



Katarzyna Malinowska-Woźniak

PhD

University of Szczecin

e-mail: katarzyna.malinowska-wozniak@usz.edu.pl

ORCID: 0000-0002-3442-7905



Civil-law aspects of carrying out an economic activity by persons with disabilities who do not have full capacity to perform acts in law

Abstract

The aim of this paper is to present civil-law aspects of carrying out an economic activity by persons with disabilities who do not have full capacity to perform acts in law. Key to this discussion was a hypothesis that persons with disabilities who do not have full capacity to perform acts in law may *de lege lata* carry out an economic activity. In the course of the analysis, relevant provisions of the Civil Code, Family and Guardianship Code, the Code of Civil Procedure, the Act on the Central Register and Information on Economic Activity and the Entrepreneurs Act are analysed using the method of investigation of the law in force. The analysis also covers proposals for legislative changes included in the draft act on amending certain acts to improve the legal and institutional environment for entrepreneurs. The research yields the following conclusions. Natural persons who do not have full capacity to perform acts in law may carry out an economic activity in their own name, though they perform acts associated with their activity with the participation of a statutory representative. Persons with limited capacity to perform acts in law may perform certain actions related to their business activity on their own. The taking up of an economic activity and other important matters related to economic activity require consent of the family and guardianship court. Introduction of legislative changes that involve clarification of principles of taking up and running an economic activity by persons who do not have full capacity to perform acts

in law seems valid. Legislative proposals presented in the draft law of 13 April 2023 are insufficient and flawed, though the direction of changes must be recognized as correct.

Keywords: entrepreneur, economic activity, capacity to perform acts in law, disability

Introduction

The definition of economic activity is presented in the Act of 6 March 2018 Entrepreneurs Law¹. Pursuant to Article 3 EL, economic activity shall be organised gainful activity, conducted in one's own name and on a continuous basis. Provisions of this act do not identify directly what entities may carry out an economic activity. Nevertheless, Article 4(1) EL defines the concept of an entrepreneur, laying down that it is a natural person, a legal person or an organisational unit not being a legal person that is granted legal capacity by a separate act of law, conducting economic activity. Thus, a natural person, among others, may obtain the status of an entrepreneur, whereby they may also carry out an economic activity.

The legislator also refers to the concept of an entrepreneur in the Act of 23 April 1964 the Civil Code.² Pursuant to Article 43,¹ an entrepreneur is a natural person, a legal person or an organizational unit referred to in Article 331(1) conducting business or professional activity on its own behalf. In this light, a natural person may, among others, become an entrepreneur. However, it needs to be noticed that neither the Entrepreneurs Act nor the Civil Code directly specify whether a natural person carrying out an economic activity should have capacity to perform acts in law – full or limited.

The terms disability and a person with disabilities feature in many legislative acts, domestic³ and international alike.⁴ Pursuant to Article 1 of the Convention on the Rights of Persons with Disabilities, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. There is no doubt, naturally, that not

1 Consolidated text, Dz.U. (Journal of Laws) of 2023 item 221, as amended; hereinafter: EL.

2 Consolidated text, Dz.U. (Journal of Laws) of 2022 item 1360, as amended; hereinafter: CC.

3 Cf. Article 2(10) of the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities (consolidated text, Dz.U. (Journal of Laws) of 2023 item 100 as amended.

4 Cf. Article 1 of the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006, A/RES/61/106, Annex I, hereinafter: Convention.

all persons with disabilities are deprived of their capacity to perform acts in law or have such capacity though limited. Persons with disabilities who have full capacity to perform acts in law take up an economic activity on the same terms as others. The subject of the discussion in this study involves principles of taking up and carrying out of an economic activity by persons with disabilities who do not have the capacity to perform acts in law with consideration to binding regulations of the civil law. The research will employ the method of investigation of the law as it is given, i.e. an analysis of normative regulations in force in a specified research area. Proposals for legislative changes are also analysed. The paper takes into account national legislation as at 30 June 2023.

