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Characteristics of the Legislative Regulation of Participation of Representatives and Other Participants in the Civil Process

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Abstract

The relevance of the issues outlined in the article is due to the peculiarities of the legislative regulation of the participation of representatives and other actors in the civil process of Ukraine. In this vein, the purpose of the article is to scientifically prove that procedural representation differs significantly from representation in civil law, among other things, in the object and nature of the relationship that exists between the representative and the principal, thus as well as the legal grounds and consequences of both processes. Furthermore, it is observed that the specialist, unlike the expert, acts as an assistant and consultant to the court and does not carry out an independent investigation aimed at clarifying the relevant circumstances of the case. The main method of research on this topic was modeling, which allowed, among other things, to consider the civil process as the only organizational lawsuit that serves to resolve the life situation. It is concluded that the legislative participation

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model of representatives and other people aims to improve their professional skills aimed at strengthening the work of the judiciary, while managing and resolving various conflicts of different nature to guarantee social order.

Keywords: legal representative in Ukraine; civil process; legislative regulation; social order; power of attorney

Características del Reglamento Legislativo de Participación de Representantes y Otros Participantes en el Proceso Civil

Resumen

La relevancia de las cuestiones señaladas en el artículo se debe a las peculiaridades de la regulación legislativa de la participación de representantes y otros actores en el proceso civil de Ucrania. En este orden de ideas, el objeto del artículo es probar científicamente que la representación procesal difiere significativamente de la representación en el derecho civil, entre otras cosas, en el objeto y naturaleza de la relación que se da entre el representante y el mandante, así como en los fundamentos y consecuencias legales de ambos procesos. Además, se observa que el especialista, a diferencia del perito, actúa como asistente y consultor del tribunal y no realiza una investigación independiente destinada a esclarecer las circunstancias relevantes del caso. El método principal de la investigación de este tema fue la modelización, que permitió entre otras cosas considerar el proceso civil como el único pleito organizacional que sirve para resolver la situación de la vida. Se concluye que el modelo de participación legislativa de representantes y otras personas tiene como propósito mejorar sus competencias profesionales dirigido a fortalecer la labor del poder judicial, al tiempo que gestiona y resuelve diversos conflictos de distinta naturaleza para garantizar el orden social.

Palabras clave: representante legal en Ucrania; proceso civil; reglamento legislativo; orden social; poder judicial.

Introduction

Based on the content of Part 1. Article 58 of the Civil Procedure Code (CPC) of Ukraine (2004), parties, third parties, as well as persons who are authorized to conduct a case in the court on behalf of others' interests, may participate in a civil case individually or through a representative. At the same time, the conduct of the case by the representative does not deprive

the party to the case of the right to personal participation in the process. Parallel conduct of the case by a person involved in the case and his/her representative is a common phenomenon in practice. This is a category of civil cases in which personal explanations on the merits of the case between the parties or third parties are important. For example, in cases of determining the place of residence of a child with one parent, the child's opinion is important, who is able to form and understand it; divorce cases, etc. Scientific work S. Fursa (2010) was devoted to the issues on the legal status of other participants and third parties.

At the doctrinal level, representation in civil proceedings is considered in three senses: as a civil procedural institution; as a legal relationship with the participation of a representative; as the activity of a representative for the conducting the mediation. From a practical point of view, representation in civil proceedings is associated with relations of two levels: the relationship between the person represented and the representative – the basis for their occurrence may be such legal facts as a civil contract, birth certificate, decision on appointment as a guardian, trustee or guardian of hereditary property (initial legal relationship); the relationship between the representative and the court (derivative legal relationship) (Allalyev, 2019; Gordadze *et al.*, 2018).

Persons who are not directly involved in the case and have no legal interest in the outcome of the civil case are considered other participants in the proceedings. The participation of other participants in civil proceedings contributes to the timely and proper consideration and resolution of civil cases. They are usually divided into two groups: persons who assist in the consideration and resolution of a civil case (witness, expert, interpreter, specialist); persons who provide organizational and technical support for civil proceedings (assistant judge, secretary of the court session, court administrator) (Guliyev *et al.*, 2018; Guliyev *et al.*, 2017).

In the doctrine of civil procedural law, participants in the trial are proposed to be considered independent participants in the process. However, given the lack of a doctrinal understanding of the “participant”, such an approach is ambiguous. After all, the understanding of the secretary of the court session, the court administrator, the assistant judge determines the consideration of the position of the court as a mandatory subject of the procedural legal relationship. These participants perform fundamentally different functions than such participants as a witness, expert, specialist, interpreter. The secretary of a court session, court administrator, legal status is regulated by the rules of administrative law, as they are civil servants, i.e. – representatives of the state.

