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ВЗАЄМОЗВ'ЯЗОК НОРМ СІМЕЙНОГО ПРАВА ТА ПРОЦЕСУАЛЬНОЇ ФОРМИ НЕПОЗОВНОГО ЦИВІЛЬНОГО СУДОЧИНСТВА

Анотація. Наукова стаття присвячена загальним положенням взаємозв'язку норм сімейного права та процесуальної форми позовного цивільного судочинства. Для досягнення поставленої мети авторами були використані різноманітні теоретичні наукові методи, такі як системний, догматичний, формально-логічний і методи індукції та дедукції. Установлено, що загальна та спеціальна процесуальні форми позовного цивільного судочинства зумовлені змістом і характером норм сімейного права комплексно-правової природи, що виявляється в родових і категоріальних властивостях судових справ. Родові властивості судових справ зумовлюють специфіку процедури розгляду цивільних справ, тобто спеціальну цивільну процесуальну форму. Категоріальні властивості судових справ зумовлюють їх підвідомчість і підсудність, склад учасників справи, предмет доказування, тобто загальну цивільну процесуальну форму. Установлено, що за ступенем впливу з боку сімейно-правового регулювання всі інститути цивільного процесуального права, які регулюють порядок розгляду справ щодо захисту сімейних прав та інтересів, можуть бути диференційовані на: 1) інститути цивільного процесуального права, які є об'єктом безпосереднього впливу з боку сімейно-правового регулювання, що підтверджується найбільшим обсягом комплексних сімейно-правових норм; 2) інститути цивільного процесуального права, які є об'єктом опосередкованого впливу з боку сімейно-правового регулювання, що виявляється у встановленні спеціальних правил на різних стадіях цивільного процесу під час розгляду судом справ щодо захисту сімейних прав та інтересів.

Ключові слова: норми сімейного права, процесуальна форма, позовне цивільне судочинство, взаємозв'язок.

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ВЗАИМОСВЯЗЬ НОРМ СЕМЕЙНОГО ПРАВА И ПРОЦЕССУАЛЬНОЙ ФОРМЫ НЕИСКОВОГО ГРАЖДАНСКОГО СУДОПРОИЗВОДСТВА

Аннотация. Научная статья посвящена общим положениям взаимосвязи норм семейного права и процессуальной формы не искового гражданского судопроизводства. Для достижения поставленной цели авторами были использованы различные теоретические научные методы, такие как системный, догматический, формально-логический и методы индукции и дедукции. Установлено, что общая и специальная процессуальные формы

неискового гражданского судопроизводства обусловлены содержанием и характером норм семейного права комплексно-правовой природы, что проявляется в родовых и категориальных свойствах судебных дел. Родовые свойства судебных дел обуславливают специфику процедуры рассмотрения гражданских дел, то есть специальную гражданскую процессуальную форму. Категориальные свойства судебных дел обуславливают их подведомственность и подсудность, состав участников дела, предмет доказывания, то есть общую гражданскую процессуальную форму. По степени воздействия со стороны семейно-правового регулирования все институты гражданского процессуального права, регулирующие порядок рассмотрения дел по защите семейных прав и интересов, предложено дифференцировать на: 1) институты гражданского процессуального права, являющиеся объектом непосредственного воздействия со стороны семейно-правового регулирования, что подтверждается большим объемом комплексных семейно-правовых норм; 2) институты гражданского процессуального права, являющиеся объектом косвенного влияния со стороны семейно-правового регулирования, что проявляется в установлении специальных правил на различных стадиях гражданского процесса при рассмотрении судом дел по защите семейных прав и интересов.

Ключевые слова: нормы семейного права, процессуальная форма, неисковое гражданское судопроизводство, взаимосвязь.

