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## DEPRIVATION OF THE PARENTAL RIGHTS ACCORDING TO THE MACEDONIAN LEGISLATION

### Abstract

One of the fundamental rights of the child is the right to live with their parents, providing that the parents will care for their children, fulfilling all their legal obligations. This right is guaranteed by many international and national documents. Hence any kind of physical and psychological ill-treatment of children, as well as any kind of neglect and abuse towards them is forbidden, thus parents have the right to protect their children from third persons. In situations where this kind of abuse derives from the parents themselves, the state is obliged to guard the interest of the child from his parents by taking them away from the source of abuse. Promoting the best interest of the child gives the state legal ground to intervene in the parental relations, when there are indices that the rights of the children are neglected or violated. This article analyses the legal institute of deprivation parental rights as the most severe measure against the parents who abuse their status as a parent, violating the rights and obligations towards their children with special emphasis in the national legislation of RM. The article will especially analyze the domestic violence as the most brutal form of abuse of children by their parents.

**Keywords:** abuse of parental right, deprivation of the parental right, domestic violence towards children

## INTRODUCTION

The family is one of the most important pillars of any society. Every child has the right to be cared about and to grow up in a functional and healthy family, to develop their emotional and intellectual potential and to grow into a healthy and respected individual. The rights and obligations of a family derive from this right of the child, hence, from the right of the child to live with their parents and the obligation of the parent to ensure a decent and healthy family life for their child through responsible exercise of their parental right.

Parental care includes the responsibilities, obligations and rights of the parents to protect the personal and material interests of their children. Despite the fact whether they live together or separated, the parents are equally obliged to jointly protect their children and care for them.

The respect towards the interest of the child by their parents, as guaranteed in the international documents, plays an important role in family law. The respect towards the interest of the child is certainly a primary and very important principle for the functioning of a family. But a generally important question remains: in reality, how well are these rights and interests of the child guarded by the parents?

It should be emphasized that the respect of the best interest of the child is promoted in the most important and fundamental international document for the right of the child - The UN Convention on the rights of the child. The most important demand of this convention is the protection of the best interest of the child where it is promoted as an obligation of the parents of the child. According to article 3 of this convention: in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. Moreover, in the second paragraph of this article the obligation of the parent to take care for the best interest of the child is clearly stated since the Convention obliges the states parties to undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures. The best interest of the child should also be guarded by the institutions and services responsible for caring and protection of children (Art. 3 of the UNCRC).

This Convention introduces new family law principles such as: respect for the best interest of the child, priority of family forms of sheltering of children, joint responsibility of parents towards their children as well as respect for the child's opinion.

In the European perspective, taking into consideration the importance of the best interest of the children and their stable physical and mental development in

their family and from their parents, there are many international documents that explicitly regulate the right of the child and parents responsibility:

- The Convention on the Rights of the Child (1989),
- The European Convention on Human Rights (1950),
- The European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (1980),
- *The Hague Convention on the Civil Aspects of International Child Abduction (1980)*,
- The European Convention on the Exercise of the Children's Rights (1996),
- The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (1996),
- The Charter of Fundamental Rights of the EU (2000) (see article 24 - Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests),
- The Convention on Contact concerning Children (2003),
- Brussels II a Regulation concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (2003).

The family law of the European Union slowly but surely becomes a part of the legal order of all European countries in which the national courts are obliged to implement the European mechanisms in regard to respect the best interest of the child in parent – child relationships.

In our society (in the families where the traditional model of discipline still functions) the children are still treated as property of their parents, and they are under full protection and responsibility of their parents until they become adults. This behavior towards the children is a result of the mentality still powerful in our society which indicates that: "No one has the right to interfere in the privacy of a family". In developed states, the children use their right to appeal for inappropriate behavior of their parents and the competent institutions are obliged to take legal action in case of violation of the rights of the children by their parents. In regard

to this attitude, many parents are not well informed about their legal rights and obligations, therefore, they may not be aware that they actually violate these rights, whereas the competent institutions may not be informed about it. In modern times, there are still traditional families where the rights of children are neglected, and they live under the “parenting power or patronage”.

#### THE ROLE OF THE CENTER FOR SOCIAL WORK IN SUPERVISING THE EXERCISING OF PARENTAL RIGHTS

The Center for social works plays a very important role in controlling of the exercise of the parental rights. When appropriate, the Center warns the parents for shortcomings in the education and development of the child and assists them in the process of developing and educating the child, thus it can suggest that either parents themselves or together with their child should visit an institute that provides counseling or another medical, social or educational institution that can be of assistance. If it is perceived in the child interest, the Center for social work can decide for permanent supervision of the exercise of the parental right in regard to all the children in that family, or just one of them (consult articles 85 and 86 of the Law on Family).

