

THE CHILD-FRIENDLY JUSTICE - THE APPLICATION OF THE INTERNATIONAL STANDARDS IN THE CIVIL COURT CASES

Abstract

The paper analyses the international standards concerning the child's process rights, the referent comparable legal solutions and the legal system of the Republic of Serbia, especially the possibility for children to take part in the court cases in different process roles. The problems have been recognized which in practice are conditioned by the circumstance that our Family Law does not allow, by its general norm, for the child to be a party in all the process which refer to his / her rights and interests. Although there is a number of situations in which children are explicitly acknowledged the process legitimation, and those where this right can be indirectly concluded, it does not mean that, starting from the international standards, the children's process rights are accepted and recognized at the highest level. As especially serious, the problem of independent undertaking of process activities by children of certain age and equal understanding capability / capacity, which is particularly analyzed in this paper. In the context of so called evolving children's capacity to recognize the participation rights as the prerequisite of participation in the case in any role. Thus the specificity of these rights and standards which are established for them on the international level (by obligating but also referring acts) are given the necessary attention. The analysis outcome of the abovementioned problems are the suggestions of changes or amendments to the Family Law by which the court procedures, especially civil ones, were to a great extent adapted for children, and the children's rights protection has reached a higher level.

Key words: *international standards, child's process rights, the process position of a child, the lawsuit capacity of children, the participation rights.*

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1. INTORDUCTORY NOTE

The demand for "child-friendly justice" surely includes "the child-friendly legislation", i.e. the justice system inclined towards children¹ as one of the most important consequences of formulating children's rights and the expansion which this field of human rights has been experiencing in the past thirty or so years. The notion, according to the definition from The Guidelines of the Committee of the Ministers of the European Council² refers to the necessity to guarantee and provide the effective implementation of children's rights on the highest possible level, in accordance with the basic principles (the participation,³ child's best interest,⁴ the dignity, the participation in the procedures and the protection from discrimination)⁵ as well as the level of maturity and understanding, i.e. in accordance with the

¹ Term "child-friendly justice" can mean "the right", "justice" or "jurisdiction / justice" which is friendly, inclined towards children, to their specific needs and capacities. It is used by the Guidelines of the Council of Europe Committee of Ministers in reference to the legal system / jurisdiction which is child-friendly (Guidelines), from 2010., Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, <https://www.coe.int/t/dghl/standardsetting/cdcj/CDCI%20Recommendations/GuidelinesChild-FriendlyJusticeE.pdf>, the date of the visit: 15.06.2016. The guiding idea are the words by Albert Camus: "Do not go in front of me, I will not be able to follow you. Do not go behind me, I will not be able to guide you. Walk next to and be my friend," which best describes the making of the programme "Let's build Europe for children and with children", under the scope of which the Guide came about.

² Guidelines, II Definitions (c).

³ The participation rights are the "developmental process" and mean "the exchange of information and the dialogue between children and adults based on the mutual respect", A. Korać Graovac, *Pravo djeteta da bude saslušano - Opći komentar br. 12 Odbora za prava djeteta (2009)*, u: *Dijete u pravosudnom postupku - primjena Europske konvencije o ostvarivanju dječjih prava* (ur. G. Filipović, D. Osmak Franjić), Zagreb, 2012, 119, <http://www.dijete.hr/joomdocs/Dijete%20u%20pravosudnom%20postupku.pdf>, the date of the visit: 20.06.2016.

⁴ The discovery and the realization of the best interest of the child is the ultimate aim of all the activities, thus the court too, D. Palačković, *Postupak u sporu za zaštitu prava deteta*, u: *Novo porodično zakonodavstvo* (ur. Z. Ponjavić), Pravni fakultet Univerziteta u Kragujevcu, Kragujevac, 2006, 539. This "duty" of the bodies in charge is in compliance with the inquisition authorities of the court in the procedures which concern children, D. Palačković, *Istražno načelo u porodičnim sporovima kao izraz najboljeg interesa deteta*, u: *Najbolji interes djeteta u zakonodavstvu i praksi* (ur. S. Bubić), Univerzitet "Džemal Bijedić", Pravni fakultet, Mostar, 2014, 146.

⁵ Guidelines, III Fundamental principles.

development of their capacities.⁶ It is the legal system which is accessible and adequate, in which you act swiftly (efficiently) and with the necessary attention, adapted and focused on all the needs and rights of children, which respects children's rights and those who refer to the acts, i.e. the participation in the procedure, respecting the private and family life and child integrity. Although it is not an obligatory document The Guidelines were adopted exactly for the purpose of formulating the national policies in this field, in order to encourage the states to adjust their legal systems to the very needs and eliminate the differences between the internationally accepted principles and standards and reality.⁷ The principles and rules which are mentioned and for which the Guidelines contain the propositions in line of operationalization are a part of the most important documents among which, are above all the UN Convention on the Rights of the Child and the European Convention (henceforth UN Convention) on the Exercise of Children's Rights (henceforth European Convention).⁸ Although they differ with respect to liability, all the three documents have an undoubted significance in adapting the court and out of court system to the rights, interests and needs of children.

The protection of the substantial rights of children requires that they are understood, respected and their differences to be taken into account within

⁶ We are talking about the concept "evolving capacity of the child" from the UN Convention on the Rights of the Child, 1989, see The Law on ratification of UN Convention on the Rights of the child (Zakon o ratifikaciji Konvencije UN o pravima deteta), Official Gazette of the Socialist Federal Republic of Yugoslavia - International Conventions (Službeni list SFRJ - Međunarodni ugovori), No. 15/90 and Official Gazette of the Federal Republic of Yugoslavia - International Conventions (Službeni list SRJ - Međunarodni ugovori), No. 4/96 and 2/97. About this particular concept see G. Lansdown, *The Evolving Capacities of the Child*, Florence, 2005, <https://www.unicef-irc.org/publications/pdf/evolving-eng.pdf>, the date of the visit: 15.06.2015.; L. Cunninham, *A Question of Capacity: Towards a Comprehensive and Consistent Vision of Children and Their Status under Law*, US Davis Journal of Juvenile Law and Policy, Summer 2006, Vol. 10:2, <http://jlp.law.ucdavis.edu/archives/vol-10-no-2/cunningham.pdf>, the date of the visit: 20.06.2016.

⁷ S. Bubić, *Usklađivanje domaćeg zakonodavstva sa *acquis-em* radi jačanja procesnog položaja deteta*, 60, 61, <http://eprints.ibu.edu.ba/3164/2/01%20Prof.%20dr.%20Suzana%20Bubic.pdf>, the date of the visit: 21.07.2016.

⁸ European Convention on the Exercise of Children's Rights, ETC No. 160, 25/01/1996, which came to force 01.07.2000., <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/160>, the date of the visit: 26.06.2016. The term "exercise" can be translated as the doing or the application.

