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Deprivation of parental rights: a safety net for children or parents?

ABSTRACT: The family, the primary and most suitable place for growth and well-being, can be jeopardized by the misbehavior of its members. In accordance with its duties, the State should take appropriate measures to protect family members, especially the children. This paper focuses on the deprivation of parental rights and its normative and theoretical framework as a court measure for children's protection. Presenting the results of research that considers cases in front of the Basic Court of Niš, this study aims to determine the reasons for the deprivation of parental rights, difficulties that occurred in the proceedings, and ways to overcome them.

KEYWORDS*:* deprivation of parental rights, the concept of parental rights, children's rights, child abuse, parental neglect, Serbian family law.

1. Introduction

International conventions and contemporary family law doctrines unanimously state that the family is the most natural and ideal environment for child development. The Convention on the Rights of the Child, the most important international document defining the rights of children, confirms this viewpoint.[626] In the Convention's preamble, it is stressed that State Parties are convinced that 'the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.' Accordingly, it is recognized that a child should grow up in a family environment in an atmosphere of happiness, love, and

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[626] Convention on the Rights of the Child, signed on 20th November 1989 (hereinafter: Convention and CRC).

understanding for the full and harmonious development of his or her personality. These attitudes reflect that State Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child, where the State Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing duties and shall ensure the development of institutions, facilities, and services for the care of children.[627] Similar obligations are prescribed in two important regional documents: the American Convention on Human Rights and the African Charter on the Rights and Welfare of Children.[628]

In a Serbian family law doctrine, the authors share the opinion of "preasumptiones iuris tantum" that it is the best interest of the child to live with his/her parents and the child's right to be primarily fostered by its parents;[629] that the family is a common and the most natural environment for children to live and achieve one's rights;[630] and, finally, that family, more than any other social group, connects an individual with society.[631]

However, family relationships, such as providing an ideal environment for a child's development or creating a healthy personality, are not always ideal. Research has shown that violence against children is widespread in families and require punishment. A 2017 UNICEF report indicated that, globally, hundreds of millions of young children experience physical punishment and/or psychological aggression from their caregivers on a regular basis. Sexual and emotional violence against girls is more frequent than against boys, and the COVID-19 pandemic has worsened the rate of all forms of domestic violence.[632]

More than 70% of children in Serbia have been exposed to some form of violence at least once and over one-quarter have been neglected at least

[627] Art. 18 of the CRC.
[628] Art. 17 of the American Convention on Human Rights, adopted on 22nd November 1969; Article 20 of the African Charter on the Rights and Welfare of the Child, entered into force on 29th November 1999. European Convention on Human Rights, came into force on 3rd September 1953; it does not provide similar obligations, but prescribes the right to respect for private and family life.
[629] Ponjavić and Vlašković, 2022, p. 245.
[630] Vučković Šahović and Petrušić, 2015, p. 149.
[631] Draškić, 2009, p. 56.
[632] UNICEF, Global Status Report on preventing violence against children 2020, p. 12.

once. Eight percent of children were victims of sexual abuse, and 38% witnessed domestic violence.[633]

The task of the state is to provide a model of parental behavior and appropriate sanctions for deviating from this model of behavior to protect children from all forms of abuse and misuse.[634] More significant state intervention in personal relationships between parents and children has provided a new concept of parental rights.[635] Due to popularization of human rights and separation of children's rights as a new category, there was a change in understanding the essence and content of parental rights.[636] The provisions of the Serbian Family Act[637] (FA) emphasize that parental rights are derived from parental duty and exist only to the extent necessary for the protection of the child's personality, rights, and interests. The term "parental rights" is replaced with the term "parental responsibilities," because it suggests a new way of perception of the child as a legal entity and the primary responsibility of parents for children's proper growth and development.

To protect the child, the state has prescribed certain measures with the aim of preventing or repressing parents' harmful behavior.

State Parties shall take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment, or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s), or any other person who cares for the child (Art. 19. CRC). These measures should include the appropriate judicial involvement.

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633 UNICEF – Violence against children - National Report for Serbia, 2017, p. 36.

634 Under international law, the state has reserved the right to intervene where the state believes it's the child's best interest. International law provides the criteria and regulates when the state can separate a child from his or her family, and it also establishes conditions under which the state acts "in loco parentis". (Van Bueren G, 1995, pp. 86–87).

635 At the beginning, roman "patria potestas" meant lifetime and strong authority of "pater familias" over all children and their descendants. A grown son, with his new family, remained under his "pater familias'" authority. The relationship between parents and children, however, developed, so that in the Middle Ages, "mundium", the father's authority, also contained parental duties. The new concept of parental rights was established in 20th century. (Draškić, 2009, pp. 175–177).

