

Edited by
Irina Sopilko, D.J.S., Professor

JURISPRUDENCE IN THE MODERN INFORMATION SPACE

Collective monograph



Faculty of Law
OF THE NATIONAL AVIATION UNIVERSITY

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The collective monograph of the author's group of the Faculty of Law of the National Aviation University is dedicated to the relevant problems of jurisprudence in the modern information space. The main globalization tendencies of the development of the law, in particular the fundamental values of the law, their interpretation and interaction of legal systems, the role of fundamental principles of law, state sovereignty and human rights, modern tendencies in ensuring legal security and economic freedoms in the light of the interaction of national legal systems are considered.

The collective monograph consists of 22 chapters, which are both the general theoretical and practical block of monographic work, and the scientists conducted a comprehensive analysis of the issues of the legal system of the social state, isolates and analyzes the essential characteristics of such a legal system and identifies the ways of developing the legal system in the context of globalization changes in the world. Also, the monograph reflects the results of scientific research of political and legal tendencies of interaction of national and international principles of statehood development, which later became the basis for considering the peculiarities of reforming state-legal institutions as a necessary condition for the development of a social and legal state in Ukraine.

Scientific publication contains articles covering issues from different branches of law.

The publication is intended for lecturers of law faculties of higher educational institutions and persons who are interested in development of legal science in Ukraine.

Contents of scientific papers do not always coincide with the views of the editorial board.

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Chapter 10

Subject of the civil procedural law in the modern paradigm of law

One of the central concepts in the doctrine of civil procedural law is the concept of «litigant», the content of which has changed in accordance with the social and cultural conditions of a historical period of society's development.

The modern axiological paradigm of the legal thinking involves mainstreaming of the introduction of normative and value orientations in the development of the national legal system - provisions on the rule of law, the establishment and safeguarding of human rights and freedoms, which determines the need of the content' renewal of the key categories of civil procedural law.

The specific nature of the civil procedural law as a science, the field of law and the field of legislation has always been a significant influence of positivist approaches to the doctrine and practice of law-making and law enforcement. The participant in the trial is perceived primarily as a participant in civil procedural legal relationships. However, such an approach methodologically restricts the legal understanding of the participant in the judicial civil process as a possessor of procedural rights and obligations. In this case, there is a need to consider the legitimate interest of the participant, his ability to actively exercise his position in the administration of justice in civil jurisdiction cases. Such an approach also insufficiently takes into account the prevailing in modern legal science the idea of the universality of the rule of law, the rule of human rights, in particular, as a participant in the civil process; does not allow to form an adequate theoretical basis for ensuring the improvement of civil procedural legislation in accordance with the requirements of the present.

As a result of the aforementioned, a number of the complex problems of legal regulation of procedural forms arose. In particular, there is a lack of a unified perception of the principles of procedural legal relations, which led to gaps in the determining the procedural status of participants in individual proceedings and procedures, the lack of an established position regarding the characteristics of the representative as an independent procedural figure and the level of his/her independence, and other urgent issues.

The case-law of the European Court on Human Rights is an evidence of the urgency of the development of human rights guarantees in the judicial process, in particular the right for a proceeding within a reasonable time. This conclusion follows from the recent adoption of numerous decisions against Ukraine, in which the European Court on Human Rights stresses the inadmissibility of violations of

these and other rights related to the administration of justice. Among these decisions, particular attention should be paid to the following: «The Case of Dyachenko and others v. Ukraine» [1], «The Case of Viktor Nazarenko v. Ukraine» [2], «The Case of Kovalenko and others v. Ukraine» [3], «The Case of Zelentsov and others v. Ukraine» [4], etc.

Thus, it is a relevant problem of the allocation of a legal phenomenon, the content of which reflects the objectification of a direct connection between its legal nature and moral and social values. In the civil process, such a phenomenon is a subject of civil procedural law, which is considered from the standpoint of the generalization of the legal properties of an abstract legal education in recognition of the ascending principle of its functioning, socio-humanitarian value orientations.

Problems of the civil status of a person in a civil trial were examined by scientists at all stages of the historical development of civil procedural law: during the Russian Empire, the Soviet era, modern Ukraine.

