

THE LEGAL REGULATION OF REPRESENTATION AND ITS FUNCTIONS IN CONTEMPORARY CIVIL LAW

Abstract

Representation is an integral part of contemporary civil law. Its benefits extend beyond the interests of natural persons and legal entities, as it plays a crucial role in civil-law relations by facilitating legal traffic. The objective of this paper is to present a detailed research on how representation is regulated in contemporary civil law and its functions within the legal system. The paper will focus on the development of representation in civil law systems through a comparative analysis of the continental legal systems within Europe. The goal of this paper is to add to the efforts of modernizing representation and enhancing its functions, especially the social-protection function.

Keywords: representation, legal traffic, civil law, rights and obligations, functions;

I. INTRODUCTION

Nowadays, the significance of the institute of representation in civil law is evident in enabling civil-law relations to be exercised without any objective or subjective barriers, which is a standard that contemporary legal systems aim to achieve¹. As a result, each contemporary legal system establishes a legal possibility for a natural person (the representative) to act in the name and for the account of another person (the represented), so that the legal consequences of that action will affect the property of the represented person². As a civil-law institute, the representation plays a crucial role in the overall development of legal traffic and civil-law relations within the legal framework.

To accomplish the goal of this paper, detailed research on representation and its functions in contemporary civil law is conducted through some methods. Using the positive-legal method, the author examines the legal regulation of representation in the Macedonian legal system. Comparative analysis shows the characteristics of representation in the contemporary legal systems of states that share a common legal history with the Republic of North Macedonia, such as the Republic of Slovenia. Also, it considers the legal systems of EU member states whose regulations are based on legal traditions similar to those of the Republic of North Macedonia, such

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¹ Р. Живковска, Т. Пржеска, *Граѓанско право – опит дел*, Скопје, 2021, 367; Р. Ковачевиќ Куштримовиќ, М. Лазивиќ, *Увод у граѓанско право*, Пунта, Ниш, 2018, 326; V. V. Vodinelić, *Граѓанско право, Uvod u građansko pravo i Opšti deo građanskog prava, četvrto izdanje, Službeni glasnik*, Beograd, 2022, 485.

² Р. Живковска, Т. Пржеска, *op.cit.*, 369.

as the Republic of Switzerland. Additionally, it analyzes the legal regulations of EU member states with legal traditions different from Macedonian law, such as France and Italy. Through the historical-positive method, the author traces the evolution of the institution of representation from its emergence in Roman law to the present day.

This paper is not only meant to demonstrate the basic function of representation in a representative's duty to protect the property interests of the represented, but also its social-protective role. It should not be overlooked that modern legal systems seriously consider the possibilities for further development and adaptation of representation to align with contemporary views on the personhood of the natural person and how it should be exercised in civil law relations. As a result, this paper presents a comprehensive analysis of the legal regulation of representation and its functions in contemporary civil law.

II. THE HISTORICAL EVOLUTION OF THE REPRESENTATION

Throughout history, legal systems have adopted different approaches to the possibility of natural persons entering into civil-law relations. From the period of Roman law, natural persons could engage in civil-law relations only personally³. Meaning that, in the earlier period of the development of Roman law, the opportunity for participating in civil-law relations was a privilege for persons with status civitatis, and entering into those relations by other persons in legal traffic was restricted⁴. But as trade relations developed, in the late period of Roman law, opportunities for other persons and their property to participate in legal transactions were introduced.

As a result of that need, the rudimentary forms of representation had emerged, known as tutorship and guardianship⁵. Those forms of representation protected property interests of natural persons under tutorship or guardianship by the representative (tutor or guardian)⁶. Nevertheless, the development of trade relations affected the natural person with full active legal capacity, as well, because they started to need to entrust the performance of their obligations to others, which in the Roman period was enabled through a contract of *mandatum*⁷. According to this, the earlier Roman idea that legal action could be performed only personally was abandoned, and the idea that another person can perform it was introduced. In this fashion, this new idea was the first step in the emergence and development of the institute of representation.

