THE SPECIAL FEATURE OF THE INSTITUTION'S CAPACITY TO EXERCISE A NATURAL PERSON AFTER THE LEGISLATION OF THE REPUBLIC OF MOLDOVA

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Abstract

After the essence and usefulness, the institution of legal capacity to exercise a natural person always occupied a position in the list of priority concerns the doctrine of, in particular, the Republic of Moldova in the process of consolidation and the development of legislative base, during the transitional period.

Although, to a certain extent, to the formation of a juridical institutions with promising prospects in the raw material the capacity to exercise, even with elements which had never before fallen in the way in the legislation of other Member States, after the year 2017, the legal decree in the field in question has given to understand that without a review within the meaning of modernization will not be able to continue to ensure efficient coveted.

In these conditions, recently, the legislature of the Republic of Moldova decided to initiate the process of reconsidering the concept of the capacity to exercise a natural person, placing emphasis on intensification of judicial measures for the protection of the interests of them in return for giving up on some circumstances that previously withdrawing into the field of action in the personal exercise of legal acts of provision.

The tactics chosen by the inspired is our legislator in the process of formulating the new legal framework to guarantee the civil rights in the case of special categories of subjects, remains to be seized after the generated effects, and until then, by doctrinally in the framework of the new research and interpretations of the possible effects in the plan Application Note.

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1. Introduction. The concept of the full exercise capacity

Notion. Exercise capacity is the ability of the person to gain by its own deed, and to exercise the civil rights, to assume personal civil obligations and to run (Article 19 CC). In the way of expression of our legislator the definition of the concept of capacity to exercise, mind, after a slight superficial exams, the phrase:„(…) the suitability of the person to gain by its own deed (…)" But the capacity of the civil society to exercise a natural person should relate exclusively to its ability to conclude staff legal acts, the aptitude test does not have anything to commit certain facts, whether they are of the nature of the material, legal, civil, commercial even. But the ability to exercise only affects the civil legal acts, namely the property-related, as in the case of legal documents related to the other branches of "capacity problem of minors is regulated separately, sometimes different from how the regulatory framework of civil law" (Mureşan, 2001, p. 92).

What is right, and the roman legislature within the actual legislation admit a mistake to define the capacity to exercise: "Exercise capacity is the ability of a person to conclude the only acts civil society' (Article 37 RCC).

Although it is appreciated the idea of reference only to the ability to complete the legal acts, in particular those civil society, and legal acts of any other nature (Beleiu, 1992, p. 317), it seems correct observation of authors (Lupan, 2007, p. 98), which considers the expression "single" as one unhappy, arguing that the same aptitude test shall be required, and then, when the legal act civil is completed by more than one person.

Therefore, in their opinion, and with good reason, the capacity of the civil society to exercise is the ability of the natural person to conclude staff legal acts civil society. In the context, the authors of the quoted continue to examine the style of defining the capacity to exercise and in the content of the other regulations with a special character. Thus, in Article 5(3) of the Decree no. 31/1954 they identify a definition more explicit, after which the: "Exercise capacity is the capacity of a person to exercise their rights and to assume the obligations, committed legal acts".

However, and here it should be noted that this legal definition is not rigorously formulated scientific, the formulation of the concept "the capacity to exercise capacity" as "person capacity", and on the other hand, it is more correctly to say: "finishing legal acts" and not "committed" such acts.

Thus, the diversity of how to define the institution's capacity to exercise a natural person in the Romanian specialized doctrine is obvious, beginning her to define on the basis of the simple account that:„Full exercise capacity is

the ability of a person to commit itself, directly and without the aid of the juridical status of another person, legal acts of civil law" (Ghimpu, 1960, p. 40) and continuing with the definitions more complete after the content and purpose, according which "the ability to exercise a natural person is that part of the capacity of the civil society of man, which consists in the ability to exercise their civil rights and assume the obligations of the civil society by the conclusion of legal acts civil society" (Beleiu, 1982, p. 105).

As a matter of fact, although based on a history not too long, the evolution of advisors and efforts directed toward the achievement of the longing in the formula and assign a concept, as appropriate the institution of the capacity to exercise does not allow overlooked and specialized in the Moldavian doctrine. According to the national authors (Baies, 2004, p. 269), through the exercise capacity of the natural person" means that part of the capacity of the civil law of man, which consists in the ability to acquire and to exercise the civil rights and assume the obligations and execute civil society by the conclusion of legal acts civil society.

