

Judicial Academy of the Republic of Serbia

IN THE CLAWS OF POVERTY

Deprivation of parental rights due to poverty

Authors: Aleksandra Lozić, Milica Jovanović, Mina Vulić

Tutor: Zorana Delibašić, Judge of the Supreme Court of Cassation

Semi-Final B: EU and European Family Law

Themis competition 2021

Contents

Abstract.....	2
1. Introductory considerations.....	2
2. The facts of the case.....	3
3. Relevant Law regulative	4
4. Arguments of the national court on the partial deprivation of Vučković's parental rights	6
5. Arguments against the decision of the national court on partial deprivation of the Vučković's parental rights.....	10
5.1. Failures of the national Court.....	10
5.2. Failures of the national Guardianship authority	13
5.3. Failures of the State	15
5.4. The position taken by the ECtHR	17
6. The viewpoint of the author of the thesis.....	18
7. Conclusion	19

Abstract

The Constitution of the Republic of Serbia in accordance with Article 16 stipulates that generally accepted rules of international law and international agreements are an integral part of the legal order and that those are directly applicable. In this sense, the general principles and provisions of European family law have been mostly implemented and applied in Serbia, although the Republic of Serbia is still not a member of the European Union. So far, confirmed are the international conventions which prescribe the protection of human rights, rights exclusively guaranteed to the children, as subjects of rights, and rights guaranteed to families, which are recognized as the essential element of a society and whose preservation is necessary whenever possible. The Member States of international conventions, have undertaken a positive obligation to organize their internal system in order to provide assistance to socially endangered persons, as well as entire families. To what extent are families protected, which measures are taken by state bodies, in order to preserve them, can the family be separated due to poverty, as well as is every decision made by the court in a legally conducted procedure really fair?

Key words: *best interests of the child, parental right, poverty, deprivation of parental rights, family, foster parent.*

1. Introductory considerations

Deprivation of parental rights is the strictest civil sanction in the area of parental rights, since it deprives parents of their basic authority, but also of their right to care for their own children, therefore there is a need for such a sanction to be clearly and precisely defined as such. Although the standpoint that a parent can be deprived of parental rights due to poverty has long been abandoned, the way of interpretation of the relevant norms of the Family Act¹ by the court within the procedure, and its application, in each particular case, remains a huge dilemma. The Parliamentary Assembly of the Council of Europe (PACE) has made it clear that there are too many concerns in Europe connected to the issue of depriving children of their parents due to poverty.² According to PACE, although in absence of official statistics, children from vulnerable groups are disproportionately more represented in the public care of member

¹ In this regard, the necessity of explicit provisions in the form of law when it comes to suspension or restriction of human rights is the standard set by the most important acts of international law, type: *Universal Declaration of the United Nations on Human Rights* (1948), Art. 29; *United Nations International Covenant on Civil and Political Rights* (1966), Art. 17.

² D. Valeska, *ECtHR condemns the punishment of women living in poverty and the 'rescuing' of their children*, <https://strasbourgobservers.com/2016/03/17/ecthr-condemns-the-punishment-of-women-living-in-poverty-and-the-rescuing-of-their-children/> accessed on 07 April 2020

states while, on the other hand, there is not a single piece of evidence indicating that children of poor parents are more likely to be abused or neglected.³ The European Court of Human Rights (hereinafter: the ECtHR) case-law also gradually reflects this reality.⁴ Today, this topic is more current than ever, due to the negative economic consequences of the pandemic caused by *Covid-19* virus, which has affected countries all over the world, including Europe. Separation of families due to poverty is more common in practice, considering that liberalization trends intensify the “privatization” of childcare responsibilities.⁵ In this context, the ECtHR need to contribute toward resolving of such a serious issue of endangering human rights. Can poverty be recognized independently and separately of other factors or is poverty only a trigger for other factual situations which can be subsumed under the legally prescribed reasons, due to which parents can be deprived of parental rights? Does the social protection framework recognize all the specific factual situations of poor parents and their ability to perform their parental duties, or are they in a kind of a social and legal "dead-end?" Are all measures, necessary to preserve the family, undertaken prior to removal of children from their family environment? Is the child's right to live with its parents respected, and are decisions concerning children and families made actually in the best interests of the child? These are some of the questions we have tried to explore and answer in this thesis by analysing an imaginary case discussed by the ECtHR.

2. The facts of the case⁶

The applicants: Mrs. Slavica Vučković (born in 1983) and Mr. Nenad Vučković (born in 1981) are spouses. They lived in a family household in the village of Topli Do, in the municipality of Pirot (Republic of Serbia) in a modest ground floor, three-room dwelling, together with their three children: minor M.V. born in 2009; minor J.V. born in 2011; and minor V.V. born in 2013. During 2018, they both lost their jobs. Since that moment they would leave their home every day in search of daily wage jobs. Sometimes they succeed, but most times they failed.

³ Council of Europe, Parliamentary Assembly, *Social services in Europe: legislation and practice of the removal of children from their families in Council of Europe member States*, Doc. 13730, 13 March 2015, para 4.

⁴ ECtHR, *Olsson v. Sweden* (no. 2), No. 13441/87 dated 30.10.1992. *Kutzner v. Germany*, No. 46544/99 dated 26.02.2002. *Wallova and Walla v. The Czech Republic*, No. 634 dated 26.10.2006. *Savini v. Ukraine*, No. 39948/06 dated 18.12.2008. *A.K. and L. v. Croatia*, No. 37956/11 dated 08.01.2013. *R.M.S. v. Spain*, No. 28775/12 dated 18.06.2013., *Soares de Melo v. Portugal*, No. 72850/14 dated 16.02.2016. *Achim v. Romania*, No. 45959/11 dated 24.10.2017.

⁵ D. Roberts, *The Dialectic of Privacy and Punishment in the Gendered Regulation of Parenting*, in 5 *Stanford Journal of Civil Rights & Civil Liberties* (2009), p. 192-93.

⁶ These refer to the aforementioned hypothetical case before the ECtHR (*Vučković v. Serbia*), processed by the authors of this thesis, in order to analyse and illustrate the subject matter, on a mock-case study, and the relevant data were arbitrarily designed and used for the sole purpose of this particular case.

