

CONTEMPORARY TENDENCIES IN THE REPRESENTATION OF NATURAL PERSONS IN CIVIL LAW

Abstract

One of the most important institutes of civil law, without which modern civil law relations cannot be imagined, is the institute of representation. It enables the exercise of the civil law rights of natural persons in circumstances when they cannot exercise their rights personally. The representation makes it possible for natural persons to participate in civil law relations, even when they lack the active legal capacity to acquire rights and duties. However, representation is not only an instrument that enables natural persons lacking active legal capacity to participate in civil law relations but also an institute that creates opportunities for natural persons with active legal capacity to undertake legal actions via a representative. Considering the scope and relevance of representation in civil law, this paper aims to examine and analyze the contemporary tendencies of development of this institute in civil law. The paper will demonstrate that this traditional civil law institute has been involved in the legal systems of contemporary European countries over time. The end goal is to evaluate how the Macedonian legal system aligns with these contemporary tendencies regarding the regulation of representation in Macedonian civil law.

Keywords: representation, active legal capacity, civil law, rights.

I. Introduction

Civil law relations have a significant impact on the legal lives of natural persons who participate in them. Engaging in civil law relations enables a natural person, as the main participant in legal transactions, to acquire civil law rights that constitute their property. Recognizing the significance of civil law relations, contemporary legal systems ensure that all natural persons participate as equals in civil law relations¹. This principle is also reflected in the regulations of the Macedonian legal system.

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¹ See: Р. Живковска, Т. Пржеска, *Граѓанско право – опит дел*, Скопје, 2021, 23; Р. Ковачевић-Куштримовић, М. Лазећ, *Увод у граѓанско право*, Пунга, Ниш, 2018, 102; V. V. Vodinelić, *Gradansko pravo, Uvod u gradansko pravo i Opšti deo građanskog prava, četvrto izdanje*, Službeni glasnik, Beograd, 2022, 43; Д. Попов, *Граѓанско право (општи део), пето измењено и допуњено издање*, Нови Сад, 2007, 13; О. Станковић, В. Водинелић, *Увод у граѓанско право*, Београд, Номос, 2007, 252; И. Бабић, *Увод у граѓанско право и стварно право, деветто измењено и допуњено издање*, Службени гласник, Београд, 2021, 33; Р. Ковачевић-

The basic assumption for the participation of natural persons in civil law relations is the existence of civil personhood². Although personhood is a characteristic assigned to natural persons as participants in civil law relations, exercising these relations depends on the capacities of natural persons. Thus, the most important element in exercising personhood in civil law is an active legal capacity, i.e., the capacity to act³. More specifically, active legal capacity enables individuals to engage in legal transactions by expressing their autonomy of will.

Nowadays, when all contemporary legal systems recognize the possibility of a natural person entering into legal transactions personally, a question arises about how this can also be available to a natural person who, for various reasons, cannot engage in civil law relations. As a result of the impossibility of a certain person and the need to find a legal instrument for entering into civil law relations, the institute of representation was gradually introduced into legal systems, without which civil law relations cannot be imagined today. The representation becomes not only an instrument that enables natural persons lacking active legal capacity to participate in civil law relations but also an institute that creates opportunities for natural persons with active legal capacity to undertake legal actions via a representative. Consequently, without representation, natural persons who lack active legal capacity may face the risk of becoming a marginalized group with no possibility of acquiring property rights through legal transactions.

In this regard, each contemporary legal system establishes a legal possibility for a natural person (the representative) to act in the name⁴ and for the account⁵ of another person (the represented), so the legal consequences of that action will affect the property of the represented person⁶. Although the representation initially served this basic function, the growth of legal transactions created a need for detailed regulation and expansion of the representation. Hence, the institute of representation also begins to protect natural persons who, despite full active legal capacity, often cannot enter into legal transactions for different reasons (such as geographical distance, illness, lack of expertise, or a busy schedule)⁷. Thus, it evolved into an institute that protects not only the rights and interests of natural persons who lack active legal capacity but also those with full active legal capacity.

Contemporary legal systems seriously consider the possibilities for further development and modification of the institute of representation. They are gradually adapting to the contemporary concept of a natural person's personhood and how it should be exercised in civil law relations. Through modifications, legal systems aim to ensure the inclusiveness of natural persons to enter into civil law relations and exercise their personhood, particularly for those with limited possibilities (such as older minors, individuals with mental or intellectual disabilities, persons who suffer from mental illnesses, etc.).

Куштримовић, *Граѓанско право (општи део)*, друго измењено и допуњено издање, Ниш, Сириус, 1995, 21; А. Групче, *Граѓанско право, општ дел*, Култура, 1976, 22.

² See: Р. Живковска, Т. Пржеска, *op. cit.*, 66; Р. Ковачевић-Куштримовић, *op. cit.*, 64-65; D. Stojanović, *op. cit.*, 101; S. Vukadinović, *op. cit.*, 9; A. Gams, *op. cit.*, 25; И. Бабић, *op. cit.*, 47-49; О. Станковић, В. Водинелић, *op. cit.*, 51; V. V. Vodinelić, *op. cit.*, 333-339; Р. Ковачевић-Куштримовић, М. Лазић, *op. cit.*, 107; Д. Попов, *op. cit.*, 71;

³ More about this, see: Р. Живковска, Т. Пржеска, *op. cit.*, 66; Also see: Т. Лалевска, *Деловната способност на физичките лица во граѓанското право*, Зборник на трудови, Општествени промени во глобалниот свет, Десетта меѓународна конференција, Штип, 2023.

