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# **ENFORCEMENT IN FAMILY RELATIONS – THE HANDING OVER AND TAKING AWAY OF A CHILD, WITH EMPHASIS ON THE ROLE OF THE GUARDIANSHIP AUTHORITY**

**ABSTRACT:** The enforcement of court decisions in family matters is becoming increasingly important in the legal system of the Republic of Serbia, which is a direct consequence of the rise in divorces and the growing need to regulate parental relationships after the dissolution of marriage or extramarital unions. It is expected that these provisions of the Law on Enforcement and Securing of Claims will be applied more frequently in the future, which necessitates their detailed consideration and analysis. Special attention should be paid to the specific enforcement mechanisms used in these cases, as well as to the impact that the enforcement of court decisions has on the child, parents, and other family members. The best interests of the child must remain the key criterion in enforcement proceedings in family matters, especially in cases concerning child custody, the regulation of personal contact with parents, and child support. Although the Law on Enforcement and Securing of Claims has specifically regulated this area, numerous dilemmas arise in practice, especially regarding the relationship between the court and the guardianship authority. The specificity of this

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procedure lies in the fact that, in certain situations, the court becomes an auxiliary body to the guardianship authority, even though its traditional role is the opposite — to make decisions that administrative bodies implement. This legal solution raises certain practical concerns and requires further consideration. This paper aims to analyze the legal framework for enforcement in family relations through the provisions of Articles 368–381 of the Law on Enforcement and Securing of Claims, with a critical review of the challenges in their application. Through the analysis of judicial practice and a comparison with potential alternative enforcement models, the paper highlights possible directions for improving the system to ensure greater legal certainty, protection of the child's rights, and efficiency of the enforcement procedure.

**Keywords:** *enforcement, children's rights, guardianship authority, child custody, child support, family relations, Law on Enforcement and Securing of Claims, judicial practice.*

## 1. Introduction

The enforcement of court decisions in family relations represents one of the most delicate and most complex segments of an enforcement procedure as it directly relates to the protection of the respective interests and rights of a child, of the child's parents and of other family members. Unlike other enforcement forms, which are primarily aimed at fulfilling some property-related requests, enforcement in family relations entails, in addition to the collection of outstanding contributions to support, the implementation of decisions on one's personal status, on child care and on parental rights and obligations, which considerably complicates its implementation in practice. Modern world requires that each individual must be recognized the right to satisfy their own unique subjectivity (Đikanović, 2020, p. 617). The essential uniqueness of the procedure of enforcement in family relations is reflected in the fact that the enforcement object refers to the child's personality. In the procedures referring to a child, the enforcement of measures need to conform to the principles of the protection of the child's human rights and best interests. Therefore a child cannot be observed as an enforcement object in the classic sense, but rather as an active holder of a right whose integrity, dignity and welfare needs to be protected throughout the enforcement procedure.

This question is given special importance in the context of the current social changes, including a significant rise in the number of divorces and an

increasing number of cases in which parents are unable to reach agreement on the exercise of a parental right, support and maintenance of personal relations with their children.<sup>1</sup> The aforesaid data indicate a need for the analysis of a legal framework, the efficacy of current enforcement mechanisms and possible improvements aimed at securing consistent implementation of court decisions, with a maximum protection of the child's best interests.

The legal framework of enforcement in family relations in the Republic of Serbia has been established by the Law on Enforcement and Securing of Claims (2015) and special rules have been stipulated by articles 368–381. These provisions stipulate specific mechanisms for the enforcement of court decisions on child custody, on the method of maintenance of personal relations with the parent not exercising the parental right, on obligations of support and on other issues in the field of family law. The reason why this segment of the enforcement procedure stands out is the fact that its basic goal does not amount to formal implementation of a court decision, but it also includes the protection of a child's best interests, which is the key principle of international and national legal standards in this field.

One of the specific features stemming from the current legal framework is the relation between the court and the guardianship authority in these procedures. Although it is the court that is, traditionally, a decision-making authority, whereas administrative authorities and social welfare services implement the court's decisions, in the event of enforcement in family relations, the situation is partly an opposite one – it is the guardianship authority that has the leading role in the procedure, whereas the court, in certain cases, becomes an ancillary authority. In practice, this legal solution is conducive to numerous dilemmas, especially when competences, court actions and the efficacy of the implementation of court decisions are concerned.

