

ISCKMC 2020**International Scientific Congress «KNOWLEDGE, MAN AND CIVILIZATION»****LEGAL CONSEQUENCES OF LIMITING THE LEGAL
CAPACITY OF CITIZENS**

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Abstract

Legal capacity belongs to all citizens in the same order. Legal capacity, its content, as well as volume depend on the elements prescribed by the law. Above all, it is worth mentioning the age and the level of mental health of an individual. Thus, according to the current Russian legislation, legal capacity may be complete, partial, and a citizen may be completely deprived of it. The legal capacity of the minors must not escape our attention. In fact, it is no longer complete. However, it may be (also depending on age) partial and relative. The considered civil law institution is quite relevant and especially valuable, which is explained by the extent to which legal capacity allows an individual realizing his property and personal non-property rights, participating in any spheres of life, economic turnover in general. Moreover, we shall not forget the delictual dispositive capacity: exercising his rights a capable person is responsible to other turnover participants for violation of contractual obligations or property damage caused in the absence of contractual relations. Thus, the category “legal capacity” is a legal provision for free participation of a citizen in property turnover. Civil law restricts the legal capacity of a person and a citizen and outlines the boundaries of consequences of such a restriction only with the intention to preserve property, protect his interests and the interests of his family, as well as to remove from abuse by third parties.

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1. Introduction

The civil law category “capacity” has the quality of a civil law subject. This property of a citizen is an integral part of the personal exercise of civil legal capacity and depends on age and mental health.

Capacity and legal capacity are elements of civil legal personality having a dual legal nature, where a will and a reasonable component are intertwined. Moreover, the intellectual approach of exercising such abilities prevails over the volitional one.

A citizen as an independent person is a holder of rights and duties, freedom and responsibility. He has regular and legal capacity, as well as a special legal status. The state of law and order and the level of legal culture in the society depend on the individual. The legal requirements contained in the law are addressed to him (Sinitsyn, 2013).

The legal system is important for the role of an individual, the protection and promotion of its interests, its rights and guarantees of those rights. Legal capacity, as the ability to have rights and independently perform duties, is an indispensable condition for the legal status of each person.

The significance of “legal capacity” is that it legally ensures active participation of individuals in civil traffic, entrepreneurial and other activities, enforcement of their property rights, including property rights, as well as personal non-property rights. Besides, the application of legal liability measures to a violator of legitimate rights and interests of others is guaranteed.

Thus, the category of capacity is an important legal mechanism exercising the individual freedom.

2. Problem Statement

The volume of legal capacity of citizens can be different. The state of legal capacity of a citizen depends on each particular case. The study of this issue is relevant, and fills the existing theoretical and legislative gaps in the regulation of the above relations.

The law provides for the possibility of limiting the legal capacity of a citizen, and, in addition, deprive him of legal capacity in general, but it is necessary to understand the consequences this may entail.

Thus, this refers to a significant reduction in the ability of a citizen to exercise his rights and freedoms. Each particular case of such restriction should be justified and should certainly exclude abuse by the concerned persons.

In this regard, it is necessary to specify the existing criteria and grounds for limiting the legal capacity of citizens and recognizing citizens as incapable.

3. Research Questions

Due to the existence of civil legal capacity, a citizen independently participates in civil traffic. As mentioned above, unlike legal capacity, the capacity depends on a number of factors, namely certain individual qualities of a person – age and mental state of health. It is these features that characterize a certain level of will, life experience, intelligence. For independent participation in civil legal relations (conclusion of a contract), a person shall understand the meaning of his actions, be aware of them, which

is an intellectual criterion. In order to lead such actions, it is necessary to have a volitional criterion. The institution of delictual dispositive capacity refers to independent responsibility. In case where a citizen is not able to participate in civil relations and be declared incapacitated due to mental disorder, a medical criterion should be taken into account.

If a citizen is deprived of legal capacity, the guardian makes all transactions for the ward. However, in case of any disposal of his property, even if it can only indirectly affect the value of the ward's property, the guardian must obtain the consent of the custody and guardianship agency. A trustee, in the case of limited legal capacity, only consents to the transaction by the ward; moreover, the consent of the custody and guardianship agency to transactions and other actions is also necessary in the same cases.

This brief analysis of the legal capacity of an individual, the restriction and deprivation of his legal capacity is always relevant.

