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SUBJECTS OF THE RIGHT TO APPEAL TO THE COURT FOR PROTECTION OF VIOLATED, UNRECOGNISED OR DISPUTED RIGHTS: GENERAL THEORETICAL AND LAW ENFORCEMENT APPROACH

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Summary

In the article there has explored and analyzed the following legal categories as "the subject of law" and "subject of legal relations". There has been defined the circle of subjects of the right to appeal to the court for the protection of violated, unrecognized or disputed rights through the application of the general theoretical approach. The analysis of the norms of the current legislation of Ukraine has been carried out in the section concerning the subjects of the right to judicial protection and the right to appeal to the court for protection. The differentiation of the subjects of the right to apply to the court has been introduced, taking into account the peculiarities of the realization of this right in a concrete process. There have been investigated the subjects of realization of the right to apply to the court and drawn the distinction between subjects of the right to apply to the court and subjects of the realization of this right.

Key words: right to apply to the court, subjects of law, subjects of the right to apply to the court, exercise of the right to apply to the court, subjects of the right to apply to the court.

СУБЪЕКТЫ ПРАВА НА ОБРАЩЕНИЕ В СУД ЗА ЗАЩИТОЙ НАРУШЕННЫХ, НЕПРИЗНАННЫХ ИЛИ ОСПАРИВАЕМЫХ ПРАВ: ОБЩЕТЕОРЕТИЧЕСКИЙ И ПРАВОПРИМЕНИТЕЛЬНЫЙ ПОДХОД

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Аннотация

В статье исследуются и анализируются такие правовые категории, как «субъект права» и «субъект правоотношений», определяется круг субъектов права на обращение в суд за защитой нарушенных, непризнанных или оспариваемых прав путем применения общетеоретического подхода. Осуществляется анализ норм действующего законодательства Украины в части, касающейся субъектов права на судебную защиту и права на обращение в суд за защитой. Проводится дифференциация субъектов права на обращение в суд, учитывая особенности реализации этого права в конкретном процессе, вводится и исследуется такая категория, как субъекты реализации права на обращение в суд, проводится разграничение между субъектами права на обращение в суд и субъектами реализации этого права.

Ключевые слова: право на обращение в суд, субъекты права, субъекты права на обращение в суд, реализация права на обращение в суд, субъекты реализации права на обращение в суд.

Formulation of the problem. The emergence of Ukraine as a democratic, social state, where rule of law is observed, has been accompained by systemic reforms and democratic transformations, while the gradual entry of our state into the European and world legal space raises considerable interest in the problem of the protection of human and civil rights and freedoms. As you know, Art. 55 of the Constitution of Ukraine establishes

the constitutional right of a person to judicial protection, which in turn is carried out through the implementation of a subjective procedural right to apply to the court. The procedure for its implementation is characterized by the presence of procedural actions of the participant and the relevant procedural actions of the court, which are carried out in a sequence established by the civil procedural law and collectively recognized as the legal composition of the emergence, change or termination of procedural legal relations.

The theoretical definition of the specificity and content of civil procedural legal relations can be attributed to a group of fundamental issues not only of civil procedural law, but of modern civilization as a whole. In fact, recognizing the general structure of civil procedural legal relations, which distinguishes three key elements – subject, object and content – almost always represent a problem, whose content determines a certain type of legal relationship and its specificity. The theoretical and scientific significance of this problem lies in the fact that, in addition to the definition of the content of such legal relations related to the implementation of the right to apply to the court, it is extremely difficult not only to define the further establishment of the subjects of the right to apply to the court and civil objects procedural legal relations, but also the general construction of the theoretical model of civil procedural law, which must contain a basic definition of what exactly constitute the civil procedural legal relationships that arise and exist within the boundaries of the law and to a court as a form of protection of violated, unrecognized or disputed rights. At the same time, it is possible to determine the circle of subjects of the right to apply to the court only on the basis of the correct and clear formulation of the notion of civil procedural legal relations in the field of legal regulation, since the correct understanding of legal relations is inextricably linked with the definition of the place of rights, legal duties, and as well as the actual behavior of their subjects.

Relevance of the topic of research. In today's conditions, the right to apply to the court can be defined as a procedural tool for the implementation of the constitutional right to judicial protection, since only in the case of the subject of the appeal of the necessary conditions for the right to apply to the court and the implementation of certain procedural actions generates a civil procedural activity of the court whose purpose is to protect the rights and interests of the individual and within the limits of which the constitutional right to judicial protection is implemented. However, in order to be able to launch a procedural mechanism for the right to apply to a court, it is necessary to investigate and clearly understand who is the subject of this right.