In particular, the secretary of the court session, the court administrator, the assistant judge differs from the witness, expert, specialist, interpreter by legal appearance, which has the following qualities:

- professional qualities that create conditions for their tenure in the relevant position in court.
- legal will, ability to make decisions and implement them.
- a set of legal relations and legal relations – connections and relations of a certain subject of law with other subjects.
- the subject of law from the standpoint of social and legal value. It is known that a person's interests are determined by the basis for the emergence of legal values.

These general features of the status of the secretary of the court session, court administrator, assistant judge give the right to characterize them as subjects of law in general, and not as subjects of civil procedural law in particular. Therefore, their legal personality should be understood through the recognition of their subject of law by the rule of law, because the legal guarantees for their activities, social and other protection, these persons are used precisely as those who hold the relevant positions. The basis of their procedural legal personality should be considered their competence as persons holding civil service positions in court.

Thus, other participants in the trial have a special legal personality of the court, which is characterized by a multifunctional nature with signs of organization. In turn, a witness, expert, interpreter, specialist is considered subjects of civil procedural law. In this case, the participation of the secretary of the court session, the court administrator, the assistant judge in the court session and the performance of their duties does not depend on the subject matter of the dispute in the process (Kerimov *et al.*, 2015; Kerimov *et al.*, 2018a).

In the research process the following methods were used: theoretical (analysis, synthesis, concretization, generalization, method of analogies, modeling); diagnostic (task method); empirical (study of the experience of civil proceedings and participation in civil proceedings of representatives and other persons); experimental (ascertaining, forming, etc.) and others. The research base of the study was the Research Institute of Private Law and Entrepreneurship named after Academician F.G. Burchak of the National Academy of Legal Sciences of Ukraine and judicial practice. The study of the problem was conducted in two stages:

- at the first stage the theoretical analysis of the existing methodological approaches in jurisprudence and civil proceedings, dissertations on the problem, as well as the theory and methods of the peculiarities of the participation of representatives and other persons in civil proceedings was carried out; identified problem, purpose, and research methods;

- at the second stage the model of participation of representatives and other persons in court case was developed; analyzed, checked, and clarified the conclusions obtained in the course of scientific work, summarized, and systematized the results.

1. Features of the relationship of the person represented and the representative

The initial (substantive) relationship between the person represented and the representative is the basis for the emergence of representative legal relations in civil proceedings. That is, without an established relationship between the principal and the representative, it is impossible for a court to have procedural legal relations with the participation of a representative (as an exception to this general rule, the so-called “consular” representation can be cited). Thus, all issues of the relationship between the representative and the person he represents are governed by the rules of Chapters 17 and 68 of the Civil Procedure Code of Ukraine (2004).

Instead, procedural representation differs significantly from representation in civil law in its purpose and nature of the relationship between the representative and the principal, on the grounds, legal consequences and so on. Thus, in some cases, representation in substantive legal relations is inadmissible (for example, entering into a marital relationship through a representative), while in the protection of such interests in civil proceedings there are no restrictions (for example, protection of the interests of one spouse by a representative in the cases of recognition marriage as invalid) (Kerimov *et al.*, 2018b; Kerimov *et al.*, 2018c).

At the same time, the authority of a representative in civil proceedings depends entirely on the powers delegated to him by the principal, because his legal position may not contradict the interests of the person he represents (meaning cases of voluntary representation). The activities of a representative in court must be lawful and specifically defined. That is why in para. 2 chapter 4 of the Code of Civil Procedure of Ukraine sets out the requirements for the legal status of the representative, documents confirming his authority, the peculiarities of his appointment or replacement (Fursa, 2010; Kerimov *et al.*, 2017; Kerimov *et al.*, 2019).

However, part 2 of Art. 58 of the CPC of Ukraine leaves unanswered the question of the possibility of participation in the case of several representatives with different, for example, powers (Civil Procedure Code of Ukraine, 2004). In general, in practice, these issues do not cause significant difficulties, because the rule about the possibility of participation in the

case together with a person whose rights and interests have been violated, several representatives with the same or different powers has become almost axiomatic. Moreover, the possibility for a person to represent his rights and interests together with the representative does not cause any objections (Kerimov *et al.*, 2016; Kerimov and Rachinsky, 2016).

Special attention deserves the possibility of self-representation of one's rights and interests directly by a legal entity through its head or a member of an executive body authorized to act on its behalf in accordance with the law, statute, regulations (self-representation of a legal entity) or by involving a representative in the case. In this regard, it should be noted that the current version of Part 3 of Art. 58 of the CPC of Ukraine (2004), compared to the previous version, is clearer, as it explicitly states that such self-representation is possible by participating in the case of the head or authorized member of the executive body, and not any legal entity, as provided in the previous version. In this regard, it has been repeatedly emphasized that the participation of the board of directors of the company in the process of consideration of the case is impractical (Fursa, 2010).