636 Draškić, 2009, p. 277; Vučković Šahović and Petrušić, 2015, p. 160; Janjić Komar and Obretković, 1996, p. 14.

637 Family Act (hereinafter FA), Official gazette Republic of Serbia, No. 18/2005, 72/2011 – other law and 6/2015, Art. 67.

The Committee on the Rights of the Child specified the scope of the term "violence against children" to include neglect, mental violence, physical violence, sexual violence, and other harmful practices. In General Comment No. 13,638 the crucial terms are defined.

Neglect refers to the 'failure to meet children's physical and psychological needs, protect them from danger, or obtain medical, birth registration, or other services when those responsible for children's care have the means, knowledge, and access to services to do so.'[639] General Comment No. 13 considers physical, psychological, or emotional neglect, neglect of children's physical or mental health, educational neglect, and abandonment.

"Mental violence" as mentioned in the Convention, is often described as psychological maltreatment, mental abuse, verbal abuse, and emotional abuse or neglect, including all forms of persistent harmful interactions with the child, scarring, terrorizing and threatening, exploiting, denying emotional responsiveness, insulting, name-calling, humiliation, belittling, ridiculing and hurting a child's feelings, placement in solitary confinement, isolation or humiliating or degrading conditions of detention, as well as cyber bullying. Examples of physical violence are corporal punishment and all other forms of torture; cruel, inhuman, or degrading treatment or punishment; and physical bullying and hazing by adults and other children. Children with disabilities are especially exposed to certain forms of violence, such as forced sterilization, violence in the guise of treatment, and deliberate infliction of disabilities on children to exploit them for begging on the streets or elsewhere. Under the scope of sexual harassment, the inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity; sexual exploitation, including pictures and videos; child prostitution; sexual slavery; sexual exploitation in travel and tourism; trafficking (within and between countries); and the sale of children for sexual purposes and forced marriage. Additional harmful practices should be mentioned, such as female genital mutilation, amputations, binding, scarring, burning and branding, violent and degrading initiation rites; force-feeding of girls; fattening; virginity testing (inspecting girls' genitalia); forced and early marriages; "honour" crimes; "retribution" acts of violence (where disputes between different groups are taken out on

[638] General Comment No. 13 (2011), the right of the child to freedom from all forms of violence.
[639] Para. 20 of General Comment No. 13.

children of the parties involved); dowry-related death and violence; accusations of "witchcraft" and related harmful practices such as "exorcisms;" uvulectomy and teeth extraction. Although there are more examples of violence against children, the above-mentioned examples show how broad this term is.

2. Theoretical Framework

2.1. Causes and substantive grounds for deprivation of parental rights

2.1.1. Full deprivation of parental rights

The Republic of Serbia submitted combined second and third periodic reports (CRC/C/SRB 2-3) and the Committee on the Rights of the Child adopted the concluding observations of the combined second and third periodic reports. Part E was devoted to Violence against Children.[640] As stated, the Committee is seriously concerned about the high number of reported cases of violence against children; the inhuman or degrading treatment experienced by children, particularly children with disabilities, living in institutional care homes; the fact that children with disabilities are more likely to be victims of physical and sexual violence; the widespread instances of violence in schools, particularly at the primary school level, often perpetrated against children with disabilities and lesbian, gay, bisexual, and transgender children; instances of cyberbullying; and inadequate implementation of the general protocol, regulations, and relevant special protocols. The Committee on the Rights of the Child proposed adequate measures to improve the position of children in the Republic of Serbia.

Supervision of the exercise of parental rights is a measure that helps parents exercise their parental rights or affect their behavior.[641] It occurs as a preventive control when the social service makes decisions that help parents exercise parental rights and as a corrective control when social services correct the parents in exercising parental rights and initiate legal proceedings in accordance with the law.

A stricter measure that the state imposes on parents owing to the abuse or neglect of parental rights is the deprivation of parental rights. This

[640] Art. 19, 24(3), 28(2), 34, 37 point (a) and 39.
[641] FA Art. 79–80.

measure is explained by the "Parens patriae" doctrine, under which the state alleges an interest in the care and custody of children (and others who are not competent in representing their own interests).[642] According to one interpretation of this theory, the right to take care of the needs and proper raising of children first belongs to the state and not to the parents. The state only delegates to parents a set of rights that fall within the scope of parental rights and determines targets to be achieved. Parents are authorized to revoke their parental rights if they act contrary to the aims of the state. According to another interpretation, this theory confirms only the state's interest in protecting and raising children. Parents' rights do not arise from the state, but they have the authority to protect their children from parents who misuse their rights.

The Institute of Deprivation of Parental Rights has undergone significant changes since the FA was adopted in 2005. According to earlier legislation, the procedure for deprivation of parental rights was conducted under the rules of non-contentious proceedings. The change in this practice probably occurred because it was believed that civil litigation provided a greater guarantee of the adoption of a lawful and proper decision.

