DEPRIVATION OF PARENTAL RIGHTS

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Abstract:
Parenthood has existed since the beginning of time. Since ancient times, the attitude towards children has been shaped within the human community depending on its tradition, but also on its economic power. The attitude towards children, their upbringing and education, has changed over the centuries. The relationship between a child and parents is established by the fact of the child's birth. As a legal relationship with certain rights and obligations, it lasts until the child reaches the age of majority, and if the child is in regular school, until the child reaches the age of 26. In this respect, the child is not only an "object of legal protection" but above all a subject of law who, through certain legal actions and activities, can have a significant impact on the making of important decisions in his or her life and development, of course in accordance with the age and maturity achieved. In addition to the fact of birth, i.e. the establishment of a parent-child relationship through natural means, parenthood can also arise through adoption, i.e. through legal means. According to the Family Law of the Republic of Serbia, the legal position of natural parents and adoptive parents in relation to a born or adopted child is equal.[1]
The work is based on the very beginnings of the proceedings in the subject matter, which are based on legal concepts, principles, practice and proceedings, without which there would be no current practice and proceedings in this very important matter.
Keywords: *parental rights, exercise of parental rights, supervision, deprivation of parental rights, procedure, effect of the decision to deprive of parental rights, restoration of parental rights.*

1. Introduction

The first documents proclaiming the rights of the child date back to the 20th century, but the establishment of a separate corpus of children's rights within international law was most significantly influenced by the adoption and almost universal ratification of the Convention on the Rights of the Child. [2] This convention encompasses a wide range of legal provisions, rights to protection and rights to participation. The legal provisions cover the fundamental rights of the child to survival and development. This includes the right to health care and normal living conditions. The convention clearly states that it is in the best interests of the child, as far as possible, to grow up with his or her parents, and that the State has an obligation to assist parents in their responsibilities. The right to

protection includes protection from physical, sexual and psychological exploitation of the child, as well as other forms of discrimination and abuse. The right to participate encompasses civil and political rights, and treats the child as an active participant in society who has the right to express his or her views and opinions. The Convention is unusual in that it combines civil and political rights, as well as economic, social and cultural rights. [3]

According to the provisions of the Convention, the child has the universal right to life, and in this connection the right to parental care. The natural right of the child to parental care is ensured in the environment of both parents and in their community of life, and the separation of the child from one or both parents is permitted only if such separation is necessary and in the interests of the child. The Family Law of the Republic of Serbia stipulates that everyone is obliged to be guided by the best interests of the child in all activities concerning the child.

The Family Law in Serbia specifically defines for the first time some of the most important rights of the child, namely: the right of the child to know who his or her parents are, that is, to know his or her origins; the right to live with parents; the right to personal relations with the parent with whom he does not live or with relatives and other persons with whom he is particularly close; the right to proper and full development; to education; the right to undertake legal affairs (the child's legal capacity) and the right to freely express his opinion.[4]

The content of the child's rights determines the content of the obligations of his parents and guardians. In order for parents to be able to raise their child as a useful member of society, they have certain rights and duties towards him. The totality of the rights and duties of parents to take care of the personality, rights and interests of their minor child is designated in our law by the term parental rights. [5]

2. The concept of parental rights

Parental rights are strictly personal rights of parents, which, as a rule, cannot be transferred to other persons, nor can parents renounce parental rights, except by giving consent to the adoption or by de facto abandonment of the child. An adopter may acquire parental rights over the adopted child, since adoption creates the relationships that exist

between the child and the parents. Parental rights consist of the duties and rights of parents related to the care of the child.[6]

Parental duties have a predominant importance in the content of parental rights, because by performing their duties towards the child, parents exercise and protect his rights and interests. Hence, parental duties are in a correlative relationship with the rights of the child. The duties of parents, or the rights of the child arising from parental rights, are aimed at physically, morally and intellectually preparing the child to become a healthy, useful and successful member of society.