The current version of this article stipulates that the participation of the head of a legal entity, as well as an authorized member of the executive body, is not a representation in civil proceedings, as such a legal entity actually takes action to protect their rights and interests personally (self-representation). That is, the head of a legal entity has the right to apply to the court on its behalf without registration of powers to do so. Instead, a legal entity may apply to the court through a representative only by proxy (Kuznetsov *et al.*, 2018; Lapidus *et al.*, 2018a).

The issue of representing the interests of the state or territorial community as participants in civil legal relations also deserves special attention within the framework of this study. It should be noted that the participation in civil law of such subjects of public law as the state and the territorial community is not their main purpose. The state of Ukraine as well as the territorial community in the civil law aspect is not a set of persons, but a single participant (subject) of civil legal relations, organized on a corporate basis. Within the framework of civil legal relations, these subjects act in their own interests, which should not be equated with the private interests of any of the citizens of Ukraine or members of the territorial community.

Thus, the state of Ukraine as well as the territorial community in civil proceedings act on their own behalf through the relevant body of state power, local government in accordance with its competence. Thus, public authorities, local councils, executive committees are subordinated to the state of Ukraine or the territorial community. Accordingly, the actions of the head of such a body during the trial are the realization of the rights and obligations of the state or territorial community, and not these bodies.

Therefore, the relevant body of state power or local self-government is controlled and accountable in its activities to the state or territorial community. That is, in the relevant procedural legal relations, these bodies are representatives of the state or territorial community, to which in case of a dispute civil lawsuits are filed (Lapidus *et al.*, 2018b; Lapidus *et al.*, 2018c).

Representation in civil proceedings as well as in law is generally not uniform and is subject to classification according to different criteria. Thus, legal representation and contractual representation are two separate sub-institutions, each of which has its own subject of regulation, although neither of them falls outside the general principles of civil procedure representation. Legal representation in civil proceedings is reflected in the fact that the legal representative becomes a participant in the process and is endowed with the relevant procedural rights only after admission to participate in the case.

A person may have several legal representatives in the common law sense, but a party to the case, following the content of Art. 42 of the CPC, will be only one of them who is specially admitted to the case by the court. Moreover, not every legal representative in the general legal sense can be a legal representative in civil proceedings. For example, the conflict of interests of the legal representative to the interests of the represented person (Civil Procedure Code of Ukraine, 2004).

The basis for the entry of legal representatives into civil proceedings may be: the fact of the origin of children from the respective parents, certified in the manner prescribed by law; the fact of adoption of children; the fact of appointment of guardianship or custody; the fact of failure or improper performance of the function of protection of the rights and interests of minors, incapable or partially incapable individuals by legal representatives, etc.

Legal representatives may be parents, adoptive parents, guardians, trustees or other persons specified by law, persons (grandfather, grandmother, brother, sister, stepmother, stepfather) (Articles 258, 262 of the Family Code of Ukraine, 2002); representatives of the prosecutor's office (Part 2 of Article 23 of the Law of Ukraine, 1991); trade union representatives (Article 26 of the Law of Ukraine, 1999), etc. For example, parents in accordance with Art. 155 of the Family Code of Ukraine (2002) have the right to go to court to protect the rights and interests of the child, as well as incapacitated son, daughter as their legal representatives without special powers. This obligation to protect the rights and interests of children lies with their adoptive parents, who are equated by the legislator in the rights and responsibilities to the child's parents.

As a rule, legal representatives should have procedural legal capacity. As an exception, the court may allow the representation of the interests of its child to minor parents who have reached the age of fourteen, with the possibility of using free legal aid. Thus, Part 3 of Art. 59 of the Code of Civil Procedure of Ukraine provides for the right of legal representatives to entrust the proceedings in court to other persons (Fursa, 2010). Liability for the choice of a representative arises if the legal representative is to blame for improperly choosing who he/she instructs to represent the interests of minors, minors, incapacitated or partially incapacitated persons. When deciding whether the choice of a deputy is made correctly, it is necessary to proceed from the requirements that are usually put forward to the representative under the contract, and the peculiarities of the content of powers.

The responsibility of the legal representative for the selection of a deputy will be reflected in the latter's obligation to compensate for damages caused by the actions or omissions of another person involved in the court proceedings. Thus, a representative in court may be an attorney or legal representative – a person who has reached eighteen years of age and has civil procedural capacity, an official of the body authorized by law to apply to the court in the interests of minors or persons who have been declared incompetent by a court or whose legal capacity is limited.