The subject of this paper is the normative and theoretical analysis of substantive and procedural provisions for the deprivation of parental rights, as well as the presentation and analysis of the results of empirical research. The study's timeframe ranged from 2005 to 2010, and the research was conducted in the Basic Court of Niš.

Parental rights deprivation is a universal measure for sanctioning parents' behavior, which occurs in domestic Serbian law in the form of full and partial deprivation. Rules of substantive law prescribe the grounds for deprivation of parental rights, while procedural law prescribes a special procedure for deprivation of parental rights. In the regulation of the procedure for the deprivation of parental rights, as a special method for providing legal protection in a specific legal matter, the legislator has tried to adapt the procedure to a sensitive parent-child relationship.

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[642] Hubin, 1999, pp. 123–150. This doctrine, literally asserting that the king is the parent of the state, was formulated in England in the thirteenth century to assert the state's role as guardian of those who were mentally incompetent. The notion that the king (or the government) is the parent of the entire state is quaint; the assertion that the state has a compelling interest in the care, nurturing, and rearing of children is not.

According to the FA, the full deprivation of parental rights may occur if a parent abuses or grossly neglects the duties of parental rights.[643] The legislator, exempli causa, listed the ways in which duties can be abused: if a parent physically, sexually, or emotionally abuses a child; exploits a child by forcing it to excessive labor, or labor that endangers the morals, health, or education of the child, or the work that is prohibited by law; encourages a child to commit an offense; allows the child to have a bad habit; or otherwise abuses their parental rights. While the abuse of parental rights is often achieved through commission, gross neglect of duties comes from the parents' failure to perform some of their duties. For example, the following reasons for deprivation are stated: if the parent abandons a child; if he/she does not take care of a child he/she lives with; avoids supporting the child financially or maintaining personal contact with the child he/she does not live with, or if he/she does not allow contact between a child and a parent with whom the child does not live; if on purpose and unjustifiably avoids creating conditions for living together with a child who is in an institution for social protection or otherwise grossly neglects the duties of his/her parental rights.

Abuse and gross neglect of duties related to parental rights are legal standards that are concretized through examples. In this way, a list of possible ways to misuse parental rights is not specified but is left to the court to decide whether one situation can qualify as abuse or gross neglect. To concretize these standards, it could be of great help for the court to use the definitions of relevant terms established under the General Protocol for the Prevention of Child Abuse and Neglect, which was adopted in 2005.[644] In this way, the reasons for the deprivation of parental rights are similar to those in other family legislatures in the Balkan region.[645] However, the FA

[643] FA Art. 81.

[644] According to this Protocol, abuse and gross neglect of parental rights includes all forms of physical or emotional abuse, sexual abuse, neglect or negligence, commercial or any other exploitation, which lead to actual or potential health problems, threats to child's development or dignity, in a relationship based on responsibility, trust or power.

[645] Family Act of Republic of Croatia, Art. 170 (Official gazette No. 103/15, 98/19, 47/20); Family Act of Serbian Republic Art. 106 (Official gazette No. 54/2002, 41/2008 and 63/2014); Family Act of Republic of Montenegro, Art. 87 (Official gazette No. 1/2007, 53/2016 and 76/2020).

does not provide reasons related to parents' health, which are prescribed in certain foreign jurisdictions.[646]

In particular, the court deprives, in full, the parental rights from parents who allow the maintenance of personal contact between the child and the parent with whom the child does not live. Emphasizing this reason in the FA is welcomed, considering the current negative practice of domestic courts, which is not to sanction parents who do not allow contact between the child and another parent. Such court actions led to the adoption of one of the first judgments of the European Court of Human Rights against Serbia in the case of V. A. M. against Serbia.[647] It was decided that the state would violate Article 6 of the European Convention on Human Rights (Right to a Fair Trial), Article 8 (Right to personal and family life), and Article 13 (Right to effective remedy).

The sanction for the full deprivation of parental rights is the deprivation of all parental rights and duties, except for the duty to financially support the child. The contents of parental rights include custody, care and upbringing, education of the child, child's advocacy, financial support, and managing and disposing of property.[648]

2.1.2. Partial deprivation of parental rights

The general clause was used to create reasons for partial deprivation of parental rights. According to Article 82 of the FA, one shall be partially deprived of parental rights if one performs parental rights or duties with negligence.

Unlike the descriptive manner used for reasons for full deprivation of parental rights, an example has not been provided to judges to recognize whether one's behavior is negligent or a less usual but legally permissible

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[646] As of August 2005, 37. American states included disabilities for terminating parental rights, while 14 states did not. Of those 37 states, 36 have specific grounds for mental illness, 32 have grounds for intellectual or developmental disability, 18 have grounds for emotional disability, and 8 have grounds for physical disability. (Kundra and Alexander, 2009, pp. 142–149).

