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CONTRACTUAL CAPACITY OF MINORS

Summary

Capability is one of the essential factors that the validity of contract stipulates the existence of it. Contractual capability means capacity and competency of parties. Individuals, legal entities, as well as states and municipalities may act as a party in concluding a contract. In general, it is important for individuals to have full active legal capacity in order to enter into a contract without someone's approval. As a legal matter, there are certain groups of people who are presumed to have no or limited contractual capacity to make an agreement. Minors included in this group must comply with the requirements established by the civil legislation for validity of contracts concluded by them. This article clarifies invalidity issues of contracts concluded by a minor party, necessity of consent and approval of legal representatives for validity of contracts and emancipation of minors.

Key words: *active legal capacity, minors, contractual capacity, children, approval of legal representatives, invalidity of contracts concluded by minors, emancipation*

Introduction

The active legal capacity of a natural person is the ability to obtain and exercise rights, also to establish and perform obligations by his own actions. It can be described as a person's power or possibility to act within the framework of the legal system. In the legislation of many states, full active legal capacity of a natural person begins in full upon reaching the age of eighteen. Under the contract law, capacity is a person's legal ability to enter into a contract. Civil law divides individuals into different categories in terms of active legal capacity, and it is legally and objectively predetermined whether these categories of individuals will be able to enter into contracts independently. As a result, the validity of a contract concluded by an individual depends on the category to which this person belongs in terms of active legal capacity and whether the contract meets the conditions of active legal capacity provided for this category. (4, p. 293)

The age of a minor may vary from state to state but the most of them put the age at eighteen years. According to the Family Code of the Republic of Azerbaijan, persons who have not reached the age of eighteen (majority) and have not acquired full active legal capacity are considered "children". (2, art. 49.1) In the theory of civil law, children are termed in various forms – infants, children, minors or individuals who have not reached the age of majority. It is necessary to distinguish between the notion of "minor" and "child" ("children"), although often they are mixed and are used as identical. The term "child" refers to a person's condition in blood relationship, based on the origin of this person from his parents. Upon reaching of full age by a person, the blood relationship with his parents is not lost, it is important for alimentary, hereditary and other legal relationships. The notion of "minor" applies to a person who has not reached the legal age, "indicates an individual's belonging to a group of people who are at a stage of human life, such as minority, in particular, i.e. the stage of the life path, within which a person has not accumulated experience yet to live in society". (13, p. 26)

Generally, minors who are under the age of eighteen in the most of states lack the capacity to make a contract. But there are some exceptional issues too. The law pursues two conflicting policies in the case of minors. On the one hand it tries to protect minors from their own inexperience, on the other, it tries to ensure that persons dealing with minors are not dealt with in a harsh manner. (9, p. 118)

Contracts concluded with minors can be divided into three categories:

- Contracts concluded with minors under the age of fourteen;
- Contracts concluded with minors between the ages of fourteen and eighteen;
- Contracts concluded with minors who are considered emancipated.

According to the Civil Code of Azerbaijan Republic, minors under the age of seven (infants) do not have active legal capacity. (1, art. 28.3) Minors under the age of seven are completely incompetent, only legal representatives can make contracts on their behalf. But contracts concluded with minors between the ages of seven and fourteen can be valid or invalid depending on the conditions. A person between the ages of seven and fourteen has the right to engage independently in the following transactions:

- small household transactions;

- the transactions directed to non-paid receipt of benefit which do not require notary approval or state registration of the rights which arise from such transactions;
- using funds provided by a legal representative or, upon the consent of the latter, provided by any third party for a particular purpose or free use. (1, art. 29.2)

The Civil Code of the Russian Federation sets age limit from six to fourteen to engage independently in these transactions. (6, art. 28.2)

The above-mentioned contracts concluded by minors under the ages of seven and fourteen are valid according to civil legislation and a subsequent approval of his parents, adopted parents or a guardian is not required for validity of them. Except for these contracts, only parents, adoptive parents or guardians are entitled to engage in contracts on behalf of minors under the age of fourteen. Contracts concluded by minors under the age of fourteen shall be invalid, with exception of cases stipulated in article 29.2 of the Civil Code of Azerbaijan Republic. But a contract made by such minors shall be considered valid if it is approved later by his parents, adopted parents or guardians.