Besides, in practice, the implementation of current mechanisms of enforcement in family relations is often encumbered with numerous problems. One of the main challenges is obstruction on the part of a parent who does not agree with the court's decision, which may lead to some long-lasting

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<sup>1</sup> The data show that the number of divorces in the Republic of Serbia has been continuously increasing. In 2021, there were 32,757 marriages concluded in the Republic of Serbia (which is an increase by 38.8% in comparison to the previous year and 9,790 marriages were dissolved (which is a 12.7% increase in comparison to the previous year). In 2022, 32,821 marriages were concluded (an increase by 0.2% compared with the previous year) and 9,813 were dissolved (an increase by 0.2% compared with the previous year). In 2023, 31,670 marriages were concluded (a drop of 3.5% compared with the previous year) and 10,175 were dissolved (an increase by 3.7% compared with the previous year). Statistical Office of the Republic of Serbia. Search “Divorce”. Downloaded 2025, May 10 from <https://www.stat.gov.rs/sr-Cyril/search?q=%D1%80%D0%B0%D0%B7%D0%B2%D0%BE%D0%B4>

procedures that may be detrimental to the child. Also, certain enforcement measures, such as fines or police assistance, may be counterproductive if not applied according to the specific features of each individual case.

Unlike the classic execution procedure, in which execution is carried out on property objects such as money, movable or immovable things, in execution procedures from family relations, the essential question of the nature of the object, that is, the object of execution, is raised. A child, as a subject of law, cannot be treated as an object of execution in the same sense as a thing or property, but it is the obligation of the parents or other legal representative in connection with the exercise of the child's rights. Enforcement in these procedures is carried out exclusively for the purpose of protecting and realizing the rights of the child, with full respect for the principle of the best interest of the child as a basic principle.

## **2. The Legal Framework of Enforcement in Family Relations**

The Law, in articles 368-380 particularly regulates child handover, enforcement aimed at maintenance of personal relations with one's child and enforcement aimed at protection from family violence and protection of the child's rights and other decisions in the sphere of family relations.

In 2009, the Ministry of Labour and Social Policy issued an instruction on the method of work of guardianship authorities or psychologists in the procedure of enforcement of decisions in the field of family law – the handing over and taking away of a child, which regulates the entire procedure in detail, from the planning stage to the enforcement and enforcement completion stage (Ministry of Labour and Social Policy, 2009).

One of the key challenges emerging in this relation is the question of the competence and role of various institutions. A court is the decision-making authority; however, the role of a guardianship authority appears very often in the enforcement procedure, this authority being authorized to provide professional support and to act as a mediator in the enforcement procedure. Due to such division of competence, in some situations, the court acts as an authority that is ancillary to the guardianship authority, which is not typical of the classic enforcement system, in which the court is the primary authority in a procedure.

## **3. The Best Interests of the Child**

The Family Law (2005) stipulates, in Art. 205, an investigative principle in procedures related to family relations. This principle ought to be applied

by the court to the highest extent possible, with a view to issuing a decision that is in the best interests of a child. In family disputes, the party disposition principle is limited and the court's active role is emphasized and thus the court is obliged to have the proceedings develop in the best interests of the child, with active participation of the court and other professional authorities. This means that the court may establish facts even if they are not disputable between the parties and may investigate, on its own, the facts that no party has presented.<sup>2</sup>

The best interests of an underage child is a legal standard which is appreciated on the basis of the circumstances of each case, the assessment elements being, among others: the child's age and sex, the child's desires and feelings considering the child's age and maturity, the child's needs, namely those related to education, housing, food, clothes, health care, etc., and the parents' ability to satisfy the established needs of the child. Acting in accordance with the best interests of the child is the making of a decision which the child would make for himself or herself if he or she were capable of doing that.<sup>3</sup>

When procedural rules and the best interests of a child are in conflict, it is the best interests of the child that always win and the court should bear them in mind above everything else. The best interests of the child impose both on the first-instance and on the second-instance court to, *ex officio*, attend to the exercise of all the child's rights that are guaranteed to the child by the Family Law and also by international documents protecting children's rights (Lazarević, 2011, p. 344). It is correct to decide that conditions have been created for a change of a previously established model of contact between an underage child and the parent with whom the child does not live if such a decision is guided by the fact of the best interests of the child.<sup>4</sup>

#### **4. Standing in the Submission of a Motion for Enforcement**

The parties in an enforcement procedure are determined according to the contents of the enforcement document. The property of an enforcement creditor is related to the property of the legal owner of the claims (who is determined according to substantive law). An enforcement debtor is determined according to procedural law, as a person against whom the claims

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<sup>2</sup> Rešenje Vrhovnog suda [Supreme Court decision], Rev.2331/2023 od 14.09.2023. godine.