[647] Application No. 39177/05. The applicant was a HIV-positive female who was disallowed contact with a child, because the court did not use all the available measures to enable her that right from her ex-husband. For that reason, she hasn't seen the child in nearly eight years. Serbia paid approximately 20,000 euros for the procedural costs and non-pecuniary damage.

[648] FA Art. 68–74.

model of childcare and education. It seems that this could lead to an uneven application of the law and inequality before the law, depending on the judge's personal sense of "normal" or "usual" child rising. For this reason, it might be more useful to regulate this form of deprivation more accurately, citing examples of negligence and leaving the possibility for the judge to bring other similar examples under this legal standard.

The sanction for the partial deprivation of parental rights is depriving a parent of one or more rights and duties of their parental rights, but not the duty to financially support the child.

2.2. Procedure in cases of deprivation of parental rights

On litigations for deprivation of parental rights special rules of civil procedure are applied, which is indicated in the FA as 'Procedure for the protection of rights of the child and for the disputes about exercise or deprivation of parental rights.' The Civil Procedure Act[649] is a subsidy applicable to this procedure.

Litigation in cases of parental rights deprivation may also be considered an adhesion process to litigation in matrimonial matters, maternity and paternity cases, litigation for protecting children's rights, and civil actions for the exercise of parental rights. Before the adoption of the FA in 2005, the legal protection method was not contentious. Bearing in mind the complexity of the legal issue in question, the ratio of the legislator to transform it to litigation is justified, since it is considered that the civil action, as a general, basic, and regular method of legal protection, provides greater assurance that lawful decisions will be brought.

2.2.1. Principles of the procedure

Bearing in mind all specifications of parental rights deprivation, the general rules of civil procedures have been modified and special working methods for this procedure have been prescribed.

The leading principle in cases of the deprivation of parental rights is to protect the best interests of the child. The Convention on the Rights of the Child provides that, in all actions concerning children, whether undertaken by public or private social welfare institutions, courts, administrative authorities, or legislative bodies, the best interests of the child shall be a

[649] Official gazette No. 72/2011.

primary consideration.[650] There is no unique definition of this term, but it broadly describes the well-being of a child, determined by a variety of individual circumstances, such as the age, level of maturity of the child, presence or absence of parents, the child's environment, and experience.[651]

The deprivation of parental rights is particularly urgent. The first hearing is scheduled to be held within eight days of the date the court receives the lawsuit. The Appellate Court shall render a decision within 15 days of receiving the appeal. When these norms are observed together with the common provisions of the FA relating to the proceedings regarding all family relations, according to which the lawsuit is not submitted in response to the defendant, and the proceedings should usually last a maximum of two sessions. The attention shown by the legislator at the creation of this principle of the procedure is obvious.

This proceeding is dominantly inquisitorial,[652] as the court may determine the facts that have not been disputed between the parties and can independently research the facts that no party has put forward.[653]

The principle of disposition is also limited because, in these cases, judgment because of failure to act and judgments on the basis of a confession or denial cannot be reached.

According to the common provisions that apply to all proceedings regarding family relations, the public is excluded in cases of parental rights deprivation. Data from court files are official secrets and shall be kept by all participants in the proceedings to whom such data are available.[654]

2.2.2. Participants in the civil procedure: the court, parties, and participants

For litigation that deals with the deprivation of parental rights, the court of the first instance is in charge. For the territorial jurisdiction of the court, the rules of general territorial jurisdiction are set, but rules of electoral

[650] Art. 3 Para 1 of the Convention.
[651] UNHCR Guidelines on Determining the Best Interest of the Child, May 2008, Available at: https://www.unhcr.org/fr-fr/en/media/unhcr-guidelines-determining-best-interests-child, (Accessed: 10 February 2023).
[652] One of the main characteristics for general civil litigation is the principle of disposition, and its parallel, when collecting the proofs is in question, adversarial procedure. The court does not collect the information and facts ex officio, but it is received from parties (Iudex iudicare debet secundum allegata et probate a partibus).
[653] Art. 205 FA.
[654] Art. 206. FA.

jurisdiction are also applicable so that legal action may be initiated in front of the court in which the child has a permanent or temporary residence.[655] Owing to the sensitivity of parent-child relationships and relationships within the family in general, the proceedings for this legal matter are handled by a specialized panel.

The following subjects have an active capacity to sue: children, parents, prosecutors, and social services.[656] This legal solution is a novel because, until 2005, non-contentious proceedings for the deprivation of parental rights could initiate social services, prosecutors, and other parents.

