

# The legal status of third parties in civil proceedings

## Правовий статус третіх осіб у цивільному процесі

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### Key words:

*individuals involved in the case, third parties, third parties that claim independent demands on the matter of dispute, third parties that do not claim independent demands on the matter of the dispute, procedural interest of the parties.*

### Ключові слова:

*особи, які беруть участь у справі, треті особи, треті особи, які заявляють самостійні вимоги щодо предмета спору, треті особи, які не заявляють самостійних вимог щодо предмета спору, процесуальна заінтересованість сторін.*

**Issue definition.** The decision, made by the court after consideration of the dispute between the plaintiff and defendant, may affect the legal status of others, hurt their freedom or interests, violate their rights or become a ground for the recourse action against them and so on. To prevent the above mentioned actions, the so-called third parties may participate in the proceedings.

The topic of the third parties in the civil proceedings in Ukraine has been researched by a wide range of scholars whose works formed a basis for a future study of this problem. Some of those scholars are V.M. Argunova, Yu.V. Bilousova, O.V. Bobrovnyk, S.V. Vasylieva, O.V. Dzera, O.I. Dzera, V.V. Komarov, V.M. Kravchuk, D.D. Luspennyk, Z.V. Romovska, S.Ya. Fursa, S.A. Chvankin, M.Y. Shtefan.

However, the term “third parties” is widely used not only in regard to the norms of the procedural law, but also in norms of the substantive law. This is the reason for misunderstanding of this notion in theory and practice.

Besides, the legal literature contains examples of proving the possibility of the third parties participation in all kinds of the civil proceedings as well as in the enforcement proceedings, regardless the fact that legislators directly and unambiguously defined third parties as parties participating in action proceedings and exclusively during the court hearing.

It is also worth paying attention to the classification of the third parties, since the researchers define various criteria for their division into types and, at the moment, there is no single approach to this matter.

**The aim of the article** is to determine the legal status of third parties in the civil process in Ukraine and to explore the importance of their participation in civil cases.

**The main data of the research.** The legislator does not answer the question, what does the term “third parties” mean. And it is typical for both of the substantive and the procedural law.

However, as it is indicated by M.M. Korshunov and Y.L. Marieiev, among all individuals, involved in the case, third parties are the most puzzling participants. The usual meaning of the words “third parties” not only does not contribute to the elucidation of their procedural status, but, on the contrary, is misleading. A lack of a more expressive term in the legal vocabulary makes it difficult to understand the role of these participants<sup>1/</sup>

In legal literature on the issue of civil procedure, the term “third party” is understood mainly in context of number i. e. when the respective parties are third in their connection to the plaintiff and the defendant.

P.P. Zavorotko and M.Y. Shtefan are of the similar opinion. They emphasize that the notion of “third party” is applied not because these individuals are odd ones in someone’s dispute, but because the dispute itself takes place between the two parties, and these individuals become a third party that enters into the dispute. The specified term is a purely procedural and reflects the true procedural state of the person, involved into the dispute between the parties and there is no need to create a new term for this individual<sup>2/</sup>.

<sup>1</sup> Гражданский процесс : [учебник] / под общ. ред. Н.М. Коршунова. – М. : Эксмо, 2005. – 797 с.

<sup>2</sup> Заворотько П.П. Особи, які беруть участь у справі позовного провадження : [навчальний посібник] / П.П. Заворотько, М.Й. Штефан. – Вип. 2. – К. : Видавництво Київського університету, 1967. – 108 с.

It appears that such a literal perception of the relevant legislative term in the civil procedure law is justified. The appropriate term not only aptly reflects the place of these legal parties among other individuals participating in the action proceedings, but also helps to understand the aim of their participation in the civil proceeding i.e. to protect the rights, freedoms and legitimate interests that are different from the interests of the other parties.

However, sometimes the term “third parties” is used both in law and in legal literature in a completely different way.

For example, in Part 1 Article 660 of the Civil Code of Ukraine, the third party is a subject who claims for the recovery of goods to the buyer based on the grounds that arose before the sale and purchase agreement.

