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CHILD'S LEGAL PERSONALITY: ACTUALIZATION OF OPPORTUNITIES AND THEIR LIMITATIONS**

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The subject of this research is the concept of a child's legal capacity in an interdisciplinary context and the validity of various approaches for determining the essence and scope of a child's legal capacity in terms of Russian public and private legislation and to provide suggestions for improvement.

Methodology: The authors' general research methods for cognition are: analysis, synthesis, and abstraction. This research is also based on legal acts and judicial practice, as well as on the opinions of scientists.

Results: On the one hand, differentiations in terms of the essence, structure and scope of a child's legal capacity within the branches of Russian law are justified according to the specifics of their subject and methods of legal regulation. On the other hand, the differences in approaches presented in them, especially according to age criterion, are far from universally justified, and this is especially characteristic of the active component of legal personality – or legal capacity. Thus, 14 and 16 are the ages of legal capacity in terms of constitutional law; 6, 14 and 16 for civil law; 14, 15 and 16 for labour law; 15 for medical law; 10, 14, 15, 16 for family law; etc. The law on education does not indicate any age benchmarks, being oriented towards the school education periods. At the same time, the lower boundaries of 'minimal legal capacity' are established only for the sake of civil legal relations and administrative and criminal liability. In other cases, in the assessment of a child's ability to make legally significant decisions, the law enforcement officer considers a child's individual psychological characteristics. Typically this approach proves to be correct. Psychological data indicate the development of an acceptable level of cognitive ability by the age of 12; therefore, the formally enshrined concept of child consent to certain legally significant acts beginning at the age of 10 requires discussion and possible adjustment. The ages of 14 and 16 as starting points for basic elements of the legal capacity (legal personality) are reasonable and must be applied systematically; other intermediate solutions are not justified. In terms of a generally correct decision with regard to the moment when the age of legal capacity begins, it would be reasonable to correlate this with the protection of a child's interests before his/her birth. There is no unified approach to understanding a child's ability to perform legal duties: in civil law such ability is denied, while in other legal spheres it exists. As for family law, it should be assimilated into the general group.

Conclusions: the concept of a child's legal capacity requires systematization and enhancement as a prerequisite for a reasonable and justified arrangement of children's world – both within the family and in the public sphere.

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1. Introduction

Among the urgent and significant prerequisites for systematizing the infosphere relating to children, is the issue of constructing an adequate legal framework for children's legal standing. In the legal-theoretical literature, this problem is considered primarily from the standpoint of defining the essence and scope of a child's status, primarily as a question of family law (N. V. Letova [1], A. M. Nechaeva [2], N. N. Tarusina [3; 4], N. A. Temnikova [5], etc.), including the point at which a child's formal legal capacity emerges (N. I. Besedkina [6], etc.) and the point at which his formal legal competency emerges – in terms of civil, family, and civil procedural law (E. L. Nevzgodina [7] , A. E. Tarasova [8], etc.). At the same time, there is no systematic analysis of regulatory decisions regarding this framework across various branches of Russian legislation; neither do these various branches correlate with each other on this matter. In modern theoretical literature, we see an obvious protest against the idea of introducing a framework which would summarize a child's legal obligations. The aforementioned positions are studied on a case by case basis, in interaction with literature in the field of psychology (the achievements of the latter are primarily used in forensics, for issues of a purely applied nature).

2. On the Moment when Formal Legal Competency Emerges

Regarding the moment when a child's legal capacity arises, legal theoretical literature demonstrates solidarity with the position of Russian legislators: legal capacity arises as a result of birth (Part 2 of Art. 17 of the Constitution of the Russian Federation). Firstly, however, insofar as the preamble of the 1989 Convention on the Rights of the Child[1] declares the need for his legal protection even before birth, this point requires some clarification. Secondly, legislation in a number of countries is in line with the position stated in the Convention [6, p. 54-60]. Thirdly, Russian normativism also ensures the protection of the interests of the nasciturus, as is directly established in the regulations of Articles 1088 and 1116 of the Civil Code of the Russian Federation. Indirectly, these interests are also protected by Russian medical, labour, social welfare, criminal and family legislation, through the establishment both of restrictions and benefits. We believe that a corrective provision should be introduced into Chapter 11 of the Family Code of the Russian Federation ("Rights of Minors") (a second clause should be added to Article 54, for example, stating: "a child's legal capacity arises from the moment of birth; to the extent stipulated by federal law, the child's interests are subject to protection even before birth."