With the transition from the Roman law period to feudalism, the idea of performing legal action through another person took entirely different directions and went beyond the true needs of legal traffic, i.e., the need to protect a person's property interests. Unfortunately, during this period, representation was established as an instrument of power over the population. So, the representation was more often used as a mechanism that enabled a single person's power to

³ A. Gams, *Uvod u građansko pravo, opšti deo, peto prošireno izdanje*, Naučna knjiga, Beograd, 1963, 176.

⁴ И. Пухан, М. Поленак-Аќимовска, В. Бучковски, Г. Наумовски, *Римско право*, Скопје, 2019, 128.

⁵ И. Пухан, М. Поленак-Аќимовска, В. Бучковски, Г. Наумовски, *op.cit.*, 153.

⁶ See: B. Eisner, M. Horvat, *op.cit.*, 187.

⁷ See: A. Watson, *op.cit.*, 165; W. W. Buckland, *op.cit.*, 1921, 512; M. Šarac, *op.cit.*, 51-53.

completely override the will of the people than as a legal institute to protect their rights and interests.

In the period of capitalism, representation continues to develop, so the legal systems restored the basic function of the institute of representation - by protecting the property interests of natural persons who could not independently participate in legal traffic. But it is not reduced only to a form of representation that aims to replace the will of the represented person, but other forms of representation also appear, which are an expression of the will of the represented person. The development of representation and its forms in this period is due to the rapid expansion of trade relations and the need for persons to participate actively in these relations, either personally or through representatives who express their will in accordance with the represented person's needs and interests. According to some legal scholars, a characteristic of the representation in this period was in function of the development of trade relations and the economic development through the use of all available property resources⁸. It can be concluded that in capitalism there is already a distinction between two types of representation, one whose purpose is for the representative to express the will for persons who cannot independently express their will in legal traffic and the other, whose purpose is for the representative to express the will for persons who can independently participate in legal traffic, but are unable to do so. As a result, during this period, we can distinguish two types of representation: legal (non-contractual) and contractual.

The legal regulation of the institute of representation during socialism was similar to that during capitalism.

Overall, it can be concluded that the historical analysis of how representation in the legal scene emerged and developed was largely motivated by the needs of legal traffic.

III. THE CONCEPT OF REPRESENTATION IN CIVIL LAW DOCTRINE

In contemporary legal systems, natural persons acquire rights and obligations through their participation in civil-law relations. The acquisition of rights and the fulfillment of obligations result from a person's expressed legal will in civil-law relations. Taking this into account, civil-law doctrine underlines that in most civil-law relations, the will is the basic legal fact that leads to the acquisition, transformation, and termination of these relations⁹. When a person does not have the necessary capacity to express a legal will to participate in civil-law relations or is unable to express it personally, there is a legal possibility for another person to undertake the legal action instead of him or her¹⁰. As we mentioned before in the text, that legal possibility is provided by the institute of representation.

⁸ See: V. V. Vodinelić, *op.cit.*, 484.

⁹ Р. Живковска, Т. Пржеска, *op.cit.*, 230; А. Группче, *op.cit.*, 194.

¹⁰ А. Группче, *op.cit.*, 295.

Analyzing the legal scholar's definitions of representation, it can be noticed that they take different approaches in defining representation¹¹. Although, in general, legal scholars agree that the basic elements comprising representation are the following: the authority to represent, the duty to notify the third party, and the performance of a legal action. The first element is that a representative has the authority to represent. The authority to represent confers on the representative the legitimacy to act in the name and for the account of another person (the represented). However, it is believed that having the authority to represent is not sufficient to ensure representation. To the same extent, legal scholars believe that it is important to notify the third party that the person acts as a representative of another person in that relation¹². Therefore, the duty to notify a third party in civil-law relations is the second element. According to legal scholars, it is necessary for the representative to notify the third party of his or her status so that the representation can proceed, and as a result, all legal consequences that emerge from that relation will affect the property of the represented, not the representative. A third important element that leads to the occurrence of representation is the representative's performance of a legal action¹³. Some legal scholars consider the third element to be crucial for understanding the core of representation and its role in legal life¹⁴. This conclusion is based on the view that it is not important to identify who performed the legal action, but rather which property is involved. So, if the legal and economic effects from the performed legal actions become part of the property of the person in whose name the legal action is taken (the represented), but not part of the property of the person who undertakes the legal action (the representative), the institute that takes place in this case is representation.