Among the first researchers should mention: E.V. Vaskovskii [5], T.M.Yablochkova [6], A.H. Holmsten [7], E.O. Nefedyev [8] and others. Significant contributions to the perception of the categories of «civil procedural legal relationships» in general and «participant in civil procedural legal relationships» in particular, as well as related categories, are the researches of such scholars of the Soviet era as S. N. Abramov, T. E. Abov, V. M. Argunov, O. T. Bonner, D. P. Watman, A. P. Vershinin, M. A. Vikut, R. E. Gukasyan, M. A. Gurvich, A. A. Dobrovolsky, V.A.Elizarov, P. F. Elysainkin, I. M. Zaitsev, O. P. Kleinman, A. F. Kozlov, L.F.Lisnitskaya, V. K. Puchinsky, M. K. Treushnikov, D. M. Chechot, K. S. Judelson. Among the contemporary scientific developments regarding the participants in the civil process, it is worthwhile to highlight the work of such researchers as S.S.Bychkova, Yu. V. Belousov, O. V. Bobrovnik, O. V. Hetmantsev, D. G. Glushkov, K. V. Gusarov, I.O. Zhurba, V.V. Zaborovsky, D.V. Ivanchulynets, T.O. Dunass, O.V.Kolisnik, V.V. Komarov, G.Z. Lazko, J. Ya. Melnyk, I. M. Lukin, I. A. Pavlunyk, G.O.Svetlichna, D. M. Sibilov, I. Yu. Tatulich, A. A. Timoshenko, A. I. Ugrinovskaya, S. A. Chvankin, N. O. Chuchkova, M. M. Yasinok, N. G. Yatsenko, M. I. Stefan and others. The issue of the participation of a person in a civil judicial process inevitably touches on other institutions of civil procedural law. In this aspect, reference should be made to the works of N. L. Bondarenko-Zelinskaya, A. V. Hetmantseva, D. D. Luzpenkik, V. V. Komarova, V. A. Kreutor, P. I. Radchenko, J. M. Romanyuk, N. Y. Sakari, V. I. Tertishnikov, G. P. Timchenko, O. S. Tkachuk, I. V. Udaltsova, S.Ya.Fursi, T. A. Tsuvina, M. I. Shtefan, M. M. Yasyuka. The multidimensional nature of the subject of scientific analysis has led to an address to the achievements of scientists in the field of civil law: S. M. Berveno, I. V. Venediktova, J. V. Zavalna, A.O.Kot, E. O. Michurin, Z. V. Romovskaya, S.O. Slipchenko, I.V. Top-Fateyev, M.O.Stefanchuk, R.O. Stefanchuk, E.O. Kharitonov, V. L. Yarotsky, as well as scientific researches in other branch legal sciences. The categories of persons in

law, the legal status of a person, human rights, and the rule of law have received widespread attention in the works of well-known domestic and foreign scientists in the field of the theory of law and philosophy of law, such as S.S. Alekseev, S.I. Arkhipov, M.V. Vitruk, S.P. Holovaty, M. M. Marchenko, P. M. Rabinovich, S.O. Komarov, A.V. Petryshyn, M.V. Tsvik and others.

Questions of the civil procedural status were given considerable attention in the work of researchers from abroad countries (T. E. Abov, G. O. Abolonin, O.B. Abrosimov, D. Kh. Valeev, G. T. Yermoshin, G. L. Osokin, I. L. Petrukhin, N.O. Chechina, D. M. Chechot, T. V. Sakhnov, M. S. Shakarian, V. V. Yarkov), as well as leading European civilization theoreticians (J. A. Jolovich, M. Kappelletti, M. Storm, M. Taruffo, A. Zukerman, J. Hazard).

The relevance of the issue of a subject of civil procedural law leads to the necessities of:

- 1) determination of the proper category, which designates and characterizes the phenomenon of the participant in the judicial process in the civil procedural law; the formation of the theoretical positions concerning it taking into account the current state and trends of the development of this branch of law, the modern paradigm of legal thinking;

- 2) characteristics of the modern role of the natural-legal approach in the legal regulation of the legal status of the subject, the justification of the defining nature of this approach to reflect on human rights as a source of formation of the field of civil procedural law;

- 3) determining the prospects for the development of the institution of the subject of civil procedural law.

Based on the established in the doctrine of civil procedural law approaches to the disclosure of the content of the category «participant in civil procedural legal relationship», other related categories it can be argued that there is a need to formulate a broad covering content of the category «subject of civil procedural law, clarification its essence and characteristics of its contents.

1. Characteristic of the genesis of the conceptual foundations of the civil procedural status of the subject of civil procedural law and their development in the context of the modern paradigm of law.

The relationship between the social content and the legal form of the morphological construction of the legal structure of the category «subject of civil procedural law» is manifested through its humanist-oriented elements, which are leaked from the concept of human-centeredness and manifest itself in the characteristic features of the dynamics of procedural phenomena. The natural legal principles of the categories «subject of law» and «subject of civil procedural law», their comparison on a qualitatively new methodological level, taking into account the specifics of the field of civil procedural law, indicate the interrelation