3. On Formal Legal Capacity and Formal Legal Competency

A child's legal standing and the legally active component of this standing, i.e. legal competency, insofar as this understanding is appropriate within one or another field of law, differ from each other in essence. We would note that insofar as legal capacity arises from birth, its applied context is necessarily limited. To a significant extent, the aforementioned differentiation is justified; this notwithstanding, we continue to believe that intersectoral correlation of the overall framework describing a child's legal standing is required.

It is atypical, within the discipline of Constitutional Law, to consider legal capacity and legal competency as independent elements of constitutional legal standing, though various scholars also argue that the typical approach is entirely justified by the particular nature of constitutional rights [9, p. 17-19], given that age specifics are accounted for by the essential dynamics of the given framework [10, p. 41-43]. Starting from the moment of birth, the most significant components of the constitutional legal standing, as regards minors, arise at the ages of 14 and 16 [11, p. 221-223]. Thus, from the age of 14, the consent of a child becomes a necessary condition for his acquisition or termination of citizenship in the

[1] 1989 Convention on the Rights of the Child (approved by the UN General Assembly on 20.11.1989 // Collection of international agreements of the USSR. Issue XLVI, 1993.

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Russian Federation.[2] This age also harkens the advent of opportunities to participate in the implementation of policy with regard to youth.[3] Simultaneously, in accordance with current legislation on local self-government,[4] for example, the aetas legitima for participation in implementation of consultative forms of municipal democracy is somewhat older (16 years), from which age also arises the right to act as an organizer for meetings and rallies.

As we can see, as minors come of age and their personality develops, they are gradually endowed by the legislator with an ever-increasing variety of opportunities for the implementation of key civil liberties, such as the freedoms to opinion, association, assembly and participation in the exercise of public authority. In the science, however, we continue to see debate surrounding the forms of said freedoms exist prior to the attainment of majority or partial majority at the ages of 14, 16 and 18 years. Are these rights essentially 'truncated' rights as per formal legal capacity, or are they, rather, limited opportunities for the implementation of said rights, as per legal competency. Some researchers, for instance, reject the possibility of recognizing minors as subjects of freedom of opinion, given a child's limited ability to make an informed choice. Others criticize this concept justly, drawing attention to the fact that the specifics of how the child's rights are exercised do not, however, imply the absence of said rights, and underscoring the fact that the recognition of the child as a subject of freedom of opinion in itself contributes to the development of the child, both as an individual and as a citizen [12, p. 29-30]. This contribution is of particular importance from the perspective of the interrelation between freedom of speech and the right to information, the latter of which is one of the prerequisites for the implementation of a significant number of other constitutional rights [13, p. 83].

Overall, the absence of a clear legal position on age eligibility and the exercise of certain civil liberties have a completely unexpected effect with regard to the freedom of assembly. Although legislators do not place a limit on the age eligibility for participation in public events (as is welcomed by constitutionalists [14, pp. 53-54]), provisions in Art. 20.2 of the Code of Administrative Offenses of the Russian Federation (hereinafter, "CAO RF") which introduce administrative responsibility for the involvement of minors in unauthorized public events produce a decrease in activity of children in corresponding events [15, p. 55, 58].

Foreign legal theory puts forward a concept by which all possible shades of a child's participation in public life are considered in the form of steps of a so-called 'participation ladder'. The levels on this participation ladder begin by considering the effects of various forms of manipulation of the opinions of minors (for example, their involvement in political events which relate to 'adult' social issues), and continue right up to and including full and conscious manifestations of youth activity, initiated and directed by the children themselves [16, p. 6-13]. It is logical that legislation should restrain manifestation of the lower forms, while simultaneously creating conditions for the development of more conscious forms of participation, such as occupy the higher steps on our 'ladder'. Currently in the Russian Federation, for example, there is no comprehensive approach aimed at the targeted creation of conditions for the development of children's civic activity online. On the contrary, measures are being taken to implement the right to security in the digital environment; in recent years, this initiative has reached a new level, as manifested by the development of cooperation between the state and digital corporations (in 2021, Russian Internet companies signed the 'Digital Ethics for Childhood'

[2] See part 2 of Art. 9 of Federal Law dated 31.05.2002 № 62-FZ "On the Citizenship of the Russian Federation". Collection of Legislation of the Russian Federation. 2002. № 22. Art. 2031.

[3] See Art. 2 of Federal Law dated 30.12.2020 № 489-FZ "On Youth Policy in the Russian Federation". Collection of Legislation of the Russian Federation. 2021. № 1 (part 1).

