GRANTING THE RIGHT TO MARRY A MINOR AS A WAY OF JUDICIAL PROTECTION OF FAMILY RIGHTS AND INTERESTS

Havrik Roman

Annotation. *The scientific article investigates the nature of granting the right to marry as a way of judicial protection of family rights and interests. The methodological basis of the research is a combination of qualitative research methods, literature review and analysis of relevant legal acts. To achieve the goal of the article, the author used the following methods: (1) literature review; (2) analysis of normative legal acts; (3) qualitative research methods and (4) comparative analysis. The scientific article defines the essence and legal nature of granting the right to marry a minor as a way of protecting family rights and interests, considering the existing judicial practice. The scientific article shows that granting a minor the right to marry by the court is by its nature a changed family relationship, there is a partial change in two family relationships – between parents and the child who applied for the right to marry, as well as between the child and others. a person who wishes to marry a minor. As a result of the court's decision to grant the right to marry, the legal status of a minor who receives the right to marry changes, this person actually loses the status of a child in the necessary legal relationship, wants and keeps it where it is necessary to ensure his best interests. Granting a minor the right to marry, on the one hand, is aimed at eliminating obstacles to the state registration of marriage by a person who has not reached the age of marriage and the emergence of a complex of personal non-property and property rights of spouses in this particular case; on the other hand – to protect her rights and interests as a child, after that this is the reason for the court's decision to grant the right to marry a minor as an exception to the rules on the marriage of an adult. Granting the right to marry to a minor can be aimed at protecting not only the rights and interests of the applicant, but also the protection of the rights of the applicant's unborn child who is pregnant, the interests of another participant in the process who wishes to marry the person requesting the right to marry.*

Key words: *protection of family rights and interests; methods of protecting family rights and interests; granting the right to marry; baby.*

1. Introduction.

According to Art. 22 of the Family Code of Ukraine, the minimum age at which men and women can enter into marriage and, in fact, apply to the state registration of civil status acts, is 18 years [1]. Only natural persons who have reached the age of majority have the right to be subjects of marital relations; the child has no such right. The general marriage age in Ukraine is 18, regardless of the gender of the spouses (the same requirements for marriage are established for both men and women). The analysis of foreign normative legal acts and national family legislation shows that reaching the legal limit of marriageable age is a mandatory condition for entering into marriage along with such conditions as: gender difference; consent of the future spouse; consent of parents or persons who replace them, if the bride and groom are minors; the absence of conditions that prevent the conclusion of marriage: the existence of an undissolved marriage; presence of close kinship [2, p. 34]. It should be noted that the legal definition of marriageable age in most European countries (and in Ukraine as well) is set precisely at 18 years old (the only exceptions are such countries as the Principality of Andorra and the Republic of Malta, as well as for Scotland, where the 16-year age of entry into marriage), and in other countries it can be even higher (for example, the legislation of the Republic of Singapore sets the marriage age at 21, in Japan at 20) [3, p.

131]. At the same time, various life circumstances may arise that make it necessary to grant the right to marry to a person who has not reached the established marriageable age, including in connection with the need for persons who wish to marry to exercise their rights to parenthood and maternity, ensuring proper protection of the rights and interests of the child to be born to the couple, etc. The above led to the emergence of the institution of granting the right to marry.

2. Analysis of scientific publications.

The analysis of existing scientific works, including dissertation studies and publications, allows us to indicate that the issue of granting the right to marry became the subject of consideration by such scientists as T. M. Baliuk, O. Yu. Bykova, V. I. Borysova, I. V. Zhylinkova, B. K, Levkivskyi, M. V. Mendzhul, M. Nimak, Z. V. Romovska, O. I. Safonchyk, D. I. Sydorenko, Yu. S. Chervonyi, H. V. Churpita. At the same time, these scholars studied the granting of the right to marriage either primarily as an institution of civil procedural law, and not as a method of protection used by the court to protect the rights and interests of a child who applies to the court for the granting of the right to marry. The above determines the relevance and importance of research on granting the right to marry as a way of judicial protection of family rights and interests of family members, primarily the child.

3. The aim of the work.

The purpose of the study was to investigate the nature of granting the right to marry as a way of judicial protection of family rights and interests. The methodological basis of the research is a combination of qualitative research methods, literature review and analysis of relevant legal acts. To achieve the goal of the article, the author used the following methods: (1) literature review; (2) analysis of normative legal acts; (3) qualitative research methods and (4) comparative analysis.