In fact, the third parties are mentioned in the Civil Code of Ukraine as parties connected with the subjects of the substantive legal relations with whom they potentially may get involved into a dispute. Usually, such parties in the civil proceedings are either plaintiffs or the third parties that claim independent demands on the subject of the dispute.

If to look back at Part 1 Article 660 of the Civil Code of Ukraine, then the “third party” is a plaintiff in a civil procedure. In such case, the buyer (the defendant in the case) must notify the seller about the made claim and file a petition on the involvement of the seller to a case, and the seller must enter the case on the buyer’s side. It means that the seller becomes a third party at the side of the buyer in case of being involved in the civil proceeding.

The third parties are mentioned in other substantive laws (e. g. Part 5 Article 89, Part 2 Article 216, Part 3 Article 244, Part 1 Article 976, Part 3 Article 1141 of the Civil Code of Ukraine, Part 5 Article 88 of the Land Code of Ukraine, Part 6 Article 34, Part 2 Article 207, Part 6 Article 226, Part 2 Article 319, Part 3 Article 367 of the Commercial Code of Ukraine). However, in all those cases legislator means any other persons whose rights, liberties and interests are affected in the course of actions that are regulated by substantive law norms.

In the legal literature, those who are interested in cases of separate procedure because of court’s decision influence on their rights and duties concerning the applicant are sometimes called “third party”. Some processualists even substantiate the participation of third parties in the mandatory proceeding. Besides there are some statements concerning the protection of rights and participation of the third parties in the course of enforcement proceeding.<sup>3</sup>

In our opinion, such approach is unacceptable. The civil procedure law of Ukraine establishes rigid legislative terms regarding the subjects of action, separate and mandatory proceedings and enforcement proceeding, defines its procedural status and proved reason of each person’s participation in the course of civil trial of certain category in different types of civil justice and on different stages of civil proceeding.

Thus, pursuant to Part 2 Article 26 of the Civil Procedure Code of Ukraine concerning separate proceedings, person that participate in the case, are claimants, other interested parties, their representatives; pursuant to Part 4 Article 235 of the Civil Procedure Code of Ukraine, separate proceedings are considered by the court with the participation of claimant and interested parties. This way participation of third parties in the process of hearing cases belonging to this type of civil justice is not foreseen by the procedural law. However, if among interested parties appears a person that has its own interest in the subject matter of the case (the so-called “potential third party” in this case), and there appears issue of law that shall be decided in the course of action proceeding, following the Part 6 Article 235 of the Civil Procedure Code of Ukraine, the court ought to leave claim without consideration and explain to the interested parties that they have the right to file a suit on common grounds.

The third parties also must not be considered as subjects of mandatory proceeding that is connected with the following: firstly, judging from the name of third parties that claim or not claim independent demands regarding the matter in dispute. Pursuant to Part 1 Article 95, Article 96, Part 1 Article 100 of the Civil Procedure Code of Ukraine, mandatory proceeding is based on unimpeachable claims that means it can exist only exclusively in case of absence of dispute between the parties. Thus, if there is no dispute, there is no reason to assert claims regarding it. If the statement and documents provided by the applicant display dispute on law, the court should refuse to accept the statement on issuance of court order (Part 1 Article 100 of the Civil Procedure Code of Ukraine).

<sup>3</sup> Сульженко Ю. Захист прав та охоронюваних законом інтересів третіх осіб у цивільному процесі / Ю. Сульженко // Право України. – 2005. – № 3. – С. 80–85.

Secondly, pursuant to Part 1 Article 96 of the Civil Procedure Code of Ukraine, statement on issuance of court order can be filed based on exhaustive list of substantive claims, and third parties a priori cannot be a legal person because of their exclusively procedural status.

Thirdly, third parties are not subjects of filing statement on cancellation of the court order (this exact position was substantiated in legal literature. The mentioned statement, pursuant to Part 1 Article 106 of the Civil Procedure Code of Ukraine, can be filed only by the subject of mandatory proceeding – debtor and in no case by the third parties which is the subject of action proceeding. Apart from that, the author has not substantiated broadening of subjects' range of the mandatory proceeding by the third parties, where can they appear there at the stage of court order cancellation.

