

Малолітні особи згідно з чинним законодавством не мають цивільної процесуальної дієздатності, тому їхні права в суді захищають виключно законні представники. Проте це не позбавляє малолітніх цивільної процесуальної правоздатності, чим зумовлений обсяг прав, передбачений ст. 27 і 27-1 ЦПКУ (приклад практичної реалізації яких – у наведеній справі Чуднівського суду).

Отже, малолітні та неповнолітні є специфічними суб'єктами цивільних процесуальних відносин, бо, з одного боку, до них застосовують положення цивільного процесуального законодавства, як до осіб, котрі беруть участь у справі, або як до інших учасників судового процесу (коли вони виступають свідками), а з другого – суд повинен враховувати пріоритетність інтересів цих категорій, на підставі чого приймати рішення щодо необхідності залучення законного представника або його заміни.

Для отримання можливості активної участі в судочинстві, що сприятиме повнішій реалізації права на захист, малолітня чи неповнолітня особа має виступати повноправним учасником цивільного судочинства, наділений відповідними процесуальними правами та обов'язками для захисту свого права в межах дієздатності.

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12. Ухвала Чуднівського районного суду Житомирської області у справі № 22-ц-2013/10р від 15 травня 2010 року.

29

# Participation of Minor Children and Juveniles as Parties to Civil Actions

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**This article is devoted to the problems of the participation of minor children and juveniles in civil actions. Minor children and juveniles are proven to be specific subjects of civil procedural relationships. A minor child or a juvenile should act as a full participant in civil proceedings vested with the relevant procedural rights and responsibilities within the legal ability of protecting their rights. The author makes conclusions regarding the existence of the necessity of ensuring their procedural opportunities to protect or recognize the substantive rights they have due to their legal ability.**

**Keywords:** minor child, juvenile, civil procedural legal capacity, civil procedural legal ability, trial, justice

The participation of juveniles in civil proceedings is becoming increasingly important because they bear certain civil rights and responsibilities which need to be protected, recognized or disputed and give rise to civil procedural relationships. Civil and civil procedural legal personalities are closely interrelated that reflects the dialectical relationship between substantive and procedural law. Subjects of civil procedure law are vested with the procedural legal capacity and ability to enable them to properly protect their rights and interests. People with incomplete civil legal ability should also be able to apply to the courts for their protection, and therefore are to be granted with a civil procedural legal personality to the extent which would enable them to restore the infringed right or demand its acceptance.

The peculiarities of the participation of minor children and juveniles in civil proceedings have always drawn the attention of scientists. In particular, this issue has been studied by the following foreign and domestic researchers:

D. Ionova, L. Kondratieva, Z. Romovska, L. Sapeiko, T. Faddeeva, etc. However, despite previous researches, some aspects of a juveniles' participation in civil proceedings are not clearly defined, in particular, due to the dynamism of the development of Ukrainian legislation.

The purpose of this article is to explore the status of juveniles and the conditions of and grounds for their participation in civil procedural relations. Therefore, it is necessary to resolve the following issues: to determine who, in accordance with the provisions of current legislation, are classified as minor children and juveniles; to define the origins of the specialties of their civil procedural legal capacity and ability; to clarify the scope of their rights and responsibilities; to examine whether they are vested with a sufficient breadth of rights.

First of all, it should be noted that legislators are to provide an adequate scope of the civil procedural legal ability of juveniles which, on the one hand, would ensure the rights of

such people and, on the other hand, would not enable them with rights that cannot be realized because of their age. The Preamble to the Convention on the Rights of the Child, adopted by the UN General Assembly on 20 November 1989 and ratified by the Verkhovna Rada of Ukraine on 27 February 1991, states that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection" [1: 145]. Principle 8 of the Declaration of the Rights of the Child envisages: "The child shall in all circumstances be among the first to receive protection and relief".

In analyzing the provisions of the UN Convention on the Rights of the Child of 20 November 1989 one can conclude that children are not the objects of law because they act as its subjects enjoying full rights. Ukrainian legislation shares this statement, e.g. the Family Code of Ukraine considers a child as an independent party to legal relationships. The law stipulates that minor children and juveniles are vested with a set of civil rights which include both property and personal non-property. To ensure these rights, children should also be vested with the appropriate procedural rights.

The prerequisites for the participation of minor children and juveniles in civil actions are laid down in Article 129 of the Constitution of Ukraine which states that the basic principles of justice are the equality of all parties before the law and the court; the competitiveness of the parties and freedom to give their evidence and prove their credibility to the court, etc. [2: 141]. It is obvious that this part of the Constitution does not envisage restrictions for juveniles.