4. Review and discussion.

According to Art. 18 of the Family Code of Ukraine, every member of family relations who has reached the age of fourteen has the right to directly apply to the court for the protection of his right or interest. The court applies methods of protection established by law or agreement (contract) of the parties. Ways of protecting family rights and interests are, in particular: establishment of a legal relationship; forced performance of a duty not performed voluntarily; termination of the legal relationship, as well as its annulment; termination of actions that violate family rights; restoration of the legal relationship that existed before the violation of the right; compensation for material and moral damage, if this is provided for by this Code or the contract; change of legal relationship; recognition of illegal decisions, actions or inaction of the state authority, the authority of the Autonomous Republic of Crimea or the local self-government body, their officials and officials [1]. Granting a minor the right to marry by a court is by its very nature a change in the family legal relationship. This way of protecting family rights and interests as a change of legal relationship, which consists in the transformation of one legal relationship into another, the evolution of one obligation into another [4, p. 69]. In this case, we see a partial change of two family relationships – between the parents and the child who applied for the right to marry, as well as between the child and another person who wishes to marry a minor. As a result of the court's decision to grant the right to marry, the legal status of a minor who receives the right to marry changes, and from the moment of registration of the relevant marriage, the person receives full civil legal capacity, that is, the person actually loses the status of a child in most legal relationships, although he retains it there , where necessary to ensure her best interests. In essence, granting a minor the right to marry is aimed, on the one hand, at eliminating obstacles to the state registration of marriage by a person who has not reached marriageable age and the emergence of such a person's complex of personal non-property and property rights of spouses; on the other hand, to protect her rights and interests as a child, since this is the reason for the court decision to grant the right to marry a minor as an exception to the rule on the conclusion of marriage by an adult. At the same time, in this case, there is no complete transformation of the family legal relationship, since such

a person retains the rights of the child in family relations, although he gets more opportunities to exercise his rights in the family legal sphere.

In accordance with Part 2 of Art. 23 of the Family Code of Ukraine, at the request of a person who has reached the age of sixteen, by a court decision, she may be granted the right to marry, if it is established that this corresponds to her interests. Thus, when deciding the issue of granting the right to marry to a minor, the court must take into account those circumstances that indicate that granting the right to marry to a minor is in her interests, in particular, it may take into account the following facts: being in a de facto family relationship without of marriage registration, pregnancy of a person who needs to be granted the right to marry, intention to register a marriage, absence of objections from parents (guardians) regarding the granting of the right to marry [3, p. 132-133]. As stated in the decision of the Sadhirsky district court of the city of Chernivtsi dated April 26, 2021 in case No. 726/574/21, the legal definition of the minimum age at which a person can freely enter into marriage is explained by the fact that in order to enter into marriage, a person must reach a certain degree of physical fitness and mental maturity. Achieving such maturity is necessary for free (conscious) marriage and ensuring the birth of healthy offspring. Yes, persons who have reached the marriageable age of 18 have the right to marry. However, in certain cases, at the request of a person who has reached the age of sixteen, by a court decision, she may be granted the right to marry, if it is determined that this corresponds to her interests. Granting the right to marry is assigned to the competence of the court. In this situation, the court carries out a control function: its duty is to find out whether there are grounds for satisfying the application, and in this particular case to establish to what extent the conclusion of marriage will meet the interests of a minor who wishes to conclude a marriage [5]. In the decision of the Lutsk District Court of the Volyn Region dated August 11, 2022, in case No. 161/10340/22, the subject of proof in cases concerning the granting of the right to marry are the circumstances that testify to the conformity of the granting of the right to marry with the person specified in the application to the interests of the person who is not has reached marriageable age, including circumstances that indicate the applicant's physiological and psychological readiness for marriage. These circumstances can be confirmed in court by a pregnancy certificate, a birth certificate of the applicant's child or other documents that reveal such grounds for granting the right to marry. The same criterion is also defined by paragraph 2 of the Resolution of the Plenum of the Supreme Court of Ukraine dated December 21, 2007 No. 11 "On the practice of applying legislation by courts when considering cases on the right to marriage, dissolution of marriage, recognition of its invalidity and division of joint property of spouses", according to which, deciding the issue of granting the right to marry to a minor, the court must proceed exclusively from her interests, and the grounds for granting the right to marry are the actual creation of a family, pregnancy, birth of a child [6]. Thus, in the decision of the Goshchan District Court of the Rivne Region dated January 8, 2020, in case No. 557/2047/19, it is noted that the person applied to the court with a statement, indicating that he intends to register a marriage with the interested person, as they support warm and sincere relationships, have strong mutual feelings of love and respect for each other. Therefore, she intends to register a marriage and exercise her right to motherhood in the near future [7]. In the decision of the Goshchansky district court of the Rivne region dated February 21, 2020, in case No. 557/234/20, it is indicated that the plaintiff intends to register a marriage with the interested person and exercise her right to maternity in the near future, as she is pregnant [8]. In this aspect, the right of a person to register a marriage is directly protected, but indirectly – her right to motherhood, which she will have in connection with the state registration of marriage. In the decision of the Kaluska City District Court of the Ivano-Frankivsk Region dated September 3, 2020, in case No. 345/3026/20, it is indicated that at the time of the application to the court, the plaintiff was pregnant, and the father of her child is the interested person. They applied to the state registry of civil status acts in Kalush to register their marriage, but they were refused due to the fact that the plaintiff had not reached the marriageable age of 18. Her parents do not object to their marriage, the interested person works and will be able to provide for their family in the future. The legalization of the relationship meets the interests of the applicant and will give her the opportunity to build family relationships based on feelings of mutual love, respect and mutual assistance, as well as give the applicant the right to motherhood already in a registered marriage and place the responsibilities of child support on both parents [9]. In fact, this same court decision on granting the right to marry protects the interests of persons who wish to marry, but do not have the status of spouses and do not fully meet the requirements for persons who have the right to marry, by removing obstacles to the acquisition of the status spouses, as well as the respective rights and obligations of spouses. In the decision of the Tysmenytsk District Court of the Ivano-Frankivsk Region