⁴ Р. Живковска, Т. Пржеска, *op. cit.*, 377; А. Gams, *op. cit.*, 285; М. Vedriš, *Osnove imovinskog prava*, Zagreb, 1971, 264; О. Станковић, В. Водинелић, *op. cit.*, 195.

⁵ Р. Живковска, Т. Пржеска, *op. cit.*, 378; А. Gams, *op. cit.*, 205. When defining the institute of representation, the element "for another's account" is not considered in certain civil codes. See: art. 32, (1), Swiss Civil Code; art. 1388, Italian Civil Code. More about these, see: О. Станковић, В. Водинелић, *op. cit.*, 195.

⁶ See: А. Gams, *op. cit.*, 174; Р. Живковска, Т. Пржеска, *op. cit.*, 369; D. Stojanović, *op. cit.*, 298; А. Групче, *op. cit.*, 294. Also see: О. Станковић, В. Водинелић, *op. cit.*, 196; Д. Попов, *op. cit.*, 224; Д. Стојановић, О. Антић, *op. cit.*, 344.

⁷ See: Р. Живковска, Т. Пржеска, *op. cit.*, 367; Д. Попов, *op. cit.*, 223; Р. Ковачевић-Куштримовић, М. Лазић, *op. cit.*, 326; О. Станковић, В. В. Водинелић, *op. cit.*, 197; И. Бабић, *op. cit.*, 174; Р. Ковачевић-Куштримовић, *op. cit.*, 179.

The legal theory emphasizes the need to establish modified forms of representation that will enable natural persons to participate actively and personally within their capacities in legal transactions. In this form of representation, legal scholars indicate that the representative's role will not merely replace the will of the represented person. Instead, it will serve more as an auxiliary to assist the represented person in civil law relations.

Considering the significance of representation, the text below highlights the characteristics of non-contractual representation and contractual representation as regulated types of representation in contemporary legal systems, such as those in North Macedonia, Germany, Switzerland, and Spain, with an analysis of the tendencies in the representation of natural persons in civil law.

II. Contemporary tendencies of non-contractual representation of natural persons in Macedonian and other legal systems

Non-contractual representation, also known as legal representation, is defined as a representation that originates from a law statute, a court decision, or an act of an authorized authority⁸. This type of representation does not arise from the will of those being represented. Instead, it arises from an objective need to represent a natural person who cannot do so personally. Natural persons who can be “represented” in a non-contractual representation are minors, adults who lack full active legal capacity, absent persons, unknown property owners, and others for whom there is an objective need to appoint them representative⁹. Through non-contractual representation, the lack of will of a certain natural person becomes eliminated, which is due to the lack of active legal capacity¹⁰. The “representative” in a non-contractual representation is a natural person with a full active legal capacity, authorized to undertake legal acts and conclude legal matters in the name and for the account of the represented person¹¹.

By analyzing the provisions of civil codes and legal regulations in the field of civil law, it is noted that the non-contractual representation of natural persons appears in several different forms of representation classified into multiple groups, such are: a) parental representation, b) representation of minors who lack parental care, c) representation of adults, and d) representation in “special cases”.

a) Parental representation refers to a type of non-contractual representation of a minor, which, without exception, is regulated in all contemporary legal systems analyzed in this paper.

- Beginning with the Macedonian legal system, parental representation is performed by parents as legal representatives of their minor children, as determined by the Family Act¹². Parental representation is carried out jointly by agreement of both parents, except in cases where it may be exercised by only one parent¹³. According to Macedonian family law, the powers of parents are classified into powers of representation in legal transactions and powers of

⁸ See: Р. Живковска, Т. Пржеска, *op. cit.*, 379; D. Stojanović, *op. cit.*, 284; Д. Попов, *op. cit.*, 238. Also see: A. Gams, *op. cit.*, 206.

⁹ Art. 45b, art. 47a and art. 48, Obligations Act. See: Р. Живковска, Т. Пржеска, *op. cit.*, 121, 370.

¹⁰ Р. Живковска, Т. Пржеска, *op. cit.*, 369; Д. Попов, *op. cit.*, 238.

¹¹ See: Р. Живковска, Т. Пржеска, *op. cit.*, 372-373. Also see: Family Act (art. 39, (1)), Companies Act (art. 65, (1), art. 69, (1)), Inheritance Act (art. 126), Civil Procedure Act (art. 81), etc.

¹² Art. 48, Family Act. Also see: Р. Живковска, Т. Пржеска, *op. cit.*, p. 381.

¹³ Art. 76 and art. 80, (1), Family Act. See: К. Чавдар, *Коментар на Законот за семејството, со судска практика, обрасци за практична примена, предметен регистар и придружни прописи*, Академик, Скопје, 1998, 168.

representation of a personal nature¹⁴. In exceptional situations, parents may also exercise parental representation over adult children¹⁵. In these situations, the parent's rights and duties, i.e., parental representation, have been extended by a court decision¹⁶.

