

Civil Legal Capacity of Minors

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Abstract

The article outlines some aspects of the civil legal standing of minors in international law and the national law of individual states. The authors came to the conclusion that special rules are fixed in international legal acts and in national law regarding the legal status of a minor in the civil law sphere. At the same time, there are significant differences in the national legal systems regarding: 1) the categorical apparatus that designates the civil legal personality and its elements; 2) the moment of a juvenile's civil legal personality appearance and its correlation with the moment of the right to life (the respect for human life); 3) the scope and the content of the civil capacity of minors; 4) the possibility of a minor emancipation, its conditions and legal consequences. Given that the civil legal capacity and the legal capacity of a natural person is determined by his personal law, the revealed differences can cause certain difficulties during the application of the rules on the legal standing of a minor who is a foreign citizen or a person without citizenship. The attention is drawn to the need for a clear delineation of the categories "minor" and "child", "minor person" and "incompetent person".

Keywords: Civil legal standing; Civil law-ability; Civil capacity; Minors; Emancipation.



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1. Introduction

The processes of globalization occurring in the world lead to the emergence of numerous cross-border relations, including those involving minors, and their main instrument of legal regulation is the norms of international treaties and the conflicts of national law rules. As a rule, the civil legal capacity and the legal capacity of a person is determined by his personal law: the law of the country of which he is a citizen or the law of the country in which a stateless person has a residence. During transaction making by a minor foreigner or a stateless person, it is necessary to take into account the norms on the legal standing of another state. "These circumstances require from each state the maximum clarity of legal regulation of private law interstate relations, on the one hand, and tolerance and loyalty, on the other, which can be achieved by establishing mutually beneficial conflict-of-laws and the principles of one state legislation application in the territory of another from the point of view of individual interest protection" (Epshtein *et al.*, 2010). At the same time, while fixing the civil law standing of minors, the national legal systems operate by different categories, and demonstrate different approaches to the possibilities of a minor to participate in civil relations, and their analysis is assumed in this work.

2. Methods

In the process of research, they used comparative legal and law-sociological methods, the methods of legal modeling and forecasting and the method of legal interpretation.

3. Results and Discussions

Legal standing is a special property necessary for any subject to participate in various legal relationships.

At the same time, legal standing is the category that is independent, which can not be regarded as the aggregate of all rights that belong to a person, since the essence of the category in question lies precisely in the legal capacity of a subject (whether it is a citizen, a legal entity or a state) to be a party to legal relations.

Legal standing as an inalienable property of a citizen is stated in international acts, in the Universal Declaration of Human Rights (Зекко, 2015). (Article 6) and in the International Covenant on Civil and Political Rights (Lozinsky, 2018) (Article 16): "every person, no matter where he is, has the right to the recognition of his legal standing". In national legal systems, the specific features of a person's standing are determined, including for certain categories of citizens (in particular, for minors).

Legal standing has its own specific content, which distinguishes it from other legal phenomena. Russian legislator reveals the legal capacity of a person to be a party to civil legal relations through the categories of legal capacity and ability.

Legal capacity is a state-recognized opportunity of a subject to have civil rights and bear civil obligations. According to Art. 17 of RF Civil Code (Yakovlev, 1978), this ability (opportunity) is recognized equally by all citizens, arises at the time of a citizen birth and ceases with his death. The content of legal capacity is determined through the list of basic civil rights (Article 18 of RF Civil Code). In essence, legal capacity is an abstract possibility for a person to have civil rights and bear civil obligations.

Competence is the ability of a subject to acquire and exercise civil rights, to create civic duties and execute them for himself (Article 21 of RF Civil Code) by his actions directly. It is acquired by a citizen in full with the coming of age, starting from the age of 18. Only in the cases provided by law, the acquisition of full legal capacity is possible before specified age achievement. As for the incompetence of a minor, its scope depends on the age of such a person, which will be discussed further.

The ability of a person to bear civil liability for a committed offense - delictual dispositive capacity - is in the doctrine as an independent structural element of legal standing or as the part of the legal capacity directly (Merz, 2008; Perlmutter and LeoGrande, 1982).