An entrepreneur who does not have full capacity to perform acts in law

There is no doubt that every human being has legal capacity from the moment of birth (Article 8 CC). Legal capacity means being able to be subject of rights and obligations under civil law. Human's legal capacity is unlimited and is granted to everyone in the same scope. No one can renounce their legal capacity, nor can they be deprived of it.⁵ On the other hand, capacity to perform acts in law means a possibility of independent taking of acts in law that lead to acquisition of rights or to assuming obligations. It does not determine, however, a real possibility to perform a given act in law.⁶ Moreover, it needs to be highlighted that the scope of the capacity to perform acts in law also applies to other legal activities, e.g. manifestation of knowledge or feelings and acts in fact. Full capacity for legal acts is acquired at the moment of becoming an adult (Article 11 CC). Persons fully legally incapacitated do not have capacity for legal acts (Article 12 CC) while persons partially legally incapacitated have limited capacity for legal acts (Article 15 CC).⁷ The basis for full incapacitation includes mental illness, mental retardation or other mental disorder, in particular alcoholism or drug addiction, which mean an individual is incapable of controlling their behaviour (Article 13(1) CC). In turn, partial legal

5 M. Pazdan, in: K. Pietrzykowski (eds.), *Kodeks cywilny*. Vol. II. *Komentarz*, Legalis 2020, Article 8, nb 17, (access: 23.12.2022).

6 Cf. P. Książak, in: W. Borysiak, K. Osajda (eds.), *Kodeks cywilny. Komentarz*, Legalis 2017, Article 11(A)(4), (access: 30.06.2023).

7 On the concept of capacity to perform acts in law see more in M. Domański, B. Lanckoroński, *Active Legal Capacity of Natural Persons and Its Intersectional Relevance to the Legal System (Chapter 1)*, in: Domański M., Lanckoroński B. (eds.), *Models of Implementation of Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD)*, London 2023, pp. 7–19, <https://doi.org/10.4324/9781003463016> (access: 30.11.2023).

incapacitation may be declared for reasons of mental illness, mental retardation or other mental disorder, in particular alcoholism or drug addiction, if the individual's condition does not justify them being fully legally incapacitated but they require assistance to manage their affairs (Article 16(1) CC). A guardian is appointed for a fully legally incapacitated person (Article 13(2) CC), while a curator is appointed for an individual partially legally incapacitated (Article 16(2) CC).

There is a debate going on among legal scholars and commentators and in judicial decisions over whether a natural person who does not have full capacity to perform acts in law may carry out an economic activity and obtain the status of an entrepreneur.⁸ The most frequently quoted argument to support the thesis that a natural person running an economic activity must be afforded full capacity to perform acts in law is the statutory requirement to carry out the economic activity in one's own name, which may be understood as performing it in person, by one's own actions.⁹

I believe that every natural person, irrespective of their capacity to perform acts in law, may operate an economic activity and obtain the status of an entrepreneur. The right to running an economic activity is afforded to every natural person as a consequence of the legal capacity afforded to a human. Moreover, no law provides that a natural person who carries out an economic activity must have full capacity to perform acts in law.¹⁰ What is more, in the Act of 6 March 2018 on the Central Register and Information on Economic Activity¹¹ the legislator points to the obligation to enter (in this register) information about limitation or loss of capacity to

