DOI: 10.32703/2415-7422-2019-9-1(14)-120-129

UDC 001:347

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The rights of juveniles in civil procedure (the 2nd half of the XIX century)

Abstract. *The article highlights the contribution of scientists of the Kyiv Law Society to solving the problems of juveniles, their legal personality, as well as the ability to act as an orator or respondent in the civil process. In the essay we made an attempt to determine The legal significance of the concept of legal personality, which consists of such components as: legal capacity, legal competence and delictual capacity under the current Ukrainian legislation. The analysis on legal sources operating on Ukrainian territories in the second half of the nineteenth century was carried out. It showed that all people aged from 14 to 21 were considered to be juveniles, and in turn were divided into two categories by age. In addition, it has been shown that the rights of representatives of different social classes were different, and various additional rules on custody and guardianship which enriched one and limited the rights of others. were constantly issued. This led to the fact that in the early '70s of the XIX century there were about fifteen types of guardianships. It has been noted that the given situation has led to the corresponding difficulties in the regulation of legal relationships, in particular, due to the lack of systematic rules on custodianship and guardianship. It has been shown how the members of the Kyiv Law society raised this issue and tried to initiate its solution at the legislative level. In particular, it has been shown that there wasn't a general opinion on the matter in the second half of the XIX century. First of all, due to the inconsistency of legal norms in various legal acts. The speeches of the Society members, in which they told about the peculiarities of the current practice on the given issue at that time have been highlighted. From these it has been concluded that the most common was the thought that gave a juvenile a certain independence in the right to sue and answer in court with the permission of the trustee. It has been noted how the inflexibility of the social and legal system hampered the development of civil law, primarily because of the conservative views of the aristocracy regarding the granting of rights and freedoms to other classes of citizens in the country. It has been traced how the development of certain issues of civil law in the activities of Ukrainian scientists led*

to an increase in the limits of the juvenile legal personality and the current full civil capacity of juveniles in the civil process.

Keywords: *the history of law; legal personality; rights of juveniles; legal capacity; active capacity; Kyiv Law Society*

Introduction

The Kyiv Law Society, which operated at the Kyiv St. Volodymyr University in the second half of the XIX century, worked in an interesting time for our country, namely at the time when many legal concepts were formed, which nowadays are firmly established in the Ukrainian legislation. Among such concepts, we want to highlight the term "legal personality", the formation of which took place in scientific circles just in the late XIX century.

In 1879, in the Kyiv Law Society there broke a lively debate regarding the legal personality of juveniles, in particular, their ability to independently be an orator or respondent in the civil process.

Research methods

In this research, a historical method of research, based on the study of the origin, formation and development of objects in the chronological sequence, through which an in-depth understanding of the essence of the problem is achieved has been used. In addition, a chronological method involving the presentation of historical material in a chronological order on all stages of the development of the historical phenomenon has been used. And also the principles of historical authenticity, objectivity, consistency and comprehensiveness have been used. General scientific methods: analysis, synthesis; as well as source-study and archival analysis (Pylypchuk, 2018; Pylypchuk & Strelko, 2017; Pylypchuk & Strelko, 2018).

Results and discussion

But first, we will consider the concept itself, its components and their significance in procedural legal relationships. First, *legal personality* is the ability of a person to act as a participant in a legal relationship, that is, to administer equitable right and legal responsibilities (Kelman & Murashyn, 2006, p. 274). It is divided into three components:

– *legal capacity* is a person's ability to have civil rights and responsibilities. It appears from the moment of birth and terminates with the deeming of a citizen to be deceased. This includes, for example, non-proprietary human rights (right to life, to a name, to housing, to a healthy environment and others). No citizen in his life can be deprived of civil legal capacity, but he may be limited in it. Law determines the content of civil legal capacity. In some areas, legal capacity emanates from a certain age or with a corresponding profession (for instance, the right to run for president of Ukraine is only at the age of 35).