IV. THE INSTITUTE OF REPRESENTATION IN THE MACEDONIAN LEGAL SYSTEM

The representation is a civil-law institute that finds its place in the regulations governing civil-law relations in contemporary legal systems.

Starting from Macedonian civil law, representation is regulated by the Obligations Act¹⁵. The Act contains general provisions on representation as an institute of civil law, and special provisions regulating contractual representation as one of its types. According to the Obligations Relations Act, a contract may be concluded or legal action undertaken through a representative (Art. 76(1)). Based on its provisions, we conclude that representation depends on the basis on

¹¹ Р. Живковска, Т. Пржеска, *op.cit.*, 368; Р. Ковачевић Куштримовић, М. Лазић, *op.cit.*, 323; А. Gams, *op.cit.*, 204; V. V. Vodinelić, *op.cit.*, 482.

¹² V. V. Vodinelić, *op.cit.*, 491; Р. Ковачевић Куштримовић, М. Лазић, *op.cit.*, 311; D. Stojanović, *Uvod u građansko pravo, šesto izmenjeno i dopunjeno izdanje*, Savremena Administracija, Beograd, 1984, 270; О. Антић, *Облигационо право*, Београд, 2007, 216.

¹³ V. V. Vodinelić, *op.cit.*, 483; Р. Ковачевић Куштримовић, М. Лазић, *op.cit.*, 332.

¹⁴ А. Gams, *Uvod u građansko pravo, opšti deo, peto prošireno izdanje*, Naučna knjiga, Beograd, 1963, 204.

¹⁵ Official Gazette of the Republic of Macedonia, number 18/01, 78/01, 4/02, 59/02, 5/03, 84/08, 81/09, 161/09, 23/13, 123/13, 215/21, 154/23, and 220/23.

which the authority to represent arises (Art. 76(2)). Performing legal action in legal traffic as a representative without authority to represent, or crossing the boundaries of the given authority to represent, means that legal action cannot affect the property of the represented (Art. 79 and Art. 80). In other words, if the person who was represented without authority to represent additionally approves the concluded contract or undertaken action, it will affect his or her property. Legal scholars explain that, in the event of additional approval, a contract concluded or action undertaken in the name and for the account of a represented person will produce legal effect¹⁶. This arises from the fact that, with the additional approval, the represented person gives authority to be represented. However, it should be borne in mind that this provision applies only to contractual representation.

The Obligations Act also regulates situations in which a representative has exceeded the authority to represent granted by the represented (Art. 79). In these cases, the Act, in the first place, safeguards the interests of the third (conscientious) party in civil-law relations. If the third party is conscientious, i.e., did not know or could not have known about the representative's excess of authority to represent, then the third party cannot suffer harmful consequences as a result of the committed excess of authority to represent by the representative.

When discussing the effect of representation, the Macedonian legislator stipulated that a contract made by the representative within the authority to represent binds both the represented and the other contracting party. (Art. 77). From this, it can be concluded that the legal effect of representation directly impacts the property of the represented person. Also, this effect arises if the third party in the civil-law relation was notified of the representative's status or, given all the circumstances, could conclude that the person was a representative. If the representative does not notify the third party that, in the civil-law relation, he or she acts as representative, and the third party cannot conclude that he or she is representative in civil law relations, the legal scholars conclude that this relation does not obligate the third party¹⁷.

