

CIVIL LEGAL CAPACITY – DETERMINING FACTOR IN ESTABLISHING AND MAKING LEGAL RELATIONS

*Lector universitar Eleonora BADAN-MELNIC, master în drept,
Universitatea de Stat din Moldova*

Claudia LACHI

studentă anul III, Facultatea Relații Internaționale,
Științe Politice și Administrative, Universitatea de Stat din Moldova

Abstract

Legal capacity in civil law remains a topical and scientific interest, and even if there are sufficiently explicit regulations in civil law and in many field studies that reveal aspects of the two forms of civil legal capacity – to use and exercise – in practice there persist some doubts, different interpretations and inconsistencies that are based on the legal capacity of natural persons and legal entities.

With this study we aim at elucidating some issues on the subject of civil legal capacity from an original approach that will exceed capacity within civil relations, which means expanding the subject and institution capacity connections with other branches of civil law.

Keywords: legal capacity, natural person, legal person, civil report

Legal capacity in civil law remains a topical and scientific interest, and even if there are sufficiently explicit regulations in civil law and in many field studies that reveal aspects of the two forms of civil legal capacity – to use and exercise – in practice there persist some doubts, different interpretations and inconsistencies that are based on the legal capacity of natural persons and legal entities.

With this study we aim at elucidating some issues on the subject of civil legal capacity from an original approach that will exceed capacity within civil relations, which means expanding the subject and institution capacity connections with other branches of civil law.

Another aspect of interest for the present research is related to differences in approaches to the use and exercise of capacity for individuals in relation to the legal elements, aptitudes and legal possibilities for the purposes of exercising legal capacity, moments in which an individual respectively, acquires legal capacity, conditions of restriction/limitation of exercise capacity for both groups of people and show the effects of the loss incurred by them in exercise capacity.

The analysis of indispensability aspects of civil legal capacity is another point of view to be investigated in this work, with explanations on the extent to which the state, through legal instruments at its disposal, can intervene in civil legal capacity and content area.

Based on the idea that legal capacity is a creation of law, which, in the abstract outlines some natural rights of the individual and in particular, gives it some legal powers, dedicated to the study of how the combination of the two meanings: as the subject gives legal status to entering into a legal relationship and to be chosen as a result of participation in it.

The term "**capacity**" is connected of human personality, which is a product of society and its culture. People establish between them various social relations, some of them falling under legal norms become legal reports. In what follows, I will refer to a category of private law norms, which are reflected in civil law, namely those norms which regulates the legal capacity of subjects in civil law and civil juridical report.

So the legal capacity in law represents a scientific juridical category which obliges us from the start to treat civil juridical report, because these two concepts are interdependent. The civil capacity, as part of judicial capacity, consists in the ability to have rights and obligations, it allows various entities, physical persons and juridical persons, to have the quality of civil law subjects. In the doctrine has rightly pointed out that notions of civil and Personality Syndrome capability juridical identity does not exist in all cases, but only partially overlap. The civil capacity is divided into use and exercise capacity, having no ties binding juridical personality with these sides. The capacity of use is sufficient for the individual to be subject to civil law, that is to have legal personality, even if he/she lacks legal capacity. As mentioned above, we conclude that the civil and legal capacity is a logico-juridical condition but not a logico-moral or social-historical one. Thus, the content of civil and legal capacity is "the ability to enter in specific civil legal relations" aptitudes with certain meanings:

- General abstract and recognized by applicable law;
- Referring to a 'person in law', regardless of the appearance that he receives in public or private law, national or international law;
- With the possibility to be a subject of law (national or international, public or private).

Therefore, the civil, the legal capacity is:

- The creation of the law in force (in law), treaties and conventions (international law);
- It is granted in a generic way;
- Once granted, no one can renounce it entirely;
- No one may lack of civil legal capacity or restricted in its exercise of legal regulation than it attaches itself, which proves once again that it is a normative case;
- When the person becomes subject to a civil legal relationship it is certain that this indicates that he/she enjoys civil and legal capacity;
- As the law acts for the future, the person who has legal civil capacity possess the ability to hold the faculty of having rights and obligations in the future.

The treatment of civil capacity of the subjects of civil law is a fundamental necessity in civil law, as this is one of the essential conditions for subjects to exist and get involved in civil legal relations.

So, we begin with the notion of this phenomenon and subsequently we will be emphasizing the traits that govern its existence. If we talk about the correlation of the capacity of use and the capacity of exercise with civil capacity, then it follows that there is a part-whole correlation between these concepts, the basic notions being the specific difference, and the second one being the proximate genus. So, in what follows, we are going to elucidate some aspects in matter of capacity of use and the capacity of exercise, in order to analyze their correlation with civil legal relationship. So the capacity of use

include the right to live, the ownership of goods, the right to move freely, the right to handle with some lawful activities. Also, it is important to mention that nobody can be devoid of this capacity, but only restricted by law and by the competent authorities.