2. Limitations for the participation of an attorney in civil proceedings

In accordance with Art. 6 of the Law of Ukraine (2013) “On the Bar and Practice of Law”, an attorney is an individual who has a complete higher legal education, speaks the state language, has experience in law for at least two years, passed a qualifying exam, passed an internship (except as provided by this Law), took the oath of an attorney of Ukraine and received a certificate of the right to practice law. One of the types of attorney activities enshrined in the Law of Ukraine (2013) “On the Bar and Practice of Law” is the representation of the victim's interests during the consideration of an administrative offense case, the rights and obligations of the victim, civil plaintiff, civil defendant in criminal proceedings and representation of individuals and legal entities. in courts during civil, commercial, administrative, and constitutional proceedings, as well as in other state bodies, before individuals and legal entities.

The participation of an attorney in civil proceedings is in some cases limited by current legislation (Civil Procedure Code of Ukraine, 2004; Law of Ukraine, 2013; Attorneys' Code of Ethics, 2017). In particular, an attorney may not act in court in cases where he provides or has previously provided

legal assistance in this case to persons whose interests are contrary to the interests of the person who requested the case, or participated as a judge, prosecutor, court clerk, expert, specialist, witness, interpreter, investigator, person conducting the inquiry, civil plaintiff, civil defendant, witness, representative of the victim, as well as when the case involves an official with whom the attorney is related.

The Law of Ukraine (2016b) “On Amendments to the Constitution of Ukraine (Regarding Justice)” of June 2, supplemented the Constitution of Ukraine (1996) with Article 131, which stipulates that only an attorney represents another person in court, as well as protection from criminal charges. At the same time, the same article enshrines exceptions to the general rule. Thus, when considering disputes arising from labor relations, as well as cases in minor disputes (minor cases), representation in court is allowed not only by an attorney or legal representative, but also by any person who has reached eighteen years and is endowed with civil capacity, despite the lack of basic legal education. Applications for the settlement of labor disputes are submitted to the court at the location of the defendant. When applying to the court to resolve a labor dispute, employees are exempt from paying court costs. A similar approach is enshrined in the representation of the interests of the individual in minor disputes (Law of Ukraine, 2016b).

Analyzing the powers of officials of bodies authorized by law to apply to the court in the interests of minors or persons who have been declared incompetent by the court or whose capacity is limited, it is appropriate to emphasize that such powers are primarily vested in prosecutors, consulate officials, etc. In the theory of civil procedure, representation by officials of consular offices is also called official representation (Tertyshnikov, 1997). In general, the issue of the consul’s participation in civil proceedings as a representative of minors, incapacitated or partially incapacitated persons is regulated at the level of consular conventions (agreements) concluded between Ukraine and other states. Representation in court of the interests of persons who do not have full legal capacity (incapacitated, partially incapacitated or minors) occurs only if such a person does not have a legal representative or a legal representative cannot directly participate in the process for various reasons. Moreover, consular officers, provided that such a right is enshrined in international treaties between the two countries, have the right to appoint a guardian or trustee and to supervise the latter’s actions in the interests of persons without full legal capacity.

Accordingly, when considering such a case, the court must, in case of procedural actions affecting the interests of persons with no legal capacity, guardians or trustees appointed by consular officers (recognition of the claim, complete or partial waiver of the claim, amicable agreement, etc.), to require permission to perform such actions from officials of the consular

post. That is, a consul or other official who performs consular functions, when representing the interests of minors, minors, incapacitated or partially incapacitated persons, is endowed with the same powers as the legal representative.

Representation by the prosecutor of the rights and interests of citizens is used to protect categories of the population who are unable to go to court to protect their rights and interests due to health, physical development, or other valid reasons. Representation of the interests of a citizen and the state in court by the Prosecutor's Office of Ukraine is one of the types of representation in court, and at the same time differs from other types of representation by a number of specific features: composition of representatives and the range of subjects they represent, powers, forms of their implementation (Judgment of the Constitutional Court of Ukraine No 3-ПІ/99, Rendered in the Case No 1-1/99, 1999).

The civil procedural legal personality of a prosecutor differs from the legal personality of a party in the process primarily in that he protects the rights of the party, and the party – its material rights and interests. The prosecutor is not a representative of the party, because in civil proceedings he acts independently, without the authority of the party, based on law. That is, the prosecutor in civil proceedings acts in the interests of minors, minors, incapacitated or partially incapacitated persons as an official of a state body, who on the basis of the law and official position performs the tasks and functions assigned to the prosecutor's office.