<sup>3</sup> Presuda Vrhovnog kasacionog suda [Judgment of the Supreme Court of Cassation], Rev.1201/2023 od 01.02.2023. godine.

<sup>4</sup> Presuda Vrhovnog suda Srbije [Judgment of the Supreme Court of Serbia], Rev. 154/2007 od 01.02.2007. godine.

are realized (Jakšić, 2022, p. 899).

It is the legal representatives, the parents or the institution to which the child has been entrusted for custody or upbringing, or an adoptive parent, guardian or foster parent, that is entitled to submit a motion to enforce the handing over of the child.

According to our national law, a guardianship authority is the universal protector of a family and an authorized body in this procedure (Šarkić, Radulović & Počuča, 2019, p. 99). In accordance with the general rules of enforcement law, a guardianship authority will always have the role of the enforcement creditor in the procedures of enforcement of a decision issued with a view to benefiting or protecting the person safeguarded by them according to an explicit legal authority when such an enforcement document has been enacted in a proceeding in which the guardianship authority participated as a party initiating the proceeding (Vujović, 2018, p. 235).

An enforcement decision should contain all the data from Art. 30 of the Law on Enforcement and Securing of Claims. It is especially important to enter the unique master citizen number. If the enforcement decision contains a printing error in the name of the enforcement debtor, this does not represent an obstacle to the implementation of the decision as at issue is a removable and evident printing error and, next to the name, there is a master citizen number, which is unique for each person.<sup>5</sup> Even if the motion for enforcement does not specify the parties' respective dates of birth, but the parties' respective unique master citizen numbers have been correctly entered, the former cannot be underlined as a fault as such a motion for enforcement is regular and actionable.<sup>6</sup>

## 5. The Role of the Guardianship Authority's Psychologist

A guardianship authority is especially significant in the process of providing a family with legal protection (Milovanović, 2023, p. 107). A guardianship authority plays a key part in the enforcement of decisions on child custody and contacts with one's child. Its role is multiple in nature and it includes numerous activities that are essential for securing the best interests of a child. Centres for social work are the holders of professional work in the field of social welfare (Šarkić & Počuča, 2020, p. 21). The legislator

<sup>5</sup> Rešenje Višeg suda u Pančevu [Decision of the High Court in Pančevu], Gži.135/2019 od 25. 06.2019. godine.

<sup>6</sup> Rešenje Višeg suda u Pančevu [Decision of the High Court in Pančevu], Gži. 27/2020 od 21.01.2020. godine.

did not distinguish precisely between the organization of a centre for social work as an administrative and professional authority and the existence of a guardianship authority as a professional authority within the former authority. A guardianship authority is a professional body operating within a centre for social work and performing various tasks in the sphere of family-related legal protection (Počuča & Šarkić, 2019, p. 362). In the domestic legal system, a centre for social work is the basic holder of complex family-related legal protection and it realizes this role in the functions of a guardianship authority (Vujović, 2019, p. 210).

The task of a guardianship authority's psychologist is to establish the emotional status of a child, the way in which the child reacts to stress and the mechanisms of overcoming such stress, the speed of adaptation to changes, the emotional relations between the child and the person with whom the child lives, as well as with the person to whom the child is to be handed over, and other facts important for the organization of enforcement actions; their role is also to provide information and consultations to the person with whom the child lives and to try to bring about a voluntary handover of the child (by advising the person of the fact that a voluntary handover of a child serves to prevent any traumatic reactions of the child and any consequences that might harm the child's growth and development, etc.). On the basis of their psychologist's work results, a guardianship authority may propose that the judge should specify in more detail the child handover method and the conditions in the area in which the enforcement is implemented. The guardianship authority's psychologist should be guided with the best interests of the child (Art. 375 of the Law on Enforcement and Securing of Claims) both before and during the enforcement implementation. It is essential that, by taking certain measures, the guardianship authority's professionals should endeavour to enable the establishment of relation of closeness and trust between the child and the parent who has been invested with the exercise of a parental right (Stanković, 2013, p. 17).