While they were looking for work, the eldest child looked after the younger siblings. Due to pending unpaid bills, their water and electricity supply were ceased. When Slavica, the wife, was required to render sexual services in return for a job opportunity, she suffered a nervous breakdown and was admitted to a psychiatric facility for treatment. The competent Social Welfare Centre (hereinafter: *SWC*) then intervened for the first time and established that the children lived in unsanitary conditions, and that it is in their best interest to be placed in a foster family, and consequently, the *SWC* initiated the proceedings to deprive the applicants of their parental rights. During the proceedings, it was established that the children lived in unpainted dwelling, that they were malnourished, did not attend school regularly, all of which was subsumed under unscrupulous exercise of parental rights by the applicants' who, in the opinion of the *SWC*, did not take proper care of their children. The father's claim that he takes care of the children as much as he can because he is trying to find some work every day, and that he was not eligible for any social benefits by the state, was assessed as his attempt to avoid his own responsibility. The first-instance decision of the competent national court, among other issues, decided that Mrs. Slavica Vukčević and Mr. Nenad Vukčević from ..., toward the minor children, namely M.V., J.V. and VV, all from ..., shall be deprived of all parental rights, except the right to maintain personal relations, to have a contact with children under controlled circumstances, according to a model determined by the competent guardianship authority and the right (obligation) of child support⁷. Following the exhaustion of all available legal remedies before the national courts⁸, the present application⁹ was submitted to the ECtHR in due time.

3. Relevant Law regulative

The protection of human rights within the United Nations has begun with the adoption of the 1948 Universal Declaration of Human Rights. It is a binding instrument, because this is not a treaty and it is not subject to ratification; however, it did serve as a basis for the international

⁷ According to the regulations of the Republic of Serbia, when parents are deprived of parental rights, parents can be completely or partially deprived of all rights from the content of parental rights, except the right (obligation) of child support.

⁸ Domestic court of the highest instance - the Constitutional Court of the Republic of Serbia in its decision UŽ-1092/20 of 10 May 2020 rejected as unfounded the constitutional complaint filed by the applicants against the decision of the Supreme Court of Cassation of the Republic of Serbia Rev. 4608/20 of 10 January 2020.

⁹ The case was initiated before the ECtHR by the application number 56789/20 dated 7 December 2020 against the Republic of Serbia for violation of the right to respect for private and family life under Article 8 of the Convention, filed by Mrs. Vučković and Mr. Vučković, both citizens of the Republic of Serbia. The applicants did not have a representative during the proceedings, while the Government of the Republic of Serbia was represented by their legal representative, Mr. N. Petrović who was represented by attorney-at-law Mr. Nikolić. On 7 April 2021, the application was transmitted to the Government for reply and the Chamber decided on the admissibility and merits of the case, in accordance with Article 29 of the Convention, and to give priority to this case in accordance with Article 41 of the Rules of Court.

human rights treaties that followed after that (the International Covenant on civil and political rights and the International Covenant on Economic, Social and Cultural Rights). As the provisions of this document referred to all men and women, it was considered that the children are included.¹⁰ The Convention on the Rights of the Child (hereinafter: the *UNCRC*), adopted under the auspices of the United Nations (1989), was the result of a long process, based on a series of circumstances and developments directed at understanding of children, childhood and attitudes toward children. In a single instrument, it covers all human rights which are granted to a specific group of people, and that is why the UNCRC became the most important international document on the rights of the child.¹¹ Special treatment of the right to respect for family life and children's rights is also guaranteed by the European Convention on Human Rights (hereinafter: the "*Convention*"), as well as by two special conventions within the Council of Europe: the European Convention on the Exercise of Children's Rights and the Convention on Contact concerning Children. The Constitution of the Republic of Serbia specifically proclaims the right of the child to the enjoyment of human rights "appropriate to his or her age and mental maturity", and it is also emphasized that the family enjoys special protection.¹² The Family Law of the Republic of Serbia, as a special legal act related to issues in the field of family law, concretizing the general legal standards of the Constitution of the Republic of Serbia and ratified international conventions, provides a legal framework regulating the protection of the family and the rights of the child, (e.g. the right of the child to live with the parents, who will take care of him/her,¹³ the right of parents to exercise parental rights jointly and by agreement,¹⁴ strictly setting the limits of state intervention when the standard of parental care is violated,¹⁵ etc.). In fact, the State has recognized parental care as the best form of child protection, giving the family a *sui generis* character of an "auxiliary public institution", responsible for the support and development of a healthy and productive new generation of the population.¹⁶

¹⁰ O. Jović, *Children's Rights: Between Idea and Reality*, Andrejević Foundation, Belgrade, 2009, page 11.

¹¹ Vučković-Šahović, *Children's Rights and the Convention on the Rights of the Child*, Yugoslav Centre for the Rights of the Child, 2001, page 21

¹² Article 66 of the Constitution of the Republic of Serbia, *Official Gazette of the RoS*, no. 98/2006, as well as Article 69 of the RoS Constitution stipulates that: "Families in need of social assistance in order to overcome social and other life difficulties and create conditions for meeting basic living needs, have the right to social protection, the provision of which is based on social justice principles, humanism and respect for human dignity, which is based on the principles of social justice, humanism and respect for human dignity."

¹³ Article 60 The Family Law, *Official Gazette of the RoS*, No. 18/2005, 72/2011 - other law and 6/2015

¹⁴ *Ibid.*, Article 70.

¹⁵ *Ibid.*, Article 67.

¹⁶ The interest of the public authority is to take care of its population, since the latter is one of the three constructive elements of any state - a state cannot exist without its population.

4. Arguments of the national court on the partial deprivation of Vučković's parental rights

The Convention on the Rights of the Child, which is directly applicable in the Republic of Serbia, guarantees the entire spectrum of children's rights (the right to life, identity, development, education, freedom of expression, the right to privacy, etc.). The Republic of Serbia has established a special ministry within the Government which takes care of the family (Ministry of Family Welfare and Demography), as well as the dedicated sectors of state administration, which take care of the protection of the most underprivileged families (social assistance, food assistance through soup-kitchens, and temporary accommodation). The Republic of Serbia established a system of social protection based on securing appropriate assistance to parents in exercising responsibility for raising a child (financial benefits, monthly social benefits as "child allowance" to cover the bare necessities, and scholarships for the most successful students), as well as a special sector taking care of the protection of children's rights within the Office of the Ombudsman. Additionally, there are school psychologists, pedagogues and specialized clinics for free children's health care. Also, a judicial protection of the children's rights and respecting their opinions in procedures which concern them has been constituted. It makes complemented mechanism in order to achieve the necessary framework for the protection of children, known as the "Three P" - Provision, Protection and Participation. The right of parents is recognized only to the extent required for the protection of personality, rights and interests of the child.¹⁷ The legal framework of the Republic of Serbia is based on the principle that a child shall not be separated from their parents against their will, except in case the competent authorities along with judicial supervision determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.¹⁸ Parental environment is considered as the best environment for proper development and rearing of children and youth, bearing in mind that there may always be situations where children are exposed to abuse and neglect within their own families, in which case the state must act.