- In the legal system of the Republic of Germany, parental representation is regulated by the German Civil Code (BGB)¹⁷. According to the BGB, natural persons under the age of 7 cannot personally participate in legal transactions (§ 104) because they are not capable of contracting. Thus, these individuals can only enter into legal transactions with their representatives (parents). Minors with limited capacity to contract (over 7 years) may enter into a contract that grants them rights only (§ 107). These minors will require the consent of their legal representatives for all other legal acts. Additionally, if a minor enters into a contract without the consent of their representative, the consequences of the contract require the approval of that representative (§ 108). The parental representation regulated in the BGB is exercised jointly by the parents, who have rights and duties to care for the minor child (§ 1626). Representation by the parents encompasses care for the child's personality and the child's property interests (§ 1629).

- The Swiss Civil Code¹⁸ also regulates parental representation as a type of non-contractual representation of natural persons in civil law. According to the Swiss Civil Code, parents who exercise their parental rights and duties for a minor child have the power to represent the child in legal transactions (Art. 304, Art. 305). Compared to other legal systems, Swiss law prescribes that a child with the capacity to reason may act for the family's account with the consent of a parent, but in doing so, it involves the parents (Art. 306(1)).

- The representation of minors in the Republic of Spain is regulated in the Spanish Civil Code¹⁹. According to the Spanish Civil Code, parents represent their minor children (Art. 162). Hence, parents can represent their minor children, manage their property according to the child's best interests, and respect their physical and psychological integrity (Art. 154). The parental representation shall be exercised jointly by both parents or by one with the explicit or implicit consent of the other parent (Art. 156 (1). The exercise of parental representation is entrusted to one parent when the other one is incapacitated, absent, or unable to exercise the parental rights and duties (Art. 156 (4) (5)). When parents live separately, Spanish law prescribes that parental rights and duties are exercised by the parent with whom the child lives (Art. 156 (6)).

Generally, parental representation refers to the representation that parents have over their children. In contemporary legal systems, parents are viewed as having both the right and the duty to protect their children's personal and property rights²⁰. According to the principle of equality between parents in rights and duties, legislation prescribes that parental representation is exercised jointly by both parents. The analysis of the provisions shows that all contemporary legal systems generally stipulate that parents jointly exercise parental representation, even if they do not live together, as long as it serves the child's best interests. Also, all contemporary legal systems today place importance on the will and preferences of the child, not just on what is in the child's best interest. Additionally, the parent's power as representative in legal systems is shaped to fit with the child's will and preferences, which are expressed according to their age and capacity to reason.

¹⁴ Art. 44-46, art. 219-222, Family Act. Also see: К. Чавдар, *op. cit.*, 165.

¹⁵ Art. 94, Family Act.

¹⁶ Art. 112, Non-contentious Procedure Act. See: Р. Живковска, Т. Пржеска, *op. cit.*, 381; Д. Мицковиќ, А. Ристов, *Семејно право*, Скопје, 218-219. Also see: А. Јаневски, Т. Зороска - Камиловска, *Граѓанско процесно право, книга втора, вонпарнично право*, Скопје, 2010, 107-111.

¹⁷ Available at: https://www.gesetze-im-internet.de/englisch_bgb/.

¹⁸ Available at: 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.

¹⁹ Available at: <https://www.boe.es/buscar/act.php?id=BOE-A-1889-4763&p=20230301&tn=0>.

²⁰ See: J. Hauser, „De la nature juridique de la représentation des mineurs (à propos de Cass.ch. mixte 9 févr. 2001)”, *RJPF*, 6 juin 2001, 7. Cited by: L. Francoz-Terminal, *La capacité de l'enfant dans les droits français, anglais et écossais*, Thèse de doctorat de droit, Université Jean Moulin Lyon, available at: https://scd-resnum.univ-lyon3.fr/out/theses/2007_out_francoz-terminal.1.pdf.

Therefore, a child who reaches a certain age has limited opportunities to participate in certain civil law relations. The parent's role is to assist, guide, and approve the legal transactions in which the child participates within their limited active legal capacity.

b) The representation of minors who lack parental care is also regulated in all contemporary legal systems, which is the subject of analysis in this paper.

In the legal system of the Republic of Macedonia, the representation of minors without parents, i.e., minors who lack parental care, is regulated in the Family Act²¹. According to the Law, guardianship includes care for the personality of the represented person (ward), and his property rights and interests²². The Center for Social Services, as a guardianship body, represents minors who lack parental care²³. Alongside the Center for Social Services, the representative for minors without parental care is also the guardian, whose power is strictly defined in the Family Act. The natural person who will serve as guardian has been decided by the Center for Social Services²⁴. As the primary institution, the Center for Social Services determines the establishment, scope of rights, and duties of the guardian and the termination of its duty²⁵.

We believe that representation exercised by a guardian should protect not only the property rights of minors but also their personal rights and interests. The argument that this solution is regarded as the most practical depends on the fact that the guardian is in constant contact with the person under guardianship and is assumed to know his personal and property needs while exercising powers of representation. However, this does not imply that the Center for Social Services, which aims to protect persons under guardianship, should be excluded from representation. On the contrary, the Center for Social Services must ensure that the guardian exercises the duties conscientiously and accurately.