## **6. The Guardianship Authority as an Ancillary or Main Authority in the Procedure of Enforcement in Family Relations**

The Law on Enforcement and Securing of Claims quite poorly defines the role of a guardianship authority as some contradictions appear here. The Law stipulates that the implementation of enforcement by taking the child away shall fall into the competence of a guardianship authority. It stipulates that the

taking away and handing over of a child should be enforced by the guardianship authority in the court's presence and under the court's supervision (Art. 378 of the Law on Enforcement and Securing of Claims). Such a provision is contrary to the court enforcement procedure concept (Šarkić & Počuča, 2020, p. 26). It seems that the stipulation of the competence of the guardianship authority in the Law on Enforcement and Securing of Claims in the implementation of enforcement through the taking away of a child is *contra naturam processus executivi*. A decision related to child welfare shall not suffer the absence of judicial authority. Judicial authority is a priority in the enactment of final decisions on the issue of child protection (Rajić & Mirić, 2023, p. 245). A court should not relieve itself of the obligation of taking a child away as that is a specific procedure, which needs to be performed by an enforcement judge. Of course, an enforcement judge should be assisted by the guardianship authority and also by psychologists, pedagogues and other professionals in the implementation of enforcement through the taking away of a child. A court cannot be an ancillary authority in the enforcement procedure – it ought to retain its traditional role of the principal authority in an enforcement procedure as enforcement falls within the court's competence. Competence in the implementation of enforcement through the taking away of a child must not be delegated to an administrative authority as the administrative authority has not been entrusted with public competences in that sense – enforcement needs to be implemented by the court only, i.e. by the judge. As it has already been mentioned in this paper, an enforcement judge ought to have specialized qualifications for work in proceedings like this.

Also, the law regulating enforcement should not determine the obligations of a guardianship authority. It would have been a much better and more practical option if the legislator had been dedicated to the harmonization of the regulations and that they have stipulated the obligations of a guardianship authority in an enforcement procedure by a law regulating the work of a guardianship authority, with only some relevant provisions of that law being included in the Law on Enforcement and Securing of Claims. Not only does a systemic mistransfer of authorities from a court to a guardianship authority undermine the systemic logicality of an enforcement procedure – it may also lead to the legal insecurity of the parties. If the competences are not clearly divided, there is a risk that the protection of the child's best interests may remain just verbal, without an adequate procedural base.

Such indications should shed light on certain omissions of the legislator, in order that, in the forthcoming period, when enacting new laws or when amending some current ones, they be able to regulate those spheres in a more practical and pragmatic manner and rectify any omissions or errors.

## 7. The Handing Over and Taking Away of the Child

As for the legal issues referring to child handover, the contents of the text show that it is also the actions of the taking away of the child that are at issue here (Nikolić & Šarkić, 2022, p. 697). In order to realize enforced child handover, it is necessary to take the child away from the parent who prevents the other parent from exercising their parental right and who does not obey the court's decision (Vavan, 2019, p. 151).

The court has exclusive competence in the execution of enforcement documents on family relations, except for the collection of legal maintenance amounts (Art. 4., para 1 of the Law on Enforcement and Securing of Claims). Although the Law on Enforcement and Securing of Claims does not specify any required professional qualifications of enforcement judges for acting in family relations matters, there is an opinion prevailing in legal theory that enforcement judges, just like contentious ones, should be specialized qualification-wise for acting in such proceedings (Stanković, Palačković & Trešnjev, 2018, p. 1110).

If the parents fail to reach agreement on the method of maintenance of personal relations with their child, the court will, when deciding on this issue, and guided with the best interests of the child, take into consideration all the circumstances of the specific case and especially the child's age, sex, needs, etc. (Jović, 2012). In practice, such decisions are often difficult to enforce, particularly when one of the parents prevents the other parent from communicating with the child. This is especially important when one bears in mind the emotional and psychological aspects related to the child.

A child's natural right to parental care is secured in the company of both parents and in the union in which they live together and the child's separation from one or both parents is allowed only if such separation is necessary and in the child's interest, on which the court decides on the basis of the law and an appropriate procedure.<sup>7</sup>

Child handover entails a peaceful and amicable solution, which implies order in the relations between the parents themselves and also between parents and their children, whereas the taking away of a child implies that the child's life or health have been threatened or that the child's integrity or the child's mental, physical or development potentials have been seriously endangered (Šarkić, Radulović & Počuča, 2019, p. 96).

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<sup>7</sup> Rešenje Vrhovnog kasacionog suda [Decision of the Supreme Court of Cassation], Rev. 4758/2020 od 29.10.2020. godine.