¹⁷ M. Draškić, *Family Law and the Rights of the Child*, University of Belgrade - Faculty of Law, Publishing Centre, 2019, page 268.

¹⁸ Specially guaranteed by article 9, point 1 of Convention on the Rights of the Child: "State Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence."

The Social Welfare Centre has initiated the procedure of removing the children from the family environment when Mrs. Vučković was admitted to a mental health hospital, which was communicated to the SWC by the hospital, since at the time the father was away from home searching for work. The SWC established that living conditions of the three minor children of the Vučković couple were inadequate for proper development of children: unsafe dwelling lacking sanitary facilities (no hot water, electricity or heating), as well as that the children are malnourished, poorly clothed and shod. All aforementioned, in the opinion of the SWC, was threatening the children's health which resulted in an urgent and immediate intervention of the social welfare service, because the welfare of the child is of the utmost importance at all times and it is the obligation of the state to take measures to protect children. The children were urgently placed in a shelter where they were given the first aid, and a day later, foster families were located, and children were provided with safe accommodation, regular meals, appropriate clothing and an atmosphere in which they were provided with unhindered schooling and available free time for play and social development.¹⁹ A procedure of partial deprivation of parental rights has been initiated, because the medical commission stated that the mother's health condition was such that she would be virtually unable to perform normal life activities for a significant period of time, while the children's father did not have the financial means to provide the children with a dignified life. By prescribing clear norms in the Family Law and adopting modern procedural solutions²⁰, the Republic of Serbia has ensured to its citizens that the court, through legally conducted procedure, in which all relevant evidence is considered, achieves a fair balance between the necessary social need - the preservation of the family and

¹⁹ N. Žegarac, *In the Labyrinth of Social Protection*, University of Belgrade, Faculty of Political Science, Centre for Research in Social Policy and Social Work, Belgrade 2014, pp. 95. The state is obliged to provide protection to a child without parental care in family environment whenever possible (see Article 6, paragraph 6 of The Family Law, *Official Gazette of the RoS*, No. 18/2005, 72/2011 - other law and 6/2015). The UN Guidelines for Alternative Accommodation for Children and the Standards of Good Social Work Practice (*United Nations Children's Fund, 2009b; Save the Children UK, 2009*) insist that the state should make efforts to ensure the continuity of child's accommodation, i.e. that children stay in their homes whenever possible (we believe that this should be interpreted in terms of accommodation with relatives, because it is a well-known family environment that can absorb child stress caused by leaving the family home), to return the separated children and young people home (family reunification) whenever safe, and it is also possible that children who cannot return home, should be provided with permanence in another way within a reasonable period of time. Foster care is a safe, secure and desirable way to care for children, because it is a simulation of a "lost" family, and many cases testify to children's healthier and more emotional relationships developed with foster parents due to their care and support, than with their own parents, especially when children spend more than two - three years in foster homes (this fact should be especially appreciated when making additional efforts by public authorities and parents, in order to return the children back to their parents as soon as possible, see *RMS v. Spain*, No. 28775/12 of 18.06. 2013).

²⁰ The Family Law, *Official Gazette of the RoS*, no. 18/2005, 72/2011, 6/2015, Art. 202 (subsidiary application of the domestic general law governing civil proceedings); Art. 204 (urgency of proceedings); Art. 205 (investigative principle); Art. 206 (exclusion of the public); Art. 207 (decision on costs at the discretion of the court, taking into account the reasons of fairness); Art. 208 (admissibility of revision).

the intended objective set by the Constitution – the best interest of the child²¹, as well as to make a fair decision respecting the internationally recognized standards. The procedure of deprivation of parental rights in Serbian law is a specific civil procedure established in a way to leave a wide margin of appreciation to judges, so that they can apply strict legal provisions, according to specific life situations.²² In the present case, Mr. and Mrs. Vučković, as well as their minor children, were enabled to participate during the entire court proceedings, and the court has presented *ex officio* all the evidence necessary to establish the relevant facts. The court addressed and analysed the personal characteristics of the parents and children, their relationships and socio-economic circumstances in great detail, entrusting the experts with the work of gathering evidence. The Guardianship Authority²³, in its expert Report submitted by a team of professionals of different profiles (the team consisted of: a psychologist, a pedagogue, a social worker and a physician)²⁴ presented a difficult financial situation in which children cannot live well.

The decision on the applicants' (Mrs. and Mr. Vučković) partial deprivation of parental rights was passed solely in the best interests of their minor children who, due to their age, psycho-physical conditions and the need for proper development and education, must not remain neglected by their parents. The best interest of a child as a legal standard is assessed based on a number of subjective and objective circumstances, and the fact that connection with nucleus family must be preserved whenever possible (thus, in this particular case, Mr. Vučković was allowed to have regular contacts with his children, which he has used sporadically, while the mother could not do so due to objective reasons, and it is not in the children's interest to spend time with their mother in a mental hospital). As assessment factors, the court has especially emphasized the early age of these children, the needs of their cognitive,

²¹ R. Vujović, *Deprivation of parental rights, substantive legal and procedural aspects*, Official Gazette, Belgrade, 2019, page 44.

²² Notably due to the most important principles: the principle of urgency (the court is obliged to try and conduct the procedure at a maximum of two hearings, if possible), the principle of exclusion of the public and confidentiality of data (it is ensured that the parties to the proceedings may present delicate facts from their private lives without fear of public condemnation or other undesirable consequences), as well as according to the investigative principle, i.e. that the court has broad powers for self-initiated gathering of evidence for the purpose of making a decision (the rule of civil procedure does not apply in the strict sense – the party that has a certain request bears the burden of proving the claims).

²³ The national court did not seek an expert opinion on the competence of the parents from the same Guardianship Authority which filed the lawsuit for deprivation of parental rights, but the opinion was submitted by the expert body competent for the territory of another city.