The Law on Family regulates the right of the Center for social work to supervise the exercise of the parental right.

The Law defines the measures that the Center can take against the parents who neglect their parenting obligations:

- The Centre for Social Work, with a decision may take the child away from one and to entrust it for care and education to the other parent, to some other person or appropriate institution, when the parents that is the parent with whom the child lives, neglect the child, as regards his care and education, or when there is a serious threats upon his regular development and upbringing.
- When there is information of less important issues in regard to child care, the Center for social work can order that parents attend counseling (for more information consult article 87 of LF).

The Center for social work can initiate a court procedure for deprivation of the parental right of the parent who neglects the exercise of this right. This court procedure can also be initiated by the other parent or by the public prosecutor.

The supervision of the exercise of the parental right represents a legally regulated relation that controls the exercise of parental rights and responsibilities and includes the possibility that, when certain information is available, adequate measures can be taken to protect the personality of the child, as well as their rights

and interests. In fact, it is an legal instrument of realization the rights of the child in regard to their parents, regulated as a potential intervention which, as it will be discussed further in this article, may include imperative measures (taking away of the child, proposing the deprivation of parental right, etc. (Чавдар и Сиљаноска – Костадиновска, 2013: 230).

## DEPRIVATION OF THE EXERCISE OF THE PARENTAL RIGHT

The most severe sanction that the law provides for uncaring parents is the deprivation of parental rights. This is a repressive measure that deprive

the right of the parent to live with and educate the child in order to protect the personal interest of the child. This measure is implemented once the legally described presumptions are met which result in negative effects towards the child, therefore the damage that may be caused to the child may be stopped by separating him/her from the parent. The fundamental and final purpose of this measure is to protect the personal rights of the child (Спировиќ-Трпеновска 2008 :166).

However, in the family law doctrine, the following question emerges: Does this measure mean the complete deprivation of the parental right or the deprivation of the exercise of the parental right? It is very important to determinate what exactly is deprived in the parental right by this measure. The legal parenting relation remains perpetual, since it is a constant, obligatory and kin (biological) relation between the child and the parent. Thus, this kind of relationship can never be deprived. It represents a mandatory mortgage established by the legal system (Mladenović 1981: 233).

The Law on family uses the term “deprivation of the exercise of the parental right”. According to professor Marko Mladenovic, by deprivation of the parental right, the parent only loses the possibility to exercise his/her rights, however, this does not apply to the parenting obligations. (Mladenović 1981:234). Therefore, this does not mean termination of the parental right. The parental right terminate in a different legal way. The parental right may, with a court decision, be returned to the parent when the reason owing to which he has been deprived of that right shall cease to exist. However, when the parental right terminated, that cannot be returned. The deprivation of the parental right does not end the right of the parent to provide suitable conditions for the development of their child. Parents either voluntarily or forcibly need to fulfil their legal obligation of supporting their children.

Therefore, the following question emerges: what are the reasons that result in a court decision on deprivation of the exercise of the parental right?

The Law on Family precisely determines the actions of the parent that are considered as abuse and neglect of the parental rights and responsibilities:

- Physical or emotional violence against the child;
- Sexual abuse of the child;
- Forced labor that is not suitable to the age of the child;
- Permission to use alcohol narcotics or other psychotropic substances;
- Forcing the child to bagging or abusing the child for bagging;
- Forcing the child to socially unaccepted behavior;
- Abandoning the child and not caring for the child for longer than three months and
- Any other severe violation of the rights of the child (Article 90, paragraph 2, Law on Family)

According to the judicial practice of the Court of first instance – Skopje 2, there are very few cases on deprivation of the exercise of the parental right. Thus, in 2015 seven cases were registered. The most common reasons for this kind of deprivation include neglect, lack of care and lack of interest for the child by the parent (Карановиќ 2016).

Neglecting of children is also forbidden by the fundamental international document – UNCRC, that guarantees that in order to protect the child’s best interest, they will be separated from their parents if they are neglected or mistreated (Art. 9 of UNCRC):

“States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents”.

## DOMESTIC VIOLENCE – THE MOST BRUTAL WAY OF ABUSING A CHILD

Children are the most sensitive part of a society, therefore the domestic violence against them is considered a serious violation of their personal rights and their higher interests.