The rights of parents, as an integral part of the concept of parental rights, belong to the parents so that they can perform their duties towards the child as best and most efficiently as possible, as well as to exclude any third party who would attempt to take over the exercise of parental rights without authorization.

3. Exercise of parental rights

Parents can exercise parental rights jointly or independently. Joint exercise of parental rights is achieved if the parents live together or if they do not live together and have agreed on the joint exercise of parental rights. The institute of joint exercise of parental rights is a novelty in the Family Law of Serbia. This institution has enabled parents to exercise parental rights jointly, even when they do not live together, if two conditions are met, i.e. if they have agreed on this and made a written agreement and if, in the opinion of the court, the content of the agreement is not contrary to the best interests of the child.

Independent exercise of parental rights - One parent exercises parental rights alone if he lives alone with the child, and the court has not made a decision on the exercise of parental rights or if he exercises this right pursuant to a court decision on the exercise of parental rights. Parents may also conclude an agreement on the independent exercise of parental rights, which must also contain agreements on support and maintaining personal relations with the other parent and must be in the best interests of the child. A parent exercises parental rights independently even if the other parent has died, if he is unknown or is completely deprived of parental rights or legal capacity.[7]

4. Supervision of the exercise of parental rights

Parents exercise parental rights primarily to protect the personal and property rights and interests of their minor child. Most parents exercise their rights and obligations with great love and care, even though they do not know the content of the legal regulations. However, when parents, for any reason, do not achieve satisfactory results in the care, upbringing, education and education of the child, or when their actions endanger the property interests or maintenance of the child, certain family law measures may be applied to them, which are aimed at protecting the interests of the minor child. All such measures limit, to a greater or lesser extent, the powers of parents that belong to them on the basis of parental rights, but they are necessary in order to ensure the most favorable forms of protection for children.[8]

According to the solution adopted in our law, the exercise of parental rights is under the supervision of the guardianship authority. The law provides for two types of supervision over the exercise of parental rights: preventive supervision and corrective supervision.

5. Deprivation of parental rights

Deprivation of parental rights is the most severe family law sanction, which is imposed on parents in order to protect the personality, rights and interests of a minor child.[9] This institution protects the interests and rights of the child that are guaranteed by the United Nations Convention on the Rights of the Child and domestic legislation. The Constitution of the Republic of Serbia establishes that children enjoy human rights appropriate to their age and mental maturity. Every child has the right to a personal name, to be registered in the birth register, to know his or her origins and to preserve his or her identity. Children are protected from psychological, physical, economic and any other exploitation or abuse.[10] Deprivation of parental rights also represents a restriction of the right to family life guaranteed by the European Convention on Human Rights, and therefore domestic authorities, and above all courts, must be very careful when imposing such a severe family law sanction.[11]

The provisions of the Family Law of Serbia provide for special substantive grounds for full and partial deprivation of parental rights. Full deprivation of parental rights is a

family law sanction that affects a parent who abuses rights or grossly neglects duties arising from parental rights, while partial deprivation of parental rights is a sanction that affects a parent who unconscientiously exercises rights or duties arising from parental rights.

6. Complete deprivation of parental rights

In the case of complete deprivation of parental rights, the parents are deprived of their parental rights in their entirety and replaced with some other form of family law protection. The Family Law of Serbia prescribes two reasons for complete deprivation of parental rights, namely cases when the parent abuses parental rights and when he grossly neglects the duties arising from the content of parental rights.[12]

6.1. Abuse of parental rights

Abuse of parental rights means such harmful behavior of the parents, when the actions of the parents contradict the interests of the child to such an extent that his physical, moral and intellectual development is seriously endangered. It implies conscious and voluntary behavior of the parents and, as a rule, means that the malicious actions of the parents are repeated. However, abuse of parental rights can also be considered in the case of only one action by a parent, which is so dangerous for the child that it should not be expected to be repeated, for example, an attempt to murder a child, causing serious bodily harm, sexual abuse.[13]