According to the Law on Enforcement and Securing of Claims, if any of the parents will not allow the other parent to contact the child, an enforcement procedure may be initiated. In this procedure, the court may issue measures which will compel the former parent to fulfill their obligations. A fine and a sentence of imprisonment have been stipulated by the law for those who prevent the court from implementing the enforcement.

Also, the court will decide that the enforcement is supervised by a guardianship authority, which will provide, in cooperation with the court, the correct implementation of the decision and the protection of the child's interests.

### ***7.1. Enforcement of the Decision on Child Handover***

The enforcement of court decisions relating to child handover is one of the most delicate and most complex spheres of enforcement law as it directly influences the child's rights and welfare. An enforcement procedure like this should be aimed at harmonizing the factual situation with the legal situation, with the taking of enforcement actions in such a way as to adapt them to the child's age and physical and mental maturity (Nikolić, 2016, p. 100). This occurs in the situations when a parent refuses to hand the child over to the other parent contrary to a court decision on the exercise of a parental right or a contact regime. The Constitution of the Republic of Serbia (2006) stipulates, in Art. 65., para. 1, that the parents are entitled and obliged to support, bring up and educate their child on an equal footing. It is, according to the law (Art. 65, para. 2), only by a court decision that one or both parents may be deprived of all the rights, or any of the rights, or that such rights may be restricted, if that is in the best interest of the child. The enforcement court shall protect, in an efficient manner, not only the parents' rights, but also the best interests of their underage children.<sup>8</sup> A failure to enforce a final and enforcement judgement regulating the method of maintenance of contact between a child and the parent with whom the child does not live may exert negative influence on their mutual relations, which may call in question the parent's capability of exerting their parental rights without restrictions and of fulfilling their parental duties and so, in a case like this, both the parents' and the children's rights guaranteed by the Constitution are infringed upon.<sup>9</sup>

<sup>8</sup> Odluka Ustavnog suda [Decision of the Constitutional Court], Už.14395/2018 od 26.12.2019. godine.

<sup>9</sup> Odluka Ustavnog suda [Decision of the Constitutional Court], Už.8266/2020 od 28.10.2021. godine.

The jurisdiction on the motion to enforce a child handover lies with a court in the place of the permanent or temporary residence or of the head office of the party submitting the motion or with a court in the place of the permanent or temporary residence or of the head office of the party against whom the motion has been submitted or with a court in the area in which the child is located. The taking away of a child shall be enforced by a court in the area in which the child is located at that moment and the enforcement is implemented either *ex officio* or at the request of the party submitting the motion for enforcement. The court which has jurisdiction in the matter of deciding on a motion for enforcement may entrust certain enforcement actions to a court which does not have jurisdiction in the implementation of the enforcement (Art. 368 of the Law on Enforcement and Securing of Claims).

The object of enforcement in the procedure of the handing over and taking away of a child is an underage child who has been entrusted, by a court decision, to one of their parents, to another person or to an institution for custody, care and upbringing (Stanković & Trgovčević Prokić, 2020, p. 306).

A motion for enforcement may be submitted by the parent who has been entrusted with the exercise of a parental right or by another person or an institution to whom/which the child has been entrusted for custody, care and upbringing and by a guardianship authority (Art. 369 of the Law on Enforcement and Securing of Claims).

A motion to enforce child handover need not specify the enforcement instrument or if it does, the court is not bound thereby (Art. 370 of the Law on Enforcement and Securing of Claims). In the procedure of enforcement of a decision on the exercise of a parental right, the court should demand that the a guardianship authority take a proactive stand, with a view to enabling the realization of contact with the child, at least in controlled circumstances, until conditions have been created for the contact to be realized in the manner stipulated by the enforcement document.<sup>10</sup> The enforcement instruments used for the implementation of decisions on the entrusting of a child and on contacts with the child ought to be balanced and as harmless as possible when the child is concerned, this field of law being rather delicate. The law stipulates various measures to be applied in the event of obstruction on the part of a parent.

Thus, having examined the circumstances, the court shall determine the following enforcement instruments in the enforcement decision: 1) enforced taking away and handing over of the child, 2) fine, 3) sentence of imprisonment.

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<sup>10</sup> Odluka Ustavnog suda [Decision of the Constitutional Court], Už.15000/2021 od 21.04.2022. godine.