When determining the natural person who will exercise representation as guardian, the legislator prescribes that the will and preferences of the person under guardianship should be considered, if he or she can express them personally. This solution about respecting the person's will under guardianship reflects the legislator's effort to value the individual's personality as an individual who, due to some circumstances, cannot fully care for their rights and interests. Additionally, since the person under guardianship is a minor who lacks parental care, the Macedonian legislator established the rights and duties of the guardian in the same fashion as the rights and duties of the parents²⁶.

Regarding the representation of minors who lack parental care, the German Civil Code (BGB) prescribes a guardian for minors when they are not under parental representation or when the parents are not authorized to represent them (§ 1773). A minor's guardian can be appointed either by the parents or the court (§1776, 1780). Guardianship of minors refers to the responsibilities that a person appointed as a guardian must fulfill, which are established by the BGB (§ 1785, 1786). The guardian has rights and duties to care for the minor's person and property (§ 1793). From these provisions, it is noted that the scope of a guardian's rights and duties is identical to that of the previous form of representation, such as parental representation.

Like other contemporary legal systems, the guardianship of minors (children) according to the Swiss Civil Code is established when the child is not under parental care, i.e., a parental representation. A child's guardian has the same power to represent the child as the parents have. Additionally, a child under guardianship has the same legal status as a child under parental care (Art. 327a, 327b, 327c).

²¹ Art. 159, Family Act.

²² Art. 142-154, Family Act.

²³ Art. 124, (1), Family Act. Also see: Р. Живковска, Т. Пржеска, *op.cit.*, 382; Д. Мицковиќ, А. Ристов, *op. cit.*, 275; К. Чавдар, *op. cit.*, 237.

²⁴ Art. 140, (1), and art. 165, (1), Family Act.

²⁵ Art. 140, (3), Family Act.

²⁶ Art. 160, Family Act.

In the Spanish Civil Code, representation by a guardian is regulated as a form of protection for minors without parental representation (Art. 222). Unlike previous contemporary laws, Spanish law prescribes to parents the legal option to appoint a guardian for their children by testament. The guardian must represent the person in legal transactions where the ward cannot participate personally (Art. 267, Art. 268). According to the Spanish Civil Code, the person chosen by the ward, or the spouse, the parents, brother, or sister, can be appointed as a guardian (Art. 234). If no suitable person is found within the ward's family, the court will appoint the natural person it considers most appropriate, considering the ward's interests and the ward's relationship with the guardian.

Contemporary legislation commits to protect the rights and interests of minors whose parents, for various reasons, cannot exercise parental representation. Therefore, as we have noted, the guardian's powers generally mirror those of the parent while exercising parental representation. This also reflects the legislation's effort to protect minors lacking parental care that closely resembles parental care. For these reasons, we noted that legislators in certain legal systems, such as the Republic of Spain and the Republic of Germany, prioritize appointing close family members as guardians of minors without parental care. The will of the parents in a testament, along with the child's will and preferences regarding the appointment of a guardian, are also considered in some legal systems, such as in the Republic of Germany. To ensure the proper protection of the child under guardianship, we also noted that contemporary legal systems pay attention to the guardian's personality.

c) Legal representation for adults in contemporary legal systems comes in various forms, and each system uses different concepts for the forms.

The Macedonian Family Act also regulates the representation of adults. Such a representation is prescribed for adults who have been fully or partially deprived of their active legal capacity in a non-contentious procedure²⁷. As a result of the need for their protection, the adults are placed under guardianship exercised by the guardian appointed by the Center for Social Services²⁸. The guardian of an adult has a duty to take care of the person under guardianship²⁹.

Unlike the Macedonian legal system, which regulates standard forms of non-contractual representation, such as guardianship of adults, the German legal system prescribes a form of representation only for adults. In the BGB, a form of representation known as legal custodianship is applied when an adult faces a physical handicap that prevents them from exercising their rights and interests (§ 1896). In such cases, the German legislator allows a certain person to appoint a custodian on its motion. Regardless of the person's condition, the Law prescribes that a custodian cannot be appointed against a person's will (§ 1896(1a), 1900). Additionally, a custodian may be appointed for tasks where custodianship is necessary (§ 1896(2)). In this regard, German law allows a natural person to appoint a custodian according to its motion and capabilities. Such a solution enables a natural person to shape their life based on their will and preferences before losing the active legal capacity to declare a will personally (§ 1900(2), § 1901a (1)).

A type of representation for adults known as deputyship is regulated in the Swiss Civil Code. This form of representation is prescribed for adults who lack the capacity to reason. According to the Swiss Civil Code, a deputyship is established if an adult cannot exercise their rights and interests due to a mental disorder or temporary loss of capacity to reason (Art. 390). Hence, the Swiss Civil Code has several types of deputyships, such as representative deputyship, assistance deputyship, general deputyship, and advisory deputyship. Representative deputyship is the power to represent an adult in legal transactions when they lack the capacity to undertake them personally (Art. 394). When a representative has the power to exercise all legal transactions for the represented person due to a permanent loss of capacity to reason, it constitutes another type of

²⁷ Art. 34-39, Non-Contentious Procedure Act.

²⁸ Art. 140, Family Act.

