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ОСОБЛИВОСТІ ПРАВОВОГО СТАНОВИЩА СУБ'ЄКТІВ ЦИВІЛЬНОГО ПРАВА

Анотація. Теоретичні та прикладні дослідження особливостей правового статусу суб'єктів цивільного права на сьогодні залишаються дискусійними. Доктринальний і законодавчий аналіз цієї теми вказує на невирішені проблеми в цій галузі. Зокрема, положення про визначення держави як учасника цивільного законодавства залишається суперечливим. Серед вчених немає єдиної думки щодо визначення фізичних та юридичних осіб суб'єктами цивільного права. Крім того, правове регулювання певних видів суб'єктів господарювання є дещо безсистемним і хаотичним. Багато в чому це пов'язано з недостатньою розробкою теоретичних питань, пов'язаних із предметами цивільного права. Вищевказані питання визначають актуальність дослідження особливостей правового статусу суб'єктів цивільного права. Метою роботи є дослідження особливостей правового статусу суб'єктів цивільного права на основі доктринального та законодавчого аналізу. В основі дослідження лежить системний підхід, який полягає у вивченні складної системи взаємовідносин між суб'єктами цивільного права. Крім того, дослідження базується на законах і принципах діалектики, які сприяють вивченню правового статусу суб'єктів цивільного права. Для всебічного опису правового статусу суб'єктів цивільного права був використаний системний і структурно-функціональний аналіз. Історичний метод сприяв вивченню еволюції досліджень з питань цивільного права. Формально-правовий метод допоміг виявити особливості положень нормативних актів, що стосуються суб'єктів цивільного права. За допомогою порівняльно-правового методу в дослідженні проаналізовано положення Цивільного кодексу України з точки зору регулювання суб'єктів цивільного права, і таке регулювання порівнювалось з іншими країнами. У дослідженні визначено поняття та види суб'єктів цивільного права та розглянуто особливості правового статусу фізичних, юридичних осіб, а також держави як особливого учасника цивільного права. Особливу увагу було приділено історичному аналізу розвитку підходів до визначення суб'єктів права, починаючи з римського права

Ключові слова: фізичні особи, юридичні особи, держава, суб'єкти права, учасники цивільного права, правове становище

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FEATURES OF THE LEGAL STATUS OF SUBJECTS OF CIVIL LAW

Abstract. *Theoretical and applied research of the features of the legal status of the subjects of civil law remains debatable today. Doctrinal and legislative analysis of this subject points to unresolved issues in this area. In particular, the provision on defining the state as a party to civil law remains controversial. There is no consensus on the definition of individuals and legal entities as subjects of civil law among scholars. Furthermore, the legal regulation of certain types of entities is somewhat unsystematic and chaotic. This is largely due to the insufficient development of theoretical issues related to the subjects of civil law. The above issues determine the relevance of the study of the features of the legal status of subjects of civil law. The purpose of the study is to investigate the features of the legal status of subjects of civil law based on doctrinal and legislative analysis. The study is based on a systematic approach, which lies in studying a complex system of relationships between subjects of civil law. Furthermore, the study is based on the laws and principles of dialectics, which contribute to the study of the legal status of the subjects of civil law. Systemic and structural-functional analysis was used to comprehensively describe the legal status of subjects of civil law. The historical method contributed to the study of the evolution of research on the subjects of civil law. The formal legal method helped identify the special features of the provisions of regulations concerning the subjects of civil law. With the help of the comparative legal method, the study analysed the provisions of the Civil Code of Ukraine in terms of regulation of subjects of civil law and such regulation was compared with other countries. The study defined the concepts and types of subjects of civil law and considered the features of the legal status of individuals, legal entities, as well as the state as a special participant of civil law. Special attention was paid to the historical analysis of the development of approaches to the definition of subjects of law, starting with Roman law*

Keywords: *individuals, legal entities, the state, legal subjects, participants in civil law, legal status*

INTRODUCTION

The need to understand the legal status of subjects of civil law, the importance of forming stable ideas, as well as the development of ideas that express the attitude of subjects of civil law necessitate a comprehensive study of this subject. Therewith, there is currently no consolidation of subjects of civil law at the legislative level, being limited merely to the provisions on participants in civil law. Furthermore, with the development of market relations in Ukraine, new problems arise in the legal regulation of subjects of civil law, there are new types of subjects of civil law. The legal regulation of certain types of entities is somewhat

unsystematic and chaotic. This is largely due to insufficient development of theoretical issues related to the subjects of civil law. Notably, the consideration of the issue of individuals as subjects of law began started during the times of Roman law. In particular, some aspects of this issue were considered by such ancient Roman jurists as Justinian, Gaius, Julius Paul, and others.

