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ОСОБЛИВОСТІ ПРАВОВОГО РЕГУЛЮВАННЯ ДІЄЗДАТНОСТІ НЕПОВНОЛІТНІХ ТА ПРОБЛЕМИ ЇХНЬОЇ ЕМАНСИПАЦІЇ

Анотація. *Стаття присвячена дослідженню та встановленню особливостей дієздатності неповнолітніх осіб, а також випадків надання їм повної цивільної дієздатності. Метою статті є розкриття окремих особливостей здійснення та захисту суб'єктивних цивільних прав неповнолітніх в межах своєї дієздатності, їх емансипації та формування конкретних пропозицій щодо вдосконалення приватноправового регулювання зазначених відносин. Проаналізовано положення чинного українського законодавства, присвяченого правовому регулюванню відносин щодо визначення обсягу цивільної дієздатності неповнолітніх осіб, а також законодавчий досвід зарубіжних країн, зокрема, Франції, Німеччини, Великої Британії, США тощо. Зроблено висновок про його неоднорідність, а також про існування різних за змістом законодавчих підходів як до визначення віку, з якого фізична особа вважається повнолітньою, так і до обсягу правомочностей, якими наділені неповнолітні. Досліджено іноземний досвід законодавчого наділення неповнолітніх можливістю розпоряджатись належним їм майном на випадок своєї смерті, а також підхід українського законодавця у частині врегулювання зазначених правовідносин. На підставі аналізу ст. 1234 ЦК України виокремлено специфічні риси права на вчинення заповіту в частині визначення його суб'єктів та сформульовано висновок про відсутність у законодавстві заборони вчинення заповіту неповнолітньою особою, що набула повну цивільну дієздатність в порядку, встановленому законом. Підтримано позицію науковців щодо необхідності нормативного закріплення можливості неповнолітніх вчиняти заповіт, однак із певними застереженнями, що обумовлені положеннями чинного цивільного законодавства, а також розроблено конкретні пропозиції щодо внесення змін до ЦК України. Зроблено висновок про правове закріплення отримання неповнолітнім статусу повністю дієздатної особи двома способами – наданням та набуттям. Водночас, під наданням повної цивільної дієздатності розуміємо прийняття компетентним органом (у цьому випадку органом опіки і піклування або судом) відповідного рішення за наявності передбачених законом підстав. Натомість набуття повної цивільної дієздатності в контексті ч. 2 ст. 34 ЦК України сприймається як результат самостійного вчинення неповнолітнім юридичної дії (у цьому випадку укладення шлюбу), яка передбачена законодавством і тягне за собою правові наслідки у вигляді отримання особою повної цивільної дієздатності без додаткового санкціонування з боку інших осіб чи держави*

Ключові слова: *фізична особа, правосуб'єктність, правоздатність, суб'єктивне цивільне право, обмеження цивільних прав, емансипація*

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FEATURES OF LEGAL REGULATION OF THE LEGAL CAPACITY OF MINORS AND PROBLEMS OF THEIR EMANCIPATION

Abstract. *This study investigated and established the specific features of the legal capacity of minors, as well as cases of granting them full civil legal capacity. The purpose of this study was to cover certain features of the implementation and protection of subjective civil rights of minors within their legal capacity, their emancipation and to develop specific proposals for improving the private law regulation of these relations. The study analysed the provisions of the current Ukrainian legislation on the legal regulation of relations on determining the scope of civil legal capacity of minors, as well as the legislative experience of foreign countries, in particular, France, Germany, Great Britain, the United States, etc. The authors of this study concluded that Ukrainian legislation is heterogeneous in nature, as well as that there are different legislative approaches to determining the age of majority of an individual, and to the scope of powers granted to minors. The study examined the foreign experience of legislative provision of minors with the opportunity to dispose of their property in case of their death, as well as the approach of the Ukrainian legislator in terms of governing these legal relations. Based on the analysis of Article 1234 of the Civil Code of Ukraine (hereinafter referred to as "the CCU"), the authors identified specific features of the right to make a will in terms of determining its subjects and concluded on the absence of legislative prohibition of making a will by a minor who has acquired full civil legal capacity in accordance with the procedure established by law. The position of scientists on the need for statutory consolidation of the ability of minors to make a will was supported, but with certain reservations conditioned by the provisions of the current civil legislation; the authors developed specific proposals for amendments to the CCU. It was concluded that a minor receives the status of a fully capable person in two ways – by granting and acquiring. At the same time, the granting of full civil legal capacity is interpreted as the adoption of an appropriate decision by the competent authority (in this case, the guardianship and custodianship authority or the court) provided the availability of grounds stipulated by law. Therewith, the acquisition of full civil legal capacity in the context of Part 2, Article 34 of the CCU is perceived as the result of independent performance of a legal action by a minor (in this case, marriage), which is stipulated by law and entails legal consequences in the form of obtaining full civil legal capacity without additional authorisation from other persons or the state*