²⁹ Art. 167, art. 168 and art. 172, Family Act.

representation known as general deputyship (Art. 398). An assistance deputyship is established with the consent of a person in need and aims to assist them in legal transactions (Art. 393). From this point of view, the assistance deputyship cannot be considered a “true” type of representation of adults. Unlike the previous, this type of deputyship does not align with the legal nature of the representation. An advisory deputyship is applied if the represented requires protection or when certain legal acts depend on the representative’s consent (Art. 396). The purpose of advisory deputyship is to provide legal certainty to the represented person concerning the legal acts that can be undertaken personally.

Demonstrating this legal solution prescribed by the Swiss Civil Code undoubtedly presents another aspect of the non-contractual representation. Thus, non-contractual representation should not be viewed solely as an instrument that replaces or supplements the will of the represented person. Considering all this, representation begins to function as an instrument that enables the represented person to exercise a will and to participate in civil law relations personally within their capacities.

As we note, all types of non-contractual representation for adults aim to protect their rights and interests when they cannot exercise them personally due to certain circumstances, such as weakness, physical disability, or illness. Depending on the reasons for establishing non-contractual representation, the legislation prescribes types of representation in which the representatives replace or supplement the will of the represented person. In addition to the typical types of non-contractual representation, contemporary legal systems in European countries also recognize various forms of representation exclusive to adults. The role of the representative in such types consists of assisting, advising, or supervising the adult. However, it does not entirely replace the will of the represented person in civil law relations, as typically regulated by types of non-contractual representation. A contemporary tendency in the representation of adults considers the will and preferences of the represented person, both in determining who will act as a representative and in shaping the manner of representation and the scope of the representative’s powers.

d) The representation in “special cases” appears in various types in contemporary law systems. Common among the types of representation in “special cases” is to provide prompt and immediate protection for the rights and interests of natural persons in certain exceptional circumstances³⁰.

In the Macedonian legal system, there are several types of representation in “special cases” (ad hoc representation). Due to various objective circumstances, a natural person may be unable to personally exercise their civil law rights and obligations in certain situations. Considering situations where a natural person’s rights, property, or interests cannot be protected regularly, the Macedonian Family Act prescribes the appointment of guardians in such “special cases”³¹. Additionally, in these cases, a representative, known as a temporary representative, may be appointed in the interest of the represented person and the third party. In this manner, the regulations eliminate the barriers that would otherwise delay exercising rights and interests in civil law relations. Provisions regulating the appointment of a temporary representative are contained

³⁰ See: Р. Живковска, Т. Пржеска, *op. cit.*, 384; О. Станковић, В. В. Водинелић, *op. cit.*, 207; Р. Ковачевић Куштримовић, М. Лазевић, *op. cit.*, 334; Д. Попов, *op. cit.*, 240.

³¹ According to the Macedonian Family Act, the Center for Social Services appoints a guardian in the following special cases: a) to a person whose place of residence is unknown and who does not have a representative; b) to an unknown property owner where there is need for protection of that property; c) when there is a conflict of interests among the represented and representative or among the represented persons who have the same representative; d) to a person who is a foreign citizen; e) at the request of a person who, for various reasons, is unable to protect rights and interests, and f) to minor children - victims of human trafficking. See: Art. 173, art. 174, art. 175, art. 176, art. 177, Family Act. Also see: К. Чавдар, *Коментар на Законот за семејството*, *op. cit.*, 277-278. Also see: Д. Мицковиќ, А. Ристов, *op. cit.*, 295;

in several substantive and procedural laws, including the Family Act³², the Inheritance Act³³, the Civil Procedure Act³⁴, and the Non-Contentious Procedure Act³⁵.

In contrast to the Macedonian legal system, this type of representation, regulated in German law, is known as curatorship. The German Civil Code regulates supplementary curatorship, curatorship of absentees, curatorship of an unborn child, curatorship for unknown persons involved, and curatorship for collected property. The first type, a supplementary curator, is appointed when the parent or guardian who exercises the representation is unable to do so (§ 1909). A curator of an absent person is appointed when there is a need to manage the property interests of the absent person (§ 1911). Furthermore, a curator may be appointed to protect the future rights of the unborn child (§ 1921). A curator for unknown persons can be appointed if there is a need to protect the rights of a person involved in legal transactions (§ 1913). According to the German Civil Code provisions, a curator for a collected property is appointed for property created due to public donations (§ 1914).

The Swiss Civil Code regulates certain types of representation in “special cases,” such as deputyship and representation in relation to medical procedures. Deputyship is established when the competent body has limited the powers of the parents or guardian over the child. In this situation, the representative (deputy) protects the rights and interests of the child that the parents or guardian are not authorized to do (Art. 314a). A notable trend in representation in special cases that differs from previous types of representation is the representation in relation to medical procedures, which is regulated in the Swiss Civil Code. This type of representation is about the treatment plan for a patient (represented) who lacks the capacity to reason. Thus, a representation is exercised by the person chosen by the patient’s decree at a time when the patient has the capacity to reason (Art. 377). If no patient’s decree has been left, then, according to the Swiss Civil Code, the patient is represented by a regular representative, such as a spouse or registered partner (Art. 377 (1)).

The Spanish Civil Code provisions regulate representation in “special cases” when individuals who regularly exercise representation (such as parents or guardians) cannot do so due to objective circumstances, yet there remains a need for representation and protection of certain natural persons (minors, vulnerable adults).