8 The admissibility of gaining the status of an entrepreneur by a person who does not have full capacity to perform acts in law is supported by scholars such as: M. Pazdan, in: K. Pietrzykowski (ed.), *Kodeks cywilny. Komentarz*, Warsaw 2004, Vol. I, p. 130; P. Księżak, in: W. Borysiak, K. Osajda (eds.), *Kodeks cywilny. Komentarz*, Legalis 2017 Article 11(F)(20) (access: 30.06.2023); P. Lewandowski, *Zdolność do czynności prawnych przedsiębiorcy jako osoby fizycznej*, "Studia Prawno-Ekonomiczne" 2016, No. 100, pp. 91–102; Z. Miczek, *Osoba fizyczna jako przedsiębiorca – na tle ustawy o swobodzie działalności gospodarczej i kodeksu cywilnego*, "Przegląd Prawa Handlowego" 2005, No. 9, pp. 24–28; P. Zaporowski, *Czy przedsiębiorcą może być osoba fizyczna niemająca pełnej zdolności do czynności prawnych?*, "Palestra" 2006, No. 7–8, p. 37; a contrary view: S. Dmowski, in: S. Dmowski, P. Rudnicki, *Komentarz do kodeksu cywilnego. Księga pierwsza. Część ogólna*, Warsaw 2003, p. 146; C. Kosikowski, *Publiczne prawo gospodarcze Polski i Unii Europejskiej*, Warsaw 2005, p. 83; A. Powałowski, *Wykonywanie działalności gospodarczej we własnym imieniu*, "Gdańskie Studia Prawnicze" 2016, Vol. XXXVI, pp. 357–366.

9 Cf. judgment of the Administrative Court in Warsaw of 22 April 2009, VI ACa 1083/08, "Orzecznictwo Sądów Apelacyjnych" 2012, No. 4, pp. 60–72.

10 Cf. S. Czepita, Z. Kuniewicz, *Wybrane problemy definiowania określenia "przedsiębiorca" w prawie polskim*, in: K. Sławik (eds.), *Działalność gospodarcza. Kluczowe problemy*, Warsaw 2007, pp. 70–71.

11 Consolidated text, Dz.U. (Journal of Laws) of 2022 item 541 as amended; hereinafter: CRIEA Act.

perform acts in law and information about appointing a curator or guardian with details about the curator or the guardian (Article 5(2)(7) of the CRIEA Act).

Carrying out an economic activity by persons with disabilities who do not have full capacity to perform acts in law

A natural person who does not have full capacity to perform acts in law and carries out an economic activity performs acts with the participation of a statutory representative. A guardian is a statutory representative of a fully incapacitated person. The principles of exercising guardianship are regulated in the Act of 25 February 1964 Family and Guardianship Code,¹² especially its Articles 154–168. A guardian is obliged to perform his/her functions with due diligence, as required by the interests of the person under care, and the interests of society (Article 154 FGC). A guardian has custody of the person and the property of the person remaining under his/her guardianship, subject to the supervisions of the guardianship court (Article 155(1) FGC).

A guardian should obtain the permission of the guardianship court for all important matters concerning the person or property of the person in their guardianship (Article 156 FGC). This permission is given by a guardianship court upon the guardian's request. The permission shall take effect upon becoming final and non-revisable, if the permission gave rise to legal consequences against third parties (Article 593 of the Act of 17 November 1964 Code of Civil Procedure).¹³

The term “important matters” is defined differently by legal scholars and commentators and in judicial decisions.¹⁴ It certainly does not accommodate acts which are beyond the scope of ordinary management. However, some reflection needs to be exercised on whether this concept includes also certain acts of ordinary management. It seems that the concepts “important matters” and “acts which are beyond the scope of ordinary management” do not have identical semantic scope since the legislator decided to distinguish between these terms. For comparison, in Article 101(3) FGC the legislator points out that parents cannot, without the permission of the guardianship court, perform any acts exceeding the scope of ordinary management, and cannot consent to the child performing such acts. In my opinion the

¹² Consolidated text, Dz.U. (Journal of Laws) of 2020 item 1359 as amended; hereinafter: FGC.

¹³ Consolidated text, Dz.U. (Journal of Laws) of 2021 item 1805 as amended; hereinafter: CCC.

¹⁴ J. Trzewik, in: M. Załucki (ed.), *Kodeks rodzinny i opiekuńczy. Komentarz*, Legalis 2023, Article 156, nb 4, (access: 30.06.2023).

concept of “important matters” must be understood more broadly than the concept “acts exceeding the scope of ordinary management.”

In this context, it needs to be discussed whether the taking up of an economic activity by a person who does not have capacity to perform acts in law requires the consent of the court. I believe that starting an economic activity should be treated as an important matter concerning the property of the person under guardianship.

