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REALITIES AND PERSPECTIVES

## **Exercise Capacity and Usability of AI Subjects**

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**Abstract:** The present research is aiming to demonstrate the conditions under which robots can have civil law reports, whilst focusing on analysing national, as well as european law. The main purpose is highlighting that AI subjects may be conferred with capacity of exercise and utilisation capacity. The “pedestal” on which we propose building this “conceptual caryatid” will be law itself. The adduced demonstration shall imply various methods, like logical, historical, comparative and qualitative (interview). Conclusions of the article will capture the importance of carrying out a legal relationship between human and AI subjects. The present study can also be useful for further development of legislation in this field, for research, as well as for different doctrinal approaches. As a result, our investigation aims coming handy to a large number of practitioners and professionals: from early apprentices to the late experts of the field – teachers, lawyers, magistrates, legislators and others. The novelty of the study recalls bringing legislation, which is insufficient at the moment, into line with the reality of this technical phenomenon, that is typical nowadays, and finding a balance between the two “worlds” – that of AI and that of norms.

**Keywords:** robots; legal report; law; civil law

### **1. The Emergence of Civil Capacity in the Romanian Society**

Civil capacity is a notion that comprises both legal capacity of exercise and legal usability.

One of the theoretical definitions (Jugastru, 2016, p. 23) regarding the capacity to use states that this is an integral part of civil capacity and that it represents one’s ability to have rights and obligations, thus becoming a civil law subject. In addition, it is also mentioned that within private international law, the capacity to use stands for one’s ability of being subject to civil legal relations, that present with an element of extraneity.

According to the same opinion, (Jugastru, 2016, p. 23) exercise capacity, which is a part of civil capacity together with legal usability, confers individuals the possibility of assuming rights and execute obligations, through conclusions of legal acts and by respecting legal provisions.

Surely, the most edifying yet still concise explanations reside in the art. 37<sup>2</sup> and 34<sup>3</sup> of the Civil Code. That is why, from our point of view, doctrinal additions could be useful for the completion of the legal definition, and a better understanding of it.

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<sup>2</sup> “Exercise of capacity is a person’s aptitude of concluding legal civil acts by itself.”

<sup>3</sup> “Usability is a person’s attribute of having rights and obligations.”

To be able of making an accurate research on the subject we believe a lookback, thus a brief incursion in the history of this institution is utterly necessary.

### 1.1. Brief history

First certifications of personal civil capacity are identifiable since ancient times, comprised within the existence of contracts and even barter. The latter were quite common during The Dacian Era, whilst Romans brought more complex customs to the Danube-Carpathian-Pontic space, customs which were subdued to laws that stated legal reports between persons. These practices became more than just simple actions, thus gaining legal value. Further going, the Medieval Era hasn't been too rich in information towards legal life, so unfortunately, we aren't yet able to analyse it.

On the other hand, history begins to provide some precise legal data over the 19<sup>th</sup> century, when the province of Moldova comes up with a Legal Code of Calimach. This was a rather complex collective work, for the era given, which brought together the efforts of various lawyers, like Christian Flechtenmacher, Anania Cuzanos, Andronache Donici, Damaschin Bojincă and others. The initiative was crowned by Voivode Scarlat Callimachi (Calimach), who promulgated it in 1817. The Code, named specifically "The Civil Code of Moldova", was entirely written in greek at that moment, and was drafted after the 1804 French Civil Code and 1811 Austrian Civil Code. The Calimach Code had a tripartite structure, numbering 2.032 articles. From our point of view, it is essential that it consecrates civil liability based on guilt, regardless of intention, and provides two cases of exoneration from liability - "the crazy" and "the child" – for which caretakers will respond<sup>1</sup>.

So, there we have it, the primary legislative care for the situation in which the subject had their liability engaged for causing damage, with accent on the subject's responsibility. It is noticeable how the legally incapacitated and the minor are absolved of it, since they will not be held responsible for the damage created, because they lack this liability, hence they cannot be part of any civil relationship.

