

THE LEGAL CAPACITY TO TRADE

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ABSTRACT: *Trading is a part of our society. The man has been trading from ancient times so the amount of trades and transactions around the world is huge. In order for us to initiate, organize and deploy such trades we have to have certain rules which can help regulate the social and professional or legal aspect of trades. Therefore the sole trader capacity must be obtained and used in order for the contracts to be valid. The right and obligations that come with this capacity constitute activities that can be reflected and analysed by obtaining and maintain the sole trader status.*

KEY WORDS: *right of use, usage of sole trader capacity, contractual obligations, procedures, rights.*

1. INTRODUCTION

Social life is complex therefore commercial activities are unavoidable during our quest for the usual necessities for food, clothes , shelter, medication, social assistance and even spiritual food. Any simple contact with a company or sole trader has a monetary trait to it and also comes with rights and obligations on both sides.

The human being is not able to get involved in all the trades and commercial activities even more our mental capacity to enter contracts diminishes with age. I will not go into the pathological aspect however I will try to keep the article focused on the natural and legal side which allows us to enter monetary transactions or trades which come with obligations and rights.

2. THEORETICAL ASPECTS OF THE LEGAL CAPACITY TO ENTER CONTRACT

We have to ask ourselves since when can a person enter a commercial transaction, to buy or sell an asset? Surely not from birth as it physical development does not allow it. However after the infancy any child enters commercial transactions when they use any means of public transportation or buys a lunch at school. How long

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does the child have to wait till he can rent or even buy its own place to live and then sell it to make a profit? The research becomes very interesting as if we look at it from a certain legal point of view even an unborn child becomes a legal entity.

The legal capacity is regulated in different ways depending on the country just as its effects on financial law or other aspects are regulated differently. However we are one of the first generations which pays close attention to the commercial laws and regulations and to the unification of the commercial treaties at least in some domains. This is mainly due to the formation and efficient running of the European Union. When talking about the subject of this article it is hard to establish common ground or if ever all the states of the world would ever agree on this considering the multiple differences be it cultural, linguistic or in the standard of living.

The human is a rational being which lives in organised social environments. Our life is not defined by isolation but on the contrary we thrive in large communities even metropolis where the social and commercial aspect are omnipresent. All that relate to the legal capacity. According to the definitions from specialized courses the legal capacity is a general and abstract ability of an individual to have rights and to use those rights according to the laws in force.

The features of the legal capacity are: generality, inalienability, intangibility and lawfulness (Mihai, 2004, p.129). These characteristics are valid even if we look at it from the law's theory, civil or even economic point of view. Any human being has legal capacity, it is not preferential or conditional. When we bear in mind the general aspects and unitary character we can distinguish some limitations which concern a certain form of the legal capacity and appear under certain conditions. The individual can never be stripped of its general and lawful legal capacity distinctive to its nationality or under the laws of the country he is living and undertaking multiple activities.

The legal capacity is general and particular however when it is analysed under the possibilities it gives the holder like the power to engage in certain activities, to be inherited, to sign civil agreements or to trade we can distinguish two versions: the capacity to act and the capacity to use. To better understand the meaning of these two notions I refer to the Romanian law according to which the capacity to use is ' a person's ability to have rights and obligations; it starts at birth and it stops with the person's death' (Noul Cod Civil rep, art.34-35); the capacity to act is ' the person's ability to sign contracts and civil documents; complete capacity to act starts when the person comes of age; the underage person gets through marriage total capacity to act' (Noul Cod Civil, re part.37,38,39).

The main regulatory documentation regarding these notions can be found in the old legislation too which came into force in 1954 (article 31). Between the 2 notions there is a difference but under the temporal aspect the capacity to use includes the capacity to act which is gained later in life, both capacities terminating with the person's life. There are situations when the capacity to use can be limited so that the civil, economic and financial actions become impossible.

Going back to the first aspect regarding the capacity to use we have already noticed it has a general character. So the individual can have rights and obligations however the legal capacity does not insure the capacity to use. So the underage

person (in Romania the coming of age is at 18) can get as an inheritance the shares in a company but the administration of the economical activities will not automatically go to him as he is missing the other aspect of capacity, the use one. Also, if you he wants to set up a business through the creation of a structure such as a trade company with legal personality, carrying out certain formalities cannot be recorded directly by the person lacking the capacity to use.