These measures may be determined and applied to a person who, contrary to a court order, refuses to hand over a child, a person who obstructs or prevents child handover, a person who keeps the child or a person on whose personal decision the child handover depends. The court may change enforcement instruments until enforcement has been completed (Art. 373 of the Law on Enforcement and Securing of Claims). All the aforesaid measures may be combined and applied to any person who refuses to act upon court order and hand over the child (Nikolić & Šarkić, 2022, p. 661). If a dispute on the exercise of a parental right has been completed in an authoritative manner, with a final court decision, the court has the discretionary authority to select the enforcement instruments that conform to the circumstances and participants in the procedure, in order that enforcement be carried out.<sup>11</sup>

The circumstance according to which these measures may be determined and applied to a person who, contrary to a court order, refuses to hand over a child, a person who obstructs or prevents child handover, a person who keeps the child or a person on whose personal decision the child handover depends indicates a deviation from the formal legality principle.

An appeal against an enforcement decision may by no means indicate the purposefulness and regularity of an enacted court decision in the part referring to the entrusting of an underage child, i.e. the same are not to be relevant for decision-making in a proceeding based on an appeal against a decision on enforcement aimed at child handover.<sup>12</sup> Such appeal-related reasons may be relevant in a contentious proceeding conducted with a view to entrusting an underage child and regulating the contacts.<sup>13</sup> The enactment of an enforcement decision on the maintenance of personal contacts with one's underage children is well-founded and justified only if the enforcement debtor prevents, with their actions, the realization of contacts between the children and the other parent.<sup>14</sup>

An enforcement decision stipulates that the enforcement debtor should hand the child over to the enforcement creditor within a certain period as of the enactment of the decision. Should the enforcement debtor fail to hand the child over to the enforcement creditor within the stipulated period, a fine shall

<sup>11</sup> Rešenje Višeg suda u Subotici [Decision of the High Court in Subotica], Gž1. 101/2018 od 12.10.2018. godine.

<sup>12</sup> Rešenje Višeg suda u Pančevu [Decision of the High Court in Pancevo], Gži. 25/2020 od 21.01.2020. godine.

<sup>13</sup> Rešenje Višeg suda u Pančevu [Decision of the High Court in Pancevo], Gž. 791/2016 od 27.12.2016. godine.

<sup>14</sup> Rešenje Višeg suda u Pančevu [Decision of the High Court in Pancevo], Gži. 427/2020 od 23.06.2020. godine.

be pronounced against them, which the court will implement *ex officio*, under the threat of enactment of a new enforcement decision and the pronouncement of an increased fine. If enforcement cannot be conducted in this manner, it will be implemented through the taking away of the child by a court official and with the help of the guardianship authority.<sup>15</sup>

When the Centre for Social Work informs the court that the enforcement debtor fails to comply with their obligations and refuses to cooperate with the Centre for Social Work for the purpose of child handover, the court will issue a decision determining, *ex officio*, a fine to the enforcement debtor. By the same decision – if the debtor fails to pay the fine within the stipulated period – the court shall determine enforcement with a view to charging the fine and, at the same time, shall order the enforcement debtor to obey the court's decision and the order of the Centre for Social Work for the purpose of child handover. Should the enforcement debtor fail to fulfil the aforesaid obligation and hand over the child, the court shall pronounce a new and increased fine against them.<sup>16</sup>

It is important to emphasize that it is a first-instance court panel that decides on the legality of the decision on a fine after such a decision has been regularly submitted to the parties' respective attorneys.<sup>17</sup>

The court shall especially ensure that the child's interests be protected as much as possible. The court may schedule an extraordinary hearing if that is in the best interests of the child (Art. 371 of the Law on Enforcement and Securing of Claims). It stems from the aforesaid that a court schedules a hearing only in exceptional circumstances, which depends on the court's assessment.<sup>18</sup> Conditions for the enactment of an enforcement decision on the maintenance of personal contacts between parents and their children have been fulfilled only in the situation when the cooperation of the other parent, as an enforcement debtor, amounts to compliance with the scheduled dates and hours, but does not include the act of preparing a child to see the other parent.<sup>19</sup> Also, we may also speak of the undermining of a right guaranteed

<sup>15</sup> Rešenje o izvršenju Osnovnog suda u Pančevu [Decision on Enforcement of the Basic Court in Pančevo], I-184/2020 of 30/09/2020, which became final on 13 October 2020 and which was enacted on the basis of enforcement document Gž.1693/09 of the District Court in Pančevo od 21.10.2009. godine.

<sup>16</sup> Rešenje Osnovnog suda u Pančevu [Decision of the Basic Court in Pančevo], I-138/2019 od 05.06.2019. godine.

<sup>17</sup> Rešenje Višeg suda u Beogradu [Decision of the High Court in Belgrade], Gži 3057/17 od 15.11.2017. godine.