The procedure was initiated through a lawsuit. All children, health and educational institutions, social welfare institutions, courts and other state bodies, associations, and citizens have the right and duty to inform prosecutors or social services of the reasons for the deprivation of parental rights.[657] One or both parents can be sued in this process. A legal guardian represents the child as a party to this procedure. If the child and its legal guardian have conflicting interests, the child is represented by a collision guardian. If the child is 10 years old and capable of reasoning, the child can ask on their own or through another person or social service to obtain a collision guardian.

If the court determines that a child, as a party in these proceedings, is capable of having the opinion, it is obliged to ensure that the child has all the information that it requires, to allow the child to express its opinion, and to pay adequate attention to the opinion in accordance with the child's age and maturity unless it is obviously contrary to the best interest of the child. However, the doctrine points to several problems related to a child's right to express opinions. First, this right is limited in that it is recognized only for children older than 10 years.[658] These provisions are inconsistent with the Convention on the Rights of the Child; the child's right to free expression is not associated with the age of the child but with the child's ability to form an opinion, which depends on a number of individual characteristics. Further, the legislature tied the exercise of this right to the child's best interest, starting from the premise that the right to free expression and the best interest of the child may be mutually contradictory and that in this case,

[655] Art. 261. FA.
[656] Art. 264. FA.
[657] Though it is not only right but also a duty to disclose the reason, no sanction is specified for not acting in the prescribed way.
[658] Petrušić, 2006a; Petrušić, 2007.

the best interests of the child prevail, which is now considered to be an outdated theoretical position. Finally, attention is drawn to the fact that only the right to express an opinion, not the right to respect that opinion, coupled with the best interests of the child, may cause the child to be denied the right to express their opinion.

The next question relates to situations in which the child is not a party to litigation in cases where other entitled subjects initiate proceedings. All of the above duties of the court and collision guardian regarding the child's right to express an opinion are applicable, by letter of law, only to situations in which the child is the party. Unlike other procedures for resolving family disputes, the necessary anticipation of the child and both parents is not prescribed.[659] If a child in this proceedings does not have a position of a party, it is, as the doctrine states, "invisible," "hidden" party, regardless of the fact that litigation is initiated to protect its rights. Children can have their own personal interests, which may be contrary to the interests of the party that initiated the proceedings. However, even if the court recognizes a conflict of interest between the child and the party that initiates the proceedings, it is unable to respond and set up a collision guardian for the child because the child, formally, is not a party to the proceedings.

This question is connected to the problem of opposing interests of the child and its legal representative when they are in the same party role. Establishing the existence of conflicts of interest in this case is doubly tricky because the representative interest can be covert, and it is not easy to determine the best interest of the child. Therefore, the doctrine suggests a German model that stipulates that a child in certain proceedings must be given a special guardian.[660]

Social services, apart from prosecutors, can also play other roles. Before making a decision to protect the rights of the child or a decision to exercise or deprive parents of rights, the court shall request a report and expert opinion of the social services, family counseling, or other institutions

[659] For example, for maternity and paternity litigations the litis consortium of both child and parents is necessary (Art. 256. FA).

[660] The court is entitled to assign a special guardian to the child when it concludes that the child's interests are in contrast with their parent's interests, when the welfare of a child is endangered, and is connected with the child's separation from their family or a parent's loss of all parental rights, as well as when the child should be separated from a married couple, life partners, foster parents, or persons entitled to have personal contact with the child. (Petrušić, 2006b, pp. 169–191).

specialized in the mediation of family relations.[661] Social services also help the court determine a child's opinion in certain situations.

The same subjects are entitled to initiate proceedings for the restoration of parental rights with the addition of a parent who has terminated the right. However, it is not clear who would be the sued person (defendant) in this case, because this issue is not regulated. One can only assume that this omission resulted from the fact that this procedure until 2005 was non-contentious and that those proceedings could be one-party. Litigation to restore parental rights does not necessarily anticipate the participation of parents and children. In addition, it would not make sense if a child, the parent who exercises parental rights, the prosecutor, or social services put a claim against the parent whose parental rights have been terminated. The assumption is that the parent will bring an action if the conditions are fulfilled, and in cases where he/she disputes the claim for the restoration of parental rights, it would be against the best interest of the child for the court to adopt such a claim.