of these categories, their interdependence and relations in the broad sense of both general and special. Static provisions on the right to a fair trial (access to a court, independent and impartial court, established by law) raise the issue of the development of guarantees for the participation of a person in the consideration of his/her case, as well as guarantees of judicial activity. Therefore, a person should be considered not only as a participant in the procedural legal relationship, but in a broader sense - as a source (subject) for improving the field of civil procedural law. Comprehensive implementation of the principles of the rule of law and the principle of legitimacy in the current legislation forms the basis for establishing and effectively improving the human rights guarantees in civil legal proceedings. In this case, the clarification of the essence, content, elements of the rule of law in civil justice must be carried out based on a substantive approach to its understanding with the definition of the priority of human rights its substantive element. The modern paradigm of legal understanding of the subject of civil procedural law is based on the concept of human-centeredness, which follows from the necessity of penetration of natural-legal approaches into the national doctrine of civil procedural law. The specified due to the perception of the subject of civil procedural law as a multidimensional phenomenon, which in the end emphasizes the socio-legal value of the subject as the starting point of civil procedural legal relationships. The use of the doctrinal provisions of the theory of law regarding the levels of influence of law allows us to indicate that the content of the category «subject of civil procedural law» is wider than the category «participant in the civil process». The category «subject of civil procedural law» provides for consideration of a person, in particular, as a potential participant in civil procedural legal relations, which in turn leads to the allocation of a separate category of guarantees of the participation of a person in a civil trial.

Identifying attribute (the possibility of distinguishing a subject from among other subjects); legal will (the ability to make legal decisions and implement them); a set of legal relations and legal relations with other persons in connection with the administration of justice; legal consciousness (the presence of certain legal feelings, emotions and their integral nature in the subject of civil procedural law); the active character of «creation» and the application of law (as a rule, the active behavior of a person in the process, as well as the definition of it as the subject of formation of the field of civil procedural law); socio-legal value (the meaning of person as a starting point for the emergence of legal values); personality is the properties (aspects) of the subject of civil procedural law as a legal phenomenon. List of attributes (aspects) is open. The presence of the selected and other attributes (aspects) of the subject of civil procedural law allows to indicate the multidimensional nature of the relevant legal phenomenon. Characteristics of the civil procedural status of the subject of civil procedural law, the definition of its structure, disclosure of the peculiarities of the civil procedural legal status of

individual participants in the judicial process as subjects of civil procedural law provides for the consideration of their functions performed in court proceedings. Discussion issues of the modern doctrine of civil procedural law are: the independent character of the procedural representative as a participant in the judicial process; the peculiarities of the legal status of the participant in the litigation in non-invasive proceedings and procedures; delimitation of the procedural status of some participants in the trial; the realization of natural-legal scientific approaches as the basis for further improvement of the procedural status of the subject of civil procedural law in general.

The case-law of the European Court on Human Rights is one of the sources of penetration of the natural-law approaches in the national doctrine of civil procedural law. It traces the provision of regulatory value to the ideals of legal regulation, which are conditioned by its existential sources. One of such ideals is the requirements of legal predictability. Legislative perception of the practice of the European Court on Human Rights testifies to the recognition of the need for them to expand the natural law approaches in law enforcement and law-making. Thus, the practice of the European Court on Human Rights affects the implementation of the principles of natural-legal regulation in the field of civil procedural law and asserts the person as a source of ways to improve the guarantees of the participation of a person in civil proceedings.

The broad nature of the category «subject of civil procedural law» makes it impossible to apply the established doctrinal approach to the characterization of its civil procedural status, which provides for the allocation of elements of such status only of rights and duties (powers). Therefore, it is necessary to consider a different approach, in which the following should be distinguished: civil procedural norms; civil procedural legal personality; procedural rights and obligations (powers); the principles of civil procedural law. At the same time, the provisions on the forms of protection of rights, freedoms, legitimate interests as the object of regulation of civil procedural law determine the pronounced purposeful nature of the legal personality of all subjects of civil procedural law. Provisions on the legal status of a person in a civil proceeding directly affect the definition of guarantees of its implementation. The rule of law directly reflects the position of the subject in the legal system in the part covered and determined by it. Consideration of the subject of civil procedural law as a system-creating for the field of civil procedural law phenomenon and the relevant legal category, which it designates, provides for the allocation of conditions and guarantees for the realization of the right to a fair trial. That is why it is allocated to the procedural aspect of the subject of civil procedural law. In this case, civil procedural legal personality characterizes the possibility of the subject to acquire civil procedural rights and obligations in civil procedural legal relations, to take actions aimed at the emergence of these rights and obligations.

In the principles of civil procedural law, the natural-legal component of the content of the legal status of the subject of civil procedural law finds its expression. Similarly, the norms of civil procedural law can not provide elements of the procedural status of the subject of civil procedural law without principles, considering their mutual molding effect. Therefore, the principles of civil procedural law must be defined as an element of the civil procedural status of the subject of civil procedural law. Legal liability, however, should not be attributed to the elements of the procedural status of the subject of civil procedural law. It should be considered as a guarantee of the implementation of the specified status. Within the framework of civil procedural legal relations, legal liability is limited to its positive aspect as the duty of a person to exercise his procedural rights in good faith and to perform procedural duties. Such liability should be regarded as civil procedural.