The civil procedural legal capacity and ability of juveniles are defined by the Civil Procedure Code of Ukraine. However, after analysis of the content of certain provisions, it has become clear that they are referential in nature, i.e. determine that the scope of civil procedural legal ability depends on the civil legal ability. The civil legislation identifies the following types of civil legal ability: partial, incomplete and complete. Thus, under part 1 of Article 31 of the Civil Code of Ukraine (hereinafter, the CCU) [4: 356], a person is considered to be a minor child and to have a partial civil legal ability of a physical person before he/she reaches the age of 14 years old. In accordance with part 1 of Article 32 of the CCU, a juvenile having incomplete civil legal ability is a person aged from 14 to 18 years old. People who are of the age of 18, i.e. come of legal age, obtain complete civil legal ability (part 1 of Article 34 of the CCU).

As regards the civil procedural legal ability, i.e. a person's ability to realize his/her civil procedural rights and carry out his/her responsibilities in a court, it should be noted that, in accordance with part 1 of Article 29 of the Civil Procedure Code of Ukraine (hereinafter, the CPCU), this kind of legal ability is vested to physical persons of full age. Only in specific cases the obtaining of complete civil legal ability is connected with a specific event. For instance, the provisions of part 3 of Article 29 of the CPCU [5: 492] provide that in the case of when a physical person under the full age registers his/her marriage, he/she obtains civil procedural legal ability on the day when the marriage is registered, and in other cases, in accordance with the procedures prescribed by the CPCU. The analysis of the above-mentioned rules proves that the obtaining of the complete civil legal ability by a juvenile results in his/her gaining of the civil procedural legal ability.

Since, as has already been noted, the law divides juveniles into two groups, the whole spectrum of their rights and responsibilities should be considered separately.

According to Article 28 of the CPCU, all physical persons are able to have the civil procedural rights and responsibilities of a party, a third party, a plaintiff, and an interested person (the civil procedural legal capacity). The contents of the rule shows that minor children and juveniles are not an exception in this case. However, according to part 2 of Article 29 of the CPCU, juveniles aged from 14 to 18 years old, as well as those

people whose civil legal ability is limited, may personally exercise civil procedural rights and carry out their responsibilities in court cases arising out of their personal relationships if no other is provided by law. In addition, the court may engage a legal representative of such citizen to participate in the proper cases. In order to specify the manner in which it should be done, pursuant to Law № 1397-VI of 21 May 2009 the CPCU was amended with Article 27-1 'The ensuring of protection of minor children or juveniles' rights in the proceedings' which envisages the procedural forms of their participation. Thus, except for the rights and responsibilities defined in Article 27 of the CPCU, during proceedings a minor child or juvenile also has the following procedural rights: to express his/her opinion directly or through a representative or legal representative, and to receive the latter's help in expressing this opinion; to get information about the trial through a representative or legal representative; to exercise other procedural rights and carry out procedural responsibilities foreseen by law.

As an example of the civil procedural legal ability of juveniles, one can define the rule enshrined in Article 18 of the Family Code of Ukraine (hereinafter, the FCU) [3] which states that each participant of family relations who has reached the age of 14 is entitled with the right of direct appeal to the court in order to protect his/her rights or interests.

In commenting on Article 18 of the FCU, scientist Z. Romovska [Romovska, 2003] indicates that the rule of this Article establishes that a child who is 14 years old obtains civil procedural legal ability. He/she has the right to file a claim, and therefore acquires the procedural rights of a plaintiff and/or a defendant (e.g., in the cases of recognition of paternity, recovery of alimony, abolishment of adoption, etc.). However, in these cases one cannot state the obtaining of a complete civil procedural legal ability by a juvenile because the CPCU defines when this person can participate in civil cases as a separate subject. That is, if the situation concerns family relationships and a juvenile is protecting his/her rights, he/she has the appropriate civil procedural legal ability. Thus, when a child takes part in a case, for example, to recognize the invalidity of a deposit agreement but he/she doesn't have the proper civil legal ability to conclude it, the child has no right to be a party to such a dispute. So, the provisions of the CPCU which state that such categories of children have civil procedural legal ability in the cases they are personally involved in, on the one hand, provide them with a real mechanism to protect such rights, and, on the other hand, do not grant them more legal ability than is specified by the substantive norms of civil law. This approach is based on the study of the subjects of civil procedure law and civil procedural relations. According to scientist S. Fedulova, the court considering the cases, shall decide who has the appropriate right and who has the legal responsibility, i.e. who is the subject of substantive relations. The subject structure of substantive relations is reflected into procedural ones [Fedulova, 2007: 43-56].

Moreover, according to the contents of part 2 of Article 23 of the FCU, a person, who has reached the age of 16, can file an application in order to obtain the right to marriage under a court decision if it is proven that this meets his/her interests. Prescribing such a procedure for obtaining the right to marry by juveniles, legislators have provided ones with the opportunity to verify the compliance of those actions with the interests of an individual by the court.