²⁴ The necessity of a multidisciplinary approach in determining the elements on which the assessment of the best interests of the child in parental rights deprivation proceedings is indicated in Item 16 of the Council of Europe Guidelines on Child Justice: “With full respect for the child's right to privacy cooperation between experts of various profiles in order to achieve a comprehensive understanding of the child, as well as an assessment of its legal, psychological, social, emotional, physical and cognitive status.”

social and emotional development which will stagnate in case they spend time in the dark, smoky and unhygienic space, without regular school and after-school activities, with a lack of supervision by parents and disregard for their safety by leaving them alone and hungry during the day. A crucial point of emphasis was the assessed need to provide a mental stability to children and acquaintance with the standard of living (informatics, sports, internet) to which they had not had an opportunity to get familiarized with. National court gave preference to the dignity of children's lives and preservation of their physical and mental integrity, when deciding that the parents Vučković should be partially deprived of their parental rights.

The traditional position of the Republic of Serbia is that the poverty as a cause in itself cannot be the reason for deprivation of parental rights, but rather that, as part of the assessment of the best interests of the child, the socio-economic conditions should be assessed as the last ones in a series of causes resulting in passing such a decision.²⁵ The Serbian authorities in the domain of children's rights, primarily their protection, accepted the principle of the so-called *welfare approach*, i.e. that every child must be provided with an equal chance for a successful development, to become a strong and stable person, to keep growing up in an atmosphere of happiness, love and understanding. Consequently, all the decisions made in the Vučković case were necessary for the welfare of the children.²⁶ The legitimate aim for passing such a decision was precisely the health and the right of children to their lives and development.²⁷ The necessity of making such a decision is reflected in the danger of the children's living in an environment that might lead to permanent detrimental consequences for the development and growth of children.²⁸ After fair judicial procedures and the decision based solely on relevant evidence of

²⁵ See: Supreme Court of Cassation of the Republic of Serbia, Rev. 967/2016, 21.07.2016. and Rev. 2343/2017, 28.12.2017, Paragraph Lex.

²⁶ Moreover, the EctHR in the case of Kutzner v. Germany, No. 46544/99 dated 26 February 2002, concluded: "The Court will have regard to the fact that perceptions as to the appropriateness of intervention by public authorities in the care of children vary from one Contracting State to another, depending on such factors as traditions relating to the role of the family and to State intervention in family affairs and the availability of resources for public measures in this particular area."

²⁷ In the case Achim v. Romania, No. 45959/11 from 24.10.2017, EctHR states: „The authorities had done everything that could be reasonably expected of them to ensure the children's return to their parents. (...) the placement in care had been intended as a temporary means of providing for the children, and had helped improve their development and state of health.“

²⁸ Deprivation of parental rights is not a fatal step as it may initially seem, considering that there is a possibility pursuant to Article 83 of The Family Law, *Official Gazette of the RoS*, no. 18/2005, 72/2011 – other Law and 6/2015, of reinstatement of parental rights when the reasons for the original decision on the deprivation cease to exist, i.e. when the parent, after a certain period, acquires full capacity to perform parental duties. In this regard it is not the obligation of the state to find employment for its citizens. The obligation of parents is to invest all their capacities and abilities to use the right to work provided and enabled by the state.

the case, it was the correct decision to rule that Mrs. and Mr. Vučković should not exercise their parental rights in the full scope.

5. Arguments against the decision of the national court on partial deprivation of the Vučković's parental rights

The Initial legal basis for justifying the reasons for not taking away minor children from the applicants can be found in Article 8 of the Convention²⁹, in connection with which three hypothetical questions may be posed (*three-part test - three-step test*)³⁰: Was the State's intervention based on the law? Was there a legitimate aim for the intervention? Was it necessary in a democratic society, or was there a "burning" need to separate children from their birth family and place them in foster care? State interference is based on the law and is regulated by the Constitution and the Family Law.³¹ Also the legitimate aim to protect the best interests of minor children does exist.³² However, the most disputable issue is whether the national authorities decision to relocate the children to a foster family was necessary in a democratic society, or whether the protection of children's rights and their best interests could have been achieved by lenient measures, without separation from the family since, in accordance with Article 8 of the Convention, the primary aim is to preserve family ties whenever possible.

5.1. Failures of the national Court

According to Article 3 of UNCRC, the national court, in a process of passing a decision, was obliged to act in the best interests of the applicants' minor children.³³ This further implies

²⁹ *European Convention on Human Rights* (1950), Art. 8: "Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

³⁰ Precisely in connection with the application of the provision of Art. 8 of the Convention, in the case *A.K. and L. v. Croatia*, No. 37956/11 from 08.01.2013, the EctHR concluded the following: "It is true that Article 8 contains no explicit procedural requirements, but this is not conclusive of the matter. The relevant considerations to be weighed by a local authority in reaching decisions on children in its care must perforce include the views and interests of the natural parents".

³¹ See: Art. 65, para 2 of the Constitution of the Republic of Serbia, *Official Gazette of the RoS*, no. 98/2006; Art. 60 par. 3, in connection with Art. 6, all in connection with Art. 261-273, The Family Law, *Official Gazette of the RoS*, no. 18/2005, 72/2011 - and 6/2015. "Exactly when the standard of parental care is violated, i.e. when, as a consequence of the parents' behaviour, the rights and interests of the child are violated, a situation arises in which the state intervenes", for more see: M. Janjić-Komar, M. Obretković, *Children's Rights - Human Rights*, Dosije, 1996, page 106.

³² Immediate intervention procedure - treatment of domestic SWC in accordance with Art. 56 and Art. 68 of the Law on Social Welfare, *Official Gazette of the RoS*, no. 24/2011; Art. 51, in connection with Art. 49, Rulebook on organization, norms and standards of work of the Social Welfare Centre, *Official Gazette of the RoS*, no. 59/2008, 37/2010, 39/2011, another Rulebook 1/2012, other Rulebook 51/2019 and 12/2020, page 106.