Having regard to the foregoing, without entering into the polemic, we adhere to the definition of what the author considers the capacity of the civil society the exercise of the natural person as part of the capacity of the civil law of man, which consists in the ability to acquire and exercise the civil rights subjective and to assume the obligations and execute civil society by the conclusion of the staff of legal acts. (Lupan, 1999, p. 93).

In these circumstances, the author less considers that in the definition of the capacity of the civil society to exercise is not necessary to mention about the suitability of the natural person to sit in the justice system, since this is already the scope of civil procedure, though we believe that the importance of the assignment of the possibility to acquire and exercise personal rights and obligations shall be reduced to zero if the person cannot take personal action in court for the purpose complaint their protection.

The headquarters of the matter. The various aspects of the capacity of the civil society to exercise are regulated directly by the content of the articles 19-25 of the Civil Code of the Republic of Moldova. Some aspects of the tangential refers to the capacity of the civil society to exercise a natural person shall contain and elsewhere: The Family Code; The Law no. 845/1992 regarding the entrepreneurship and enterprises, some laws in the field of trade, the Government Decision No. 1047/1999 for approving the rules of registration of motor vehicles and their trailers etc.

Steps taken by the person under the aspect of the capacity of the civil society to exercise.

In principle, it is considered that the person in life can be found in three capacities of the capacity to exercise: lack the capacity to exercise, limited

exercise capacity and full exercise capacity.

Among other things, the Romanian legislator in the content of Article 40 of the Civil Code, recognizes another chance to exercise capacity, hereinafter referred to as "advance" exercise capacity, which would recognize certain individuals. Thus, the quoted rule provides that the grounds, the appellate court guardianship can recognize the minor who has reached the age of 16 years full exercise capacity. For this purpose, will be listening to their parents or guardian of the minor, account being taken, where appropriate, and the opinion of the Council of the family. (Romanian Civil Code, Article 40).

With all civil law in the Republic of Moldova does not recognize the institution capacity to exercise early elections recognizes, in exchange, empowerment of institution (the acquisition of the full capacity to exercise by the minor who has reached the age of 16 years), imposing a certain additional condition, this consists in the fact that the minor working under a contract of employment or, with the agreement of their parents, curator or joiners, the practice of self-activity (art. 20 paragraph 3 CC).

Obviously, the full exercise capacity allocation of a minor by emancipation shall be carried out on the basis of the decision of the authority may, with the agreement of both parents, curator or joiners, and in the absence of such agreement, the court ruling. However, being in accordance with Romanian authors (Lupan, 2007, pp. 105-106) we believe that there should be no talk about three hypostases (stages) of the capacity to exercise a natural person, because of the total lack of capacity cannot be considered as a category. But, if it is missing, then does not exist.

In this exposure, stating the steps and examining the capacity to exercise, which affects the person in the different periods of his life, we consider it appropriate to we mention: that the entire legal protection regime of the capacity of the civil society to exercise in relation to its stages cannot be regarded solely from the progressive optical, (ascension) dictated by the evolution of the maturation of person (no capacity - up to the age of 7 years, a limited exercise capacity - from 7 to 18 years[1] and the full exercise capacity - after 18 years) but and vice versa in order regression (decline) its suitability mental what characterizes the judgment and who does not already have nothing with age (the full capacity - after 18 years of limited capacity[2] and,

[1] In the text below we come up with explanations and answer to the question: why limited exercise capacity shall be considered from the age of 7 years and not from the age of 14, once the minor concludes staff legal acts only at this age.

[2] We mention that the Civil Code of the Republic of Moldova in the editorial office of up to 13.04.17 regulate the institution of the limitation on the exercise of the capacity of the natural person, a situation which we will express disagreement and regret toward the end of the work.

finally, the deprivation of exercise capacity[3] - under the conditions laid down in Article 24 cc of RM).

In the context, if we spoke of limited exercise capacity - category unfits for the Romanian legislation, it may require to be noted that, although the institution capacity restricted exercise would closely resemble a remarkable likeness to the limited exercise capacity, they shall be distinguished by virtue of invocation.