The relationship between the representative and the represented in the Obligations Act is regulated as a personal one. In that sense, the Macedonian legislator prescribed that the representative cannot transfer their powers to anyone else. However, there are three exceptions in Obligations Act where the authority of the representative is transferable: when the legislator allows the transfer of the authority; when the represented has agreed to it (in the case of contractual representation), and when the representative is prevented to performing, but in the best interest of the represented, legal action needed to be taken (Art. 78).

An analysis of the provisions in the Obligations Act shows that the Macedonian legislator regulates representation as an institute that enables the conclusion of contracts and the undertaking of other legal actions by a representative based on an authority to represent, whereby the concluded contracts and undertaken legal actions have direct legal effect, i.e., in the name and for the account of the represented¹⁸. Hence, based on this, it can be concluded that the definition of representation

¹⁶ К. Чавдар, К. Чавдар, *Коментар на Законот за облигационите односи, коментари, објаснувања, практика и предметен регистар, трето изменето и дополнето издание*, Академик, Скопје, 2012, 159.

¹⁷ К. Чавдар, К. Чавдар, *Коментар на Законот за облигационите односи, op.cit.*, 158.

¹⁸ Р. Живковска, Т. Пржеска, *op.cit.*, 368.

in the Obligations Act corresponds to the scientific definition of representation provided by the civil law doctrine.

Additionally, it is worth noting that, despite the Obligations Act, the provisions of legal regulation of representation and its types in Macedonian civil law are also set out in several Acts, such as the Inheritance Act¹⁹, Family Act²⁰, Civil Procedure Act²¹, Trade Companies Act,²² and others.

V. THE INSTITUTE OF REPRESENTATION IN THE LEGAL SYSTEMS OF EU MEMBER STATES

Representation is a crucial civil-law institute for regulating civil-law relations. Undoubtedly, contemporary legal traffic cannot be imagined without representation. It regulates the possibility of undertaking legal actions for the account of another, through which certain civil law rights and interests of the represented person can be realized and protected. To demonstrate how some EU member states regulate representation within their legal systems, a comparative legal analysis will be conducted in the following text. The analysis aims to show how the legal systems of EU member states, with both similar and different legal traditions, regulate representation in contemporary civil law.

a) Unlike the Macedonian legal system, the legal system of the Republic of Switzerland regulates the representation in the Code, known as the Swiss Civil Code²³. Moreover, the legal (non-contractual) representation of natural persons and legal entities is regulated in the first part of the Swiss Civil Code, which governs their personhood. The contractual representation, as the second type of representation, is regulated under the Obligations Code²⁴. The Swiss Civil Code does not contain a general provision of legal (non-contractual) representation, but through the analysis of the provisions regulating types of legal representation, it can be concluded that legal representation provides a legal opportunity for natural persons who lack active legal capacity to participate in civil-law relations with the consent of their legal representative (Art. 19).

However, it should be noted that the Swiss Civil Code does not restrict the legal representation of natural persons who cannot independently participate in legal relations. The Code regulates forms of legal representation that facilitate relations with third parties. For example, it provides the representation of the marital union by spouses with regard to the day-to-day needs of

¹⁹ Official Gazette of the Republic of Macedonia, number 47/96 and 18/01.

²⁰ Official Gazette of the Republic of Macedonia, number 80/92, 9/96, 38/04, 33/06, 84/08, 67/10, 156/10, 39/12, 44/12, 38/14, 115/14, 104/15, 150/15, 122/18, 51/21, 53/21 and 199/23.

²¹ Official Gazette of the Republic of Macedonia, number 6p.79/05, 110/08, 83/09, 116/10 and 124/15.

²² Official Gazette of the Republic of Macedonia, number 84/05, 71/06, 25/07, 87/08, 17/09, 23/09, 42/10, 48/10, 8/11, 21/2011, 24/11, 166/12, 70/13, 119/13, 120/13, 187/13, 38/14, 41/14, 138/14, 88/15, 192/15, 217/15, 6/16, 30/16, 61/16, 64/18, 120/18, 195/18, 225/18, 239/18, 290/20, 215/21 and 99/22.