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the justice system too, which includes the adoption of the mechanism and the guarantee of the process character. All the rights, and for all children, are designed as human rights starting from the child's autonomy as the legal subject and their independence as the bearer of the human freedoms and rights,⁹ from his uniqueness and values as a human being.¹⁰ However, concerning the age, maturity and developmental needs we should dominantly take care in order to provide protection to this vulnerable category and procure the satisfactory level of freedom of personality and self-determination,¹¹ even when the process rights of the child are in question.¹²

The UN Convention establishes the obligation for the member states to provide the child capable of forming his opinion with the possibility to express it freely concerning all the matters which concern him/ her, and thus also in the court case, to enable the opinion of the child to be given an adequate importance, and especially to make it possible for the child to be interrogated in all the court and administrative procedures which concern him / her directly, through a representative or the corresponding organ, and the means of realization is in the domain of the national procedure law (article 12). We are talking about the fundamental right which is considered to be the measure of human dignity- to make it possible for everyone to be involved in the decision-making which concerns them, in compliance with their level (of development) and the competencies and the general right to express their opinion about all the things that concern a certain person in compliance with the mentioned factors.¹³ Apart from Art. 12, the Article 13 is

⁹ N. Petrušić, *Austrijski model pomoći i podrške detetu u postupku za uređivanje roditeljskog staranja i ličnog kontakta*, Zbornik radova PF u Nišu, br. 65, 2013, 163.

¹⁰ United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (ECOSOC RES 2005/20, 22. July 2005), III.8.a " Every child is a unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected", <http://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>, the date of the visit: 24.07.2016.

¹¹ N. Petrušić, *Austrijski model*, 163.

¹² This approach contains also the document by the Center for Children's rights "The Child-Friendly Justice in the Republic of Serbia", The Centre for the rights of children, Belgrade, 2013, 3, which was established with the support of the organization Save the children Sweden.

¹³ S. Aras Kramar *et al.*, *Vodič za ostvarenje prava djeteta na informacije, izražavanje mišljenja, zastupnika i prilagođen postupak u sudskim postupcima razvoda braka i o roditeljskoj skrbi*, Hrvatski pravni centar, Zagreb, 2015, 17, <http://www.hpc.hr/dokumenti/Razno/Vodiczaostvarivanjepravadjetetarazvodbrakaroditeljskaskrb-27-11-15.pdf>, the date of the visit: 05.07.2015.

also important, by which the right of the child to ask for, receive and give information is constituted, even those important for the court procedures which is the prerequisite for expressing the opinion.

The European Convention, although it is not a mandatory act in the Republic of Serbia, i.e. it guarantees the procedural rights of children which it contains, are undoubtedly the guiding ones in the process of adapting our judicial system *acquis comunitar*. By the provision of the Article 1/3 its application area is limited to the procedural rights of children in family matters, especially those which refer to the exercise of parental rights, residence and the access to children. We could talk about two types of procedural rights guaranteed by this Convention - mandatory and recommended ones for the member states.¹⁴ The mandatory ones are, based on the provisions of articles 3 and 4, the right to information, to be consulted and to express one's opinion, to be informed about the possible consequences of the stated opinion and of any decision made, as well as the right to have a special representative appointed (in person or through another person or body) in case of the clash of interests with other representatives.¹⁵

When we talk about the general right of child participation, the connection with the provision of Article 6 of the European Convention on Human Rights can be established,¹⁶ i.e. thus established right to the just trial. This provision most directly recognizes the right of "all", but in the context of its application it is referred to the need for flexibility and child adjusted procedure.¹⁷

¹⁴ About this see D. Palačković, *Procesna prava deteta prema Evropskoj konvenciji o ostvarenju dečijih prava*, *Pravni život*, 9/2000, 541, 542.

¹⁵ "A representative" is defined by Art 2 c (Definitions) - „a person, such as a lawyer, or a body appointed to act before a judicial authority on behalf of a child”.

¹⁶ Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.XI 1950, see The Law on the confirmation of the European Convention of the Protection of Human Rights and Fundamental Freedoms, Official Gazette of the Republic of Serbia and Montenegro - International Conventions (Službeni list SCG - Međunarodni ugovori), No. 9/2003, 5/2005, 7/2005 - corrected, and Official Gazette of the Republic of Serbia - International Conventions (Službeni glasnik RS - Međunarodni ugovori), No. 1/2010).

¹⁷ See for example the decision of the Court for Human Rights in the case of Hokkanen v Finland, 23. 09. 1994., lawsuit 41, <http://www.c-g.org.uk/camp/hr/hokkanen.htm>, the date of the visit: 26.07.2016., that the wishes of the child are always, as much as possible, respected in the legal procedures. Numerous guarantees of the just trial to the minors are the consequence of the application of Art. 6 and the practice of the Court, e.g. in Australia, Victoria, Charter of Human Rights and Responsibilities Act, 2006,

2. THE CHILD POSITION IN CIVIL PROCEEDINGS IN THE REPUBLIC OF SERBIA

For the position of a child in the civil proceedings the provisions of the Family Law Act¹⁸ and Civil Procedure Act¹⁹ are important. The Family Law Act, which in the case of the substantial rights of children accepts the international standards, when we talk about their procedural rights, is, it seems, has a flaws. The general attitude (Art. 6/1), that "everyone" has an obligation "in all the activities" to be guided by the child's best interests and the obligation of the state "to respect, protect and improve the child's rights" (Art.6/3) the Family Law Act operationalizes by a number of provisions. The provision of article 65 is extremely important, by which the child's right "to freely form (his/her) opinion is guaranteed" to be freely expressed,²⁰ but also

http://www.austlii.edu.au/au/legis/vic/consol_act/cohrara2006433/, the date of the visit: 26.07.2016: that the court must explain each activity, decision or procedure, as well as their effects, in an understandable and simple manner, that it must allow the full participation during the procedure, that it must respect the culture(al) identity and minimize the stigma towards the children and their family, the disclosing of the public and acting in compliance with their age. As an example of the precise approach of the Court for human rights the decisions in the case of T v United Kingdom and V v United Kingdom are stated, in which the breach of the right for just trial was established thus the children were not, in reference to the legal representatives, at distance in the Court House which does not allow "whispering ("whispering distance"), A. Burnnard, *The Right to a Fair Trial: Young Offenders and the Victorian Charter of Human Rights and Responsibilities*, <http://www.austlii.edu.au/au/journals/CICrimJust/2008/24.html>, the date of the visit: 26.07.2016.

¹⁸ Family Law Act (Porodični zakon), Official Gazette of the Republic of Serbia (Službeni glasnik RS), No. 18/2005, 72/2011 – other Law and 6/2015.

¹⁹ Civil Procedure Act (Zakon o parničnom postupku), Official Gazette of the Republic of Serbia (Službeni glasnik RS), No. 72/2011, 49/2013 – decision of the Constitutional Court, 74/2013 – decision of the Constitutional court and 55/2014 and Non-litigious Procedure Act (Zakon o vanparničnom postupku), Official Gazette of the Socialist Republic of Serbia (Sužbeni glasnik SRS), No. 25/82 i 48/88 and the Official Gazette of the Republic of Serbia (Službeni glasnik RS), No. 46/95 – other law, 18/2005 – other law, 85/2012, 45/2013 – other law, 55/2014, 6/2015 and 106/2015 – other law.

²⁰ The practice of the Auditory Court in our country confirms that the Court of First instance has the problem of acknowledging the right from Art. For example, The High Court Council Audit, 2393/07, dated 12. 09. 2007., where it is stated in the explanation that the court must not be guided by the positive motivation of the parents to take care of children but is obliged to determine and "obtain" the opinion of a child which is capable of giving one, and thus make the decision in accordance with his / her best interests.

to timely get all the "information" which is necessary for forming the opinion. The right to directly express an opinion in each proceeding in which it is decided about his/her right is applied to the child who is at least 10 years old, as well as for him/her to address the court (or other administration body), in person or through another person or institution and ask for help in achieving his rights. The court (or administration body) "establishes"²¹ the child's opinion in cooperation with the school psychologist i.e. the organs of custody, family counselling service or any other institution specialized for mediating in family matters, and in the presence of the person which the child chooses himself/herself, and finally, a "due attention" must be devoted to this opinion "in accordance with the age and maturity of the child".