The first is independent of the will of man - the age, and the last because of the abuses of part of what has already acquired the full capacity to exercise. Not in vain was saying that the evolution of the capacity to exercise does not only has a unique sense gradually, obviously, with the exception of some (Which are not abuse of alcohol or drugs, as well as for those who after the acquisition of the full capacity to exercise are not affected by a mental illness and were born without mental deficiencies). As for the rest, those who have followed all stages of production in the exercise capacity at any time may go back where he had started once, i.e. from the lack the capacity to exercise.

Obviously, some of them may return to the incapacity directly, without going through the limitation (in the case of mental illness), others may go back to the inability to exercise through the limitation in this, and those of the third category may not reach have never the exercise capacity (people born with mental deficiencies).

2. The capacity of the civil society of limited exercise of persons

Notion. Taking into account the fact that the great majority of the notions exposed in literature through which it is intended to define limited exercise capacity rotate around the ability of a person aged between 14 and 18 years to conclude a certain category of legal acts civil society, in the compartment front we will try to show that on grounds imposed by national legislation in this field, the notion of capacity restricted exercise, should be defined.

Namely, that it is necessary given the need of the provisions referred to in Article 22(2) of the Civil Code of the Republic of Moldova which allow the minor aged from 7 to 14 years to conclude staff, attention, even without the prior consent of the parents, legal acts, the civil law, only a certain category of documents, that's why it's ability to exercise and call - restricted.

[3] Civil legislation of the Republic of Moldova in the current version, after 13.04.17, does not accept deprivation of the person in the exercise capacity on the question of mental illness, setting for this an alternative which consists in the imposition of measures against it legal protection, Bringing it so in the category of persons with limited exercise capacity, similar to the minor aged from 7 to 14 years, once it is stated that the first has the right to conclude its own legal acts referred to in Article 22(2).

Therefore, we consider that the legal exercise of the conclusion of the legal acts with the consent of their parents do not need to be the sole indicator (element) of the restricted exercise capacity, but must be taken into account that the person has a limited exercise capacity, if this is the unvarying two circumstances: the first consists in the restriction to conclude staff all categories of acts legal-civil society, because it can conclude staff only a certain category of legal acts and, second, that other categories of legal acts are completed, or by the protection guardians. But, as more support in our specialized literature (Baies, 2004, p. 276), we do not recognize that minors between the ages of 7 and 14 years have not exercise capacity, as long as the law establishes a certain degree of exercise capacity[4]. Even more so, the previous civil law (the Civil Code in 1964, Article 14) which limited exercise capacity of the minor, even from birth until the age of 15 years.

Therefore, we notice that in the end, according to the legislation of the Republic of Moldova, the capacity of the unvarying exercise know, so to speak, two steps: the first is that between 7-14 years of age, and the two, between 14-18 years, the difference between them being imposed not only by age, but even to the category of acts which may be concluded by them personally (minors from 14-18 may conclude other categories of legal acts personal than those aged from 7 to 14) but the fact that in the first case all other amendments shall be concluded by the parents of the minor in his name, and in the latter case, the staff are completed by the minor, but with the approval of the parents.

Among other things, the capacity of the limited exercise, in general, to be defined without referring to a certain age, because the degree the ability to penetrate the essence of certain things, events, effects which may cause the legal acts against the person may vary from case to case. It all depends on their degree of intellectual development of the minor, the degree of education or even by his personal experience in areas narrower, the ability to judge and to appreciate things at their fair value.

As a matter of fact, that's not what counts, even if we are of the opinion that is illogic to appreciate the degree of development of the ability of each time it intends to conclude the legal acts which it affects, finally, the law may not allow to reach the subject of the possibility to decide after their own belief the existence or absence of someone, the more the realm of degree, where in general may not be graduated flask. But the law is operating in the field of

[4] Although, according to the latest changes, of the Romanian civil law (art. 43 parag. 3 CC) accepts cases in the person without the exercise capacity may be terminated only certain acts provided by law, the acts of preservation, as well as acts of provision of small value, with the current character and which shall be carried out at the time of their conclusion. However, as a last resort, be considered without an exercise capacity.

exercise capacity with the ends that have well-defined limits - the existence or absence of discerning.

