

FEATURES OF SUBJECTS OF THE RIGHT OF FREEDOM OF WORLD VIEW AND RELIGION IN THE CIVIL LAW OF UKRAINE



Marianna Brynchak

post-graduate student

Kharkiv National University of Internal Affairs

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Abstract. An important role in private law is played by personal non-property rights that ensure the full existence of a person in society. The right to freedom of worldview and religion deserves special attention to its implementation and use in a legal, democratic, independent state of Ukraine. Any personal non-property right has its own characteristics. The structure of the right to freedom of worldview and religion consists of a certain content, this right has its subject, object and subject. In this article we will consider the subject in the rights to freedom of world view and religion. Features of the subject in legal personality and capacity, from what age you can enjoy the right to freedom of world view and religion.

Keywords: *subject, legal personality, legal capacity, capacity, freedom of world view and religion, civil law*

Introduction

The question of the definition of the subject of freedom of outlook and religion is still opened up to nowadays. The right to freedom of thought and religion requires an appropriate definition of a particular subject. Indeed, the actual implementation of this right itself by a person is becoming necessary, as well as its full protection and regulation in civil law of Ukraine.

Analysis of recent research and publications. In the review of recent studies, there was a need to systematize personal non-property rights, to define their concepts, forms, methods of protection and content. Accumulation of the end of the first decade of the XXI century empirical material, judicial practice, including international, the emergence of different approaches to the regulation of personal non-property relations, not only different legal systems, but also within a single system, opened new problems in understanding the content, implementation and protection of personal non-property rights, definition of the subject structure, understanding of rights arising in legal relationships. These problems were solved by such scientists: E. Kochanovsky [1], R. Stefanchuk [2], L. Fedyuk [3], L. Krasitska [4], O. Sinegubov [5].

The purpose of gender is to define the subject of the right to freedom of thought and

religion, illumination of the features of such a subject.

Presenting the main material. The vast majority of people today consider the spiritual self as the greatest value, directing efforts to self-improvement of their personality through spiritual growth. Intangible, non-property weighs not less for a person, but sometimes also much more than material. Thus, the assessment of a person as a person, a sense of freedom, self-esteem - is something for which she lives, improves her financial position, works and communicates. Feeling like a person, human wants to preserve his uniqueness, demonstrate it to others, be confident in the assessment and respect for himself [6, p. 8].

Civil non-property rights, which are absolute in nature, have no economic content, are not alienated, fall into the category of rights that ensure the full existence of a citizen-person in a modern society, that is, they are in fact positive, so they should be

regulated by civil law acts. Legal regulation and protection of any social relations is carried out by expressing them in a legal form, namely in the form of legal relations. Questions about the subjects of the right to freedom of opinion and religion, which may be parties to the legal relationship, require further study and clarification. In the general understanding of the subject of rights is called the carrier of rights and obligations [1, p. 26].

In the Legal Dictionary, the "subject of law" defines a person (physical and legal), a state, a state or a municipal entity, which is empowered by law to be directly or through a representative, subjective rights and legal obligations [7].

It should be noted that the term "subject of law" has a fairly wide application in legal circles, defines a variety of approaches to the definition of the very concept of "subject of law", due to different understanding of various domestic and foreign scientists, such as: S. Alekseev, V. Boitsov, S. Kechekyan, A. Mickiewicz, V. Kopievichikov, P. Rabinovich, R. Halfina and others. In due time, they initiated a discussion of subjects of law and expressed a variety of points of view.

Alexeyev S. notes that the "subject of law" is the person who has "legal personality", that is, citizens, organizations, social entities that may be the bearers of rights and obligations, to participate in legal relations [8].

Halfina R. believes that "subject of law" - a broader concept, which is different from the concept of "subject (participant) in the relationship" [9]. According to Boytsov V., "subject of law" - is a person who has a personality, that is, a person, potentially (in general) who is able to be in legal relationships, and the subject of legal relationships - is a real participant in the data of legal relations [10]. This definition is believed to be true because the subject of legal relationships is a participant in a particular legal relationship, and the subject of law is a person who is not a party to the legal relationship, but may, in the presence of certain conditions, become him. Consequently, the subject of law is not always a participant in legal relationships, whereas a party to a legal relationship is always a subject of law.