³³ Prior to enactment of the UNCRC, this principle was proclaimed by Principle no. 2 of the *United Nations Declaration of the Rights of the Child* (1959).

that the court was obliged to give reasons for its decision, so that it could be determined from that rationale how and by which criteria, the best interest of the children was assessed in the procedure. Further, it should have been explained how the results of the assessment were taken, compared to other identified interests and possible positive and/or negative impact of the decision on children and their future life.³⁴ If the best interest of the child is not determined, the correct decision cannot be passed either in the procedure which represents the undoubted influence of public authorities on family life – the deprivation of parental rights.³⁵ In this particular case, this has not been done. Firstly, none of the applicants' minor children were heard during the proceedings. Parties to the UNCRC should encourage the child to state his/her own opinion and should provide an environment which allows the child to exercise the right to be heard.³⁶ The participatory role in the process is legally guaranteed to the child.³⁷ In that sense, expressing an opinion is not an obligation of the child, but his/her right. According to Article 12 of the UNCRC, every child is capable of forming its own views (opinion) and to express it freely, and such opinion should be assessed in line with the child's age. The Committee on the Rights of the Child recommends that the child should be given an opportunity to be personally heard in any proceedings.³⁸ In the Republic of Serbia, the legal presumption is that a child older than 10 years can freely and directly express its opinion in any court and administrative procedure where a decision on its own rights is to be made.³⁹ Lower age limit for the exercise of this right is not stipulated, but the right as such is granted to a child capable to form its own opinion⁴⁰. The crucial fact is the mental maturity of the child. Despite the above stated, the national court relied exclusively on the expert opinion of the SWC when determining the children's opinions (in which the live words of the children were interpreted, without a detailed explanation of the manner in which the children expressed their thoughts and emotions), without discovering whether the children's opinion was understood and

³⁴ Additionally, in connection with the above, in accordance with *the General Comment of the Committee on the Rights of the Child No. 14* (2013) and the guidelines it contains, the decision maker, while determining the best interests of the child, should first define the elements he/she evaluates in passing a decision, and afterwards the criteria used in assessing these elements and their importance in the overall definition of the best interests of the child. The court is also expected to observe all defined elements in correlation, and in the context of specific circumstances and to clearly explain how the specific element influenced the decision-making.

³⁵ See relevant cases before the ECtHR: *Kutzner v. Germany*, No. 46544/99 dated 26 February 2002; *Savini v. Ukraine*, No. 39948/06 dated 18 December 2008.

³⁶ *General Comment of the United Nations Committee on the Rights of the Child no. 12* (2009): The right of the child to be heard, Section III.

³⁷ The Family Law, *Official Gazette of the RoS*, no. 18/2005, 72/2011 – other law and 6/2015, Art. 65.

³⁸ *United Nations Convention on the Rights of the Child* (1989), Art. 12; *European Convention on the Exercise of Children's Rights* (1996 ETS No. 160), Art. 3.

³⁹ The Family Law, *Official Gazette of the RoS*, no. 18/2005, 72/2011 – other law and 6/2015, Art. 65 para 4.

⁴⁰ M. Draškić, *Family Law and the Rights of the Child*, University of Belgrade - Faculty of Law, Publishing Centre, 2019, pp. 267.

presented in a credible way.⁴¹ In addition, the very fact that the children cried during the separation from their parents was completely disregarded, although it undoubtedly showed their desire not to be separated from their birth family, which is in accordance with the applicant's allegations they kept repeating during the court proceedings, that their children wanted to stay with them in spite of their poor financial situation. Secondly, the national court essentially based its entire decision on the proposals of the competent SWC contained in the presented evidence, treating it as "*key evidence*"⁴², without detailed argumentation and without connecting it with other (un)presented evidence and circumstances of the case. Thirdly, the applicant's proposals to question witnesses to the disputed circumstances - the active struggle to find work and the reasons why they had not received social assistance - were flatly rejected as "superfluous". Fourthly, it was not particularly taken into consideration that no lack of parental capacity or dysfunction in the care and protection of their children had been established in either of the applicants and no physical or permanent mental illness that would make it impossible for them to take care of their children was determined. Fifthly, the fact that the mother of the children has mentally fully recovered during the procedure was not considered. Sixthly, the national court did not consider at all the facts - that the children did not suffer from any disease caused by unsanitary conditions; that hygiene was maintained with water from the yard pipe; that the children were extremely emotionally attached to their parents, regardless of the difficult living conditions, and that they cried when the SWC separated them from their parents (all these facts were left out of the SWC report in order to justify the decision to partially deprive the parents of their parental rights). Seventhly, the health, development, child-rearing, education and socialization of the children were not *seriously endangered*, as a result of the poor living conditions of their family.⁴³ Eighthly, the allegations concerning the

⁴¹ In other words, the national court used the legal provision too broadly - Art. 65 para 6 of The Family Law, *Official Gazette of the RoS*, no. 18/2005, 72/2011 – other law and 6/2015 that the court will determine the child's opinion "in cooperation with the school psychologist or guardianship authority, family counselling authority or another institution specialized in mediation in family relations, and in the presence of a person chosen by the child", which practically means that the court ordered the Guardianship Authority as a "specific expert witness" to determine the opinion of children and submit the entire report to the court, within a specified deadline. The argument of the national court that the legal obligation pursuant to Art. 266 para 3, point 3 of The Family Law, *Official Gazette of the RoS*, no. 18/2005, 72/2011 – other law and 6/2015 to determine the child's opinion "as well as in a place which is in line with its age and maturity", while the courtroom is not a room/place where children would feel comfortable and relaxed, is not justified enough. Therefore, an example of good practice is talking with a child through a conference call, using audio or visual recording device.

⁴² In this specific case, the national court was, at least, obliged and could request a supplement or correction of the opinion or invite the expert witness to appear at the hearing (see Article 270 and Article 271, paragraphs 1-2 of The Law on Civil Procedure, *Official Gazette of the RoS*, No. 72/2011, 49/2013, CC's decision 74/2013, 55/2014, 87/2018 and 18/2020, in connection with Article 202 of The Family Law, *Official Gazette of the RoS*, No. 18/2005, 72/2011- other law and 6/2015).

⁴³ In absence of reliable material evidence to the contrary, the ECtHR concludes exactly the same in the case of *Savini v. Ukraine*, No. 39948/06 dated 18 December 2008; stating that: "Further, a number of specific conclusions

reasons why the applicants got into a poor financial situation (their father's unpaid salaries and severance pay, inability to get a job through no fault of their own) were not particularly examined either. Ninthly, there is no evidence of the follow-up visits by the competent SWC, other than the initial one. Tenthly, the national court did not consider the applicants' willingness and positive motivation to exercise their parental responsibility, regardless of their poor financial situation, nor has the court considered the special wish of children to live with their parents, which would preserve the family as the basic and natural cell of society.⁴⁴

5.2. Failures of the national Guardianship authority

Prior to the relocation of the children to foster families, and the initiation of proceedings for the partial deprivation of the applicant's parental rights, the Social Welfare Centre was primarily obliged to undertake a series of measures beforehand, in accordance with Article 27 paragraph 3 of the UNCRC⁴⁵ in order to assist parents and to enable the proper development of children within their birth family. The SWC did not perform any of the transitional or preventive measures to strengthen the family, such as: 1) contact of parents and children with professionals within the centre (home visits of professionals, counselling guidance for parents, counselling guidance for children); 2) other forms of intangible assistance (contact with extended family and friends,⁴⁶ day care services); 3) adequate material assistance (financial social assistance, one-off financial assistance⁴⁷ for the repair or furnishing of the household); 4) preparation for separation of children (explanation to children where and why they would go, consultation with children about where they could live, introduction to foster parents, visit of the place of future residence before placement, where if the child is separated from the

(such as that the children lacked proper nutrition, were dressed inappropriately and were often left home alone) were based solely on the submissions by the municipal authorities, drawn from their occasional inspections of the applicants' dwelling. No other corroborating evidence, such as the children's own views, their medical files, and opinions of their paediatricians or statements by neighbours had been examined."