Therefore, the sentence which tend to move inward in context, is that the institution restricted exercise capacity may not have a universal concept, but rather to be designed according to different parameters on a case-by-case basis, from state to state, from region to region or to a system of law to another. There is a member the legislation which expressly provides that the minor has limited exercise capacity from the age of 14 years. Is Romania's case where Article 12(1) of the Decree 31/1954 clearly says that they do not have the capacity to exercise the minors who have not reached the age of 14 years.

For the reasons stated above, we can define limited exercise capacity as an aptitude test a natural person, considered from the age laid down by law, ask him given the opportunity, and in some cases, to conclude staff only a certain category of legal instruments, and in others, only with the prior consent of the legal protection, through which, acquires and exercise the civil rights subjective, assume the obligations and execute the civil society.

2.1. The beginning of the civil limited exercise capacity

As regards the beginning of the capacity of the restricted exercise, we stressed that the national legislation, the problem deductively, connecting to the date on which the minor has reached the age of 7 years and lasts until the date on which he is almost 18 years old and is not between the age of 14-18 years, because as we have previously seen, the minor aged from 7 to 14 years may conclude staff legal acts of little value, the execution of which takes place at the time of their conclusion, therefore it has a limited exercise capacity even at the age of 7 years and 14 as in the case of civil law of Romania.

However, analysing and other rules[5] contained in national legislation, we can easily notice with the lack of a coherent regulatory framework which would suggest on another start of the capacity of the restricted exercise marked by reaching the age of 14 years.

Here it is said that in cases in which the owners of the vehicles are persons that have not reached the age of 14 years, the registration operations shall be carried out on their behalf, at the request of the parents legal tutors or joiners and, in cases where the owners are persons aged from 14 to 18 years, the registration operations shall be carried out at the request of those persons with the approval of their parents, legal tutors or joiners, giving to understand that until the age of 14 years together and they do not have the capacity to exercise once will not be able to act registration.

[5] The judgment of the Government of the Republic of Moldova nr. 1047/1999 for the approval of the rules of registration of motor vehicles and their trailers.

Anyway, about the inability to commit acts of registration still remains to be discussed, as long as previously mention that exercise capacity is related only to the suitability of the conclusion of the legal acts civil engineering and those of another kind, and registration is a simple non-recording, in the category of unilateral legal acts civil society. Moreover, it is not necessary for the validity of the legal sector of the Act (contract of sale-purchase) in considering the transmission of ownership, nor even for the recording of the state of the rights (in the case the right of ownership of the car), but is the act which marks the moment in which the State shall authorize the participation of the vehicle in road traffic or the technological process. (GJ. 1047/1999 pct. 9). And in general, in carrying out the formalities for advertising of economic rights, the capacity problem exercise ought not to be put in question.

But if the legal act by which it has acquired a right in rem is valid, then what is the legal person, be required the existence of the capacity of the person to the registration of this law, all the more so that this operation has nothing in common with the psychic ability of the person. How then acts of conservation measures on which the civil law (Article 22(2)(c) (CC) entrust them to be committed by the minor aged up to 14 years, and one of the acts of preservation would be pledging of goods.

Obviously, here is just about to guarantee its obligations to which it is entitled to assume once acquired by itself a heritage (the totality of the rights and obligations indissoluble) and others obligations.

Therefore, we appreciate in this respect, the decision of the Romanian legislator, where Article 19 CC of the stipulated clearly that the formality advertising can be requested by any person, even if it is lacking the capacity to exercise. Another disparity in the raw material to the start of the capacity of the restricted exercise, identify between the standard referred to in Article 22(2) CC and in Article 53(5) CF, where it is stated that the minor can defend itself, and of his legitimate rights and interests at the age of 14 years.

We note, therefore, the paradox in which the minor aged from 7 to 14 years has the possibility of acquiring and the exercise of certain rights personally, but at the same time, may not and protect them personally in court, a fact about which we mention, that reduces the capacity of the importance of the assignment of restricted exercise once shall not give entitlement to the prepared in justice for defense of the rights acquired in this period of his life.