<sup>18</sup> Rešenje Višeg suda u Pančevu [Decision of the High Court in Pančevo], Gži. 467/2020 od 31.07.2020. godine.

<sup>19</sup> Rešenje Višeg suda u Valjevu [Decision of the High Court in Valjevo], Gž1. 15/2020 od 03.07.2020. godine.

by the Constitution if one of the parents has been prevented from having any contact with their child for a long time although the child has come of age meanwhile.<sup>20</sup>

If an enforcement document does not stipulate child handover, the enforcement decision shall order the party against whom the enforcement is conducted to hand over the child immediately or to hand them over within a specified period. Child handover may be ordered by an enforcement decision also to a person to whom the enforcement document refers, to a person on whose personal decision the child handover depends or to any other person who keeps the child at the moment of the enactment of the enforcement decision or during enforcement implementation.

The procedure aimed at taking the child away is conducted *ex officio*. The court shall initiate it if it assesses that the child's life, health or integrity have been threatened or if it assesses that the child is being kept in the surroundings that might be detrimental to the child's further development. The European Court for Human Rights underlines the importance of paying special attention to the impact of the duration of such procedures on the exercise of a right to family life.<sup>21</sup> With a view to protection of this right, in the case of illegal actions on the part of the parent with whom the child lives, one must not exclude sanctions, although the use of punitive measures is not desirable in this field.<sup>22</sup> The implementation of the court decision itself may not be prevented, revoked or unduly delayed.<sup>23</sup>

If the enforcement debtor has initiated a procedure for a change of a decision on the exercise of a parental right and the procedure has not been completed yet, this cannot exert any influence on the implementation of enforcement of child handover. As long as it is in legal force, the decision on the entrusting of the child must be obeyed.<sup>24</sup>

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<sup>20</sup> Odluka Ustavnog suda [Decision of the Constitutional Court], Už. 7150/2021 od 16.03.2023. godine.

<sup>21</sup> V.A.M. vs Serbia, submission no. 39177/05 od 05.03.2007. godine, para. 99–100.

<sup>22</sup> Felbab vs Serbia, submission no. 14011/07 od 14.04. 2009, godine, para. 67–69.

<sup>23</sup> Damnjanović vs Serbia, submission no. 5222/07 od 18.11.2008. godine, para. 67.

<sup>24</sup> Rešenje Višeg suda u Pančevu [Decision of the High Court in Pancevo], Gži.163/23 od 07.11.2023. godine.

## **7.2. Conducting Enforcement if an Immediate Child Handover Has Been Ordered**

The order that a child should be handed over immediately shall be given, above all, if the child's life, health or mental and physical development have been threatened or if the enforcement document stipulates the handover of a child who has been illegally taken away or retained with a view to being returned to a foreign country (international child abduction) or with a view to reestablishment of a relation of custody or communication between a parent and their child in a foreign country (Art. 372 of the Law on Enforcement and Securing of Claims). Here the Law on Enforcement and Securing of Claims distinguishes between child handover and the order that the child be handed over immediately and mentions, rather awkwardly, that, if an enforcement decision does not order child handover, the relevant party shall be ordered to hand over the child immediately or within a specified period (Počuča, 2018, p. 273).

When an enforcement decision orders that a child be handed over immediately, the decision is submitted to the person from whom the child shall be taken away during the first enforcement measures. If that person is not present during the act of taking away, the enforcement decision shall be submitted to them at a later date. If a child is taken away from a person to whom the enforcement document does not refer, the enforcement decision and a protocol on the taking away of the child shall be submitted to them. The absence of the person from whom the child is to be taken away shall not prevent the taking away of the child (Art. 377 of the Law on Enforcement and Securing of Claims).

At the relevant party's proposal, the court shall reimplement the same enforcement decision if, within 60 days, contrary to the enforcement decision, the child is again found at the place of the person from whom they were taken away. (Art. 378 of the Law on Enforcement and Securing of Claims).

The same procedure applies in the case of *international child abduction* – the case when a child has been illegally taken away and kept in Serbia although, on the basis of a local or foreign legal document, the child has been entrusted to the parent who lives with the child abroad.

## 8. Conclusion

The enforcement of decisions in family matters represents an extremely important aspect of the legal system as it directly influences the rights and interests of the most vulnerable category – children. Children's rights, and parents' rights as well, must be protected not only through legal norms, but also through their efficient implementation. Through the analysis of the enforcement of decisions on the entrusting of a child and on contacts with the child and of decisions on maintenance, we can see that the Serbian legal framework in this field has been well developed in general, but that there are still numerous challenges when its practical implementation is concerned.

