

# The Entitlement to Take Legal Action of Individuals

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**ABSTRACT:** This paper addresses the topic of the entitlement to take legal action of individuals. As it is well-known, persons are called subjects of civil law, and between them a legal relationship occurs. The quality of this subject of law is expressed by what is called the civil legal standing and which includes: the entitlement to take legal action and the legal competence. In this paper, we talk about the notion of entitlement to take legal action of individuals - a component of civil standing. This quality of the subject of law presents all the rights that an individual can acquire. We also present the legal characteristics of the entitlement to take legal action, aspects related to the occurrence of the entitlement to take legal action, the exception of acquiring the entitlement to take legal action from the date of conception, as well as the constitutive elements of the entitlement to take legal action of individuals and in the end we presented the ways of termination of the entitlement to take legal action of the individual.

**KEYWORDS:** entitlement to take legal action, civil standing, individual, civil rights, limitation of the civil standing

## Introduction

The object of study of the civil law is the civil legal relationship, consisting of subjects, content and object. Its subjects form the first element of the legal relationship. The holder of rights and obligations can be both an individual and a legal person. The individual represents the bio-psycho-social being, and in the field of law, the person participates in the social relations that have legal value.

From an etymological point of view, the term "person" comes from the Latin "persona" which means the actor's mask, the role that he/she plays on stage, and in law, the meaning of this word would be the legal role played by man in the society.

The legal relations occur as a result of people's participation in achieving personal goals or in meeting certain material interests, while having legal standing, as they may be holders of rights and obligations. This capacity of being a holder of rights and obligations represents the aptitude of the subject of law.

The legal standing is closely related to man's personality, and the law establishes the moment of its occurrence, its extent, as well as its cessation. Personality is that stable element of a person's behavior that differentiates him/her from other people and which, from a social point of view, determines the value of man.

According to S.18 of the Civil Code, any individual acquires the entitlement to take legal action. It has been shown in the research literature that the subject of law is both a participant in legal relations and a person who has the ability to value their rights and obligations.

The entitlement to take legal action of the individual cannot be transferred. Under the law, it can only be limited. All citizens are equal in terms of rights in all fields, without any discrimination or differentiation based on gender, religion or nationality.

One of the legal characteristics of the entitlement to take legal action - legality - shows us that only the law can determine the moment when the entitlement to take legal action begins and ends. Equality is another feature of this standing and shows us that citizens are equal before the law, without any discrimination, being acknowledged for all persons.

### The notion of the entitlement to take legal action of individuals

A component of the civil standing is the entitlement to take legal action. According to S.28 (2) of the Civil Code, any individual has the entitlement to take legal action, thus the fundamental legal principle according to which the quality of subject of law is acknowledged to any individual being applied.

S.34 of the Civil Code stipulates: "The entitlement to take legal action is the aptitude of the person to hold civil rights and obligations" (P. Trușcă and A.M. Trușcă 2017, 22).

The entitlement to take legal action potentially foreshadows all the civil rights that an individual can acquire. It is not to be mistaken for the rights, but expresses only the general and abstract aptitude to acquire them (Stătescu 1970, 22).

In an old conception it was said that the case law does not study the individual in all its integrity, and that it only considers people from the point of view of the role they play in the society. The science of law regulates the relations between persons only with regard to the regulation of the infinitely varied reciprocal relations that occur between them (Constantin, Rosetti-Bălănescu, Băicoianu 1996, 133).

In a first formulation, it is said that: "The entitlement to take legal action of an individual is that component part of the civil standing which consists in the general aptitude to acquire civil rights and obligations" (P. Trușcă and A.M. Trușcă 2017, 23).

In another formulation it is shown that: "the entitlement to take legal action of an individual can be defined as part of the civil standing of the people, consisting in their aptitude to have civil rights and obligations (Lupan 1993, 20).