When considering giving the permission, the court should weigh up whether the interest of the person under guardianship will not be jeopardized, whether such an activity needs to be taken, whether it may bring benefits to this person, whether it is reasonable and what possible threats to the interests of the person under guardianship it may bring.¹⁵ The court should name in the permission all essential elements of the activity to which the permission refers and its objects. The consent may accommodate a few or a lot of repeatable and similar activities if named in the permission. The permission may also specify the upper threshold of the value of commitments and transactions the guardian may make. The permission may be general, though it should concern a certain category of activities (e.g. related to the running of a business) and specify terms for performing them.¹⁶

Where the guardianship court issues a permission to undertake an economic activity, it should be considered what activities within the scope of the economic activity will also require the court’s permission and which may be performed by the guardian independently. It seems that the fundamental criteria could be a differentiation of ordinary acts taken as part of one’s economic activity and acts that go beyond this scope. Performing the latter would require court’s permission. I believe that permission to start an economic activity should accommodate the guardian’s right to independently perform acts of ordinary management typical to the activity carried out.

Given the normative regulation, the situation looks slightly different for a partially incapacitated person. A curator is a legal representative of such a person and is appointed to represent them and manage their assets only if the guardianship court so decides (Article 181(1) FGC). The scope of powers conferred on a curator is specified by the court in a certificate (Article 604 CCC). If the guardianship court authorises the curator to represent an incapacitated person and to manage

¹⁵ Cf. L. Kociucki, in: K. Osajda, M. Domański, J. Słyk (eds.), *Kodeks rodzinny i opiekuńczy. Komentarz*, Legalis 2023, Article 156(B)(II.12) (access: 30.06.2023).

¹⁶ Cf. H. Haak, A. Haak-Trzuskawska, *Komentarz do art. 145–184 KRO regulujących opiekę i kuratelę*, in: H. Haak, A. Haak-Trzuskawska, *Opieka i kuratela. Komentarz do art. 145–184 KRO oraz związanych z nimi regulacji KPC (art. 516, 518, 520, 573–574, 590–598, 599–602, 604–605)*, Legalis 2021, Article 156(I.A.5) (access: 30.06.2023).

their assets, the curator becomes a statutory representative of such partially incapacitated person. In turn, the Supreme Court in its order of 30 September 1977¹⁷ held that: “A curator of a partially incapacitated person shall be appointed to issue consent for this person’s making commitments or disposing of his right (Article 17 CC), only where the guardianship court’s order does not envisage curator’s power to represent a partially incapacitated person and to manage his or her assets (Article 181(1) FGC)). (...) Taking a different stand would lead to a situation where on the one hand a person partially incapacitated would not be allowed to assume obligations or dispose of their right on their own, and on the other there would be no person who could express their consent for these activities. Asking at the guardianship court to appoint a curator each time to express such consent, irrespective of the practical difficulty, would not find express support in legislation.” The view expressed by the Supreme Court must be deemed practically substantiated, though I believe it is not founded on the law in force. The legislator expressly points out that a curator is legitimized to represent a partially incapacitated person where the guardianship court so decides. Therefore, there are no obstacles to demand that the guardianship court specify the curator’s powers precisely and in agreement with the interest of the incapacitated person.

Pursuant to Article 156 FGC applied in conjunction with Article 178(2) FGC, a guardian should obtain the permission of the guardianship court for all important matters concerning the person or property of a person under their guardianship. The concept “important matters”, irrespective of whether it refers to a person who enjoys full capacity to perform acts in law or who does not have capacity to perform acts in law, should be interpreted the same. This means, that for a person with limited capacity to perform acts in law to take up economic activity a permission of a guardianship court needs to be sought on the same terms as in the case of persons with no capacity to perform acts in law.