That is why, through concrete legal possibilities the legal property of a person deprived of capacity to use may be managed by another person, obviously that has the necessary legal capacity, in the interest of the minor or the person deprived of capacity to use, if this is major. In order to create some early possibilities (partial) of exercising the subjective rights of the holder, restricted capacity has been created for minors aged between 14 and 18 years, such persons being able to sign certain personal legal documents (Dănişor d. C & Daniel & Dănişor G, 2008, p. 340, apud Daniel. I).

In economic matters, this type of capacity to use is the most restrained and it does not offer great advantages, the person being deprived of the total using of its subjective rights. Then managerial activity itself is complex, involving a whole range of initiatives give tasks and responsibilities, a fact which shows that the time of the exercise of a specific economic activity, that of his coming of age. In accordance with the specific legislation in Romania for the past four years prior to the age of becoming, for signing legal acts the minor will need various agreements either from parents or legal representatives, as appropriate, only certain categories of documents, basically those concerning conservation will be easier to sign if there is no risk of reducing his goods in terms of value through the administration of them.

However, Romanian legislation introduced provisions including the possibility of acquiring anticipated capacity of use before the age of majority. So under the current civil code, a person acquires legal capacity (usage), even before he is born, which at first glance seem almost impossible; the rights envisaged are concerned on the unborn child, not his parents or his mother this time.

The applicability of this exception to the moment of acquiring the capacity to use regards the inheritance rights. In other words, whether by operation of law, Romanian civil throughout, this type of capability is recognized for the unborn but conceived (from the moment of conception, which can be determined scientifically), if the child is born alive, then for him the condition regarding the vocation for a particular succession would be met. For a person to inherit he must be alive, basically to exist on the date of succession, the date of death of the person laid down naturally or by judicial process. Fold here a fiction with normative character appeared, as an unborn child but conceived cannot be removed from a sequence, which was necessary after his birth, evidently caused by the fact that it has to be born alive. Obviously that the inheritance may include social actions and parts, so that they will be dealt according to the law or legislation in legal devolution or agree with the will of the holder, if the will in question was put together.

By reference to the civil code in articles 39 the situation of acquiring full exercise to use is implied, either in advance, up to the age of becoming, which in our country is lower than in some States. So for the person who marries before 18 years, the full capacity of use is established from the date of marriage.

Objective analyzing, obviously we are talking about all of the exception or legislative fiction, because in terms of physical and mental development of the rules should be equal for everyone; how a particular marriage, however, includes the same social status as well as the specific rights and obligations has been established so by effect of the final regulatory action as minor married to acquire the full effects of exercise capacity. In this case, the exception does not cover only certain duties specific duties of times family, but can exercise direct times that of discharging any duties, including those to conduct economic activities, to make specific acts, if not precisely those economic operations are impeded by certain specific age limits, as it might be the banking ones or of a different kind.

Within the company in dealings with third parties or with other economic operators, the person must be responsible and from a legal point of view to be in full capacity to use, so his acts cannot be tainted in any way. Not incidentally, and labour legislation makes full working capacity with the age of becoming. It's true and here there are some exceptions, on the programme of work of the juvenile, the conditions under which the work and time of day in which work is done, but the basic rule is all full capacity to use, which as I stated to be received on the path.

Once a person holds the full exercise capacity does not mean that this one will have it the rest of his life, as is the capacity to use, characteristic. Thus fall short of full capacity of exercise though have become major persons placed under interdiction, and well as mentally alienated persons-and obviously their individual actions will be limited, subject to allowance or direct administration as appropriate. A staff employed in each of these situations will not be able to organize single economic activities being necessary to take certain measures for managing legal conclusion.

An important aspect in acquisition times exercise capacity loss is the person discernment. It constitutes "intellectual capacity of an individual to distinguish and prioritise rational values or objects, relationships, and assessed, so as to be informed of his actions to realize the significance of the actions and of the consequences of actions in which it was committed" (2004, p131). Discernment is absolutely necessary a platforms when it enters the various legal or economic relations. That illness or psychological development in order to attract in terms of responsibility, on the way, and therefore its ability to render into society by seeking attainment of legitimate interests, by honouring some duties undertaken by other States in fact will be reduced, making it necessary to have a foreign intervention in favour of the person no longer has the capacity to exercise.