Instead, Article 61 of the CPC of Ukraine (2004) establishes a list of persons who cannot be representatives in court. That is, the legislator enshrined the prohibition of procedural combination in the same court case by a clear list of persons who cannot represent in court the rights and interests of the principal. Such persons are the secretary of the court session, an expert, a specialist, an interpreter, a witness, an assistant judge who is considering the case. In addition to the above list, a person who represents or has represented in this case another person whose interests in this case contradict the interests of his principal may not act as a representative in court. That is, lawyers cannot be represented in court if there is a conflict of interest between their principal (for example, the plaintiff in the case) and the defendant or a third party acting on his side. This legislative approach is quite justified given the violation of the principle of objectivity or impartiality in representing the interests of its principal.

In addition, it is prohibited to be representatives in court proceedings in connection with the holding of the relevant position by judges, prosecutors, investigators, employees of units engaged in operational and investigative activities. Such restrictions on the rights of these persons are due to their official status. At the same time, part 3 of Article 61 of the CPC of Ukraine (2004) provides for an exception to the above rule, when judges,

prosecutors, investigators, employees of units conducting operational and investigative activities, in case of such actions on behalf of the relevant body, which is a party or third party. For example, when a claim for damages and compensation for non-pecuniary damage for illegal actions is brought before the body of inquiry, investigation, etc.), or as legal representatives may act as representatives in court proceedings. These persons represent the interests of the relevant body, which is a party or a third party in the case, or a citizen, if the latter is unable to protect their violated or disputed rights or exercise procedural powers due to underage, incapacity or limited capacity, and legal representatives or bodies, which law gives the right to protect the rights, freedoms and interests of such a person, do not exercise or improperly protect it. In case the court confirms the existence of grounds for representation, the latter is granted the powers of the relevant party to the process, with the appropriate rights to apply to the court with a claim; entering into a case initiated by another person at any stage of court proceedings; initiatives to review court decisions; direct participation in the case; acquaintance with case materials, etc.

3. Proper consideration and resolution of civil cases and contribution of other participants (witness, assistant judge, secretary of the court session, court administrator) to it

It is considered that the assistant judge is an employee of the court staff and is accountable only to the relevant judge. In his work the assistant judge is guided by the Constitution of Ukraine, the Law of Ukraine (2016a) “On the Judiciary and the Status of Judges”; Article 92 of the Law of Ukraine (2016c) “On Civil Service”, relevant procedural codes, other laws and regulations of Ukraine, Rules of Conduct, approved by the Council, decisions of the meeting of judges of the relevant court, the Instruction on court records, the Rules of internal labor regulations of the court, this Regulation, as well as job descriptions. The assistant judge is subject to labor legislation, except for Articles 391, 41-431 and 491 of the Labor Code of Ukraine (1971). An assistant judge may be a citizen of Ukraine who has a higher legal education and is fluent in the state language. Assistant judges of the Supreme Court must also have at least three years of professional experience in the field of law.

According to the job description, which is approved by the head of the court staff in agreement with the meeting of judges of the relevant court, the fundamental rights include (Standard job description of the Court Administrator of the Local General Court, 2005):

- to enjoy the rights and freedoms guaranteed to citizens of Ukraine by the Constitution and laws of Ukraine.
- receive from the staff of the court to which it is attached, documents and information necessary to perform their duties.
- use information databases, telecommunication networks of the relevant court in the prescribed manner.
- make proposals to the judge on the organization of their work.
- in agreement with the judge to participate in conferences, seminars, round tables, forums, other scientific and practical events, and at the request of the judge – to undergo internships in the relevant departments of state bodies.
- participate in meetings, staff meetings and other similar events of the relevant court.
- improve their professional level in the system of training and retraining of court staff.
- the right to respect for personal dignity, fair and respectful treatment of themselves by managers, employees, and citizens.
- the right to remuneration in accordance with current legislation.
- the right to social and legal protection in accordance with their status.

The assistant judge is obliged to: timely and efficiently carry out the instructions given to him by the judge; adhere to the deadlines for preparation of documents and execution of orders; constantly improve their professional level and qualification; treat the property of the court carefully; in the performance of their official duties not to allow violations of human and civil rights and freedoms.

An assistant judge in his/her professional activity must adhere to the ethical norms related to his/her status and stipulated by the Code of Conduct for a Court Employee, in particular, Section 2 “Personal Ethics” (Rules of Conduct for Court Employees, 2013). An assistant judge is prohibited from:

- committing acts of a procedural nature, as well as actions that may entail the emergence, change or termination of the rights and obligations of litigants (except for the exercise on behalf of a judge or presiding judge of the court secretary in the absence of the latter);
- disclose information that constitutes a state or other secret protected by law, as well as information that became known to him in connection with the performance of official duties, in particular,

relating to the private life and health of citizens or affecting their honor and dignity;

- publicly express their opinion on the case under consideration, or provide information, advice, etc. on the circumstances that may be the subject of consideration in court.
- post information on social networks, Internet forums and/or comment on information that may harm the authority of the judge and the judiciary in the case of their registration on social networks, indicating the place of work and position.