For example, civil capacity in ancient Rome emerged from birth. However, according to Roman jurists, in some cases civil capacity could arise before the birth of a child. Paul noted, "He who is in the womb is protected, as if he

were among men, because it concerns the benefits of the foetus itself". At the time of birth, Roman jurists recognised the separation of the child from the mother and her cry. The dead child did not have legal capacity. From birth, the child was the bearer of rights; it could be the owner, the subject of other civil rights, such as being an heir, etc [1]. At the same time, in Roman private law, slaves were deprived of legal capacity. They represented a lower category of society not only in terms of their social status, but also due to the lack of legal rights. Their legal status was no different from the state of affairs.

However, the legal status of legal entities as subjects of civil law has been a subject of discussion since the 19th century. In particular, certain aspects of this issue have been studied by such scholars as Nikolai Korkunov, a Russian scholar-lawyer and philosopher of law [2]; Friedrich Karl von Savigny – German jurist and statesman [3]; Hans Kelsen – Austrian lawyer and philosopher [4]; Rudolf von Ihering – German jurist, and others.

The first scientific theory of the legal entity is known to modern civil science under the name "theory of fiction". The creator of this theory is considered to be the founder of the historical school of law – Friedrich Carl von Savigny. In particular, Carl von Savigny believed that a legal entity is inherently artificial, it is described by a lack of will, capable of duties and rights. Because legal entities are legal fictions, they do not have free will and are not subjects of law. Accordingly, he believed that the term "person" applied only to a human [3]. Hans Kelzen, for his part, argued that "subjects of law" are objects of legal obligation or subjective rights. That is, they may have legal authority to sue. That is, an individual and a legal entity are merely a set of rights and responsibilities, which together are metaphorically expressed as the concept of "person" [4].

1. LITERATURE REVIEW

To date, issues concerning the subjects of civil law have been considered by such domestic scholars as: A. Kostruba [5], R. Shyshka [6], V. Luts [7], R. Stefanchuk [8], E. Kharitonov, Y. Shevchenko [9] and others. However, in the theory of law there is a wide range of views on the features of the legal status of subjects of civil law. As for the subjects of civil law, Y. Shevchenko noted that they are necessary elements of civil law. The general formulation of civil relations implies that "a legal relationship is an ideological relationship that exists in the form of a relationship of subjects governed by the law of social relations, which is expressed in the presence of their subjective rights and responsibilities" [10].

Alekseev identified two main features that are inherent in the subject of law. First, it is a person – a participant in public relations, which by its nature can actually be a bearer of subjective legal rights and responsibilities. It must have a) external separation; b) personification; c) the ability to produce, express, and carry out a personalised will. Secondly, it is a person who is truly capable of taking part in legal relations, has acquired the properties of a subject of law through legal provisions [11]. For example,

Mazur names the subjects of civil law as follows: citizens of Ukraine, foreign citizens, stateless persons, legal entities (state enterprises and institutions, cooperatives, public organisations, joint stock companies, leased enterprises), the Ukrainian state, and others organisations (for example, religious organisations, joint ventures with Ukrainian and foreign legal entities, foreign enterprises and organisations) [12]. In turn, Nekit noted that a potential subject of civil relations can even be a robot integrated with general artificial intelligence, which has the ability to solve complex intellectual problems. Such division appears to be rather contradictory [13].

However, the question of the legal personality of the state is also debatable, for example, scholars express different opinions on this issue. Some researchers deny the legal personality of the state, arguing that the state has power and is not an ordinary participant in civil turnover. Opposing this view, other researchers noted that the state has legal personality, acquires rights and responsibilities and takes part in civil relations based on equality of subjects, but at the same time has the powers of authority.

We should also agree with Lunts, who defines the state as a political-territorial organisation of society, which is a special participant in civil relations. The presence of sovereignty enables it, through objective law, to independently determine the principles of its participation in civil relations and its legal personality. In civil relations, it acts by acquiring and exercising civil rights and obligations. Therewith, entering into civil relations, the state does not lose its status as a sovereign [14]. Furthermore, theoretical and legal approaches to the participation of the state in civil relations and its legal personality were studied by Dzera [15]. He noted that unlike other participants in civil relations, the legal status of the state is determined by a special function due to its participation in the political system of society, in which the state acts as a sovereign, a political organisation as a subject of political relations, and at the same time – as way of organising power.