However, the Family Law Act does not determine the child's procedural position on the general level in the procedures which refer to his/her rights and interest, and can be recognized also the specific problems - the real participation when his/her active (process) legitimation is recognized, guarantees that the statement represents the real will of the child, the way of informing and the type of information and similar. It is exactly because of this, in reference to the general problems of the child's position, the current theoretical division on the situations when the rights of the child are directly protected and thus the child has a position of a client, and those when you do things indirectly, and the child is the "hidden" or "concealed" client, "the object" of dealing although it is his/her rights (or interests) it is decided about.²² The Family Law Act enables the child to be the client, the prosecutor as a rule, in a number of court cases, recognizing his/her process legitimation.²³ But in the situations when the child is the necessary and unique co-litigant (the procedures in the cases with the aim of establishing or

²¹ Vrhovni sud Srbije, Rev. 2393/07, using the formulation "to obtain an opinion" it makes an association with the inadequate application of the provision, and thus the court is obliged to "determine" the child's very opinion, and not to turn to other for that aim. "Others" are only in the role of the deputy organ of the court.

²² G. Stanković, *Dete kao stranka u parničnom postupku*, u: Prava djeteta i ravnopravnost polova - između normativnog i stvarnog (ur. G. Marković), Istočno Sarajevo, Pravni fakultet, 2012, 31 i 113, and more about the position of the child, N. Petrušić, *Pravo deteta na slobodno izražavanje mišljenja - materijalno-pravni i procesni aspekt*, Bilten sudske prakse VSS, 2007, 512-531.

²³ The procedures for the determination of motherhood (Art. 249/1), to contest the maternity (art. 250/1, the paternity determination (art. 251/1, the contest of the paternity (art. 252/1), for the protection of children's rights (art. 263/1) as well as in the procedure for exercising i.e. the deprivation of the parental right (art. 264/1, 2).

dispute the parental status), he/she according to the mandatory legal norm, has the position of a client (taking into consideration the process outcome of the lack in the form of dropping the accusations, Art. 256/6, 7 of the Family Law Act).²⁴ In all the other ones, irrespective of the legal legitimation, that position is acquired only if they initiate the proceedings. If this is done by someone from the group of other legitimized persons (or bodies), the child, thus, does not have the position of a client so it is justly pointed to the necessity of the application of the institute of the necessary co-litigation and in other situations, for example in the proceedings for the protection against the domestic violence, for depriving of or giving back the parental right and for the children rights,²⁵ which is, still, a partial solution to the problem.

The provisions of the Family Law Act point to the conclusion that the child ``can`` have a position of a party in the proceedings in which it does not have the legal legitimation. Thus in the alimony proceedings (Art. 278/2), taking into consideration the stylization of the provision which allows the right for prosecution to the persons in the role of creditor or the debtor of the allowance, and the similar conclusion can be drawn for the annulment of the statement about the consent to the acknowledgement of paternity (Art.49), because the statement must be given by a child older than 16 who is capable of reasoning, and the right to initiate the proceedings has ``a person who has given the statement`` (Art.253/1). Also, the child as ``the member of the family towards whom the violence was committed`` can also initiate the proceedings for the protection against the domestic violence, as well as for the prolonging of the protection measures against the domestic violence (Art. 284/2). In these situations too, as well when irrespective of the active process legitimation the child did not initiate the proceedings, he/she ``can`` be the party, which makes it more problematic for the protection of his/her rights.

We can note, for example, that in matrimonial proceedings, according to the Family Law Act, the child, for obvious reasons, does not have the legitimation to initiate the proceedings, but does not have either any other procedural role²⁶ although it is undoubtedly interested in the ``destiny`` of

²⁴ B. Poznić, V. Rakić-Vodinić, *Građansko procesno pravo*, Beograd, 2015, 559.

²⁵ Vid. Analiza zakonodavstva RS s aspekta prava deteta (Analiza zakonodavstva), Centar za prava deteta i UNICEF, Beograd, decembar 2010 - januar 2011, godine, 16, http://www.unicef.rs/files/FINAL_Analiza%20zakonodavstva%20RS_9_2_11.pdf, the date of the visit 18.07.2016.

²⁶ Obiteljski zakon Republike Hrvatske, Narodne novine, br. 103/15, od 01.11.2015, <http://www.zakon.hr/z/88/Obiteljski-zakon>, the date of the visit: 07.07.2016., e.g., Art. 325, in the procedure.

the marriage, which can have repercussions on the rights, legal and factual relations between parents. Apart from that, in the matrimonial proceedings it is necessary to make a decision of exercising the parental right (Art. 226/1 of the Family law), and this procedure, as the adhesion, is a part of the matrimonial proceedings, so the theory recognizes the unique situation in which someone who has a legal interest, the process legitimation was not recognized.²⁷ The consequences are very rigid for the child, among others the impossibility of opposing the decision. This conclusion cannot be influenced by the circumstance that in the matrimonial proceedings concerning the exercising the parental right it is decided based on the duty, and the application of the principle of the best interest of the child does not mean that the court has always, in the case of the decision of The Court of First Instance, taken all the necessary activities in order to establish it.²⁸ It could be even said that the child is the "interested party" in the biggest number of proceedings in the area of family relations, that they are important for the rights or interests of children, i.e. that these proceedings and their outcomes truly concern them.²⁹

The Family Law Act does not contain the provisions about the capability of a child to act in the civil proceedings, but general rules of the Civil Procedure Act are applied (Art. 75, 76), i.e. the child is capable of participating in the civil proceedings within the limits of his/her capacity to act. The Civil Procedure Act does not have special rules by which it would be made possible, under the certain conditions and by the permission of the court, for the child to act independently in civil proceedings, according to the analogy to the capabilities of the "participant" of the non-litigious proceedings – the party who initiated the proceedings or the one "about whose rights and interests it is decided on" (Art. 7). The permission of the court refers to all the activities in the procedure which the law does not accredit them for if they are capable of understanding their meaning and the true consequences. In theory, however, this rule is interpreted in such a way

of the mandatory counselling before the divorce, the child can be given the opportunity to express his / her opinion with the consent of parents.

²⁷ About that A. Uzelac, B. Rešetar, *Procesni položaj i zastupanje djeteta u sudskom postupku prema hrvatskom i komparativnom pravu - neka otvorena pitanja*, u: *Dijete i pravo* (ur. B. Rešetar), Pravni fakultet Sveučilišta "J.J.Štrosmajer", Osijek, 2009, 176, http://www.alanuzelac.from.hr/pubs/A24proc_pol_djeteta_Os.pdf, the date of the visit: 07.07.2016.

²⁸ About the best interest, factors for its determination and the difficulties in practice, D. Palačković, *Istražno načelo*, 145-154.