So, pursuant to the doctrine, the capacity of use has the following characteristics:

- *Legality*. This character consists in the trait of this capacity to be regulated only by law in all its aspects: establishing, beginning content and termination.
- *Generality*. It lies in the fact that the capacity of use is expressed general and abstract ability of people to have civil rights and obligations.
- *Inalienability*. This character consists in impossibility of becoming an object of renunciation and alienation.
- *Intangibility*. This assumes that it can't be bring limitations, restrictions, except by express texts of law.
- *Equality*. This assumes the equality of subjects before the civil law.
- *The universality* resides in the fact that all the persons are entitled to it.

So, the capacity of exercise is the ability of a person to acquire and to exercise their rights and assume the obligations committing legal acts. It is appropriate to elucidate two essential conditions for the existence of this part of the civil juridical capacity:

- *Existence of the ability of use*;
- *The discernment*.

Regarding the capacity of use, the explanation can reflect by its universality, being acknowledged by all the persons. With regard to discernment, this is the individual's ability to correctly represent the legal consequences of his manifestation of will, and his existence is determined by the age and the mental condition of the person. As we have highlighted the features of the capacity of use, we won't exemplify them once more because they are also related to the capacity of exercise, except for the universality. This is explained by the fact that, unlike the capacity of use, which is held by every person, the capacity of exercise is conditioned by the existence of the discernment.

In the following, we are going to present some aspects regarding civil juridical report, and later we are going to analyze its interdependence with the civil legal capacity of the person. In the aspect of generality, we should mention that the civil juridical report is like the proximate legal relation of that general category, and we define this concept as a social relation, patrimonial and personally non-patrimonial, regulated by a juridical norm of civil law. So, the civil juridical report has certain legal characters.

- *The social character* of civil legal report resulting from the fact that this report is in fact a social relation, a relation established between the people.
- *The volitional character* of civil legal report arising from the intention of the legislature to recognize, to protect and guarantee the civil legal reports.
- *The position of legal equality of the parties* in terms of Civil Law is manifested by the fact that the the subjects of civil reports don't have a subordinate position to each other.

Considering the fact that the status of subject of law, of legal capacity and of legal relationship (all categories being branch categories of the civil law) they are closely related, because the subject of law can't exist without legal capacity, can't be part to a legal report, and in consequence, neither can conclude legal documents of civil law. The

subject of civil law is that species of a subject of law which comprises natural and juridical person, as the holder of subjective rights and civil obligations. So, in the following, we are going to emphasize the quality of subjects of civil legal reports, to take a common of the capacity of use and of the capacity of exercise.

In the matter of capacity of use to the natural persons, we inform that art. 18, paragraph 1 of the Civil Code of the Republic of Moldova, stipulates that the capacity of use of a natural person is the ability to have civil rights and obligations and it is equally recognized to all natural persons. Also, article 18, para. (2) of the Civil Code of the Republic of Moldova stipulates that the capacity of use ceases once of her death. With reference to the inadmissibility of deprivation and limitation of the capacity, I will refer to the article 23 of the Civil Code of the Republic of Moldova, which contains the next stipulations:

- The capacity of use is recognized to all persons regardless of race, nationality, ethnic origin, language, religion, sex, political affiliation, social wealth, degree of culture or other similar criteria;
- The natural person can't be bereft of the capacity of use;
- Nobody can be deprived of the capacity of use than the conditions and in the manner provided by the law;
- Total or partial renunciation of the natural person to the capacity of use and the other legal acts aimed at limiting the capacity of use of the natural person are null.

Regarding to the capacity of exercise of the natural person, its legal definition can be found in the Civil Code of the Republic of Moldova, namely in the art. 19, the legislator defines the capacity of exercise of the natural person, as the ability of a person to acquire by the own force and to exercise civil rights, to assume civil obligations and to execute them. The capacity of exercise of the natural person appears in four states:

► **The full legal capacity.** The article 20 of the Civil Code of R. of M., contains the following provisions in the matter of full legal capacity of the natural person. This capacity begins on the date when natural person becomes adult at the age of 18 years. The minor acquires the full legal by marriage. A minor who has reached the age of 16 can be recognized as having full legal capacity if he's working based on a employment contract or with the agreement of his parents, of his adoptive parents or of the curator, or he practice entrepreneurial activity.

► **Restricted legal capacity.** That's characteristic for natural persons aged 7 to 18 years. This category of people is divided into two subcategories, namely: people aged 7 to 14 years, have restricted capability and art. 22 of the Civil Code of the RM stipulates that the all legal acts for and on behalf of the child until the age of 14 can be concluded only by parents, by the adoptive parents or by the tutor, under the conditions provided by law. An express stipulation regarding of the independent actions of a minor over the age 14 contains art. 21 of the Civil Code. of R. of M, that a minor aged of 14 conclude legal documents with the consent of his parents, of the consent of his adoptive parents or the consent of curator, but in the cases provided by law, and with the consent of tutelary authority. An express stipulation regarding of the independent actions of a minor over the age 14 contains the art. 21 of the Civil Code. of RM, namely the minor the age of 14 have the right independently: to dispose the salary, bursary or other earnings resulting from his activities, to exercise the copyright in a scientific, literary or of an art work, or

on an invention or another result of intellectual activity protected by law, to make deposits in financial institutions and dispose of these deposits in accordance with the law, and to conclude legal acts stipulated in Article 22, paragraph (2).