Let's note that three structural elements of legal standing are mentioned in German law (GGU) - Rechtsfähigkeit (legal capacity), Geschäftsfähigkeit (capacity), Delictsfähigkeit (delictual dispositive capacity).

The French legislator uses only one term - capacite (Article 3 of the FCC), implying both legal capacity and legal capacity.

The laws of England and the United States do not distinguish the concept of legal capacity and ability terminologically, where there is also a single term - legal capacity. However, there is the indication of Passive capacity (passive legal capacity, i.e., legal capacity) and Active capacity (active legal capacity, i.e. capacity) in court practice and in doctrine.

It is important to determine the moment of legal standing emergence. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights do not describe this issue. According to the Preamble of Child Rights Declaration a child needs special protection and care both before and after birth (Копиленко *et al.*, 2008). This does not mean that the beginning of legal standing is the moment of a child conception, the provisions of the declaration are aimed only at an embryo protection.

The norms on the protection of an embryo right to life are recorded in the legislation of several states. Thus, according to the American Convention on Human Rights, the right to respect for human life is protected by law from the moment of conception. The Constitution of Slovakia and the Charter of Fundamental Rights and Freedoms of the Czech Republic contain the provision that "human life is worthy of protection even before birth." The Constitution of Ireland and the Law of Abkhazia "On Health Care" recognize the right to life for an unborn. The right of an embryo to life is protected in Germany (the laws "On the Protection of Embryo" "On the Protection of Embryos in Connection with the Import and the Use of Human Embryonic Stem Cells") and in France (the section "The Protection of the Human Embryo"). The courts of Great Britain also equate an embryo to a person (Giappiconi, 2018; Perevozchikova and Pankrtova, 2006).

The legislation of several states recognizes the need to protect the rights of an embryo, but the emergence of legal capacity is related to the moment of a child's birth. This provision is fixed in § 1, art. 29 of the Civil Code of Italy in the art. 13 of the Civil Code of Japan, and in the art. 37 of the Civil Code of the Republic of Yemen (Abdulhakovich and Ahmed, 2014; Beck *et al.*, 2008).

An embryo as a subject of rights is not considered in Russia. A child acquires a civil legal standing in the case of birth alive, regardless of vitality.

It is necessary to distinguish between the notion of "minor" and "child" ("children"), although often they are mixed and are used as identical. The term "child" refers to a person's condition in blood relationship, based on the origin of this person from his parents. Upon reaching of full age by a person, the blood relationship with his parents is not lost, it is important for alimentary, hereditary and other legal relationships. The notion of "minor" applies to a person who has not reached the legal age, "indicates an individual's belonging to a group of people who are at a stage of human life, such as minority, in particular, i.e. the stage of the life path, within which a person has not accumulated experience yet to live in society" (Epshtein *et al.*, 2010).

There are three main approaches on the issue of the scope and the content of the civil capacity of minors in modern law and order.

1. The legislation of some countries recognizes minors as completely incompetent, all legally significant actions on their behalf are performed by legal representatives. However, as an exception, they determine the actions that a minor can commit independently. So, according to the Art. 388-1-1 of FCC "a legal representative (an administrator) represents a minor in all acts of civilian life, except for the cases when the law or practice allows minors to act independently". The property of a minor is managed by his parents, except of the property that was donated or subordinated to a minor under an appropriate condition, and is administered by a third person, a third-party administrator (the Article 384 of the FCC). The lack of legal capacity among under-aged persons is confirmed by the rules of responsibility imposition on parents (guardians) for the damage caused to minors (Article 1242 of FCC).

2. In other legal systems, minors have incomplete legal capacity, the volume of which does not depend on age and is traditionally determined through the categories of transactions that they are entitled to perform independently (Currie *et al.*, 2009). Thus, in Great Britain, the contracts of a minor, concluded with an adult, link only the latter (Article 3 (2) of Good Sale Law) (Kresin, 2013). The exception is the contracts aimed at acquiring of necessary

things and services for minors (to maintain their physical existence and social status), for which a minor is obliged to pay a reasonable price. Other transactions involving a minor are either null, for example, loan agreements, or disputable. A counterparty of a minor may demand the transferred to him under some transaction only if "the court deems it is lawful and just" (De Jong, 2011). Similarly, in the United States, a minor is granted the right to cancel a contract concluded by him, except for the agreements related to the marriage, the maintenance of children, the loans for education and other agreements approved by the court (Akhmetyanova *et al.*, 2018).