Keywords: *individual, legal personality, legal capacity, subjective civil law, restriction of civil rights, emancipation*

INTRODUCTION

The civil status of minors constitutes an extremely complex, multidimensional, and dynamic phenomenon, the specific features of which are determined by numerous factors, namely the aspects of social and economic policy of the state. This, for its part, objectively necessitates the identification, pinpointing, and investigation of the fundamental components of the civil status of minors and the problems of their emancipation. However, modern civilistics has not yet developed a unified scientific approach to the main categories that describe this status. Over the past few decades, the study of the specific features of the legal personality of minors and its main elements has become of unprecedented importance, given the consolidation at the highest international level – in the Universal Declaration of Human Rights of 1948[1] and the International Covenant on Civil and Political Rights of 1966[2] – the provision that "everyone, wherever they are, have the right to recognition of their legal personality". Furthermore, this provision once

1. Universal Declaration of Human Rights. (1948, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_015#Text.
2. International Covenant on Civil and Political Rights. (1966, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_043/ed19661216#Text.

again demonstrates the manifestation of the principle of anthropocentrism as fundamental for building a social and legal state.

The current stage of development of the doctrine of legal personality in general and the legal capacity of minors in particular is described by dynamism and the emergence of innovative approaches to understanding legal personality. New scientific challenges require the scientific community and the legislator to accumulate efforts to timely respond to the emergence of new phenomena and ensure adequate legal regulation of the legal capacity of minors and the problems of their emancipation. In addition, nowadays, one can confidently say that the category of legal personality of minors in the legal doctrine consistently acquires features inherent in an interbranch legal institution, going beyond the subject of civil law.

The purpose of this study was to cover certain features of the implementation and protection of subjective civil rights of minors within their legal capacity, their emancipation and to develop specific proposals for improving the private law regulation of these relations.

1. MATERIALS AND METHODS

The scientific and theoretical framework for the study of legal regulation of relations in the field of legal capacity of minors and the problems of their emancipation included the papers of famous theorists and civilistic scientists of the pre-revolutionary, Soviet, and modern periods, who considered the basic principles of legal personality of individuals: M.M. Agarkov [1], S.S. Alekseev [2], V.I. Borysova [3], S.M. Bratus [4], M.V. Vitruk [5], V.P. Hrybanov [6], O.V. Dzera [7], A.S. Dovhert [8], I.V. Zhylinkova [9], Yu.O. Zaika [10], O.S. Ioffe [11], O.O. Kot [12], O.D. Krupchan [13], N.S. Kuznetsova [14], V. V. Luts [13], O.O. Kovalenko [15], R.A. Maidanyk [16], Z.V. Romovska [17], M.M. Sibilova [18], R.O. Stefanchuk [19], Ye.O. Sukhanov [20], Ya.M. Shevchenko [21], G.F. Shershenevych [22], S.I. Shymon [23], V.L. Yarotskyi [24] and others. On their basis, using philosophical, general scientific, and special scientific methods of cognition, the features of legal regulation of the legal capacity of minors and the problems of their emancipation were established.

The main empirical material used in the preparation of the study included the legal provisions that define the concept, content, and correlation of elements of civil legal personality of minors in civil law of Ukraine, features of its implementation, relevant theoretical provisions and conceptual approaches to understanding legal personality of minors, legislation of Ukraine, other countries and international agreements, as well as law enforcement and judicial practice in cases related to the exercise of legal personality of minors for further scientific development of vectors of legal science in the field of regulation of relations concerning emancipation, as well as the legal consequences that the minors' behaviour may lead to. The research methods were chosen in accordance with the purpose and objectives of the study, taking into account its object and subject. The methodology of this study includes information regarding the philosophical aspects, methodological and legal foundations of scientific cognition, the study of the structure and main stages of a scientific article, etc. The methodological framework of the study included philosophical, general scientific, and special scientific methods of cognition. In particular, *dialectical method* was used to investigate the terms "individual", "legal personality", "legal personality", "legal capacity", and establish their specific features. Furthermore, the use of the dialectical method allowed outlining objective prerequisites for the development of an effective mechanism for legal regulation of relations arising in the exercise of legal personality. *Aristotelian method* was used to formulate the concepts of legal personality of minors and the category of emancipation.

The use of the *synergistic method* made it possible to study and determine the nature of legal personality or minors in the totality of its main features and elements and establish connections between the elements of its structure. Use of general scientific methods, such as *analysis and synthesis,* allowed investigating the components of the legal personality of minors and the effectiveness of legal regulation of relations arising upon its exercise. *The comparative legal method* made it possible to identify and determine ways to implement the positive foreign experience in law-making, legal doctrine, and judicial practice in the field of legal regulation of relations on the exercise of the legal personality of minors in the Ukrainian legal system. This method also helped clarify conceptual approaches to understanding the concept of legal personality, theories of static and dynamic legal capacity.