On the other hand, in Țara Românească Province, "The Caragea Rule" is the first Legal Code. Promulgated in 1818, during the rule of phanariot ruler Gheorghe Caragea, it contained stipulations of feudal taxes for peasants and of women's interdictions to participate in political matters.<sup>2</sup> In our opinion, exclusion of women from society's political scene was also a form of limiting the liability of a person, similar to what Moldovan Laws stated, but only for the mentally incapacitated and minors. Basically, women could enjoy usability, but could not hold any political positions and were forbidden to vote, these being exclusively masculine rights, thus they did not benefit entirely of their liability.

The true changes of Modern Era finally come during the reign of Alexandru Ioan Cuza, that unites the two existing Romanian Principalities (Moldova and Țara Românească) and immediately adopts a brand-new Civil Code. It will be promulgated in 1864 and take effect by the 1<sup>st</sup> of December 1865.

Cuza's Civil Code was structured in three "books" and comprised no less than 1.914 articles, but with time there were plenty normative acts that repealed, modified and completed the Code's articles. Although there have been many attempts of replacing the old Code with a new one, the regulations stated by A.I. Cuza extinguished and created all legal relations, forming also a judicial practice – bridge over time, until the 1<sup>st</sup> of October 2011, when the New Civil Code took its effect.<sup>3</sup>

<sup>1</sup> [https://ro.wikipedia.org/wiki/Codul\\_Calimach](https://ro.wikipedia.org/wiki/Codul_Calimach), consulted on 02.03.2021.

<sup>2</sup> [https://ro.wikipedia.org/wiki/Legiuirea\\_Caradja](https://ro.wikipedia.org/wiki/Legiuirea_Caradja), consulted on 02.03.2021.

<sup>3</sup> [https://ro.wikipedia.org/wiki/Codul\\_Civil\\_din\\_1865](https://ro.wikipedia.org/wiki/Codul_Civil_din_1865), consulted on 02.03.2021.

Again, we trace also in the Old Civil Code a preoccupation of the legislator to norm the situations that regard legal capacity. A few examples are enlightening. We shall present a series of the 1865 regulations<sup>1</sup>, articles which referred to the subjects' capacity to establish contracts:

- Article 949: "Any person not declared incapable of the law can contract."
- Article 950: "The incapable of contracting are: minors; mentally incapacitated persons; married women, in cases determined by law; generally all the persons that were forbidden any contracts by law"
- Art. 951: "The minor cannot attack his commitment for the cause of incapacity, then only in case of injury."
- Art. 952: "Persons capable to commit cannot oppose the minor, the incapacitated or the married woman their incapacity."

## **2. Existing Legislation - Comparative Law**

In a much younger field, barely in formation, in which the impact of A.I. towards legal world is growing, positive law is the one which will mark a start for a research paper. The legislation in force is the core around which the research will develop, together with specialised works that are also utterly necessary.

Therefore, we shall present the European and National existing norms, but also doctrine elements adding also our pertinent observations.

### **2.1. Romanian Legal Framework**

In Romania, usability and liability refers directly to human natural person and the headquarters of subject is represented by articles 34-36, respectively 37-48, Civil Code. It is understood from its provisions that we have personal usability from birth to death, and that the person is susceptible to civil rights and obligations.

The definition of the robot specifies that this is "an automatised apparatus that can perform, based on a complex programs sistem, a series of directed actions, similar to human actions."<sup>2</sup>

According to specialists at the Robotics Institute of U.S.A., the robot is "a universal manipulator, reprogrammable, conceived to move materials, components, tools or specialised systems, conducting different programmed movements in order to fulfill different tasks." (Negruț, 2019, p. 16)

Another definition, found in the Merriam Webster dictionary, the robot represents „a machine that looks like a human and that accomplishes complex tasks (such as speaking or walking) characteristic of man.” (Negruț, 2019, p. 16)

Therefore, these entities have human appearance and even human characteristics. An argument that humanoid robots should benefit usability and liability, similar to human persons, is also a main objective that robotics pursues for the future, that of elaborating autonomous robots.

The doctrine (Țârulescu, 2014, p. 7) assigned to this field is considering that autonomous robots will be capable of executing the tasks drawn, without any human assistance. At receiving th orders, the robot will be able of executing them in its own way, regardless that the user shall be the one to generate them. These entities, capable of actions, will be equiped with perceptual sensors, under a computer agorithm.

