LEGAL, THEORETICAL AND LEGISLATIVE ASPECTS OF LEGAL CAPACITY IN PRESENT DAY CONTEXT

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Abstract:
Legal capacity represents a subject of utmost importance as some aspects that seemed, at first sight, to be perfectly well known proved to be less studied, or even controversial from the doctrinal point of view. In a more and more scientific, computerized and media dominated society, which often is dehumanized, the right of the persons and implicitly the acknowledgement of their ***legal capacity*** *stand proof to the eternity and priority of the human condition and it is at the same time the main instrument for its protection.*

Key words: *legal personality, subject of law, legal capacity.*

JEL classification**:** K-Law and Economics, K00-General

Legal capacity represents one of the fundamental institutions studied and employed by the theory of law and the legal sciences, its content expressing the social value it has. From the perspective of the theory of law the term "**capacity**" takes on the meaning of **legal capacity**. Looked upon from the historical perspective of the evolution of human society, the **legal capacity** is the legal phenomenon that evolves in direct correlation to the development of economic, political and legal factors of the society.

The basis of law is constituted by the individual and that individual right which usually has its source in the exercise of free will, restricted by the normal rights and the will of the collectivity. The individual is the **man**, and man for the science of law means the **person**. Legal norms regulate the **legal status** of man as **person**, which has **rights and obligations**.

Most of the Romanian legal doctrines define the person as *any being capable of having rights and obligations, therefore of being a* **subject of law.** The legal status of the subjects of law has gradually crystallized and modernized in Romania after the Romanian Civil Code took force (1865) and with the changes and improvements of this fundamental normative act of civil law, its evolution will theoretically end in the present stage of development of law with the adoption of the new Romanian civil code. We mention the word theoretically because N. Titulescu's words „What we today consider a conquest will be seen as a minor thing tomorrow" are valid in the world of law too.

The subject of law, designed by the name of **person**, a quality that the law acknowledges not only to the individuals (**natural persons**) but, under certain conditions, to some organized groups as well (**legal persons**) enters in various social relations. A great part of these social relations entering under the incidence of legal norms turn into **legal relations**. The exercising of the rights acknowledged by the law will take place within this framework and the obligations validly assumed must be executed within it.. Consequently we deem the observations of the Romanian researcher P. Truscă to be very suggestive. In his opinion the *quality of subject of law is permanently doubled by the quality of subject of the legal relation.*

Likewise M.N Costin establishes that *the subject of law is a virtual participant, while the subject of the legal relation is an actual participant in legal relations*. Thus within a legal relation the holder of rights and obligations is called a **subject of law** and

his vocation to participate in legal relations finds its expression in the technical –legal notion of legal capacity.

Legal capacity can be expressed scientifically only if we start from the **quality of subject,** regardless of the field of law or branch of law we deal in. In this context the quality of subject of law and the legal capacity are and remain two distinct concepts in their nature, but as they are in a dynamic interconnection, they condition each other. They derive one from the other and one implies the other, each suggesting the other.

Due to the profound changes that took place in the socio-economic and political life of the Romanian society, nowadays all people are acknowledged their legal capacity through the existing legal framework that limits the arbitrary and abusive intervention of the state in the sphere of private interest and confirms human values. The alignment of internal legislation to the legislative norms of the European Union imposes the obligation of the legal science and not only of the legal science to analyze and appreciate the aptitudes of the natural and legal person under the new circumstances.

Seen in retrospect as a legal phenomenon, the legal capacity becomes an object of research especially in the period 1950-1970 in the legal internal and international writings. We consider that the structure, the extent and the volume of the legal capacity still constitute a controversial subject, both from the point of view of the doctrine and of the legislation, which is often ambiguous in the existing regulations if we take into consideration the following aspects:

a) The investigation of the evolution of this institution in our country concerning the dynamics and interconnection of its determining factors has not been done completely, or has been only selectively and partially done. We refer here to the identification and examination of the "legal capacity" phenomenon by determining its essence and the conditions of its building in Romania and the study of its evolution with regard to its nature, its structure and content from the apparition of the state and law up to the present time.

b) Older sources for the investigation of this legal phenomenon are the starting point in the analysis of this theme, but they can be only partially relied upon, as in the new socio- historical context new social realities emerge and new legal institutions are implemented in legislation. Implicitly we must underline the fact that legal capacity structures its content depending on the present social context from which the legislator draws the norms (we take into consideration today's crisis in elaborating and applying the law, thinking about the risk of endangering human dignity through the improper use of biology, genetic engineering and medicine - the human body and its parts should not be a source of financial gains. Since the human body is an inviolable sanctuary, any prejudice to the body is a prejudice to the person; the regulating of the legal status of the human embryo, it being only a potential human being, therefore we cannot acknowledge its capacity of being a holder or rights to be exercised; establishing a correct legal status of animals, etc.

Based on the study of the doctrine, legislation and jurisprudence of our country and of others, we claim to establish that **legal capacity** has a complex and dynamic character, its dynamics being reduced to the new content that the legislator generates from the new socio-political realities. We believe that in the light of our own legislation and doctrine as well as of all European legislations and doctrines we can say that the legal thought has striven to understand the sources that allow the finalizing of the legal terms: **person, subject of law, natural person, legal person, legal status, legal capacity.** We consider that these notions constitute the result of positive efforts of the legal thought in its historical development.

We find that the term of **legal capacity** is a product of legal technique, it is a regulated premise, therefore a condition of **juridical logic**, not one of **moral logic**, legal capacity is decided in its forms and content by the law in force – its content being

different from one historic system to another depending on the human progress in defending the fundamental rights and liberties of man. We find that in the juridical life people are not presented in the proper sense but in their **typical role**, as it is appropriately acknowledged by the legal order for the corresponding legal relations.

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