E. Trubetsky believed that the subject of law is one who is able to have rights regardless of whether he actually uses them or not [11].

The subject of law is a person having a legal personality (or only legal capacity, if it is isolated), that is, a person potentially (in general) able to be a party to legal relationships [12]. In the legal sources of the late XIX - early XX centuries the notion of "subject of law" was used to refer to the carrier of "subjective rights".

Concerning the equivalence of the concepts of "subject of law" and "subject of legal relations", certain reservations are made in the literature and it is difficult to disagree with it. First, a specific citizen as a permanent subject can not be a party to all legal relationships at the same time; and secondly, infants, young children, mentally persons, being subjects of law, are not subjects of the majority of legal relations; and thirdly, the legal relationship is not the only form of realization of law [13]. These differences, of course, must be held in mind.

"The subject of law" is quite a broad concept that includes many derivatives, which is why the carrier of rights and responsibilities is not always a party to legal relationships, since it is not possible to simultaneously implement all their rights and obligations [14].

"The subject of law" - a universal legal form of the person (physical and legal), which, in view of its specificity, is the bearer of all of its subjective rights and obligations, enshrined in legal norms (objective law).

It should be noted that all people (individuals) from the moment of birth are the subjects of law as in the understanding of their abstract personality in relation to all applicable legislation, and in the sense of their specific legal personality - as the real carriers of the officially recognized (born and inalienable) human rights and freedoms [15]. Man is the main primary subject of law, which plays a special role in the system of subjects of law. Individual as a subject of law - this is the initial basis and an indispensable prerequisite for the possibility of occurrence of non-individual (group, etc.) subjects of law. For the legislation the right to freedom of the individual and other subjects of social life in legal form determines the possibility of their functioning in conditions of social integrity and a stable regulatory-legal sphere [14].

The subject of law is characterized by the following signs. First, it is a person, a participant in social relations (individuals, organizations), which in its features can actually be the bearer of subjective rights and

legal responsibilities. To do this, it must have certain qualities:

- external isolation;
- personification (appearance in the form of a single person - persons);
- the ability to produce, express and exercise the person's will.

Secondly, this person, who is really able to participate in legal relationships, has acquired the properties of the subject in the force of legal norms. In other words, legal norms form the basis of the statement of individuals, organizations, public entities as subjects of law [13].

In accordance with the above concepts of the subject of law and his characteristic features of the subject of the right to freedom of opinion and religion is an individual who, from the moment of birth, has the ability to directly have subjective rights and obligations.

The ability of a person to be a subject of civil law is characterized by its civil legal personality, which in a generalized form defines the content of state-guaranteed legal capacity of a participant in civil relations. Components of legal personality are socio-legal properties of legal ability, capacity and delicacy. Among them is the legal capacity - the general, not specified ability of the person to have civil rights and responsibilities. Civil legal capacity is inherent in every person, from it can not be refused or give away to anyone. It arises from birth and ceases to be death. Individual rights can be acquired only with the achievement of a certain age [16, p. 29].

Eligibility does not depend on the physical or mental condition of a person, on whether he is capable of carrying it out. Both the newborn and the mentally ill have civilian capacity in the same measure as an adult healthy person. Eligibility must be distinguished from subjective civil law. Liability is an abstract opportunity to have the rights and responsibilities specified in the law. Subjective right is a right that already exists and belongs to a particular person.

Characteristic features of legal capacity: reality, security (every individual is guaranteed the opportunity to become the subject of all rights and obligations (Article 24 of the Constitution of Ukraine). [17] Any obstacles that limit the ability to acquire civil rights and freedoms are eliminated by measures of state authorities; equality (all individuals have equal rights to have the

rights and obligations stipulated by law, regardless of race, nationality, political or religious beliefs, sex, ethnic or social origin, place of residence, language or other characteristics); capacity (an individual can not transfer his legal capacity to another person in a paid or non-paid contract).

