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# Ensuring the rights and obligations of the representative

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**Abstract:** Representatives have significant rights and responsibilities that are critical for efficient management and protection in the domains of law, business, and politics. This article examines the procedures for enforcing these rights and obligations, the consequences of non-compliance, and how this situation affects stakeholders. This article illustrates the importance of a balanced approach to ensure that representatives carry out their responsibilities efficiently while upholding the values of accountability and integrity, through an analysis of the basic legislative framework, case law, and enforcement strategies.

**Keywords:** Representation, competent person, partial or limited transaction, doctrine of representation, entrusted manager.

**Introduction:** In civil-legal relations, the representative is the one who performs the most fundamental and direct action. Representation is considered an institution that determines the legal basis for the representative acting on behalf of another person. The representative carries out legal actions by concluding a transaction on behalf of the person who has entrusted him or her with it. Therefore, a representative is required to have appropriate knowledge, qualifications and skills, professional experience and full legal capacity. Any individual who has shown a desire to carry out these actions is a representative, and it is not permitted to force representation on anyone (or forced representation is not allowed).

As a rule, a representative is considered a person with legal capacity. This means that an individual in a state of emancipation can also be a representative. A relationship of mutual trust has been established between the person who can act on behalf of another person as a representative and the person who grants the power of attorney. The representative becomes a

representative at will and is regarded to have the right to terminate the representation at any time. In other words, the rule that 'impermissibility of unilateral refusal to perform an obligation' (Article 237 of the Civil Code) does not apply to a representative.

The representative must have legal capacity. Since the legal consequences of a transaction concluded on behalf of the authorizer do not affect the legal sphere of the representative and, therefore, do not lead to a decrease in his property, the law does not prohibit the representation of citizens with partial and limited legal capacity (Articles 27, 28 of the Civil Code). However, since it is impossible to impose on a authorizer who does not have the capacity to conclude a transaction the risk of damage resulting from the conclusion of a transaction on his behalf by an inexperienced or dishonest representative, it becomes clear that citizens with partial and limited capacity to conclude a transaction cannot become guardians or trustees (Law "On Guardianship and Trusteeship").

A citizen with partial or limited legal capacity may experience a loss, in case of non-approval by another person of a transaction concluded on behalf of another person without his authority. Therefore, according to Paragraph 1 of Article 132 of the Civil Code, according to Articles 27 and 29 of the Civil Code, such a transaction enters into force for a citizen who is partially or limitedly legally capable of making a transaction with the permission or consent of his or her legal representative.

In civil law literature, civil law actions are divided into three main groups: transactions (RechtsGESchafte), transaction-like actions (GESchaftsahnlichen Handlungen) and real actions (Realakte).

Transactions are actions aimed at causing the consequences of private law, that is, at determining, changing or canceling civil rights and obligations. These consequences are determined by the content of the will of the participants, in particular the representatives, and arise not only because the law binds them to transactions, but also because those who make transactions want them to appear in the first place.

Actions analogous to transactions, such as recognition of debt (Article 157 Paragraph 1 of the Civil Code), notification of the debtor's waiver of the claim in favor of another person (Article 317 of the Civil Code) and refusal to accept the proper execution proposed by the creditor (Art. 338 Paragraph 1 of the Civil Code), differ from transactions in that the legal consequences of these actions are determined not by the will of the person, but by law, and whether the participants want them or not.

The provisions provided for transactions in connection with the discovery of the will contained in actions analogous to transactions, including the provisions on representation, may be applied analogously if the purpose of these provisions justifies their appropriate application. With the help of analogy, open gaps in the law are filled in, in which the rule used in the text of the law does not exist, although for the purpose of legal regulation, this rule is required to be in the law [1, 84].

R. Leonhard notes that representation "may be applied not only in transactions, but also in legal acts analogous to transactions" [2, 309]. Contrary to this opinion, A. Manigk notes the following: "the will of the person acting in the implementation of actions analogous to the transaction in relation to the occurrence of a legal consequence does not have significance until this consequence arises. In the case indicated by R. Leonhard, it is about facilitating the implementation of the factual content of a transaction-like action that is not representative in the true sense" [3, 315].

However, the author then argues that such assistance, particularly assistance in conveying a message, cannot be analyzed as representation by analogy. In this case, the legal consequences of one person delivering a message to another person, according to A. Manigk, are not the "similarity of the message to a transaction" and the rules on representation do not apply to it, but the "Vollmachtsverhaltnisse" that bind these persons. In this situation, the informant is considered to have acted on the instructions of the employer [4, 22]. This analysis does not take into account not only the existence of "Vollmachtsverhaltnisse" between the representative and the authorizer, but also, first and foremost, the specifics of similar actions. For this reason, the rules of representation on analogy are applied to such actions [5].

Real actions are carried out without the aim of determining will, and the law binds them to legal consequences without taking into account the legal consequences that the person acting desires [6, 334]. Real actions, in particular, the creation of a scientific or artistic work (Article 8 of the Civil Code), the discovery of treasure (Article 196 of the Civil Code) and the public announcement of the award (Article 981 of the Civil Code). In particular, real actions have very little in common with transactions, and it seems that the provisions on transactions should not be applied to them by analogy.

S. Schlossmann and R. Hoffmann have different views on the possibility of carrying out some real actions through a representative.