2.2.3. A petition

The complainant requests the court to deprive the respondent of some or all rights from the content of parental rights. This petition is constitutional because it seeks to impose a legal change. The general rules of civil procedures are applicable in terms of content. The lawsuit must contain all the elements prescribed by the Civil Procedure Act, in part related to the formal regularity of the submitted act.[662]

The rules of procedural law do not allow the court to award something else or anything more than that sought by the plaintiff in a petition (Ne eat iudex ultra et extra petita partium). However, the court may award less than that in the complaint. Based on this rule, the question is whether only a petition for the full deprivation of parental rights can be fully adopted. More precisely, the request for full deprivation of parental rights implicitly includes a request for partial deprivation of parental rights. Reasons for the full deprivation of parental rights are listed in the FA but can be divided into two large groups: abuse of parental rights and duties or gross negligence of parental rights. The reasons for the partial deprivation of parental rights are not as thoroughly regulated, listed only as negligence in the exercise of

[661] Art. 65. para 6 FA.
[662] Art. 98. and 192. of Civil Procedure Act.

rights and duties of parental rights. The question is whether the court, if during the procedure, based on established facts, determines that there has been no abuse or serious neglect of parental rights, but "only" negligence in exercise of the rights and duties, may, if the claim is directed to the full deprivation of parental rights, deprive parents only partially of their parental rights? More specifically, is there an identity between the partial deprivation of parental rights and the partial adoption of a petition for the full deprivation of parental rights? If not, what should the court do if it determines that only elements of partial deprivation of parental rights exist? This is one of the proceedings in which the court must be guided by the best interests of the child, and the real question is how to perform this effectively. The court may initiate this procedure as an adhesion proceeding, but what should be done in a situation where the central procedure is the deprivation of parental rights? The right and duty of the judicial authority is to notify social services as well as actively legitimate persons in this proceeding, and there are grounds for the deprivation of parental rights. In addition, the social service may itself note that there are grounds for initiating the proceedings. However, urgency does not allow all actions to be retaken if they have already been undertaken during the process of full deprivation of parental rights. Therefore, the statutory regulation of this issue should be considered to clarify whether there is an overlap in the content of full and partial deprivation of parental rights.

2.2.4. Decision making and verdicts

In this process, the Court reaches a verdict. By nature, this decision is constitutional. In comparative law, a high degree of credibility of evidence and clear and convincing evidence is required (75% certitude).[663] With this degree of certainty, the following elements must be proven: 1) the child's safety, health, or development has been or will continue to be endangered by the parental relationship; 2) the parent is unwilling or unable to eliminate the harm facing the child, or is unable or unwilling to provide a safe and stable home for the child, and the delay of permanent placement will add to

[663] Historically, the legal standard of proof for terminating parental rights was relatively low, a preponderance of the evidence (or "more likely than not"). However, the United States Supreme Court, in *Santosky v. Kramer* (1982) overturned this relatively lenient standard of proof in favor of higher standard, clear, and convincing evidence. (Barone, Weitz and Witt P, 2005, p. 405).

the harm; 3) the division (the Division of Youth and Family Services) has made reasonable efforts to provide services to help the parent correct the circumstances that led to the child's placement outside the home, and the court has considered alternatives to deprivation of parental rights; and 4) deprivation of parental rights will not do more harm than good.

The FA does not prescribe any exception to the general rules of civil procedures in terms of proof, and from the records of processed cases, it could not be observed that the court established particular criteria on this issue.

This decision must be recorded in the birth registry, and if a child has the right to real estate, it must also be recorded in a corresponding public registry of property rights. In proceedings involving the deprivation of parental rights, the parties cannot conclude a judicial settlement. The decision was approved for revision.

The Court decides on discretion regarding the reimbursement of the costs of the proceedings, bearing in mind the grounds for fairness.

3. Empirical Research

3.1. The circumstances of the disputed cases and proceedings before the Basic Court

The study included 12 subjects, who were validated in front of the Basic Court in Niš during 2005–2010. Thus, according to the available documents, all proceedings conducted in front of the court during this period were handled.[664] However, further studies on this topic are warranted.

All disputed cases can be classified into several groups based on the reasons parents have been deprived of their parental rights.

The first group of cases, five of them, concern circumstances in which the child has an innate disability because of which the parents are unable or unwilling to take care of the child.665 The proceedings are brought by the Center for Social Work, usually at the initiative of the defendants and the

[664] While collecting data, two problems were confronted. First, the electronic registar for browsing the data is only available from 2010. Also, there are no unified records in the social service. For that reason, the data are received by the intern records of the employed or by memory. Further, it is especially hard to prove abuse, and establishing an informative network for wider indications is recommended. The main evidence are clinical records and social records. (Janjić and Obretković, 1996, pp. 113–114).

[665] The following anomalies occurred: down syndrome, anomaly multiplex (exact type of anomaly was not noted), heart anomaly, apert syndrome.

parents of a minor. Children are typically placed in social care institutions.[666] In most cases, parents do not show interest in caring for their children or helping them adapt and socialize.[667]

In three out of five cases, both parents were completely deprived of parental rights; in one case, both parents were partially deprived of parental rights, and in one case, one parent was partially deprived of parental rights.