In accordance with Article 21 of the Civil Code of the Russian Federation, the ability of a citizen to acquire and exercise civil rights by his actions, create civil duties for himself and fulfill them (civil capacity) arises in full at legal age, i.e. after reaching the age of eighteen (RosPatent, 1994).

“Modern foreign civil legislation pays special attention to the institution of legal capacity of citizens, through which the enforcement by citizens of subjective civil rights stipulated by law is inextricably linked” (Sadat et al., 2016, p. 34).

Reaching the legal age implies the acquisition of full legal capacity. In almost all countries, this age is 18 years. But there are exceptions. In accordance with the Civil Code of the Philippines of 1949, persons that reached the age of 21 are considered fully capable (Article 402 of the Civil Code). However, there is one condition for women that they cannot leave their parental home before the age of 23 without parental consent, except in cases of marriage or if they work in a certain profession (The Civil Code of Philippines. Article 43).

4. Purpose of the Study

The essence of capacity, its content has always been a concern of civil law scholars, and besides, there is no single understanding of these issues among lawyers. The issue continued to be relevant, to some extent debatable, and requires careful study.

The considered category is very important, significant and inalienable from the legal status of an individual. The problems of capacity are raised in educational, scientific and practical literature, periodicals, but in a generalized form, and not as a fundamental research issue.

In this regard, the purpose of this scientific study is to analyze the legal norms of legal capacity, which determine the criteria for recognizing (limiting) the legal capacity of citizens, and the consideration of legal capacity as a legal mechanism for the exercise of legal civil rights.

The implementation of the objective requires the solution of such tasks as characterizing the institution of civil legal capacity in Russian legislation, identifying a mechanism for limiting the legal capacity of citizens and abolishing such a restriction.

5. Research Methods

The research methods included a deductive method of obtaining information and its presentation, an inductive method paired with it; system structuring; a descriptive method was used for objective evaluation and correct presentation, as well as comparative method tools.

6. Findings

In the event of violation of the rights and interests of other participants in property relations the civil law can limit the rights of offending citizens.

A citizen is recognized partially incapacitated, if such is recognized by the court.

Restriction of legal capacity means the deprivation by the court of the citizen's right to carry out the following actions without the consent of the trustee: to sell, give, bequeath, exchange, buy property, as well as to make other transactions, with the exception of petty daily transactions, directly receive wages, pensions and other types of income.

Despite the fact that in the scientific literature in the wording of normative acts the term "restriction of legal capacity" is used quite often, the Civil Code of the Russian Federation does not contain the definition of this concept.

The recognition of a citizen partially incapacitated is only possible if there are grounds established by the civil law.

If a citizen is unwilling or unable to evaluate his actions normally, this is the reason for the restriction of legal capacity.

7. Conclusion

Let us consider the grounds for restricting the legal capacity of a citizen, which are referred to in the current norms of the civil law.

The Article 30 of the Civil Code of the Russian Federation entitled *Restriction of the capacity of citizens*, lists the following four cases where the capacity of a citizen is restricted:

- 1) if due to addiction to gambling a person puts a family in a difficult financial situation;
- 2) the same, but due to immoderate drinking;
- 3) if, due to drug addiction a person puts a family in a difficult financial situation;
- 4) a citizen is recognized partially incapacitated due to mental disorder. If he can understand the meaning of his actions or direct them only with the help of others.

In the course of judicial proceedings on the restriction of legal capacity, on the basis of paragraph 1. Article 30 of the Civil Code of the Russian Federation only two issues are studied:

- 1) whether there is a real interest in gambling, as well as drug or alcohol addiction.
- 2) was the family in a difficult financial condition for this reason (Darchieva, 2019).

In civil proceedings, when there is a restriction of legal capacity, a defendant appears in case as the first party, which puts the family in difficult financial conditions due to in constant gambling, and not only because of gambling, but also alcoholism and drug addiction. Besides, a defendant will be a mentally

unhealthy citizen who reports on his own actions and can lead them, but for this he needs assistance of another person.

The procedural opposite side of this person (the defendant) is the plaintiff, which will be presented by family members, custody and guardianship agency, representatives of a psychoneurological or a psychiatric facility (Zaharova, 2018).

First of all, family members (i.e. parents, a spouse, as well as children) submit a statement to the court on restricting the legal capacity of a citizen.

The pension, earnings and other income of a citizen, who was restricted the legal capacity by the court, are spent by the trustee in the interests of the ward. The trustee's report for the previous year is submitted annually no later than February of the current year (Article 25 of the Federal Law *On Custody and Guardianship* No. 48-FZ dated 24.04.2008 (Federal law on the On Custody and Guardianship, 2008).