Use of *judicial practice* helped establish an understanding of the essence of the legal personality of minors from the standpoint of judicial practice. *The method of legal modelling* was used to formulate relevant proposals and recommendations for improving the current legislation of Ukraine and the practice of its application.

2. RESULTS AND DISCUSSION

When studying the specific features of the legal capacity of minors, it is necessary to refer to the provisions of the current legislation governing relations in this area. Thus, according to Article 32 of the CCU[1], an individual between the ages of fourteen and eighteen is recognised as a minor. Analysing the provisions of this Article, one can conclude that the legislator has considerably expanded the scope of legal capacity of minors in comparison with the legal capacity of children. Thus, Part 1, Article 32 of the CCU indicates that, apart from transactions provided for in Article 31 of the CCU (i.e., making small household transactions and exercising personal non-property rights to the results of intellectual and creative activities), a minor has the right to:

1) independently manage their earnings, scholarship, or other income;

2) independently exercise the rights to the results of

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

intellectual and creative activities protected by law;

3) be a participant (founder) of legal entities, if this is not prohibited by law or the constituent documents of the legal entity;

4) independently conclude a bank deposit agreement (account) and dispose of the deposit made by them in their name (funds on the account).

At the same time, an exhaustive list of powers of minors aged 14 to 18 years indicates that the legislator states their inability to independently exercise other rights and perform obligations stipulated by civil legislation in comparison with adults. Moreover, Part 2, Article 32 of the CCU states that a minor makes other transactions with the consent of parents (adoptive parents) or guardians. This, in turn, as fairly noted by S.V. Reznichenko, is the reverse side of the legal status that reflects the aspect of interference in the fulfilment of their capabilities by parents (adoptive parents), guardians, or guardianship and custodianship authority. In this case, the legislation makes provision for a legal lever that can influence the course of civil relations, the subject of which is a minor, in particular, to restrict their rights. Proceeding from these factors, such a person is legally dependent and relatively non-independent [25, p. 14].

In this regard, it would be advisable to give examples of foreign experience in the legal consolidation of the scope of civil legal capacity of minors. Interesting, in particular, is the experience of France. Thus, according to Article 389 of the Civil Code of France, a person under the age of 18 is considered legally incompetent[1]. Their property is managed by their legal representatives, that is, their parents, and in case of their death, custodians. Parents are jointly and severally liable for damage caused by their minor children. They also enter into agreements on behalf of a minor until they reach the age of majority. However, in cases defined by law, a minor can independently enter into transactions with the consent of their parents or guardians. According to the provisions of French civil law, upon reaching the age of 16, a minor can only enter into a certain number of transactions without the consent of their parents (guardians). Such transactions include the conclusion of an employment agreement, the right to dispose of personal earnings and deposit in the bank, the right to make a will for half of the property bequeathed to minors, and other transactions that, according to Article 1305 of the Civil Code of France, are not unprofitable for a minor and do not violate their rights [26, p. 82].

In Germany, a person becomes fully capable from the age of 18. A child under the age of 7 is completely incapable. A person between the ages of 7 and 18 has limited legal capacity and, as a general rule, concludes transactions with the consent of legal representatives. However, a minor has the right to conclude some transactions independently. Apart from the possibility of entering into transactions that give legal benefits, minors can enter into transactions within the limits of funds received from a legal representative or other person (with the consent of their parents); transactions concluded as a result of the operation of an enterprise for which the legal representative's consent was obtained; transactions aimed at implementing and terminating an employment agreement. Tort – the ability to bear responsibility for the damage caused – is defined as a separate legal category in Germany. Thus, according to Paragraph 828 of the Civil Code of Germany[2], a person under the age of 7 is not responsible for damage caused to another person. A person between the ages of 7 and 10 is not responsible for damage caused to another person as a result of an accident involving a car or railway, except if he or she intentionally caused an injury. And according to Part 3 of the same Paragraph, a person under the age of 18 is not responsible for damage caused to another person, if, upon causing damage, they did not have the understanding necessary to realise their responsibility [27; 28].

In the United States and England, there is no concept of legal capacity in its classical understanding. In these countries, only the term "legal status" is used, which, according to judicial practice, is divided into passive and active legal status, although English civil doctrine does not clearly distinguish between these concepts. In the literal sense, active legal status is the ability to perform certain actions, which in Ukraine and in most European countries is called legal capacity [28]. As for the legal consolidation of the powers of minors, in England, until the age of 18, a person is considered a minor, their legal capacity is limited regardless of age. A minor can only conclude certain transactions, such as the purchase of necessary things and services; the possibility of entering into a personal employment agreement, etc. A special feature of the civil law of England is the presence of the so-called "unconditionally invalid transactions", that is, transactions to which a minor is not entitled. Such transactions include a money loan agreement, trade transactions, recognition of the balance of a counter-current account [29].