The legal provisions state, exempli causa, that a parent abuses the rights under parental rights if he physically, sexually or emotionally abuses the child, if he exploits the child by forcing him to do excessive work or work that endangers the child's morals, health or education, or work prohibited by law, if he encourages the child to commit criminal acts, if he accustoms the child to indulge in bad habits or in some other way neglects the duties under parental rights.[14] The legislator has left the possibility for the court to assess other behaviors of parents, which are not exhaustively listed in the law, as gross abuse of parental rights.[15]

6.2. Gross neglect of parental duties

Child neglect, like abuse, has been present throughout history and is a phenomenon that occurs in all countries. This is confirmed by the fact that the different types of neglect to which children are exposed in the family show great similarity in all cultures in the world. In all types of child abuse, neglect is usually also present. It is unlikely that a child who is physically and emotionally abused will not also be neglected.[16]

7. Partial deprivation of parental rights

Partial deprivation of parental rights is a novelty in our law, and is a sanction for parents who negligently exercise the rights and duties arising from the content of parental rights. Parents who exercise parental rights and parents who do not exercise these rights are sanctioned differently.

Parents who negligently exercise parental rights may be deprived of the right and duty to care for, raise, educate, educate and represent the child, as well as the right to manage and dispose of the child's property.

A parent may be deprived of one or more rights and duties arising from the content of parental rights, depending on whether or not he or she exercises parental rights at that moment, but he or she may never be deprived of the duty to support the child. The extent of the deprivation will depend on the court's assessment of the circumstances of each individual case. The court's decision also depends on whether the parent acted negligently with regard to more than one right and duty from the content of parental rights or with regard to only some of them, however, a parent can never be partially deprived of parental rights with regard to all rights and duties from the content of parental rights, because in that case it would be a question of complete deprivation of parental rights.

8. Procedure for deprivation of parental rights

The procedure for complete or partial deprivation of parental rights is carried out in civil proceedings. In litigation for complete deprivation of parental rights, a decision is made to deprive all rights that make up the content of parental rights, so that the parent is left with the only right and duty to support the child. In litigation for partial deprivation of

parental rights, a decision is made to deprive only one or more rights belonging to the parent.

8.1. Jurisdiction

Substantive jurisdiction – The decision on the deprivation of parental rights in the first instance is made by the competent Basic Court in civil proceedings, and in the second instance by the High Court.

Territorial jurisdiction – In the procedure for the deprivation of parental rights, the court of general local jurisdiction has territorial jurisdiction, i.e. the court in whose territory the defendant's residence or place of residence is located. However, the Family Law provides for the possibility of elective territorial jurisdiction in the interests of the child, i.e. if the child files a lawsuit, in addition to the court of general local jurisdiction, the court in whose territory the child has residence or place of residence also has territorial jurisdiction.[17]

Functional jurisdiction – In the procedures for the deprivation of parental rights, a three-member panel of judges consisting of two lay judges and one professional judge decides in the first instance. In the second instance, a three-member panel of professional judges decides. Professional judges must have special knowledge in the field of children's rights, and lay judges must have professional experience in working with children and youth, so lay judges can be educators, pedagogues, psychologists.[18]

8.2. Characteristics of the procedure for deprivation of parental rights

The procedure in disputes concerning the rights of the child, or the exercise and deprivation of parental rights, differs in its characteristics from the rules of general civil procedure in the following ways:

- judges who decide in procedures related to family relations must be persons who have acquired special knowledge in the field of children's rights, and lay judges must be selected from among professionals who have experience in working with children and youth;
- any procedure related to family relations is urgent if it concerns a child or a parent exercising parental rights, but the procedure in a dispute for the protection of the rights of

the child and for the deprivation of parental rights is particularly urgent. Special urgency is defined by the rule that the first hearing shall be scheduled within eight days from the date the complaint is received by the court, and the second-instance court shall be obliged to render a decision within 15 days from the date the appeal is submitted to it;