²⁹ *Analiza zakonodavstva*, 16.

that in litigious and non-litigious proceedings the incapable person must have a legal representative, and that the court will in the cases of non-litigious proceedings "take into consideration" only the abovementioned activities, whereas "these possibilities do not exist in litigious proceedings".³⁰

3. THE NEED TO MAKE PRECISE THE POSITION OF A CHILD IN CIVIL PROCEEDINGS

The comparative analysis of a number of laws which regulate the area of the family relations point to the more modern approach than the one by the Serbian Family Law Act. Thus, the process position of the child in all proceedings which "concern their rights and interests" are defined by the general formulation by the Family Law Act of Croatia (Art.538) – the child is the party in all proceedings. There isn't a limitation by the phrasing "legal" interests, which implies the relevance of each interest of the child.³¹ However, in this case (as in other cases of the legal activite legitimation) the child's capacity to act in civil proceedings is not recognized.³² It is recognized in a limited manner and indirectly by the Article 359/1 –when the personal rights and interests of the child are decided on, the court is (generally) authorized to let the children older than 14 to "present the facts, propose evidence, submit the legal remedy and undertake other activities in the proceedings" if they are capable of understanding the meaning and the legal consequences of these activities. "The possibility" of children to act independently in the civil proceedings is included in the Family Law Act of the Federation of Bosnia and Herzegovina (Art. 271/1), but it is questionable if it refers to all or some individual activities (the wording refers to the general approach), and it was not explicitly prescribed who will make the estimation and give permission (we suppose it must be done by the court, the comment by the author of this paper). In the Austrian legislation, in non-litigious proceedings for

³⁰ B. Poznić, V.Rakić-Vodinečić, *op. cit.*, 685.

³¹ See also Family Law Act (Porodični zakon), Official Gazette of Federation of Bosnia and Herzegovina (Narodne novine Federacije BiH), No. 35/05 and 31/14, https://advokat-prnjavorac.com/zakoni/porodicni_zakon_Federacije_BiH.pdf, Art. 125/2 establishes that "the right of the child (is) to ask for the protection of all the rights before the organ in charge", and the provision is precisely defined by the art. 271/1.

³² A. Uzelac, B. Rešetar, *op. cit.*, 177, S. Triva, M. Dika, *Gradjansko parnično procesno pravo*, Zagreb, 2004, 314-315.

reulation of the parental care and the maintenance of the personal relations the children have identical possibility.³³

The acceptance, by the general norm, of the party role of a child in all the procedures which refer to his/her rights and interests is considered justified and necessary, also because in this way the legal representatives of a child are put into the position to undertake all actions in civil proceedings in the name of and in the interest of a child. The independence in undertaking the procedural actions deserves, however, the comment in the context of the general attitude towards the theory of the civil procedural law that the capacity to act in civil proceedings can only be complete, unlimited.³⁴ The principle of the legal certainty is directly opposed to the undertaking only some actions in civil proceedings - "the partial", "special" capacity to act in civil proceedings, so these legal solutions are criticized in the theory.³⁵ From this aspect the solution of the Family Law Act of Federation of Bosnia and Herzegovina is more acceptable, and is justified by the conditions connected with the age and capability to understand which are accepted in the international documents on children's rights in accordance with the attitude on the "evolving" capacity to act,³⁶ and then also the capacity to act in civil proceedings, but the approach is definitely revolutionary.³⁷ The adoption of the possibility of undertaking the actions in civil proceedings by the permission would require the determination of the lower age limit of

³³ § 176/1 Allgemeines bürgerliches Gesetzbuch, and about the Austrian law see more in N. Petrušić, *Austrijski model*, 169-173.

³⁴ Thus, S. Triva, M. Dika, *op. cit.*, 308; B. Poznić, V. Rakić-Vodinelić, *op. cit.*, 199; A. Jakšić, *Građansko procesno pravo*, Beograd, 2012, 216; D. Palačković, *Parnično procesno pravo*, Kragujevac, 2004., 106,107.

³⁵ A. Uzelac, B. Rešetar, *op. cit.*, 172-174.

³⁶ It is stated in the literature that the development of children in the psychological, cognitive and emotional sense is the most intensive in the period between the ages of 10 and 18, D. O. Brink, *Immaturity, Normative Competence and Juvenile Transfer: How (not) to Punish Minors for Major Crimes*, University of San Diego, School of Law, Legal Studies Research Paper Series, No. 07-01, September 2005, 1571, as well as the literature to which the the athor refers toin the remark no. 62, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=800692, the date of the visit: 28.07.2016.

³⁷ The darft of the Civil Codex of the Reblic os Serbia (Nacrt Građanskog zakonika), The General part, in art. 31, as an alternative solution for the partial business capability` The older minor can independently do the legal dealings as determined by the law, those which correspond to his / her capabilities or those which are by nature in harmony with his / her intellectual and emotional maturity ` , which is the contemporary approach of the children rights, <http://www.mpravde.gov.rs/files/NACRT.pdf>, the date of the visit: 25.07.2016.

children which would presume the capability of rational judgment (a rebuttable presumption).³⁸ This, surely, could not be the age of ten, which the Family Law Act states, for example, as the direct expression of the opinion because for the understanding of the importance of the procedural actions and their consequences, and thus for the independent undertaking, a higher level of cognitive, intellectual capabilities is necessary, i.e. of the knowledge and education.

The complementation should, taking into consideration the necessity to protect children, include the solution to the problem of the participation of the child's legal representative. The higher level of the legal certainty is of course provided by the solution accepted in the Federation of Bosnia and Herzegovina, that the legal representative undertakes the procedural actions only until the child states that he/she "will undertake civil proceedings" (Art. 271/3). However, from the aspect of child protection as the vulnerable category, it is more acceptable for the legal representative to keep the procedural rights, and in the case of the mutually opposing actions of the child and the legal representative, the court will make the estimate which action to undertake taking into consideration child's best interest.³⁹ Apart from that, for the actions undertaken by the representative before initiating civil proceedings, the abovementioned estimation must be carried out.⁴⁰

It could be stated that in respect to the child's possibility to undertake the actions in civil proceedings independently there are arguments both for and against both stated solutions, taking the side is not easy not even in the sphere of the legal policy. Also, as an alternative, the normative approach should also be mentioned already accepted by the Family Law Act (Art. 64),⁴¹ i.e. the recognition of the special capacity to act of children of certain age (fifteen), who can undertake legal actions also by which they manage and enjoy their income or assets acquired by personal work, which is a prerequisite of the possibility to independently carry out the civil proceedings

³⁸ Family Law Act of Republic of Croatia, art. 360/3, thus, it adopts the relatively high limit of the age of 14 for the independent expression of the opinion.

³⁹ See art. 359/4, 5 of the Family Law Act of Republic of Croatia.

⁴⁰ In the Austrian law the legal representative, also, is not relieved of the right to represent irrespective of the process capability of the child older than 14, in N. Petrušić, *Austrijski model*, 170.

⁴¹ Here the capability to have the judgment is suspected. Labour Law Act (Zakon o radu), Official Gazette of the Republic of Serbia (Službeni glasnik RS), No. 24/2005, 61/2005, 54/2009, 32/2013 and 75/2014, Art. 25, as the condition for beginning the employment mentions "the capability for doing the job", which is not the same thing as the capability of judgment.

“stemming from the abovementioned actions”.⁴² The assumption of the extensive application of this solution is, also, the acceptance of the attitude of the evolving capacity of children which provides maintaining the concept of the capacity to act in civil proceedings contained in Civil Procedure Act. However, the Draft of Serbian Civil Code does not contain the innovative solutions on child’s position in civil proceedings in reference to the Family Law Act,⁴³ so it can be supposed that there is no intention to regulate this sphere in a different way.