An assistant judge should enhance the authority of the judiciary, demonstrate tact, courtesy, endurance, and respect, avoiding disrespect for others, and actions and statements that may undermine the authority of the judiciary, courts and judges. Depending on the type and nature of the violation, the assistant judge shall bear disciplinary, civil, administrative or criminal liability in accordance with applicable law, in particular for: non-performance, late or improper performance of his duties; exceeding their powers defined by law; inaction or unfair use of the rights granted to him; non-compliance with the requirements of the legislation on information, state secrets and protection of personal data; non-compliance with the requirements of anti-corruption legislation of Ukraine; non-compliance with the requirements of regulations on labor protection and fire safety rules; non-compliance with the restrictions established in the Regulations related to admission to the patronage service and the passage of the patronage service; for violation of the rules of internal labor regulations of the court and labor discipline and the Rules of Conduct of a court employee.

To properly ensure the consideration of civil cases, in contrast to the assistant judge, the Secretary of the court session monitors the return to the court of receipts for service of court summons. Receipts of persons who have received court summons, as well as court summons returned due to non-delivery to their addressee, are attached to the case. In cases of non-service of court summonses, the Registrar is obliged to find out all the reasons for non-service, report to the presiding judge and, on his instructions, take measures to ensure the timely service of the court summons.

According to the Labor Code of Ukraine (1971), the Laws of Ukraine “On Civil Service” and “On Combating Corruption”, the Secretary of the court session is liable for violation of labor discipline, poor or untimely performance of official duties, inaction or non-fulfillment of rights granted to him, violation of norms ethics of civil servant behavior and restrictions related to admission to the civil service and its passage (Labor Code of Ukraine, 1971; Law of Ukraine, 1995; Law of Ukraine, 2016c). In the absence of a Registrar of the court, the secretary of the court session performs simultaneously with his functions, the duties of a Registrar of the court.

In turn, the Registrar of the court is an official of the local court, whose status is determined by the Law of Ukraine (2016c) “On Civil Service” taking into account the features defined by the Law of Ukraine (2016a) “On the Judiciary and the Status of Judges”, who creates appropriate abidance of the established rules in the courtroom. The activity of a Registrar of the court in courts of general jurisdiction is regulated, in addition to the Code of Civil Procedure of Ukraine, by the above laws and “Regulations on the Procedure for Establishing and Operating the Service of Court Administrators” (2017), and “Standard Job Description of the Court Administrator of the Local General Court” (2005).

The Registrar of the court is obliged to ensure the proper condition of the courtroom and invite participants to the trial, announce the entry and exit of the courtroom from the courtroom and invite everyone present to stand up, monitor the order of persons present in the courtroom, and perform the order of the presiding judge to swear in the interpreter, the expert and to accept documents and other materials from the participants of the trial present in the courtroom and to submit them to the court. Participants in civil proceedings must comply with all the requirements of the Registrar of the court related to the performance of his/her duties, as they are obligatory for them. Violation of these requirements is the basis for the court to apply measures of procedural coercion.

The basis for entering into civil proceedings of witnesses should be considered the relevant data of his/her awareness of the circumstances of the case. After all, a witness is a carrier of information about events and an indispensable source of evidence in civil proceedings. The value and difference of a witness from other participants in the process lies, among other things, in the legal disinterest in the outcome of the dispute. The rule on the obligation of a witness to testify in court is constitutional. However, it is impossible not to take into account that the witness also has the general status of a natural person, which provides him/her with legal guarantees.

In the dictionary, a term “witness” is used in at least three, in some way related meanings: a person who was present at any event, adventure and personally saw something; a person summoned to court to certify the circumstances known to him/her; a person present at something to officially confirm the validity or correctness of something (Bilodid, 1978). Thus, a witness in civil proceedings is a natural person, without age restrictions, who has a special legal status in court. The activities of a witness are of a targeted nature, which sets the appropriate direction for the witness to exercise his rights and perform his duties.

The witness should meet certain characteristics, in particular: the witness should be only a natural person; the witness should have such physical and mental development that allows him/her to correctly perceive the circumstances and/or to speak about them; the witness should have the

information necessary to resolve the case; the witness must not have a legal interest in the results of the case; the witness perceives the circumstances of the case directly or indirectly; the perception of the circumstances of the case by the witness is not related to its consideration; the involvement of a person as a witness in a civil case is based on a court decision.