In the United States, the legal capacity of a minor is regulated similarly to English law. A person becomes fully capable from the moment of their majority, which in different states occurs between the ages of 18 and 21. If a person has not reached the age of majority, they are considered to have limited legal capacity. A feature of American judicial practice is the tendency to expand the legal capacity of minors by recognising the validity of a larger scope of transactions that minors can conclude and perform [30, p. 83].

The analysis of foreign experience in the legal consolidation of the scope of civil legal capacity of minors indicates its heterogeneous nature and the existence of various legislative approaches, firstly, to the establishment of the age from which an individual is considered an adult; secondly, to the actual application of the terms "legal status"

1. Civil Code of France. (1804, March). Retrieved from https://www.napoleon-series.org/research/government/c_code.html.
2. Civil Code of Germany. (2013, October). Retrieved from https://www.gesetze-im-internet.de/englisch_bgb/.

and "legal capacity" in law-making; thirdly, to the scope of powers that minor individuals are endowed with. At the same time, there is no doubt that each of these approaches is based on the corresponding legal traditions that form the foundation of a particular legal system.

The experience of France in securing the right to make a will for property for minors deserves special attention and consideration of this right through the lens of Ukrainian civil legislation and doctrinal approaches to the expediency of consolidating it. Most importantly, the authors of this study note that pursuant to Article 1234 of the CCU[1], only an individual with full civil legal capacity has the right to a will. The analysis of this Article enables the identification of specific features of the right to make a will in terms of determining its subjects. Thus, the right to make a will belongs exclusively to individuals; the right to make a will is conditioned by the acquisition of full civil legal capacity by an individual; the right to make a will does not stipulate that an individual reaches the age of majority. This suggests the possibility of a will made by a minor who has acquired full civil legal capacity in accordance with the procedure established by law. At the same time, the theoretical provisions of civilistics generally lack consensus regarding the possibility for minors to dispose of wages or scholarships by making a will [31, p. 38]. According to V.I. Serebrovskyi, minors cannot bequeath property because they have the right to independently use their earnings "for consumption", and the will does not have such a purpose [32, p. 99].

I.V. Zhylinkova's position is quite opposite – she believes that since the relevant article of the CCU gives minors the right to dispose of their earnings, scholarships, and other income, the transfer of such property by will is another way to dispose of it. Otherwise, there is a conflict: on the one hand, a minor has the right to dispose of their earnings, scholarship, and other income, and on the other hand, they do not have the opportunity to dispose of these funds by making a will [33, p. 23].

It is difficult to disagree with this position because according to Article 1233 of the CCU, a will is a personal order of an individual in case of their death. It is the private, personal nature of this document that indicates that there is no need for its approval by other persons. Furthermore, the legislative ban on making a will through a representative, which is stipulated by Article 1234 of the CCU, indicates the inadmissibility of any influence on the will of the testator, and only the personal will of the latter must be considered when making a will. The literature also expresses the opinion that the right to make a will, along with fully capable persons, should be granted to persons with incomplete civil legal capacity because the right to bequeath is a component of the term "disposal", and therefore, relating to specific property, minors should have a testamentary legal capacity [34, p. 10].

The legislative experience of foreign countries in securing the right to make a will for minors is quite different. Thus, according to the requirements of the legislation of the countries of the continental and Anglo-American legal systems, as a general rule, a will can also be made only by adults and fully capable persons, but there are exceptions to this rule. According to the Civil Code of Germany[2] a will can be made by a person who has reached the age of 16. A will made by a person who, due to mental illness, is incapable of understanding and evaluating the meaning of the instructions contained in it is considered invalid. Minors (from 16 to 18 years of age) can make a will only in the form of an oral application or transfer a written application to a notary.

According to the provisions of the Civil Code of France[3], a will is any document, the content of which expressly indicates the will of a person to engage in a testamentary disposition. A person who has reached the age of majority or an emancipated minor who has reached the age of 16 has the right to make a will. Non-emancipated minors who have reached the age of 16 can make a will for ½ part of the property that is theirs by right of ownership, and which they could dispose of if they were of legal age [35, p. 87].

According to English law, the ability to make a will arises only upon reaching the age of majority, namely from the age of 18. An exception is made for sailors during the voyage and military personnel who can make a will from the age of 14 [36, p. 230].

Under US legislation, the right to make a will arises at the age of 16. Some states, such as Georgia, have set an earlier age for achieving the ability to make a will – 14 years. Laws and judicial practice require that the testator be "competent", that is, understand what their actions, and determine wills made by incapable, mentally ill persons to be invalid, as well as those concluded with the use of violence, threats, deception, mistakes, etc. [36, p. 87; 37].