A special pointing to the right of the child to present fact and offer evidence, in the cases of validity of the inquiry principle in the proceeding in family matters⁴⁴ does not have a special importance.⁴⁵

Bearing in mind that the right to express an opinion (Art. 65 of the Family Law Act) does not determine the child’s position in the proceedings, the circumstance that the child does not have the status of the party in all proceedings in family matters, i.e. when his/her rights are in question, a question is to be raised whether a child can take the role of the witness.⁴⁶ The witness is discussed in the theory as a person who provides the statement for the court about "his/her past observations which could be important for establishing the truthfulness of the statements which are the subject of

⁴² B. Poznić, V. Rakić-Vodinečić, *op. cit.*, 200, as well as S. Triva, M. Dika, *op. cit.*, 798, A. Jakšić, *op. cit.*, 217.

⁴³ The draft of Serbian Civil Code, Book four, The Family Relations, art. 2284- 2295 (the rights of the child), art. 2456-2462 (the common provisions about the procedures in the family matters).

⁴⁴ In the Croatian law these are the status, then the procedures about the parental care, personal relations and measures as well as the alimony for the protection of rights and the well-being of our child (art. 350, in connection with art. 349 of the Family Law Act of Republic of Croatia), and in the law of Serbia everyone (art. 205 Family Law Act of Republic of Serbia). About the significance of the prosecution principle in the family courts see D. Palačković, *Istražno načelo*, 143-144, 153.

⁴⁵ In the protection of the best interest of the child ex officio the court collects facts and evidence, and this behaviour is, among other things, also the barrier to all the party dispositive activities which are opposed to him, D. Palačković, *Procesni instrumenti u funkciji zaštite prava na zakonsko izdržavanje deteta*, u: *Pravna sredstva za smanjenje siromaštva djece* (ur. S. Bubić), Univerzitet "Džemal Bijedić", Pravni fakultet, Mostar, 2015, 144.

⁴⁶ It is explicit about the fact that the child can have the position of the witness, *Analiza zakonodavstva*, 17.

argumentation".⁴⁷ The fact that the role of a child is not identical to the role of the witness can be supported by, above all, the fact that the court, taking care of the child's best interest always, must not interrogate the child about the facts which harm him/her. The nature of the family relationship and special sensitivity of children due to, for example, emotional immaturity, special relations with parents and other members of the family, influence important restrictions in the procedure of finding out child's opinion, even as the potential witness. Thus he/she is the source of information in a limited extent for the court, and the "interrogation", is much more often and rather consulting the child before decision making.⁴⁸ However, even for such a limited hearing the Civil Procedure Act does not have special rules, so the general rules are applied, as well as the provision of the Art. 65 of the Family Law Act, which actually does not associate the role of the witness because the court "establishes the opinion" in cooperation with the specialized organs. But, irrespective of the specific aspects of the "hearing/interrogation" of children, special rules are necessary. In this context a number of rules can be useful which are contained in Serbian Act on Juvenile Criminal Offenders and Criminal Protection of Juveniles,⁴⁹ as is the general obligation of eliminating the harmful consequences of the proceedings to the personality and health of the juvenile person who is the injured party, the interrogation with the help of the psychologist, pedagogue or other expert, the limitation as to the number of hearings,⁵⁰ the use of the technological assets for the transmission of sounds and images, the hearing without the presence of parties and other participants of the proceedings, the interrogation in the apartment, in some other room or in the authorized institution entitled for interrogating the juvenile persons, the prohibition to be faced with the injured party, if the injured party is due to the criminal act, the consequences

⁴⁷ S. Triva, M. Dika, *op. cit.*, 518, and similar, as "the person which gives the statement to the court about his / her observations about the facts in the past", B. Poznić, V. Rakić-Vodinelić, *op. cit.*, 405.

⁴⁸ M.C.J. Koens, A.P. van der Linden, *Kind en Scheiding*, Den Haag: Sdu Uitgeveres bv 2010, cited according to I. Busschers, *Children's Participation Rights in Divorce Proceedings, A comparative legal research of divorce proceedings in Netherlands, Norway and the United States*, 2012, master thesis, 23 <http://dare.uva.nl/cgi/arno/show.cgi?fid=442754>, the date of the visit: 19.07.2016.

⁴⁹ Act on Juvenile Criminal Offenders and Criminal Protection of Juveniles, Official Gazette of the Republic of Serbia (Službeni glasnik RS), No. 85/2005.

⁵⁰ In reference to the number, it is pointed that there is the inconsistency of the regulations and the need to explicitly, without the possible exceptions, limit the number of hearing to the greatest extent, *Analiza zakonodavstva*, 28.

and other circumstances, in a specially vulnerable and difficult mental state and similar,⁵¹ as a guideline when other court and administrative proceedings are in question. New general rules about testifying from the Civil Procedure Act are also very useful, e.g. the possibility of the written statement (Art. 245/2), which is not inapplicable in the case of schoolchildren, although the need to verify the written statement is problematic taking into consideration the knowledge and the capabilities of children, but also the need to pay the verification fees. It is acceptable for the interrogation by the sound or optical recording (Art. 245/3), which implies friendly surroundings, but not the rules of punishment.

Concerning the participation of the child as an interfering party in the acts in which he or she is not a party, the family and procedural laws do not have clear statements and viewpoints, but there are points of view that this role is possible by the application of the general rules of civil proceedings.⁵² However, as the participation of the third party is conditioned by the legal interest for one party to win the case, the court would, in the case of the child as a possible interfering party, be obliged to estimate whether the individual legal interest of the child for interfering would be his/her best interest. The estimation is specific here and complicated taking into consideration the circumstance that the civil proceedings can be interfered during the whole duration of the proceedings (Art. 215 Civil Procedure Act), and what is the best interest of the child is estimated by the court based on all the circumstances of the legal matter for which there isn't enough process material in the longer period of the civil proceedings.

4. THE PARTICIPATION RIGHTS AS THE PRE-REQUISITE OF THE CHILD'S PARTICIPATION IN THE PROCEEDINGS

Above all, the standpoint of the international documents is that the age cannot be the reason for excluding from exercising the authority which the participation means that the approach must always be individualized,⁵³ so

⁵¹ Art. 152, 153 Act on Juvenile Criminal Offenders and Criminal Protection of Juveniles.

⁵² Explicitly, without further elaborating, we find this possibility with N. Petrušić, *Posebna poslovna i parnična sposobnost deteta; Učešće deteta u sudskim postupcima u porodičnim stvarima*, Pravosudni centar Beograd, 2006, the presentation available at: <https://www.google.rs/>, the date of the visit: 18.07.2016.