2.2. The contents of the restricted exercise capacity

As previously saying, in the determination of the content of the capacity of the restricted exercise is necessary to take into account the two indicators (components), the first refers to the fact that the person may conclude staff only a limited category of legal acts, and second, that all other legal acts shall be

concluded only with the approval of the parents and, in the case of limited capacity of the minor aged between 7 and 14 years, only by the parents on their behalf.

That is why in the content of Article 21 of the CC in paragraph 1 to identify the second indicator: „the minor who has reached the age of 14 years conclude legal acts with the consent of their parents, legal tutors or joiners, and, in the cases provided by law, and with the approval of the Authority, and in paragraph 2, the first indicator: " the minor who has reached the age of 14 years shall be entitled, without the consent of their parents, legal tutors or joiners:

(A) have salary, the stock exchange or other revenue resulting from its own activities;

(B) to exercise the rights of an author of a literary or scientific works of art, on an invention or another result of intellectual activity defended by law;

(C) make deposits in financial institutions and to dispose of these deposits in accordance with applicable law;

(D) to conclude the legal acts referred to in Article 22(2).

It is noted that as a result of recent additions of the text of the Civil Code of the Republic of Moldova (Article 222), the cash of the minor which does not have the full capacity to exercise enjoys a detailed regulatory.

According to the standard:

(1) the operations of collection, payment and cash management carried out on behalf of the minor which does not have the full capacity to exercise shall be made exclusively by the account opened in the name of the representative, if the law provides otherwise for certain categories of payments.

(2) the family or, in the absence of the latter, the decision-making authority may prescribe that a certain amount of money which belongs to the minor which does not have the full exercise capacity to be deposited on a special account representative, which will be carried out extractors only with the authorization of the family or, in the absence thereof, the competent authority may accept. The provisions of this paragraph shall not apply in the case of forced execution on the minor's cash.

(3) the family or, in the absence of the latter, the decision-making authority is obliged to take all necessary measures to bring it to the attention of the institution to which is open to the account name of the minor which does not have the full capacity to exercise about the special regime established by paragraph 2.

As regards the list of acts which cannot be completed by the person with a limited exercise capacity civil society, naturally, is missing, as this would be impossible, and, in fact, absurd. Therefore, it is understood by default for other legal acts outside those provided for in Article 21(2) CC may not be concluded by them personally, but ends on their behalf by the legal protection or with their consent.

As a matter of fact, we identify and an exception. People with limited exercise capacity civil society may not available through the donation even with the approval of the parents, more recent nor may conclude acts with the title for free (donation) contracts in the name of the minor unable due to the age, things taking in the chain.

I mean, if parents concluded on behalf of the minor unable (up to 7 years) legal acts, and after that age (limited exercise capacity) only allow, and conversely, if he couldn't hold by donation on behalf of the minor unable, means that cannot nodded nor the completion of the acts of the minor with a limited exercise capacity. In fact, these bans are identified and in the text of the Civil Code of the Republic of Moldova in the editorial office after 02.06.2017, according to which: "May not be authorized, and the guardian is not entitled to conclude: Acts concerning the free disposal of the goods or of the rights of the person protected, including the remission of the debt, the waiver free a right acquired, the issue of a real or personal security constituted for the benefit of the person nurtured, without the obligation guaranteed to have been extinguished in full, as well as the documents on the setting up of a real or personal security to guarantee the obligations of a third party".

Even more so, a string of legal acts, other than those referred[6] to, can be concluded on behalf of the minor which does not have the full capacity to exercise, but which produces legal effects only after authorisation by the Council of the family or, in the absence of the latter, by the decision-making authority.

Returning to the inability of the minor with a limited exercise capacity to conclude certain acts of provision, we notice that it shall be deducted from the other rules of the Civil Code and of Article 832(a) according to which, it is prohibited to the donation in the name of the persons incapable, on the assumption that people with limited exercise capacity, the more may not available through the donation even with the consent of their parents. What right, in the legislation of the civil society in Romania is expressly says that the meaningless exercise capacity or with a limited exercise capacity can not dispose of its assets through liberality except for the cases provided by law (article 988 CC).