Based on the analysis of the above, one can state a global trend of moving away from the implicit condition that an individual has the right to make a will by acquiring full civil legal capacity or reaching the age of majority. On the contrary, the legislation of foreign states establishes a considerable number of exceptions for granting testability to persons who are not of legal age, as well as do not have full civil legal capacity. According to the authors, such an approach to solving the issue of the possibility of minors to be testators of their property is quite reasonable and adequate to modern social realities. Moreover, it does not contradict the current Ukrainian legislation in any way because, as already noted, minors aged 14 to 18 years have the right to independently dispose of the funds that they have acquired through their work, and, consequently, to determine their future legal fate in case of their death.

Considering the above, the authors deem it appropriate to support the position on the need for regulatory

1. Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15/ed20030116#Text.
2. Civil Code of Germany. (2013, October). Retrieved from https://www.gesetze-im-internet.de/englisch_bgb/.
3. Civil Code of France. (1804, March). Retrieved from https://www.napoleon-series.org/research/government/c_code.html.

consolidation of the ability of minors to make a will, but with certain reservations, which are stipulated by the provisions of the current civil legislation. Thus, if according to Part 1, Article 32 of the CCU[1] minors have the right to independently, at their own discretion, dispose of their earnings, scholarship, or other income, then in accordance with Part 2 of this Article, a minor must make a transaction relating to vehicles or immovable property with the written notarised consent of the parents (adoptive parents) or the guardian and the permission of the guardianship and custodianship authority. Part 3, Article 32 of the CCU is based on the same principle, which indicates that a minor can dispose of funds deposited in whole or in part by other persons in a financial institution in their name with the consent of the guardianship and custodianship authority and parents (adoptive parents) or a guardian. Consequently, the existing legislative restrictions on the minors' disposal of certain categories of property belonging to them make it impossible for potential minor testators to freely include it in a will without the corresponding approval of their parents (guardians) and the guardianship and custodianship authority. With this in mind, to provide minor individuals with the opportunity to fully dispose of their property in accordance with the current legislation and at the same time to protect the property rights and interests of minors, the authors of this study propose to amend Parts 1-2 of Article 32 of the CCU, wording them as follows:

"Article 32. Incomplete civil legal capacity of an individual between the ages of fourteen and eighteen

1. Apart from transactions stipulated by Article 31 of this Code, an individual between the ages of fourteen and eighteen (a minor) has the right to:

1) independently manage their earnings, scholarship, or other income, ***including by making a will***;

2. A minor makes other transactions with the consent of their parents (adoptive parents) or guardians.

For a minor to make a transaction relating to vehicles or immovable property, ***including wills****, there must be written notarised consent of the parents (adoptive parents) or the guardian and permission of the guardianship and custodianship authority".*

Furthermore, Article 1234 of the CCU should be supplemented with Part 2 and be worded as follows:

"A minor individual with incomplete civil legal capacity has the right to a will relating to the property belonging to them by right of ownership, considering the requirements of Parts 1-2 of Article 32 of this Code regarding the need to obtain the consent of parents (adoptive parents) or a guardian and the permission of the guardianship and custodianship authority for minor to make a transaction relating to certain types of property".

In the context of studying the specific features of civil legal capacity of minors, the issue of granting them full civil legal capacity in accordance with the procedure established by law is critical. This institution is widely known to all legal systems of the world under such a term as emancipation. In general, there is an opinion in society that a person acquires full civil legal capacity only after reaching the age of 18. However, in this regard, the position of I.F. Shershenevych is correct, that it is quite possible that a person will reach maturity before the legal term, and then it would be difficult for them to be under excessive guardianship; it is possible, on the contrary, that a person will remain mentally challenged even after reaching the age of majority, and then it would be dangerous to leave them without a mentor [38, p. 69].

As N.Ya. Dyachkova fairly noted, the basis for the emergence of emancipation in Ukraine was the need for legal regulation of existing relations due to the new economic structure of Ukraine and the rapid development of entrepreneurship, and the biosocial nature of human – the rapid acceleration of adolescents, etc. The forced unemployment of millions of adults has prompted their children to seek a certain source of income. The payment of extracurricular education, the unavailability of free higher education for many also contributes to the early growth of adolescents who seek to acquire economic freedom by their own work [39, p. 298]. Thus, the need to legislate the legal possibility of teenagers "reaching the age of majority ahead of schedule" is quite natural and objectively predetermined.

In general, emancipation emerged more than two thousand years ago in the Roman Empire and became one of those legal phenomena that are successfully used in the world to this day. Its primary importance, as a ritual for freeing persons from parental care, in the modern world has found its purpose in the procedure for granting full civil legal capacity to minors [40, p. 57].