Performance of certain acts in law by a person with limited capacity requires consent of the statutory representative. It follows from Article 17 CC that, subject to the exceptions provided for by the law, a legal act whereby a person with limited capacity for legal acts assumes an obligation or disposes of his right requires the consent of his statutory representative to be valid. The term “assume an obligation” must be understood as activities involving commitment to certain action or

17 III CRN 132/77, OSNC 1978, no. 11, item 204.

omission, while disposing of one's right covers activities than involve establishing, encumbrance, limitation or annulment of a subjective right.¹⁸

A person with limited capacity to perform acts in law may independently perform activities that go beyond the scope of regulation of Article 17 CC, thus those which do not lead to assuming an obligation or disposing of one's right. The catalogue of such activities that may be associated with carrying out an economic activity includes: accepting a gift onto which no instruction has been placed,¹⁹ an agreement unilaterally binding on the counterpart, writing off of this person's debt, avoiding the effects of a declaration of intent or choice of a performance in an alternative obligation.²⁰ In turn, activities granting authorisation, e.g. giving the power of attorney, may be performed independently by a person who does not have full capacity to perform acts in law if they apply to acts in law leading to the assumption of an obligation or disposition of a right.²¹ Otherwise, performing them requires consent of the statutory representative.

The legislator stipulated for independent performance of an act by a person with limited capacity to perform acts in law in other situations too. Pursuant to Article 21 CC, a person with limited capacity for legal acts may, without the consent of his statutory representative, dispose of his earnings unless the guardianship court rules otherwise for good cause. At the same time, it needs to be stated that incomes from an economic activity are earnings within the meaning of this provision. Moreover, pursuant to Article 22 CC, if the statutory representative of a person with limited capacity for legal acts gives him specific property items for unrestricted use, that person acquires full capacity for legal acts concerning these property items. Legal acts for which the consent of the statutory representative is, according to the law, insufficient constitute an exception. In the content of Article 22 CC the legislator does not stipulate that these items may be given for unrestricted use to a person with limited capacity to perform acts in law. One must agree with a view that allows giving any item, also one of great value, for unrestricted use.²² Items given for unrestricted use may in particular serve the running of an economic activity. At the

¹⁸ Cf. M. Gutowski, in: M. Gutowski (eds.), *Kodeks cywilny*. Vol. I–III. *Komentarz*, Legalis 2021–2022, Article 17(2) and (3), (access: 23.12.2022).

¹⁹ Cf. Resolution of the Supreme Court of 30 April 1977, III CZP 73/76, OSNCP 1978, no. 2, item 19.

²⁰ Cf. A. Grześkowiak, in: P. Machnikowski (eds.), *Zobowiązania. Przepisy ogólne i powiązane przepisy Księgi I KC*. Vol. I. *Komentarz*, Legalis 2022, Article 17, nb 35, (access: 30.06.2023).

²¹ Cf. A. Herbet, in: P. Machnikowski (ed.), *Zobowiązania. Przepisy ogólne i powiązane przepisy Księgi I KC*. Vol. I. *Komentarz*, Legalis 2022, Article 17, nb 20 (access: 30.06.2023).

²² Cf. M. Pazdan, in: K. Pietrzykowski (ed.), *Komentarz KC*, Vol. 1, Legalis 2018, Article 22, nb 4 (access: 30.06.2023).

same time, it needs to be borne in mind that giving an item for unrestricted use is treated as an activity of managing assets of a person with limited capacity to perform acts in law.²³ Depending on what this item is (e.g. real estate, a car or an industrial machine), such an act may be considered an important matter within the meaning of Article 156 FGC. This means that the statutory representative of a person with limited capacity to perform acts in law should obtain consent from a guardianship court for performing such an act.

In summary, it needs to be stated that taking up an economic activity by a partially incapacitated person requires consent of the guardianship court. A person with limited capacity to perform acts in law may perform certain acts related to their economic activity independently and certain other acts require the consent of a statutory representative or permission of court. A decision here depends on the nature of the act (e.g. assuming an obligation, disposition of a right) and on the extent and objects of the economic activity and it should be reflected in the guardianship court's permission to carry out an economic activity.