⁴⁴ *International Covenant on Civil and Political Rights* (1966), Article 23, *International Covenant on Economic, Social and Cultural Rights* (1966), Article 10 Paragraph 1.

⁴⁵ Measures of a preventive nature in accordance with the provision of Art. 9 of the Rulebook on the organization, norms and standards of work of the Social Welfare Centre, *Official Gazette of the RoS*, no. 59/2008, 37/2010, 39/2011 – other Rulebook, 1/2012 – other Rulebook, 51/2019 and 12/2020.

⁴⁶ Rulebook on the organization, norms and standards of work of the Social Welfare Centre, *Official Gazette of the RoS*, no. 59/2008, 37/2010, 39/2011 – other Rulebook, 1/2012 – other Rulebook, 51/2019 and 12/2020, Art. 70 para 3. The planning of services and measures is based on the principle of the least restrictive environment (Ibid. Article 70, paragraph 5).

⁴⁷ Article 4 of The Law on Social Protection *Official Gazette of the RoS* no. 24/2011 prescribes that every individual and family who would need social assistance and support in order to overcome social and life difficulties and establishment of conditions for meeting life needs, have the right to social protection. However, families who (through no fault of their own) get in a situation of poverty and misery (state economic crisis, job loss, "bankruptcy", large loan debts, etc.), do not receive adequate and necessary material assistance exclusively because of inert and bureaucratically inclined state bodies of social protection.

parental family after immediate intervention, as in this case, good practice requires that a planning meeting be scheduled as early as possible, within 48 hours).⁴⁸ During the court proceedings, the Guardianship Authority did not adequately perform its specific procedural function, which is their obligation in such proceedings, and considering that the Republic of Serbia has made a special effort to regulate this by law in detail⁴⁹, this omission of the SWC is even more relevant. Both applicants expressed a desire to maintain regular contact with their children (Mrs. Vučković, as of the moment of her complete recovery); however, they were unable to acquire it for objective reasons, as they did not have the financial resources for a bus ticket, or a telephone to communicate with their children, and there was a lack of minimal assistance of providing free transportation to the place where the children were accommodated, and maintaining a regular telephone contact.⁵⁰ Subsequent active social assistance of counselling of the applicants⁵¹ was also lacking, and such assistance was necessary in terms of continuous mental and psychological support, although no absence of parental capacity was recognized. There was no adequate supervision of the proper role of foster parents (who had to communicate intensively with the children for the purpose of informing them about their provisional role until their family crisis situation is resolved i.e. until the improvement of financial situation of their parents and full recovery of their mother, and were not there to replace their biological parents for good).⁵² The children were divided into two separate foster families,⁵³ guided by the age criteria, instead by, in this case, a more important and expressed

⁴⁸ N. Žegarac, *In the Labyrinth of Social Protection*, University of Belgrade, Faculty of Political Science, Centre for Research in Social Policy and Social Work, Belgrade 2014, pp. 171-176.

⁴⁹ See more: *Guidelines for the conduct of the social welfare centre in the context of civil court proceedings concerning the rights and interests of the child of the RoS*, the Centre for the Rights of the Child and the UNICEF Office in Serbia, 2016.

⁵⁰ This right of the applicants and their children enjoys special protection, both in accordance with the relevant provisions of the positive law of the Member State (Article 61 of The Family Law, *Official Gazette of the RoS*, no. 18/2005, 72/2011 – other Law and 6/2015), as well as in accordance with the provisions of international legal sources (Article 9 of the *United Nations Convention on the Rights of the Child* (1989); Article 4 of the *European Convention on the Right to See the Child* (2003, European Treaty Series - No. 192); *Recommendation Rec (2005) 5 of the Committee of Ministers to member states on the rights of children living in residential institutions - Specific rights for children living in residential institutions*).

⁵¹ Thus, the ECtHR (in the case of *Wallova and Walla v. The Czech Republic*, no. 634 of 26 October 2006) took the stand that if, from the facts of the present case, it was not apparent that the social security authorities have made serious efforts to overcome their difficulties and return their children as soon as possible there has been a violation of Art. 8 OHCRC. In addition, one of the possible alternative measures to assist the competent social authorities, instead of relocating children to foster families, as mentioned in this case, is to monitor the applicants' living conditions and hygiene, and to provide advice on what steps they can take to improve the situation and find solutions to their problems.

⁵² It is about the so-called urgent foster care from Art. 3 of the Ordinance on Foster Care, *Official Gazette of the RoS*, no. 36/2008.

⁵³ Which is opposite to the recommendations, see Art. 6 par. 1 point 3 of the Ordinance on Foster Care, *Official Gazette of the RoS*, no. 36/2008; as and *Guidelines for the Alternative Care of Children*, Distr. LIMITED A/HRC/11/L.13, 15 June 2009, Part II: General principles and perspectives, B. Alternative care, Point 17;

emotional connection, which existed among all three underage children. The context of the best interests of the child standard, from the moment when the children were placed in a foster *family*, had to be regularly re-examined. It was necessary to undertake active measures to establish a fair balance between the rights of the applicants and their underage children, with constant work on the preparation of their return⁵⁴, i.e. family reunification (all in accordance with the pre-prepared *aim of permanence*, which was not defined at all). Such a passive function of the Guardianship Authorities, and a unilateral function of foster families⁵⁵ (without the involvement of parents), caused an irreparable pecuniary damage to the applicants and their children, in terms of lasting emotional distancing and everyday intimacy.