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RELATIONSHIP BETWEEN THE RULES OF FAMILY LAW AND THE PROCEDURAL FORM OF NON-RECOURSE CIVIL PROCEEDINGS

Abstract. *The scientific article is devoted to the general provisions of the relationship between the rules of family law and the procedural form of non-recourse civil proceedings. To achieve this goal, the authors used a variety of theoretical scientific methods, such as systematic, dogmatic, formal-logical and methods of induction (deduction). It was established that the general and special procedural form of non-recourse civil proceedings is conditioned by the content and nature of the rules of the family law of the complex legal nature, which is manifested in the generic and categorical properties of court cases. The generic properties of court cases determine the specifics of the procedure for consideration of civil cases, a special civil procedural form. Categorical properties of court cases determine their jurisdiction and jurisdiction, the composition of persons involved in the case, the subject of evidence, that is, the general civil procedural form. By the degree of influence from the family-legal regulation, all institutes of civil procedural law that regulate the procedure for reviewing cases concerning the protection of family rights and interests, are proposed differentiated by: 1) institutes of civil procedural law, which are the subject of direct influence from the family law regulation, which is confirmed by the largest volume of complex family-legal norms; 2) institutes of civil procedural law, which are the object of indirect influence from the family-legal regulation, which manifests itself in the establishment of special rules at various stages of the civil process during the consideration of the court cases on the protection of family rights and interests.*

Keywords: norms of family law, procedural form, non-recourse civil proceedings, interconnection.

INTRODUCTION

The problem of the relationship of material and procedural rules of law is one of the most urgent problems of modern legal science [1, p. 115]. It is considered as a general scientific problem, as well as a problem of correlation between different branches of law, legal institutes and separate legal norms. An analysis of general concepts of the division of law to material and procedural argues that such a delimitation of law is rather arbitrary, since it is impossible to divide legal norms mechanically and clearly into material and procedural [2, p. 31].

It should be noted that each procedural branch of law is closely connected, first of all, with the branch (branches) of material law, which it "serves". This connection is decisive in terms of clarification of the legal nature of procedural procedures defined for the maintenance of basic material legal relations [2, p. 31]. Thus, the system of each type of civil procedure is determined, first of all, by the material and legal nature (category) of those cases that fall under the relevant jurisdiction, because the different legal nature of cases influences the order of their trial. The determining influence of material and legal component of cases is, first of all, on the activity of the court of the first instance [3, p. 41].

At the same time, it is clear that the relevant impact is not absolute. Not every branch or institute of material law and, moreover, not every norm requires an independent civil procedural form. One and the same branch of procedural law can serve several branches of material law, connected with certain similar signs. But as soon as the legislator attributes certain categories of cases to the jurisdiction of the court which, by their material and legal nature, are essentially different from those that are traditionally dealt with by civil procedure, there is a need for the division of legal proceedings into separate types, since the essential material and legal peculiarities of cases require the use of specific means and methods of protecting the law and protected by law interest [4, p. 4–5].

So, what specific elements of civil procedural form of non-recourse civil proceedings are influenced by the material and legal nature of family cases? To answer this question, we will give the thoughts of the scholars-processualists about the interconnection and interdependence of the norms of material and procedural law.

1. LITERATURE REVIEW

In the similar context V. V. Komarov states that it has become traditional to determine the correlation between material civil law and civil procedural law as content and form [5, p. 40]. The problem of correlation between material and procedural law reflects the inter-system relations of civil procedural law and civil and other material branches of law in the aspect of the functioning of material and legal and procedural and legal in the mechanism of legal regulation in general. In view of this, material law without procedural guarantees cannot be potentially real. Procedures for judicial proceedings and judicial decisions in the mechanism of legal regulation for impossibility of realiza-

tion of material rights ensure the legal definition of specific legal relations and law and order in general [6, p. 168].

In the same angle O. V. Ivanov also mentions: "The material and legal character of cases referred by the law to the competence of the judicial authorities, can stipulate, within the framework of a single procedure of civil proceedings, some procedural features of their consideration... . But one should not exaggerate the importance of this factor in deciding the question of the impact of material law on the process: not always procedural features express the peculiarities of material and legal character of this category of cases" [7, p. 53].