²³ Available: https://www.fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/cc/24/233_245_233/20220101/en/pdf-a/fedlex-data-admin-ch-eli-cc-24-233_245_233-20220101-en-pdf-a.pdf.

²⁴ Available: https://www.fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/cc/27/317_321_377/20220101/en/pdf-a/fedlex-data-admin-ch-eli-cc-27-317_321_377-20220101-en-pdf-a-2.pdf.

the family, as well as the representation of the marital union by one of the spouses if authorized to do so by the other spouse, by a court decision, or if the interests of the marital union brook no delay and the other spouse is unable to consent due to illness, absence or other similar reasons (Art. 166).

A special type of legal representation regulated by the Swiss Civil Code concerns the protection of adults who are no longer capable of judgment. A characteristic of this type of legal representation is that the legal representative is appointed by the adult when the adult is capable of judgment, and the authority to represent takes effect when the adult loses capacity for judgment (Art. 360). According to the provision, an adult with the active legal capacity may instruct a natural person or legal entity to take responsibility for his or her personal care or the management of his or her assets or to act as his or her representative in the event that he or she is no longer capable of judgment. The Swiss legislator also prescribes that the adult must define the tasks that are to be assigned and may issue instructions on how these tasks are to be fulfilled (Art. 360(2)).

In the context of the protection and representation of adults who are not capable of judgment, it is important to mention the model of representation known as deputyship, regulated in the Swiss Civil Code. According to this, a deputy representative is appointed to represent: adults who, due to a learning disability, a mental disorder or a similar inherent debility is wholly or partially unable to manage his or her own affairs; adults who have temporarily lost the ability to reason and cannot protect their rights and interests and absent persons who do not have their own representative (Art. 390). Also, the Swiss legislature regulates several types of deputyship, such as assistance deputyship (Art. 393), representative deputyship (Art. 394), advisory deputyship (Art. 396), and general deputyship (Art. 398). Assistance and advisory deputyship are considered the most specific because their nature involves helping and advising the represented individual in making the final decision themselves. Furthermore, the purpose of advisory deputyship is to provide the represented person with greater legal certainty regarding the matters they undertake independently. By regulating these types of representation, the Swiss legislator has moved from a system of substitute decision-making to the European model of representation through a system of support decision-making.

Contractual representation, regulated by the Obligations Code, is defined as performance of rights and obligations in the name and for the account of the represented person (Art. 32). The Obligations Code clearly stipulates that the representative, in addition to the authority to represent, must also show an intention to represent. Demonstrating their intention to act as a representative is done by notifying the third party about entering into a civil-law relationship as a representative, i.e., in the name and for the account of another person (Art. 32 (2)). By not demonstrating intention to represent, i.e., not being identified as a representative, the representative is obliged to bear all legal consequences arising from the legal relation with the third party (Art. 32 (3)).

The Obligations Code also regulates unauthorized representation, a case in which a person entered into a civil-law relation by acting as a representative, even though he lacked authorization to do so. In this case, the legal actions of the unauthorized representative, according to the Code, can be taken in the name and for the account of the represented party if he or she ratifies them (Art.

38). In cases where the represented has explicitly or implicitly refused to ratify the legal actions taken by the unauthorized representative, the Obligations Code prescribes the liability of the unauthorized representative for the damage that occurred as a result of the unauthorized actions (Art. 39).

b) In the same fashion as the Republic of Switzerland, a representation as a civil law institute in the Republic of France is codified and regulated by the French Civil Code²⁵. The Code does not contain general provisions on representation, but regulates legal (non-contractual) representation and its types, as well as contractual representation.