[4] See part 2 of Art. 26.1 of Federal Law dated 06.10.2003 № 131-FZ "On General Principles of Organization of Local Self-Governance in the Russian Federation. Collection of Legislation of the Russian Federation. 2003. № 40. Art. 3822.

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Charter)[5]. Many issues relating to the assurance of an individual's personal security within the digital environment, however, still require legislative attention [17, p. 26-28], including whose within the context of proportionate measures for the protection of children's security, health and development, and the evasion of insurmountable barriers to the implementation of various other rights. As it is impossible to fully identify the interests of parents and children within the digital environment, additional guarantees for the protection of a child's rights to personal data and access to information should be envisaged at the legislative level [18, p. 32].

In classical civil law, legal standing in the context of its active component, i.e., legal competency, is construed in a somewhat different fashion. In provisions from Articles 21, 26, 28 of the Civil Code of the Russian Federation, legal competence is conferred at the ages of 6, 14 and 16 years. At the same time, 'mini-competency' and the status of a 6-year-old are not clearly defined: the literature notes that not all actions performed as formally permissible transactions can truly be fully performed by the child, meaning that in this sense, some rights are qualified as declarative and, in practice, ignored [7, с. 129-135]. This aspect of a child's legal competency is in apparent need of clarification. Provision 2 of Article 54 of the Federal Law "On the Fundamentals of Protecting the Health of Citizens in the Russian Federation" requires informed consent to acts of medical intervention not from the age of 14, but from the age of 15. Provision of Article 43 of the Federal Law "On Education in the Russian Federation" is vague: students (without any age indications) are obliged to master the educational program, comply with the requirements of the local acts of educational institutions, respect the honor and dignity of other students and employees, etc. Then comes the apotheosis: for non-fulfillment of a number of duties (listed in paragraph 4 of Article 43), students (other than those in preschool and elementary school) are subject to disciplinary responsibility (paragraph 5 of Article 43): this would seem to be far from any concept of 'mini-competency'. In the sphere of labor, emphasis is placed on the age of 16 (Article 20 of the Labor Code of the Russian Federation, hereinafter LC RF), notwithstanding an assumption that 14 and 15 year-olds, and even children of a younger age, may work if certain conditions obtain, (Article 63 of the LC RF). At the same time, despite the 'genetic connection' between labor law and civil law, the literature on labor law bears witness to the fact that legal competency, as a stand-alone component of a person's legal standing under the labor code, is an issue still under debate, and direct application of the framework for a 14-year-old's legal competency from civil law would hardly be appropriate as a general rule [19, p. 163-166].

Provisions from Article 2.3 of the CAO RF on administrative action against persons identifies 16 as the age of responsibility, though development level and various other characteristics of the minor in question are also taken into account. As per the provisions of Article 20 of the Criminal Code of the Russian Federation, the general age of criminal responsibility is set at 16 years old, though for especially serious crimes the age of responsibility is 14, with assumptions of possible exemption due to mental retardation unassociated with mental disorders, inability to fully comprehend the significance acts committed and manage corresponding actions. Judging by the text of the law itself, these are the only cases in which there obtains a direct possibility of differentiating a minor's capacity to be held liable in tort based particularly upon his ability to comprehend his own act, straight up to and including his full exemption from liability. The civil law context for the differentiation of liability, on the contrary, is based upon formal criteria (Articles 26 and 1074 of the Civil Code of the Russian Federation).

An age differentiation for which reasoning is not fully provided can be observed within family law, which can objectively be said to contain the richest assortment of perspectives. The Family Code of the Russian Federation (hereinafter FC RF) records several milestone ages: up to 10 years of age, a child's opinion on family issues affecting his interests

[5] See Charter "Digital Ethics of Childhood"./ Alliance on protection of children's rights in the digital environment. URL: https://internetforkids.ru/charter/ (accessed at: 20.12.2021).

is taken into account by authorized entities; from the age of 10, his opinion must be taken into account without fail, but provisions are made within law for administrative or judicial decisions that are not in line with the child's position [20, p. 25-29]. Also from the age of 10, the law makes provision for the child's obligatory consent to commit a number of acts relating to family law (Article 57 of the FC RF). At the same time, 'legal handles' are actively and elaborately used in the field of family law. Thus, for instance, an underage parent of a child born out of wedlock has the right to independently file suit for establishment of his paternity from the age of 14 (Article 49 of the FC RF), while a minor (even over 14 years old) does not have the right to file a lawsuit for the judicial search for his illegitimate father (Article 49 of the FC RF). The minimum age of an "adult parent" within law is 14 if married, but only 16 if unmarried (Article 62 of the FC RF). The list of cases where a child's consent is mandatory from the age of 10 does not include the right of relatives to communicate with the child or to challenge/establish paternity of another person (in situations where a positive decision might destroy a stable family).