R. Ye. Hukasian expressed his own position on the above problem, who in the scientific article "Influence of material and legal relations on the form of the process in legal proceedings" came to the conclusion that material law influences such elements of procedural form, for example: 1) on the definition of the subject and grounds of the claim; 2) on the composition of persons involved in the case and have a material interest in it; 3) on the definition of the subject of evidence, and the admissibility of evidence; 4) on the ways of protecting of the broken or disputed subjective rights of citizens and organizations [8, p. 31–32].

R. Ye. Hukasian also noted that it is precisely within these limits that the process in a particular case and, accordingly, civil procedural law, determined by material law. The rest – specifically procedural phenomena that are relatively independent, not related to material legal relations and set by the legislator in order to solve problems facing the judicial authorities [8, p. 31–32].

From the point of view V. I. Tertyshnikov, material law and process are in a dialectical relationship between content and form. Civil process is an external form of material law, the form of its manifestation, implementation (of course, not the only one), because sanctions of legal norms are also realized in the process, which means that the material law gets the most complete expression in the process, "lives" in its own form [9, p. 4].

Analyzing the interrelation between institutes of material and procedural law, Zh. K. Staliev drew attention to the fact that a number of institutes of the civil process are based on material and legal factual departments, institutes or complications of civil legal relations such as procedural legal capacity, procedural capacity, legal representation, obligations to prove, etc. [10, p. 19–20].

In the relevant context N. M. Kostrova noted that the boundaries of active interaction of material and procedural law pass through such basic elements of civil procedural form as a lawsuit, jurisdiction, subjects of the process, and basic rules of proof. All these elements of the procedural form create preconditions for the development of material (protective) legal relations in the procedural envelope. Therefore, the influence of material law on the basic elements of the procedural form is as follows: 1) the specificity of the controversial material and legal requirement defines the procedural side of the claim; 2) the need for material law in defense forms general and special rules

of jurisdiction; 3) the place of the party in the process occupy subjects of probable or actual material legal relation; 4) the specificity of the basic rules of proof is associated with the need for the court to apply the rules of material law regulating the legal relations from which the dispute arises in court [11, p. 30].

"The content of civil material legal relations determines ways to protect the rights of the parties to the process, the basic elements of the rules of proof, the dispositive and competitive nature of the process of consideration of civil cases", – wrote S. O. Borovikov [12, p. 10].

In the opinion of I. K. Piskariov, the rules of material law determine the subject matter of the relevant cases, the subject of cognitive activity, admissibility of evidence, etc. [13, p. 7].

Some scholars emphasize the reciprocal influence of civil procedural law on the rules of material law. Thus, O. V. Ivanov stipulates the presence of such a reciprocal influence by the fact that the legislator, when deciding the question of the forms of protection of certain subjective rights, takes into account the properties of the civil procedural form, fixed in the procedural law, as well as the possibility of judicial protection they have [14, p. 53].

Consequently, most scholars tend to think about the precondition of the main elements of the procedural form of the material and legal nature of cases that are subject to review and resolving in civil proceedings. In this case, the object of material and legal influence, mainly, enumerate such elements of procedural form as: procedural guarantees, the subject and the basis of the application, the composition of the participants of the case, the subject of evidence, the admissibility of evidence, the means of protecting the violated, unrecognized or dispute subjective rights and interests, etc. At the same time, some scholars do not deny the existence of reciprocal interconnection.

2. MATERIALS AND METHODS

In accordance with the aim and tasks, general scientific and special methods of knowledge of legal phenomena have become the basis of the methodology of the study of the general provisions of the interconnection of the norms of family law and procedural form of non-recourse civil proceedings.

Particularly, the comparative legal method has been used in comparison of scientific views with the outlined issues. The comparative legal method has allowed studying the whole nature of civil proceedings, discovering set of legal norms and principles that regulate and protect the personal and property relations of individuals that arise between members of the family.