There was article 344.2 in the Civil Code of the Republic of Azerbaijan and it stated that “in the event agreement concluded by a minor is beneficial to him, it may be considered valid by court for benefit of minor upon request of his parents, adopting parents or a guardian”. As can be seen, this article stipulated the existence of a request of parents, adopting parents or a guardian of minors and also a court decision for validity of contracts. But article 344.2 was excluded from the Civil Code in 2005. (3, art. 86) For now, the only requirement for validity of contracts concluded by minors under the age of fourteen is a subsequent approval of parents, adopted parents or guardians.

Another important issue is that, parents, adoptive parents or a guardian are liable for the contracts of minors under the age of fourteen, including contracts concluded independently by minors, if they are not able to prove that the obligation was not breached on their fault. As provided by law, such persons are also liable for damages caused by minors.

Minors between the ages of fourteen and eighteen have the right to conclude independently the following contracts without the consent of parents, adoptive parents or a custodian:

- transactions disposing of their earnings, stipends or other income;
 - exercising author's rights for scientific, literary and artistic works, or an invention or any other product of intellectual activities protected by law;
 - performing small household transactions and other transactions specified by Article 29.2 of the Civil Code.
- Upon reaching the age of sixteen, minors are also entitled to be members of cooperatives. (1, art. 30.2)

Except transactions specified in article 30.2 of the Civil Code of the Republic of Azerbaijan, minors between the ages of fourteen and eighteen conclude contracts upon the written consent of their legal representatives: parents, adoptive parents or a custodian. A contract concluded by such a minor without the written consent of legal representatives is also valid if it is approved later by his parents, adoptive parents or a custodian. Contracts concluded by minors between ages of fourteen and eighteen not reaching the age of majority without consent of his parents, adopting parents or a custodian where such their consent is necessary pursuant to the requirements of the Civil Code, and not approved later by them are invalid.

Unlike minors under the age of fourteen, minors between the ages of fourteen and eighteen are independently liable for contracts concluded in accordance with requirements of the Civil Code. Minors between the ages of fourteen and eighteen are also liable for damages caused by them.

There are different approaches to the invalidity of contracts concluded by minors in the theory of civil law. S.S.Allahverdiyev notes that, a contract made by a minor under the age of fourteen is considered void, and a contract made by a minor between the ages of fourteen and eighteen is considered voidable. (5, p. 774, 778)

According to S.S.Suleymanli, in the event that an individual enters into a transaction being incapable of legal capacity and his legal representative subsequently approves it, such transactions shall be considered valid from the moment of their conclusion. It is clear that in these cases, when transactions are concluded without proper consent, a different legal situation arises from the situation of "void" and "voidable" transactions. (4, p. 345) It is thought that, the latter approach is more appropriate in terms of the requirements of the civil legislation.

In common law, the general rule is that contracts entered into by a minor are not binding on him unless they are ratified by him after he reaches the age of eighteen. However, contracts of minors are not void, they are unenforceable by the adult, but enforceable by the child. As a result, the contract is binding on the adult, the adult cannot escape the contract by pleading the minor's incapacity.

This straightforward position is qualified by four exceptions designed to protect those who have dealt fairly and in good faith with the child, and to allow children to benefit from contracts which further their welfare. They are:

- contracts to supply necessities;
- employment and other beneficial contracts;
- contracts involving land, marriage, company shares, or partnerships which are binding unless the child disclaims them (voidable);
- other contracts which are ratified by the child on reaching majority. (8, p. 3)