- in a dispute for the protection of the rights of a child, i.e. in a dispute for the exercise and deprivation of parental rights, as well as in all other proceedings related to family relations, the public is excluded;

- the court decides on the reimbursement of the costs of the proceedings related to family relations at its discretion, taking into account the reasons for fairness.(19)

- in litigation for the deprivation of parental rights, the principle of disposition is significantly narrowed. The deviation from this principle is reflected in the fact that the court may ex officio initiate adhesion proceedings for the deprivation of parental rights in conjunction with proceedings in matrimonial disputes, maternity and paternity disputes, as well as in disputes for the protection of the rights of the child and in disputes for the exercise of parental rights;

- in these disputes, a judgment by omission, a judgment based on admission and a judgment based on renunciation are not permitted, nor is a court settlement permitted, which is also a manifestation of the limitation of the principle of disposition;

- the principle of officiality is reflected in the fact that in a dispute for the deprivation of parental rights that is conducted as the main proceeding, the court may, ex officio, determine one or more measures of protection against domestic violence, if it assesses that there is a need to provide this type of legal protection and if the legal conditions for determining these measures are met;

- in terms of collecting procedural material, the investigative principle prevails over the adversarial principle. The court has an active role in collecting factual and evidentiary material and is obliged to encourage the parties to present facts and offer evidence, and is also authorized to independently investigate and collect facts that the parties have not presented and to verify the truthfulness of those facts that are not disputed between the parties. The court is also authorized to present evidence that the parties have not proposed.

- When deciding on the deprivation of parental rights, the court is obliged to be guided by the best interests of the child.[20]

8.3. Initiation of the procedure

The procedure in a dispute for the deprivation of parental rights is initiated by a lawsuit. The persons with active legitimacy to file a lawsuit are the child, the other parent, the public prosecutor and the guardianship authority. In the event that the deprivation procedure was not initiated by the guardianship authority, the court is always obliged to inform the guardianship authority about the initiated procedure and request a finding and expert opinion from it regarding the reasons for the deprivation of parental rights and the need to make that decision. [21]

Example of a lawsuit for complete deprivation of parental rights

IN THE BASIC COURT IN _____

Plaintiff: _____ from _____ ul. _____ no. ___
Defendant: _____ from _____ ul. _____ no. ___

LAW
for complete deprivation of parental rights

1. The plaintiff married the defendant on _____ and the marriage gave birth to a daughter, a minor _____, born on _____.

Evidence: Birth certificate for the home area of the Municipality of _____ for _____ year.

2. The plaintiff and the defendant divorced their marriage by the judgment of the _____ court in _____, P. No. _____ of _____.

Evidence: Judgment on the divorce of the plaintiff and the defendant _____ of the court in _____, P. No. _____ of _____ year.

3. The defendant has meanwhile established a marital union with another woman and moved to live with her.

Since the birth of the minor _____, the defendant has not shown any interest in the minor _____, and has not provided support for her.

On _____ year, the defendant contacted the plaintiff, in order to see the minor _____ and spend the weekend with her. The plaintiff - the mother of the minor _____ barely agreed to this. They agreed that the defendant would come and pick up the minor _____ the next day and return her the same day by 8 p.m. The defendant left his mobile phone number for communication.

Given that after the agreed time, the daughter was not returned to her mother, and there was no contact with the minor _____, the mother contacted the police authorities in _____ who found the defendant and the minor _____ on the same day and took the child away from the defendant. A medical examination determined serious bodily injuries resulting from beatings and the use of force against the minor _____.

Evidence: 1. Police report _____;

2. Orthopedic doctor report _____.

Since the defendant grossly abused his parental rights and caused serious bodily harm to his minor daughter, the plaintiff files this lawsuit and proposes that the court, in accordance with Article 81, paragraph 2, item 1) of the Family Law, render the following

JUDGMENT

THE DEFENDANT _____ from _____, ID number _____, is COMPLETELY deprived of parental rights towards the minor daughter _____ from _____, born _____ in _____, ID number _____, from mother _____ from _____, ID number _____.