Domestic violence is not a new phenomenon in our society; it has existed for ages and remains an unsolved problem for many families in which educational forms that cause harmful socio-psychological consequences prevail. Violence

against children in general and domestic violence in particular, is a multidimensional problem, which requires a more serious approach by the state, NGOs, citizens and domestic members themselves, who subdue directly or indirectly to the violent actions (Selmani-Bakiu 2015:166).

In our country, there have been very few studies related to domestic violence against children; a greater empirical approach has been devoted to violence against women and their protection, including children as indirect victims to this kind of violence, which is not to be neglected; however, we should not ignore the fact that violence is exercised against children as direct victims. The violence against children could be physical, psychological and sexual, manifested in different forms. Noticing and recognizing the signs of violence exercised against children, is often difficult, especially when it comes to psychological violence. It should be pointed out that the number of cases of violence against children is much bigger than the data being revealed (Selmani-Bakiu 2015: 167).

Children can be victimized directly or indirectly. The following are considered as forms of domestic violence: physical and sexual violence, psychological abuse and pressure, negligence in caretaking, exploitation, forcing children to beg, insults, underestimation, threats, cause of the feeling of fear, limitation of the freedom of movement, as well as other actions that impinge the child's dignity and personality.

Children who are victims of domestic violence in their childhood often show violent behavior in their adult years. Children who have witnessed violence among their parents often become violent towards their partners or their own children. Apart from that, exposure to domestic violence has a major negative impact into the development of a gender based identity, where boys are usually identified with the role of the tormenter whereas girls are usually identified with the role of the victim. Exposure of the mother to domestic violence develops different attitudes that violence is inherited from generation to generation (ESE 2015: 20). Except empirical studies, scientific circles also claim that children who grow up in a violent surrounding risk to repeat the same behavior either as perpetrators or as victims of violence once they grow up. In addition, children that are raise in a tense family environment are prone to repeating that violence either as its authors or victims. It is considered that these children are not sensible towards domestic violence (Øverlien 2010: 84).

From the legal-procedural perspective, courts play a very important role, since they enunciate temporary protective measures such as they forbid violators to threat with committing domestic violence; they forbid violators to maltreat, upset, or contact the children by any means; they forbid the violator to get near the child's place of residence, school or other places the child usually visits; they decide on moving the victim from the household, regardless of the ownership, until the

final decision is brought by the competent court; they prohibit them from owning weapons or if they do – it is confiscated; they force them to return everyday life items that are necessary for the fulfillment of family's daily needs; they oblige the violator for the maintenance of the child; they make the defendant visit adequate counseling offices; they force him/her to mandatory curing if they are suffering from addictive or other illnesses; they oblige them to compensate medical and other expenses caused by the practice of domestic violence as well as any other measure that the court would consider to be necessary for the security and well-being of the child (Article 94-e, Law on Family).

In this way, the parent who abuses the exercising of the parental right or severely violates the exercising of parental obligations either by physical, psychical or sexual abuse can be subject to on deprivation of the exercise of the parental right. As it was emphasized, this measure is the most severe way of interfering with the status of the parent and their parental rights.

#### THE PROCEDURE OF DEPRIVATION OF THE EXERCISE OF THE PARENTAL RIGHT ACCORDING TO THE LAW ON FAMILY AND THE LAW ON NON-LITIGATION PROCEDURE

The Law on family provides in the article 84, paragraph 2 that every citizen, state institution or legal entity has the obligation to report to the Center for social work any knowledge that a parent is not fulfilling his parental rights properly, or that other causes may determine the need for appropriate protection of the personality, the rights and the interests of the child. As it was emphasized above, the procedure for deprivation of the parental right can be initiated by the Center for social work, the other parent or the public prosecutor.

In this phase of the procedure, the Center for social work is competent to initiate the procedure for deprivation of the exercise of the parental rights upon any information that certain causes for doing so exist, as explained in the earlier subtitles, in cases of abuse or negligence of parental rights. Prevention measures that can be taken by the Center include:

- Informs the parent on the lacks and shortcoming in exercising the parental right,
- Decides on continuous supervision over the exercising of the parental right,
- Implements professional counseling work with the parents and the children (article 91, par. 3 of LF)

If the parent of the abused or neglected child does not follow the advice and requirements of the Center for Social work and repeats the abuse of parental right

or severely neglects the exercise of the obligations of parenting, the Center for social work is obliged to immediately take away the child temporarily and to initiate the procedure before the eligible court for deprivation of the parental right, to ensure appropriate shelter for the child and to take measures to protect the rights and the interest of the child until the adoption of a final court decision in regard to the deprivation of the parental right (art. 91, par. 4, LF).