The disposition of the judgment in which the defendant (a father) is partially deprived of parental rights is incomprehensible and vague, since it is judged that he partly decides on issues that significantly affect the lives of minor claimants. It follows that the defendant can decide on some issues and not others. If the judge misunderstood a clear legal norm that does not leave such a possibility, he did not list issues on which the defendant could or would not decide in the future. Regardless, what has been decided in the verdict may be assumed; however, this is a judge's failure or misunderstanding of the regulations of such a crucial and delicate legal matter.

Explanations for judgments are also questionable because almost none of them state the exact reason for the deprivation of parental rights. It remains in the domain of speculation whether the explanations relate to the abandonment of a child or to the intentional and unjustified failure to create conditions for living together with a child who is in an institution for social protection. Considering that there is always an essential violation of civil

[666] Conditions in institutions for social care are described in the report, Torment not treatment: Serbia's Segregation and Abuse of Children and Adults with Disabilities, MDRI, 2007. Different forms of violation of human rights such as unsanitary conditions, infectious diseases, lack of medical help and rehabilitation, make life in institutions dangerous. Many children from this research are institutionalized in Kulina, one of institutions described in this MDRI report [Online]. Available at: https://www.mdri-s.org/wp-content/uploads/2015/02/Mucenje-kao-lecenje.pdf www.mdri-s.org (Accessed: 14 February 2023).

[667] The latest research shows that it is in the best interest of children with disabilities to grow up in a family and be involved as much as possible in different activities with other children. Radical turnover is made in an opinion concerning raising a child with a disability. In the past, parents were encouraged to place the child in a social institution, but today they are advised to raise the child in a family environment. (Llewellyn et al, 1999, p. 219) This kind of behavior is against the latest tendencies in inclusive education, which encourage involving children in everyday activities. This kind of treatment is not only good for children with disabilities, but also for other children, because they would develop understanding of the differences.

procedures if a judgment has defects that cannot be examined, judges are expected to have serious and fundamental approaches to adjudication.[668]

These proceedings are characterized by efficiency, a small number of hearings, and renunciations of the right to submit a remedy because it is also in the interest of the respondents to end the proceedings as soon as possible by adopting the claim. In only one case was a temporary representative appointed as the respondent, the mother of a minor child.

The second group consists of cases in which parents are deprived of parental rights because of severe neglect of parental rights. Two cases arose from the same situation, in which parents allowed girls aged 11 and a half years and 13 years to "marry." The girls had been exposed to mental and physical abuse. There is no clear reason why passive multiparty litigation is yet to be established. The cases are based on the same factual and legal situation. There is jurisdiction of the same court, so to achieve a procedural economy, it was more appropriate to lead one proceeding instead of two.

One case relates to parents who did not want to take their child from the hospital, and two cases relate to parents who neglected a child who lived with them.[669] In all the proceedings, the parents were fully deprived of their rights.

Only one case was brought about because of child abuse, and the parents were partially deprived. The father beat the child, threw him on the bed, put cigarettes on his cheek, and burned his heel with hot bricks. Based on the judgment of the criminal court, the father was sentenced to prison for two years for the abuse, and the mother was sentenced to prison for one year due to neglecting the child. It is unclear why the social services claimed partial instead of full deprivation of parental rights when such conduct does not fall under simple negligence in the exercise of parental rights. The

[668] Art. 374. para 12 of Civil procedure: The crucial violence of civil procedure exists if the judgment has defects that cannot be examined, and especially if the decision is unclear, contradictory to itself or to reasons in explanation, or if there is no explanation at all, or those reasons are unclear or contradictory, or there is a contradiction because the explanation cites documents or records.

[669] In one of these two cases, a child was assigned to a mother, who was emotionally unstable, immature, possessed a higher sexual urge, exhibited impulsive behaviour, did not understand development needs, felt maternity was a burden and was emotionally cold to the child. This attitude is against the opinion that women with severe mental illness (SMI) derive great meaning and pride from being mothers. Because motherhood for women with SMI appears to be part of their positive identity, we recommend that this status be fully explored and considered in working with these mothers. (Sands, Koppelman and Solomon, 2004, p. 322).

parents were deprived of the following rights and duties: care, raising, upbringing, education, and child advocacy. The claim for parental support was denied because they were recipients of social care. The Court's decisions and claims are questionable. The legal norm is clear: parents may be partially deprived of all parental rights, but of the duty to support a child.[670] It follows that the claimant does not need to request that the parents support the child because they are not deprived of their duties. The claimant could eventually determine the amount that parents would be required to provide for the child's support.

The last proceedings were initiated by the father of a minor child against the mother and the ex-wife. She also asked for the full deprivation of the claimant's parental rights. Since it was clear that the central problem was an unhealthy relationship between parents and did not concern the child's best interests, the Court rejected both petitions.