Among the conceptual foundations of the civil procedural status of the subject of civil procedural law it is advisable to allocate civil procedural legal interest, the realization of which takes place within the framework of the implementation of the corresponding subjective rights. This approach deprives the category of «legitimate interest» of independent significance as an element of procedural status. Legitimate civil procedural interest is partially covered by the category «subjective civil procedural law» and can not be implemented outside the civil procedural legal relationship. Therefore, the category «legal procedural interest» is determined by the direction and the limits of the implementation of the procedural status of the subject of civil procedural law.

The structure of the subject of civil procedural law can be applied during the characterization of the physical, legal entity, as well as the state as such entities. The structure in question includes the common features of all these types of subjects of law. The key value of the individual (person) as the subject of civil procedural law is that the person acts as the spokesperson not only of his own will, but also of the will of the legal person, the state (represented by authorized officials). Under such conditions, the application of natural-legal approaches to the settlement of the status of subjects of civil procedural law is actualized. At the same time, characterizing the subjects of civil procedural law, the principle of the rule of human rights is of key importance.

In legal literature in the structure of the system of law distinguish sectors, sub-sectors, institutes, norms of law. Classical fractures of the institute of law are the following: a specific, defined object of legal regulation, or a specific task of the existence of a particular legal institution; autonomous character of one institute of law with respect to other institutions; specific means of influencing the object of legal regulation; the ability to form their own terminology within a particular institution.

It is advisable to point out that the legal regulation of subjects of civil procedural law meets all the above-mentioned features. Thus, the specific general task of the norms regulating the issues of these subjects can be determined by establishing their procedural status. The principles of determining the procedural status (for example, its structure, the composition of rights and responsibilities, the provisions on civil procedural legal personality, etc.) to a large extent do not depend on changes in such institutions, such as judicial decisions, civil jurisdiction, evidence and evidence, etc. You can also specify the use of specific means of influencing the object of legal regulation by establishing these rights and responsibilities, determining the list of participants in the case, etc.

The introduction of large-scale changes to the Civil Procedural Code of Ukraine dated March 18, 2004, No. 1618-IV (hereinafter referred to as the CPC of Ukraine) [9] clearly demonstrated the possibility of using within its legal terminology the subjects of civil procedural law that does not significantly affect the development of other institutes of civil procedural law.

All the above mentioned suggests the possibility of identifying a subject of civil procedural law as a separate institution of this branch of law.

II. Court as a subject of civil procedural law

Unlike other participants in the litigation, the court is the bearer of the judiciary; a subject submitted to the requirements for a high professional level. The ascending nature of the legal status of a judge in relation to civil procedural law is due to the special status of the court in the system of subjects of civil procedural law, the nature of the relationship and mutual influence of the court on the actual field of civil procedural law, as well as its individual subjects. The court is the subject of public authority, and, therefore, its statutory competence corresponds to its functional purpose, unlike private law subjects, the basis for determining subjective rights of which can be considered a legitimate interest. Describing the court as a multidimensional phenomenon from the standpoint of the subject of civil procedural law, it must be recognized that its identifying property stems from the possibility of applying a general approach, according to which the ascension is human-centered. That is, recognition of the identifying property of the court by the basic characteristic is a necessary condition for determining the court by the subject of civil procedural law, considering its peculiarities. In this, the influence of the rule of law on the characterization of the court as a subject of civil procedural law manifests itself. In addition, such influence can be traced at the level of implementation of the court of its powers, primarily functional. Thus, the court applies this principle when considering civil cases (Article 10 (1) of the CPC of Ukraine), and in particular, the requirement of a fair balance between the public interest and the specific subjective interest protected by the court in the issuance of a court decision (principle of proportionality). Procedural guarantees of the

proper administration of justice should be characterized as a sectoral manifestation of general guarantees of legal legality. They are a consequence of the functioning of the court as a subject of civil procedural law, which determines the need for proper maintenance of its activities and indicates the possibility of considering the court as a subject of formation of the field of civil procedural law. Such safeguards include: means of procedural coercion, powers of the presiding judge to maintain order in the court session, the secret of the consultative room, separate institutes of civil procedural law (procedural time limits, legal fees, etc.), etc.

The procedural status of the court when considering a case in the court of first instance and this status when considering a case in proceedings for review of a court decision are related as general and special. The specificity of the consideration of the case in the proceedings for review of the court decision, the special requirements of the court reviewing the court decision, determine the specific features of the court as a subject of civil procedural law in proceedings to review the court decision. Therefore, the courts of the first, appellate, cassation courts are the court in the broadest sense as a subject of civil procedural law. The element of the civil procedural status of the court as a subject of civil procedural law are the principles of civil procedural law, which provides for the definition of such principles and considering their specificities in non-invasive proceedings. However, such proceedings are subject to such general principles of legal proceedings as discretion, competition, procedural equality, publicity, etc. Some exceptions are only procedural and individual proceedings, as well as separate proceedings in matters related to the execution of court decisions.