It should also be noted that regional differentiations in the rule on reducing marital age (below federal part 2 of Article 13 of the RF FC) is, in most cases, by no means due to the national and cultural specifics of various territories, as originally intended by legislators; differences (14 or 15 years) are ubiquitously observed. Since the entering a marriage union at such a young age leads to the acquisition of full civil competency, we have an obvious and unfounded 'disharmony' in this matter, which can't be qualified as anything other than legal nonsense. Nor is it obvious that all 10-year-old children are able to independently make reasonable decisions on various family issues, although some of them do have the appropriate psychological prerequisites. Certain doubts also arise with regard to 14-year-olds. However, this is not a psychological, but precisely a 'legal trick': in some cases, legislators are guided by these considerations and doubts, while in others that are similar in essence and significance, they are not. The unsystematic approach taken by legislators is discouraging, to say the least. Yet at the same time, in contrast to the civil law decision in favor of establishing a minimum age of 6 years old, we would refrain from a formal approach in the sphere of family law, which is dominated by personal relations, in favor of focusing on assessment of a child's individuality and personal surroundings.

Self-protection of rights and interests by minors and proactive statement of their opinions in court or by court decision in civil and even administrative legal proceedings is not paired, even to this day, with a clearly delineated procedural legal standing. Thus, the provisions of Article 37 of the Civil Procedural Code of the Russian Federation (further CPC RF) explicitly establish the procedural position only of a fully capable minor citizen; in other cases, the law indicates that the child's interests should be represented and that it is possible to involve the child in the process from the age of 14. Before 14, both participation in the trial itself and the status of the child remain undefined. This is justly criticized in the theoretical literature, [21, p. 67], yet a decision has yet been made. Any plan should, of course, also take into account the psycho-traumatic context of the aforementioned participation [22, p. 44]. Such legal uncertainty needs to be eliminated either within the provisions of Article 7 of the CPC RF or by introducing a dedicated chapter into the procedural code, which deals with the specifics of the participation of minors in the trial process.

Being essentially legal, the problem of criteria for 'degree of adulthood' directly affects the field of psychological science which deals with the laws of human development. The fact that formally recorded age (14 years, in the first instance) provides no convincing representation of cognitive and behavioral traits, requires no proof. Accordingly, in order to determine the degree of legal competency, it is necessary to search for a psychological analogue for the legal concept – one for which psychological science has developed an algorithm according to which so-called 'expert' psychological understandings exist, resulting in legal phenomenology and terminology perfectly adapted to the realities of psychological diagnostics. The latter operates with indicators that can be measured using psychodiagnostic methods, and therefore

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serve as a means of identifying the degree of legal competence of a minor individual with regards to certain requirements and/or opportunities, as defined within law. This expert task is being resolved systematically, primarily within the framework of criminal law [23, p. 229], though it also begs consideration and application in relation to other types of legal competency, where minors are concerned. Responsibility may be said to complete its evolution during the early years of human adolescence. Conditions for the formation of responsibility are imposed first by a child's parents, and then by the society in which a child lives [24, p. 5]. Neither does this pattern negate individual variability, in terms of the formation of those psychological structures that ensure legal competency (perception, memory, thinking, reflexive abilities, motivation) [25, p. 723-725]. This brings us back to the question of the need to develop psychological criteria and indicators for this complex of individual characteristics which are at play in the development and implantation of new law. Here, it is also necessary to keep in mind various provisional stages of psycho-legal development that are characteristic of the aging and development process during its different phases. Thus, let us look at the age of 10, which marks a sort of starting point from which a child may determine, for instance, whether to reside with one or another parent, or even more seriously, construct his/her position within the framework of consent to adoption, etc. The age of 10 belongs to the period of age development, which is defined as 'junior school age' (D. B. Elkonin) [26, p. 55]. At this age, a child's abstract thinking capability is undergoing intense development, but is far from complete. In fact, we can speak about developed abstract thinking capability beginning only from adolescence, e.g. from approximately 12 years old. In our opinion, this circumstance should be considered as fundamental for legal practice. When answering relevant questions posed by the court or by experts, children have a tendency to focus on external, insignificant details of the reality around which a trial is occurring. In consequence, the legal-theoretical literature, in conversation with literature in psychology, should continue to consider the question of possible age-range correction for children and teenagers, for instance, in cases where the required legal competency in terms of contents and volume requires developed cognitive abilities from a minor under 12 whose interests are affected by adherence to given legal regulations. And here we aren't speaking only of cognitive ability; traits relating to attention skills also play a significant role. Taking decisions on many issues that relate to the status of a person within the family requires the ability to take into account a significant quantity of circumstances, familial ties, and consequences. With regard to abstract legal norms, these features in terms of attention also imply a high level of development, which is atypical of children at primary school age.