► **Limited capacity of exercise.** This state of capacity of exercise is foreseen by the article 25 of the Civil Code of the Republic of Moldova, which stipulate that the person who, after excessive alcohol abuse, drugs consumption or other psychotropic substances, worsening material situation of the family can be limited in capacity of exercise by the court. These people have curatorship established.

► **The lack of capacity of exercise.** Art.24 para. (1, 2, 3) contains the conditions of declaring a natural person incapable. Thus, the person who as a result of psychiatric disorders (mental illness or mental disabilities) can't realize or conduct his actions, can be declared incapable by the court. Over her is established the tutelage.

In what follows, we will elucidate the most eloquent aspects in matters of civil capacity of legal entity. Regarding to the capacity of use for the legal entities, as in the case of natural persons, it is part of the civil juridical capacity which resides in the ability to have and to exercise subjective rights and to assume and certain obligations.

According to article 63 of the Civil Code, the legal entity acquires the capacity of use at the date of registration. The capacity of use of the legal entity ceases at the date of erasure from the State Register. The deregistration is made according to article 99 of the Civil Code, after the dissolving of legal person through reorganization or liquidation procedure ended and all documents were presented. With reference to capacity of exercise, we mention that the legal entity is a subject distinct from the persons who compose it and manifests itself in civil circulation through its organs, which are parts of them, but they aren't separate subjects. Thus, according to article 61 para. (1) of the Civil Code, the legal entity 'exercises the rights and executes the obligations by an administrator', expressing his own will. The administrators are the natural persons who are designated by law. They act in relationships with third parties, in the name and on account of the society. Speaking of the beginning of the capacity of exercise, in doctrine, there are several hypothesis according to which the capacity of exercise to legal entity appears either with the capacity to use, either at the time of designation of governing organ or at the time of the formation of the company. The article 61 of the Civil Code stipulates that legal entity exercise its rights and performs its obligations since its constitution. It is important to note that if the executive organ isn't formed, the legal entity can't capitalize her capacity. To the achievement of the capacity of exercise, certain conditions or limitations that are restricting it can be made, their origin is either in legal norms or in the articles of incorporation act or in the statute.

In retrospection to those mentioned above, we should make it known that the concept of civil capacity, the juridical report and the subject of law, have seen a quite complex evolution, suffering many changes along the history until it acquired the current meaning. These elements of civil law take a major role in this branch of law as it determines the existence and evolution, both in theoretical as well as practical sense.

As a conclusion, we should note that the civil capacity and the civil juridical report represent two complex and interrelated phenomena, by which we can determine the quality of civil law subjects.

Thus, the notions of civil capacity, civil report, and civil subjects, so simple in appearance, are the result of efforts of legal thinking in the history of its development.

Bibliography:***I. Normative acts***

1. Constitution of the Republic of Moldova, from the 29.07.1994, Official Monitor of the Republic of Moldova, no. 1 of 12.08.1994.
2. Civil Code of the Republic of Moldova, no. 1107 of 06.06.2002, Official Monitor of the Republic of Moldova, no. 82-86 of the 22/06/2002.

II. Specialized literature

1. Baieş Sergiu, Nicolae Roşca: Civil Law. General Part. Individuals. Legal entity: Vol. I. – Chişinău: Ed. Cartier, 2004.
2. Beleiu George: Romanian Civil Law. Introduction into civil law. Subjects of civil law. Bucharest: Ed. "Chance SRL", 1993.
3. Buda Calin. Theoretical landmarks concerning institution of legal capacity. //Law and Life, 2011, no. 8.
4. Ciobanu, Tatiana. The general theory of state and law: Course support. – Chisinau: CEP USM, 2012.
5. Chelaru Eugen: Civil Law. Persons. Bucharest: Ed. ALL Beck, 2003.
6. Ion Dogaru. Elements of civil law. Introduction into civil law. Subjects of civil law: Vol. I.- Bucharest: Ed. Şansa, 1993.
7. Maniuc Liliana. Reflections on of the capacity of use of natural person. //Law and Life, 2008, No. 1.
8. Turcan Daniela, Volcinschi Victor. The concept of natural person and civil juridical essence. //National Law Journal, 2006, no. 1.
9. Poenaru Emil. An introduction to civil law. General Theory. The persons.- Bucharest: Ed. Europa Nova, 1996.
10. Igor Trofimov. Introduction to civil law. Natural persons. Legal entity. - Chisinau: Ed. Elena VI, 2004.