The defendant is obliged to reimburse the plaintiff for the costs of the civil proceedings within 15 days, under threat of enforcement.

On _____ _____
day of _____ year The Prosecutor

Proceedings in litigation for the deprivation of parental rights may also be conducted as an adhesion proceeding, joined to proceedings in matrimonial litigation, in litigation regarding the challenge of paternity and maternity, in litigation for the protection of the rights of the child and in litigation for the exercise of parental rights.

Proceedings in litigation for the deprivation of parental rights, as an adhesion proceeding, may be initiated by one of the litigants in the main proceedings or by the court itself, ex officio. The need for the court to initiate proceedings for the deprivation of parental rights ex officio exists when the court, based on the results of the investigation and discussion in the main proceedings, which are conducted in one of the matrimonial litigations or litigations from the parent-child relationship, comes to know that there is a need to deprive the parent of parental rights and thereby protect the personality, rights and interests of the child, and that none of the actively legitimized subjects has requested the determination of a protection measure.

A party may initiate an adhesion procedure for the deprivation of parental rights at the time of initiating the main procedure. In that case, the statement of claim combines the civil action that initiated the main procedure and the civil action that initiated the procedure for the deprivation of parental rights. [22]

8.4. The position of the child in the procedure for the deprivation of parental rights

The best interest of the child - When deciding in a dispute for the protection of the rights of the child and in a dispute for the exercise or deprivation of parental rights, the court is always obliged to be guided by the best interest of the child.

The best interest of the child is a legal standard taken from the Convention on the Rights of the Child and is assessed according to the circumstances of the specific case. The elements of the assessment of the best interests of the child are: age, gender, developmental disabilities, the child's safety, the child's wishes and feelings, the child's existential needs, the ability of the parents to recognize the child's developmental needs, the expected impact of the changed circumstances on the child and the time needed to adapt to the new environment.

Before making a decision, the court is obliged to obtain an expert report and opinion from an institution specialized in family mediation, which does not have the position of an expert in the procedure. The expert reports and opinions of these institutions must contain all elements of the assessment of the best interests of the child. However, this does not exclude the obligation of the court to hear the authorized persons and remove all ambiguities when the finding is incomplete, or when the opinion contradicts the finding.[23]

Child's legal capacity - A child of a certain age, who is capable of reasoning, is authorized by law to undertake certain legal matters and legal actions by his/her declarations of will and to independently decide on certain rights concerning his/her personality. In this way, in addition to legal capacity, the child also acquires a special legal capacity, before reaching the age of majority, within which he/she has full legal capacity and can independently undertake all legal actions in the procedure.[24]

Child's active legal capacity - According to the provisions of the Law on Civil Procedure, the capacity of a party, when it comes to a natural person, is acquired at birth and ceases at death. From the point of view of that law, a child could be a party to the proceedings, but not from the point of view of the Law on Marriage and Family Relations, according to which a child could be a party only in certain disputes arising from family relations. An important novelty of the Family Law is that a child has the status of a party in all proceedings regulated by that law, except in matrimonial disputes. According to the

provisions of the Family Law, a child is a party and can file a lawsuit for the protection of the child's rights, the exercise, or deprivation and restoration of parental rights. In these disputes, the child is an actively legitimized holder of the rights that are being protected.[25]

Representation of a child - A child is represented as a party by his or her legal representative. If the interests of the child are contrary to the interests of his or her legal representative, the child may be represented by a conflict guardian or a temporary representative.