Any individual is a subject of law. The notion of individual has undergone, during its evolution, essential changes, starting from definition and ending with the most complex regulations of this institution in force. Thus, in order for an individual to be able to participate in a legal relationship, it must meet the condition of legal standing, a condition with which he/she was not born, but that he/she acquired during life. For example, slaves were not subjects of law as they were considered things (*res*) or speaking tools (*instrumento vocalia*) (Hanga 1996, 97).

### The legal characteristics of the entitlement to take legal action of individuals

The entitlement to take legal action of individuals has the following legal characteristics:

a) A first legal character of the entitlement to take legal action of individuals is **legality**. This character consists in the characteristic of this standing to be regulated only by law; it is not left to the individual will. This means that the moment when the entitlement to take legal action begins and ends can be determined only by law.

b) The **generality** of the entitlement to take legal action of individuals is another characteristic which consists in the fact that, by the entitlement to take legal action of the individual, the general and abstract aptitude of the individual to have all the civil rights and obligations is expressed (P. Trușcă, A.M. Trușcă 2017, 24-25).

The entitlement to take legal action is the aptitude of the person to have civil rights and obligations" (Civil Code 2018, 26).

c) **Inalienability** of the entitlement to take legal action of individuals. The entitlement to take legal action of individuals is inalienable because this feature cannot represent an object of total or partial waiver or an object of transfer. This legal feature of the entitlement to take legal action of individuals is expressly enshrined in S.29 (2) of the Civil Code, as follows: "No one may waive the entitlement to take legal action, in whole or in part (...)."

Those legal acts by which a subject of law partially or totally, temporarily or definitively waives the entitlement to take legal action will be under absolute nullity (P. Trușcă, and A.M. Trușcă 2017, 25).

It is possible for a person to waive a certain inheritance that has been opened and to which he/she is called - this waiver having as object a certain subjective, determined right. However, it is not

possible by a unilateral act or by convention that a certain person limits his/her entitlement to take legal action, waiving the aptitude to generally acquire the quality of heir.

If the partial waiver of the entitlement to take legal action is not possible, *a fortiori*, it is not possible to have a waiver of the entitlement to take legal action in its entirety, because it would be equivalent to a true "civil death" of the human being (Beleiu 1990, 257).

d) **Intangibility** of the entitlement to take legal action of individuals. The intangibility of the entitlement to take legal action of individuals is its characteristic of not being able to cause it limitations or restrictions except in the cases and conditions provided by law. S.29 (1) Civil Code provides: "No one may be restricted in his/her entitlement to take legal action (...) except in the cases and conditions expressly provided by law".

A second remark is that, incidentally, the law speaks of the restriction of the entitlement to take legal action and does not refer to the deprivation of the entitlement to take legal action, the legislator excluding implicitly but categorically, the possibility of total deprivation of the entitlement to take legal action of a person (P. Trușcă, and A.M. Trușcă 2017, 26).

e) **Equality**. It is known that a fundamental principle of civil law is that of equality before civil law. This character results both from the constitutional provisions which, referring to the legal capacity, establish in S.16 (1) that "Citizens are equal before the law and public authorities, without privileges and without discrimination", as well as from the provisions of the Civil Code, which in S.28 (1) establish that "The civil standing is acknowledged to all persons (P. Trușcă, and A.M. Trușcă 2017, 27).

f) **Universality** implies the acknowledgment of the entitlement to take legal action of all persons. On the territory of Romania, "universality" means that both Romanian citizens and foreign citizens (including stateless persons) living in our country and who enjoy the general protection of persons and property, guaranteed by the fundamental law and other laws (S.8 (1) from the Constitution), benefit from the entitlement to take legal action.

The Civil Code states (S. 28) that: "The civil capacity is acknowledged to all persons, each person having the entitlement to take legal action. In terms of the Universal Declaration of Human Rights, every human being has the right to have his or her legal personality recognized everywhere (Baies and Rosca 2014, 258).