3.2. Analysis of the data

According to the collected data, 12 procedures for partial or full deprivation of parental rights were terminated in front of the Basic Court in Niš from 2005 to 2010. In Nis, approximately 3,400 children are born each year.[671] As there are no statistics on the number of juveniles in Niš, a rough estimate is that there will be 51,000 in 2021.[672] This means that only one parent out 25,000 children is deprived of parental rights. It follows that this is a marginal social phenomenon, and its frequency deserves more attention. However, it is doubtful that this is a realistic picture, but it seems that the abuse or serious neglect of parental duties exists. Public perception, obtained by reading newspaper articles, suggests it is a far more widespread phenomenon.[673] This is supported by data from the Annual Report of the Center for Social Work in Niš, according to which, during 2021, 45 children were victims of domestic abuse, and in 2020, 31 children were victims,

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[670] Art. 82. Par. 2. FA.

[671] U niškom porodilištu 2022. najviše rođenih beba u poslednje 3 godine. Available at: www. https://www.juznevesti.com/Drushtvo/U-niskom-porodilistu-2022-najvise-rodjenih-beba-u-poslednje-3-godine.sr.html (Accessed: 16 January 2023).

[672] The population between 0 and 19 years. (Available at: https://publikacije.stat.gov.rs/G2022/Pdf/G202213049.pdf, Accessed: 26 January 2023). According to the last population census, Niš is home to approximately 260,237 citizens.

[673] 'Baby fell in a manhole,' 'Mother killed a baby and then tried to commit a suicide,' 'Father killed a child for revenge,' are examples of newspaper headings (different medias in Serbia).

which raises the question of why there are not more proceedings in this matter. The reasons remain only in the domain of speculation, but the prevailing impression is that the relationship between parents and children and family relations in general continue to be considered as something that stays in the family, and the relevant institutions seldom and unwillingly interfere. The number of decisions in this area speaks more about society's unwillingness to react than about the judiciary's unwillingness to deal with this problem because the claim was adopted in 11 out of 12 cases.

The evidence used was the hearing of parties and the reading of documents. In one case, a child whose parents have been deprived of their parental rights is questioned.

On average, 4.5 hearings were held before a decision was made. The hearings were often delayed because the defendant was not properly summonsed or summonsed but did not come. In both cases, a temporary representative was set.

The average duration of proceedings is seven months, which conflicts with the principle of urgency. The only procedure against the state of Serbia led by the European Court of Human Rights, referring to the deprivation of parental rights, is the duration of proceedings in front of domestic courts.[674] Due to violation of Article 6 (Right to a fair trial), Serbia is obliged to pay 2,600 EUR for non-pecuniary damages and 1,300 EUR for the costs of the proceedings.

The only appeal to the court was to the Center for Social Work due to the decision to reimburse the costs.

4. Conclusion

The deprivation of parental rights is the most severe measure by which the state interferes with the relationship between parents and children. Thus, the state punishes parents who unconsciously exercise their parental rights, abuse them, or neglect the rights and duties of their parental rights, but, broadly and more significantly, protects the rights of a child. Therefore, it is essential to clearly and precisely prescribe the substantive reasons for the deprivation of parental rights and procedures. While full attention was paid to the prescription of the reasons for the full deprivation of parental rights, it seems that the same attention was missing when it came to the partial deprivation of parental rights. Therefore, the grounds are too broad and

[674] *Veljkov v. Serbia* App. No. 23087/07, 19 April 2011.

vague, which can lead to a distortion of the principle of legal certainty due to different interpretations by the judge. The method of legal protection for which the current solution has opted is litigation, which differs from the longstanding practice in which this matter is decided in non-contentious proceedings. When creating the procedural rules, the child's best interest was taken as the supreme principle, but some questions remained sketchy, such as the right of the child to express opinions (and be appreciated) and the role of the child when it is not a party in these proceedings.

Research conducted by the Basic Court in Niš concluded that proceedings for the deprivation of parental rights are extremely rare in practice. The most significant number of proceedings were initiated because parents themselves could not or did not want to take care of their children, who were, in almost all cases, born with some form of inborn disease or disability. Other proceedings were initiated mainly due to neglect of parental duties, while only one process was initiated because of the physical abuse of a minor.

The average duration of the proceedings is seven and a half months, which is inconsistent with the principle of urgency by which judges should be guided to carry out the proceedings. The most significant problem in achieving efficiency is the submission of letters to respondents. In making the explanation, the court did not always give a precise reason for the deprivation of parental rights, and in one case, partial deprivation did not list the rights a parent was deprived of.

In conclusion, the existence of abuse and neglect and parents not prosecuted and appropriately punished for misbehavior remains. In this way, this phenomenon can expand because unpunished cases encourage others to behave in the same way and, conversely, children exposed to violence have a greater predisposition to become bullies.

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