2. MATERIALS AND METHODS

The study investigates such an important issue of the science of civil law as the features of the legal status of the subjects of civil law. Considering the purpose of the study, a set of regulatory principles is used, including techniques and methods, which altogether allowed to cognise the features of the legal status of civil law. In particular, several general scientific and special legal scientific methods were used in this study. Notably, the following methods were used in the study: discourse and content analysis, system analysis method, induction and deduction method, historical method, formal legal method, comparative legal method, etc.

Therewith, the research was performed with the use of qualitative methods, such as discourse and content analysis, which allowed to outline the specific features of the legal status of subjects of civil law, as well as to identify the main legal provisions governing the subjects of civil law. The study is based on a systematic approach, which lies in studying a complex system of interrelations between subjects of civil law. Furthermore, the study is based on

the laws and principles of dialectics, which contribute to the study of the legal status of subjects of civil law. For example, the method of system analysis and synthesis is used. Cognition gradually revealed the intrinsic essential features of the subjects of civil law, the connection of its elements and their interaction with each other. To take these steps, it was necessary to divide all subjects of civil law into constituent parts, and then study them, highlighting the properties and characteristics, tracing the links and relationships, as well as identifying their role in the system as a whole. This goal was achieved through operations such as analysis and synthesis.

The methodological techniques used in the research process include a multifaceted approach to determining the features of the legal status of subjects of civil law. This approach allowed to comprehensively study the phenomenon of the legal status of subjects of civil law, form a holistic view of it, thereby overcoming a one-sided view of the legal status of subjects of civil law. Another methodological approach used in the research process was an integrated approach. The integrated approach has largely overcome the shortcomings of analytical legal science, as it has allowed to organically combine legal remedies, legal tools, and essential legal ideas, legal ideals, deep principles of law.

Systemic and structural-functional analysis was used to comprehensively describe the legal status of subjects of civil law. The historical method contributed to the study of the evolution of research on the subjects of civil law. The formal legal method helped elaborate on the specific features of the provisions of regulations concerning the subjects of civil law. The comparative legal method allowed for a thorough analysis of the provisions of the Civil Code of Ukraine¹ in terms of regulation of subjects of civil law and compared such regulation with other countries.

Using the achievements of Ukrainian and foreign legal science, this study developed original conclusions about the specific features of the legal status of subjects of civil law. In particular, the source base of the study included the regulations of Ukraine and other countries, as well as doctrinal works of domestic and foreign scientists. The statutory framework of the study included the provisions of the Constitution of Ukraine², the Civil Code of Ukraine³, and the provisions of the Civil Codes of foreign countries. Therewith, the study of Ukrainian legislation governing the features of the legal status of civil law is of theoretical and practical interest, which determines the relevance of the subject matter. In general, the study is intended for anyone interested in the problems of civil law.

3. RESULTS AND DISCUSSION

3.1 *The concept of the participant in civil relations and the subject of civil legal relations*

The definition of “subjects of law” means the parties to a legal relationship that have mutual subjective rights and legal obligations [16]. For example, Arkhipov believes that the subject of law is not only the bearer of rights and responsibilities, but also the main factor of all legal life, which depends on the content of law, its functioning and development [17]. In turn, A. Kostruba notes that modern civil doctrine inherited a positivist vision of the institution of legal personality from the Marxist-Leninist theory of civil law. It is based on the priority of legal form over social content. A subject of law is a fact that emerges by virtue of law and in accordance with the law. Furthermore, its provisions are based on the fact that the subject of law is not an objective legal reality, which is conditioned by the social nature of the phenomenon, but a statutorily defined category, the existence of which in legal relations is conditioned by the will of the ruling class within a certain economic formation [18].