The question of formation of a court composition with the participation of jurors arises. The problem is determined not only by the differences in the determination of the quantitative composition of the court in different areas of the judiciary (one professional judge and two jurors in civil proceedings, two professional judges and three jurors in the criminal), but also the need to ensure that the procedural competence of the jury is consistent with their procedural functions. Among the options for solving the problem, one can propose to exclude from the jurisdiction of the jury powers relating to the award of a judgment with the preservation of all other guarantees associated with participation in the trial. The issue of the composition of the court is also relevant when considering certain categories of civil cases. So, choosing an approach to determining the composition of the court for consideration of the investigated category of cases, it is necessary to proceed from the fact that due to the above complexity of the establishment of circumstances, and also that public control in such cases may be due to participation of representatives of mass media, expediency of participation of people's assessors in their consideration it is questionable. On the other hand, it is also inappropriate to introduce compulsory collective review of all cases

inseparable unity with the concrete person - its bearer. Lack of capacity for a person in a particular case does not mean the inability to consider it as the subject of law. The above affects only the possibility of personal implementation of himself as a subject of civil procedural law in the relevant legal relationship. Therefore, civil procedural empowerment is an optional element of the procedural legal personality of a participant in a litigation process.

The state as a subject of civil procedural law, like a legal entity, is also a generalized form of the corresponding legal attributes (aspects), separated from their specific carrier. On the other hand, in contrast to the legal entity, the state participates in the civil process for the sole purpose of serving the right, securing human rights and freedoms, and other purposes defined by the understanding of it as a democratic, social and legal one. Defending its subjective rights, in particular property, is also covered by this appointment. It is its decisive feature as a subject of civil procedural law. A person expressing the will of the state in a particular procedural legal relationship is a specific individual authorized to do so under the law. Thus, the state as a participant in civil procedural legal relations can be represented as a specific legal personality. The above refers to the participation of the state in the civil process as a party and in the case of seeking protection of the rights, freedoms and interests of other persons.

The application of the general approach to the recognition of the multidimensional nature of the subject of civil procedural law to the characteristics of the representative allows to assert the existence of independent procedural interest, which forms the basis for the implementation of appropriate opportunities in the process; independence of decision-making within the powers granted to him; his independence as a participant in a specific civil procedural legal relationship. The procedural representative as a subject of civil procedural law operates on the basis of the procedural competence proper to him, which is conditioned by the purposeful nature of the participation of a representative in the civil process. The main area of the participation of a representative in the civil process, which is urgent for a decision, concerns the clarification of legal requirements to it. The indicated indicates the absence of a single theoretical basis for the perception of the procedural representative, including as a subject of civil procedural law. One of the gaps in the legal regulation of the participation of a representative in a court proceeding is the lack of proper constitution of the right of a person to have a representative when participating in certain types of proceedings and procedures: restoration of lost litigation; solution of procedural issues related to execution of judicial decisions in civil cases and decisions of other bodies, officials; judicial review of execution of court decisions. In addition to the above, the actual direction of further research is to work out the concept of «conflict of interest» as the basis for the impossibility of the representation of one person accomplices.

Depending on the nature of the participation in the trial (potential or actual), subjects of civil procedural law can be divided into two groups: 1) participants in the trial (court and staff of the court, participants in the case and representatives, other participants in the trial); 2) all other persons who can influence the formation of the field of civil procedural law by their activities (for example, representatives of civil procedural law science, practitioners, etc.). The above systematization proceeds from the legal understanding of man as the central subject of civil procedural law. Understanding of a person as an ascending concept for the definition of a subject of civil procedural law determines the key role of human rights in disclosing the content of this category. Person is primarily the subject of these rights. However, this is only a «common part», which characterizes it as a subject of civil procedural law. «Special part» can be considered those properties that are determined by a specific civil procedural status (court, party, witness, etc., or any other entity that affects the development of the field of civil procedural law). Consequently, the notion of «subject of civil procedural law» in its content goes beyond the actual field of civil procedural law.

Thus, the subject of civil procedural law should be defined in active and passive aspects on the criterion of the nature of influence on the formation of the field of civil procedural law. An active aspect involves the ability of the subject to influence actively - by committing certain actions, making decisions, not necessarily - within the consideration of a case. This may be: the issuance of acts defining the procedural form of consideration of civil cases or influencing the resolution of specific procedural issues; appeal in the manner prescribed by law to the state authorities with issues that directly affect the functioning of the court process; informal communication with representatives of the legal community, etc. The passive aspect involves the influence of the subject of civil procedural law on the formation of a given industry because of the presence of this subject in the legal reality, the need to consider his interests in the implementation of legal regulation. Such a person may also be an incapacitated person or a person with limited capacity. In addition, such a person can identify any person whose interests are subject to judicial protection.