[6] The contract of sale and other legal acts of provision; the contract of the tenancy and other legal acts of administration of goods protected person whose term beyond the term of the measure of protection; the contract of transaction; the contract for the sharing of common goods; the act of acceptance or waiver of inheritance; the contract to receive a loan; the contract between the guardian or its affiliated persons and person equally protected, except in the case of acts free of charge, concluded on behalf of the person nurtured. At the end of this legal act, the Guardian shall be deemed to be an interest which is contrary to the interest of the person nurtured (art. 48^{75} align. 1 CC).

2.3. The end of the exercise capacity restricted - the beginning of the full exercise capacity

As a part of the end of the exercise capacity is restricted, obviously, the beginning of the capacity of the civil society full exercise, the marked line or the time of the anticipation of majority, i.e. the age of 18 years (article. 20 align. 1 CC), in some cases at the age of 16, when this time is determined by the conclusion of the marriage. Although, in this latter respect, all the details relating to the end of the restricted exercise capacity are not offered expressly provided for by the legislation of the civil society, they can only be detached in the interpretation of linked to standard referred to in Article 20(2) CC with Article 14 of the Family Code.

The first establishes that the minor acquired by marriage full exercise capacity, and the second, that age of marriage minimum is 18 years old, but that for the grounds, may be reduced by 2 years, obviously, with the approval of the conclusion of the marriage by legal protection.

This reduction in the age of the matrimonial is valid for both spouses, although according to the legislation of the family in the previous editorial staff, the age at which the woman had the right to conclude the marriage was 16 years. The same confirm and in the previous legislation of Romania in the editorial office of up to 2012 when the provisions of the Family Code have been integrated into the Romanian Civil Code, i.e. matrimonial age of the woman and the man were different, respectively 18 and 16 years, regulations which do not support, especially in the context in which this link and the beginning of the full capacity to exercise.

In fact, the woman can acquire full civil capacity before reaching the age of majority, and the man is not, or their judgment appears at different age? Is not possible. Currently we find with great appreciation that legislative situation in the age matrimonial rules has been recovered. Pursuant to Article 272 of the Romanian Civil Code expressly mention that: „for grounds, the minor who has reached the age of 16 years may be married under a medical advice, with the approval of his parents or, as the case may be, of the trustee and with the authorization of the court patronage in whose constituency the minor resides" without showing that the rules in question affects only the woman.

The same logic in regulations shall be identified and in the current legislation of the Republic of Moldova (Article 14 of the FC). According to rule, the minimum matrimonial age is 18 years. For grounds, it may be nodded conclusion of the marriage with the reduction in matrimonial age, but not more than two years. Reduction of the marital age will be ought to local authority in whose territorial range residing persons wishing to marry, on the basis of their application and agreement of the minor's parents.

At the same time, we should we mention that in general cases restricted capacity of exercise, shall cease on the day on which the minor has reached the age of 18 years, in the event of cessation of restricted capacity at the age of 16 years, this time does not coincide with the anticipation of the age in question and not from the time of the end of her marriage, but from the time of the conclusion of the effective implementation thereof.

Therefore, if parents have expressed agreement with respect to the conclusion of a marriage when the minor was 16 years, and the marriage has ended in front of the civil status officer at the age when it was 17 years ago, when the capacity of the restricted the exercise has ceased at the age of 17 years and not when the minor has received the approval of their parents. Dissolution of the marriage shall not affect with nothing on the former husbands in the full capacity to exercise. Things are different in the case of declaring the nullity of marriage, the court may be dispensed with her husband minor full exercise capacity at the time of her.

Here, we can infer that according to the legislation of civil society in the Republic of Moldova, as well as family law (Article 44 of the CF), alike, even in a case after declaring a marriage null and void, "Former husbands" and retain the full capacity to exercise, even at that proof of good faith at the end of them, as provided for in the legislation of the civil society in Romania (Article 39(2) (CC), regulatory authorities which we hold.

In the case of i suggest and our legislator that come up with statement in the text of the standard referred to in Article 22(2) the last sentence by which provide that after a declaration of invalidity of a marriage between minors, at what has made use of this institution only for the purpose of acquiring the full capacity to exercise, be deprived of this by decision of the Court of Justice.