Notably, there currently no definition of subjects of civil law at the legislative level, although the participants in civil relations are enshrined in Article 2 of the Civil Code of Ukraine⁴. These include individuals and legal entities, as well as the state of Ukraine, the Autonomous Republic of Crimea, territorial communities, foreign states, and other subjects of public law [19]. In this regard, Kuzmich notes that being one of the elements of civil law, the subject as a concept personifies the participants in civil relations, the range of which is defined in Article 2 of the Civil Code of Ukraine [20]. However, as noted by Dzera, “the concept of participant in civil relations is broader than the concept of subject of civil relations. This circumstance is primarily connected with the fact that the participant in specific civil relations may also be a person who is not the subject of the relationship in question, in particular, a third party. Considering the above, it is possible to assume that apparently, in preparing the Civil Code of Ukraine, its developers considered this fact, consolidating in the Civil Code of Ukraine the concept of participant in civil relations, which, *inter alia*, includes the state itself” [15]. For example, in Georgia, Article 24 of the Civil Code⁵ also stipulates that the state and local governments take part in civil law relations as legal entities under private law. In this regard, the powers of the state or local government are exercised by its bodies, such as departments, institutions, etc.

As for the participants in the civil turnover of the People’s Republic of China, according to the Civil Code of

1. Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15/ed20030116#Text>.

2. Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/ed19960628#Text>.

3. Civil Code of Ukraine, *op. cit.*

4. *Ibidem*, 2003.

5. Civil Code of Georgia. (1997, June). Retrieved from <https://www.wipo.int/edocs/lexdocs/laws/en/ge/ge012en.pdf>.

the People's Republic of China¹, they are individuals and legal entities. Therewith, the state is not endowed with the status of a subject of civil law [21]. This fact is a distinctive feature, which indicates that in China, the state in civil law acts as a sovereign, i.e. a public entity, the bearer of powers of authority. The state acts in the interests of society as a whole, so its participation in civil turnover is determined by its special functions. Signs of the state are sovereignty, the presence of population and territory, the legal form of state self-organisation. Furthermore, an integral feature of the state is public authority, and civil law regulation of public relations is based on the recognition of equality of participants in relations. That is, the state uses power to organise civil turnover. This means that the state legally establishes the rules of participation in civil relations, which are mandatory for all, including for the state itself. Thus, the recognition of the state as a subject of civil law entails a sharp contradiction, because upon entering into civil legal relations, the state either loses public power, or retains it, but does not use it. In the first case, the state loses its essence. In the second case, there is a violation of the principle of equality of participants in civil relations, as other subjects of civil law do not possess public authority. That is, the state is a party to civil relations and is not a subject of civil law.

As A. Kostruba notes, "since the state is a union of interests of persons united in a single social organism in order to ensure them, it is justified that a legal entity as a subject of law synthesises not only the features inherent in the corporation, but also the features that inherent in the state as a subject of law. That is, the state is a legal entity in which public authorities must perform the functions of the governing body of such a person" [18]. The state enters into civil legal relations with the help of its bodies, which have the right to act only to the extent that they are expressly permitted to do so. Accordingly, the state can have only those rights and obligations that are stipulated by legislation. However, an individual, as a participant in civil relations has certain features and properties that in some way individualise it and affect its legal status. Such features and properties should include name, citizenship, age, marital status, gender. Therewith, individuals as subjects of civil law have civil capacity and legal capacity.

3.2 *The civil capacity: The features of the emergence and termination*

In international human rights instruments, in particular Article 6 of the Universal Declaration of Human Rights² (1948)

and Article 16 of the International Covenant on Civil and Political Rights³ of 1966 declare that every person, wherever they may be, shall have the right to recognition of their legal personality. The Constitution of Ukraine⁴ also contains provisions that all citizens have equal constitutional rights and freedoms and are equal before the law. There may be no privileges or restrictions on the grounds of race, colour, political, religious, or other beliefs, sex, ethnic or social origin, property status, place of residence, language, or other characteristics. Foreigners and stateless persons who are in Ukraine legally, enjoy the same rights and freedoms, have the same responsibilities as citizens of Ukraine – except those established by the Constitution of Ukraine⁵, laws of Ukraine or international treaties [22].

The practical significance of civil capacity is that if a person is capable of acquiring specific civil rights and have specific civil obligations, they can enter into a corresponding civil relationship, i.e. can become its obligated party. In this regard, the issue of the moment of occurrence of an individual's civil capacity becomes especially relevant. Thus, the legal capacity of an individual, i.e. the ability to have civil rights and responsibilities, arises from birth and ends with their death. In this case, an individual has legal capacity throughout life, regardless of age and health.