The participation of juvenile witnesses in court proceedings takes place in the presence of parents, adoptive parents, guardians, trustees, if they are not interested in the case, or representatives of guardianship and custody, as well as the children's service. Thus, despite the importance of the participation of minors as witnesses in court proceedings, primarily as sources of information, they should also be considered as subjects of civil procedural law.

The following persons are not entitled to examination as witnesses:

- incapable physical persons, and persons who are registered in or undergo medical treatment at residential psychiatric facility and are not able to perceive circumstances that are relevant to the case correctly or to testify because of their physical or mental defects.
- persons obliged by law to keep in secret information that had been entrusted to them in connection with their official or professional status – examination of such information.
- the clergy (about the information they obtained during the confession of believers).
- judges, people's assessors and jurors (about the circumstances of discussion of the issues that arose during the approval of decision or sentence in a courtroom);
- the persons who have diplomatic immunity cannot be examined as witnesses without their consent, and representatives of diplomatic missions – without the consent of a diplomatic representative (Law of Ukraine, 1993).

In terms of the ability to make decisions and implement them, the right of a witness to refuse to testify about himself, close relatives in cases provided by law (Article 63 of the Constitution of Ukraine) deserves attention. In accordance with Part 1 of Art 185 of the Code of Ukraine on Administrative Offenses (1984), a witness is brought to administrative responsibility in case of: contempt of court, which was expressed in malicious evasion from appearing in court; in disobedience of the said persons and other citizens to the order of the presiding judge or in violation of the order during the court session; committing any actions that indicate a clear contempt of court or rules established in court.

4. The role of an expert, a specialist, and an interpreter in civil proceedings

Among other participants in the civil proceedings, an expert, a specialist, and an interpreter stand out. An expert is a person who is entrusted with the study of material objects, phenomena and processes that contain information about the circumstances of the case, and to give an opinion on issues that arise during the proceedings and related to the scope of his special knowledge. The expert must have special knowledge in the field of science, technology, arts, crafts, etc., necessary to clarify the relevant circumstances of the case and provide an opinion on the issues under investigation.

Based on the court's decision, the expert is instructed to conduct a study of material objects, phenomena and processes that contain information about the circumstances of the case and provide an opinion on issues that arise during the case and relate to the scope of its special knowledge. The main legal acts that determine the status of an expert in civil proceedings are the CPC of Ukraine, the Law of Ukraine (1994) "On Forensic Examination", "Instruction on the appointment and conduct of forensic examinations and expert examinations" (1998), approved by the Ministry of Justice of Ukraine No 53/5, as amended by the order of the Ministry of Justice of Ukraine No 1950/5 and the Instruction on the peculiarities of forensic activities by certified forensic experts who do not work in state specialized expert institutions, approved by the order of the Ministry of Justice of Ukraine No 170/5 (Instructions on the peculiarities of carrying out forensic expert activity by certified forensic experts who do not work in state specialized expert institutions, 2011).

A reasoned and objective written opinion of the expert must contain answers to all questions asked by the expert. The expert's opinion means a detailed description of the research conducted by the expert, the conclusions made as a result and substantiated answers to the questions posed to the expert. If necessary, when examining the expert's opinion, for additional clarifications, the court shall issue a decision to summon the expert to a court hearing. The expert is obliged to appear in court and explain his conclusion to the court and the parties to the case and answer all their questions. The expert may participate in the court hearing by videoconference, in the absence of objections of the parties.

In the case of an expert study with complete or partial destruction of the object of examination or change of its properties, the expert must obtain the appropriate permission of the court, which is issued by a decision. In the case of the involvement of an expert in the case, the latter is notified of the consequences of the expert study with the receipt of written permission to

conduct it. At the end of the examination, the expert objects are provided, regardless of whether they are intact or damaged, or their remains, as well as other materials belonging to them are returned to the court.

In cases provided by law, the expert may be held liable for non-performance or improper performance of his duties. In general, the expert is criminally liable for a knowingly false conclusion – Article 384 of the Criminal Code of Ukraine (1960); administrative liability for contempt of court, etc.; disciplinary liability for violations during the examination, which do not entail criminal or administrative liability – paragraph 2.4. “Instructions on the appointment and conduct of forensic examinations and expert examinations” (1998), approved by the order of the Ministry of Justice of Ukraine. Measures of procedural coercion may be applied to the expert warning and removal from the courtroom (Articles 143-145 of the CPC of Ukraine).

In case of insufficiency of materials for a court opinion and proper justification for the impossibility of obtaining them (for example, if it is impossible to obtain the necessary additional samples for genetic testing, a person recognized in court as missing), the expert may refuse to provide such an opinion. In the statement of refusal, the expert provides a detailed justification. Unlike an expert, a specialist acts as an assistant and consultant to the court. The court engages a specialist to participate in the trial in cases where there is a need to perform such procedural actions as photography, drawing up diagrams, plans, drawings, sampling for examination, etc. As a specialist, you can involve any individual who has special knowledge and skills in the use of technical means, as well as could provide advice on issues that require relevant special skills and knowledge, or directly provide technical assistance.

