

Investigating Actions of the Discriminator Immature from the Viewpoint of the Law in Iran and France

Mohammad Reza Mohammadzadeh Rahni^{1*}, Peyman Kavousi², Hamid Reza Erfanian³

¹Department of Humanities, Shirvan Branch, Islamic Azad University Shirvan, Iran

²Graduated student, Department of Humanities, Shirvan Branch, Islamic Azad University Shirvan, Iran

³Lecturer of Eshragh University of Bojnourd

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ABSTRACT

The immature is a child who has reached the age which can recognize the good from the bad and has the power to understand. So he has the will and the legal intent and does the legal transactions.

The Civil Code of Iran, France and Germany do not recognize the legal actions of the immature. In Iranian law the immature can do beneficial transactions independently and it does not need the involvement of his guardian. For example, he can accept the gift and in such case he would be the owner. However, other legal acts cannot be done independently and it needs that his guardian to state his satisfaction before or after the transaction. This way the transaction will be valid and otherwise it will be in vain. In French law the transactions by immature is not valid too and the child's guardian in the event that it deems expedient would accept it and otherwise he can request the court to void it.

KEYWORDS: child, discriminator, transactions, Iran Law, French Law.

INTRODUCTION

Being wise in the Rights of Iran is the ability of individual to have and use his rights and in turn is of two types: Tamatto and Estifa. The Tamatto means having the rights which are for all people from birth to death, but some people for some reason have not the capacity of Estifa and the legislative is prohibited them from the acquisition of the property or to be involved in legal actions related to the properties, this people are so-called Mahjour. Mahjourns in terms of their transactions are divided into two categories: people without the power of discrimination (the crazy or the immature) and people without enough growth (the immature or the fool). In this paper, we investigate the transactions by the immature from the latter category, i.e. people without enough growth.

Legal actions of the immature

The immature can recognize the good from the bad in simple matters and for this reason he can recognize the legal actions including transactions and their effects and can sign transactions. Iranian Civil Code, in Articles 1212 and 1214 has stipulated this ability, i.e. signing transactions, for the immature. But because these people have not grown sufficiently to recognize and respect their financial benefits, their legal acts and their possessions on their finances properties is declared invalid.

Transactions by immature, in terms of legal status can be divided into two types: transactions related to the property and financial rights of the immature; and transactions that result in the ownership of the immature, like accepting donations.

According to Article 1212 civil law, transactions related to the property and financial rights of the immature (either point or non-point) is void and as later would be stated the purpose of these transaction which are voided by the law, is independent transactions of the immature, i.e. transactions that solely relies on the consent of the immature and his guardian does not confirm them. In voiding these transactions, there is no difference between the immature with the power of discrimination or the immature without that power. If these transactions to be confirmed with the guardian or the immature itself after being matured would be valid, but transactions that result in the purely acquisition of the immature, independently, and without the need to be confirmed by the guardian are valid.

Article 1212 of the Civil Code stipulates that: [acts of the immature where related to the properties and or financial rights are void and have no effect. However, the immature can receive donations and accept gifts].

It is clear that according to the rules above, the transactions by the immature are principally void, except transactions resulting in the acquisition of donations.

But what needs to be discussed is the status of transaction by the immature with respect to his property or financial rights when his guardian has rejected them. Whether these transactions such as transactions done by

*Corresponding Author: Mohammad Reza Mohammadzadeh Rahni, faculty member, Department of Humanities, Shirvan Branch, Islamic Azad University Shirvan, Iran

the crazy or the fool can be considered void and effectless, or it could be considered valid after permission by the guardian or himself after being matured.

The legislator has not clearly stated the status of transactions by the immature related to his properties and financial rights before the permission or rejection by the law or guardian. Some believe that they are void and others believe they are non-influential. The main source of this disagreement is the conflict between Article 212 and 213 of the Civil Code and the ambiguities which there is in the legal matter. Article 212 of the Civil Code has voided transactions by all three groups namely those who are not mature or wise or are crazy, without any separation, while Article 213 of the Civil Code stipulates immediately that transaction by Mahjourns is not valid, and of Article 1212 has voided all finance transactions by the discriminator and non-discriminator immature absolutely, and only an exception there exists that transactions by the immature which are absolutely beneficial are valid.

No interpretation or discussion, which to guarantee the gathering of the regulations and elimination of ambiguity and conflict as well as legal analysis, is not seen.