In our opinion, third parties cannot be subject of appeal to court decision implementation because of the following reasons. Firstly, third parties, which do not claim independent demands regarding the matter in dispute do not belong to persons in favor of which the decision can be made and so, pursuant to Part 2 Article 367 of the Civil Procedure Code of Ukraine, they do not have the right to demand the issuance of enforcement order. Secondly, third parties which do claim independent demands regarding the matter in dispute, in case of their suit being upheld, in course of enforcement proceeding get the procedural status of the party, namely – creditor's.

Given the above, usage of the term "third party" is considered inappropriate for designating subjects of other kinds of civil procedures and stages of civil process.

Moreover, it is not very correct to name any subjects of substantive law a third parties. However, in the latter case there is no use in making amendments to the relevant legislative acts, introducing new terms instead of established ones. It is necessary to understand in each separate case whether subjects of substantive or procedural law are being referred to.

In the civil procedures of Ukraine third parties are characterized by the range of features, firstly they are directly interested in the results of civil proceeding.

As it was appropriately mentioned by A.O. Melnykov, third parties in the civil procedure have substantive or procedural interest in the results of case hearing, because in reality or according to their opinion, litigious substantive law belongs not to the parties involved in case but to them, or court decision related to the dispute on law between the parties will influence their own substantive rights<sup>4</sup>.

Thus, interest of the third parties has substantive and procedural legal character.

The substantive legal character of the third persons' interest lies in that the decision which will be made by the court regarding certain dispute between other persons (parties) may in any way influence rights, liberties, interests or obligations of the third parties.

The procedural legal interests of the third parties lie in their desire not to allow the unfavorable for them decision to be made by the court. Due to this, third parties will direct their actions in civil procedure to prevent decision to give the object of dispute to plaintiff or to leave it with defendant or will demand the object of dispute to themselves<sup>5</sup>/

Secondly, third parties in any case participate in the procedure that have already started on dispute settlement between the plaintiff and defendant "not taking part in the formation of initial dispute substantive legal relations"<sup>6</sup>.

The proceeding on civil case is always initiated for protection of violated, unacknowledged and disputable rights, liberties or interests of the plaintiff. The third parties can appear in the civil procedure only after initiation of such proceeding because before the moment of proceeding initiation in the civil case on dispute settlement between the parties rights, liberties, interest of the person, that later participates in the case as the third person, in most case, are either not concerned at all or they do not know about such violation, unacknowledgement or dispute or just show no reaction to the presence of the latter etc.

<sup>4</sup> Мельников А.А. Правовое положение личности в советском гражданском процессе / А.А. Мельников. – М. : Наука, 1969. – 247 с.

<sup>5</sup> Штефан М.Й. Цивільне процесуальне право України : [підручник] / М.Й. Штефан. – К. : Ін Юре, 2005. – 621 с.

<sup>6</sup> Заворотько П.П. Особи, які беруть участь у справі позовного провадження : [навчальний посібник] / П.П. Заворотько, М.Й. Штефан. – Вип. 2. – К. : Видавництво Київського університету, 1967. – 108 с.

Due to the fact that third parties enter into the civil legal dispute that has already started, their participation is possible only under action proceeding.

Thirdly, third parties enter the civil procedure in order to defend their own subjective rights, liberties or interests, which do not coincide with the rights, liberties and interests of the plaintiff and defendant. The reason of their appearance is difficult extensive structure of substantive legal relations, which constitute the object of dispute<sup>7</sup>. Although in some cases, third parties defending their rights, liberties and interests can contribute to the decision being made in favor of the plaintiff or defendant.

Thus, considering the above-mentioned features, such a definition may be provided – third parties are entities of civil procedural legal relations, which enter the civil case that is being considered as the action proceeding in order to defend their subjective rights, liberties or interest different from rights, liberties and interest of parties.

The meaning of the third parties' participation in the civil procedure lies in the fact that they help to correctly and substantially settle a dispute between the plaintiff and defendant, establish all real facts of the case, provide real guarantees of rights protection of the persons that participate in the case. Their entrance into the already initiated proceeding also prevents the court from making inconsistent decisions, contributes to the economy of time and costs because there would be no need to hear one more civil case, establish the same facts.