These tendencies create an opportunity for individuals who anticipate losing their capacity to reason due to a specific illness or other medical circumstances to appoint a representative for themselves personally. Thus, in this situation, we noted the emergence of a hybrid model of representation, which is not prescribed and regulated in the Macedonian legal system. Namely, such representatives appointed by natural persons will represent and protect their rights and interests when, after losing the capacity, they are unable to act personally in the future. This legal opportunity involves selecting a representative and defining the representative’s powers, which take effect once a certain natural person loses the capacity to reason and act.

Considering all the reasons for establishing representation in “special cases,” the analysis shows that contemporary legal systems aim to limit the powers of the representative prescribed by law, such as a parent, guardian, or Center for Social Services. Therefore, the powers of the representative are limited to the protection of the rights and interests of the represented, who require protection due to “exceptional circumstances.” Additionally, the duration of legal

³² Art. 169-170, Family Act.

³³ Art. 126, Inheritance Act.

³⁴ See: A. Јаневски, Т. Зороска - Камиловска, *Граѓанско процесно право, книга прва, парнично право, второ изменето и дополнето издание*, Скопје, 2012, 236-237. Also see: Art. 76, art. 77, art. 78, art. 260, Civil Procedure Act; К. Чавдар, К. Чавдар, *Коментар на Закон за парничната постапка, со коментари, судска практика, примери за практична примена и предметен регистар, трето изменето и дополнето издание*, Агенција „Академик“, Скопје, 2016, 164; Г. Станковиќ, В. Боранијашевиќ, *Граѓанско процесно право*, Службени гласник, 2023, 178-181.

³⁵ Art. 6, Non-Contentious Procedure Act. See: A. Јаневски, Т. Зороска - Камиловска, *op. cit.*, 43.

representation in “special cases” is limited, lasting only as long as the exceptional circumstances persist.

III. Contemporary tendencies of contractual representation of natural persons in Macedonian and other legal systems

Contractual representation in contemporary legal systems is a type of representation that reflects the expression of the autonomy of the represented person’s will – the principal³⁶. It serves the principal’s interests by enabling him to undertake legal acts without being personally present. The principal (represented person) may have several reasons for engaging a representative (agent) in their legal acts, such as a busy schedule, a distance between the principal and the person with whom he or she intends to enter into civil law relations, or due to the lack of professional knowledge of the principal³⁷. Through contractual representation, a representative’s actions in legal transactions are considered to be those of the principal who is being represented. Therefore, any rights acquired through the representative’s actions are viewed as rights directly acquired by the represented, and the obligations become a burden for the represented person’s property, not on the representative’s property³⁸.

For developing legal transactions, contractual representation is crucial because it enables natural persons to enter into civil law relations without requiring their personal presence. Given its significance, all contemporary legal systems in European countries regulate a contractual representation as a type of representation.

Starting from the Macedonian legal system, contractual representation is regulated in the Obligations Act³⁹. Thus, the Macedonian Obligations Act includes provisions concerning power of attorney, which allows the principal (the represented) to grant the representative (the agent) power to represent based on an act⁴⁰. By its nature, a power of attorney is independent of the legal relationship on which it is based⁴¹. However, in addition to this, the Law also regulates types of contracts that contain clauses with the power for representation, such as the order contract⁴², the commercial representation contract⁴³, the intermediation contract⁴⁴, the freight forwarding contract⁴⁵, and others⁴⁶.

³⁶ See: V. V. Vodinelić, *op. cit.*, 485-490; Р. Живковска, Т. Пржеска, *op. cit.*, 380; О. Станковић, В. Водинелић, *op. cit.*, 197; Д. Попов, *op. cit.*, 233. Also see: S. Vukadinović, *op. cit.*, 89; К. Чавдар, К. Чавдар, *Коментар на Закон за облигационите односи...op. cit.*, 163.

³⁷ See: Р. Живковска, Т. Пржеска, *op. cit.*, 367; Д. Попов, *op. cit.*, 223; Р. Ковачевић Куштримовић, М. Лазић, *op. cit.*, 326; О. Станковић, В. В. Водинелић, *op. cit.*, 197; И. Бабић, *op. cit.*, 174; Р. Ковачевић Куштримовић, *op. cit.*, 179.

³⁸ See: Р. Живковска, Т. Пржеска, *op.cit.*,369; Д. Попов, *op.cit.*, 228; Р. Ковачевић Куштримовић, *op.cit.*, 186; Р. Ковачевић Куштримовић, М. Лазић, *op.cit.*, 327.

³⁹ Art. 81-90, Obligations Act.

⁴⁰ Art. 81, (1), Obligations Act. Also see: Р. Живковска, Т. Пржеска, *op.cit.*, 388; Р. Ковачевић Куштримовић, М. Лазић, *op. cit.*, 326; Д. Попов, *op. cit.*, 233; S. Vukadinović, *op. cit.*, 89; D. Stojanović, *op. cit.*, 275; A. Gams, Lj. M. Đurović, *op. cit.*, 205.

⁴¹ Р. Ковачевић Куштримовић, М. Лазић, *op. cit.*, 328; V. V. Vodinelić, *op. cit.*, 488; See also: О. Станковић, В. В. Водинелић, *op. cit.*, 198.