⁵³ G. Lansdown, *The realisation of children's participation rights (The realisation)*, A Handbook of Children and Young People's Participation - Perspectives from Theory and Practice, 2010, 12, <http://nmd.bg/wp-content/uploads/2013/02/Routledge-A-Handbook-for>

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the recognition of the participation rights is the general pre-condition of child's participation in the proceedings irrespective of the process role. They aren't all of the same rank - the right to be informed is the pre-requisite for the exercising the other ones. It entails the right to the "adequate" "adapted" information, the information which correspond with the age and the capability to understand (facts, circumstances),⁵⁴ but also which are relevant for the certain legal matter, which will enable the child to exercise the rights completely, unless it is against the child's best interest.⁵⁵ And the decision to announce the information and the way of expressing information must be adapted to the age and capability of understanding.⁵⁶ The national laws can determine the age when the so called capability for understanding is acquired, thus the provision of art. 65 of the Family Law Act is not opposed to the international standards.⁵⁷ However, The Committee for the Children's Rights pointed out in the General Comment no 7 that the children have the rights from the earliest age, and the research shows that "the child is capable of shaping his/her opinion from the earliest age, even when he/she is not capable to express it verbally", so according to that, the application of art. 12 requires both "the recognition, and the respect of the non-verbal forms of communication which include games, speech, body language, facial expression, drawing and painting, by which even the smallest children show

Children and Young Peoples Participation.pdf, the date of the visit: 19. 07. 2016. In the theory four levels are recognized, out of which each one has certain difficulties, in the process of including children in the decision making about the things which concern them-informing, expressing their opinion based on the obtained information, then make sure that this opinion is taken into the consideration, and finally, for the decision to be made (individual or mutual), and according to theory approach of the art. 12 implies that all the children have the right with the respect to the first three named levels, but not in the reference to the fourth one, Alderson, J. Montgomery, *Health care Choices: Sharing decisions with children*, London, 1996, cited in G. Lansdown (The realisation), 13.

⁵⁴ EU Conventions, art. 2d.

⁵⁵ About the best interest, and in this context too, there does not need to exist the dispute between the parties-the contestation of the activities, behavior and measures from the aspect of the best interest, but irrespective of that, it has to be established / determined, D, Palačković, *Istražno načelo*, 146.

⁵⁶ In that sense also S. Aras Kramar *et al.*, *op. cit.*, 18.

⁵⁷ Convention on the Rights of the Child, General Comment No. 12 (2009), A. Legal analysis (Opšti komentar br. 12), 250,<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>, the date of the visit: 05.07.2016.

respect, choices and affinities⁵⁸, which associates the fact that any kind of restrictions according to age are not acceptable.

In order to answer the question who is obliged to provide information all the enumerations would be incomplete – these are all the organs which act as all the others which are in the direct contact with children – parents, caretaker, food provider, the legal guardian and other representatives if the national judicial system prescribes them.⁵⁹ The guidelines (item. 14, 15) provide the interdisciplinary education (training) of all the experts who work with children or for children – about the rights and needs of children, the way of communication and the proceeding which is adapted for them. This is especially important because the court must ask these people for help in taking a comprehensive look into the children's capabilities to understand in order to make the decision about the right of the child to get information. The Article 6 of the European Convention especially emphasizes the obligation of the court to consider before making the decision whether the child has sufficient information, and when it is necessary, to obtain the necessary information, additional information, especially in the case of parental obligations. The personal contact of the court is not discluded, if it is necessary "tete a tete". The General comment of the Article 12 (item. 41) explains the obligation by the persons in charge or organs to inform the child about the right to be heard, i.e. to express his/her opinion about the impact which his/her opinion may have on the decision including the consequences of his/her decision not to express one's opinion. Before the hearing the decision making person or body must prepare the child – inform him/her about the location and time of statement giving, to whom it will be given and who will be present. The information must be timely as well. The guidelines, for example entail that children, parents and representatives must obtain the information directly and informing parents must not be an alternative. Apart from the spoken information, it is expected for the special material to exist, which contain them, which they are accessible and are adapted for children; moreover, it is expected from the state to establish special bodies-associations, internet pages, and telephone.⁶⁰ By pointing out the immmergency when informing, the contents of the information is thoroughly

⁵⁸ N. Vučković Šahović (ur.), *Prava deteta u međunarodnim dokumentima*, Beograd, 2011, 249.

⁵⁹ S. Aras Kramar *et al.*, *op. cit.*, 19, and considering the obligations of the coalition caretaker and the temporary advocate, Art. 267 Family Law Act of Republic of Serbia.

⁶⁰ S. Aras Kramar *et al.*, *op. cit.*, 19, 20.

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listed.⁶¹ The list cannot consist of the exhaustive items, thus the type and nature of the information is decided in concreto. Thus, it would not have any effect if very young children were informed about the rebuttal of the decision to explain in detail the course of the court proceedings.⁶²

The Family Law Act also talks about the timely information and points that the opinion of a child must be established both in the way and in the place which is in compliance with the age and maturity of a child (Art. 266/3), but it does not provide concrete evidence that the information must be "adequate"; rather, it talks broadly about "all the explanations which are necessary for the child" (Art. 65/2, 266/3)⁶³ which does not have the same meaning. Also, the explicit duty of the court is to ask for "the expert evidence and opinion" only in the proceedings for the protection of children's rights and the exercising and losing parental right,⁶⁴ which is problematic.

From the point of view of the judge who carries out the proceedings, the first question is the age, which is indisputable, and then the general judgment capability,⁶⁵ for the establishment of which the help of an expert may be necessary (e.g. disabled children). If the child has this capability, the next phase is providing information about the right which is protected, the proceedings, the procedural rights and the consequences of the decision. Only the adapted information influence the decision by the child to express (or not to express) the point of view, and thus all the information about the legal matter are unnecessary, and very often are not useful either.⁶⁶ The selection is decided by the best interest of the child. The manner, place and time of providing the information, together with the friendly environment and the language which the child understands, mean that the provided information are objective and non-manipulative, even in the cases of specific ways of communication for the children with special needs, such as

⁶¹ Guidelines, Chapter A. The general elements of justice child friendly, 1. Information and advice, in reference to the children, parents and other representatives.

⁶² S. Aras Kramar *et al.*, *op. cit.*, 19, 20.

⁶³ Neither the Rulebook about the organization, normative and the standards of the social care center, Official Gazette of Republic of Serbia, No. 59/2008, 37/2010, 39/2011 and 1/2012 - oth. Rule book, and about that there are no provisions S. Aras Kramar *et al.*, *op. cit.*, 23.

⁶⁴ See art. 270, and in the connection with the art. 268 of the Family law Act.

⁶⁵ It is "the capability of the child to shape the independent opinion to the greatest extent", The Rights of the Children in the International Documents, *op. cit.*, 250.

⁶⁶ Thus, S. Aras Kramar *et al.*, *op. cit.*, 18 state that it is not in the best interest of the child to give him / her information about the unpleasant circumstances which lead to the divorce or the separation of the child from parents, i.e. family.

simplified information.⁶⁷ All is in favor of the standpoint that the court needs external help by experts, so the generalized and partial solutions of the Family Law Act are not the sufficient guarantee, i.e. must be defined more precisely.

Although two relevant conventions define differently the right to express one's opinion⁶⁸, and the theory notices that the term "the right to have one's own point of view", has a broader scope of reference - it refers not only to the court and the administrative proceedings, but also to all other (life) situations which refer to children's rights, whereas the right to be heard refers only to the proceedings, so we can responsibly and without doubt conclude the, as per idea, the same rights are in question.⁶⁹

The Family Law Act, furthermore, following the guarantees of the international documents, by the formulations of Art. 65/4,5 recognizes generally the right of the child to express his/her opinion, but the problem is in the practical application, especially for the children younger than ten for which the court does not have the obligation to provide the opportunity to express themselves directly, as it does not have a special rules in terms of the manner and place where the conversation will take place, nor in the accompanying regulations.⁷⁰ The guidelines (item 44), e.g., oblige the judges to provide the respect for this right, which entails the established mechanisms on the national level. Children must be given the opportunity to express their opinion about the manner of hearing as well. The general comment (item 22) insists on the "free expression of one's opinion", i.e. without any pressure, so that the decision of the child not to express his/her opinion must not have negative consequences for the child and his/her rights and the child must not be exposed to "excessive" influence and pressure.⁷¹ It is necessary to provide the safe environment at statement

⁶⁷ *Ibid.*, and more comprehensively about the contents and the right to inform those who will be informed by the child, A. Uzelac, B. Rešetar, *op. cit.*, 27, 28.