In the legislation there are two forms of participation of a specialist in civil cases – advisory, which consists in providing advice during the commission of procedural actions on issues that require certain special skills and technical assistance during the commission of procedural actions. A separate type of participation of a specialist in a civil case may be the participation of a psychiatrist. In exceptional cases, if a person against whom proceedings have been instituted in the case of restriction of his civil capacity or recognition of his incapacity to pass the examination, the court with the participation of a psychiatrist may decide to forcibly send an individual for forensic psychiatric examination (Article 298 of the CPC of Ukraine). It should be noted that the assistance of a technical specialist during the commission of procedural actions does not replace the expert’s opinion, and therefore, if there are appropriate grounds for the study, it is necessary to appoint an examination.

In cases provided by law, a specialist may be held liable for non-performance or improper performance of his duties. A specialist may be

held administratively liable for contempt of court, disorderly conduct during a court hearing, etc., as well as coercive measures, including warning and removal from the courtroom (Articles 143-145 of the CPC of Ukraine). It should also be borne in mind that a person is admitted to civil proceedings as a specialist if he or she is not interested in the case. The CPC of Ukraine states the grounds for dismissal and provides for the impossibility of participation of a specialist in civil proceedings.

All explanations and consultations provided by a specialist are not recognized as an independent source of evidence, they only have an auxiliary character in the examination of evidence or other procedural actions and cannot replace the conclusions of the expert. Given the fact that the proceedings are conducted in the Ukrainian language, a participant in civil proceedings, if necessary, may be an interpreter.

An interpreter is a person who is fluent in the language of the proceedings and another language whose knowledge is required for oral or written translation from one language to another, as well as a person who has the technique of communicating with the deaf, dumb or deaf. Any natural person may be involved as an interpreter if he or she is fluent in: the language of the proceedings and another foreign language that is needed during the trial; the state language and technique of communication with the deaf, dumb or deaf-mute; there are no grounds for its removal provided for in Art. 39 CPC of Ukraine. The interpreter enters the civil proceedings at the request of the person involved in the case or is appointed on the initiative of the court.

The interpreter is criminally liable for knowingly false translation (Article 384) and administrative liability for contempt of court, etc. (Criminal Code of Ukraine, 1960). Given that it is not possible to remove an interpreter from the courtroom, as a person who does not speak or does not speak the state language sufficiently will be deprived of the relevant services if the interpreter repeatedly violates the order during the court hearing or fails to comply with the presiding judge's instructions, the court can take a break and allow time to replace the interpreter.

Conclusion

Summarizing the above, we conclude that the legislative regulation of the participation of representatives and other participants in civil proceedings is a necessary component of the Ukrainian judiciary, which contributes to the rapid and high-quality consideration of civil cases. The article substantiates that the optimal models of civil procedural representation are legal and contractual representation, which corresponds to modern trends

of democratic, social, legal state. It is emphasized that the principle of the rule of law and the rights and freedoms of the individual are fundamental principles of the functioning of the judiciary. The legal nature of procedural representation gives grounds to assert that it is an integral part of the effective functioning of civil proceedings, which serves to ensure the legal mechanisms for the protection of individual rights.

The implementation of civil procedural representation is one of the necessary conditions for ensuring mechanisms to protect the civil rights and legitimate interests of the individual. Attention is paid to strengthening the institution of procedural representation by increasing the rights of principals and representatives and systematization of norms on the conditions and grounds of legal civil procedural representation. Attention is drawn to the need to strengthen the process of adaptation of civil procedural legislation to the requirements of the European Union law in the field of representation, as well as strengthening the role of other participants in civil proceedings in accordance with the importance of international cooperation in protecting civil rights and interests of Ukrainian citizens, including those who is abroad.

It is noted that other participants in civil proceedings also contribute to the administration of justice; they are endowed with a number of rights and responsibilities aimed at ensuring the proper performance of their procedural functions. The peculiarity of the procedural status of an interpreter and a specialist is also their application of their knowledge and skills of different legal nature. The materials of this article can be used for a wide range of lawyers, as well as specialists in the field of civil justice, in particular: scientists, graduate students, lawyers, notaries and anyone interested in current issues of civil procedural law of Ukraine. In the process of research, new problematic issues arose that need further scientific solution. It is necessary to continue scientific research to address these issues, to form new scientific approaches to improving the introduction of litigation in the civil justice system by other participants, as well as to promote the participation of representatives in civil proceedings.

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