However, legal capacity describes its bearer as a legal entity, which allows to consider it as a socio-legal quality of a person. This shapes the features of the emergence and termination of legal capacity, as well as the fact that it is a constant quality of a person and it does not cease in the process of its implementation. Due to the legal capacity, more specific rights and responsibilities may arise with a citizen [23]. Another element of the material and legal status of an individual is legal capacity. Civil capacity means the ability of a citizen to acquire and exercise civil rights by their actions, to create civil duties for themselves and to perform them.

The most essential elements of the content of the legal capacity of citizens are the ability to independently enter into agreements and the ability to bear independent property liability (tort). For example, in § 1 of the German Civil Code⁶, an individual means a person as a bearer of rights and responsibilities. The decisive feature of an individual is legal capacity. According to § 1 of the German Civil Code⁷, legal capacity begins from the moment a child is born. Thus, the legal capacity of an individual does not depend on nationality, gender, or origin. It cannot be denied or deprived of a person by an official or court decision. The legal capacity of an individual ends in death. The

1. Civil Code of the People's Republic of China. (2020, May). Retrieved from http://english.www.gov.cn/archive/lawsregulations/202012/31/content_WS5fedad98c6d0f72576943005.html.

2. Universal Declaration of Human Rights. (1948, December). Retrieved from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

3. International Covenant on Civil and Political Rights. (1966, December). Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

4. Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/ed19960628#Text>.

5. *Ibidem*, 1996.

6. German Civil Code. (2002, January). Retrieved from https://www.gesetze-im-internet.de/englisch_bgb/.

7. *Ibidem*, 2002.

concept of death is not defined by law in German law, but it must be established by medical science, considering the criterion of brain death. Confirmation of death is carried out by means of the state registration of death. In the Civil Code of Turkmenistan¹, individuals are understood as citizens of Turkmenistan, foreign citizens, as well as stateless persons.

Individuals include persons with ordinary legal personality and individuals with entrepreneurial legal personality. Vorotintseva defines an individual-entrepreneur as follows: a capable individual registered, in accordance with the established procedure, in the status of an individual-entrepreneur, without the status of a legal entity, which engages in independent, professional, entrepreneurial activity at its own risk and under its own responsibility with the purpose to profit from such activities, has certain rights and responsibilities conditioned by the entrepreneurial activity [24]. Butkov defines an individual-entrepreneur as a person who takes the initiative in the development of the economic sphere of the state, engages in entrepreneurial activity by increasing labour productivity and reducing production costs and is responsible for its activities [25]. Notably, they have different legal regimes. For example, the problems of bankruptcy of individuals who are not engaged in entrepreneurial activities are actively discussed but will not be able to be implemented in practice. At the same time, the need for the institution of bankruptcy of individual entrepreneurs is beyond doubt.

3.3 *The legal entities as subjects of civil law*

Along with individuals, legal entities also act as subjects of civil law. A legal entity is an organisation that owns, manages, or operates a separate property and is responsible for its obligations with this property, can, on its own behalf, acquire and exercise property and personal non-property rights, perform duties, be a plaintiff and defendant in court. While individuals acquire legal personality at birth, legal entities acquire the legal personality granted to them through the commission of certain legal acts. In the most common case, a legal entity usually acquires legal capacity by registering with a government agency established for this purpose. As Artikulenko notes, “the amount of civil legal capacity of a legal entity depends on the very nature of the subject, and therefore it is incapable of having those rights that by their nature can belong only to a human. Moreover, in contrast to the legal capacity of individuals, which is equal for all, organisations can have either general or special legal capacity” [26]. Thus, the legal personality of legal entities differs from the legal personality of individuals, for example, a legal entity cannot bequeath its property. The content of the legal personality of legal entities is that they have the opportunity to acquire rights, the legal entity is responsible for its obligations, has a name and location.

The fact that a legal entity is an organisation that

owns, manages, or operates separate property means that the property belongs to the legal entity directly, as an independent subject of law, and is attached to it either on the right of ownership or on the right of economic management or operational management. In this case, the property of a legal entity is separated from the property of its founders. In turn, legal entities are responsible for performing their civil obligations with all their property. The founders of a legal entity are not liable for its obligations, and the legal entity is not liable for the debts of the founders, except the cases stipulated by law.