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<sup>1</sup> <https://lege5.ro/Gratuit/g42tgny/codul-civil-din-1864>, consulted on 02.03.2021.

<sup>2</sup> <https://dexonline.ro/definitie/robot>, consulted on 03.03.2021.

The best example for now is the robot Sophia, that act like a human being, having conversations and understanding what is communicated to her. It even has the liberty to answer the questions it is adressed, without being programmed to do it. Even more, it's the first robot who was granted the citizenship of a state, in october 2017, by Saudi Arabia.<sup>1</sup>

We will further proceed our demonstration by analyzing the legal features of usability. According to one opinion (Jugastru, 2016, pp. 24-25) - to which we rally by adding also the arguments – robots can have civil rights and obligations for which the Nationa Law reveals the following features of usability:

a) **Legality** reffers to the fact that all aspects regarding the start, content and termination of usability belong to the law field, thus private individuals cannot intervene in any way. In this context, robots should take part in civil life, being responsible for the actions they undertake. These will be subjected to law, exactly like human beings, because as long as they have autonomy, we may say they resemble the human person from a legal point of view as well. So, the certification of usability should be oposable to them.

b) **Equality** is mentioned in the Constitution's 16<sup>th</sup> article, and states that "citizens are equal to the Law and public authorities, without privileges or discrimination". The Civil Code completes the fundamental law by adding in it's 30<sup>th</sup> article that "race, color, nationality, ethnic origin, mother-tongue, religion, sex or sexual orientation, opinion, personal beliefs, membership of political, unional, social category or disadvantaged category, wealth, social origin, degree of culture, as well as any other similar situation, have no influence over civil capacity."

Corroborating the two articles, we can deduce that a humanoid robot should have the same rights as any other romanian citizen. This "social category" can't be ignored or unacknowledged legally speaking, because this would mean a serious violation of national norms. Of course, if the subject is liable of having civil rights and obligations, it shouldn't matter if this is a human being or an A.I. person.

As long as it resembles that much to a human, and is gifted with it's own perception and intelligence, it should be considered as an actual person, at least from the point of view of usability. This usability's germination moment will coincide with the moment the robot starts functioning, and furthermore the cessation of this capacity will coincide with it's decommissioning.

c) Continuing, **universality** means recognition of the individual's usability. In our country, according to the Constitution<sup>2</sup>, all romanian and foreign citizens, as well as stateless individuals are granted usability. Also, the Civil Code provides in it's 28<sup>th</sup> article that "any individual is granted usability and, excepting cases mentioned by law, liability.

Even if we denied an A.I. individual's rights and obligations, there is proof that robots can legally be viewed as persons. If usability is granted in Romania to foreigners also, then a robot with actual citizenship (for example Sophia, the humanoid robot we previously mentioned) will be able of having rights and obligations, just like any other romanian citizen. So, we can actually state: *Quod erat demonstrandum!*

d) **Intangibility**. This aspect is found in article 29<sup>3</sup>, Civil Code. It highlights the fact that usability cannot be restricted from any individual, exempted the cases shown by law. As a result, the existence of a person

<sup>1</sup> [https://ro.wikipedia.org/wiki/Sophia\\_\(robot\)](https://ro.wikipedia.org/wiki/Sophia_(robot)), consulted on 04.03.2021.

<sup>2</sup> Art. 18, paragraph 1, Romanian Constitution, published on Monitorul Oficial, nr. 767 from 31<sup>st</sup> of october 2003

<sup>3</sup> Art. 29, as found in the Civil Code: "(1) Nobody can be restricted in it's usability or striped, totally or partially, of it's exercise capacity, excepted the cases and conditions specifically provided by law."

(2) Nobody can give up, totally or partially, it's usability or exercise capacity."

is inextricably linked to the possibility of gaining rights and obligations. “From the moment a person exists (Jugastru, 2016, p. 24), usability cannot disappear but simultaneously with it.