If in the space of a month the custody and guardianship agency fails to find an individual or a close relative who will be a guardian for an incapacitated person, then such a person will be placed under supervision to a psychoneurological hostel.

In addition to the general civil legal consequences of legal capacity restriction, other consequences are possible not only in the sphere of civil legal relations, but also in relations regulated by other sectors, for example:

- if an employee is restricted in legal capacity by the court, his salary is issued to a trustee (Part 5 of Article 136 of the Labor Code of the Russian Federation No. 197-FZ of December 30, 2001 (Labor Code of the Russian Federation, 2001);
- a person restricted in legal capacity may not work in the prosecutor's office (Article 40.1 of the Federal Law No. 2202-1 of 17 January 1992 *On the Prosecutor's Office of the Russian Federation* (Federal law on the Prosecutor's Office of the Russian Federation, 1992);
- such a citizen is not entitled to draw up a will (RosPatent, 1994, Article 1118), etc.

Harm caused by a citizen restricted in legal capacity due to alcohol or drug abuse is compensated by the harm-doer himself.

Gambling, alcohol or drug intoxication are obviously socially condemned, because the result of such immoral behavior is unadvisable expenditure, property belonging to the whole family (Fomina, 2017).

If the court decides to remove the restriction on legal capacity by canceling the earlier made decision on such restriction, an examination must be carried out on the state of mental health of a citizen.

When considering the case, the defeasible factors that serve as the basis for restricting the legal capacity of a citizen it should be clarified whether. In other words, it is about whether a citizen has stopped drinking alcohol or taking drugs or his family has completely broken up, and hence he does not put the family (since it is not) in a difficult financial situation (Anisimov et al., 2017).

The court may lift the restriction of legal capacity if there is sufficient evidence that:

1) a citizen has ceased alcoholic or drug abuse, in connection with which he can be entrusted with independent disposal of property and money;

2) a family of a partially incapacitated person ceased to exist (divorce, death, separation of a family) and therefore, the obligation of this person to provide funds for its existence has disappeared (Fokov, 2013).

If a person is partially incapacitated due to mental disorder, it is necessary to show evidence in court that he was cured. There may be another option to abolish the restriction: a citizen may well participate in property turnover and dispose of his financial resources, as well as his property.

Upon recognition of a person as fully capable, he is removed from guardianship and, accordingly, the obligation to dispose of his earnings and property, to carry out civil law transactions and to submit various kinds of applications and documents only with the written consent of the trustee.

The participation of the interested person in the consideration of lifting the restriction or deprivation of his or her legal capacity is mandatory in all cases. It is also obligatory that a prosecutor and a representative of the custody and guardianship agency are present in the process of considering the case on the abolition of the restriction of the legal capacity.

The evidence in the case may be the witness statements; a medical document from a psychoneurological establishment; bank statements on accounts and cards; certificates of divorce, death, separation of a family, etc.

1. If after the abolition of the restriction of legal capacity a citizen is again interested in gambling, sinister alcohol and drug abuse, then, at the request of interested persons, the court may withdraw his legal capacity (Miroshnichenko et al., 2018).

Above we have considered the cases where the court may decide to remove the restriction of legal capacity in relation to a person who abuses gambling, drugs or alcohol, but also a person with some mental disorder. Besides, a minor may restore his right to dispose of his money himself through the court. He himself or his parents (plus the custody and guardianship agency) have the right to sue to resolve this issue.

If a person has reached the age of eighteen, restrictions on income orders cease to apply.

In other cases, the following may apply to the court:

1. A citizen himself;
2. His close relatives;
3. Custody and guardianship agency;
4. Psychoneurological or psychiatric facility.

If the court overturns the restriction of a person's legal capacity, his guardianship is also removed (Mousavi & Fahimi, 2016).

Regarding the protection and provision of the rights of minors the US law contains a special legal mechanism under which they can cancel a contract that they had previously concluded. However, this does not apply to marriage agreements, child maintenance, contracts approved by the court (Barnes et al., 2016).

Upon recognition of a person as fully capable, he is removed from guardianship and, accordingly, the obligation to dispose of his earnings and property, to carry out civil law transactions and to submit various kinds of applications and documents only with the written consent of the trustee.

Legal capacity may be restricted exclusively by the court and only in the manner prescribed by the law.

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