

LIMITED LEGAL CAPACITY OF NATURAL PERSONS

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Abstract

This paper examines the limited legal capacity of natural persons as a subtype of general legal capacity, which itself is a core institution of civil law, referred to as legal subjectivity.

The research shows that limited legal capacity is a rare phenomenon in modern legal systems, as it restricts the bearer from exercising certain subjective rights and obligations.

This paper aims to analyze the reasons why general legal capacity may be restricted and to identify cases where limited legal capacity arises within the legal framework of the Republic of North Macedonia.

The analysis reveals that limited legal capacity primarily appears in relation to items of common use (such as waters, coastlines, cemeteries, public roads, and squares), which are, under the Law on Ownership and Other Real Rights, exclusively reserved for state ownership.

In addition to common-use items, the concept also applies to the sale of state-owned agricultural land to foreigners. Under current legislation, foreigners are not permitted to purchase such land; thus, their legal capacity in this context is limited. Moreover, foreigners who are not nationals of the European Union or Organization for Economic Cooperation and Development (OECD) member states face restrictions: their acquisition of ownership rights over agricultural land, construction land, residential buildings, apartments, and commercial premises is subject to the principle of reciprocity. Limited legal capacity also appears in contexts involving regulated goods such as medications, narcotic drugs, and weapons, where the right of ownership is conditioned by specific legal criteria.

Keywords: subjectivity, general legal capacity, limited legal capacity, natural person.

1. Introduction

Legal subjectivity is one of the fundamental institutions of civil law. According to prevailing views in civil law doctrine, subjectivity, as a set of characteristics of legal subjects, constitutes a legal category comprising two core components: (1) capacities and (2) attributes. Capacities include passive legal capacity, active legal capacity, and tort liability capacity. Attributes include name (title), domicile/residence (seat), and citizenship (national affiliation)¹. The legal capacity of natural persons is crucial not only within civil law theory but also in legal practice, where numerous civil law relations arise, such as in property law, obligation law, and inheritance law. Well-established conditions for the formation of civil law relationships include the presence of a legal fact (source), a civil law object (e.g., property, human action), and a legal subject—namely, a natural person—who participates in the relationship. For a natural person to enter into a civil law relationship, they must possess general legal capacity, which refers to the abstract ability to hold rights and obligations. This requires that the person is alive and born of a woman. In cases where a person seeks to acquire a special legal capacity (e.g., professional or occupational capacity), additional requirements apply. These include meeting educational and technical criteria (e.g., passing the bar exam, completing medical school) and obtaining the appropriate authorization (license or approval) for performing the relevant activity. This paper argues that limited legal capacity is a rare form of legal capacity in modern legal systems. It

¹ Родна Живковска, Тина Пржеска, Граѓанско право – Општ дел, Скопје: Европа 92, 2021, р. 66.

refers to the abstract legal inability of certain persons to acquire civil rights and obligations, usually due to restrictions imposed by law.

2. Limited Legal Capacity under the Legal Framework of the Republic of North Macedonia

Limited legal capacity, as a subtype of general legal capacity, constitutes an abstract legal incapacity of certain natural persons to acquire civil rights and obligations under specific conditions prescribed by law. These legal restrictions limit the general legal capacity of individuals according to the amount.²

Within the Macedonian civil law doctrine, such limitations are considered exceptional.³ This is consistent with one of the fundamental constitutional principles of the Republic of North Macedonia, which guarantees *the right to ownership and the right to inheritance*.⁴

Limited legal capacity most commonly arises in relation to items of common use, such as waters, coastlines, cemeteries, public roads, and squares. According to the Law on Ownership and Other Real Rights, these items are reserved exclusively for state ownership. The legal definition of items in common use refers to property owned by the state and intended for use by all natural and legal persons⁵. As such, individuals cannot acquire ownership rights over these items and, therefore, are considered to possess limited legal capacity in this specific context.

Thus, according to the Law on Waters, items classified as goods of common use—such as waters—are owned exclusively by the Republic of North Macedonia and are subject to special legal safeguards provided by law. The law clearly stipulates that such waters *cannot be the object of ownership by either natural or legal persons, regardless of the legal status of the land on which they are located*.⁶ Concerning the right to use water, the law provides that *every person may use water within the limits, under the conditions, and according to the procedures established by law and secondary legislation enacted pursuant to it*.⁷ Since natural persons cannot acquire ownership rights over water but only rights of use, their legal capacity in this context is limited. In modern legal systems, waters are considered immovable property (real estate), and they are assigned cadastral numbers and fall within defined cadastral municipal boundaries. For example, Lake Ohrid is classified as real estate and is registered with a cadastral number 09-4866/1.

