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## **ABOUT THE CORRELATION OF THE 'LEGAL STATUS' NOTION AND RELATED CATEGORIES**

### **Summary**

The article deals with the correlation of the «legal status», «legal position», «legal condition», «procedural status», «procedural position» and «procedural condition» notions. The reasonability of the equation of the «position» and «condition» notions as well as the distinction between the notions of «status» and «position» is grounded. The author suggests unifying the use of the terminology in question in the material and procedural law in order to determine the objects and topics of legal studies in future.

**Key words:** legal status, legal position, legal condition, procedural status, procedural position.

**Formulation of the problem.** Recently, not only lawyers, legal scholars, but researchers are paying insufficient attention to the theoretical understanding of the basic concepts of law. Yes, there is uneven interpretation of the term "legal status" and adjacent concepts used in a large range of legal research without proper justification, and sometimes - contradictory, determining the relevance and timeliness of the study.

**Analysis of recent research and publications.** The theoretical basis of the study were N.V.Vitruka, L.D. Voevodina, A.A. Stryemouhova and other scientists. However, some of these and other authors have been devoted to value only certain related concepts.

**The article is to study** the relationship between the concepts "legal status", "legal status", "legal status" and "procedural status", "procedural provisions", "procedural situation" for the unification of the studied use of terminology.

**Presenting main material.** In legal literature there is debate regarding the use of the terms "legal status", "legal status", "legal position".

Most scholars tend to equate these concepts. M.I. Matuzov, O.V. Malko define the essence of the legal person status as a legally enforceable position in society [1, 183]. O.V. Skakun insists that it is synonymous, and they are etymologically identical [2, 378]. L.D. Voyevodin indicates that the legal status of a person - a man's place in society and state [3, 50] and notes that the analysis of the constitutions of individual countries concluded that the application of the concepts of "status", "position ", " position "and other similar categories that define where the subject of legal communication, except for exceptional cases between these terms is not any distinction [3, 12].

Some researchers defend the position of the feasibility of the distinction between "legal status" and "legal status". Specifically, N.V. Vitruk, separating the legal status of legal status, characterizes the situation as a broader concept and it cites the following elements: legal status, citizenship, legal personality, legal safeguards [4, 40]. He insists that the legal position - an umbrella category that reveals all the elements embodied in the right state of persons who are to each other in certain relations and socially conditioned by the place in which a person takes a system of social relations [4, 10-11]. For O.I. Harytonovoyi opinion, on the contrary, the legal status is associated with a stable legal state subject, and the legal status varies depending on the relationship in which he is involved [5, 71].

Following analysis of the use of these terms in scientific research you can not reach a definite conclusion on the limits of the use of these concepts.

In particular, the term "legal status" used in the names of dissertation research I.V. Lukach "Legal status of holding companies under the law of Ukraine" O.V. Scherbyny "The legal status of shareholders under the laws of Ukraine" and some others. This content analysis for these abstracts is clear that their authors are proponents of the thought of identifying the concepts of "status" and "position".

The term "legal status" is often used in various areas of law. In particular, the dates used in the names of dissertation research Baltsiya Yu. "Legal status of the mayor in Ukraine", Ye.V. Bulatova "The legal status of the institution as a participant of economic relations", L.V. Vynara "The legal status of legal persons founded by the

state", I.Ya. Zayatsya "The legal status of region in Ukraine", M.H. Isakova «The legal status of the company as a business entity», L.L. Labenskoyi "The legal status of deputies of local councils», I.V. Nazarova "The legal status of the High Council of Justice", O.M. Yaroshenka "The legal status of the parties to the employment relationship" and some others.

It should be noted that among these works in research and L.L. Labenskoy, I.V. Nazarova terms "legal status" and "legal status" is used as identical. In particular, in I.V. Nazarov thesis concludes that regulatory determining the position of the High Council of Justice in the system of government is part of the legal status of the High Council of Justice [6, 14], that he is a supporter of differentiation of these concepts, summarizing the concept and considers status.