5.3. Failures of the State

The complete absence of any reaction by the State, in the sense of not taking any preventive measures in order to create conditions for the development of children within the family, certainly represents a violation of its positive obligation.⁵⁶ The State is the subject who should ensure that the family Vučković has access to appropriate forms of support in their custody function.⁵⁷ In accordance with Article 18 of the UNCRC, all in conjunction with Article 4 of the UNCRC, it is stipulated that the responsibility of parents or guardians is paramount; however, the state is obliged to provide them with appropriate assistance in exercising responsibility for raising a child, as well as to ensure the development of institutions, capacities and child protection service. The Republic of Serbia could and was obliged to implement this positive obligation by undertaking family policy measures prescribed (in detail) by the UN Guidelines for Alternative Care of Children, which the state had adopted precisely in order to

Recommendation Rec (2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions - Specific rights for children living in residential institutions).

⁵⁴ "The nature and extent of such preparation may depend on the circumstances of each case, but it always implies the active action, understanding and cooperation of all actors," the ECtHR concluded in *Olsson v. Sweden* (no. 2), no. 13441/87 dated 30 October 1992. Intensive cooperation and co-operation of all bodies acting in disputes concerning the relocation of a child is proclaimed in Principle no. 11 *Recommendation CM/Rec(2015)4 of the Committee of Ministers to member States on preventing and resolving disputes on child relocation.*

⁵⁵ In a similar case before the ECtHR (*RMS v. Spain*, no. 28775/12 dated 18 June 2013), the court concluded: "The applicant simply faced a lack of material resources, a situation in which the national authorities could assist to fix it in another way, and not to lead to a complete breakup of the family, which is the last measure which applies only in the most serious cases. The role of the competent social work authorities is to help people in a precarious situation to find ways to overcome their difficulties."

⁵⁶ See more: *European Court of Human Rights, Guide on Article 8 of the European Convention on Human Rights – Right to respect for private and family life*, Updated version dated 31 August 2020. The Republic of Serbia has taken on such an obligation and, according to, see: *Resolution 2049*, Parliamentary Assembly of the Council of Europe, 2015; as well as: The Council of Europe *Recommendation Rec (2006)19 on policy to support positive parenting.*

⁵⁷ *Guidelines for the Alternative Care of Children*, Distr. LIMITED A/HRC/11/L.13, 15 June 2009, Part II: General principles and perspectives, A. Child and Family, Point 3.

effectively fulfil the obligations undertaken by the UNCRC.⁵⁸ These Guidelines clearly stipulate that financial and material poverty (i.e. conditions directly and exclusively related to such poverty) must never be the sole justification for separating a child from parental care, accepting a child into the alternative protection system or preventing its social reintegration.⁵⁹ In that sense, according to the Point 10 of the Guidelines, the Republic of Serbia was obliged to exert special efforts in order to combat discrimination based on any status of the child or its parents, including, *inter alia*, poverty.⁶⁰ Contrary to that, children are “recklessly” separated from their families and placed in foster care due to the poor economic status of their parents, without sufficient and adequate help and assistance offered to their family beforehand. Although foster care is defined in the legal literature as acceptance of someone else's child for free food and education, in modern legal systems it represents a special legal relationship between the foster child and the foster parent - an adult, (who is not his/her relative), who takes care of the child and to whom some rights and obligations, from the content of parental rights, are transferred. However, it should be performed in a way that the child does not interrupt the family relationship with his/her family.⁶¹ The specific property is that the foster parent in entitled to compensation from the State based on his/her work, defined per child who is under his care, as well as compensation for the costs of supporting the foster child. According to available information, the foster parent in the Republic of Serbia retains the right to compensation for family accommodation of one child for the month of March 2021, as follows: child support allowance in the amount of approx. €266.86, plus foster care allowance in the amount of approx. €174.00, plus allowance for personal needs of the beneficiary's “pocket money” in the amount of „€40.00, i.e. in the total amount of approx. €480.00, while the monthly income of socially vulnerable parents for one child on account of the so-called “Child allowance” averages about €3.00 (while the basic amount of social assistance benefits for individuals without any source of income and one underage child is €73.00)⁶². Despite the latest Concluding Observations of the Committee on the Rights of the Child, which, *inter alia*, recommended to the Republic of Serbia to reconsider the adequacy of financial assistance to children, for the purpose of providing a minimum standard of living and access in terms of

⁵⁸ *Ibid.* Part IV: Prevention of the need for Alternative Care: A. Encouraging Parental Care, B. Prevention of Separation from the Family, C. Encouraging Family Reintegration.

⁵⁹ *Ibid.* Part II: General principles and perspectives, B. Alternative Care, Point 15.

⁶⁰ *Ibid.* Part II: General principles and perspectives, A. Child and Family, Point 10.

⁶¹ M. Draškić, *Family Law and the Rights of the Child*, University of Belgrade - Faculty of Law, Publishing Centre, 2019, p. 311.

⁶² See, demo.paragraf.rs/demo/documents/editorial/statistika/27_stat.htm and <https://csrkovacica.rs/novcana-socijalna-pomoc/>, accessed on 24/04/2021.

information, scope and procedures tailored to the beneficiary⁶³ , nevertheless, the State has made a major omission in the present case by failing to undertake all available measures to assist the applicants, i.e. their children, in order to improve their financial situation and preserve their family.

5.4. The position taken by the ECtHR

*All state bodies which act within proceedings for deprivation of parental rights are obliged, before passing any decision, to actively undertake all measures available (within their competence) which could primarily help parents in conscientious exercising of their rights and duties arising out of the content of parental rights, especially in specific situations in which possibly identified negligence is mainly a consequence of the undisguised poor financial condition of the parents. Opposite actions of state authorities, especially national courts and guardianship authority, as well as unjustified lack of state assistance to able-bodied but unemployed parents, who express a desire and positive motivation to exercise parental rights, with whom lack of parental capacity is not recognized, as well as when emotional closeness and attachment between parents and children is not violated, shall be an act contrary to the principle of the best interest of the child and an illegitimate violation of family life by the public authorities. (Sentence from the judgment of the ECtHR in the case of Vučković v. Serbia, No. 56789/20 of May 24, 2021).*⁶⁴

Although the decision of the national court to partially deprive the spouses Vučković of their parental rights had a legitimate aim, taking into account all the above-mentioned failures of the Republic of Serbia or its competent authorities to take preventive and alternative measures, it cannot be qualified as proportionate to that aim, or necessary in the democratic society.⁶⁵ It is in the best interest of the child that the relationship with its birth family be preserved whenever possible, and that it may be terminated only under exceptional circumstances. The aforementioned means that everything must be undertaken to re-establish this relationship, and any restriction of the right for preservation of family life must be

⁶³ *Concluding Observations on the Combined Second and Third Periodic Reports of the Republic of Serbia of the Committee on the Rights of the Child (CRC / C / SRB / 2-3)*, adopted by the Committee at its 74th Session (16 January - 3 February 2017), Section: Standard of living, point 52 d.