dated June 29, 2023, in case No. 352/1147/23, it is noted that warm, sincere relations have developed between the applicant and the interested person, they have mutual feelings of love for each other, so they intend to register a marriage. Her parents, who at the beginning of her relationship did not object to this, allowed her to live for a certain time with a person interested in him at the address of his actual residence in the city of Ivano-Frankivsk, constantly emphasized that he was her future husband, and perceived him as a future son-in-law, recently, they began to negatively perceive the interested person for no reason, they forbid him to communicate with him. Further living with her parents brings her moral and physical suffering, only with her chosen one she feels safe, he takes care of her. Granting the right to marry is in the best interests of the applicant, as she and the interested person wish to create a family, live together, and have children. The representatives of the guardianship authority did not object to the application for the granting of the right to marry, because at the moment the applicant's parents categorically object to her marriage, and at the same time commit psychological violence against their minor daughter, forbidding her to communicate with a boyfriend. The court recognized that granting the right to marry in this case corresponds to the interests of the applicant [10]. The parents' (guardians') objection to the granting of the right to marry is not a reason for refusing to grant the application, since the main criterion for granting the right to marry is the establishment by the court of the fact that such a right corresponds to the interests of the applicant [11]. However, the opinion of the parents can contribute to establishing the actual circumstances of the case, clarifying the conformity of the granting of this right to the interests of the minor, since this conformity is the main criterion for the satisfaction of the application for the granting of the right to marry [12].

On the other hand, the court's decision to grant the right to marry is also aimed at protecting the rights of the unborn child. Thus, in the decision of the Sofiiv District Court of the Dnipropetrovsk Region dated January 16, 2023 in case No. 193/16/23, she cannot wait until the applicant reaches marriageable age for objective reasons, because she has to give birth to a child before she turns 18 and wants to, for the child to be born when she will be in a registered marriage and will register the child under the same surname of the parents. These objective circumstances correspond to her and the future child's interests [13]. In the decision of the Pervomaisky City District Court of the Mykolaiv Region dated September 23, 2022, in case No. 484/2815/22, it is noted that since the interested person who wishes to marry the applicant is in the active army and is exposed to danger on a daily basis, the applicant believes that registration marriage will be moral support for the interested person [14]. Thus, the corresponding decision of the court was aimed at protecting not only the rights and interests of the applicant, but also the interests of another participant in the process who wishes to enter into marriage with the person who is requesting to grant her the right to marry.