The Law on Waters also defines coastal land as a strip of land extending 50 meters inland from the edge of permanent or seasonal watercourses—rivers, lakes, or springs.⁸ As with other items of common use reserved for state ownership, natural persons have limited legal capacity to acquire ownership rights over coastal land. According to the law, this 50-meter strip from the zero waterline is excluded from private ownership.

The Law on Cemeteries and Funeral Services recognizes cemeteries as items of common use: *cemeteries as goods in common use are owned by the Republic of North Macedonia, enjoy special legal protection, and may be used only under conditions and procedures defined by law*.⁹ All natural and legal persons are entitled to use cemeteries in accordance with these rules. Specifically, natural persons may acquire the right to use a burial site, which constitutes a form

² See: Родна Живковска, Тина Пржеска, *op. cit.*, p. 113.

³ *Ibid.*

⁴ Art. 30(1), Constitution of the Republic of North Macedonia, Official Gazette of Republic of North Macedonia, no. 52/1991, 1/1992, 1/1992, 31/1998, 31/1998, 91/2001, 91/2001, 84/2003, 84/2003, 107/2005, 107/2005, 3/2009, 3/2009, 13/2009, 49/2011, 49/2011, 6/2019 and 6/2019.

⁵ See: Art. 16(4), Law on Ownership and Other Real Rights, Official Gazette of Republic of Macedonia, no. 18/2001, 31/2008, 92/2008, 139/2009 and 35/2010.

⁶ See: Art. 6(1)(2), Law on Waters, Official Gazette of the Republic of Macedonia, no. 87/2008, 6/2009, 161/2009, 83/2010, 51/2011, 44/2012, 23/2013, 163/2013, 180/2014, 146/2015, 52/2016, and Official Gazette of the Republic of North Macedonia, no. 151/2021 and 99/2022.

⁷ See: Art. 14(1), Law on Waters...

⁸ See: Art. 4(50), Law on Waters...

⁹ See: Art. 2, Law on Cemeteries and Funeral Services, Official Gazette of the Republic of Macedonia, no. 86/2008, 156/2010, 53/2011, 163/2013, 152/2015, 31/2016.

of personal servitude.¹⁰ This right is limited to usage and forms part of the content of the right of ownership, but does not include the right to dispose of the burial site.

According to the Law on Public Roads (2008)¹¹ *A public road is any road officially designated as such, and it may be either state-owned or municipal.*¹² The law further classifies public roads as items of common use, which may only be used under the conditions and procedures established by law.¹³ Since natural persons are not permitted to acquire ownership rights over public roads—as they are reserved for public use and state or municipal ownership—they are considered to have limited legal capacity with respect to this category of property.

Another instance in which limited legal capacity arises in North Macedonia—primarily for security reasons—is the prohibition against foreign natural persons acquiring ownership rights over agricultural land. The Law on Ownership and Other Real Rights explicitly states that *foreign natural and legal persons are not permitted to acquire ownership of agricultural land located within the territory of the Republic of North Macedonia. However, based on the principle of reciprocity, they may be eligible for long-term lease agreements for agricultural land located within the jurisdiction of the Republic of Macedonia, provided they obtain prior approval from the Minister of Justice, following consultations with the Ministers of Agriculture, Forestry and Water Economy, and Finance*¹⁴. The acquisition of a long-term lease of agricultural land on the territory of the Republic of North Macedonia requires the cumulative fulfillment of two conditions: the existence of reciprocal rights in the applicant's home country and official consent from the relevant state authorities. These legal restrictions mean that foreign nationals do not possess full legal capacity to acquire ownership of such immovable property, and are therefore subject to limited legal capacity with respect to agricultural land.

Limited legal capacity also applies to foreign nationals who are not residents of member states of the European Union or the Organization for Economic Cooperation and Development (OECD). According to the Law on Ownership and Other Real Rights, the acquisition of ownership right—and the right to long-term lease—over construction land, and the right of ownership of an apartment, residential building, and business premise on the territory of the Republic of North Macedonia by foreign natural and legal persons from non-EU and non-OECD countries is subject to the condition of reciprocity. As a result, these individuals are considered to possess limited legal capacity in relation to construction land within the territory of the Republic of North Macedonia.¹⁵

At this point, it is also important to mention the case of limited legal capacity in the context of the sale of state-owned agricultural land. The sale is conducted based on an annual program and a formal government decision.¹⁶ According to the procedure, the Ministry of Agriculture proposes one or more decisions to the Government of the Republic of North Macedonia within 30 days from the adoption of the annual program. For the sale of agricultural land up to 10 hectares, the Ministry specifies in the decision that only domestic natural and legal persons—who have residence or a registered office in the municipality where most of the land is located—are eligible to participate in the purchase.¹⁷ However, foreign natural and legal persons are not

¹⁰ Art. 7, Law on Cemeteries and Funeral Services...