– *legal competence* is the ability of a person to independently exercise his rights and responsibilities. A legal person carries out actions that entail legal consequences.

Full legal capacity comes with the attaining of majority that is from 18. In cases of marriage before attaining majority, full capacity is reached from the moment of marriage. With attaining majority, a citizen becomes sufficiently mentally mature, has certain life experience and can do any lawful actions.

Diminished capacity is reached by citizens aged from 14 to 18 years and has the following content: a) the right to dispose of his salary, scholarship or other income; b) independently exercise rights to the results of creative, intellectual activities protected by law; d) to be a participant (founder) of legal entities, if this is not prohibited by law or constituent documents of a legal entity; e) the right to contribute to and dispose of credit institutions.

A juvenile performs other acts with the consent of the parents (adopters) or trustees. Consent to commit a legal act by a minor must be obtained from any parent. In case of objection from the parent with whom the minor lives, the consent of the guardianship and trusteeship body is necessary.

Diminished capacity is provided to minors under the age of 14 years: a) the right to commit small household deals on their own; b) to exercise personal non-proprietary rights to the results of intellectual, a creative activity protected by law. A minor is not responsible for the damage he has caused. Responsibility is taken by parents or guardians.

Limited capacity can be determined by the court for citizens suffering from mental disorder, which significantly affects their ability to realize and (or) manage their actions; as well as those who abuse alcohol, narcotic drugs, toxic substances, etc., and thus places themselves or their families in a difficult financial situation. A limited-capable citizen can enter into agreements on the disposal of property only with the consent of parents or trustees. He can make only small household deals.

Recognition of a citizen as legally incapable can be made only by a court decision, if a citizen, as a result of a chronic, persistent mental disorder, is not able to realize the significance of his actions and (or) manage them. Recognition of a citizen as legally incapable entails certain legal consequences: a guardianship is established over him, he can't make any transactions. The guardian makes them instead of him and in his interests.

– *passive dispositive capacity* is the ability of a person to take legal responsibility for his wrongful acts, that is, offenses. Prerequisite for passive dispositive capacity is *mental capacity*, which is the ability to realize his actions and manage them at the time of committing a socially dangerous act (Tsyvilnyi kodeks Ukrainy, 2019, pp. 17–22).

All these components make it possible to consider the concept of "legal personality" as a subjective legal right - "right to a right", which exists within the framework of general legal relations in accordance with the norms of constitutional law. Of course, this includes the right of the person to be a plaintiff or defendant in court, including a minor.

In the second half of the XIX century, these concepts were not as clearly defined as now. Majority was reached at the age of 21. Children under the age of 14 were

considered to be juveniles and incapacitated and therefore had no right to exercise their rights. Minor children (14-21) were divided into two categories: the first (14-17) – juveniles, who had diminished capacity and had the right to dispose of their movable property; the second (17-21) – minors who were entitled to manage immovable property without the right to dispose of it (to sell, mortgage), which occurred only at the age of 21. For the juveniles and the first category of juveniles, there was an institution of guardianship, for the second category of juveniles there was an institution of custody (Derbakova, 2014; Cunningham, 2005).

In addition, during the XIX century, various additional rules custody and guardianship were constantly issued for different social classes, which resulted in the formation of about 15 types of guardianship in the late 1960s. Thus, in the second half of the XIX century, a difficult situation in the regulation of legal relationships was created, in particular, due to the lack of systematic rules on custody and guardianship (Kvas, 2014).

For comparison, we note that in today's Ukraine the institution of guardianship works for juveniles and persons recognized as incapacitated, and the institution of custody for minors and persons with limited capacity (Tsyvilnyi kodeks Ukrainy, 2019, pp. 27-32).

Domestic legislation was in a state of reform (the period of the reign of Emperor Alexander II), therefore, there were frequent differences between established norms and judicial practice. One of them was the issue of civil procedural rights of juveniles. In a word, it was about their legal personality in the civil process.