However, if the parent with his/her actions has abused the child or severely neglected him/her and has brought to danger the life of the child, the Center for social work is obliged to immediately take away the child and to initiate the procedure for deprivation of the parental right in front of the eligible court, to ensure appropriate shelter and to take measures for protecting the rights and the interests of the child until the adoption of a final and executive court decision on deprivation of the parental right (art. 91, par. 5, LF).

#### THE NON-LITIGATION PROCEDURE OF DEPRIVATION OF THE EXERCISE OF PARENTAL RIGHT

Subjects that are eligible to initiate a court procedure for the deprivation of parental rights are: the other parent, the Center for social work and the public prosecutor. The other parent is the legal representative of the child and protects his/her rights or interests before the court.

In this procedure, the court verifies the existence of the reasons for the deprivation of the exercise of the parental right or the deprivation of his custodial status (art. 106 of the Law on non-litigation procedure).

In the court procedure for the deprivation of the parental right the court will hear the subject that proposes this measure, the parent against whom the measure is proposed if that is possible, the other parent – if he/she is not the proposer, as well as other persons that can give any needed information (art. 109, par.1 of the LNLP).

An appeal against the decision reached in this procedure can be initiated by the parent whose parental right is deprived, by the other parent, by the Center for social work, if the procedure is initiated by them (art. 110 of the LNLP).

The final decision on the deprivation of the exercise of the parental right will be presented by the court to the eligible registration officer in order for it to be written in the registration book of the born persons (art. 111 of the LNLP).

The parental right may, with a court decision, be returned to the parent when the reason owing to which he has been deprived of that right shall cease to exist. The parent or the Center for social work can initiate that procedure (art. 92 of LF).

## CONCLUSION

The parental responsibility should be exercised according to three core principles: equality between parents, joined responsibility in caring for, protecting, educating and developing the child, as well as prohibition of any abuse of the parental right. The exercise of the parental right should be in accordance with the legal provisions that provide for respect towards the interest, the integrity and the life of the child. In the opposite, the neglect or abuse of this responsibility results in the deprivation of the exercise of the parental right as a sanction to uncaring parents, as it was described in this article.

It is crucial that parents ensure a decent life for their children. In this way, the parents ensure a healthy family for their children which functions through mutual respect of the rights and obligations in the parent-child relationship.

In this aspect, a very important role is played by the state institutions that provide mechanisms for the implementation of the legal provisions that guarantee the respect within the family. The second important role of these institutions includes the supervision of the exercise of the parental rights and responsibilities as well as the initiation of appropriate legal measures in situations where parents violate the rights of the child by abusing their parental status. Thus, the following subjects have a direct impact in the encouragement of a healthy family: the society, the parents, the state and the children.

In order to involve a larger number of state institutions that aim to protect the rights and interests of the child, an effective communication between the below mentioned institutions is crucial in order to prevent any eventual neglect of children.

The successful prevention of child maltreatment relies on community referrals. Competency in establishing adequate referral systems can be judged by the following:

Does the trainer (social worker) have community contacts...?

Within the court system?

Within the educational system?

With the Public Health Department?

With the Department of Family and Children Services?

With other local mental health centers?

With hospitals in the area?

With family planning clinics?

With local drug and alcohol programs?

With day care centers in the area?

If the answer to any of these questions is no, then the social worker (trainer) must establish such contacts. It becomes evident then that a considerable amount of groundwork must be done before the implementation of any training (S. Wodarski at al., 2015: 219-220)

In the process of protecting the rights and interests of the child, the Center for social work implements measures of assistance and protection provided by the institute of supervision over the exercising of the parental right. The active role that the Center plays in the supervision of the exercise of the parental right encourages the analysis and research of the situation in which these Centers operate. It is also important that many reforms are needed to ensure the efficiency of this process as well as to ensure the raise of awareness for the social services that control and supervise the parental relation.

Introducing the Parental counseling plays a crucial role in the overcoming of many difficulties by families that encounter problems in the parent-child relationship. This program ensures education for the parents in regard to competent and caring exercise of the parental right.

It should be emphasized that introducing the principle of child's best interest in the in the Law on family is an important step for the reforms of family law legislation of our country. These reforms should aim at the harmonization of the provisions of the Law on family with the UN Convention on the Rights of the Child in order to achieve the highest standards for the protection of the rights and interests of the child.

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