It is necessary to recognize the well-grounded position of the legislator on the possibility of the prosecutor to take part in the case at any stage of the trial, as well as to challenge the decision of the court of first instance, regardless of participation in the consideration of the case in this court. In order to determine in the CPC of the time periods for which proceedings are suspended in the event of the parties turning to the mediation during the proceedings, it is necessary to amend paragraph 1 of Article 251 of the CPC of Ukraine, in particular paragraph 5, after the words «resolving a dispute with the participation of a judge» to supplement with the following words: «, the address of the parties to the mediation».

Persons in whose interest's non-infringement proceedings and procedures are in the best interests of the parties are parties to such cases, although the court decision, which is made after the outcome of their consideration, does not determine their material rights and obligations. Applicants and interested persons should be included in the circle of subjects of civil procedural law with the recognition of certain features due to the purpose of the appointment of proceedings and procedures. The expediency of supplementing the existing classification of persons involved in the case by way of civil proceedings, the criterion of the nature of interest is substantiated. An additional subgroup of such persons should be identified by the participants in the trial in non-invasive proceedings and procedures provided for in Sections 6-10 of the Civil Code of Ukraine (resolution of procedural issues related to the enforcement of judgments in civil cases and decisions of other bodies (officials), judicial control over enforcement court decisions, proceedings in appeals against decisions of arbitration courts, appeals against decisions of international commercial arbitrations, etc.). In these proceedings, it is advisable to call these persons the applicants and the interested persons accordingly. Relations in non-invasive proceedings and procedures are civil procedural, since relations between the court and the persons concerned have a structure and features of civil procedural legal relations. Procedural safeguards for the participation of persons in legal proceedings should be extended to the activities of individuals in these proceedings and procedures. The construction of the civil procedural status of the subject of civil procedural law may also be extended to court and to participants in proceedings and procedures. At the same time, it is necessary to consider the peculiarities determined by the tasks of the considered proceedings and procedures.

IV. Other parties to the trial as subjects of civil procedural law

Officials of the court, as a result of which legal civil procedural facts arise, constitute in aggregate the broad concept of the court as a subject of civil procedural law. Such officials are the judge (people's assessor), the secretary of the court, the court administrator. Covering the concept of a court as a subject of civil procedural law assistant judge does not correspond to the nature of the assistant judge's office, because performance of official duties does not provide for procedural legal facts. Therefore, it is expedient to exclude him from the circle of other participants in the trial, as defined by the CPC of Ukraine. To do this, it is necessary to amend the CPC of Ukraine, in particular:

- a) to exclude from article 65 the word «assistant to a judge»;
- b) article 66 shall be deleted.

The basis for the procedural legal personality of the secretary of a court session, the court administrator is their competence as persons who hold civil

service positions in court and through their activities create procedural legal facts. Therefore, they can be regarded as subjects of civil procedural law. A witness, expert, translator, specialist, expert on law matters should be considered in the civil process as individuals with a general status, but who, on the basis of the circumstances specified in the law, acquire a special legal status and whose activity in the court has the purposeful nature which is the basis of their procedural legal personality. A person present in the courtroom during an open trial of a civil case can not be considered a special subject of civil procedural law. However, such a person presents the subject of this branch of law with a general position as having a potential ability to influence its formation. The activity of an expert on law matters has a formative influence on the guarantees of his participation in the case, and, consequently, on institutes of civil justice. This is also characteristic of other participants in the process: a witness, an expert, a specialist, an interpreter. Therefore, legal guarantees must be recognized as an integral part of these subjects of civil procedural law. The structure of the persons under consideration as subjects of civil procedural law is similar to the structure of other subjects and contains the general and special parts. The determination of the procedural rights of an expert in the field of law should be based on ensuring his capabilities: providing explanations for the conclusion, participation in the court session. Notwithstanding participation in a case on the part of one of the parties, the expert in the field of law should be considered as not interested in the outcome of the case consideration by a person. The above should be considered as a starting point for further improvement of its procedural status, in particular, with regard to specification of the criteria for admission to participation in the case.

The widespread use of the hermeneutic approach to the natural legal legal understanding of the subject of civil procedural law allows to state the key influence of their activity on determining the directions of improvement of the principles of their activities, their main functions, tasks, rights and responsibilities, and therefore - the status in the process as a whole.

Other participants in the litigation process in reviewing court decisions and in other proceedings and procedures as subjects of civil procedural law have a multi-dimensional content, like their content in the lawsuit. However, on such a content directly affect the functional features of these proceedings. In particular, one can not say about the right to change the basis or subject of proceedings in the proceedings on review of a court decision or the possibility of concluding an amicable settlement in the process of issuing a permit for the enforcement of an arbitration award. Unlike the activity of an expert, the activity of a public authority involved in a case for the submission of a conclusion in the exercise of its powers, it is expedient to include in the administrative form of protection of subjective private rights. It is necessary to join in the position of scientists regarding the inexpediency of consolidating the conclusion of the subject of public authority to

fulfill their powers as an independent separate source of evidence in the civil process. The legal structure of these participants as subjects of civil procedural law is like such a design in the proceedings.