Furthermore, the use of a legal entity’s own name allows to distinguish it from other organisations and, therefore, constitutes a necessary prerequisite for civil legal personality of a legal entity. To ensure proper civil turnover, the legislation makes provision for the individualisation of a legal entity, i.e., its separation from the mass of all other organisations. Individualisation of a legal entity is carried out by determining its location and assigning it a name. The location of a legal entity is determined by state registration, unless otherwise stipulated by law. However, the location of the legal entity is indicated in the constituent document. Notably, a legal entity can independently protect its violated rights and legitimate interests. At the same time, it is capable of taking responsibility for its own actions. If necessary, claims for compensation for losses, damage caused to the health of a citizen, etc. will be presented specifically to a legal entity. If the organisation is not a legal entity, it has no right to appear in court as a plaintiff or defendant [27].

At the international level, the concept of legal entity is contained in the 1999 Convention on Criminal Liability for Corruption², developed within the framework of the Council of Europe. In particular, the term: “legal entity” means any organisation having such status in accordance with applicable national legislation, with the exception of states or other public bodies exercising public authority and public international organisations. The liquidation of a legal entity entails its termination without the transfer of rights and obligations to other persons by way of succession. Liquidation is carried out by the decision of its founders (participants) or its authorised body, including the achievement of the purpose for which it was created, or by a court decision in case of gross repeated violations of the law.

The key features of the subjects of certain legal relations should include the following: 1) they must be endowed with certain legal rights and responsibilities, 2) the capability of being the subjects of specific legal relations, which is determined based on legal provisions. Thus, the subjects of civil law may be individuals (citizens, foreign nationals, stateless persons); legal entities (Ukrainian, foreign). The state is a special participant in civil law. Individuals are described by legal status and capacity. That is, individuals are subjects who act as persons endowed with civil legal

1. Civil Code of Turkmenistan. (1998, July). Retrieved from <https://cis-legislation.com/document.fwx?rgn=2363>.

2. Convention on Criminal Liability for Corruption. (1999, January). Retrieved from <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/173>.

personality. Legal personality can be attributed to the integral, inalienable rights of citizens, which describes the civil status of the individual. Therewith, an individual can be the owner of specific subjective rights and obligations only due to their legal capacity, which occupies a special place in the mechanism of legal regulation. Legal capacity is recognised equally for all citizens, it arises at birth and ends with death. That is, it means that all citizens have equal legal capacity, no one has any privileges and advantages in the ability to have rights compared to others. Also, an individual as a participant in civil relations has certain features and properties that individualise it and affect its legal status. Such features and properties include name, age, citizenship, marital status, gender.

A legal entity is an organisation that acts in civil circulation under its own name, has property rights or other rights, and can be a plaintiff and defendant in court. It is considered established from the date of its state registration and introducing the corresponding entry in the unified state register of legal entities. State registration and introduction of relevant entries in the state register is also required for reorganisation and liquidation of legal entities, when amending their constituent documents. Furthermore, the participation of the state in civil relations also deserves attention. It has specific features that are not inherent in individuals and legal entities as independent subjects. Such specificity is primarily conditioned by the public legal nature of the state, embodied in such features as the existence of a sovereign territory and its population, the public nature of the organisation of power and government, the presence of its own state symbols, etc. That is why, acting as a party to civil relations, the state does not constitute a subject of civil law. Accordingly, the state can have only those rights and obligations that are enshrined in law.

CONCLUSIONS

Most often, the science of civil law distinguishes such subjects as individuals and legal entities. Therewith, the state constitutes a special participant in civil law relations. The issue of individuals as subjects of law started to be considered as early as the times of the Roman law. In the modern understanding, individuals are subjects who act as persons endowed with civil legal personality, which can be attributed to the integral, inalienable rights of citizens, which describes the civil status of the individual. Individuals with entrepreneurial legal personality stand out among individuals. Notably, individuals and individuals-entrepreneurs have different legal regimes. For example, the problems of bankruptcy of individuals who are not engaged in entrepreneurial activities are actively discussed but will not be able to be implemented in practice. At the same time, the need for the institution of bankruptcy of individual entrepreneurs is beyond doubt.

In turn, the legal status of legal entities as subjects of civil law has been a subject of discussion since the 19th century. At present, a legal entity is defined as an organisation endowed with civil legal personality, which owns separate property, is liable for its obligations with this property, can acquire property and personal non-property rights on its own behalf, bear responsibilities, be a plaintiff and defendant in court. Therewith, the recognition of the state as a subject of civil law entails a sharp contradiction because the state, upon entering into civil legal relations, either loses public power, or retains it, but does not use it. In the first case, the state loses its essence. In the second case, there is a violation of the principle of equality of participants in civil relations, as other subjects of civil law do not have public authority. That is, the state is a party to civil relations and is not a subject of civil law.