Method of induction and deduction facilitated the classification of institutes of civil procedural law depending on the influence of the rules of family law on the procedural form of non-recourse civil proceedings. The system method allowed establishing the existence of the interconnection of the norms of family law and procedural form

of non-recourse civil proceedings. Due to this, it has been discovered that family law is an independent branch of law that is separated from the civil. The sociological method allowed studying the features of family law, using various normative documents and examples of court cases. Established data can be used as a baseline at an initial stage, as well as for checking all information, preparing the relevant findings.

The dogmatic method was used in the interpretation of legal categories, which resulted in a deeper and more precise definition of the categorical apparatus of protection of family rights and interests in the order of non-recourse civil proceedings. The formal and logical method was used as a universal means of argumentation of scientific conclusions. Using the formal and logical method, the authors came to the conclusion that the general and special procedural form of non-recourse civil proceedings is conditioned by the content and character of the rules of family law of the complex legal nature, which is revealed in the generic and categorical features of court cases.

3. RESULTS AND DISCUSSION

3.1. General provisions of the interconnection of norms of family law and procedural form of non-recourse civil proceedings

Undoubtedly, the authors agree that the material nature of the cases in one or another way influences the procedural form of their consideration and the decision in the order of civil proceedings. In this case, such influence have general institutes of civil procedural law (evidence and provability, participants of the case, jurisdiction, etc.), as well as special institutes, among them – special procedures for the consideration and resolution of certain categories of civil cases, i.e. types of civil proceedings. The condition of the general and the special procedural form of civil proceedings by the content and nature of norms of material law, regulating the relevant material relations and reflected in the properties of the civil case, depends on the character of the latter, which, according to the criterion, are differentiated by generic and categorical properties.

The generic properties of litigation (that is, the properties that are the criteria for the separation of the types of court cases) [3, p. 35], such as: the affiliation of the certain group of material relations; the legal nature of material legal facts, which is a prerequisite for the emergence of the civil process), being properties of the highest order (scale), determine the specifics of the procedure for consideration and resolution of civil cases, i.e. a special civil procedural form. In this case, the main differences in the procedure for considering a particular category of cases arise precisely in the court of the first instance [15, p. 121–123]. In particular, with regard to non-recourse civil proceedings, in which determined by the law civil cases are considered in order to defend protected by law (legal) interests or undeniable subjective rights, the influence of generic properties is revealed, for example, in limiting the principle of competition and the limits of trial.

Categorical properties of court cases (that is properties that are criteria for distinguishing categories of court cases [16, p. 25], such as: subject structure, object and content of material relations) affect the jurisdiction of court cases, the structure of the participants in the case, the subject and grounds of the statement, the subject of evidence, the division of duties for proof, the lawful presumptions, etc. The manifestation of the influence of categorical properties of court cases on the general procedural form of their consideration may be, for example, the structure of the participants in the case of dissolution of a marriage on the application of a spouse who has children characterized by the plurality of persons who acquire the civil procedural status of the applicant.

Consequently, the influence of material nature of civil cases, the external manifestation of which are their generic and categorical properties, on general and special civil procedural forms is indisputable. In turn, this is the consequence of the placement of certain procedural norms in the codified acts regulating the material relations. And, as stressed in the legal literature, if earlier the procedural norms only split into regulations, which contained mostly material and legal requirements, then at the present stage of development of the law the number of strictly procedural norms significantly increases [17, p. 78]. For example, a number of norms of civil procedural law are reflected in the FC of Ukraine.

Regarding the correlation of procedural norms contained in procedural laws and procedural norms contained in the material law, the latest native legislation adopted the corresponding Soviet doctrinal approaches and legislative traditions, according to which general procedural norms, as a rule, are contained in procedural laws, and special norms concerning certain categories of cases – in material laws [18, p. 20–21].

What are the reasons of so-called "implementation", in particular, the norms of civil procedural law in the family law of Ukraine?

In the scientific doctrine it is considered that procedural norms are included in procedural legislation through: inextricable connection of such procedural rules with the material norm; historical preconditions for such consolidation; the desire to avoid detailing of particular issues in procedural laws; the necessity to eliminate gaps in legal regulation, due to the fact material legislation, as a rule, changes faster than procedural [19, p. 9–10].