Some writers with respect to the Article 212 of the Civil Law consider transactions by the immature invalid (Imami, 1960, p. 466; Shayegan, 1960, p. 466). Others merely quoting the text of Articles 212 and 213 and without considering the conflict between them have concluded, without considering the conflict between those two Articles (Adl, 1963, p. 128), while others have considered deals by the discriminator immature non-influential (Katoozian, 1960, p. 25). Among the latter group, some people believe that Article 1212 of the Civil Code which voids actions and words of the immature also has considered those by the discriminator immature (Safaei, 1972, p. 138). However, considering the term immature in this article and the presence of exception about purely beneficial deals by the immature, this idea cannot be correct, because if the purpose of this article is the non-discriminator immature then referring to that exception would be in vain and irrelevant, because as it is presumed in the main article no refer is made to the discriminator immature so that it can be extracted from the sentence of the exception.

In Imamiyeh jurisprudence, popular opinion is that the deals by the discriminator immature is void, and some jurists have agreed to that claim, while others have considered it true only by the permission of the guardian (Ansari, Article 1410 of the Civil Code, p. 316). Someone has voided deals by the discriminator immature respecting some anecdotes as well as some well-known consensus and agreements.

The validity of deals by the discriminator immature in the current Law of Iran

In our opinion, transactions by the discriminator immature are void. To prove this point, first, it is necessary to interpret the relevant laws to the Articles 212 and 213 and then to analyze reasons for its being non-influentially, because as long as the apparently conflicts between two articles is not resolved, any comment about the status of the deals by the discriminator immature are without any scientific basis and would be of no value. Respecting both Articles of 212 and 213 of the Civil Code and according to the appearance of the Article 212 of the Civil Code, voided deals of the immature include their independent deals, namely their transactions without the approval of their guardian. Our intent of the non-validity of deals by Mahjourns include personal deals that their fault has led to their limitations, however, they have intention to compose. Because, the word Mahjour according to the Article 1207 of the Civil Code is used in all three groups of people without the qualification and in its specific meaning alike immature refers to the fool (Article 1214 of the Civil Code of Iran) as well as in its middle meaning the fool can refer to the discriminator immature.

Invalidation of the independent deals is common to all types of Mahjourns. Also, the independent deal of the fool which is not confirmed by the guardian would be invalid. This way, the deal by crazy and the non-discriminator immature due to the lack of will is invalid from the scratch, but the deal by the fool and the non-discriminator immature according to the Article 1212 and 1214 of the Civil Code, which have the intent to write, in three separate stages are of different situations. Deals by these two groups, before the ratification or rejection of their guardian, which are still unclear whether are independent or not, are non-influential, because description of the lack of influence by itself indicates the status of the deal in the case the condition of the deal is unknown. After the ratification of his guardian, the deal would be influential, while at this stage the transaction no longer should be considered independent and rather because of the interference of his guardian, in fact, it should be considered a Mahjour. If the deal is rejected by the guardian of the Mahjour, that deal will be void, but at this point it becomes clear that the intended deal is the independent deal of the Mahjour.

According to the above analysis, the conflict between Articles 212 and 213 in appearance was resolved. Under Article 212, the independent deals of Mahjourns of every group are void, whereas according to the Article 213, deal of those who are only Mahjour but having the intention of writing, i.e. the fools and the discriminator immature before the ratification and rejection by the guardian is not influential. Voidance of the deal of the crazy and the non-discriminator immature from the beginnings is a rule that from the regulation in Articles 1213 and the concept of exception in Article 1212 as well as rules on the impact of composition in transactions will be clearly understood. So it cannot be objected that the situation of transaction by the crazy and the non-discriminator immature is not considered in the law.

To prove the lack of validity of the deal by the non-discriminator immature, by relying on the above interpretation, the following context is presented to prove it:

1. Only referring to the Article 212 of the Civil Code, the deal by the non-discriminator immature cannot be voided before ratification or rejection by the guardian. Because as we will say soon, regardless of the appearance of the Article 212 of the Civil Code, which refer to the deals of the immature people without involvement of their guardians, if we consider the transaction by the discriminator immature before ratification or rejection by his guardian as void, then the deal by the fool should also be considered as void, because in Article 212 deals of the fool in a row with the deals of immature is declared as void, whereas Article 213 has immediately referred this transaction to be influential, which in turn shows that its meaning has been lack of influence before ratification or rejection by the guardian and it is not rational that voidance of the deal by the fool in this stage, in Article 212, and its lack of influence immediately in Article 213 to be attributed to the legislator. Then we must accept that the verdict of invalidity of the deals by the Mahjours in Article 212, including the immature people, is relevant to a stage different from the stage related to the Article 213, i.e. invalidity of the deals by the immature people. Moreover, none of the authors of civil rights has discussed the invalidity of the transactions of the fool before ratification or rejection by his guardian.