3. Most legal systems provide for the allocation of several age groups among minors that differ by the amount of ability. Among these is the Russian legal system, where three groups of under-aged have been identified in terms of capacity.

The first group includes the minors under 6 years who are completely incompetent, and only their legal representatives can make transactions on their behalf (paragraph 1 of the Article 28 of RF Civil Code).

The second group consists of the minors at the age of 6 - 14 years, most of their transactions are also performed by their legal representatives. But unlike the previous group, children of this age have the right to perform independently: 1) small household transactions; 2) the transactions aimed at the non-reimbursable receipt of benefits that do not require notarization or state registration; 3) the transactions for the disposal of funds provided by a legal representative or with the consent of the last by the third person for a specific purpose or for free disposal (p. 2, Article 28 of RF Civil Code) (Bunyatova, 2015). Property obligations for the transactions of a minor, as well as for the harm caused to them, are borne by his legal representatives.

The third group is the minors at the age from 14 to 18 years, and their capacity expands significantly. In addition to transactions available to the minors of the second group, these subjects are entitled independently: 1) to dispose of their earnings, scholarships and other incomes; 2) exercise the rights of the author of a scientific, literature or artistic work, an invention or other result of his intellectual activity protected by law; 3) to make deposits into credit organizations and manage them; 4) to be a cooperative member upon reaching the age of 16 (paragraph 2 of the Article 26 of RF Civil Code). Other transactions they make with the written consent of their legal representatives, which may be in the form of a subsequent written approval (paragraph 1 of the Article 26 of RF Civil Code). At the same time, they answer both for the transactions made and for the harm done independently.

The expansion of the legal capacity of a minor is possible as the result of emancipation. The Institute of Emancipation is more typical for the countries of continental Europe, it is unknown to the law of England and the United States. In Switzerland the emancipation was abolished on January 1, 1996 (the Article 15 of the Swiss Civil Code) (Bunyatova, 2015). However, the conditions and legal consequences of emancipation are different.

States differ by the following conditions of emancipation:

- 1) by the virtue of marriage; typical for many states (for example, Article 476 of FCC); the exception is Germany and Russia;
- 2) due to "spiritual maturity"; it is characteristic of Muslim law, when the spiritual maturity of a minor is recognized by his patron or judge (Bunyatova, 2015)
- 3) from the situation, when the parents transfer property to a minor and entrust the management of it; it is also more characteristic of Muslim law;
- 4) at a minor's request (the Article 32 of the Civil Code of Spain) (Bunyatova, 2015);
- 5) with the consent of legal representatives or by a court decision (the Article 27 of RF Civil Code, the Article 477-479 of FCC, the Article 316 of the Civil Code of Italy, the Article 26 of the Civil Code of the Republic of Belarus) (Bunyatova, 2015). The RF Civil Code establishes the grounds to declare a minor as emancipated: the reaching of the age of 16; the implementation of labor activity or the involvement into entrepreneurial activities with the consent of parents.

There are also legal consequences of emancipation. An emancipated person can be declared as fully capable (the Article 320 of the Civil Code of Spain) or partially capable (the Article 481, 487 of FCC, a minor cannot marry on general grounds, cannot be engaged in business).

The conclusion arises from the mentioned above, that it is necessary to see the difference between the categories of "a minor person" and "an incompetent person".

The indicated approaches to the legal standing of minors are presented in the most general form. Within the framework of national legal systems, there are numerous features related to minimum age determination for legal standing acquisition, the record of different levels of authority, the presence or the absence of emancipation, etc.

4. Conclusions

Both international legal acts and national laws contain special rules on the legal standing of minors.

However, the law of states has some differences in the terminology used to denote the legal standing, determine the moment of its emergence, fix the range of actions that a minor can commit independently, etc., which may entail certain difficulties in law enforcement.

5. Summary

The revealed differences suggest the need for a more detailed comparative analysis of an underage person civil status from the position of a correct understanding and the application of law, and also the advisability of taking into account the most successful legal designs during further improvement of RF civil legislation.

Acknowledgements

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

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