It is very important that we observe the doctrine refers to the moment in which the person starts “existing”, thus opening the way to the recognition of usability towards robots, given that they actually start this existence from the moment they were programmed to do so. It is that very moment that they start being autonomous and can behave similar to a human individual (again, we will exemplify Sophia). More than that, “cases stated by law” do not comprise the A.I. robots’ category. *Per a contrario* and according to the legal principle that “what’s not forbidden, is allowed”, it results that robots also can have their usability granted.

e) **Generality** is that characteristic of usability which attests to the fact that all and any subjective rights granted by law to an individual, are acknowledged.

So considering the arguments, we believe that if law grants an individual any civil rights, *a fortiori* these rights should as well be conferred to A.I. individuals. As we mentioned before, the complexity of human-like robots will not allow them to be held outside of the Civil circuit.

f) The last but not least of aspects would be **inalienability**. Through this term we understand the impossibility of any waiver of subjective rights which make the object of usability.<sup>1</sup> Still, we must understand that such a thing as giving up the general capacity of gaining rights is not admissible. So, if someone wants to give up a certain subjective right *per se*, one might be able to alienate or encumber it. In other words, an individual can dispose as pleased of his subjective civil rights.

Inalienability is the guarantee of a person’s existence, the privilege of the legal subject. As long as robots are already being treated like actual individuals, having such miscellaneous skills – from direct and indirect medical assistance to home medical care<sup>2</sup> - they will benefit of their prerogative of disposing of their rights just like humans do. AN extra argument is the fact that medical robots already have the right to exercise a profession, a right that is certainly inalienable and depends on the holder’s will.

The **usability** of A.I. entities will be subjected to individual-related regulations, respectively articles 37 to 48, Civil Code. To further demonstrate that liability stipulations of the Code applies to robots as well, we shall analyse the notion itself. The definition is present, naturally, in the Civil Code<sup>3</sup> and states that the individual has a vocation to conclude legal civil acts by itself.

To demonstrate that robots will be able of concluding such acts, we shall resort to analyzing liability provisions, that we find within “The European Parliament’s Report” of 27.01.2017, which contains recommendations addressed to the European Commission for civil norms in the robotics field.<sup>4</sup>

One of these provisions defines robotic autonomy as “the capacity of decision-making and putting them into practice in the outside world, independent of external influence or control, given that this kind of autonomy is exclusively technological, and it’s level depends on how sophisticated the robot’s interaction with the outside environment has been conceived.”

In conclusion, if the robot is a complex one, with high autonomy levels, it can be a legal subject, with complete liability, or partial liability – if its independence is partial. The definition conceived by the European Parliament is the best argument of the existence of liability in the A.I. entities cases.

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<sup>1</sup> To be consulted: 29<sup>th</sup> Article, 2<sup>nd</sup> Paragraph, Civil Code.

<sup>2</sup> <https://www.linkedin.com/pulse/how-medical-robots-change-healthcare-ala-omar>, consultat în 05.03.2021.

<sup>3</sup> The base of this Law is Article 37, Civil Code.

<sup>4</sup> The Report can be consulted at: [https://www.europarl.europa.eu/doceo/document/A-8-2017-0005\\_RO.html](https://www.europarl.europa.eu/doceo/document/A-8-2017-0005_RO.html).

On the other hand, we also consider a clarification is required: their liability will be considered restricted or complete based on different criteria that for the human beings, meaning that it should depend on the robot's complexity.

Furthermore, according to Romanian Civil Code, a robot won't gain full usability when turning 18 years of age, but will have it as soon as it begins existing, respectively when it begins functioning as autonomous. In case the robot won't be having but partial autonomy, and being controlled by human factors, then it's usability will remain restricted for as long as it will function, or until it will receive some technical updates, that will allow gaining it in full.

Another problem highlighted in the report refers to legal liability in case of damage, given the degree of autonomy of A.I. individuals. The more independent robots are, the more responsible they are, meaning we cannot continue considering them as a producer's, operator's or owner's simple instrument. In which case, the European Parliament is really preoccupied of the norms regarding legal responsibility, and whether they are sufficiently clear or not.

Who will be held responsible for robotic errors and omissions, when they cannot be imputed to a human being or what will happen in case "robot's omissions that determined damage could have been avoided" – these are problems found in the respective "Report".