The need to ensure "the stability" of general norms of civil proceedings justifies the expediency of consolidating the peculiarities of the opening of proceedings and consideration of certain categories of cases in K. S. Yudelson codes of material law [20, p. 6].

According to L. O. Hros, the need to create special norms arises only within the framework of separate procedural institutes, characterized by a special sensitivity to changes in material law (jurisdiction, parties and third parties, evidence and provability, court decisions, etc.) [21, p. 15]. However, as a rule, the legislators do without the introduction of special procedural norms, introducing only special material norms. An

example of this can be material norms, containing provable presumptions, particularly the presumption of good faith of the addressee [3, p. 37].

"The inclusion of the most important norms of the process in the legislation on marriage and the family is explained by the meaning of these norms, which determine the behavior of the participants of civil process and aimed at protecting the rights of citizens. Repetition in the family law of some norms of legal proceedings is dictated by the need to facilitate the use of laws. Thus, it is permissible to include family law in procedural laws, which not only establish new rules, but also repeat the provisions of procedural legislation", – writes V. S. Tadevosian [22, p. 58].

V. K. Puchynskyi considers it is justified that in the normative legal acts, which by their name and general direction are acts of material and legal content, quite often placed some rules of justice. At the same time, he clarifies that this should be done within certain limits and that the main issues should be regulated by procedural legislation, which may be supplemented, if necessary, by special rules [23, p. 21].

Yu. K. Osypov also states that it is reasonable to include to the sources of material law only general rules that determine admissibility of cases arising from legal relations, which are regulated by a certain branch of material law, and the exceptions from the rules [24, p. 29].

N. M. Kostorova pays attention to the fact that a large number of procedural norms in family laws is caused by the need to accept special procedural rules which regulate the consideration of cases arising from family relations. The need is caused by the peculiarities of the subject of legal defense in such cases, particularly, by the special interest of the state and society in solving such cases, and also by their personal character. Thus, the author considers that availability of procedural norm in family law is a naturally determined phenomenon, especially when procedural problems are solved in it, which are not settled in procedural regulations [25, p. 17].

The analysis of the scientific doctrine gives reasons to make a conclusion that the main reason for placement of procedural norms in material codes, mainly, is the need or expediency in special legal regulation of a single aspects of procedural order of consideration and solving of separate categories of cases in material law in order to avoid "overload" with special norm of procedural law. Is it a justifiable approach of the legislator? In order to obtain the answer to this question it is necessary to determine the legal nature of procedural norms included in the structure of family law.

From this point of view there are three main positions in legal literature.

According to the first position, the procedural norms included in the structure of material legislation are considered such which are included in the corresponding branch of law. This conclusion scientists spread to material branches, which do not have the same procedural branches of law. Since the family law relates to such branches, the procedural norm of which are included in the structure of family legislation, and can be considered as a structural part of the family law. However, norms containing proce-

dural rules are norms of material law, but still have a procedural character. There is an opinion within this conception according to which procedural norms, placed in CLC of Ukraine, have a priority over the norms of material law concerning several issues of civil process [17, p. 92].

A postulate of the second position is the thesis in accordance with which procedural norms, which contains material law, are the component part of the procedural law, as the arrangement of some norms that regulate civil legal proceedings in another branches of legislation does not change their nature, but is explained by the connection of these norms with material and legal relations, to the protection of which they are directed and the specificity of which they reflect [26, p. 321].

The supporters of the third position consider that to every branch of material law corresponds the branch of procedural law. So procedural norms are not included in the structure of neither family, nor civil procedural law, but are the layer placed between relations regulated by material law, and form independent procedural branch – a family and procedural law [27, p. 38–40].