In confirmation of the above interpretation the Article 1212 of the Civil Code can be used, as follows: In this article first the main rule and then an exception to that are enacted. The original rule is invalidity of the deals of the immature and the exception is the validity of legal acts done by the discriminator immature provided that the deal is a donation. But we know, as it is acceptable to all that the purpose of the legal actions in the sentence of exception includes legal actions by the discriminator immature, because the discriminator immature to tie these contracts does not the permission of his guardian, because no loss would face him due to accepting a donation. Therefore and because of the need for unity between the exception and the original sentence we must accept that the purpose of the actions and sayings of the immature, which absolutely and without any separation between the discriminator immature and the non-discriminator immature is stipulated as void, are their actions and sayings. However, actions by the non-discriminator immature are clearer and according to the other regulations are void from the scratch. The analysis of the relationship between the original sentencing and its exception to the topic provide a symmetrical point for the independence of the deals of Mahjours, which is stated in Article 212 of the Civil Code, would result.

2. With respect to the provisions of Article 1212 of the Civil Code, it clearly result that the discriminator immature can have intention to compose and accordingly, he can do deals with the result of owning a donation or pure benefit without any risk. Studying two Articles 1212 and 1214 of the Civil Code it appears that the criterion of the main rule and the exception in the aforementioned article is the same and the fools and the discriminator immature psychologically are of the same situation and both have the intention to compose and lacks sufficient growth and intelligence to protect their financial properties. In this case, it makes no difference if the discriminator immature unlike the fool is not reached to the sexuality maturity. Different between Articles 1212 and 1214 is due to the usage of the word "immature" in them which is used as the discriminator immature and the non-discriminator immature in them, respectively. Thus, we should inevitably have an order in this matter that in addition to being common to both of them. Please note, that the aforementioned rule is relevant to the actions they do independently. Therefore, the status of the deals by the discriminator immature, neglecting the aforementioned exception, is the same with that of the fool.
3. Invalidity of the deals by the discriminator immature can also be inferred from the concept of priority in its comparison with the rule of the Mokreh deal, because the discriminator immature has intention to write a transaction and his defect is limited to his inability to understand financial benefits. But according to the regulations relevant to the reluctance (Articles 199, 203 and 209 of the Civil Code), reluctant transactions that are not satisfied to do the transaction is non-influential and not void. Then, we have to accept that deal by the discriminator immature which is satisfied but his satisfaction is faulty, cannot be void.
4. General Board of the Supreme Court of the country after spending a period of uncertainty, in its vote with the number of 3082 and with the date of 1960/02/17 stipulated that transactions by the discriminator immature are not valid (the judicial procedure of Keyhan, verdicts of the General Board of the Supreme Court of the country, since 1949 to 1963, p. 322).

It should be added that effects of deals of the discriminator immature after the ratification of the transaction and its exchange, alike to that of the fool, is similar to deal of Makrouh and deal of pry (Article 258 of the Civil Code of Iran) and has the same regulations from the composition the contract.

In French law, deals by the discriminator immature alike that for the people with lack of qualification is relative void. For this reason, if the immature itself or his guardian after reaching the immature to the maturity

and growth does not recognize it according to the qualification of the immature they request the court to issue its invalidity, but the other side of the contract cannot based on the immaturity of him request a similar request from the court (Mazeaud, Dr.civ.T.2, premier volume, Ed.1998, Montchrestien. N. 230).

Conclusions

Being wise in the Rights of Iran is the ability of individual to have and use his rights and in turn is of two types: Tamatto and Estifa. The Tamatto means having the rights which are for all people from birth to death, but some people for some reason have not the capacity of Estifa and the legislative is prohibited them from the acquisition of the property or to be involved in legal actions related to the properties, this people are so-called Mahjour. Mahjourns in terms of their transactions are divided into two categories: people without the power of discrimination (the crazy or the immature) and people without enough growth (the immature or the fool). In this paper, we investigate the transactions by the immature from the latter category, i.e. people without enough growth.

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The Civil Code of Iran, France and Germany do not recognize valid the legal actions of the discriminator immature. In Iran law the immature can do beneficial transactions independently and it does not need the involvement of his guardian. For example, he can accept the gift and in such case he would be the owner. However, other legal acts cannot be done independently and it needs that his guardian to state his satisfaction before or after the transaction. This way the transaction will be valid and otherwise it will be in vain.

Therefore, the transactions of the discriminator immature can be considered in three stages: (1) when the immature has done the deal and his guardian has not stated his acceptance or rejection yet, which in this case the deal is void; (2) the stage in which the guardian has accepted the deal, which in this case the transaction is correct; (3) the stage in which the guardian has rejected the deal, which in this case the transaction will be canceled.

In French law the transactions by the discriminator immature is not valid and the child's guardian in the event that it deems expedient would accept it and otherwise he can request the court to void it.

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