"The Romans", as Dionysius explained to Greek readers, "have nothing of their own as long as their parents are alive, but both money and slaves, everything they have belongs to their parents" [41]. Parental authority was unlimited and ceased only with the death of the father, the death of the subject, or the receipt of certain honorary titles by the subject. However, the power of the home-owner as a unilateral right could be terminated artificially – the father had the right to release his son from his power at his own discretion. This procedure was called emancipation and originated as the antipode of the ritual of mancipation (mancipatio), through which Roman citizens concluded transactions with things and persons. That is, in case of the implementation of mancipatio relating to a person, they fell under the power of the home-owner, but if emancipatio was applied to a person, they were released from parental authority. Thus, emancipation (emancipatio) is a procedure for the release of a subordinate son by the will of pater familias (home-owner) [40, p. 58].

Notably, emancipation did not cease to exist with the fall of the Roman Empire, and, according to I.V. Zhylinkova has retained its primary importance in foreign law and is interpreted as the release of a person from guardianship and custodianship by parents or other authorised persons and the acquisition of the ability to

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

acquire rights and obligations by their actions, that is, the acquisition of full civil legal capacity by a person [27]. Thus, for example, Article 477 of the Civil Code of France[1] establishes the possibility of withdrawal from parental care if the person reaches the age of 16. The legal status of an emancipated person in this country is close to the legal status of an adult, but at the same time it has a number of restrictions. In particular, an emancipated minor cannot engage in business activities [37].

Considering the experience of Spain, according to Article 323 of the Spanish Civil Code[2], an emancipated person cannot borrow money, alienate their real estate or objects of special value without the permission of their parents (guardians) [37]. In the United States, only some states regulate the emancipation. According to Paragraphs 62, 64 of the Civil Code of the State of California[3] a person aged 14 to 18 years is considered emancipated if he or she marries, enrols military service, or by a court decision [40, p. 58].

According to the provisions of the legislation of the Czech Republic, a minor can be declared fully capable by a court decision if he or she has reached the age of 15, their ability to earn a living independently and solve their issues is confirmed, as well as with the consent of the legal representative of the minor (Part 1, Para. 37 of the Civil Code of the Czech Republic)[4].

At the same time, emancipation does not find its legislative consolidation in all countries of the world. Thus, in Germany, after reducing the age of majority to 18 years, emancipation lost its significance and the corresponding paragraphs of the Civil Code were removed [42]. Furthermore, the emancipation procedure is also absent in such countries as Denmark, the Netherlands, England. [43, p. 861].

The analysis of the regulatory consolidation of the emancipation procedure in the legislation of foreign states indicates a variation in approaches to the possibility of minors to acquire full civil legal capacity, which is quite natural given the specific features of the legal customs of a particular state, which in turn are caused by the features of historical and social development.

At the same time, the legislation of Ukraine, as well as, for the most part, in European countries, also establishes emancipation as an institution. However, Z.V. Romovska made a reservation that "granting minors full civil legal capacity is both good and bad because, on the one hand, it eliminates obstacles to full social activity; on the other hand, because the minor becomes an independent subject of risk and responsibility, losing the possibility of partially transferring them to parents, guardians". In this regard, according to Romovska, the provision of full civil legal capacity should be approached carefully and mindfully [17, p. 254].

Evidently, guided by the need for special protection of the interests of minors, the Ukrainian legislation approached the issue of regulating the procedure for emancipation cautiously, providing an exclusive procedure for obtaining full civil legal capacity by minors in the CCU provisions. Thus, according to the provisions of Article 35 of the CCU, full civil legal capacity can be granted to an individual who has reached the age of sixteen and works under an employment agreement, as well as to a minor who is recorded by the mother or father of the child. Full civil legal capacity is granted by a decision of the guardianship and custodianship authority at the request of the interested person with the written consent of the parents (adoptive parents) or the guardian, and in the absence of such consent, full civil legal capacity may be granted by a court decision. Full civil legal capacity may be granted to an individual who has reached the age of sixteen and wishes to engage in entrepreneurial activity. With the written consent of the parents (adoptive parents), guardian or guardianship authority, such a person may be registered as an entrepreneur. In this case, an individual acquires full civil legal capacity from the moment of state registration as an entrepreneur. Full civil legal capacity granted to an individual applies to all civil rights and obligations. In case of termination of the employment agreement or termination of business activities by an individual, the full civil legal capacity granted to him/her remains.

Furthermore, the full civil legal capacity of an individual before reaching the age of majority is also mentioned in Part 2, Article 34 of the CCU, according to which in case of marriage registration of an individual who has not reached the age of majority, he or she acquires full civil legal capacity from the moment of marriage registration. Thus, the analysis of these legislative provisions suggests that a minor receives the status of a fully capable person in two ways – by granting and acquiring. At the same time, the granting of full civil legal capacity is interpreted as the adoption of an appropriate decision by the competent authority (in this case, the guardianship and custodianship authority or the court) provided the availability of grounds stipulated by law. For its part, the acquisition of full civil legal capacity in the context of Part 2, Article 34 of the CCU is perceived as the result of independent performance of a legal action by a minor (in this case, marriage), which is stipulated by law and entails legal consequences in the form of obtaining full civil legal capacity without additional authorisation from other persons or the state.