¹¹ Law on Public Roads, Official Gazette of the Republic of Macedonia, no. 84/2008, 52/2009, 114/2009, 39/2010, 124/2010, 23/2011, 53/2011, 44/2012, 168/2012, 163/2013, 187/2013, 39/2014, 42/2014, 166/2014, 44/2015, 116/2015, 150/2015, 31/2016, 71/2016, 163/2016, and Official Gazette of the Republic of North Macedonia, no. 174/2021 and 253/2023.

¹² See: Art. 4(2), Law on Public Roads...

¹³ See: Art. 3(1), Law on Public Roads...

¹⁴ See: Art. 246, Law on Ownership and Other Real Rights... *Agricultural land can be in state and private ownership*, Art. 7(1), Law on Agricultural Land, Official Gazette of the Republic of Macedonia, no. 135/2007, 17/2008, 18/2011, 42/2011, 148/2011, 95/2012, 79/2013, 87/2013, 106/2013, 164/2013, 187/2013, 39/2014, 130/2014, 166/2014, 72/2015, 98/2015, 154/2015, 215/2015, 7/2016, 39/2016 and Official Gazette of the Republic of North Macedonia, no. 161/2019, 178/2021 and 91/2023.

¹⁵ See: Art. 244-245, Law on Ownership and Other Real Rights...

¹⁶ See: Art. 6(1), Law on the Sale of State-Owned Agricultural Land, Official Gazette of the Republic of Macedonia, no. 87/2013, 106/2013, 137/2013, 61/2015, 97/2015, 215/2015, 53/2016, 51/2018.

¹⁷ See: Art. 9(1)(3), Law on the Sale of State-Owned Agricultural Land...

entitled to acquire ownership rights over state-owned agricultural land, unless otherwise provided by an international agreement.

Citizens of European Union member states may acquire ownership of state-owned agricultural land only after seven years have passed following the accession of the Republic of North Macedonia to the EU.¹⁸ Until this transitional period expires, foreign natural persons do not have the right to acquire ownership of state-owned agricultural land. Therefore, under current law, they are subject to limited legal capacity in this regard.

Another case where limited legal capacity arises is in the acquisition of ownership rights over weapons, which are classified as dangerous items. According to the Law on Weapons, *weapons and ammunition may be acquired only with prior approval issued by the Ministry of Internal Affairs, in accordance with the legal categorization of weapons, unless otherwise provided by law.*¹⁹ A permit for acquiring weapons may be granted to natural persons who demonstrate a need for self-protection, protection of property, or for purposes related to hunting and shooting sports.²⁰ Since the right to acquire weapons and ammunition is conditional upon the fulfillment of specific legal requirements, this situation constitutes a form of limited legal capacity in relation to the ownership of dangerous items.

Medicines and narcotic drugs are also classified as objects over which natural persons possess limited legal capacity due to the strict legal conditions governing their acquisition and use.

According to pharmaceutical legislation, medicines are categorized into three groups based on their place and method of dispensing: Prescription-only medicines, which may only be dispensed in pharmacies upon presentation of a valid medical prescription; Over-the-counter (OTC) medicines, which may be purchased without a prescription; and Institution-only medicines, which are administered exclusively within healthcare institutions. Prescription-only medicines can only be acquired after fulfilling a legal requirement—namely, obtaining a doctor's prescription. Therefore, the ownership and use of such medicines by natural persons is conditioned by law, which reflects a form of limited legal capacity. The Law on Control of Narcotic Drugs and Psychotropic Substances categorically prohibits the cultivation, production, trade, possession, and use of substances and plants listed in Schedule I²¹, except when such actions are performed for purposes of medical or scientific research, forensic investigation, education, or police operations, as explicitly defined by law²². Substances listed under Schedules II and III may be prescribed in the form of medicine to individuals, provided they have a valid doctor's prescription²³. For instance, certain pharmaceutical products containing THC, dronabinol, or nabilone may be prescribed by a general practitioner (a doctor of medicine, family medicine specialist, pediatrician, or general medicine specialist), but only upon recommendation from a specialist in neurology, oncology and radiotherapy, or infectious diseases employed in a public healthcare institution that provides hospital-level medical care²⁴. Under the Law on Control of Narcotic Drugs and Psychotropic Substances, when crossing the national border, natural persons may carry medicines containing psychotropic substances classified under Schedules II and III only if they possess valid medical documentation, and only

¹⁸ See: Art. 3, Law on the Sale of State-Owned Agricultural Land...