Because I referred to the role of legal capacity under economic relations I will make the following analysis respecting the quantification of non-monetary injuries in component financial repairs. The problem of infringement of one's image or alteration of works or supplies unique is not new, but we remain in the sphere of moral damage. When a person is insulted or slandered several times, a fellow with the discernment is born for the injured person, the right to obtain damages from the guilty.

Compensation for moral and material injury caused by a long time was perceived to illogical and shocker (Mezeaud & Mezeaud, 1965 panorama II, no. 397, and next, apud Deleanu, 2005, p. 331). However the concept of this type of renovation has come a long way in the right, so slowly but surely, what once seemed illogical

principle level became the first proposal, and then legal norm and here's how it's currently non-material damage, without any material component directly inflicts damage are repaired based on pure materials, damages through issues and economic considerations given the gift to satisfy the claims of the injured party. How to calculate these damages, which would be the formula calculation technique times we do not know precisely, therefore, concrete provisions would be welcome, because today is a different offense addressed under the aspect of compensation also includes assigned, although as I said subjectivity can be expanded in to establish.

Commercial activity involves specific action on trade, the completion of legal documents whose circulation is found in contacts between companies or between them on the one hand and the State on the other side. The multitude of commercial laws, implies the existence of discernment on the part of the person who participates in the preparation of their own, and one of the most important documents are contracts concluded, the most common being those that have a commercial component.

The contract represents a bilateral or multilateral agreement, and the rights and obligations set out in the conclusion become benefits times for parts duties. That is why, at the signing of the contractual agreement, each entity to fulfil all the conditions required by law to be able to perform such operation, so that in the end the final act to legalize the understanding that has been reached and that represent the will of the parties. In economic activity we are dealing with several types of contracts, some of them used very often, others on the contrary, after extended periods of time. Of contracts between the business world encountered we list a few: the insurance contract, contract, contract of Association Commission, consignment agreement, contract, supply contract, loan agreement, lease agreement, rental agreement, contract term, the contract of sale shopping and many other types of agreements between the parties.

The conclusion of these contracts supposes commercial society times other entity with economic activities, the existence of exercise capacity, the person designated to negotiate and to conclude an understanding. In terms of the way in which they organise the work of the economic operator, taking into account its diversity and expanding the geographical areas, in many cases, the physical presence of the trader is impossible, he may not be simultaneously in several places at once. In this situation, on the basis of a warrant contract trade, it empowers a person, called an agent to negotiate and finally reach an understanding if you conclude a contract with another company on behalf of an entity that has mandated, the trustee being remunerated for this type of task representation (Bojincă, 2001, pp. 273-274).

Remunerate trustee distinguishes mostly commercial form of the civil contract, but what I wish to clarify here is that in such a situation a person, that is, the trustee must also have exercise capacity, so as to be accountable for his deeds, both the rights and obligations arising from the instruments concluded will become benefits and burdens for the person that cost him engaged, contracts, having the same enforceability as their principal, and how it had been completed by himself. Contract with a commercial component, concluded by an incapable, if not covered by any of the exceptions laid down by law is in principle an agreement voidable. Legal capacity is required to be at the end of understanding graphs, the disappearance of the exercise does not affect the validity of the Act.

Because labour legislation provides for the possibility of acquiring quality employee, for certain activities and subject to certain conditions before his 75th birthday by a major person, opinions expressed below is that as far as possible, the representation of the example above, the specific mandate entrusted to commercial to be a person of course would be able to have the quality of employee, but that would be a major. If the latter has experience and education in the domain, things are deemed to stand better. It would be a complicated situation, however, even though in practice it's probably rare that empowerment of married minor is to conclude in the name of and on behalf of various legal entities.

Through the co-ordination of the provisions of the new civil code, legislation in the field of labour and commercial aspects, this is possible because the minor married acquires the full exercise capacity and all those before reaching 18 years of age may have the quality of employee, non-compulsory condition to the contract of mandate. Well, the acts of these, I sustain, remain valid, since although they are concluded by a minor under the exceptional aspects it had at the end of their exercise capacity.