State of research. In the theory of civil procedural law, the question of the definition and correlation of such concepts as "the subject of law" and "subject of legal relations" attracted the attention of lawyers and caused a lot of discussions, in particular S.S. Alekseev, N.I. Matusov, M.N. Marchenko, M.A. Vikut, S.F. Kechekian, A.V. Mickiewicz, V.V. Kopeychikov, V.V. Razuvaev, R.O. Khalfina and other scholars initiated the debates on this matter and expressed different points of view. However, the principle of delimitation regarding the definition of these concepts in science has not been not carried out, and for the most part, "subjects of law" are considered mainly in the context of "subjects of legal relationships", that is, these terms are used as identical.

The purpose of this article is to study and analyze such legal categories as "subject of law" and "subject of legal relations". Considering the right to apply to the court as a form of protection of violated, unrecognized or disputed rights, determine the circle of subjects of this right by applying the general theoretical approach. On the basis of the law enforcement approach, associated with the implementation in a specific process of the right to judicial protection, and to differentiate the subjects of the right to apply, the court has distinguished between the persons who have the procedural right to appeal to a court from persons who carry out procedural activities aimed at the realization of this right. To achieve the abovementioned goal, the following tasks were **set:**

– to carry out an analysis of the provisions of the current legislation of Ukraine insofar as it concerns the subjects of the right to judicial protection and the right to appeal to the court for protection;

– to study and define the content of such categories as "subject of law" and "subject of legal relationships";

– to define a circle of subjects of the right to apply to the court by applying the general theoretical approach, while considering the said right as a form of protection of violated, unrecognized or disputed rights;

– to differentiate the subjects of the right to apply to the court on the basis of the law enforcement approach;

– to distinguish between persons who have a procedural right to appeal to a court from persons who carry out procedural activities aimed at the realization of this right.

Presenting main material. At the legislative level, "the right to judicial protection" is enshrined as an unrestricted and inalienable right. This right has been directly enshrined in the Constitution of Ukraine (hereinafter – the Constitution), which in Part 1 of Art. 55 confirmed that the rights and freedoms of man and citizen are defended by the court [1]. At the same time, the Civil Procedural Code of Ukraine (hereinafter – the Criminal Code of Ukraine) in Art. 3 establishes the provision on "the right to apply to the court for protection" and specifies that each person has the right, in the manner prescribed by this Code, to apply to the court for the protection of their violated, unrecognized or disputed rights, freedoms or interests [2]. However, the use of such a definition as "every person" needs to be detailed in order to correctly identify the circle of subjects of the right to apply to the court. After all, from the right understanding of whom belongs the subjective right to apply to the court, who and in what cases can implement it depends on the implementation of the constitutional right to judicial protection.

Like any civil procedural law, the right to apply to the court is implemented within the framework of civil procedural legal relations. By definition, civil procedural legal relations are social relations that arose

as a result of the influence of the norms of civil procedural law on them and aimed at the protection and protection of the subjective rights and interests of certain members of society, which are carried out by a specially authorized body of state power, a court. But it should be remembered and clearly understood that the law does not affect behavior directly. The legal norm specifies the persons who can or are obliged to be subjects of legal relations or can initiate them. It thus establishes legal capacity as the ability to be the subject of legal relations. Accordingly, one should agree with the statement of S. S. Alekseyev that legal norms create a mandatory basis for the identification of the individual, organization, public entities as subjects of law [3, p. 139].

Despite the fact that in modern jurisprudence the issue of the definition and correlation of such concepts as "the subject of law" and "subject of legal relations" is devoted to sufficient research, it remains unclear and causing many discussions. So, S.F. Kechenyak [4, p. 38] and R.O. Khalfina [5, p. 114] investigating this issue reaches the conclusion that the concept of "subject of legal relations" is narrower than "the subject of law", because the carrier of rights and obligations may not be a participant in concrete, real legal relations. In defining the concept of "subject of law" most theorists, jurists, in particular, S.S. Alekseev [6, p. 276], N.I. Matusov [7, p. 91], are usually guided by the content of the category "legal personality". Furthermore, O.F. Skakun substantiates the essence of the concept of the subject in relation to such categories as the subject of legal relations and legal personality, indicating that the categories "subject" and "person having legal personality" coincide [8, p. 113]. It appears that the legal personality and the subject of law are two interrelated concepts: the elements of legal personality (legal capacity and capacity) represent the qualities of the person recognized as the subject of law. Such approaches are the most common in legal science, but with such an understanding of legal personality one can discuss, since the personality includes abstract ability to have rights and responsibilities and the real ability of these rights and obligations to use, as well as the ability to bear responsibility for committed delusions, then under legal personality it is necessary to understand the ability of individuals and their entities to be subjects of legal relationships. In addition, it is not possible to agree with this statement, given that in all modern law and order the subjects of law are also recognized as persons who are not able to engage in legal relationships, namely, those who are young and incapacitated.