¹⁹ See: Art. 5(1), Law on Weapons, Official Gazette of the Republic of Macedonia, no. 7/2005, 47/2006, 42/2007, 86/2008, 25/2010, 72/2010, 158/2011, 119/2013, 138/2013, 164/2013, 152/2015, 193/2015, 55/2016, 97/2018 and Official Gazette of the Republic of North Macedonia, no. 171/2022.

²⁰ A permit for the obtain of weapons by a natural person is issued based on a previously submitted written personal request, if the natural person meets the following conditions: 1. has reached the age of 18; 2. has not been deprived of or restricted his/her legal capacity; 3. is medically fit to own and carry weapons; 4. does not pose a threat to public order; 5. has a justified reason for obtaining weapons and 6. has technical knowledge for the proper use, storage and maintenance of weapons and knowledge of the regulations on weapons, Art. 8-9, Law on Weapons...

²¹ List I classify prohibited substances and plants, List II classifies substances and plants subject to strict control, List III classifies substances and plants subject to control and List IV classifies precursors by the regulations on precursors, Art. 22(1), Law for Control of Narcotic Drugs and Psychotropic Substances, Official Gazette of the Republic of Macedonia, No. 103/2008, 124/2010, 164/2013, 149/2015, 37/2016, 53/2016, 193/2017.

²² See: Art. 24, Law for Control of Narcotic Drugs and Psychotropic Substances...

²³ See: Art. 41(1), Law for Control of Narcotic Drugs and Psychotropic Substances...

²⁴ See: Art. 41(3), Law for Control of Narcotic Drugs and Psychotropic Substances...

in a quantity necessary for personal use, for a period not exceeding seven days²⁵. In specific and narrowly defined circumstances, the Agency for Medicines and Medical Devices may grant permission to certain legal and natural persons to possess samples of substances and plants classified in Schedules I, II, and III, as well as their preparations, in limited quantities. These permissions apply in the context of teaching and vocational education activities, forensic medicine and scientific analysis, and training of animals for the detection of narcotic drugs²⁶. Moreover, police officers may be authorized to possess substances from these schedules and their preparations when conducting simulated purchases or controlled deliveries, in accordance with statutory procedures, for criminal investigation and enforcement²⁷. In light of the above, both medicines and narcotic drugs are legally classified as regulated items. The acquisition of ownership rights over these substances is subject to strict legal requirements, meaning that natural persons do not enjoy full legal capacity with respect to them. Instead, they possess limited legal capacity, as established by the applicable regulatory framework.

3. Conclusion

Based on the analysis presented in this paper, the following conclusions can be drawn:

Limited legal capacity, as a subtype of general legal capacity, refers to the abstract legal incapacity of certain natural persons to acquire civil subjective rights and civil subjective obligations under conditions prescribed by law.

This form of legal capacity is primarily encountered in relation to items of common use—such as waters, coastlines, cemeteries, public roads, and public squares—which, under the Law on Ownership and Other Real Rights, are reserved exclusively for state ownership. As a result, natural persons are legally excluded from acquiring ownership over such property and thus possess limited legal capacity in this context. Furthermore, limited legal capacity arises in the case of the sale of state-owned agricultural land, where foreign nationals are currently prohibited from acquiring ownership under the same law. A similar restriction applies to foreign individuals who are not residents of EU or OECD member states. Their ability to acquire ownership over agricultural land, construction land, and apartments, residential buildings, and business premises is subject to the principle of reciprocity, thereby limiting their legal capacity in these areas. Additionally, limited legal capacity is observed in the context of acquiring ownership rights over regulated or controlled goods, such as weapons, medicines, and narcotic drugs. These items can be acquired only under specific legal conditions, such as permits, prescriptions, or professional licenses.

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²⁵ See: Art. 45(1), Law for Control of Narcotic Drugs and Psychotropic Substances...

²⁶ See: Art. 68, Law for Control of Narcotic Drugs and Psychotropic Substances...

²⁷ See: Art. 69, Law for Control of Narcotic Drugs and Psychotropic Substances...

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