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PARENTING AFTER DIVORCE IN MACEDONIAN FAMILY LAW

Abstract

In the text the authors note that in the past decades major changes have taken place in marital and family relations in all European countries, and one of the most significant is the sharp increase in the number of divorces. The authors point out that these changes also bring about significant reforms in the family law systems of European countries with regard to the regulation of parental rights after divorce. The authors analyze the model of parental rights after divorce in Macedonia and state that unlike most European countries, the Macedonian legislation does not provide for the model of joint parental rights after divorce. The text also analyzes the role and competences of the Centers for social work in relation to the exercise of parental rights and proposes a serious reform in this area, with the greater number of competences of the Centers for social work to be transferred to the courts. Also, the authors propose the adoption of the principle of shared parenting after divorce, which is in the best interests of children, as well as the implementation of the principle that the children should have the possibility to express their opinion in all proceedings where the competent authorities are deciding about their rights and interests.

In the past decades in all Western countries the number of divorces has dramatically increased,¹ which was one of the main reasons for the disruption of the existing family model and the emergence of pluralism of family forms.² Seen from a legislative perspective, one of the most significant reforms in family law systems was the liberalization of the divorce.³ In addition, all

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¹ In the countries of the European Union in 1960 only 170.000 marriages were divorced; in 1993 there were 636,000 divorces, and in 2006 the number of divorces increased to 1.040.000. See more: Ljiljana Spirovikj-Trpenovska, Dejan Mickovikj, Angel Ristov, *Family Law Act*, Blesok, 2013, Skopje, p. 54.

² See more about the pluralism of family forms in: Dejan Mickovikj, *Family in Europe XVI – XXI century*, p. 183-195. According to Castels nowadays there is no longer only one existing family model. In contemporary societies there is a diversity of family forms. See more: Castels, M., *The Power of Identity*, Blackwell Publishers, London, 1999, p. 227. In this sense, Judith Stacey states that the conditions in the post-industrial society led to the creation of many different family models. See more: Judith Stacey, *In the Name of the Family, Rethinking Family Values in the Postmodern Age*, Beacon Press, Boston, 1996, p. 7.

³ According to Mary Ann Glendon, as opposed from the previous, period when the divorce was allowed only in exceptional cases, today it is possible to divorce by mutual consent of the spouses or by unilateral request by one of the spouses. See more in: Mary Ann Glendon, *The Transformation of Family Law Act: State, Law, and Family in the United States and Western Europe*, The University of Chicago Press, Chicago and London, 1989, p. 226. According to Patrick Parkinson, previously divorce was possible exclusively because of the fault of one or both marital partners, and now days in most Western countries, marriage can be dissolved by unilateral decision made by one of the spouses, even when the other opposes the divorce. Patrick Parkinson, *Family Law Act and the Indissolubility of Parenthood*, Legal Studies Research Paper, No. 06/31, October 2006, The University of Sydney, Sydney Law School, p. 3.

jurisdictions were faced with the dilemma how to regulate the exercise of parental rights and responsibilities after divorce. This question is extremely important because of the fact that many studies show that divorce causes severe and long-term negative consequences for children, and affects all aspects of their lives.⁴

Under the influence of changes in marital and family relationships, a significant transformation is taking place in contemporary legal systems in the last few decades. Instead of protecting the marital relationship by prohibiting the divorce, or providing that divorce is possible only in case of fault of one of the spouses, the modern legislation protects the relationship between parents and children. While deciding on the exercise of the parental responsibilities after the divorce, the best interest of the child is always the primary consideration,⁵ whereas the cessation of the relationship of the child with one of the parents is not considered to be the child's best interest. Therefore, in the last decades all European countries accept the concept of joint legal custody,⁶ and the concept of joint physical custody, while deciding on the exercise of the parental responsibility after divorce. Furthermore, the European countries and the USA are familiar with the trend that the legislation „does not distinguish in a formal sense between the custodial and non-custodial parent, nor between residence and contact“.⁷