The situation could be even more complicated if the said minor due to various reasons I would stop the marriage, so the possibility of losing full version exercise capacity, and maintaining it. Whatever variant followed, concluded is subject to the existence of a full exercise capacity of their actual date, and the subsequent evolution of the State of the person and the maintenance/loss of capacity could not influence the validity of the documents negotiated and entered into.

Legal capacity is therefore an essential skill of the human being in the sphere of social organization. If upon the first versions, the things concerning the use, acquisition, maintenance, loss, and the effects generated are quite clear, in terms of use appear certain, age related mental evolution, civil status, various diseases, judicial decisions with times disturbingly direct possibility the exercise of rights of the person in accordance with its interests of another and with coverage of some duties.

When we speak of legal capacity one must not refer, however, only to the individual, but also to the legal person. The last few decades in terms of legislation regulating the establishment, organization, functioning of the legal person has changed much, and its existence in European social and economic landscape represents a reality however. With all the differences compared to the natural person under legal issues and countless person is acquiring certain rights, it can wield in whichever legitimate interests and at the same time they are retained on the various obligations both contractual as well as through direct effects of tax legislation.

Through direct reporting to the regulatory text, the person acquires legal capacity of service from the date of the registration/date of the instrument of incorporation/date of authorisation establishes their (Civil Code, art. 205), and exercise capacity is acquired from the date of their constitution (the new Civil Code, art. 210).

The legislative text is not similar to that in terms of a physical person, for acquiring legal capacity. Determination over time, it will be kept for the duration of the existence of a legal person, if not involved other decisions concerning various forms of sanctions, through the prohibition of the exercise of certain rights.

It is a fact that according to the legal entity to be entered in the date of entitlement to the economic capacity of use is reported by two times. If we have in mind, legal entities, where the purpose of the establishment are required to be registered or recorded statements made in the various types of records prepared in accordance with the law by the State authorities, for the acquisition of legal personality, acquiring the ability to use is dated on the day of carrying out this procedure, where through regulatory action this procedure is not necessary acquisition date, usage capacity shall be determined with the day of filing of formation or of their authorisation as the prerequisite for the purposes of operation.

For acquisition of the exercise capacity is desirable to establish effective legal entity, and in respect to this form of legal capacity, it can only be full, local laws which do not indicate any form of restricted capacity in case of legal persons.

Exercising the social rights and performing the obligations of legal entity are carried out by individuals designated under the Constitution or State or other forms of internal organization, during its existence. Rules for individuals involved in matters of legal capacity shall be kept and when they are acting within or on behalf of a company, regardless of the nature or origin of capital, so long as the company in question carry out activities in the territory of our country.

Returning to the exercise capacity of a physical person, its activities must be organized strictly in the business set, as object of activity and also only on the basis of the authorisation or registration fees for performing various actions, and prohibited conduct or assuming of rights and duties, out of bounds for the purpose in which it was established (Dănişor d. C & Daniel & Dănişor G 2008, p. 341).

So if the human being is in a wide range of subjective rights that can be exercised in the case of a legal person, the scope of its rights is related to the purpose for which the level of prejudice has been created. Of course during the company's operation, it can modify the objects, so that their rights will be exercised in accordance with the existing goal and enshrined documents on that date.

Created as a fiction of law, as has been much circulated the idea in the literature, a legal entity is an important component of the business environment and beyond. In optimum operation observe the need for duplication of the finding of the existence of legal capacity. So besides the fact that it is a mandatory exercise capacity of both the legal entity to perform many types of activities, conclusion of legal acts/modifications shall be imposed and exercise capacity of an individual in decision-making: posture member Administrative Council or in other Office or office-holder, so as to avoid any declaration of acts performed.

Turning to the ability of the legal entity must be added that the sphere of subjective rights that can be acquired is made up of all those rights are specific times can be exercised by a legal entity, excluding those that by their very nature (right to life) or by operation of law (freedom of marriage) are exclusive to a specific individuals. Then the lack of capacity of the legal person, where it is acquired after obtaining certain permits or approvals, attract the absolute nullity of the actions carried out in the absence of authorisation required by law (Civil Code, art. 207).