⁶⁴ This sentence is also hypothetical, i.e., the same, as such, is not taken from any of the previous same or similar decisions of the European Court of Human Rights or domestic practice, and it was designed by the authors of this thesis.

⁶⁵ The ECtHR also pointed out in the case of *Kutzner v. Germany*, No. 46544/99 dated 26 February 2002: “The Court further reiterates that the order for public care of children should in principle be considered as a temporary measure, which should be revoked as soon as the circumstances of the case allow, and that all measures for temporary care should be in line with the permanent aim of unification of natural parents and children. “

understood in such a way that it should cease as soon as circumstances allows it.⁶⁶ The court must permanently, and at any moment take care to achieve the optimal balance between the realization of the best interests of the child and securing all conditions for the parental capacity of the parents to be preserved, as much as possible - *proportionality test*.⁶⁷ In the present case, a fair balance between the applicants' interests and the State's interests was not achieved, especially taking into account the fact that some of the above-mentioned measures to strengthen the family, which could have preserved the close relations among family members and preserve it as a whole, had not been undertaken towards the applicants, before deprivation of parental rights, as the most severe family law sanction.⁶⁸ The national authorities did not make adequate and effective efforts to ensure the applicants' right to live together with their children, and to enable the timely reunification of the family, unjustifiably shifting and narrowing the responsibility solely to them, and at the same time violating their right to respect for private and family life guaranteed by Article 8 of the Convention on Human Rights.

6. The viewpoint of the author of the thesis

Proper development of every child is essential for social community, and both individuals and the state should undertake everything possible in order to achieve it. State must allocate its material resources (public goods) to provide for parents who find themselves in a negative financial situation to effectively and adequately improve their living conditions. The aforementioned is the only way to achieve a triple positive result: children who will develop in the atmosphere of parental love and care (which, on psychological level, is extremely important for each individual), strengthening families as the basic cells of society and respecting human dignity in terms of guaranteeing every person to develop as a parent, to whom, due to objective circumstances through no fault of theirs, the right to perform the most important role in life cannot be restrained – *Mothers and fathers shape the future of the world, because they shape their children*. It is unacceptable for state authorities to deprive children of parental care because their parents did not provide them with proper clothing, shoes, hygiene products or conditions for education, etc. (considering it as a matter of neglecting their children), while not

⁶⁶ *Guidelines for the Alternative Care of Children*, Distr. LIMITED A / HRC / 11 / L.13, 15 June 2009, Part II: General principles and perspectives, B. Alternative Care, Point 14.

⁶⁷ The same legal position was determined by the Supreme Court of Cassation of the Republic of Serbia: *Sentence* from the judgment of the Supreme Court of Cassation Rev. 1902/2019 dated 09/05/2019., pronounced at the session of the Civil Department dated 03/07/2020.

⁶⁸ "Families living in poverty cannot be punished for their deprivation and their children should not be 'rescued' from them. Instead, and because children are not the exclusive responsibility of parents, states must fulfil their supportive role and provide material and other forms of assistance to make family life possible", see: EctHR, *Soares de Melo v. Portugal*, No. 72850/14 from 16.02.2016.

investigating the real reasons which bring the parents to a situation where they cannot provide the basic needs for their children - their poverty. The Republic of Serbia has based its social policy on child protection, first of all, on providing financial support through alternative ways of caring for children (payment of compensation to foster parents), instead of focusing the material and personal assistance resources on social services offered to parents in an economic crisis. We have come to a situation where foster parents receive three times higher financial aid than the parents themselves, who would, if the funds were allocated to them in the right way, use such funds to provide their children with proper development. Parents are not provided with an opportunity to demonstrate whether, had they been given the funds they lacked (to obtain the means of subsistence) they would have exercised their parental rights in a proper manner - placing the interests of their children before their own. The right of citizens to a fair trial is also violated, because neither the court decision or the decision of the SWC (like in the Vučković case) offered an explanation to the parents why their children were relocated to an unknown environment, and why the funds were provided to unknown persons to take care of their own children, instead of providing them with the money to use it to provide adequate conditions for children's development. It is a wrong opinion that in that case the parents would refuse to work and to support the children from their own income, because these funds are intended for the children, and not for the parents or foster parents.

One of the solutions would be for the State to prescribe measures for unemployed parents, in accordance with their professional qualifications and health condition, to have priority in employment, which would solve the subsistence of more people, and not just parents. Also, it is necessary to constantly engage all resources of the social welfare services – starting from counselling and educational assistance up to the one which is reflected in immediate results - e.g. roof repair, improvement of sanitary conditions, etc. *Democratic society* is created when the social environment provides equal opportunities for all, which guarantees the right of every citizen not to feel discriminated against on account of their financial status, as well as freedom without violation of fundamental human rights – like subjecting the parents to such a draconian punishment as deprivation of the parental rights, through no substantial fault on their part (any punishment should include wrongdoing behaviour, which poverty in itself is not).

7. Conclusion

The States are obliged to recognize the needs of families, of which its society is composed, as well as to provide them with protection. In providing protection, the State must resort to

measures aimed at preserving and strengthening the family, in order to create a feeling of safety for their children and ensure that children have adequate conditions for growth and development. Conversely, measures which are most commonly taken are those which seek to protect children, after their separation from the family. Most often, the primary cause of disfunctioning families, to a greater or lesser extent, is the poverty itself. The concept of poverty is the central issue of social justice and standard of living in any State. It is accompanied by a set of stereotypes - that poor families are prone to violence and the children from such an environment turn to criminal activities, that the lack of material resources entails stressful, frustrating and incidental situations which cannot be considered the desired environment in which a child can have a fulfilled childhood based on well-being. The public tacitly (silently) and unjustifiably condemns families in such circumstances, instead of rendering assistance by the entire society to those most vulnerable individuals. As a result of inadequate state aids and repressive measures, parents of poor financial status are even additionally punished, which further opens up the issue of discrimination against the poor and raises the question whether the poor people have the right to become parents. The issue of the best interests of children in the case of parental poverty cannot be the sole responsibility of any of the actors - neither the parents, as individuals, nor the relevant institutions, nor the entire State. The “key” or the solution is to move focus from repressive to preventive actions, in addition to interactions among all actors aimed at achieving a common goal. This goal must be enabling the child to develop physically, morally and intellectually to become a healthy, useful and successful member of society, and to achieve this while living in his/her family, whenever possible.