What is the record of the legislation of the Republic of Moldova in the raw material of cessation of restricted exercise capacity before reaching the age of majority, that it does not provide for the acquisition of the anticipated only in the case of the conclusion of the marriage at the age of 16 years, but also by the empowerment, I.e. the minor who has reached the age of 16 years working under a contract of employment or, with the agreement of their parents, legal tutors and joiners, the practice of self-activity. Full exercise capacity allocation of a minor (empowerment) shall be carried out by the decision of the authority may, with the agreement of both parents, legal tutors or joiners, in the absence of such agreement, the court ruling (Article 20(3) CC of RM).

3. „The nostalgia of the doctrine" of the institution in the exercise capacity limitation

First of all, we consider a large regression for civil legislation of the Republic of Moldova, the repeal of the rule provided for in Article 25 cc

which regulate the institution of the limitation of the natural person in the exercise capacity, in fact, through which it was left without legal protection a large number of families against the actions of those who have wasteful patrimonial obligation to maintain, but a string of legal relations in which undertake to those who have judgment affected by certain substances with psihotrop effect.

Moreover, it is not only about the reallocation of interest to qualify for the maintenance of the wasteful, but also the interests of all. Only one year from the time of the repeal of the rule in question, the families that have among them a state of category discussed, large commercial claim against legislature, because I have been deprived of the opportunity of requesting the limitation of the exercise capacity of children majors leading up everything in the house because of the vices which could inflict, without subsequently invoke the nullity of the legal acts for disposing concluded by them.

However, we do not understand the position of the front legislature by the institution of the limitation on the exercise capacity after amendments, it has abandoned her permanently or in part, once in Article 23(3) CC mentions that nobody can be limited in the capacity to use and exercise capacity than in the case, and in the manner prescribed by the law, it means that you are still there somewhere rules which would allow the limitation of the person in the exercise capacity.

The former statutory provision. According to the former legislation of the Republic of Moldova (Article 25 of the Civil Code), the person who, as a result of abusive consumption of alcohol or consumption of drugs and psychotropic substances, worsening the condition of material of his family may be limited by the court in the exercise capacity. On such a person shall be established guardianship.

For reasons which have determined the need for regulating the exercise of the institution's capacity of the natural person. Still the Romanians ancients establish the possibility of the capacity limitation of the exercise by the judgment of the court. This is confirmed by the law of the XII Table which specifies a category of person’s restricted rights - wasteful (*prodigus*).

The person could be recognized prodigus only pursuant to a decision by the magistrate, on the basis of which on her guardianship is hereby established. Since the person was declared prodigus, she lost the possibility that in the absence of consensus curatoris to conclude the legal acts of provision (which lowers of the heritage). With all these, they could conclude contracts less important with traditional character or legal acts which does not affect their assets, for example, marriage. They were responsible for offenses committed, but could not dispose of assets or by testament.

With the cessation of the unreasonable consumption of cash, a situation that has the direct cause abusive consumption of drugs and alcohol, this limit may be raised by the decision of the praetor. (Хвостов, 1996, p. 522).

Therefore, noting that regulate the institution of the limitation on the exercise capacity has its roots quite partition in history, identify that it has survived and in the texts of the civil law, in fact, due to reasons that, from our point of view, because there is more and more aimed at two major[7] goals: the protection of the heritage of the family of vices (alcoholism and drugs) against his westful unreasonable and discourage the consumption of such substances having a negative impact on the entire society.

The Essence and the conditions of limiting the exercise capacity. As show above, the institution of the limited capacity of exercise presents a completely different legal nature than that of the capacity to exercise restricted, the first being a cause dependence on the will of the subject matter of the limited, on the last is due to the lack of what constitutes a question, independent of the will of man (age).

The express conditions. As conditions require to be met in the event of restrictions in the exercise capacity, say that they are two in number and that have to be met cumulatively, i.e. one without the other does not give reason to limit the person in the exercise capacity.

- abusive consumption of alcohol or consumption of drugs and psychotropic substances;
- worse family status materials as a result of abuse.

Other defaults conditions.

1. I materialized in the exposure of the second conditions as worse status materials should be direct cause of abusive consumption of alcohol, drugs or psychotropic substances, with all that many times this is obvious for itself. If the consumption of the narcotic drugs and psychotropic substances, obviously not you where to ensure a decent living standard for your family.