A conflict guardian is appointed for the child by the guardianship authority in an administrative procedure. The guardianship authority may appoint a conflicting guardian on its own initiative or at the proposal of the child, or another person or institution to whom the child has addressed and requested assistance in initiating the procedure for appointing a conflicting guardian. The child has the right to initiate this procedure independently or through another person or institution if he or she has reached the age of ten and is capable of reasoning.[26]

If the court determines during the course of the litigation that there are conflicting interests between the child and his or her legal representative or that the child as a party has not been adequately represented, it must appoint a temporary representative for the child ex officio or at the proposal of the child himself or herself, or another person or institution to whom the child has addressed for assistance in initiating the procedure for appointing a temporary representative. The child may independently or through another person or institution initiate this specific adhesion procedure for appointing a temporary representative, provided that he or she has reached the age of ten and is capable of reasoning. The child's capacity to reason is determined by the court during the adhesion procedure by conducting the necessary examinations.[27]

A child cannot have two independent legal representatives at the same time. Therefore, if the guardianship authority has previously appointed a conflicting guardian, the court cannot appoint a temporary representative. The family law literature states that a conflicting guardian can also be a legal layperson, while a temporary representative must be a legal expert, i.e. a lawyer.[28]

The opinion of the child - When a party to the proceedings for the deprivation of parental rights is a child who is capable of forming an opinion, the court is obliged to allow the child to express his or her opinion directly. Due attention must be paid to the child's opinion in all proceedings concerning him or her, in proceedings in which decisions are made about his or her rights, and in accordance with the child's age and maturity.

The court and the person representing the child are obliged to provide the child with all the information he or she needs in a timely manner and to inform him or her of the consequences of accepting his or her opinion. The child's opinion shall be determined in a manner and place appropriate to his or her age, unless this would clearly be contrary to the best interests of the child.

When the child has not directly expressed his or her opinion, the person representing the child shall be authorized to convey the child's opinion to the court, unless this would clearly be contrary to the best interests of the child.

The child's opinion shall be determined in cooperation with a school psychologist, guardianship authority, family counseling center and other institutions specialized in mediation in family relations, and in the presence of a person designated by the child. Whether a child will exercise the right to express his or her opinion or not depends solely on the child's will, and the court is obliged to enable this right.[29]

9. Effect of the decision on deprivation of parental rights

The consequences of the decision on deprivation of parental rights are severe for parents, because deprivation of parental rights is the most severe family law sanction that can be imposed on parents, in order to protect the personality, rights and interests of a minor child. A parent may be deprived of parental rights for an indefinite period of time, in relation to all children or in relation to only one child. When depriving parental rights, the court may determine one or more measures to protect the child from domestic violence.[30] A legally binding court decision on deprivation of parental rights must be entered in the birth register, and if the child owns real estate, the decision must also be entered in the public register of rights to real estate.

The effect of a decision to deprive a parent of parental rights varies depending on whether the parent is deprived of parental rights completely or partially.

9.1. Effect of a decision to deprive a parent of parental rights completely

Complete deprivation of parental rights may apply to one or both parents, depending on whether both parents abused their parental rights, or grossly neglected their parental duties, or whether only one parent did so.

If only one parent is deprived of parental rights, parental rights belong to the other parent and he or she exercises them alone. If both parents are deprived of parental rights, or if the only parent who had parental rights is deprived of parental rights, the child is considered a minor without parental care, is placed under guardianship and placed in another family or institution.[31] The Family Law of Serbia stipulates the obligation of the state to provide protection in a family environment for a child without parental care whenever possible, which results in the obligation to prioritize the placement of the child in a foster or adoptive family, and only then, if the aforementioned method of placement is not possible, should the child be placed in a competent institution.

A court decision on the complete deprivation of parental rights deprives the parent of all rights and duties arising from parental rights, except for the duty to support the child.[32] It follows that the parent has no right or duty to care for the child, to educate, protect or represent the child. A parent who is completely deprived of parental rights is not required to consent to the adoption of a child.

9.2. Effect of the decision on partial deprivation of parental rights

Partial deprivation of parental rights affects one or both parents, but in a different way depending on whether that parent exercises or does not exercise parental rights. If one parent is partially deprived of parental rights, he or she continues to exercise parental rights in the part that he or she is not deprived of together with the other parent. If both parents are deprived of parental rights with respect to the same rights and duties, or if the only parent to whom that right belongs is partially deprived of parental rights, a temporary guardian must be appointed for the child who will take over the exercise of those rights and duties that the parent has been deprived of, and if necessary, the child may be cared for in a foster family, or, in the worst case, in a social institution.