"Legal status" is used synonymously with the term "legal status" in the I.Ya. Zayatsya. M.H. Isakov, O.M. Yaroshenko used synonymously three terms "legal status", "legal status", "legal position". O.M. Yaroshenko providing the legal status, indicates that "the rule of law is a recognized legal entity status that reflects its position in relations with other entities" [7, 8].

A dissertations L.V. Vynara, Ye.V. Bulatova and is not used other terms except for the term "legal status", which indicates that they are supporters of the distinction between these concepts. Delineates the concept of "status" and "status" and Yu.Yu. Baltsiy using the first term in determining the mayor system of local government [8, 12].

In studies of procedural direction as there is no clear terminological certainty: the study participants different types of proceedings authors use the term "procedural situation" (V.V. Vapnyarchuk "procedural position of the person conducting the inquiry"), "procedural status" (O.I. Lytvynchuk "Procedural status of an investigator in the criminal process Ukraine").

At the same time, some researchers consider it possible to use the term "legal status" for certain characteristics by process (O.V. Belkova "The legal status of a witness in the criminal process Ukraine"). This O.V. Belkova in his study clearly indicate that the terms "legal status" and "legal status" is used as identical because

these concepts in its etymology synonymous [9, 10]. Said researcher is widely understood legal status of a person as socially acceptable system, the regulatory authority enshrined and guaranteed by the state possibilities person as legal entity [9, 9]. We think specified definition too broad interpretation of what constitutes "legal status".

O.H. Yushkevych uses the term "procedural and legal status" [10, 10-103], referring to the rights and obligations of certain participants in the process. However, in our view, the use of the term is possible only if a comprehensive disclosure and legal and procedural status. For example, consider reasonable use of the term for the study of individual, on the one hand, individuals can enter into any relationship that does not contradict the current legislation, on the other hand, the process of the individual can join as a plaintiff, defendant, a third party, the other party cases and in each case the said person acquires a certain procedural status. And if research will be mutual participation of an individual in the relationship and determine its place in the participants, in this study likely be used the term "procedural and legal status."

Among the scientists also observed the direction of deviation from the theoretical determination of the formulation of legal (procedural) status (position) by formulating the problem in more general terms (eg O.V. Anpilohova dissertation research on "Legal regulation of the prosecutor in administrative proceedings to protect rights and liberties", M.A. Maletycha on "An individual is interested in the case, as a participant in the economic process" that did not analyze the issue of legal or procedural status).

Regarding the latter work, in our view, the subject of the research "Individuals interested in the case, as a participant in the economic process" formulated incorrectly, because no such stakeholders as a "natural person" - in the individual can act as a plaintiff, defendant, third person interpreter, court expert, an official of the company, organization or other body.

Along with the recognition of the identity of the terms "legal status" and "legal status" believe that the term "legal status" has independent meaning. The latter notion is narrower and includes only the rights, duties and responsibilities. The legal position

(situation) is more extensive and voluminous concept includes legal, place in the system, principles, and guarantees of protection of rights.

In the procedural field can be transformed only the term "legal status" - a "procedural status", which includes the rights, duties and responsibilities of a person in the process. That is, the legal status regarding procedural status acts as a general and special.

As for the term "procedural provisions", then consider it possible to use this concept only apply for determining the location of a person in the system subjects (participants) process (procedural provisions of attorney as a representative of the parties in the case, the procedural provisions in the forensic expert), ie in cases when necessary to determine the range and content of a particular participant in relations with other participants.

On this occasion, interesting is the position and justification O.I. Lytvynchuka of "equivalence in meaning" concepts "procedural status" and "procedural situation", based on context, stylistic advantages you can use a particular phrase [11, 17].

Said the author examines the concept of "procedural status investigation" as a system enshrined in the Criminal Procedure Act the functions, rights and obligations of procedural guarantees and responsibility for investigating violations of the law that reflects the actual situation in its relations with other participants in criminal proceedings During the pre-trial investigation [11, 17] (emphasis added - TS).