In the similar context we defend the position according to which material and legal norms, which regulate the peculiarities of the general procedural form of consideration and solve some categories of family cases, are necessary to examine as special norms of complex and legal nature. The specificity of the last lies in the fact that the corresponding norms, although placed in codified material and legal act – FC of Ukraine, at the same time are the sources of civil procedural law. The complex character of such norms reflects the availability of special relation between material and legal and procedural rules, when their separate codification is not appropriate, and also the specificity of the structure of civil procedural legislation that lacks procedural norms which concretize the peculiarities of procedural form of consideration and solving family cases.

Therefore, we agree with N. M. Kostrova that procedural norms, which regulate the legal defense of family rights and interests, arrange a certain system consisting of:

a) general and special rules of civil proceedings, established in civil procedural legislation and included in the structure of civil procedural law;

б) procedural norms containing in family legislation and included in the structure of not only one branch of law, but civil procedural law [11, p. 52].

Taking into account the above mentioned, the authors find the approach of legislator who placed special norms of complex and legal nature in material and legal act – FC of Ukraine well-founded enough, thereby "avoiding" the overload by the corresponding rules of the civil procedural law.

That is why, general and special procedural form of non-recourse civil proceedings caused by the content and character of norms of family law of complex and legal nature, which simultaneously are the sources of procedural, as well as material law and revealed

in generic and categorical properties of family cases, explained with substantiated desire of legislator to provide stability of CPC of Ukraine and avoid overload of the last with special rules.

3.2. Classification of institutes of civil procedural law by the degree of influence from the side of family and legal regulation

Finally, the main question to which the authors should give the answer – what are the exact institutions of non-recourse civil proceedings and to what extent are they materially and legally influenced by family law?

It should be noted here that non-recourse civil proceedings are the set of procedural institutions of different legal nature. Therefore, the influence of norm of family law on the procedural form of non-recourse civil proceedings is different depending on the object of such influence – a specific procedural institution. Based on this, by the degree of influence on the part of family and legal regulation, all institutions of civil procedural law, which regulate the order of consideration of cases concerning the protection of family rights and interests, can be differentiated into:

1) institutes of civil procedural law, the set of which is an embodiment of general civil procedural form (institute of jurisdiction and competence of corresponding applications, institute of the participants of the case, institute of evidence and proof, etc.). Such institutes are the object of direct influence from the part of family and legal regulation, which is confirmed by the largest number of complex family and legal norms.

As N. M. Kostrova timely points out, this group of procedural institutes belongs to the main "links" of interaction with material, including family law and reflects the basis of procedural regulation of protection of family relations in court [11, p. 37–38].

For example, in cases of divorce on the application of a spouse who has children, exactly by norms of family law (Article 109 of FC of Ukraine) the circle of persons is established who may be applicants in such cases (both spouses), as well as the circumstances which are included to the subject of proof (the existence of mutual consent of the spouses regarding the dissolution of the marriage; the presence of minors; the existence of the agreement on which of them will live with children, what participation in ensuring their living conditions will take one of the parents who will live separately, as well as the conditions for exercising the right for personal upbringing of children, and the amount of child support; the absence after divorce of violations of personal non-property and property rights of the spouses, as well as the corresponding rights of their children).

In addition, if regulatory legal relations are closely connected with the person of a certain participant of these relations, in the procedural laws in this regard a rule on the mandatory participation of these persons in the process may be introduced. Particularly, such provisions are found in the procedures concerning consideration of cases of adoption of a child (P. 1, 2 of the Article 313 of CPC of Ukraine) [3, p. 40].

The form of legal action to initiate (changes, terminations) regulative legal relations is closely connected with the admissibility of evidences and their evaluation in the trial. Therefore, special rules concerning the admissibility (inadmissibility) of individual evidence in relevant litigation or on the assessment of evidence in a case may be established in material laws [3, p. 40].