The basic guarantees of the proper participation of other participants in the civil process in non-invasive proceedings are insufficiently enshrined in procedural legislation, which impedes the development of unambiguous practice of their participation in the court proceeding. The main insufficient guarantees are: the distribution of responsibilities for evidence between the parties to the case; distribution of legal expenses incurred by the person concerned in connection with the involvement of the said persons in the civil process; procedural deadlines to be applied in connection with the involvement and participation of the said persons in the civil process; the consolidation of their procedural rights, as well as other guarantees, which are determined by the civil procedural form of proceedings in the courts of the first and higher courts. In order to develop the guarantees of the proper fulfillment of their procedural obligations by other participants in the trial, amendments to paragraph 1 of Article 264 of the CPC of Ukraine should be amended by adding paragraph 9 thereof, which reads as follows: «Are there grounds for reimbursement to the participant in the court proceedings of damages caused by improper execution by another participant of the court process of their procedural duties».

The problem of the application of the newest procedural institutes (court fines, electronic evidence, claims (applications), etc.) in non-invasive proceedings and procedures is to actualize the conduct of scientific research in order to disseminate the general provisions of civil procedural law.

The general object of civil procedural legal relations is the protection of subjective private rights, freedoms, legitimate interests through the administration of justice. In this case, it has a purposeful influence on the existence (occurrence, development, termination) of each particular civil procedural legal relationship. Therefore, despite the definition of a special object for each such relationship, it can be argued that there is a general object regarding all civil procedural legal relationships. The stated concept of the object of civil procedural legal relationships is characteristic of legal relationships that arise between the court and the persons involved in the case. However, as is known, in the legal literature, according to the criterion of legal entities, also distinguish between service and auxiliary civil procedural legal relations that arise between the court and other participants in the process. An example of such legal relationships is the relationship between a court and a witness, in which the witness has the duty to testify, and the court has the right to receive them. It is necessary to agree with the generally accepted position on the constitutional nature of the witness's duty to testify in a case, thus assisting the court in the administration of justice. The indicated can also be extended to other participants in the civil process: an expert,

a specialist, a translator, a person who provides legal assistance. At the same time, fulfillment of the specified duty and realization of the specified right should be in the procedural form defined by the law. In particular, the requirements for the procedure for questioning the witness are established, in particular, by Article 230 of the CPC of Ukraine: as regards the interrogation of each of the witnesses separately (part 1), the prevention of witnesses to the courtroom, which has not yet been questioned (part 2), an explanation by his witness procedural rights (part 3), etc.

The implementation of each of these requirements involves the emergence, change, termination of the relevant civil procedural legal relations. Thus, the witness has the right to explain to him by his trial his procedural rights, and the court has an appropriate duty. As a result of the implementation of such legal relations, the witness's knowledge in his procedural rights is achieved. This can be considered as the object of the above procedural legal relationship. On the other hand, such an understanding of the object of the specified service-auxiliary relationship can be called narrow. His disadvantage is the lack of consideration of the purpose of the questioning of the witness and the purpose of the proceedings as a whole.

The proper fulfillment of all the statutory requirements for participation in the civil process of other participants in the civil process is an important condition for the possibility of putting the results of the participation of such persons in the motive part of the court decision, and therefore, in order to achieve the ultimate goal of their participation, to establish the circumstances of the case. This can achieve the ultimate goal of legal proceedings - the protection of subjective rights, freedoms, legitimate interests. It is for the achievement of these purposes that the procedural activity of the court and other participants of the civil process in the course of realization of civil procedural legal relations should be directed. Therefore, we can mention the allocation not only of a special, but also the general object also in the service and auxiliary legal relations. Such a conclusion can also be applied to legal relationships with other participants in the process, except for the witness (expert, translator, specialist).

Consequently, we will support the current concept of allocating a general and special object of civil procedural legal relations, as well as the allocation of such a relationship of such a kind as a civil service civil auxiliary procedural legal relationship. It is advisable to define a narrow and broad understanding of the object of civil procedural legal relations. In the narrow sense, the object of civil procedural legal relations should be determined by a court decision on a particular procedural matter (content aspect), which is formalized by a court order, which must be issued in compliance with the requirements of the law (formal aspect). In the broad sense of each civil procedural legal relationship, in addition to the above (special object), it is expedient to allocate as a general object - the protection of

rights, freedoms, legitimate interests through the administration of justice. It has a guiding character in relation to each civil procedural legal relationship.