### **The beginning of the entitlement to take legal action of individuals**

The entitlement to take legal action as the aptitude of a person to hold civil rights and obligations belonging to each person, regardless of whether or not he/she has a conscious or sufficiently mature will, is closely related to that person's life. It follows that, from the moment of birth of an individual, he/she acquires the entitlement to take legal action, a standing that lasts as long as his/her life, that is, until death.

The legal consecration of this rule is established by the provisions of S.25 Civil Code, as follows: "The entitlement to take legal action begins at the birth of the person (...)"

In other words, the date of birth is the date of the beginning of the entitlement to take legal action of an individual. We have an exception from this rule stated in S.36, first thesis of the Civil Code, namely: "The rights of the child are recognized from conception, but only if it is born alive."

In the civil legislation there is also a second text, respectively S.957 (1) of the Civil Code according to which: "A person can inherit something if that person exists at the time of the opening of the inheritance" (P. Trușcă, A. M. and Trușcă 2017, 29-31).

We have to observe that, in reality, these only apply, in the special field of inheritances, the general rule according to which, exceptionally, the quality of subject of law is acquired even before the birth, if certain conditions are met (Stătescu 1970, 52).

These conditions are:

1) It has to be about the acquiring of rights by the conceived child, not about the assumption of obligations

2) The child has to be born alive.

The first condition - to be about rights in favour of the child, but not about obligations in its charge, derives from the very nature of the exception, to be a protection measure for the child conceived, but not yet born (P. Trușcă and A.M. Trușcă 2017, 32).

The heir, whether major or minor or only conceived will practically never be burdened by the debts of the deceased, as these will be paid from the value of the assets acquired by inheritance and within the limit of their value (Reghini, Diaconescu, Vasilescu 2013, 98).

The second condition - the child has to be born alive - it can be seen that Romanian law does not require like other legislations, the condition for it to be viable. This means that it is enough for it to have been born alive (P. Trușcă and A.M. Trușcă 2017, 33).

### **The content of the entitlement to take legal action**

The content of the social standing structure highlights its component elements - the entitlement to take legal action and the legal competence.

The legal definition of the entitlement to take legal action is the one stated in S.34 of the Civil Code, according to which "the entitlement to take legal action is the aptitude of the person to have civil rights and obligations" (Stătescu 1790, 22). The content of the entitlement to take legal action, as it can be seen, is obtained by combining two sides:

- The active side, which expresses the individual's aptitude to have subjective civil rights.
- The passive side, which expresses the individual's aptitude to have civil obligations.

We can find the content of the entitlement to take legal action of individuals in all cases, except for the anticipated entitlement to take legal action, in which case only the aptitude to acquire subjective civil rights, not obligations, is considered.

For establishing the content of the entitlement to take legal action of individuals, certain rules must be taken into account:

a) First of all, the content of the entitlement to take legal action of individuals that is established in relation to the legislative system of a state, the legislative system of a state meaning both the national regulations and the international regulations included in the sources ratified by that state

b) Secondly, the real extent of the content of the entitlement to take legal action results from the knowledge of the system of restrictions in relation to this standing, as these are established by the legislation of a state, at a given moment

c) In order to establish the content of the entitlement to take legal action of individuals, both the specific sources of civil law and those specific to other branches of law must be taken into account, insofar as they refer to elements of the content of these standings

d) The establishment of the content of the entitlement to take legal action of individuals assumes only the aptitude of the man to be the holder of civil rights and obligations, without taking into account the rights and obligations related to other branches of law.

In order to determine the content of the entitlement to take legal action of individuals, certain criteria can be used, namely:

- The criterion of the nature of the civil rights, when it must be established if it is a question of patrimonial rights or of personal non-patrimonial rights

- The criterion of their legislative source, as in this case we deal with normative acts that ensure the internal consecration or that as international legal norms (P. Trușcă and A.M. Trușcă 2017, 37-38).

- The restrictions on the entitlement to take legal action of individuals

Only civil law incapacities are restrictions on the entitlement to take legal action. These restrictions on the entitlement to take legal action of individuals are also called "incapacities".