⁶⁸ Art. 12 of the UN Convention-the right to be heard (to be heard, the same expression is used by the Guidelines), art. 3 of the European convention- the right to express his / her opinion (right to expres his or her views).

⁶⁹ *Ibid.*, 30.

⁷⁰ About the obstacles in realizing the right in the Temporary representative of the child, The Right of the Child to be informed and express one's opinion,⁷ <http://www.djecaps.me/fajlovi/Publikacije/PRIVREMENI%20ZASTUPNIK%20DIJETETA.pdf>, date of visit: 18.07.2016.

⁷¹ More about that G. Lansdown, Every Child's Right to be Heard, A Resource Guide on the Un Committee on the Rights of the Child General Comment No.12, 2011, 52-76,

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expressing the opinion, the respect and taking into consideration the individual and social circumstances of a child, who in every moment, can give up further expression of his/her opinion, i.e. the participation (General comment, item 23). If the direct hearing is not possible or the child decides to give the statement through the representative or intermediary, these persons (parent(s) - if there isn't a clash of interests,⁷² the lawyer or other individual or social worker) must correctly and accurately convey the point of view or the opinion of the child, so thus they must have the necessary knowledge, skills and experience and understand the course of the proceedings and the consequences of the decision. The conversation, rather than asking questions, and especially not strictly insisting on the answer is the adequate approach, and excluding the public in this process is self-understood (confidentiality, The Confidentiality, Guidelines, item. 42, 43), but if the child wants, the presence of a parent, caretaker or other individual must be provided according to the child's choice, unless it is decided differently by the explained decision. The friendly environment entails also specially decorated space where the conversation with the child takes place (Guideline, item. 62-64).

The provision which is especially problematic is that the court or the temporary representative (coalition guardian) can deprive the child from the right to express his/her opinion (as well as the right to be informed) if they estimate that it is obviously against the child's best interest (Art. 266 and 267, which are also applied in all proceedings which protect children's interests). Namely, the mechanisms for the control of such decisions are missing, if the caretaker makes them, so it is pleaded for the explicit solution that the court exclusively makes the estimation and the decision concerning exercising the rights.⁷³

Finally, adequate attention must be devoted to the opinion of the child, but that does not mean that his/her opinion will be automatically accepted and decisive for making the decision but that it is the court's task to bring the opinion of the child into the interaction with all other factors of the very

http://www.unicef.org/french/adolescence/files/Every_Childs_Right_to_be_Hear_d.pdf, date of visit: 01.08.2016.

⁷² About the clash of interests in representing children see, e.g., N. J. Moore, *Conflicts of Interests in the Representation of Children*, Fordham Law Review, Vol. 64, Issue 4, 1996, 1820-1856, <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3250&context=flr>, date of visit: 28.07.2016.

⁷³ Analiza zakonodavstva, 17.

situation, and especially and always bearing in mind child's best interest.⁷⁴ The General comments (item 28) insists that the child know in what way his opinion will influence the course of the proceedings, as well as that the age is not enough to determine the importance of the opinion because the children of the same age do not have the same level of understanding, rather it depends on the level of information obtained, experience, the environment he/she lives in, the social and cultural expectations in that environment, as well as the level of support which the child has (item 29). Thus the approach must be individualized, and the maturity, in the context of respecting the opinion, entails, above all, that the child understands and accepts the consequences of possibly respected opinion. From the aspect of refutation of a decision by the child, it would be especially justifiable to explicitly predict that the explanation must state the circumstances which made the court not to admit the right to express one's opinion and (or) not to give importance to the freely expressed opinion,⁷⁵ which would prevent the arbitrary acting of the judges.

REFERENCES

- Act on the Juvenile Perpetrators of the Criminal Acts and the criminal protection of the minors (Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica), *Official Gazette of the Republic of Serbia (Službeni glasnik RS)*, No. 85/2005.
- Analiza zakonodavstva RS s aspekta prava deteta, Centar za prava deteta i UNICEF, Beograd, 2010 - 2011.: http://www.unicef.rs/files/FINAL_Analiza%20zakonodavstva%20RS%209%2011.pdf,
- Aras Kramar, S., et al. (2015.), *Vodič za ostvarivanje prava djeteta na informacije, izražavanje mišljenja, zastupnika i prilagođen postupak u sudskim postupcima razvoda braka i o roditeljskoj skrbi*, http://www.hpc.hr/dokumenti/Razno/Vodicza_ostvarivanje_prava_djeteta_razvod_braka_roditeljska_skrb-27-11-15.pdf
- Brink, D.O., *Immaturity, Normative Competence and Juvenile Transfer: How (not) to Punish Minors for Major Crimes*, University of San Diego, School of Law, Legal Studies Research Paper Series, No. 07-01, 2005, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=800692

⁷⁴ D. Palačković, *Najbolji interes deteta - "izjava težnje" ili dužnost?*, u: Usklađivanje pravnog sistema Srbije sa standardima EU (ur. B. Vlašković), Pravni fakultet Univerziteta u Kragujevcu, Kragujevac, 2013, 272.

⁷⁵ N. Petrušić, *Pravo deteta na slobodno izražavanje mišljenja u novom porodičnom pravu RS*, u: *Novine u porodičnom zakonodavstvu* (ur. G. Stanković), Pravni fakultet Univerziteta u Nišu, Niš, 2006, 113, 115.