Therefore, mandatory prerequisites for granting minors full civil legal capacity are as follows:

1) reaching the age of 16 and working under an

1. Civil Code of France. (1804, March). Retrieved from https://www.napoleon-series.org/research/government/c_code.html.

2. Civil Code of Spain. (1889, July). Retrieved from https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5a8ad42e4.

3. Civil Code of the State of California. (1872). Retrieved from https://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=CIV.

4. Civil Code of the Czech Republic (2012, February). Retrieved from http://anesro.com/downl/zakon/89-2012_Sb.pdf.

employment agreement;

2) reaching the age of 16 and wanting to engage in entrepreneurial activity;

3) recording of a minor by the father or mother of a child, regardless of the age of the minor.

At the same time, for persons engaged in labour activity or recorded by the father/mother of the child, the provision of full civil legal capacity is subject to the written consent of legal representatives. In the absence of such consent, full civil legal capacity may be granted by a court decision. At the same time, it appears rather strange and incomprehensible that a minor is not assigned the opportunity to obtain full civil legal capacity if there is a desire to engage in entrepreneurial activity in the absence of written consent of parents (adoptive parents), a trustee or a guardianship and custodianship authority in court.

This situation is also reflected in the procedural legislation. Specific features of court proceedings on cases of granting a minor full civil capacity are contained in Article 301 of the Civil Procedural Code of Ukraine, according to which the statement of a minor, who has reached sixteen years of age, requesting to grant them full civil capacity in cases established by the CCU, in the absence of the consent of parents (adoptive) or guardian is submitted to the court of residence. Therewith, according to the provisions of Article 302 of the Civil Procedural Code of Ukraine, the application for granting a minor full civil legal capacity must contain data that the minor works under an employment agreement or is the mother or father of the child in accordance with the civil status certificate[1].

Analysis of the grounds defined in Article 35 of the CCU for granting a minor full civil legal capacity suggests that different grounds for acquiring full civil legal capacity by minors are conditioned by different goals of the legislation. Thus, it is quite true that the emancipation of minors engaged in labour or entrepreneurial activity is carried out for stimulating, encouraging them to be involved in civil (entrepreneurial) turnover without waiting for the coming of age [44, p. 48]. Emancipation of minors based on their recording by their mother or father of the child is carried out not for stimulating them to give birth to children by minors, but for fully performing parental duties and the possibility of protecting the rights and freedoms of their children (since in case of failure to provide minor parents with full legal capacity, both they and their young new-born children will actually have incomplete and partial legal capacity, which will not allow them to become full members of society) [45, p. 115]. Thus, it can be confidently stated that each of the legally defined grounds for granting a person full civil legal capacity is a weighty argument in favour of the need to ensure the possibility of a minor to become a full-fledged subject of civil legal relations and, accordingly, a carrier of the entire range of rights and obligations stipulated by civil legislation. Considering the above, the possibility of minors to obtain full civil legal capacity in court in the absence of the consent of legal representatives constitutes an additional legislative guarantee aimed at protecting the interests of minors and preventing abuse of legal rights by their rights and obligations relating to children (minors).

According to the authors of this study, entrepreneurship in its essence and meaning is as similar as possible to working under an employment agreement, and in some cases, the risks of entrepreneurial activity are much higher than self-employment. Regarding the dynamic growth of the role of entrepreneurship for young people, the literature contains fair points that today, when information technology is developing rapidly, numerous new human activities have emerged, including professions that are opened before reaching the age of majority. The "sale" of intellectual abilities and their results by minors is now fairly commonplace. Moreover, self-fulfilment in these types of activities is possible not only through the conclusion of employment agreements, but also through self-organisation of individual work, that is, through the implementation of entrepreneurship or the conclusion of separate civil agreements. One should not forget that young men and women are currently active not only in the field of information technologies or the creation of objects of intellectual property rights, but also in the "conventional" branches of entrepreneurship: retail trade, service provision, etc. [15, p.36].

Considering the above, it is necessary to introduce appropriate amendments to the Civil Code of Ukraine and the Civil Procedural Code of Ukraine regarding ensuring the possibility of minors to obtain full civil legal capacity by a court decision in the absence of the consent of legal representatives. In particular, the authors of this study propose to word Paragraph 2, Part 3, Article 35 of the CCU as follows:

"With the written consent of the parents (adoptive parents), guardian or guardianship authority, such a person may be registered as an entrepreneur. In this case, an individual acquires full civil legal capacity from the moment of state registration as an entrepreneur. In the absence of such consent, full civil legal capacity may be granted by a court decision".