As can be seen, there are however some contracts which when a minor enters into, he is bound by it. Contracts to supply necessities concluded by minors are valid and enforceable. The term of necessary in relation to goods is defined statutorily in the Sale of Goods Act dated 1979. According to the relevant normative document, necessary means goods suitable to the condition in life of the minor and to his actual requirements at the time of the sale and delivery. (7, art. 3(3) The term of necessary covers more than just items needed to stay alive, such as shelter, food and clothing, also those things which are essential and suited to the minor's position in life. The burden of proving that the goods are necessities is on the seller. (9, p. 119)

According to the case of *Peters v Fleming* (1840), an expensive watch-chain was supplied on credit, and it was left to the jury to decide whether it was a reasonable purchase for this particular student, and therefore whether it was a necessary. It was considered reasonable for a student to have a watch, and therefore a watch-chain was needed. (10, p. 82)

In court precedents, it was established that no contract could be enforced against an infant unless it was beneficial to him in the sense that the contract considered as a whole was fair and reasonable. (12, p. 42) It means that, in the cases related to employment and other beneficial contracts, courts take the view that an oppressive contract is unenforceable against a minor. But if a contract is beneficial and in the favor of the minor on the whole, the minor may be bound to the contract, even if some of the clauses of the contract do not turn out to be to his advantage. According to the case of *Roberts v Gray* (1913), when a billiards player agreed to take a minor on a world billiards tour, providing his lodging and travelling arrangements under the contract, this was viewed by the court as 'a kind of education'. The minor later changed his mind and claimed the contract unenforceable, but was held liable in damages. (10, p. 85)

Although contracts of employment and analogous contracts are binding on a minor, a trading contract made by a minor is not. If a minor has a business, a contract made in the course of that business is not considered enforceable. In *Mercantile Union Guarantee Corp'n v Ball* (1973), a 20-year-old minor, with a haulage business, was not bound by a contract for the hire purchase of a lorry for his business. The contract was not considered to be of a type which could be enforced against a minor and, in any event, the terms were not beneficial to him. Trading contracts may be seen as presenting a risk to the minor which is not present in a contract of employment. (11, p. 454)

The expansion of the legal capacity of a minor is possible as the result of emancipation. When a minor is emancipated, no longer his parents have control over his affairs and are also not legally bound to pay for damages that the minor causes to other's properties. In this case minors take responsibility for their own care. This means that emancipated minors will be liable for the breach of contract that they enter into regardless of whether they are of necessity or not.

According to the Civil Code of the Republic of Azerbaijan, a minor who has reached the age of sixteen may have full active legal capacity if he works under a labor agreement, or is engaged in entrepreneurial activity with the consent of his parents, adoptive parents or a custodian. A minor may be considered as having full active civil legal capacity (emancipation) by decision of a body of guardianship and custody with the consent of both of parents, adoptive parents or a custodian, and in the absence of such consent by a court decision. (1, art. 28.4)

Although the age of marriage in the Republic of Azerbaijan is eighteen, this age limit can be reduced no more than by 1 year in the presence of reasonable excuses. In this case, a minor under the age of eighteen acquires full active legal capacity upon marriage. Active legal capacity acquired upon entering into marriage continues in full even if divorce occurs before the age of eighteen.

The situation is also different in the issues related to validity of contracts concluded by emancipated minors. A written consent of parents, adoptive parents or a custodian is not required for validity of contracts concluded by emancipated minors. It means that, rules for invalidity of contracts concluded by a minor between ages of fourteen and eighteen not reaching the age of majority shall not apply to contracts of minors not reaching the age of majority having full action capacity in accordance with rules of Civil Code. (1, art. 345.2) It should be emphasized that, parents, adoptive parents and a custodian are not liable for the obligations and liabilities of a minor who has been considered as having full active legal capacity, including liabilities for damages.

Conclusion

Based on the above, in order to specify the validity of a contract entered into by a minor contractual party, it is important to determine its age range and the subject matter of the contract. As minors have no or limited contractual capacity, not following essential requirements stipulated in the civil legislation causes invalidity of contracts concluded by them. In case of violation of general rules for validity, a subsequent approval of parents, adoptive parents, guardians or custodians can make a contract valid. However, the situation is different for emancipated minors, so that such an approval is not required for the validity of contracts made by them.

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