The scope (content) of legal capacity constitutes all civil rights and obligations which an individual may acquire in accordance with the law. The law does not provide an exhaustive list of possible civil rights that an individual can acquire, since their range is quite wide and it is impossible to enumerate them in the legislative form. With changes in the political, economic situation in society and the state, new rights may be included in the scope of legal capacity, and existing ones can change qualitatively. Any person, regardless of age and health, is legally competent, but not every person has the capacity to act [18]. However, for the realization of legal capacity and the acquisition of specific subjective rights and obligations a person must be endowed with appropriate capacity. Civilian capacity - is the ability of a person by his actions to acquire for himself civil rights and independently carry them out, as well as the ability by their actions to create for themselves civil obligations, to independently perform them and bear responsibility in case of their non-fulfillment [16, p.31]. The right to freedom of thought and religion, as well as other personal non-property rights that ensure the natural existence of a person, belongs to a person from the moment of his birth and ceases with the moment of death, can not be transferred under the contract, but if a person loses the ability to exercise and protect his natural rights independently in the prescribed by law, these rights may be exercised in the interests of the person by other persons who are authorized by law or by court (parents, guardians, trustees).

As it was noted earlier, the right to freedom of thought and religion is automatically acquired by every person from the moment of his birth, but the possibility of its implementation needs some attention.

One of the main features of the subject of the right to freedom of thought and religion is to realize it from a certain age. Every person's religion begins from birth. Parents (guardians), from the very early age, choose faith for their children, usually the one who professes themselves. This is manifested in

the characteristic religious rites, for example, the Christian sacrament of "baptism," the Muslims is "the dedication of the child to God," the Hinduism is a jatar-karma. The peculiarity is that the conduct of such appearances is the first legally significant fact that occurs in the life of a newborn child who has the right to freedom of world outlook and religion, but carried out by his parents (guardians, trustees). The biological and spiritual development of man are interconnected, then with the age of the corresponding changes occur in the psychic sphere. Gradually social maturation is realized, the dynamics of spiritual development of the personality manifests itself. This serves as a natural basis for the allocation of successive stages of human development and the formation of age-old periodization [19].

E. Erickson identified 8 stages in human development: infant (from birth to one year), early age (1-3 years), preschool age (3 - 6, 7 years), adolescence (7-12 years), youth (13 - 18 years), early maturity (third decade), middle age (fourth and fifth decades of life),

late maturity (after the sixth decade of life). Each age or period of human development is characterized by the following indicators (L. Vygotsky, D. Yelkonin):

- a) a certain social situation of development or a concrete form of relations in which the person enters with other people in this period;
- b) the main or main type of activity;
- c) the main mental tumors (from individual psychological processes to the properties of the person). [19]

Characteristic indicators vary with each passing year, so we can conclude that each person develops at different speeds, and therefore the formation of her as a person occurs more or less in the period from 14-21 years, therefore, significant religious events in the life of a child under 18 years of age carried out by parents (guardians, trustees). This indicates that the rights and obligations that were granted to it by the state from the moment of birth are independently exercised since the age of majority (18 years).

Conclusion

The subject of the right to freedom of thought and religion is the general subject of personal non-property rights, but with some peculiarities. First, the exercise of this right derives from a certain legal fact, namely, an individual can independently exercise the right to freedom of opinion and conscience with the onset of adulthood, until this time carried out by parents or guardians and trustees. Secondly, the physical person-carrier of civil personal non-property rights of freedom of outlook and religion always remains the subject of law, it does not require, however, to enter into legal relations with other subjects. Thus, the subject of freedom of the worldview and religion is a natural person who is born from birth with civil capacity (certain rights and obligations) and can independently exercise his rights and obligations with the onset of a legal fact (full age), before the onset of a legally significant fact, rights and obligations are exercised by legal representatives (parents, guardians and trustees) within the limits of the law.

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