Where performing a certain activity was permitted without special permission, and after obtaining authorization becomes mandatory, according to some legislative changes, obviously the legal entity in question will have to be approved, adapting to the new requirements in the domain.

3. RESULTS

The existence of legal capacity constitutes a characteristic of the person, and in terms of legislative developments in the latest legislative amendments, in matters not brought different rules of law, towards the mid last century. Moreover, when we refer to the ability to use previously acquired birth subject to establish expressly by law text, we note this trait that defines a person. Such an abstract skill is recognized concerning certain rights of a person presumed to be born and which at the same time under the biological aspect of lived at least a moment. Sometimes the right isn't enough to apply its provisions, therefore working with other sciences, in particular medicine in this case (proving that the newborn breathed even once) it is necessary for the application of the existing legal regulations.

A human being can freely exercise his activities, including the commercial ones, initiatives of economic times work specific entrepreneurship after fulfils the conditions relating to development that enough is tantamount to recognition of exercise capacity in its full form. Only man is the subject of law, no other creature having this quality, which shows that this feature can be found in one species of creatures, that in order to clarify the problem of animal rights, so as not to misunderstand that they would be subjects of law, and obviously would also have obligations. Generic notion of animal rights is considering rules for their protection, the obligations being obviously relied on all the people.

Although I have discussed many aspects of the effects of the person's physical capacity, either physical or legal, an interesting situation is one in which a person, a contractor for example, is declared deceased by judicial procedures obviously being organized under the legislation of subsequent successions, including shares held by it. In the event that the person declared deceased by judicial reappears a first effect will be setting aside of the judgment of death, but declarative person should be reinstated immediately. In my opinion the legal capacity of the person concerned shall be deemed to be continuous, because in fact the person has not died, just his presumed extinct and the long period of his non identification had attracted the death declaration procedure completion by judicial.

As regarding legal persons, the existence of legal capacity restricts its existence, given that the company, institution, foundation acquired the ability to use and exercise at the same time, the absence attracts a non function of the legal entities listed. Overlapping deadlines with the duration of the existence of a legal person may give rise to the idea that legal capacity is a form of acknowledgement of the establishment and functionality of the person, the absence of traits being equivalent with the termination of the economic and social landscape of the organization.

Legal entities under the aspect of their organization and operation are much more present in the Act of Commerce. Market faring traders to certain hierarchies, but on the subject of the to-do, the acquisition of legal capacity has occurred previously in the anchorage marketing activities of the legal person, because without the operating conditions, the operator will not be able to promote their work or activities that aims to perform and from which it intends to obtain a certain profit.

If we take into account legal persons without patrimonial purpose, here, unless a target profit directly, but also various other ways to support some cultural, artistic or other social values under the same aspect of acquiring legal capacity, the situation is similar in the sense of the necessity of acquiring capacity, started earlier, be they charitable actions.

4. CONCLUSIONS

If the human being, in principle, does not have to fulfil any legal formality to obtain ability, this being recognised subject indicated, prior to the birth of the human being, the person must initiate some moves from the founders, the event or persons designated for this purpose, the activities carried out for the registration of which has the effect of use and acquiring capacity; as regards the ability of exercise, the differences between people are more clear in the sense that physical ones will get somewhat gradually, first, then measure the effect on physical development, in some cases even anticipated toward fellowmen, the effect of the amendment on civil status, while the legal person, once it is established , exercise capacity is deemed to be acquired.

Even at the time of the loss of the two forms of capacity are recorded some differences. If respecting the end of use, specific individual moment is the cessation of life, and at the termination of the legal person of its existence, on the ability of exercise remember that while at this form of legal person ceases at the same time capacity with the use in the case of a physical person, things can be similar, in the sense that the end of life of the person shall terminate and the ability of exercise.

There are however exceptions, under which the Office may lack the capacity and the legal person's lifetime, even after he was acquired with effect, under the conditions specified.

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There are however exceptions, under which the capacity to use may lack during the legal person's lifetime, even after it was acquired with full effects as indicated.

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