Another peculiarity of ensuring the rights and legitimate interests of minor children and juveniles in civil actions is the legal affirmation of the court's right not to accept the refusal of a plaintiff from a claim, the recognition of the claim by a defendant in the case where a person is represented by a legal representative if his/her actions contradict the interests of a person he/she represents (part 5 of Article 174 of the CPCU). Legislators have also used this approach in the



cases of amicable agreements (part 6 of Article 175 of the CPCU). Meanwhile, articles 174 and 175 of the CPCU do not raise the issue regarding court analysis of the legality of the acceptance or denial of a claim by a plaintiff who uses his/her own discretion in determining whether these actions are in compliance with the interests of a juvenile [Sapeiko, 2010]. In this respect, the civil procedure law does not consider the possible participation of a juvenile as a party to the case who (if the court rejects the refusal of the claim, its acceptance or amicable agreement, and the judgment in the case) can face negative consequences in the form of the impossibility to re-appeal to the court in person or through a representative, or satisfaction of the obviously ungrounded demands of a plaintiff.

The issue of the procedural position of juveniles in cases where claims are filed in order to protect their rights by other people in the situations as foreseen by family law (e.g., on the determination of paternity, recovery of alimony, participation in the process of children's upbringing) still remains disputable.

So, the scientific works regarding family law mainly represent the view according to which the plaintiff in such cases is a person who acts to defend the rights of other individuals (Article 45 of the CPCU), i.e. to protect the interests of a child. Scientist T. Faddeeva [Faddeeva, 1976] states that the subjects authorized to receive alimony from parents are the children themselves. However, in these cases a claim shall not be filed by the child but in the interests of this child on behalf of a person who is actually raising him/her, that is why that person is a plaintiff in the case. One can agree with this view only regarding minor children because, as has been noted, 14-year-old people who have family relationships are entitled to a direct appeal to the court for the protection of their rights or interests. For all that, the participation of their legal representative is not excluded but it is not mandatory as opposed to those cases regarding the protection of the interests of a minor child (parts 1, 2 of Article 39 of the CPCU).

One should take into account that the duty to upkeep a child to the age of 18 is equally entrusted by legislators to both of his/her parents, so if a juvenile refuses or does not initiate the recovery of alimony for his/her maintenance from the other parent, all such expenses are actually placed on the second parent. Thus, one considers the following position of legislators to be reasonable: the person authorized to protect the interests of a child, i.e. the parent who upkeeps him/her, can be a plaintiff in these cases.

We should note that a juvenile does not meet any limitations while implementing their procedural rights and responsibilities in civil cases where the subject is substantive relations which they can enter by themselves. Even the fact that, in accordance with part 2 of Article 29 of the CPCU the court may involve a legal representative in such a case, does not change the situation because the position of a legal representative would not prevail over the juvenile's opinion. It should be mentioned that this concerns only the cases when juveniles realize their civil procedural rights and fulfill their responsibilities in those court cases arising out of relationships which they are personally involved in.

Juveniles are full parties to civil actions and can use all their procedural rights defined by law within the relationships they are personally involved in. Civil cases involving juveniles are considered in court hearings under the rules of the general procedural order contained in the Civil Code of Ukraine, and their consideration in court is almost identical to the consideration of other civil cases.

In view of this, one could believe that the proposal of scientist D. Ionova [Ionova, 2009] seems to be disputable as it concerns the need to assign to juveniles aged from 14 to 18 the right to give their own oral and written explanations and arguments on all issues arising during court hearings; to put questions to other people involved in the case; to submit evi-

dence and participate in the process of their examination; to apply for the reclamation of evidence and subpoena of witnesses; to review case materials; and to participate in court debates. In acquiring complete procedural legal ability they, like the other participants of civil actions, receive all of the above-mentioned rights.

A juvenile can appear before the court not only as a plaintiff but also as another participant of civil actions, e.g. a defendant, a third party, etc. In this case, he/she will take part in the civil actions not by their own initiative. Thus, according to Article 1179 [4: 356] of the Civil Code of Ukraine, juveniles are independently responsible for the damage caused by themselves on a general basis. If a juvenile does not have property which is sufficient to reimburse the damages caused by him/her, they shall be partly or completely reimbursed by his/her parents (adoptive parents) or the ward unless they prove that the damages were caused due to their fault.

Taking into account the above-mentioned facts, a juvenile who is a party to a civil case can have both complete and incomplete civil procedural legal ability.

Moreover, it is necessary to analyze the responsibilities of the people involved in the case and the juvenile's inability to perform such responsibilities if they are the subjects of a civil procedural legal relationship.