Furthermore, the authors also consider it appropriate to support the proposal of M.V. Mishchenko regarding the presentation of Article 302 of the Civil Procedural Code of Ukraine in the following wording:

"Article 302.

Content of the statement.

1. The statement for granting a minor full civil legal capacity must contain information that the minor works under an employment agreement, or is the mother or father of the child in accordance with the civil status certificate, or has other grounds for acquiring full civil legal capacity stipulated by the legislation of Ukraine" [45, p. 116].

Summarising this stage of research, the analysis of the current legislation aimed at the legal regulation of relations in the field of determining the legal capacity

1. Civil Procedural Code of Ukraine. (2004, March). Retrieved from https://zakon.rada.gov.ua/laws/show/1618-15#Text.

of minors, as well as theoretical developments on this subject, indicates the existence of a considerable number of problematic issues that necessitate an in-depth study and solution. Considering the above, as well as factoring in the constant dynamic development of public relations, the features of the legal capacity of minors should become the subject of periodic scientific study of a legal, socio-economic, and psychological nature, and the results of these studies should be updated and correspond to the current level of society development. This, for its part, will ensure timely and adequate changes in legislative provisions in this area to maximise the protection of the rights and interests of minors.

CONCLUSIONS

The analysis of foreign experience in the legal consolidation of the scope of civil legal capacity of minors indicates its heterogeneous nature and the existence of various legislative approaches, firstly, to the establishment of the age from which an individual is considered an adult; secondly, to the actual application of the terms "legal status" and "legal capacity" in law-making; thirdly, to the scope of powers that minor individuals are endowed with. At the same time, there is no doubt that each of these approaches is based on the corresponding legal traditions that form the foundation of a particular legal system.

Having analysed the scope of legal capacity of children under the age of 14 under the civil legislation of Ukraine, one can come to the conclusion that in general, the provisions that currently govern these issues can create sufficient legal conditions for the exercise and protection of subjective civil rights of minors. It can be stated that there is currently a situation of expanding cases of independent participation of minors in civil relations, which actually goes beyond the limits of partial legal capacity granted to them by law. Therewith, to expand the opportunities of this category in modern civil legal relations, as well as to solve some problematic and controversial issues, the requirements of the legislation regarding the establishment of a minimum age for acquiring partial legal capacity, expanding the scope of legal capacity of minors, as well as providing them with the opportunity to independently apply for free legal aid to protect their subjective rights and interests, including civil ones, need to be improved.

The authors deem it appropriate to support the position on the need for regulatory consolidation of the ability of minors to make a will, but with certain reservations, which are stipulated by the provisions of the current civil legislation. Thus, if pursuant to Part 1, Article 32 of the CCU minors have the right to independently, at their own discretion, dispose of their earnings, scholarship, or other income, then in accordance with Part 2 of this Article, a minor must make a transaction relating to vehicles or immovable property with the written notarised consent of the parents (adoptive parents) or the guardian and the permission of the guardianship and custodianship authority. Part 3, Article 32 of the CCU is based on the same principle, which indicates that a minor can dispose of funds deposited in whole or in part by other persons in a financial institution in their name with the consent of the guardianship and custodianship authority and parents (adoptive parents) or a guardian. Consequently, the existing legislative restrictions on the minors' disposal of certain categories of property belonging to them make it impossible for potential minor testators to freely include it in a will without the corresponding approval of their parents (guardians) and the guardianship and custodianship authority.

RECOMMENDATIONS

Considering the global trend of moving away from the implicit condition that an individual has the right to make a will by acquiring full civil legal capacity or reaching the age of majority, it is appropriate to pay attention to the legislation of foreign countries, which establishes a considerable number of exceptions for granting testaments to persons who are not of legal age, as well as do not have full civil legal capacity. According to the authors, such an approach to solving the issue of the possibility of minors to be testators of their property is quite reasonable and adequate to modern social realities. Moreover, it does not contradict the current Ukrainian legislation in any way because, as already noted, minors aged 14 to 18 years have the right to independently dispose of the funds that they have acquired through their work, and, consequently, to determine their future legal fate in case of their death.

Each of the legally defined grounds for granting a person full civil legal capacity is a weighty argument in favour of the need to ensure the possibility of a minor to become a full-fledged subject of civil legal relations and, accordingly, a carrier of the entire range of rights and obligations stipulated by civil legislation. Considering the above, it is recommended to pay attention to the minors' possibility of obtaining full civil legal capacity in court in the absence of the consent of legal representatives, which has to be an additional legislative guarantee aimed at protecting the interests of minors and preventing abuse of legal rights by their rights and obligations relating to children (minors).

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