A parent who is deprived of the right to decide on issues that significantly affect the child's life is not required to consent to the adoption of the child. As in the case of complete deprivation of parental rights, a court decision on partial deprivation of parental rights cannot deprive a parent of the obligation to support a child.[33]

The extent of partial deprivation of parental rights will depend on the court's assessment of the circumstances of each individual case.

10. Restoration of parental rights

A decision on deprivation of parental rights is issued for an indefinite period of time and is temporary in nature. The deprived parental rights may be restored to the parent by a court decision, in a separate civil proceeding, when the reasons for which the parent was fully or partially deprived of parental rights cease to exist.

If one parent is partially deprived of several rights and obligations arising from the content of parental rights, the decision on restoration does not have to restore all rights. For example, if a parent was deprived of representation, management and disposal of the child's property, by a decision to restore parental rights, only the right and duty to manage the child's property may be restored to the parent.[34]

A final court decision to restore parental rights must be recorded in the birth register, and if the child owns real estate, in the public register of rights to real estate, in order to inform the public that the parent has regained parental rights over his or her child.[35]

11. Conclusion

The idea that violence against children should and must be prevented is relatively new. The first documents related to the protection of children from abuse and neglect date back to the late 19th century, and it was only in the 20th century that the view that child abuse and neglect must be prevented, punished and adequately treated, began to spread.[36]

The modern family is very different from the traditional closed family model of the past. Today's diversity of lifestyles has created new concepts for forming partnerships and having children. Family units, whatever their composition, are faced with new kinds of

pressures due to rapid and profound changes in societies, and they must adapt to them. Economic and social factors are often a source of stress for parents and can undermine their efforts at parenting and their own development as individuals. The idea of children has also changed. No longer viewed in principle as “future adults,” they are now recognized as having the potential to be active and useful members of both the family and society as a whole. Children enjoy full rights and their views should be given the weight they deserve in matters that directly concern them.[37]

Definitions of the family are rare in contemporary law, since it is difficult to legally define a concept that is not static and influenced by numerous factors outside the legal domain. In social theory, definitions of the family are, on the contrary, frequent and numerous, but legal writers most often define the family descriptively (by listing the members of which the family is composed) or operationally (by listing the functions that the family customarily performs). Since such definitions do not allow us to distinguish what is essential and universal in the family from what changes under the influence of socio-historical changes, the elements on the basis of which it is possible to determine the universal characteristics of the family as a kind of social group actually originate from sociological disciplines. Thus, the three universal characteristics of the family are: first, the family is a community of parents and children who are born (or adopted) from that relationship; second, the family is the primary community in which the child’s personality develops; and third, the family is a community that ensures the psychological and social connection of its members.[38]

According to many opinions, children are among the most vulnerable victims of abuse. In some legislations, they are classified as a special category of “powerless” victims of a criminal offense. All modern legislations strive to introduce special normative rules when it comes to abused children and their role in criminal proceedings. All modern police, prosecutorial and judicial systems introduce into their practice special rules for dealing with child victims of crimes involving violence, i.e. victims of abuse. In addition, many laws impose a strict legal obligation on doctors and other health workers, social workers, teachers, and police officers to report every case of child abuse.[39]

Since it is the fundamental right of a child to live with his or her parents and to be cared for by them before all other persons, it may seem incredible that parents who have

at least average moral and mental maturity can knowingly cause harm to their child. Unfortunately, the most severe forms of neglect and abuse of children are not unknown in life. Therefore, such parents must be prevented from further exercising parental rights, and the child must be provided with another appropriate form of family protection.[40] However, due to the specific relationships between parents and children and the prevailing autonomy of will in modern family law, the role of the state and its bodies in implementing this right or obligation must primarily be preventive, and only then reactive, through the deprivation of parental rights.[41]

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