REFERENCES

- [1] Pidopryhora, O.A., & Kharitonov, E.O. (2009). *Roman law*. Kyiv: Yurinkom Inter.
- [2] Korkunov, N.M. (1909). *General theory of law*. New York: The Macmillan Company.
- [3] Savigny, F.K. (1867). *Modern Roman law system*. Madras: J. Higginbotham.
- [4] Kelsen, H. (1967). *Pure theory of law*. Clark: The Lawbook Exchange.
- [5] Kostruba, A.V. (2020). Right deprivation in the legal regulation mechanism of civil property relations: Comparative analysis of international legislation. *Asia Life Sciences*, 22(2), 143-156.
- [6] Shyshka, R. (2015). *Stages of regulation of economic relations. Economic and legal regulation of social relations*. Kyiv: MP Lesya.
- [7] Kostruba, A.V., Maydanyk, R.A., & Luts, V.V. (2020). Bonum requirements of the beneficiary in the corporate rights protection system in Ukraine: Implementing best practices. *Asia Life Sciences*, 22(1), 1-19.
- [8] Kuznietsova, N.S., Stefanchuk, R.O., & Kot, O.O. (2020). Lack of regulation in determining the moment of conclusion of the land lease agreement. *Astra Salvensis*, 8(S1), 105-122.
- [9] Shevchenko, Ya.M. (2014). *Civil law of Ukraine*. Kyiv: In Yure.
- [10] Shevchenko, Ya. (2009). Role and importance civil legal subjects in society. *Law Herald*, 2(11), 39-46.
- [11] Alekseev, S. (2008). *General theory of law*. Moscow: Prospekt.
- [12] Mazur, O. (2006). *Civil law of Ukraine*. Kyiv: Tcentr navchalnoyi literaturi.
- [13] Nekit, K. (2018). Legal entities of a private property in information society. *Lex Portus*, 2, 128-141.
- [14] Lunc, L. (2002). *Private international law course*. Moscow: Spark.
- [15] Dzera, Yu. (2010). Theoretic and legal approaches regarding participation of state in civil relations and its legal personality. *Forum Prava*, 1, 66-71.
- [16] Zaychuk, O.V., & Onishenko, N.M. (2008). *General theory of state and law*. Kyiv: Yurinkom Inter.
- [17] Arkhipov, S.I. (2004). *Subject of law: A theoretical study*. Saint Petersburg: Yuridicheskiy Centr Press.

- [18] Kostruba, A. (2017). State in the system of subjects of civil law of Ukraine. *Journal of the National Academy of Legal Sciences of Ukraine*, 4(91), 67-77.
- [19] Zhornokuy, Yu., Bilous, P., & Voloshina, N. (Eds.). (2017). *Problems of civil law and process*. Kharkiv: HNUVS.
- [20] Kuzmich, O. (2019). Participants (subjects) of civil legal relations as one of the criteria for the identification of third parties. *Actual Problems of Improvement of the Current Legislation of Ukraine*, 51, 76-87.
- [21] Haibin, L. (Ed.). (2020). *PRC Civil Code Series – 01: The Thing About Part I General Principles*. Retrieved from <https://www.chinajusticeobserver.com/a/pr-%20civil-code-series-01-the-thing-about-part-i-general-principles>.
- [22] Nadion, V. (2014). Elements of legal personality in the civil law. *Problems of Legality*, 125, 100-109.
- [23] Ignatiev, D., Protsenko, V. (2011). Citizens as subjects of civil law. *Leges si Viata*, 9, 33-43.
- [24] Vorotyntseva, I. (2020). On the definition of the individual entrepreneur as a subject of civil law. *Law Herald*, 1, 280-284.
- [25] Butkov, I. (2013). To definition of concept “legal status of the individual entrepreneur”. *Forum Prava*, 3, 70-76.
- [26] Artykulenko, O. (2018). Theoretical aspects of legal capacity of a legal entity. *Entrepreneurship, Economy and Law*, 11, 5-10.
- [27] Shablova, Ye.G., & Zhevnyak, O.V. (2015). *Civil law*. Ekaterinburg: Ural.

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