The case of granting the right to marry is considered in the order of civil proceedings according to the rules and procedure of a separate proceeding with the mandatory involvement of such persons as one or both parents (adoptive parents) of a minor or his guardian, the person with whom marriage registration is planned, the guardianship authority and care. The need to involve such persons in the court process can be explained by the fact that the court must take into account the opinion of the legal representatives of the child and the guardianship authority when deciding the issue of granting the right to marry; as for the person with whom the marriage registration is intended, her involvement in the scientific literature is explained by the fact that the subject of consideration in court should not be the expediency of granting the applicant an abstract right to marriage, as a result of which he will get the right to marry anyone he wants, and the expediency of granting a minor the right to marry a specific person, and the decisive part of the decision must necessarily contain the surname, first name and patronymic of the person with whom the right to marry is granted by the court [15, p. 241; 16, p. 535].

5. Conclusions.

On the basis of the above, we can note that granting a minor the right to marry by the court is by its very nature a change in the family legal relationship, since there is a partial change in two family relationships – between the parents and the child who applied for the right to marry, as well as between a child and another person who wishes to marry a minor. As a result of the court's decision to grant the right to marry, the legal status of a minor who receives the right to marry changes, that is, the person actually loses the status of a child in most legal relationships, although he retains it where it is necessary to ensure his best

interests. Granting a minor the right to marry, on the one hand, is aimed at eliminating obstacles to the state registration of marriage by a person who has not reached marriageable age and the emergence of such a person's complex of personal non-property and property rights of spouses; on the other hand, to protect her rights and interests as a child, since this is the reason for the court decision to grant the right to marry a minor as an exception to the rule on the conclusion of marriage by an adult. Granting the right to marry to a minor can be aimed at protecting not only the rights and interests of the applicant, but also the protection of the rights of the applicant's unborn child who is pregnant, the interests of another participant in the process who wishes to marry the person requesting the right to marry.

References:

1. Simeinyi kodeks Ukrainy vid 10 sichnia 2002 roku (iz nastupnymy zminamy ta dopovnenniamy) [Family Code of Ukraine dated January 10, 2002 (with subsequent amendments and additions)]. Zakonodavstvo Ukrainy – Legislation of Ukraine. URL: https://zakon.rada.gov.ua/laws/show/2947-14#Text [In Ukrainian].

2. Bykova O. Yu. (2005) Ukladennia ta rozirvannia shliubu za zakonodavstvom Ukrainy [Marriage and dissolution of marriage according to the legislation of Ukraine]. Candidate's thesis. Odesa [In Ukrainian].

3. Sydorenko D.I. (2019) Nediisnist shliubu v simeinomu pravi [Invalidity of marriage in family law]. Candidate's thesis. Khmelnytskyi, 2019 [In Ukrainian].

4. Huz L.Ye., Huz A.V. (2011) Sudovo-praktychnyi komentar do Simeinoho kodeksu Ukrainy [Judicial and practical commentary to the Family Code of Ukraine]. Kharkiv: Faktor [In Ukrainian].

5. Rishennia Sadhirskoho raionnoho sudu mista Chernivtsiv vid 26 kvitnia 2021 roku u spravi № 726/574/21 [Decision of the Sadhirsky district court of the city of Chernivtsi dated April 26, 2021 in case No. 726/574/21]. Yedynyi derzhavnyi reiestr sudovykh rishen – Unified state register of court decisions. URL: https://reyestr.court.gov.ua/Review/96818237 [In Ukrainian].

6. Rishennia Lutskoho raionnoho sudu Volynskoi oblasti vid 11 serpnia 2022 roku u spravi № 161/10340/22 [Decision of the Lutsk District Court of the Volyn Region dated August 11, 2022 in case No. 161/10340/22]. Yedynyi derzhavnyi reiestr sudovykh rishen – Unified state register of court decisions. URL: https://reyestr.court.gov.ua/Review/105697124 [In Ukrainian].

7. Rishennia Hoshchanskoho raionnoho sudu Rivnenskoi oblasti vid 8 sichnia 2020 roku u spravi № 557/2047/19 [Decision of the Goshchan District Court of the Rivne Region dated January 8, 2020 in case No. 557/2047/19]. Yedynyi derzhavnyi reiestr sudovykh rishen – Unified state register of court decisions. URL: https://reyestr.court.gov.ua/Review/86788042 [In Ukrainian].