Provisions regulating legal (non-contractual) representation are found in several parts of the French Civil Code. The Code regulates the legal representation of minors (Art. 342, 390), absent persons (Art. 113), spouses when one is unable to express a legal will (Art. 219), adults who lack active legal capacity (Art. 492), etc. From the provisions governing this type of representation, it can be concluded that the function of legal representation is to handle legal matters in the name and for the account of other persons (the represented) who cannot protect their rights and interests due to a lack of active legal capacity or absence. Among other things, French law regulates the representation of adults who have reached the age of 18 but, due to their mental capacity, are unable to independently protect their rights and interests (i.e., do not have full active legal capacity) (Art. 488). Legal representation of adults under the French Civil Code takes several forms: judicial supervision, guardianship of adults, and curatorship of adults, which are used according to adults' needs (Art. 488-590).

Contractual representation is regulated by articles 1984-2010 of the French Civil Code. The Code defines the contractual representation as a legal matter by which one person authorizes another to undertake legal actions on the account of the other (Art. 1984). The analysis of the French Civil Code provisions regulating contractual representation shows that this type of representation is an internal relation between the representative and the represented person, from which rights and obligations arise for both parties. It is noted that the French Civil Code does not contain provisions governing the external relations in which a representative acts in the name of the represented person.

c) Similar to the French Civil Code, the general definition of the institute of representation is not contained in the Italian Civil Code²⁶. However, this Code regulates several types of legal (non-contractual) representation and contractual representation. Legal (non-contractual) representation under the Italian Civil Code is established to protect the interests of missing persons (Art. 48), the minors (Art. 320, 321, 343), and adults who cannot protect their own rights and interests (Art. 404).

Discussing legal (non-contractual) representation includes the provisions concerning the legal representation of adults who lack full active legal capacity. The Italian legislator regulates the protection of these adults by appointing a so-called support administrator, whom the court

²⁵ Available: <https://www.fd.ulisboa.pt/wp-content/uploads/2014/12/Codigo-Civil-Frances-French-CivilCode-english-version.pdf>;

²⁶ Available: <https://www.codice-civile-online.it/codice-civile/articolo-48-del-codice-civile>;

appoints for an adult determined to be incapable of taking care of his or her rights and interests as a result of physical or mental deficiencies (Art. 404). The administrator handles the legal matters for which the represented person is incapable or unable to perform. When undertaking legal matters, the administrator must take into account the needs and wishes of the represented person (Art. 410 (1)). Also, it is noted that a legislator does not forget respect for the autonomy of the will and regulates a provision that provides that the represented person to whom an administrator is appointed does not completely lose the capacity to act independently. The person may perform those legal matters for which he or she has the necessary capacity, i.e., those legal matters for which the administrator is not exclusively authorized or for which the administrator's consent is required (Art. 409).

Contractual representation is regulated by articles 1703-1730 of the Italian Civil Code. This type of representation, according to the Code, occurs when one party undertakes legal action for the account of another party (Art. 1703). It is evident that contractual representation in the Italian Civil Code is not defined as the undertaking of legal action in the name and for the account of the represented, but only for the account of the represented. From this definition of contractual representation, it can be concluded that the contractual representative may enter into civil law relations with third parties in his own name, but for the account of the represented. However, the Italian Civil Code does not exclude the possibility of the contractual representative acting both in the name and for the account of the represented.

The Italian legislator distinguishes two forms of contractual representation: contractual representation by which the representative is authorized to act in the name of the represented, i.e., direct representation (Art. 1704), and contractual representation by which the representative is authorized to act in his own name, i.e., indirect representation (Art. 1705). When the contractual representative is authorized to act in his own name in relations with third parties, the representative acquires the rights and obligations arising from those relations. According to the Code, when the contractual representative acts in his own name, there is no direct relationship between the third parties and the represented party (Art. 1705(2)). The represented person in this case has the power to exercise the rights acquired by the contractual representative, unless exercising those rights violates the rights guaranteed by the Code to the contractual representative.