4. On Duties

One particularity of family law, in which it opposes other fields of law, can be seen in its approach to a child's legal standing in terms his duties. Thus, in Chapter 11 of the FC RF – a chapter which is devoted to the child as a subject of family law – we find not a single mention of the child's duties and obligations vis-a-vis parents and/or other legal caregivers. The vast majority of civil law researchers believe this position to be correct, in view of the child's incompetency. In fact, we find that even Soviet civil law failed to achieve any sort of agreement with regard to this issue: the Code's recording of parental rights in relation to children should surely imply the corresponding duties of the latter, corresponding to these rights; it is inherent in law that parents are allowed to apply non-illegal methods of educational influence to children, which clearly implies "legal protection of the duties assigned to children" [27, p. 238-239].

Insofar as, as we mentioned earlier, the FC RF makes clear provision for the legal competency of a child, any thesis to the extent that a child lacks legal competency is unworkable as the decisive argument in favour of the inadmissibility of imposing duties upon him: it isn't in an unconscious fashion that a 10-year-old child expresses his attitude in the form of mandatory written consent to a number of family legal acts; a minor of 14, while continuing to be a 'child' (Article 54 of the Russian Federation Family Code), nevertheless makes significant decisions with regards to marriage, extramarital

parenthood, and the protection of his rights and interests (Article 57 of the Russian Federation Family Code). Such thesis would also oppose the above mentioned requirements in terms of disciplinary and criminal liability. Or should such points of law be accommodated to the dominant legal point of view, and qualified in the form of the rights of minors to be subject to adverse measures relating to legal responsibility? An additional argument against introducing a framework for 'children's responsibility' to the sphere family law is the declarative nature of said framework. Firstly, however, it must be said that legislators hardly avoid declarations which aren't undergirded by statements of sanction (e.g., "spouses are obliged to build their relations in the family on the basis of mutual respect and mutual assistance ..." (clause 3 of article 31 of the FC RF). Secondly, foreign legislators willingly use an ethical framework to describe the relationship between parents and children in provisions of family law. For example, the Family Code of Bulgaria calls upon children to respect and help their parents and grandparents (Articles 69-70); a provision of Article 1619 of the German Civil Code informs children that they must help their parents at home and with their affairs in whatever way they are able; etc. [28, p. 27-28]. At the same time, the psychologically justified inclusion of children in the system of legally enshrined rights and obligations within the family is not only a tool to streamline relevant sections of legislation, but also supports the decisive role of the family in the legal socialization of children [29, p. 5-7]. Therefore, children's implementation of those elements of legal capacity associated with family function is a key means of promoting their maturation and preparation for the challenges of their journey to adulthood [30, p. 27-29].

5.Conclusion

The institution of minor legal standing, independent of which branch of law is involved, assumes both passive and active components, corresponding to formal legal capacity (passive), and formal legal competency (active). While the scope of each differs significantly in terms of the age criterion, we find no unanimity between the various fields of law with regard to this issue. As a rule, the various branches of law define no minimum age. We believe this is justified, given that it allows law enforcement officers to take into account the individual characteristics of a child as well as the specifics of a given situation. At the same time, we would advise that age gradations be subject to additional analytics, including on the basis of data from the literature in the field of psychology, which states that 10 years is not an age sufficient to the requirements for making legally significant decisions (this applies to both family and educational legislation); rather, this criterion is met by the age group starting from 12 years. Nor do we find any justification for differentiation within the age group of 14-16 years. We believe that the concept of a minor's partial legal competency (from 14) within civil law, as well as the assumption of his emancipation (starting from the age of 16) can be taken as a basis for regulatory decisions. This will harmonize such decisions without violating the sovereignty of various branches of Russian law.

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