8. Rishennia Hoshchanskoho raionnoho sudu Rivnenskoi oblasti vid 21 liutoho 2020 roku u spravi № 557/234/20 [Decision of the Goshchan District Court of the Rivne Region dated February 21, 2020 in case No. 557/234/20]. Yedynyi derzhavnyi reiestr sudovykh rishen – Unified state register of court decisions. URL: https://reyestr.court.gov.ua/Review/87803417 [In Ukrainian].

9. Rishennia Kaluskoho miskraionnoho sudu Ivano-Frankivskoi oblasti vid 3 veresnia 2020 roku u spravi № 345/3026/20 [Decision of the Kalusa City and District Court of the Ivano-Frankivsk Region dated September 3, 2020 in case No. 345/3026/20]. Yedynyi derzhavnyi reiestr sudovykh rishen – Unified state register of court decisions. URL: https://reyestr.court.gov.ua/Review/91301163 [In Ukrainian].

10. Rishennia Tysmenytskoho raionnoho sudu Ivano-Frankivskoi oblasti vid 29 chervnia 2023 roku u spravi № 352/1147/23 [Decision of the Tysmenytsky District Court of the Ivano-Frankivsk Region dated June 29, 2023 in case No. 352/1147/23]. Yedynyi derzhavnyi reiestr sudovykh rishen – Unified state register of court decisions. URL: https://reyestr.court.gov.ua/Review/111990560 [In Ukrainian].

11. Rishennia Stryiskoho miskraionnoho sudu Lvivskoi oblasti vid 15 lypnia 2022 roku u spravi № 456/992/22 [Decision of the Stryi City and District Court of the Lviv Region dated July 15, 2022

in case No. 456/992/22]. Yedynyi derzhavnyi reiestr sudovykh rishen – Unified state register of court decisions. URL: https://reyestr.court.gov.ua/Review/105318088 [In Ukrainian].

12. Rishennia Radomyshlskoho raionnoho sudu Zhytomyrskoi oblasti vid 23 lystopada 2022 roku u spravi № 289/2065/22 [Decision of the Radomyshl District Court of the Zhytomyr Region dated November 23, 2022 in case No. 289/2065/22]. Yedynyi derzhavnyi reiestr sudovykh rishen – Unified state register of court decisions. URL: https://reyestr.court.gov.ua/Review/107467466 [In Ukrainian].

13. Rishennia Sofiivskoho raionnoho sudu Dnipropetrovskoi oblasti vid 16 sichnia 2023 roku u spravi № 193/16/23 [Decision of the Sofia District Court of the Dnipropetrovsk Region dated January 16, 2023 in case No. 193/16/23]. Yedynyi derzhavnyi reiestr sudovykh rishen – Unified state register of court decisions. URL: https://reyestr.court.gov.ua/Review/108421608 [In Ukrainian].

14. Rishennia Pervomaiskoho miskraionnoho sudu Mykolaivskoi oblasti vid 23 veresnia 2022 roku u spravi № 484/2815/22 [Decision of the Pervomaisky City District Court of the Mykolaiv Region dated September 23, 2022 in case No. 484/2815/22]. Yedynyi derzhavnyi reiestr sudovykh rishen – Unified state register of court decisions. URL: https://reyestr.court.gov.ua/Review/106403131 [In Ukrainian].

15. Churpita H.V. (2016) Kontseptualni zasady zakhystu simeinykh prav ta interesiv u poriadku nepozovnoho tsyvilnoho sudochynstva [Conceptual principles of protection of family rights and interests in the procedure of non-suitable civil proceedings]. Doctor's thesis. Kyiv [In Ukrainian].

16. Bychkova S.S. (eds) (2010) Tsyvilnyi protsesualnyi kodeks Ukrainy: Naukovo-praktychnyi komentar [Civil Procedure Code of Ukraine: Scientific and practical commentary]. Kyiv: Atika [In Ukrainian].

Roman Havrik,
Candidate of Legal Sciences, Associate Professor,
Professor of the Department of Constitutional, Administrative and Financial Law
Faculty of Law,
Khmelnytskyi University of Management and Law
named after Leonid Yuzkov
E-mail: gavrik.roman@gmail.com
ORCID ID: 0000-0003-1557-0594