Conclusions

There is no doubt that *de lege lata* a natural person who does not have capacity to perform acts in law may carry out an economic activity. In my opinion, the right to carry out economic activity results from legal capacity thus is granted to every human. The legislator does not stipulate any particular normative solutions in this regard, whereby Civil Code and Family and Guardianship Code regulations on performing legal acts by persons who do not have full capacity to perform acts in law apply.

The running of an economic activity by a person who does not have full capacity to perform acts in law is especially justified in certain cases, e.g. where this person inherits a company. What may be considered is only amendment of legislation concerning giving a person who does not have full capacity to perform acts in law greater possibilities to perform certain acts independently or statutory cataloguing of acts associated with the running of an economic activity for which consent of a statutory representative or permission of the guardianship court is required.

In the case of incapacitated persons who do not have full capacity to perform acts in law and who run an economic activity, information about it should be disclosed in the Central Register and Information on Economic Activity. Such

²³ Cf. A. Lutkiewicz-Rucińska, in: M. Balwicka-Szczyrba, A. Sylwestrzak (eds.), *Kodeks cywilny. Komentarz*, commentary to Article 22, LEX 2022 (access: 30.06.2023).

a solution ensures security of trading as it protects the interests of the incapacitated person before independent performance of acts as part of their economic activity and potential counter parties before performing acts with a person who does not have full capacity to perform acts in law.

Given the absence of a public register of incapacitated persons, the counter party has no way of verifying whether a given person has full capacity to perform acts in law. There is a risk that such a person performs an act independently under an impulse, without thinking it over or under pressure of third persons. Such an act will be flawed and may have negative effects for this person, for their counter party and for third persons alike.

Some reflection may be due on whether, *de lege ferenda*, a person who carries out an economic activity should have full, or at least limited, capacity to perform acts in law since most or all (in the case of fully incapacitated persons) acts associated with the economic activity must be performed with the participation of a statutory representative and many of them also with the consent of the guardianship court.

At present the legislator does not initiate actions intended to take away from persons who do not have full capacity to perform acts in law their right to carry out an economic activity. However, on 13 April 2023 a draft law on amending certain acts to improve the legal and institutional environment of entrepreneurs was made under which there are plans to introduce legislation that are to regulate in detail the principles of minors' taking up and carrying out of an economic activity. These draft amendments mostly affect Civil Code regulations. It is proposed that Article 14(3) CC be added in the following wording: "An act in law that relates to economic or professional activity performed by a minor entrepreneur who does not have capacity to perform acts in law and has permission of the guardianship court to carry out an economic activity independently is valid unless it involves gross detriment to the person incapable to perform acts in law." Moreover, it is proposed that the following content be added after Article 21 CC: "A minor entrepreneur who has limited capacity to perform acts in law may, without the consent of the statutory representative, perform acts in law relating to their economic or professional activity provided they have permission of the guardianship court to carry out the activity in person" (Article 21¹ CC); "Where the economic or professional activity is contrary to the interest of a minor entrepreneur, the guardianship court may prohibit or limit such activity" (Article 21² CC).

Not delving into a detailed discussion on the validity and aptness of proposed legislative changes, it is worth emphasizing here that their major purpose is to specify principles of running an economic activity by minors. The explanatory memorandum to the draft also emphasizes the need for a clear regulation of rules

of starting and running an economic activity by minors.²⁴ Apart from minors, the drafted changes to the civil code do not refer to any other persons who do not have full capacity to perform acts in law, that is partially or fully incapacitated persons. Therefore, it calls for a question of what effects such introduction of proposed amendments will have for incapacitated persons. Since the provisions under analysis refer directly solely to minors, one may conclude that Article 14(3), Article 21¹ CC and Article 21² CC will not apply to other persons who do not have full capacity to perform acts in law.