The restrictions of the entitlement to take legal action of individuals can be classified according to several criteria:

1. Depending on their purpose:

- a) Incapacities with a sanction character

- b) Incapacities with the character of protection or care measures
- 2. Depending on how it operates:
  - a) Incapacities that operate as of right (*ope legis*), by simply including the individual in the hypothesis of the norm that establishes the incapacity
  - b) Incapacities that operate through the effect of a court decision that remains final or irrevocable: this includes some sanction incapacities
- 3. Depending on their source:
  - a) Incapacities established by civil law
  - b) Incapacities established by the criminal law (P. Trușcă and A. M. Trușcă 2017, 39).

### **Cessation of the entitlement to take legal action of individuals**

The entitlement to take legal action of individuals ceases along with the very cessation of the existence (of the being) of this person. According to the provisions of S.35 of the Civil Code, "The entitlement to take legal action begins at the birth of the person and ceases at his/her death."

From this legal provision it follows that the date (moment) of the person's death marks the end of his/her entitlement to take legal action or, in other words, of the quality of subject of civil law.

In reality, the civil law regulates the manner of establishing the date of death for two possible hypotheses:

- the hypothesis of death acknowledged physically, directly both in the case of death due to a natural cause, and in the case of death due to a violent cause;
- the hypothesis of the missing person, in which case the examination of the corpse is not possible, although the person's death is certain, or almost certain; this hypothesis is applied to the missing person, and the legislator created the institution of the judicial declaration of death. For both hypotheses, the date of cessation of the entitlement to take legal action coincides with the date of death (P. Trușcă and A.M. Trușcă 2017, 45).

The death of a person is a legal fact that is physically ascertained, directly, by examining the corpse and is established by means of a certificate of death as a medical act (Fodor and Drimer 2014, 65).

In case of the death which is directly ascertained, the death is registered at the local public administration authority in the administrative-territorial area of which the death occurred, based on the verbal statement made by the family members of the deceased, or in their absence, by one of the following persons: doctor or another staff member from the health unit where the death occurred and any person who has knowledge of the death.

If the physically found death presupposes both the existence of the corpse and the finding of death, there are situations when such a finding is not possible, due to the non-existence of the person's body, but there are sufficient and solid indications that the person is not alive (natural disasters, air, maritime disasters), or the disappearance of the person from his/her home for a long period.

Regardless of the circumstance, the disappearance of a person requires the clarification of his/her legal situation, because a long disappearance may cause uncertainty either about his/her existence or this uncertainty affects the interests of other people.

As a notion, the "judicial declaration of death" is the legal institution and, in time, the legal means by which the end of the entitlement to take legal action of individuals is determined when his/her death cannot be ascertained directly.

The existence of this legal institution is based on the social-legal necessity of clarifying the situation of the missing person, about whom no one knows whether he/she is alive or not. In order to clarify the situation of the missing person, both the society and the persons with whom the missing person has civil relations are inquired (P. Trușcă and A. M. Trușcă 2017, 46-49).

## Conclusions

From the content of the present paper, it follows that the participants in the civil legal relations are the subjects of civil law, as these are the holders of rights and obligations.

As it was found, the entitlement to take legal action - that aptitude of the individual to have civil rights and obligations - occurs at birth and lasts throughout his/her life.

Regarding the content of the entitlement to take legal action, both the rights and the obligations are presented differently, but from the point of view of their existence, these cannot be separated, in the sense that an obligation corresponds to each right and vice versa. The entitlement to take legal action of individuals is acknowledged and attributed to all persons.

The Universal Declaration of Human Rights presents the international norms regarding universality, that feature of the entitlement to take legal action attributed to every human being who has the right to have his/her legal personality acknowledged everywhere.

Even if certain restrictions or limitations of the entitlement to take legal action may be imposed on the individual, the latter cannot be completely deprived of it.

The law prohibits any discrimination based on race, color, gender, language, religion, wealth, national or social origin, so that another fundamental principle of civil law can be inferred, namely equality. Citizens remain equal before public authorities and the law.

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