On illicitness in the identified concepts, M.A. Vikut insists on considering the subject of law as the actual owner of subjective law [9, p. 67]. At the same time, V.V. Razuvaev emphasized that with the assimilation of the categories of "subject of law" and "subject of legal relations" there is a major shortage of theoretical developments on this issue, since it is formed the idea that it is legal relations that are primary and identify a person as a subject of law, while actually the truth is the opposite – the subjects of law are primary, because in their absence, there will not exist and relationships [10, p. 58]. These positions of the authors, at the present stage of development of legal science, occupy a central place and determine that the subject of the right is a person who may be a participant in the legal relationship, that is, their potential participant. Instead, the subject of legal relationships – this is already a real participant in the legal relationship, that is, a specific person.

From the analysis of the general theoretical positions of the authors it is seen that the subject of law is considered to be all who can have rights regardless of whether he realizes them in fact, proceeding from this, any entity that may be subject to civil procedural law, can also be the subject of both civil process and civil procedural legal relationships. In this case, we are talking about the legal possibilities reflected in the procedural law. It is sufficient to have procedural legal capacity in order to become a subject of civil procedural law. Ability to be a subject of judicial protection and in this context – the subject of civil procedural law in no way associated with the possibility of their actions to exercise subjective civil procedural rights and obligations. The above statement is conditioned, first of all, by the absolute right to judicial protection, which can not be made dependent on the availability of capacity and the actual ability to legally act in the process.

Thus, when defining the subjects of the right to apply to court, as forms of protection of violated, unrecognized or disputed rights, the attention should be paid, first of all, to the provisions of Art. 55 of the Constitution, which defines the subjects of the right to judicial protection, since the right to apply to the court is posessed only by the person who has been granted the right to judicial protection. In accordance with this rule, the right to judicial protection is guaranteed "to everyone". By providing an official interpretation of Part 1 of Art. 55 of the Constitution, the Constitutional Court of Ukraine (hereinafter – CCU) in paragraph 1 of the decision No. of 25.12.1997 [11] defines the subjects of the right to judicial protection: citizens of Ukraine, foreigners and stateless persons, that is, individuals. A similar position was also stated in paragraph 1 of the decision of the CCU of 25 September 1997 No. 6 [12]. Thus, it is quite right that the issue of assigning legal entities to the subjects of the right to judicial protection and the right to apply to court accordingly appears.

The only explanation on this issue can be found by analyzing the judgment of the Constitutional Court No. 1-rp/99 of February 9, 1999, in case No. 1-7/99 [13], which provides official interpretation of Art. 58 of the Constitution in the context of the extension of the provisions of this article to legal entities and states that the provisions of Part 1 of Art. 58 of the Constitution, it should be understood that it concerns a person and a citizen (an individual). Such a conclusion is probably based on the fact that this article is contained in Section II "Rights, Freedoms and Responsibilities of a Person and Citizen", which enshrines the constitutional rights, freedoms and responsibilities primarily of man and citizen and their guarantees and is supported by system analysis the content of his articles and Part 2 of Art. 3 of the Constitution. Accordingly, the question is whether Article Art. 55 of

the Constitution on legal entities, can be considered rhetorical, since this article is in the same section as in Art. 58 of the Constitution.

Taking into account the abovementioned, the question arises as to the compliance of the norms of other laws of Ukraine, which contain provisions on the right to judicial protection and the right to appeal to the legal entities of the Constitution. For example, Part 1 of Art. 7. The Law of Ukraine "On the Judiciary and Status of Courts" guarantees the right to judicial protection, however, Part 2 of this article contains somewhat different definition of subjects of the right to judicial protection than in the Basic Law: "Foreigners, stateless persons and foreign legal entities have the right to judicial protection in Ukraine on a par with citizens and legal entities of Ukraine" [14]. The provisions on individuals (foreigners and stateless persons) are indisputable, since Art. 26 of the Constitution and Art. 55, the content of which is officially explained by the above-mentioned decisions of the Constitutional Court. However, the provision on the assignment of foreign legal entities to the subjects of the right to judicial protection, at first glance, is unfounded, since the compliance of legal entities of Ukraine with the subjects of these rights is not clarified. Such a problem can only be solved by supplementing Art. 55 of the Constitution, the norm concerning legal entities. A good example in the context of this issue is Art. 19 (3) of the German Constitution, which states that fundamental rights must also apply to domestic legal entities to the extent permitted by the nature of such rights [15].