Such an approach can also be applied to the characteristics of the object of service and auxiliary civil procedural legal relationships. A special object of these relations is the implementation of legal safeguards provided for by law. Thus, during the interrogation of a witness such guarantees may include: impartiality of a witness (part 2 of Article 230 of the CPC of Ukraine), the knowledge of a witness in his procedural rights (part 3 of Article 230 of the CPC of Ukraine), etc. The general object, as well as in other civil procedural legal relations, is the protection of rights, freedoms, legal interests through the administration of justice.

Conclusions. Summarizing the above, it can be noted that the study allowed to solve the scientific problem of determining the essence and content of the subject of civil procedural law as a legal phenomenon, its theoretical foundations, based on the modern human-oriented paradigm of legal thinking and taking into account trends in the field of civil procedural law.

The system-forming significance of natural-legal approaches, compared with positivist ones, was established, as in the content of the category «subject of civil procedural law» in the civil procedural law, as well as in determining the directions of development of civil procedural law as a science, the field of law, the field of legislation. Thus, when consolidating the content of the category «subject of civil procedural law, «the human-centered approach determines the consideration of its legal properties (aspects), which constitute the legal personality of the subject of civil procedural law. Along with this, the subject of civil procedural law is defined as the upward category for establishing directions for the development of civil procedural law as a science, law, industry. Natural-legal approaches serve as the basis for resolving such issues as: the legal status of the subject of civil procedural law; guarantees of participation of the indicated subject in the court proceeding. The perception of the position of the European Court on Human Rights should be considered one of the important means of penetrating natural-legal approaches to the national doctrine of civil procedural law, the formation of a national doctrine as part of the definition of the subject.

The principles of further improvement of the provisions concerning the subject of civil procedural law: development of natural-legal approaches in legal scientific researches of subjects of civil procedural law; improvement of legal guarantees of proper participation in the civil process of subjects of civil procedural law. In this regard, the relationship between the principles of the rule of law and the rule of law in civil procedural law is of fundamental importance. The rule of law principle is the basic principle for determining the civil procedural status of the subject of civil procedural law. The significance of the positivist approach in the settlement of the civil procedural status of the subject of civil procedural law is determined by the public and legal nature of civil procedural law, the need for the

existence and implementation of a civil procedural form of administration of justice. The subject of civil procedural law can be considered an institute of this branch of law, since it is characterized by both established, general features of the institute of law, and specific: the nature of norms, the principles of determination, the means of influencing the object of legal regulation.

The subject of civil procedural law is defined as a set of legal properties of a person that exist objectively and can be implemented in civil procedural legal relations. The definition of the dynamic aspect of the subject of civil procedural law implies the consideration of the existence of a legal possibility for acquiring the status of participant in civil procedural legal relations, in connection with which there are two stages of transformation of the status of the subject: as a person potentially able to enter into civil procedural legal relations and a participant in civil procedural legal relations. Construction of the design of the subject of civil procedural law allows to take into account and recreate in each of the aspects (properties) of the subject of civil procedural law the specificity of the legal nature and social purpose of each of the participants in the civil process, based on a higher level of legal generalization. Application of the system-functional approach has allowed to define a range of such properties: individualization; legal will; a set of legal relations and legal relations; legal consciousness; active character of «creation» and application of law; social and legal value; legal personality.

The legal structure of the subject of civil procedural law provides for the allocation of its general and special part. The general part contains provisions on human rights and freedoms. A special part is defined by elements that reflect the specifics of specific subjects of civil procedural law: the functional purpose of a particular subject or the purpose for which he exists (for example, the administration of justice - in relation to a court); citizenship; legal guarantees of activity; structure of the legal status of the subject of civil procedural law. The influence of the development of the doctrine of civil procedural law on the formation of the theory of subjects of civil procedural law is conditioned by: the close relationship between the subject of civil procedural law and its institute with other institutions of civil procedural law; the meaning of the subject of civil procedural law as a system-building category regarding the doctrinal basis of civil procedural law. Directions of such influence are: the basic provisions concerning the objectives of the civil procedural law subjects; elements that directly characterize these subjects; elements of legal status of subjects of civil procedural law. However, the category «subject of civil procedural law» plays an important role in shaping the field of civil procedural law as the key concept underlying it, affecting all the principles and institutions of civil procedural law.

The structure of the civil procedural status of the subject of civil procedural law, consists of the following components: civil procedural rules; civil procedural legal personality; the principles of civil procedural law; civil procedural status of

participant in civil procedural legal relationship (procedural rights and duties (powers)). The guarantee of the proper implementation of the civil procedural status of the subject of civil procedural law is a positive civil procedural liability as a duty to properly use procedural rights and to fulfill procedural obligations. The basis of the procedural legal personality of the subject of civil procedural law is the function performed by him in the civil process (for example, the administration of justice - in relation to the court).

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