⁴² Art. 805-826, Obligations Act. See: Г. Галев, Ј. Дабовиќ - Анастасовска, *op. cit.*, 444-446; Also see: К. Чавдар, К. Чавдар, *Коментар на Закон за облигационите односи...op. cit.*, 865-874; О. Станковић, В. В. Водинелић, *op. cit.*, 198.

⁴³ Art. 846-868, Obligations Act. Also see: А. Николовски, С. Плавшиќ, *op. cit.*, 255-256; С. Цариќ, *Уговори робног промета*, Белград, 1969, 182.

⁴⁴ Art. 869-971, Obligations Act.

⁴⁵ Art. 883, Obligations Act.

⁴⁶ See: К. Чавдар, К. Чавдар, *Коментар на Законот за облигационите односи ,op. cit.*, 162-163.

Regarding the contractual representation of natural persons in civil law, a tendency that should not be overlooked is the professionalization of representatives. This contemporary trend is also reflected in Macedonian law, ensuring legal certainty in legal transactions. The dilemma among legal scholars is whether the effort to professionalize a representative should go to the extent of excessively affecting the autonomy of the represented person's will. We believe that no legal system should permit the expansion of the professionalization of representatives in a manner that would result in the exclusion of undertaking certain legal acts personally. By this, we mean that every system should establish regulations that strike a balance between the need for professionalization and respect for the autonomy of the represented person's will. Regarding the Macedonian legal system, there are regulated situations in which the legislator prescribes that representation can only be exercised by representatives with professional knowledge and expertise. So, in civil law relations, such as real estate transactions and in the field of civil law rights protection, the represented person must choose a representative with specialized professional knowledge and expertise. Such solutions are governed by the provisions of the Notary Act⁴⁷ and the Civil Procedure Act⁴⁸.

Thus, the Macedonian Notary Act prescribes provision when legal transactions concerning real estate valued at over 10,000 euros, then the sale contract must be prepared by a lawyer, including their seal and signature⁴⁹.

According to the provisions of the Macedonian Civil Procedure Act, a legal entity in appointing a representative in a civil procedure must choose a person who is a law graduate. Moreover, if the value of the dispute, in which the legal entity appears as a party, exceeds 1,000,000 denars, the legislator prescribes that the law graduate must also have passed the bar exam⁵⁰.

Additionally, another issue concerning the contractual representation of natural persons arises in civil court proceedings. As we have emphasized before, the Macedonian legislator undoubtedly establishes the professionalization of contractual representation, conducted by representatives who have professional knowledge and expertise. Therefore, legal scholars are in a dilemma as to why the Macedonian legislator, despite the effort to professionalize the contractual representation, also prescribes a "quasi-representation," allowing representatives to also be individuals related by blood, such as a brother, sister, or spouse of the person being represented⁵¹. Unfortunately, regardless of how much we deny it, we are facing an ambiguous situation. Thus, the Macedonian legislator promotes expertise and competence in contractual representation by a qualified representative. However, the legislator contradicts himself by allowing representation to be exercised even by blood relatives of the person being represented. We believe that, in order to ensure the legal certainty of natural persons and protect their rights and interests within the legal framework, the Macedonian legislator should clearly express a stance on the trend towards professionalizing contractual representation.

In the legal system of the Republic of Germany, contractual representation, known as an agency, is regulated by the German Civil Code (BGB). It regulates the power of attorney as a one-sided legal act (§§ 164-169), as well as contracts such as the mandate (§ 662), the contract for the management of another's affairs (§ 675), and the bank transfer contract (§ 676). Under the provisions of the BGB, the power is granted by a declaration of will from one person (the principal) to another person (the agent) or to a third party who is intended to be affected by the power (§ 167(1)). It states that the power of attorney does not have to be in the same form as the legal transaction, implying that it can be expressed in any form (§ 167(2)). This solution about the form of power of attorney prescribed in the provisions of the Code, as we can note, differs from those in the Macedonian Obligations Act⁵².

⁴⁷ Art. 55, Notary Act.

⁴⁸ Art. 81, (1) and art. 82, Civil Procedure Act. See: К. Чавдар, *op. cit.*, 174; А. Јаневски, Т. Зороска - Камиловска, *Граѓанско процесно право, книга прва.*, *op. cit.*, 241; Г. Станковић, В. Боранијашевић, *op. cit.*, 189.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Art. 81, (1), Civil Procedure Act. Also see: К. Чавдар, К. Чавдар, *op. cit.*, 174.

⁵² Art. 82, Obligations Act.

In German legislation, there is a provision that concerns a natural person who can act as a representative in contractual representation. An analysis of the provisions in the German Civil Code reveals that a natural person with partial active legal capacity, i.e., limited capacity to enter into contracts, can also act as a representative (§ 165). In this case, we note a distinction between German and Macedonian legislation. Therefore, the Macedonian legislator does not specify detailed provisions regarding the level of active legal capacity (full or partial) that a representative should have. By systematically interpreting the provisions of Macedonian Obligations Act, we can conclude that the legislator excludes the possibility of appointing a natural person with partial active legal capacity as a representative, while opinions in civil doctrine on this issue are pretty divided⁵³.