While continuing to study the provisions of a legal entity under national law, the attention should be paid to Art. 80 of the Civil Code of Ukraine [16], according to which a legal entity is personally legal and defined as a possible participant in the civil process. By the general rule in accordance with this Part 1 of Art. 3 The GIC of Ukraine has the right to appeal to the court for protection, "every person". The specifying circumstance of the concept of "every person" in this case may be art. 30 of the same law, the content of which includes individuals, legal entities, as well as the state.

The question of determining the state as the subject of the right to apply to a court can be solved by analyzing the norms of the current legislation, first of all, it is necessary to refer to Part 2 of Art. 30 of the CPC of Ukraine, which defines the state as a participant in the civil process and to Part 4 of Art. 38 of the CPC of Ukraine, according to which the state in the civil process is represented by the relevant bodies of state power within their competence through their representative. These legal norms create the proper ground for asserting that the state exercises its procedural right to apply to the court through the system of state authorities, which is entrusted with the fulfillment of state tasks, in particular the representation of the state as a party to the civil case and the protection of its interests in court. However, is it possible say that within the scope of the right to apply to the court as a form of protection of violated, unrecognized or disputed rights, the state is the subject of this right?

Given that the state is an independent participant in the civil process and takes part in civil cases indirectly through the relevant state authorities, while exercising the right to apply to the court in order to protect their own interests in case of violation or threat of violation, it is possible to state that within the right to appeal to the court as a form of protection of violated, unrecognized or challenged rights of the subject of this right is not a state.

Analyzing the foregoing, taking into account the nature of the normative attachment and the person's constitutional right to judicial protection, it is possible to determine the primary general theoretical classification of subjects of the right to apply to court as forms of protection of violated, unrecognized or disputed rights:

- any individual – citizens of Ukraine, foreigners and stateless persons;
- legal entities of Ukraine and foreign countries.

Given the nature of the person's right to apply to the court for the protection of violated unrecognized or disputed rights and the way of its implementation, it is possible to divide the subjects of the right to apply to:

– actual:

- acting directly in the process, realizing the right to apply to the court by their own actions (when a person has both civil procedural legal capacity and civil procedural capacity and exercises procedural rights and obligations personally);
- acting in the process indirectly, exercising their right to apply to the court through procedural representatives (when the person has both civil procedural legal capacity and civil procedural capacity, but procedural rights and obligations in the real process do not independently implement);
- potential, characterized by a "two-sided" expression, replacing its procedural incapacity with the procedural capacity of a legal representative, exercising his right to apply to a court through a legal representative (when the person has only civil procedural legal capacity and has no capacity).

In the abovementioned cases, in the scope of the right to apply to the court, as a form of protection of violated, unrecognized or disputed rights, there will be a manifestation of the applied (law enforcement) level of definition of the subjects of this right, which is associated with the implementation in a specific process of the right to judicial protection.

Taking into account also that the right to apply to a court in a civil proceeding can be implemented both directly and indirectly, it is possible to identify the subjects of the realization of the right to apply to the court, which in themselves are not the owners of this right, but take part in civil process, promoting its implementation, along with its subjects. To such subjects, taking into account the nature of their interest, it is possible to include the following participants in the process: the court; bodies and persons authorized by law to protect the rights of the freedom and interests of other persons; legal and procedural representatives. However, this issue is the basis for further, separate and thorough research.

Conclusion. The analysis of the general theoretical developments in the legal literature on the definition

of the "subject of law" and the norms of the current legislation provide an opportunity to stress that in determining the structure of the right to apply to the court as a form of protection of the violated, unrecognized or disputed rights, the differentiation should be drawn between subjects of the right to apply to the court and the subjects of the realization of the right to apply to the court. The latter, in turn, are not direct bearers of the subjective procedural right to judicial protection, but, along with its subjects, participate in the mechanism of its implementation.

Accordingly, the subjects of the right to apply to the court according have been determined, including those persons who directly are the carriers of the specified right, among them individuals (citizens of Ukraine, foreigners and stateless persons) and legal entities (both Ukraine and foreign states). In this case, the volume of civil procedural capacity of individuals should be divided into actual and potential. As a result of the will to exercise their own right to apply to the court subjects of the right to apply to the court may be divided into direct and indirect. At the same time, the direct subjects of the right to apply to the court in case of its realization are always the subjects of its realization.

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