In Article 19 of the «Statute of Civil Proceedings» of 1864, the norm was fixed: «For everyone who is under guardianship … for their minority, their parents or guardians sue and are sued». At first sight, it is evident that this norm concerned only the first category of minors (14-17 years old), but in reality, it gave rise to a lot of incomprehensible court decisions and precedents. Practice showed that this norm was used for different categories of juveniles, in various aspects and situations, therefore, it urgently required the elaboration and explanation (Ortynska, 2017).

Therefore, at the meeting of the Kiev Law Society on September 15, 1878, the head of the Society, professor V. H. Demchenko raised this question and made a lecture in order to understand, in the end, whether the minors have the right to "to sue and to be sued" in court. In particular, he noted that both academics and judges did not hold one opinion, but in general, in legal literature and judicial practice, there were three different views on this issue:

– the first: all people under the age of 21 did not have legal personality in the civil process;

– the second: people of the secondary category of juveniles, aged from 17 to 21, had the right to act as plaintiffs or defendants in court only with the permission of parents or guardians;

– the third: people who reached the age of 17 received full legal personality judicial process.

As we can see, the logical category in this list was not included at all.

In fact, the formation of Art. 19 was based on the thought of the State Council about the abolition of various terms of infancy and juveniles, consolidated by the Imperial Court on April 27, 1864, according to which all persons under the age of 21 were recognized as minors, and till then they were given a guardianship.

Thus, V. H. Demchenko noted, that instead of the scheduled several articles, one in the above-mentioned editorial, which did not distinguish between the age of a minor, neither custody nor a guardianship, appeared in the Statute. At the same time, as in 1785, custody and a guardianship in domestic legislation began to be considered as independent institutions. And in general, he denied the procedural capacity of juveniles, regardless of age.

V. H. Demchenko's report caused some objections among the members of the Kyiv Law Society. So, the lawyer H. M. Barats noted that the State Cassation Department adhered to the idea based on Part 2 of Article 179 of Vol. X of The Digest of Laws of the Russian Empire, which pointed to the representation of the institution of guardianship and custody only in relation to mentally ill persons. All the juveniles aged from 14 to 21 had civil legal personality only with the permission of parents or trustees.

I. Ya. Davydenko noted that the practice of old courts always required the participation of trustees in the process. Especially in oral debates, because the court had to deal only with adults, not children.

M.P. Orlov emphasized that doubts and controversies around Article 19 could not be resolved at that time, as the reissue of Art. 19 provided for another organization of the guardianship that remained in the blueprint stage. And according to the old law, neither the trustee nor the underage person could act independently. Both of them had to participate. And according to the new Regulations of Civil Proceedings, such a procedure was not foreseen in general, and therefore could not be implemented. This explains the constant fluctuations of practice, which, of course, had to be stopped.

O. A. Kvachevskyi also drew attention to the fact that the protection of the rights of juveniles at court should occur with the participation of trustees, because the legal capacity of the plaintiff and the defendant was determined by substantive laws, and not procedural ones. laws, and not procedural ones.

To this V. H. Demchenko replied that, since the old laws of the court defined the functions of the trustees in relation to judicial protection differently (the trustees acted independently) than they were determined in relation to substantive civil law (the trustees acted in conjunction with juveniles), it was impossible to apply the rules of substantive civil right to their procedural activity.

P. K. Skordelli noted that juveniles have the right to sue and to be sued in court directly on their behalf in the perception of the trustee, who could not conduct a process without a minor, as the main interested person. He based his views on other norms of domestic legislation. In particular, he noted that both the old and the new Senate recognized that a person who had reached the age of 17 had to sue and to be sued in court on his own behalf, and not through a trustee. The jurisdiction of the case

was determined by the person of the juveniles, not the trustee, because the main person in the process is the minor himself, who owns the legal relationship, and in whose interests the case is conducted, and a trustee is an auxiliary person. After all, jurisdiction should have a solid foundation, which is the person of the juveniles (Prtokol zasedaniya #7, 1879).

