CHILDREN AS VICTIMS UNDER RUSSIAN LAW

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I. Contributory Negligence

Are there any special provisions concerning contributory negligence if the tortfeasor is a child?

There are no special provisions concerning contributory negligence if the tortfeasor is a child. According to the general rule, contributory negligence on the part of the victim must be considered for the reduction of compensation. However, if a victim has been injured, a court may not deprive him or her of compensation unless there was intent on his or her part to sustain the injuries.

What are the rules governing contributory negligence of the child? Do such principles follow the same lines as those governing the negligence issue itself (mirror-image)? Does the fixed minimum age for children to be liable, if any exists, also apply to the contributory negligence of the child?

Generally, in the law of delicts the legal status of a person after fourteen is not different from the legal status of an adult. Thus, a child from fourteen to eighteen may be a tortfeasor and bear full personal liability and may be contributorily negligent when a victim. For children who are under the age of fourteen the same rules as those governing the negligence issue itself apply (mirror-image) – such children are presumed to be incapable of fault (intentional and negligent – both personal and contributory).

The Supreme Court has always supported the legal doctrine that a minor victim, who has not attained fourteen years of age cannot be contributorily negligent and even prohibited all courts from discussing this matter in their decisions.

1 See Grazhdanskii Kodeks Rossiiskoi Federatsii (Civil Code of the Russian Federation, GK RF), art. 1083, no. 2.
2 See GK RF, art. 1083, no. 2.
Thus, if neither the minor tortfeasor nor his or her minor victim has attained fourteen years of age they cannot be in fault of any kind at all.

4 At the same time, the question of contributory negligence by the victim’s parents or guardians arises. The plain implementation of the law dictates that only the minor tortfeasor’s parents are to bear all the responsibility, which may be unfair when gross contributory negligence could have been found had the victim been an adult. There are a few decisions where the parents of a minor who had caused harm together with another minor proved that the harm had arisen mainly through the fault of the other minor’s parents. Thus, considering the mirror-image to negligence, this rule might theoretically be applied with respect to a victim minor who was contributorily negligent and to his parents. However, the author is not aware of such precedents.

What is the standard of care governing the behaviour of children in the context of contributory negligence? Is such standard determined by the same principles and criteria which are relevant to the duty of care incumbent upon the child in the context of him or her being held liable?

5 If a minor victim is older than fourteen, a usual adult approach towards contributory negligence is applied. The standard of care will be an adult standard without consideration of the minor’s age. This standard is determined by the same principles and criteria which are relevant to the duty of care incumbent upon the child/adult in the context of being held liable.

II. Contribution in Equity

Is there a parallel (mirror-image) to liability in equity in the field of contributory negligence? If so, do the criteria determining liability in equity of the child also apply to the issue of holding him or her accountable for his or her contributory negligence?

6 Art. 1083 provides that the court may reduce or deny compensation having considered the property status of the tortfeasor with the exception of when harm was inflicted by the tortfeasor intentionally. This general rule may be applied to a child victim older than fourteen years of age. However, there is not any legally established mirror-image rule with respect to minor victims similar to the rule according to which an under-aged (under fourteen) minor tortfeasor may be compelled to compensate in equity. On the contrary, the prohibition on considering the contributory negligence of a child under fourteen stops courts from reaching such conclusions on the general grounds of art. 1083.

\[\text{See GK RF, art. 1083.}\]