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- Bubić, S., *Usklađivanje domaćeg zakonodavstva sa *acquis-em* radi jačanja procesnog položaja deteta*,
<http://eprints.ibu.edu.ba/3164/2/01%20Prof.%20dr.%20Suzana%20Bubic.pdf>
- Burnard, A., *The Right to a Fair Trial: Young Offenders and the Victorian Charter of Human Rights and Responsibilities*, <http://www.austlii.edu.au/au/journals/CICrimJust/2008/24.html>
- Busschers, I., *Children's Participation Rights in Divorce Proceedings, A comparative legal research of divorce proceedings in Netherlands, Norway and the United States*, master thesis, 2012, <http://dare.uva.nl/cgi/arno/show.cgi?fid=442754>
- Civil Procedure Act (Zakon o parničnom postupku), *Official Gazette of the Republic of Serbia (Službeni glasnik RS)*, No. 72/2011, 49/2013 – decision of the Constitutional Court, 74/2013 – decision of the Constitutional court and 55/2014.
- Convention for the Protection of Human Rights and Fundamental Freedoms, The Law on the confirmation of the European Convention of the Protection of Human Rights and Fundamental Freedoms, *Official Gazette of Republic of Serbia and Montenegro*, No. 9/2003, 5/2005, 7/2005 - corrected, *Official Gazette of Republic of Serbia - International Conventions*, No. 1/2010.
- Convention on the Rights of the Child, General Comment No. 12 (2009), A. Legal analysis, <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>
- Cunningham, L., *A Question of Capacity: Towards a Comprehensive and Consistent Vision of Children and Their Status under Law*, 2006, <http://ijlp.law.ucdavis.edu/archives/vol-10-no-2/cunningham.pdf>
- Draft of the Civil Code of the Republic of Serbia, <http://www.mpravde.gov.rs/files/NACRT.pdf>
- European Convention on the Exercise of Children's Rights, ETC No.160, 25/01/1996, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/160>
- Family Law Act (Porodični zakon), *Official Gazette of the Republic of Serbia (Službeni glasnik RS)*, No. 18/2005, 72/2011 – other law and 6/2015.
- Guidelines of the Council of Europe Committee of Ministers in reference to the legal system / jurisdiction which is child-friendly, 2010., Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice; <https://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/GuidelinesChild-FriendlyJusticeE.pdf>
- Jakšić, A., *Građansko procesno pravo*, Beograd, 2012.
- Koens, M.C.J., Van der Linden, A.P., *Kind en Scheiding*, Den Haag: Sdu Uitgever, 2010.
- Korać Graovac, A., *Pravo djeteta da bude saslušano - Opći komentar br. 12 Odbora za prava djeteta*, 2012, <http://www.dijete.hr/joomdocs/Dijete%20u%20pravosudnom%20postupku.pdf>,
- Labour Law Act (Zakon o radu), *Official Gazette of the Republic of Serbia (Službeni glasnik RS)*, No. 24/2005, 61/2005, 54/2009, 32/2013 and 75/2014.

- Lansdown, G., *Every Child's Right to be Heard*, A Resource Guide on the Un Committee on the Rights of the Child General Comment No. 12., 2011, http://www.unicef.org/french/adolescence/files/Every_Childs_Right_to_be_Heard.pdf
- Lansdown, G., *The Evolving Capacities of the Child*, 2005, <https://www.unicef-irc.org/publications/pdf/evolving-eng.pdf>
- Lansdown, G., *The realisation of children's participation rights*, A Handbook of Children and Young People's Participation - Perspectives from Theory and Practice, 2010, http://nmd.bg/wp-content/uploads/2013/02/Routledge-A_Handbook_for_Children_and_Young_Peoples_Participation.pdf
- Law on the Confirmation of the European Convention of the Protection of Human Rights and Fundamental Freedoms (Zakon o potvrđivanju Evropske konvencije o zaštiti ljudskih prava i osnovnih sloboda), *Official Gazette of Serbia and Montenegro – International Conventions (Službeni list SCG – Međunarodni ugovori)*, No. 9/2003, 5/2005, 7/2005; *Official Gazette of the Republic of Serbia – International Conventions (Službeni glasnik RS – Međunarodni ugovori)*, No. 1/2010.
- Moore, N. J., *Conflicts of Interests in the Representation of Children*, *Fordham Law Review*, Vol. 64, Issue 4, 1996.
- Non-litigious Procedure Act (Zakon o vanparničnom postupku), *Official Gazette of Social Republic of Serbia (Službeni glasnik SRS)*, No. 25/82 and 48/88 and the *Official Gazette of the Republic of Serbia (Službeni glasnik RS)*, No. 46/95 – other law, 18/2005 – other law, 85/2012, 45/2013 – other law, 55/2014, 6/2015 and 106/2015 – other law.
- Obiteljski zakon Republike Hrvatske, *Narodne novine*, br. 103/15, <http://www.zakon.hr/z/88/Obiteljski-zakon>
- Palačković, D., *Istražno načelo u porodičnim sporovima kao izraz najboljeg interesa deteta*, u: *Najbolji interes djeteta u zakonodavstvu i praksi* (ur. S. Bubić), Univerzitet "Džemal Bijedić", Pravni fakultet, Mostar, 2014.
- Palačković, D., *Procesna prava deteta prema Evropskoj konvenciji o ostvarivanju dečijih prava*, *Pravni život*, 9/2000.
- Palačković, D., *Procesni instrumenti u funkciji zaštite prava na zakonsko izdržavanje deteta*, u: *Pravna sredstva za smanjenje siromaštva djece* (ur. S. Bubić), Univerzitet "Džemal Bijedić", Pravni fakultet, Mostar, 2015.
- Palačković, D., *Najbolji interes deteta – "izjava težnje" ili dužnost?*, u: *Usklađivanje pravnog sistema Srbije sa standardima EU* (ur. B. Vlašković), Pravni fakultet Univerziteta u Kragujevcu, Kragujevac, 2013.
- Palačković, D., *Parnično procesno pravo*, Kragujevac, 2004.
- Palačković, D., *Postupak u sporu za zaštitu prava deteta*, u: *Novo porodično zakonodavstvo* (ur. Z. Ponjavić), Pravni fakultet Univerziteta u Kragujevcu, Kragujevac, 2006.
- Petrušić, N., *Pravo deteta na slobodno izražavanje mišljenja u novom porodičnom pravu RS*, u: *Novine u porodičnom zakonodavstvu* (ur. G. Stanković), Pravni fakultet Univerziteta u Nišu, Niš, 2016.

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in the Civil Court Cases*

- Petrušić, N., *Austrijski model pomoći i podrške detetu u postupku za uređivanje roditeljskog staranja i ličnog kontakta*, 2013, <http://www.prafak.ni.ac.rs/files/zbornik/sadrzaj/zbornici/z65/09z65.pdf>
- Petrušić, N., *Posebna poslovna i parnična sposobnost deteta; Učešće deteta u sudskim postupcima u porodičnim stvarima*, 2006: <https://www.google.rs/>
- Petrušić, N., *Pravo deteta na slobodno izražavanje mišljenja - materijalnopравни i procesni aspekt*, Bilten sudske prakse VSS, Beograd, 2007.
- Poznić, B., Rakić-Vodinelić, V., *Građansko procesno pravo*, Beograd, 2015.
- Porodični zakon Federacije BiH, *Narodne novine Federacije BiH*, br. 35/05 i 31/14, https://advokat-prnjavorac.com/zakoni/porodicni_zakon_Federacije_BiH.pdf
- Rulebook about the organization, normative and the standards of the social care center, *The National Gazette of RS (Službeni glasnik RS)* no. 59/2008, 37/2010, 39/2011 and 1/2012 - oth.
- Stanković, G., *Dete kao stranka u parničnom postupku*, u: *Prava djeteta i ravnopravnost polova - između normativnog i stvarnog* (ur. G. Marković), Istočno Sarajevo, Pravni fakultet, 2012.
- The Child-Friendly Justice in the Republic of Serbia*, The Center for the rights of children, Belgrade, 2013.
- The Right of the Child to be informed and express one's opinion* <http://www.djecaps.me/fajlovi/Publikacije/PRIVREMENI%20ZASTUPNIK%20DJETETA.pdf>
- Triva, S., Dika, M., *Gradjansko parnično procesno pravo*, Zagreb, 2004.
- United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (ECOSOC RES 2005/20, <http://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>
- Uzelac, A., Rešetar, B., *Procesni položaj i zastupanje djeteta u sudskom postupku prema hrvatskom i komparativnom pravu - neka otvorena pitanja*, 2009, http://www.alanuzelac.from.hr/pubs/A24proc_pol_djeteta_Os.pdf
- Vučković Šahović, N., *Prava deteta u međunarodnim dokumentima*, Beograd, 2011.