d) The definition of the representation in the legal system of the Republic of Slovenia is given in the Obligations Code²⁷. The representation in this Code is prescribed in a manner quite similar to that in the Macedonian Obligations Act. According to the Slovenian Obligations Code, contracts and other legal matters can be concluded by a representative with the authority to represent (Art. 69). The analyzed provision shows that the Code prescribes several types of representation depending on the basis on which the authority to represent is founded. In line with the law, it can be concluded that Slovenian law recognizes both contractual and legal (non-contractual) representation. The legal effect of representation prescribed that every contract or legal matter concluded by the representative in the name of the represented and within the boundaries of the authority to represent obliges the represented and the third party directly. It is

²⁷ Obligacijski zakonik, Uradni list RS, št. 97/07, <https://pisrs.si/pregledPredpisa?id=ZAKO1263>.

clear from this that representation enables the undertaking of legal matters, in the name of another, for the account of another, and with the authority to represent. In addition to the authority to represent, which is crucial for the emergence of representation, the Code also stipulates that the representative must demonstrate an intention to represent in relations with third parties. The intention to act as a representative is demonstrated by notifying the third party that he or she is acting as a representative (Art. 70 (3)).

Given that the authority to represent is crucial to the legal effect of representation, the Code stipulates that a contract concluded with a specific person in the name of another without authority to represent does not obligate the unauthorized represented party, unless he additionally approves it (Art. 73 (1)). A third party who has entered into a relation with the unauthorized representative may request the unauthorized represented party to declare whether he approves the concluded contract within a specified period. If the unauthorized represented party does not approve the contract within the specified period, the contract is considered not to have been concluded (Art. 73 (3)). A conscientious third party who did not know or should not have known that he or she was concluding a contract with an unauthorized representative, according to the Code, has the right to request the unauthorized representative to be compensated for the damage he or she suffers as a result of the unauthorized representation (Art. 71 (4)).

VI. THE FUNCTIONS OF REPRESENTATION IN CONTEMPORARY CIVIL LAW

According to the civil doctrine, contemporary civil law cannot be conceived without the institute of representation. As economic relations develop, legal traffic is becoming increasingly complex and diverse. Due to the smooth running of numerous activities within the framework of legal traffic, there is often a need to pursue legal action through a representative. The person who acts as a representative protects the interests of the represented party when the represented party cannot do so independently and, at the same time, ensures that all rights and obligations in relations with third parties are fulfilled. Given the complexity of the institute of representation, civil doctrine emphasizes that representation comprises several functions.

The first function of representation is to facilitate the legal traffic²⁸. As a result of the regulation of the legal possibility of undertaking legal actions through a representative, the smooth running of legal traffic is enabled, as the representative has the authority and duty to undertake legal actions in the name and for the account of the represented person.

Enabling the inclusion in legal life of persons who lack active legal capacity to undertake legal actions independently and personally is the second function of representation. So, the representative manages the personal and property interests of persons who lack active legal capacity. These persons, with the help of the representative, participate in legal traffic and acquire civil-law rights and obligations which enter into their property as a material basis for satisfying their needs. Without a representative, these persons would be extremely marginalized, with no

²⁸ Р. Живковска, Т. Пржеска, *op.cit.*, 400.

opportunity to protect their interests. According to legal scholars, this is a very important function of representation, which shows a humane dimension²⁹.

The third function of representation consists of expanding the possibilities of natural persons to participate in various civil-law relations. Representatives who act in the name and for the account of the represented person enable that person to participate in several different civil-law relations at the same time. This function of representation is usually expressed in contractual representation. A contractual representative protects the interests of the represented person who, due to a lack of time, necessary knowledge, distance, or other reasons, is unable or unwilling to undertake certain legal actions independently.

Also, representation ensures the protection of the legal interests of absent persons and unknown property owners. Based on this, it can be said that this becomes the fourth function of representation³⁰. Absent persons, i.e., those with an unknown place of residence who may appear as parties to civil-law relations or as participants in judicial and other proceedings, are objectively unable to protect their rights and legal interests in those relations. As a result, the representative does this in the name of the absent person. Representatives are also authorized to take care of the protection of property whose owner is unknown or absent.