The character of material legal relations (objects, subjects and content), which is the main criterion for distinguishing categories of court cases, has a decisive influence on the necessity of introduction and content of the relevant special procedural norms. Particularly, the object of material legal relations affects the introduction of special ways to protect the rights of their members, special rules of jurisdiction, etc. In turn, the content of legal relations may impose special requirements for the content of the court decision in certain categories of litigation [3, p. 36];

2) institutes of civil procedural law, the total amount of which is the embodiment of the special civil procedural form (institute of opening proceedings in the case, institute of preparatory proceedings, institute of examination of the case on its merits, institute of appeal proceedings, institute of cassation proceedings, etc.). Such institutes are the subjects of indirect influence by family law regulation, which is manifested in the establishment of special rules at various stages of civil process during the consideration of cases by the court for the protection of family rights and interests.

For example, the specificity of material and legal regulation of the adoption in the family law is expressed in the special rules of the trial of relevant cases. In particular, according to the Part 1 of the Article 313 of the CPC of Ukraine, the court examines the case on the adoption of a child by the obligatory participation of the applicant, the guardianship and care body or the authorized executive body, as well as the child, if it is aware of the fact of adoption by the age and state of health, with the call of interested and other persons, whom the court finds it necessary to interrogate.

The given examples show the existence of a number of norms of civil procedural law that regulate alternative territorial jurisdiction of applications, the representation of which is mediated by the protection of family rights and interests, reduced time limits and special civil procedural status of the applicants in some categories of cases, an exhaustive list of circumstances of procedural character that form the subject of proof in such cases, etc. These norms are the reflection of the simplicity of civil procedural form, which, in view of the above, should be considered as one of the main conceptual foundations of protection of family rights and interests in the order of non-recourse civil proceedings.

Returning to the differentiation of the institutes of civil procedural law by the degree of influence from the family and legal regulation, the authors summed up: the main object of influence from family law is a general procedural regulation of non-recourse civil proceedings, and special institutes of civil process experience only partial influence.

CONCLUSIONS

The general and special procedural form of non-recourse civil proceedings is subjected by the content and character of norms of family law of complex and legal nature, which manifests itself in the generic and categorical properties of court cases.

The generic properties of court cases (properties that are the criteria for distinguishing the types of court cases: the branch affiliation of certain group of material legal relations; the legal nature of material legal facts, which is a prerequisite for the emergence of the civil process), determine the specifics of the procedure for consideration of civil cases, that is a special civil procedural form.

Categorical properties of court cases (properties which are the criteria for distinguishing the categories of court cases: subject structure, object and content of material legal relations) determine their jurisdiction and competence, the composition of the participants, the subject of proof, that is the general civil procedural form.

By the degree of influence from the side of family and legal regulation, all institutes of civil procedural law, which regulate the procedure of consideration of cases concerning the protection of family rights and interests, can be differentiated into:

1) institutes of civil procedural law, which are the object of direct influence from the family and legal regulation (institute of jurisdiction and competence of the relevant applications, institute of participants of the case, institute of evidence and proof and other institutes, the total number of which is the embodiment of general civil procedural form), and it is proved by the largest amount of the complex family and legal norms;

2) institutes of civil procedural law, which are the object of the indirect influence from the side of family and legal regulation (institute for opening proceedings in the case, institute for preparatory proceedings, institute of court consideration and other institutes, the total number of which is the reflection of special civil procedural form), which is manifested in the establishment of special rules at various stages of civil process during the consideration of cases by the court on the protection of family rights and interests.

REFERENCES

- [1] Churpita, G. V. (2016). *Protection of family rights and interests in the order of non-recourse civil proceedings*. Kiev: Alerta.
- [2] Belyanovich, O. A., Berestova, I. E., Bychkova, S. S. (2013). *Theoretical and methodological principles of differentiation and unification in civil, economic and administrative legal proceedings in Ukraine*. Kyiv: Editorial office of the magazine "Law of Ukraine".
- [3] Bychkova, S. S., Bobryk, V. I., Protsenko, V. V. (2014). *Unification and differentiation of procedures for civil, economic and administrative proceedings*. Kyiv: Research Institute of Private Law and Entrepreneurship name of academician F. G. Burchak, NPR of Ukraine.

