional Court has a similar expert institute. Article 53 of the Law of the Republic "On the Constitutional Court" provides that an expert who is not a party to the case has the right to give legal opinions to the Constitutional Court of Armenia¹¹.

The institution of amicus curiae does not exist in the legislation of Uzbekistan. Similar to this institute, the Scientific Advisory Council under the Constitutional Court of the Republic of Uzbekistan operates¹². The activities of the Scientific Advisory Council are aimed at

⁶ «Судьям были и будут интересны качественные и профессиональные экспертные заключения» <https://www.kommersant.ru/doc/4701961>

⁷ Saha, Tushar Kanti. Textbook on Legal Methods, Legal Systems & Research Архивная копия от 18 февраля 2018 на Wayback Machine. — Universal Law Publishing, New Dehli, 2010. — P. 94. — ISBN 978-81-7534-893-6. Allen v. Sir Alfred McAlpine & Sons Ltd [1968] 2 QB 229 at p.266 F-G.

⁸ Norme integrative per i giudici davanti alla Corte costituzionale.

https://www.cortecostituzionale.it/documenti/download/pdf/Norme_Integrative_per_i_giudizi2020.pdf

⁹ Султанов А.Р. Конституционное судопроизводство и «amicus curiae». Журнал зарубежного законодательства и сравнительного правоведения. 2009. №4 (19). С. 25-30. Цибульский С. «Amicus curiae» как инструмент усовершенствования правовой системы. Третья Международная Конференция "Доступ к правосудию.

Практика Amicus curiae - друга правосудия" (Украина, Киев, апрель 2005), <http://www.iaps-ci.org/ru/Amicus/ac1> (25.08.2011), Мамедов Э. Amicus Curiae как средство общественной заинтересованности. Третья Международная Конференция "Доступ к правосудию. Практика Amicus curiae - друга правосудия" (Украина, Киев, апрель 2005), <http://www.iaps-ci.org/ru/Amicus/ac1> (25.08.2011).

¹⁰ [КС ответил на опасения по поводу отказа от института «друзей суда»](http://www.konstsud.uz/uz/docs/ozbekiston-respublikasi-konstitutsiyavij-sudi-huzuridagi-ilmij-maslahatlashuv-kengashi-togrisida-n-i-z-o-m). Дата обращения: 4 февраля 2023. [Архивировано](http://www.konstsud.uz/uz/docs/ozbekiston-respublikasi-konstitutsiyavij-sudi-huzuridagi-ilmij-maslahatlashuv-kengashi-togrisida-n-i-z-o-m) 4 февраля 2023 года.

¹¹ Гамбарян А. С. Институт Amicus Curiae как средство обеспечения эффективности судебной политики Республики Армении

¹² <http://www.konstsud.uz/uz/docs/ozbekiston-respublikasi-konstitutsiyavij-sudi-huzuridagi-ilmij-maslahatlashuv-kengashi-togrisida-n-i-z-o-m>



developing proposals to ensure the priority of the Constitution.

The Scientific Advisory Council is invited to assist the Constitutional Court in issues of jurisprudence and the practice of constitutional control, as well as in making full use of the achievements of foreign legislation. The scientific-advisory council is elected at the session of the Constitutional Court based on the proposal of the chairman of the Constitutional Court of the Republic of Uzbekistan, consisting of the chairman of the council, the deputy chairman, the scientific secretary and the members of the council. Scientific Advisory Board:–
Makes scientifically based recommendations on issues submitted for consideration by the Constitutional Court of the Republic of Uzbekistan;

- develops proposals for the improvement of legal documents related to the implementation of constitutional control.

As mentioned, the Scientific Advisory Council is formed by the Constitutional Court for the purpose of direct consultation. Amicus curiae is filed independently and by initiative entities.

introduction of the institution of amicus curiae into practice of the Constitutional Court will become a source of additional information in the formation of judicial policy, while simultaneously contributing to the formation of an effective, multilateral, balanced and predictable judicial policy.

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