2. Under these circumstances, we notice that the legislator to focus not only on the heritage wastage, as a condition of the capacity limitation on the exercise of wasteful, but also on the fact that the failure of the means which

[7] The opinion of those who disputes the justice by the text of the Judgment of the Court of First Instance sitting in plenary session under the Supreme Court No 1 of 14 May 1979 with the amendments introduced by the Judgment of the Court of First Instance sitting in plenary session under the Supreme Court of Justice No 10 of 25.11.1991 and the Judgment of the Court of First Instance sitting in plenary session under the Supreme Court of Justice No 38 of 20.12.1999. "About judicial practice in the causes of the civil society concerning the capacity limitation of the exercise of the citizens that they abuse the spirituous beverages or narcotic drugs", is confined to the reason why would the visa combating the torrent, alcoholism and drugs.

would increase the assets or, so necessary to complete the obligation for maintenance of the family. But a drunken can perform work in exchange for a bottle of alcohol. Hypothetically, in this case, the condition of the material of his family do not is getting worse with nothing, because neither has not improved prior to worsen.

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The topic is the person entitled to the right of the action in court to claim the limitation of the person in the exercise capacity. In the category of a form all members of the wasteful family. In this case, remember to title for instance, the judgment of the Court of 19.04.2005 Center on the edge of the dos. 2-1170, at the request of the Prosecutor Sect. The center on the limitation of the exercise capacity on I.F. The intervener has been drawn to his mother, who confirmed that her son consumes narcotic drugs, in fact, the worsening material situation of the whole family. The Court decided to recognize him on the I.F. limited exercise capacity, with the ban to conclude legal acts relating to the disposal of heritage, receipt and disposition of the salary of a pension or other types of income.

At the same time, the court ruled the obligation of the patronage and his I.F. guardianship to establish a trustee.

3. The capacity limitation exercise occurs not only on the basis of the abusive consumption of drugs, but is sufficient facts for their consumption „moderately". But the condition concerning the abuse affects not only the consumption of alcohol and the drugs or other substances with psihotrop effect, once the legislature is expressed by the phrase: „a person who, as a result of the abusive consumption of alcohol or consumption of drugs and psychotropic substances".

Another person would have been the meaning if it is noted that: "The person who, as a result of abusive consumption of alcohol or drugs.". At the same time, the other vices or the abuse of a person such as: gambling, betting, some of the hobby will not constitute grounds for limiting the capacity to exercise (Ardelean, 2008, p. 103).

4. The declaration of inability to exercise a natural person

The title of the compartment in question coincided with the title of the rule of Article 24 CC, currently have been repealed. According to it, the person as a result of mental disorders (mental illness or mental deficiencies) may not even contemplate or directing his actions may be declared by the court as unable. On guardianship is hereby established.

Therefore, in accordance with rule shown, the person regardless of age and the fact if ordered any date of full exercise capacity or not, when the is suffering from a mental disturbance likely to adversely affect discernment, is declared by the court as being incapable or as it is said in the literature, without an exercise capacity, all the legal acts on behalf of them being concluded by the guardianship.

Conclusions

But, as I was saying, the civil law of the Republic of Moldova in the current version, after 13.04.17, does not accept deprivation of the person in the exercise capacity on the question of mental illness, setting for this an alternative which consists in the imposition of measures against judicial protection, bringing it so in the category of persons with limited exercise capacity, similar to the minor aged from 7 to 14 years, once it is stated that the first has the right to conclude its own legal acts referred to in Article 22(2).

But, according to this rule the current editorial staff, in respect of the natural person who, as a result of mental diseases or of a visually impaired physical, mental or psychological impairments cannot, in full, even contemplate his actions or expressed willingness may be established by Decision of the court, the extent of the judicial protection in the form of provisional curatorship, healthcare or guardianship.

I agree with the new regulations, the segment of their acceptance of the possibility to conclude staff legal acts of small value, although here could fit place for discussion (may be affected by a property interest or of any other nature of their parents or legal tutors when the minor or subject to judicial protection measures would buy 100 chocolate through several legal acts cycles) we do not agree with the legislator decision to fall within the same category visually impaired persons with mental disabilities with those suffering of physical deficiencies in the plan of discerning.

We understand that our legislator resorted to such tactics, once out of the preferment, institution, but we don't see a problem if it remained regulated separately, as long as the shortcomings of the physical person has nothing to do with her judgment.

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