This draft law also includes proposals of new regulations in the Code of Civil Procedure. It is proposed that Subchapter 7 “Matters concerning economic activity of persons who do not full capacity to perform acts in law” be added to Part One, Book Two, Title II, Section II, Chapter 2. The very wording of this title demonstrates that these regulations should concern not only minors by all persons who do not have full capacity to perform acts in law. However, the proposed Article 598²³(1) CCC²⁵ again only lists a minor, whereas in Article 598²³(2) CCC the drafters mention “a minor child” and “an adult who does not have full capacity to perform acts in law.” In turn, Article 598²⁴ CCC introduces premises that the guardianship court should be guided by when issuing decisions in matters of the running of economic activity by a minor child (sentence 1) and other persons who do not have full capacity to perform acts in law (sentence 2). In the case of the latter, these premises include the level of one’s mental development and health. Subsequent provisions of the Code of Civil Procedure, however, included in the draft only concern a minor (Article 598²⁵ CCC and Article 598²⁶ CCC).

This draft also includes a proposal to amend the Act on the Central Register and Information on Economic Activity. The drafted amendments concern i.a. a minor operating an economic activity (Article 8(9) and (10), Article 10(2)(8)(b), Article 29(1)(2a) and Article 44a), but they do not include persons who do not have full capacity to perform acts in law. On the other hand, it is proposed that subsections (4) and (5) be added to Article 17 of the Entrepreneurs Act: “A minor cannot without the consent of the guardianship court take up an economic activity” (Article 17(4); “The guardianship court may prohibit a minor or an adult who does not have full capacity to perform acts in law from taking up or carrying out an economic

²⁴ Cf. explanatory memorandum to the draft law no. UD497 <https://legislacja.rcl.gov.pl/docs//2/12371407/12964171/12964172/dokument616021.pdf>, p. 14 (access: 23.12.2022).

²⁵ Article 598²³(1) CCC provides that a request for guardianship court’s permission to take up an economic activity shall be submitted by the minor or his statutory representative, curator or guardian.

activity or limit them in doing so where this activity is contrary to the interest of this person” (Article 17(5)).

Given the limited framework of this study it is not possible to refer in detail to the drafted amendments. However, the direction of the amendment deserves credit because concretization of principles for taking up and carrying out an economic activity by persons who do not have full capacity to perform acts in law is desired. Nevertheless, the legislator should apply similar rules to introduce regulations concerning minors and incapacitated persons. A fragmentary regulation of issues concerning the latter and at the same time a detailed regulation of questions concerning minors is not justified. All the while, introduction of different rules for taking up and carrying out an economic activity by minors and incapacitated persons is not ruled out. Similarly, it would be possible to establish different rules in this regard for persons who do not have capacity to perform acts in law and persons with limited capacity. However, the legislative initiative in this matter definitely deserves credit. It certainly is an additional argument for admissibility of carrying out an economic activity by persons who do not have full capacity to perform acts in law.

References

- Balwicka-Szczyrba M., Sylwestrzak A., *Kodeks cywilny. Komentarz*, LEX 2022.
- Borysiak W., Osajda K., *Kodeks cywilny. Komentarz*, Legalis 2017.
- Czepita S., Kuniewicz Z., *Wybrane problemy definiowania określenia “przedsiębiorca” w prawie polskim*, in: K. Sławik (ed.), *Działalność gospodarcza. Kluczowe problemy*, Warsaw 2007.
- Dmowski S., Rudnicki S., *Komentarz do kodeksu cywilnego. Księga pierwsza. Część ogólna*, Warsaw 2003.
- Domański M., Lanckoroński B., *Active Legal Capacity of Natural Persons and Its Intersectional Relevance to the Legal System (Chapter 1)*, in: M. Domański, B. Lanckoroński (eds.), *Models of Implementation of Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD)*, London 2023, <https://doi.org/10.4324/9781003463016>.
- Gutowski M., *Kodeks cywilny. Vol. I–III. Komentarz*, Legalis 2021–2022.
- Haak H., Haak-Trzuskawska A., *Komentarz do art. 145–184 KRO regulujących opiekę i kuratelę*, in: H. Haak, A. Haak-Trzuskawska, *Opieka i kuratela. Komentarz do art. 145–184 KRO oraz związanych z nimi regulacji KPC (art. 516, 518, 520, 573–574, 590–598, 599–602, 604–605)*, Legalis 2021.
- Kosikowski C., *Publiczne prawo gospodarcze Polski i Unii Europejskiej*, Warsaw 2005.
- Lewandowski P., *Zdolność do czynności prawnych przedsiębiorcy jako osoby fizycznej*, “Studia Prawno-Ekonomiczne” 2016, No. 100.