- [4] Chechot, D. M. (1973). *Non-productive production*. Moscow: Yuridicheskaya literatura.
- [5] Komarov, V. V. (2011). Civil process in a global context. *Law of Ukraine*, 10, 22–44.
- [6] Komarov, V. V. (2012). Civil procedural law: problems of the methodology of science, differentiation and unification of judicial procedures. *Law of Ukraine*, 1, 154–174.
- [7] Ivanov, O. V. (1973). On the connection between material and civil procedural law. *Jurisprudence*, 1, 47–53.
- [8] Ghukasyan, R. E. (1979). Influence of material relations on the form of the process in claim production. *Questions of the Theory and Practice of the Civil Process*. Saratov: Publishing House of Saratov State University, 1, 25–32.
- [9] Tertyshnikov, V. I. (1972). *Procedural means for strengthening the Soviet family in the production of the dissolution of marriage* (Candidate thesis, Kharkiv Law Institute, Kharkiv, Ukraine).
- [10] Stalev, J. S. (1977). *Material law and forms of its protection. Issues of development and protection of the rights of citizens*. Kalinin: Publishing House of Kalinin University.
- [11] Kostrova, N. M. (1988). *Theory and practice of interaction of civil procedural and family law*. Rostov to Don: Publisher of Rostov University.
- [12] Borovikov, S. A. (2005). *Effect of the norms of substantive law on the norms of arbitration procedural law* (Candidate dissertation, Saratov State Academy of Law).
- [13] Baskakov, E. Ya., Efimov, A. F., Zhukov, V. M. (2005). *Features of consideration and resolution of certain categories of civil cases (legal proceedings)*. Moscow: Publishing House "Gorodets".
- [14] Ivanov, O. V. (1973). On the connection between material and civil procedural law. *Jurisprudence*, 1, 47–53.
- [15] Zayvvy, T. V. (2011). Value of the concepts "type of civil proceedings", "type of proceedings" and "the procedure for consideration of certain categories of civil cases". *South Ukrainian Legal Journal*, 3, 121–123.
- [16] Kostrova, N. M. (2001). Development of procedural rules of family affairs proceedings. *Journal of Russian Law*, 7, 52–58.
- [17] Podlubna, O. V. (2007). *The norm of civil procedural law: concept, limits of action and implementation in civil legal proceeding*. (Candidate dissertation, Chernivtsi National University named after Yuri Fedkovich).
- [18] Judelson, C. S. (1974). *The ratio of civil procedural norms, which are concentrated in civil procedural codes and codes of substantive law*. Problems of application of the civil procedural code of the RSFSR. Kalinin: KM.
- [19] Baulin, O. V. (1995). *Special norms in civil procedural law: author's abstract. dis to soup. scientist steppe*. (Candidate thesis, State University named after M. V. Lomonosov, Moscow, Russian Federation).
- [20] Judelson, C. S. (1976). Legal proceedings within the civil jurisdiction. *Questions of the Theory and Practice of the Civil Process*, 1, 3–17.
- [21] Groves, L. A. (1999). *Influence of the norms of substantive law on civil procedural law: scientific and practical problems* (Doctoral dissertation, Moscow State Law Academy Moscow, Russian Federation).
- [22] Tadevosyan, V. S. (1970). Civil procedural norms in the law on marriage and family. *Soviet State and Law*, 3, 58–65.

- [23] Puchinsky, V. (1969). Marriage and Family Codes and Civil Proceedings. *Soviet Justice*, 3, 20–21.
- [24] Osipov, Yu. K. (1974). Legal norms regulating the jurisdiction of legal affairs, in the system of Soviet legislation. *Jurisprudence*, 5, 28–34.
- [25] Kostrova, N. M. (1978). *Family Proceedings*. Makhachkala: Daghestan University.
- [26] Lesnitskaya, L. F. (1980). *The system of legislation on civil proceedings*. System of Soviet legislation. Moscow: Yuridicheskaya literatura.
- [27] Gorshenev, V. M. (1976). *The procedural form and its social and legal opportunities in a socialist society*. Legal procedural form: Theory and practice. Moscow: Yuridicheskaya literature.

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