S. Schlossmann defines representation in his well-known work "The Doctrine of Representation, Especially

in Mandatory Contracts" that it is carrying out someone else's work at the risk and expense of the interested party. In this way, the author acknowledges the existence of a real movement even when one person makes a new movable object from one's own materials to another. But the preparation of a new item is a real action, which leads to the owner of the materials taking possession of the thing not directly according to the will of the manufacturer, but rather to the beginning of this legal consequence. However, since the owner of the materials allows the use of these materials, in this case, he acquires the status of a person who made the movable item for him (Article 182 of the Civil Code). Furthermore, when creating an object, its direct manufacturer does not express his or her own will towards it, and even if s/he does express such will, s/he does not have the right to prevent the owner of the materials from acquiring ownership rights to the new object. Therefore, s/he acts not as a representative, but as an assistant (Gehilfe) to the producer of the item, which excludes the application of the rules of representation to his activities.

The representative concludes the transaction on behalf of the authorizer, that is, the representative informs the third party that in the process of concluding the transaction the authorizer should be in his or her place. The representative with this information conveys the principle of openness (Offenheitsgrundsatz) of representation [7].

The statement of the representative that s/he is acting on behalf of the authorizer serves the interests of the person to whom the representative's will is directed, and s/he is aware that his counterparty is not the person with whom he is entering into a transaction, but another person. Therefore, the representative's intention to act on behalf of the authorizer must be determined by the recipient. On the contrary, the awareness of third parties acting as a representative does not have legal significance. " … The direction of the representative's will (will to represent) should be "not for third parties", but at a level that is distinguishable for the person to whom it is addressed (partner in expression) [8, 341]. "It is sufficient that the person with whom the representative entered into legal relations on behalf of the authorizer is aware of the person's actions as a representative. How this relationship appears to others is not taken into account" [9, 225].

In most cases, the the representative declares directly to the recipient of his will that he is acting on behalf of the representative. However, it can indicate this in another way, for example, by concluding a transaction in his own presence, by indicating that he is his representative, in particular, a seller in a store owned by another person (Article 129 of the Civil Code), or by informing his counterparty that he is concluding a transaction as a court manager. To do this, it is not enough for the representative to announce that s/he protects the interests of another person. Because in this case, the representative does not directly express his will to bring about the legal consequences of the transaction s/he is carrying out in the legal sphere of the authorizer. H. Reichel rightly highlights that "if someone concludes a transaction expressly for the benefit of a third party, then this... does not mean that s/he is concluding it on behalf of the third party. With this same success... s/he can act on his/her own behalf by being... a commission agent... transferring the work without assignment... "or" entering into a contract for the benefit of this third party" [10, 173].

Articles 129, 849, and 1144 of the Civil Code state that the bankruptcy manager, entrusted manager, and hereditary manager (executor of inheritance acts) shall enter into transactions in respect of managed property on their own behalf. If the situation is described by the legislator, then these transactions are made by the managers directly with the intention of causing the necessary legal consequences for them. At the same time, the bankruptcy manager, entrusted manager or hereditary manager as a manager of someone else's property, expressing a will to ensure that he is the owner of the property, not only of the transaction he or she has concluded. Accordingly, the legal consequences arising from it arise directly with the person granting the authorization. Therefore, Article 857 of the Civil Code states that "The rights acquired by the entrusted manager as the result of actions for the entrusted management of property shall be included in the composition of such the property". As for the bankruptcy manager and the hereditary manager, a similar conclusion can be drawn from the fact that there are no provisions in the law obliging the manager to transfer the rights acquired during the management of the property to the authorizer.

Analyzing the actions of managing someone else's property, H. Dole notes that the manager acts "neutral", that is, he does not make transactions on his own behalf or on behalf of someone else [11, 268]. This statement does not even have the appearance of reliability, because when concluding this transaction, the manager does not express his or her will to create a legal effect that corresponds to its content, both for himself and for the owner of the property, as a result of which the transaction does not enter into force at all.

The representative usually tells the recipient of his will the name of the authorizer (the person granting the power of attorney) or allows the recipient to determine this name himself (for example, it can be read from the

front of the store where the agent works as a salesperson). However, when the representative informs that the transaction in progress is due to enter into force for the authorizer whose name is not disclosed, there is also an action on behalf of the authorizer and due to the circumstances of the case, the addressee will not be able to determine who the authorizer is. In this case, they are talking about a transaction for the person concerned (GESchaft fur den, den es angeht).

In practice, the following types of transactions can be concluded for the relevant person:

a transaction in which the representative does not name the authorizer, whose identity has already been determined;

a transaction concluded on the condition that the representative subsequently identifies and names the authorizer;

a transaction concluded by the representative on behalf of an unknown authorizer, whose identity must be determined [12, 50].

An example of a transaction in which the representative does not name the authorizer, whose identity is already known, is the sale of a painting at an auction, if the organizer acts as the representativeof the seller and keeps his or her name secret at the request of the buyer. The legal effect of this transaction arises for the authorizer, regardless of whether the addressee later knows the will of the representative or not.

An example of a transaction concluded under the condition that the representative subsequently identifies and names the representative can be given below. A representative of multiple confidants who commissioned the purchase of the same item, by concluding an agreement with the owner on the sale of this item, can announce which of the confidants will be the seller one week later, and at the same time announce the name of the confidants who offered the highest price. When concluding such a transaction, since it is unknown in whose legal sphere the legal consequence corresponding to its content should occur and whether this legal sphere is generally defined, the transaction shall not be valid until the representative specifies the name of the authorizer. It shall take effect ex tunc upon notification of the name of the person represented by the representative. Thus, the legal consequence desired by its parties (in this example, the emergence of rights and obligations of the seller and buyer) is considered to have occurred at the time of conclusion of the transaction (in this example, a purchase and sale agreement).

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