It has been already emphasized in this paper that the Law on Enforcement and Securing of Claims stipulates numerous measures for the enforcement of decisions in family matters, such as enforcement implementation, fines and provisional restrictions of parental rights, the very implementation of these measures often encounters considerable obstacles. Apart from enforcement officers and the court, a key role in the enforcement process is played by the guardianship authorities and the centres for social work, which, in numerous cases, are the first points of contact for families in conflict. However, although the system provides mechanism for a quick and efficient resolution of disputes, the lack of coordination between the institutions, as well as slow proceedings, represent some major obstacles.

One of the key aspects that need to be highlighted is the best interest of the child, which is the primary objective in all the procedures of enforcement in family relations. For that reason, each step in the enforcement process must be aimed at minimizing any damage that may be inflicted on the child and at securing the child's welfare. To this end, it is necessary to additionally improve cooperation between various institutions, to speed up proceedings and to enable additional education for all the participants in the process.

The proposed measures for the improvement of the enforcement system, such as the development of electronic tools, the intensification of training of enforcement officers and judges and the introduction of alternatives to enforcement may significantly improve the efficacy of the process and secure justice for all the parties. It is essential to create, in the context of an increase in the number of divorces and family conflicts, a legal framework which is to be flexible enough and adapted to the needs of modern society.

Finally, as a key recommendation, it is necessary to focus more attention to the development of systemic solutions that will secure a better functioning of judicial and social systems, as well as citizens' trust in the legal system,

which, in these delicate family matters, will be the true protector of the rights and interests of both the child and the parents.

### **Conflict of Interest**

The authors declare no conflict of interest.

### **Author Contributions**

Conceptualization, M.P.; methodology, D.B.; formal analysis, M.P. and D.B.; writing - original draft preparation, M.P. and D.B.; writing - review and editing, M.P. All authors have read and agreed to the published version of the manuscript.

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## **IZVRŠENJE U PORODIČNIM ODNOSIMA – PREDAJA I ODUZIMANJE DETETA, SA OSVRTOM NA ULOGU ORGANA STARATELJSTVA**

**APSTRAKT:** Izvršenje sudske odluke u porodičnim odnosima postaje sve značajnije u pravnom sistemu Republike Srbije, što je direktna posledica porasta broja razvoda i povećane potrebe za regulisanjem roditeljskih odnosa nakon prestanka bračne ili vanbračne zajednice. Očekuje se da će u budućnosti ove odredbe Zakona o izvršenju i obezbeđenju biti sve češće primenjivane, što nameće potrebu za njihovim detaljnim razmatranjem i analizom. Posebnu pažnju treba posvetiti specifičnim izvršnim mehanizmima koji se koriste u ovim slučajevima, ali i uticaju koji izvršenje

sudskih odluka ima na dete, roditelje i druge članove porodice. Najbolji interes deteta mora biti ključni kriterijum prilikom izvršenja u porodičnim odnosima, što se posebno odnosi na postupke koji se tiču poveravanja deteta, određivanja načina održavanja ličnih odnosa sa roditeljima i izdržavanja. Iako je Zakon o izvršenju i obezbeđenju posebno regulisao ovu materiju, u praksi se javljaju brojne dileme, naročito u vezi sa odnosom suda i organa starateljstva. Specifičnost ovog postupka ogleda se u činjenici da sud u određenim situacijama postaje pomoći organ organu starateljstva, iako je njegova uloga tradicionalno suprotna – da donosi odluke koje organi uprave sprovode. Ovo pravno rešenje u praksi izaziva određene nedoumice i zahteva dalje razmatranje. Ovaj rad ima za cilj da analizira pravni okvir izvršenja u porodičnim odnosima kroz odredbe članova 368–381 Zakona o izvršenju i obezbeđenju, uz kritički osvrt na izazove u njihovoj primeni. Kroz analizu sudske prakse i poređenje sa potencijalnim alternativnim modelima izvršenja, ukazaće se na moguće pravce unapređenja sistema, kako bi se osigurala veća pravna sigurnost, zaštita prava deteta i efikasnost samog postupka.

***Ključne reči:*** izvršenje, prava deteta, organ starateljstva, poveravanje deteta, izdržavanje, porodični odnosi, Zakon o izvršenju i obezbeđenju, sudska praksa.

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