In our opinion, european concerns of norming robot's legal liability means their fair recognition as entities with legal capacity. To withstand by our affirmation, we will be calling art. 1.349 Romanian Civil Code, that stipulates in paragraphs 1 and 2 that he who has discernment and harms the rights or legitimate interests of another person, is required to fully repair the damage caused by these means. Considering the autonomous robots are aware of their actions and their consequences (humanoid robots, for example), we can state that they have full awareness when acting, therefore they also have usability. If they would be incapacitated, robots couldn't have civil responsibility for the damage they cause, and there wouldn't be any european concerns in this matter.

## 2.2. Legal European Context

"European Parliament's Resolution from 12<sup>th</sup> of February 2019, regarding a comprehensive European Industrial Policy regarding A.I. and Robotics"<sup>1</sup> contains aspects that we will be using as arguments for the idea that robots have legal civil capacity. At the "Health" section, we tend to find various details on A.I. from the medical field.

European Parliament ascertains that A. I. and robotics bring a lot of benefits for patient care, directly proportional with a higher life expectancy. With the help of robots, doctors and medical nurses will be more available for higher valued activities, like patient interaction.

If such a practice is to expand, and more and more robots will be caring for patients, it's easy to understand that this action asks for various interventions, that an A.I. agent will be performing from own initiative, without being able to be controlled by human factors. This decision-making freedom instantly confers legal liability and usability.

"The Resolution" highlights that A.I. already has a notable impact on wellbeing, on preventing, diagnosing and on medical research, with a high potential of ensuring personalised care. If robots can

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<sup>1</sup> [https://www.europarl.europa.eu/doceo/document/TA-8-2019-0081\\_RO.pdf](https://www.europarl.europa.eu/doceo/document/TA-8-2019-0081_RO.pdf), consulted on 06.03.2021.

lead research and make prognostics in the field, *a fortiori* they will gain civil legal capacity, being assimilate to medical personnel.

European Parliament invites the Commission to closely monitor the progress of these technologies and, if necessary, to propose changes in the regulations. The aim is to establish the legal framework of the user (doctor, professional), the producer and the medical institution offering treatment. There is, in addition, a special inclination in case of medical damage assisted by A.I.

Regarding this specification, we tend to consider it rather insufficient, incomplete, because not all medical robots will be partially independent, so that their author's responsibility can be held, either if it's the case of a doctor, a producer, or a hospital unit. In this case, we will appreciate that the robot would have restricted usability or none at all.

But, in another hypothesis, in which the robot has its own power and perception, it will be held totally responsible for the damage, which implies undoubtedly the existence of civil juridical capacity. In our opinion, the "Resolution" should also comprise the possibility for direct responsibility of the A.I. agent, considering that there are already enough humanoid robots in the world, which act independently, phenomenon that we believe will happen also to the ones in the medical field.

### **3. Conclusions**

A corollary of all ideas that we enlisted would be that norms should agree with reality, and its new challenges.

Technical field perfects each day, and inventions are more and more advanced and performing. On the other hand, relations between legal subjects are increasingly more diverse and numerous. In this context, A.I. will most likely interfere with legal relations, creating legal novelty. Understandably, society won't remain indifferent to these changes, and will accept and adapt them to everyday life.

Scientist Nikola Tesla said that "In the 21<sup>st</sup> Century, robot will take the place that slaves took, in ancient civilisations". So, what he is actually saying is that, in the future, robots could possibly be associated with humans. Regarding the fact that nowadays slavery is forbidden, because it contradicts fundamental human rights, Tesla's affirmation seems to be a more than eloquent conclusion, for our research subject.

Milovan Vitezović, serbian writer, attests metaphorically: "There will always appear new computer generations. We are forging a robotic family tree." The figure of speech has but a dose of truth, because robots are more and more often compared to humans, and their performance confers them increasingly more human attributes.

Also, in a metaphorical sense, our great philosopher, Emil Cioran, writes "Automatised sadness: an elegiac robot." Even if this thought is in a figurative sense, maybe it had the vocation of foreboding a future reality. In our interpretation, Cioran personifies the robot and assigns it human attributes. Again, this similarity of both categories sets a link between man and robot, link that became increasingly present in the past years.

All presented are, combined, the best proof of the necessity to develop laws in the A.I. field, to make it possible for these two fields – legal and technical – to coexist in an era of novelty and change.

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