Analyzing specified definition, it should be noted that the author brings the system functions, rights, obligations, warranties and liability to the location's process among others. Although, in our opinion, the procedural status of participant in the process - is stable, the vested participant in the process and does not depend on relations with other participants in the case. Undoubtedly, all participants are in a business relationship between a joint effort to achieve the purpose of the case - its decision and make the final act. However, we can say that the presence of a user process rights to participate in the case, to give explanations and evidence, participate in examination of evidence, inspect the case only "reflect his actual position in relations with other participants." Thus, any participant in the court is obliged to follow

instructions, it is important to treat other stakeholders al., But it does not determine its actual position in relations with other participants. Therefore we can not agree with this definition and identification of the procedural status of the terms "procedural status" and "procedural provisions."

Given the above and determining the ratio of "procedural provisions", "legal status" and "procedural status", it should be noted that, in our opinion, the procedural provisions subject is not part of either legal or procedural participant status process.

Thus, a priori individual has certain rights and opportunities not related to the judicial process, has legal capacity and that it takes to join the lawsuit and independently of him. The Commercial Court in attracting individual in the process only checks on legal entities, indicating the improper nature of the individual properties.

Enrolling in the process, for example, in the person of the plaintiff, a person acquires the procedural status of the plaintiff (all the rights, duties and responsibilities of any claimant in the economic process) and certain procedural position relative to other participants in the trial.

Therefore, we should recognize that capacity and capability of person (arising pursuant since birth and certain age) as the legal entity (which occurs at the time of its registration) belonging to the legal provisions. Entering the specific legal choosing specific economic activities (eg signing the supply agreement), people are given a certain legal status (rights, obligations and responsibilities for non-fulfillment of duties under the supply agreement), and the introduction to the process depending on which is party to the process specified person - the relevant procedural status.

That is, the legal status of a person available at any time, and procedural provisions, legal or procedural status - when entering a relationship (physical or procedural).

It should be noted that since joining the relationship as possible in the active form (eg, contract, filing a lawsuit plaintiff) and passive form (eg, in the case if the defendant does not appear in the process and did not provide any explanation of the case), the legal and procedural status simply means giving certain rights of the subject,

but not the obligation to use them. On the other hand, the economic court can establish the obligation to perform certain actions (attendance in court, giving an expert opinion, etc.), the failure of which could lead to negative consequences.

It should be noted that on the procedural status of the structure is also no consensus. Thus, the structure O.O. Bondarenko procedural status includes procedural rights, guarantees of procedural rights and procedural obligations retrospective responsibility for their failure [12, 6]. O.I. Lytvynchuk includes the structure of the procedural status functions, rights and obligations of procedural guarantees and liability for violations of the law [11, 6].

A.Ye. Holubov believes that its components are: subjective rights (freedom), legal obligations and legitimate interests of individuals [13, 8]. The above position is interesting because of the fact that a legitimate interest is the "engine" person in the case, and the system of rights and opportunities specific user process must be built based on the legitimate interests of the person. However, not always in the procedural law of Ukraine established the possibility to protect their rights to persons with circumstances beyond their control have not been involved in the process in the first instance. Only in the course of judicial reform in 2001 they received the right to lodge appeals, and only during the judicial reform of 2010 - the opportunity to initiate a process of appeal. However, a legitimate interest in getting these people said law was available, so the time is right has been established in law.

On the other hand, the procedural status - is legally established range of opportunities by a certain process. And legitimate interests do not belong to this circle, and only focus is improving legislation and aim to meet the person which enters the process.

**Conclusions.** Based on the above should summarize that the legal situation (situation) is the most broad concept and available in person at any time, and procedural provisions, legal or procedural status - when entering a relationship (physical or procedural).

Procedural provision places the user in the system stakeholders. Legal and procedural status include the rights, duties and responsibility for dereliction of duty that occur during participation in accordance with the material or procedural legal relationships.

Appropriate use of study seems to unify the terminology in substantive and procedural law to clearly outline the object and subject of research.

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