The fifth function of representation is more dedicated to the third party. It consists of creating an opportunity for third parties to realize their rights and interests in relation to the represented person³¹. As the legal scholars note, the functions of representation in different legal systems are not limited only to protecting the rights and interests of the represented party. Through representation, the interests of third parties are also indirectly protected. For example, a plaintiff who files a lawsuit against an absent defendant can ensure legal protection of his rights in the civil procedure against the defendant only if the defendant has a representative in that procedure who will act in the name and for the account of the defendant.

VII. CONCLUSION

As the text points out, in the early period of Roman law, representation was not evident, and the understanding prevailed that natural persons could acquire rights and assume obligations only personally. With the development of trade relations, Roman law began to allow participation in legal traffic through other persons. This opened the possibility for the emergence of rudimentary forms of legal representation, such as tutorship and guardianship. During feudalism, representation played a minor role in civil law relations because it was not used to protect the population but rather as a mechanism for controlling the population by a single person, i.e., the representative (the ruler). Representation in the period of capitalism continues to develop, gaining its significance as an institution through which the property interests of persons who cannot independently participate in legal traffic, and of persons who, for some reason, cannot personally assume rights and

²⁹ V. V. Vodinelić, *op.cit.*, 483.

³⁰ V. V. Vodinelić, *op.cit.*, 484.

³¹ V. V. Vodinelić, *op.cit.*, 485.

obligations, are protected. During socialism, representation is also regulated and retains the characteristics it had under capitalism.

As the paper demonstrates, the representation is a civil-law institute that finds its place in the legal regulations governing civil-law relations in contemporary legal systems. Some European states regulate the representation in their civil codes, and others in other legal regulations. As we explain, in the Republic of North Macedonia, representation is regulated by the Obligations Act, which contains general provisions on representation and special provisions governing contractual representation as one of its types. Despite this Act, the provisions governing representation in Macedonian civil law are also set out in several Acts, such as the Inheritance Act, Family Act, Civil Procedure Act, Trade Companies Act, and others. The overall analysis of the institute of representation shows that the Republic of North Macedonia regulates the basic types of representation of natural persons - legal (non-contractual) and contractual, recognized in all contemporary legal systems.

As for the legislation of European states, such as the Republic of Switzerland, the paper concluded that the representation is regulated by the Swiss Civil Code. The legal (non-contractual) representation of natural persons is regulated in the first part of the Swiss Civil Code. A second type of representation, the contractual representation, in Swiss legislation is regulated under the Obligations Code. An overall analysis of representation in the Republic of Switzerland shows that, among other things, the Swiss Civil Code prescribes provisions governing a specific model of legal representation for vulnerable adults and of representation in relation to medical procedures. Despite the Swiss Civil Code, the paper analyzes the legal regulation of representation in the Republic of France, which is codified in the French Civil Code. The Code does not contain general provisions on representation, but regulates legal (non-contractual) representation and its types, as well as contractual representation. Also, the French Civil Code regulates several forms of legal representation for adults, such as judicial supervision, guardianship, and curatorship, which are used according to adults' needs. Unlike the French Civil Code, the Italian Civil Code does not contain a general definition of the institute of representation. However, it regulates several types of legal (non-contractual) representation and contractual representation. The definition of representation in the legal system of the Republic of Slovenia is set out in the Obligations Code. The representation in this Code is prescribed in a manner quite similar to that in the Macedonian Obligations Relations Act.

Considering the functions of the institute of representation in modern civil law, it can be concluded that the primary role of representation as a civil law institute remains intact in modern legal systems: the representative's purpose is to safeguard the property interests of the person they represent by expressing the legal will on their behalf. However, it is also important to recognize that contemporary legal systems assign some types of representation a social-protective function, meaning that some representatives are required to care for not only the property but also the personal interests of the person they represent.

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