At the same time, entrance of the third parties into the case is an important tactical maneuver. Engagement of third parties from the tactical point of view changes the alignment of forces in the procedure, broadens fact in question, makes court hearing more difficult<sup>8</sup>. Due to this, that or other party in the procedure can occupy more advantageous position for them.

According to the level of interest in the case hearing, legislator points out two types of third parties in the civil procedure:

- 1) those that claim independent demands regarding the matter in dispute (Article 34 of the Civil Procedure Code of Ukraine) and have both substantive legal and procedural interest in the case hearing;
- 2) those that do not claim independent demands regarding the matter in dispute (Articles 35, 36 of the Civil Procedure Code of Ukraine) and have exclusively procedural interest in the case hearing.

Some processualists, specifying the mentioned criterion of legal classification of third parties, suggest other assisting features for such classification. Thus, according to D.R. Dzhililov, criteria for classification of third parties into two types is their difference in 1) grounds of their legal relations with the court; 2) content of their legal relations with the court; 3) influence of court decision on rights and obligations of the third parties<sup>9</sup>.

According to V.V. Komarov and P.I. Radchenko, diverse third parties' membership and their differentiated legal interest in case comes from the fact that court decision directly relates to subjective rights or third parties' interests protected by law or influences them sideway<sup>10</sup>.

If to analyze the defined grounds for classification of third parties mentioned above, it seems that in all cases the primary criterion of the certain classification is the level of legal interest of third parties, which, in its turn, gives the possibility to point out other, assisting criteria. For example, the legal relations of third parties with the court, namely their rights and obligations, depend only upon the level of legal interest of third parties in the dispute settlement: third parties that claim independent demands regarding the matter in dispute get all the rights and obligations belonging to the plaintiff while third parties that do not claim such demands get general rights and obligations of persons that participate in the action proceeding etc.

The only one criterion of the classification provided by D.R. Dzhililov does not correspond to this approach is the grounds of legal relations between third parties and court. In our opinion, there is no difference in appearance of the legal relations between third parties and court since the only legal fact that causes civil relations with court in both cases should be the relevant court resolution.

<sup>7</sup> Аргунов В.Н. Участие третьих лиц в советском гражданском процессе : автореф. дисс. ... канд. юрид. наук / В.Н. Аргунов. – М., 1980. – 18 с.

<sup>8</sup> Кравчук В.М. Науково-практичний коментар Цивільного процесуального кодексу України / В.М. Кравчук, О.І. Угриновська. – К. : Істина, 2006. – 944 с.

<sup>9</sup> Мельников А.А. Правовое положение личности в советском гражданском процессе / А.А. Мельников. – М. : Наука, 1969. – 247 с.

<sup>10</sup> Цивільне процесуальне право України : [підручник] / за ред. В.В. Комарова. – Х. : Основа, 1992. – 416 с.

Due to the above mentioned, the only feasible criterion for legal classification of third parties into those that claim and those that do not claim independent demands regarding the matter in dispute is the level of their legal interest in the case decision.

**Conclusions.** The conclusions drawn from the conducted research are as follows. First of all, third parties are entities of civil procedural legal relations which enter the civil case that is being considered as the action proceeding in order to defend their subjective rights, liberties or interest different from rights, liberties and interest of parties. Secondly, usage of the term "third parties" is inappropriate for designation of subjects of non-action types of civil court procedure and separate stages of civil procedure. Thirdly, the only criterion for legal classification of third parties is the level of their legal interest in the case decision.

### Summary

The legal status of third parties in civil procedure at the present stage of development of civil procedural law is studied in the article. The notion of the third parties in the civil procedure in Ukraine and its types have been defined as well as the place of the third parties.

### Анотація

Стаття присвячена дослідженню правового статусу третіх осіб у цивільному процесі на сучасному етапі розвитку цивільного процесуального права. Визначено поняття третіх осіб у цивільному процесі України, їх види, досліджено значення їх участі в цивільних справах.

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