- Machnikowski P., *Zobowiązania. Przepisy ogólne i powiązane przepisy Księgi I KC*. Vol. I. Komentarz, Legalis 2022.
- Miczek Z., *Osoba fizyczna jako przedsiębiorca – na tle ustawy o swobodzie działalności gospodarczej i kodeksu cywilnego*, "Przegląd Prawa Handlowego" 2005, No. 9.
- Osajda K., Domański M., Słyk J., *Kodeks rodzinny i opiekuńczy. Komentarz*, Legalis 2017.
- Pietrzykowski K., *Kodeks cywilny*. Vol. I–II. Komentarz, Legalis 2020.
- Powałowski A., *Wykonywanie działalności gospodarczej we własnym imieniu*, "Gdańskie Studia Prawnicze" 2016, Vol. XXXVI.
- Załucki M., *Kodeks rodzinny i opiekuńczy. Komentarz*, Legalis 2023.
- Zaporowski P., *Czy przedsiębiorcą może być osoba fizyczna niemająca pełnej zdolności do czynności prawnych?*, "Palestra" 2006, No. 7–8.

Cywilnoprawne aspekty prowadzenia działalności gospodarczej przez osoby niepełnosprawne niemające pełnej zdolności do czynności prawnych

Streszczenie

Celem niniejszego artykułu było wskazanie cywilnoprawnych aspektów prowadzenia działalności gospodarczej przez osoby niepełnosprawne niemające pełnej zdolności do czynności prawnych. Kluczowe znaczenie dla prowadzonych rozważań miało postawienie hipotezy, że osoby niepełnosprawne niemające pełnej zdolności do czynności prawnych mogą *de lege lata* wykonywać działalność gospodarczą. W toku badań poddano analizie obowiązujące przepisy kodeksu cywilnego, kodeksu rodzinnego i opiekuńczego, kodeksu postępowania cywilnego, ustawy o Centralnej Ewidencji i Informacji o Działalności Gospodarczej oraz ustawy Prawo przedsiębiorców przy wykorzystaniu metody dogmatyczno-prawnej. Analizie poddano również propozycje zmian legislacyjnych zawartych w projekcie ustawy o zmianie niektórych ustaw w celu ulepszenia środowiska prawnego i instytucjonalnego dla przedsiębiorców. Po przeprowadzeniu badań sformułowano następujące wnioski. Osoby fizyczne niemające pełnej zdolności do czynności prawnych mogą wykonywać działalność gospodarczą we własnym imieniu, jednak czynności związanych z prowadzoną działalnością dokonują przy udziale przedstawiciela ustawowego. Osoby ograniczone w zdolności do czynności prawnych niektórych czynności związanych z prowadzoną działalnością gospodarczą mogą dokonywać samodzielnie. Podjęcie działalności gospodarczej oraz inne ważniejsze sprawy związane z wykonywaną działalnością wymagają zgody sądu opiekuńczego. Za celowe należy uznać wprowadzenie zmian legislacyjnych polegających na doprecyzowaniu zasad podjęcia oraz wykonywania działalności gospodarczej przez osoby niemające pełnej zdolności do czynności prawnych. Propozycje legislacyjne zaprezentowane

w projekcie z dnia 13 kwietnia 2023 r. są niewystarczające i obarczone błędami, aczkolwiek kierunek zmian należy uznać za prawidłowy.

Słowa kluczowe: przedsiębiorca, działalność gospodarcza, zdolność do czynności prawnych, niepełnosprawność

CYTOWANIE

Malinowska-Woźniak K., *Civil-law aspects of carrying out an economic activity by persons with disabilities who do not have full capacity to perform acts in law*, „Acta Iuris Stetinensis” 2024, nr 2 (48), 35–48, DOI: 10.18276/ais.2024.48-02.