V. P. Panasiuk expressed a strange idea that in this situation it is necessary to take into account not only the age of juveniles but also his status: whether he manages his real estate himself or not, after reaching the age of 17. According to him, if a juvenile manages it himself, he may have the relevant legal personality in court, and if his immovable property is managed by a trustee, then the latter should be responsible.

P. K. Skordelli replied to this that the difference between actual management and non-management of immovable property by a minor was not confirmed by the law, and therefore had nothing to do with this issue. By law, a person who has reached the age of 17 and received a trustee was considered to be in control of his property. It is inappropriate to attribute the capacity to sue and to be sued in the court to the fact of management. The right to sue and to be sued was the main part of a person's legal capacity. Therefore, with the achievement of the corresponding age, this capacity increases without any relation to the management or possession of immovable property. The same was about of the property of a minor in the form of bank capital, which the latter had the right to claim in the bank, after reaching the age of 17, with the consent of the trustee (Prtokol zasedaniya #8, 1879).

In general, the above-mentioned Article 19 of the "Regulations of Civil Proceedings" did not reflect any of the three above-mentioned views. But, as we can see from literature and jurisprudence, the second approach to its interpretation was the one that gave the juvenile a certain degree of independence in the right to sue and to be sued" in court with the permission of the trustee.

Unfortunately, such an incomprehensible situation on this issue remained until 1917. First of all, it was due to the inflexibility of the socio-legal system. The aristocracy, as a class, was so conservative, so afraid of losing its power that any reforms were perceived rather negatively than positively, especially in the legislative sphere.

Today, Article 47 of the "Civil Procedure Code" defines all the conditions of civil legal personality for both adults and juveniles:

«Individuals who have reached the age of majority, as well as legal persons, have the capacity to personally exercise civil procedural rights and perform their duties in court (civil procedural capacity).

Juveniles aged between fourteen and eighteen, as well as persons whose civil capacity is limited, may personally exercise civil procedural rights and perform their duties in court in matters arising from the relations in which they personally participate unless otherwise established by law. The court may engage in such cases a legal representative of a juvenile or of a person whose civil capacity is limited.

In the case of a marriage registration of an individual who has not reached the age of majority, he acquires civil procedural capacity from the moment of marriage registration. A juvenile, who is given full civilian capacity, also acquires civil procedural capacity» (Tsyvilnyi kodeks Ukrainy, 2019, p. 18).

Conclusions

As we can observe, in the late XIX century, there was a tendency to increase the limits of the legal personality of juveniles; as a result, nowadays we see the full civilian capability of this category of citizens in the civil process (Goncharova, 2017). Of course, the scope of the rights of a person and a citizen in the European community increased over time; so at the moment in Ukraine it is considered that a juvenile, aged from 14 to 18, is already capable to take responsibility for their actions in a civil proceeding, as well as to file claims against those who, in her opinion, exert illegal actions.

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Права неповнолітніх в цивільному процесі (друга половина XIX століття)

Анотація. *У статті висвітлено внесок вчених Київського юридичного товариства у вирішення проблем неповнолітніх, їх правосуб'єктності, а також можливості виступати у якості позивача чи відповідача у цивільному процесі. Визначено юридичне значення поняття правосуб'єктність, яке складається з таких складових, як: правоздатність, дієздатність і деліктоздатність за чинним українським законодавством. Проведено аналіз діючих у другій половині XIX ст. на українських землях джерел права, який показав, що усі особи віком від 14 до 21 року вважались неповнолітніми, і в свою чергу поділялись на дві категорії за віком. Крім того, показано, що права представників різних суспільних станів були різними, постійно видавались різні додаткові правила про опіку і піклування, що збагачувало одних і обмежувало в правах інших. Це призвело до того, що на початку 70-х рр. XIX ст. нараховувалось близько п'ятнадцять видів опік. Зазначено, що вказана ситуація призвела до відповідних складнощів у врегулюванні даних правовідносин, зокрема, через відсутність систематизованих правил про опіку і піклування. Відображено, як члени Київського юридичного товариства підняли це питання і намагались ініціювати його вирішення на законодавчому*