The responsibility to collect and submit evidence for the confirmation of demands and objections of the parties has great importance amid all the procedural obligations. The timeliness and accuracy of the resolution of a case on its merits depends on the fulfilment of that responsibility. It is quite difficult for juveniles to determine the necessary range of evidence in a case and assemble it by themselves. According to L. Kondratieva [Kondratieva, 2006], during a hearing, the court may determine that a juvenile participant does not have the necessary legal knowledge and life experience to protect his/her rights and interests. In this situation, a legal representative who will provide legal assistance to such a child must be introduced. That is, under these circumstances, the participation of a legal representative is not only justified but also necessary as the court is obliged to promote the full and complete exploration of the factual background of the case (part 4 of Article 10 of the CPCU).

In regards to minor children, the following should be noted: they do not have civil procedural legal ability; in the courts, their rights are protected exclusively by their legitimate representatives but they are not deprived of civil procedural legal capacity which predetermines the scope of their rights set forth in Article 27-1 of the CPCU.

For instance, we can present the case which was considered in the Chudniv District Court of Zhytomyr region [12] regarding a claim filed by the guardianship and wardship authority of the District State Administration in the interests of a minor child of the defendant in order to release the latter as a guardian. According to the acts on examination of the material and living conditions of the ward, it became clear that there had been conflicts between the guardian and the minor child. The child did not obey and refused to help with the housework. Taking into consideration the above-mentioned circumstances, the defendant personally filed an application to the guardianship and wardship authority to release him from the guardianship of the child. According to the case materials and the explanations of the minor child, the latter objected to the release of the defendant from the guardianship. This example shows that the child's opinion was expressed and taken into account, and therefore the court ensured the implementation of the provisions of part 1 of Article 27-1 of the CPCU. So, this case illustrates the participation of a minor child in civil actions as a party in the form of giving explanations even when his/her interests are intermediated by legal representatives.

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Головний редактор  
Світлана ПИСАРЕНКО – 235-81-55

Приміальня:

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Заступник головного редактора  
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Підготовку та випуск у світ журналу «Віче»

за дорученням засновника здійснює редакція.

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від 05.04.1994.

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Підписано до друку 18.03.2014.

Формат 60x84/8.

Папір офсетний.

Друк офсетний.

Ум.-друк. арк. 2,3.

Зам. № ДС 211. Тираж 2400 прим.

Ціна договірна.

Набрано і зверстано на комп'ютерному

комплексі редакції журналу «Віче».

Надруковано з готового оригінал-макета

у ТОВ «КЖД «Софія»,

08000, Київська обл., смт Макарієв,

вул. Першотравнева, 65.

Свідчення про державну реєстрацію

A01 № 22 9953 від 26.11.2008 р.

Журнал «Віче» читають у Верховній Раді та її коміте-

тах, адміністрації Президента України, Кабінеті Міні-

стрів України, Держкомтелерадіо. Він також надход-

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педагогічної, Центральної імені М. Островського.

Передплатний індекс – 74254.

Summarizing the researches on the participation of minor children and juveniles in civil actions, we should note that their civil procedural legal capacity and ability are defined by the civil procedure law and are closely related to the civil legal ability. As the law divides juveniles into two groups (the first one includes people under the age of 14 with partial civil legal ability, and the second one includes those aged from 14 to 18 who have incomplete civil legal ability), the entire scope of the procedural rights and responsibilities of these groups should be considered separately.

Juveniles aged from 14 to 18 years old may personally exercise civil procedural rights and perform their responsibilities in court cases arising from relationships in which they are personally involved, unless others are provided by law (part 2 of Article 29 of the CPCU). But, the court may involve a legal representative of a juvenile to participate in such cases. However, the family relationships may include cases in which a dispute arises between a juvenile and their legal representative, parents, adoptive parents or guardians. The opportunity for a person who has reached the age of 14 to file actions with a court on this issue under Article 18 of the FCU is a necessary guarantee to protect their rights from abuses and violations. The above-mentioned example of court practice shows that the civil procedural legislation fully provides the juvenile with the possibility of protecting such rights in court. Thus, a juvenile is a full participant in civil actions, and has the possibility to use their procedural rights provided by the law.

According to current legislation, minor children do not have civil procedural legal ability and that is why their rights are protected only by legal representatives in court. However, this does not divest minor children of civil procedural legal capacity that predetermines their scope of rights under articles 27 and 27-1 of the CPCU (an example of their practical realization is contained in the above-mentioned case of the Court of Chudniv).

So, minor children and juveniles are the specific subjects of civil procedural relationships because, on the one hand, the provisions of the civil procedure law are applied to them as people participating in a case or as other participants in a trial (when they act as witnesses) and, on the other hand, the court must consider the priority of the interests of these categories of people and on that basis make decisions on the need to involve a legal representative or to replace them.

In order to obtain the opportunity of active participation in proceedings that facilitate the fuller realization of the right of defence, a minor child or a juvenile should act as a full participant in civil proceedings vested with the

relevant procedural rights and responsibilities to protect their rights within the legal ability.

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