In Switzerland's legal framework, contractual representation is governed by the Code of Obligations, which is part of the fifth section of the Swiss Civil Code. The section in the Swiss Civil Code that prescribes various types of contracts also governs contracts that contain a power of attorney. Unlike German law, we noted that Swiss law does not define the concept of power of attorney. Instead, it prescribes that rights and duties from an obligations relationship, based on the contract concluded by a representative, directly affect the principal's property (Art. 32).

In the legal system of the Kingdom of Spain, contractual representation is established by the Spanish Civil Code. The Spanish Civil Code regulates contractual representation as a contract in which, with a power of attorney, one person acts in the name of another, i.e., performs a certain act or service (Art. 1709). This contract is known as a mandate contract, and the Spanish Civil Code does not specify its exact form. A power of attorney, as prescribed in the Spanish Civil Code, may be granted explicitly or tacitly. An explicit mandate may be given through a public or private deed, or even verbally (Art. 1710 (2)).

Alongside protecting the principal's interests, contractual representation also has a role in the process of developing legal transactions. In each contemporary legal system, it is becoming increasingly common for natural persons who specialize in undertaking legal acts in the name and for the account of others, to engage in legal transactions as their representatives. Moreover, this approach to developing contractual representation encourages the dynamics of legal transactions and supports the fulfillment of civil law relations.

Contractual representation undoubtedly provides legal certainty for the contemporary legal systems. When qualified individuals act as representatives, legal transactions exercised in the name and for the account of the principal will be managed correctly. Hence, the legal certainty provided by qualified representatives is multi-dimensional. Firstly, it serves the principal, ensuring that the representative properly represents and protects the rights and interests of the represented. Secondly, legal certainty also exists for third parties entering civil law relations with the representative. For third parties, this ensures that rights and obligations arising from the civil law relationship will be fulfilled.

The existence of solid legal regulations for contractual representation is a presumption for exercising the functions of contractual representation. This does not imply that there should be excessive regulation of contractual representation or restrictive regulation. All contemporary legal systems should strive to establish regulations that prioritize the autonomy of parties in contractual representation.

⁵³ Art. 24, (1), Obligations Act. See: К. Чавдар, К. Чавдар, *Коментар на Закон за облигационите односи*, *op. cit.*, 116; Р. Живковска, Т. Пржеска, *op. cit.*, 373; Р. Ковачевић Куштримовић, *op. cit.*, 185; Д. Попов, *op. cit.*, 228. Исто така види: А. Gams, Lj. М. Ђurović, *op. cit.*, 195. See also: Р. Ковачевић Куштримовић, М. Лазић, *op. cit.*, 332-333; О. Станковић, В. В. Водинелић, *op. cit.*, 193; А. Gams, *op. cit.*, 209; Д. Stojanović, *op. cit.*, 276; М. Juhart, Д. Možina, В. Novak, А. Polajnar-Pavčnik, V. Žnidaršič Skubic, *op. cit.*, 215; А. Perkušić, *Osnove građanskog prava*, Split, 2009, 77; Д. Стојановић, О. Антић, *op. cit.*, 346.

⁵³ More about these see: А. П. Лазаревић, *Облигационо право-посебен дел*, Скопје, 1960, 231. Also: Д. Попов, *op. cit.*, 118; О. Станковић, В. В. Водинелић, *op. cit.*, 199; Р. Ковачевић Куштримовић, *op. cit.*, 185-186; V. V. Vodinelić, *op. cit.*, 493; S. Perović, *Obligaciono pravo, knjiga prva*, Beograd, 1986, 250; И. Бабић, *Грађанско право, књига 4 – Облигационо право*, 257.

IV. Summary

This paper analyzes contemporary tendencies in non-contractual representation and contractual representation of natural persons in civil law. The types of these representations and their characteristics are the focus of this analysis. As the paper demonstrates, 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 the legal consequences of that act will affect the property of the represented person. By analyzing the provisions of the civil codes and legal regulations in the field of civil law, the paper concludes that the non-contractual representation of natural persons appears in several different forms of representation classified into multiple groups, such as parental representation, representation of minors who lack parental care, representation of adults, and representation in “special cases”.

The analysis of the Macedonian legal system reveals that the legislator regulates all typical forms of non-contractual representation, which are also present in the contemporary legal systems of every country, and are the subject of analysis in this paper. Difference is that Macedonian law lacks a modern approach to regulating the typical types of representation. The paper demonstrates that Macedonian law lacks regulation of the type of non-contractual representation, especially when it comes to the representation of adults. In other words, the Macedonian legal system lacks a unified long-term care system for vulnerable adults, unlike other contemporary European legal systems.

Contractual representation in contemporary legal systems, as the paper shows, is a type of representation that reflects the expression of the autonomy of the represented person’s will. The paper concludes that contractual representation is crucial in developing legal transactions, enabling natural persons to enter into civil law relations without requiring their personal presence. Considering its importance, today’s legal systems in European countries typically regulate contractual representation.

The paper concludes that Macedonian law aligns with contemporary tendencies in the development of contractual representation and aims to establish regulations that will support the further advancement of the contractual representation. One of the legislator’s most evident intentions is to promote expertise and competence in contractual representation, particularly in civil law protection rights.

Having well-defined legal regulations is essential for fulfilling the role of contractual representation. This does not imply that there should be excessive regulation of contractual representation or restrictive regulation. Consequently, all legal systems should strive to establish regulations that prioritize the autonomy of parties in contractual representation.

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