рівні. Зокрема, показано, що однієї загальної думки з даного питання в другій половині XIX ст. не існувало. В першу чергу через неузгодженість правових норм в різних нормативно-правових актах. Висвітлено виступи членів Товариства, у яких вони розказали про особливості діючої практики з даного питання на той час. Саме з них було зроблено висновок, що найпоширенішою була думка, яка давала неповнолітній особі певну самостійність в праві позиватись і відповідати у суді із дозволу піклувальника. Зазначено, як негнучкість соціально-правової системи гальмувала розвиток цивільного законодавства, в першу чергу, через консервативність поглядів аристократії стосовно надання прав і свобод іншим станам громадян в країні. Простежено, як розвиток певних питань цивільного права в діяльності українських вчених призвів до збільшення меж правосуб'єктності неповнолітніх у цивільному процесі і існуючої на сьогоднішній день повної цивільної дієздатності неповнолітніх громадян у цивільному процесі.

Ключові слова: *історія права; правосуб'єктність; права неповнолітніх; правоздатність; дієздатність; Київське юридичне товариство*

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Права несовершеннолетних в гражданском процессе (вторая половина XIX века)

Аннотация. *В статье освещен вклад ученых Киевского юридического общества в решение проблем несовершеннолетних, их правосубъектность, а также возможность выступать в качестве истца или ответчика в гражданском процессе. Определено юридическое значение понятия правосубъектность, состоящее из таких составляющих, как: правоспособность, дееспособность и деликтоспособность по действующему украинскому законодательству. Проведен анализ действующих во второй половине XIX в. на украинских землях источников права, который показал, что все лица в возрасте от 14 до 21 лет считались несовершеннолетними, и в свою очередь делились на две категории по возрасту. Кроме того, показано, что права представителей различных сословий были различными, постоянно издавались различные дополнительные правила об опеке и попечительстве, что обогащало одних и ограничивало в правах других. Это привело к тому, что в начале 70-х гг. XIX в. насчитывалось около пятнадцати видов опек. Отмечено, что указанная ситуация привела к соответствующим сложностям в урегулировании данных правоотношений, в частности, из-за отсутствия систематизированных правил об опеке и попечительстве. Отображено, как члены Киевского юридического общества подняли этот вопрос и пытались инициировать его решения на законодательном уровне. В частности,*

показано, что одной общей мысли по данному вопросу во второй половине XIX в. не существовало. В первую очередь из-за несогласованности правовых норм в различных нормативно-правовых актах. Освещены выступления членов Общества, в которых они рассказали об особенностях действующей практики по данному вопросу того времени. Именно из них был сделан вывод, что самой распространенной была мысль, которая давала несовершеннолетнему лицу определенную самостоятельность в праве судиться и отвечать в суде с разрешения попечителя. Указано, как негибкость социально-правовой системы тормозила развитие гражданского законодательства, в первую очередь, из-за консервативности взглядов аристократии по предоставлению прав и свобод другим сословиям граждан в стране. Прослежено, как развитие определенных вопросов гражданского права в деятельности украинских ученых привело к увеличению границ правосубъектности несовершеннолетних в гражданском процессе и существующей на сегодняшний день полной гражданской дееспособности несовершеннолетних граждан в гражданском процессе.

Ключевые слова: *история права; правосубъектность; права несовершеннолетних; правоспособность; дееспособность; Киевское юридическое общество*

Received 08.04.2019
Received in revised form 20.05.2019
Accepted 23.05.2019