Taking into consideration the principle of the best interest of the child and accepting the tendency of equality between the mother and the father in exercising parental responsibilities after the divorce, the concept of joint legal custody has been introduced as a dominant concept in in many other European countries such as France,⁸ Germany,⁹ Sweden,¹⁰ Switzerland,¹¹

⁴ According to Paul R. Amato many studies show that the parents's divorce has negative consequences for the children when they grow up, including lower socioeconomic status, marital problems and greater likelihood of divorce. See more in: Paul R. Amato, *The Consequences of Divorce for Adults and Children*, *Journal of Marriage and Family*, Vol. 62, No.4 (2000), p. 1279.

⁵ 1989 Convention on the Right of the Child in Art. 3 (1) provides that „ In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration‘. Според Noel Semple “The statutes, case law, and scholarship all clearly proclaim that the best interests of the child are the only relevant consideration”. See Noel Semple, *Whose Best Interest? Custody and Access Law and Procedure*, 48 *Osgoode Hall Law Journal* (2010), 287-336, at 335.

⁶ According to Parkinson many countries “made joint parental responsibility the default position in the absence of a court order to the contrary”. See Parkinson, P., *Family Law and the Indissolubility of Parenthood*, *Family Law Quarterly*, Vol. 40 No.2, p.240

⁷ *Ibid.*, 241.

⁸ The French Law promotes the principle of shared parenting after separation of parents. In principle, the attribution of parental responsibilities is not affected at all by the divorce. The reform Act of 4 March 2002 incorporated a new section into the French Code Civil concerning “the exercise of parental responsibilities by separated parents.” In all cases of parental separation both parents generally remain holders of parental responsibilities and the French Civil Code requires each parent to maintain personal relationships with the child after divorce.

⁹ In Germany, Child Law Reform Act of 1998 provides that joint parental responsibility is generally maintained after the divorce and that parents jointly decide on all issues that are important to children.⁹ No court ruling is required for joint legal custody. In Germany a parental divorce no longer means that family courts are obliged to deal with the future arrangements regarding parental responsibilities. Under the Child Law Reform Act a court decision on parental responsibility is necessary only if so requested by one parent. Such an application can always be made if the parents live apart.

¹⁰ See Swedish Children and Parents Code, Chapter 6 Sec. 3, para.2 ,(15 March 2017), English version available at < <http://ceflonline.net/wp-content/uploads/Sweden-Parental-Responsibilities-Legislation.pdf> >

¹¹ Ingeborg Schwenzer, Tamie Keller “New Rules on Parental Responsibility in Switzerland,” *The International Survey of Family Law* (2014), 457-470, at 457.

Norway,¹² the Netherlands¹³ and many others. Another important characteristic of European countries in regard to the exercise of parental responsibilities after divorce is the important role of the courts in deciding on joined custody after divorce. In most of the countries the court can decide to appoint joined custody to the parents even when they cannot agree about this between themselves. The court can also accept the joint agreement between the parents assessing whether that agreement is in line with the best interest of the child. This surely represents a step forward to the implementation of the principle of the child's best interest and to the implementation of the European Convention on Human Rights¹⁴ as well as the UN Convention of the Rights of the Child,¹⁵ since according to both documents, for all the important issues, especially for the decision on the exercising parental responsibilities, the court is eligible to decide.

The major changes in marital and family relationships which are common to all European countries, are also happening in North Macedonia. However, due to the specific historical, cultural, economic and political conditions, family transformations in Macedonia took place much later in comparison with some other European countries. In this regard, it is interesting that Macedonia, according to a survey conducted between 1990 and 2000, had the lowest rate of divorces in Europe.¹⁶ The causes of this were numerous: the patriarchal relations, the strict customary and moral norms, the economic crisis as well as the high unemployment rate of 30%. However, in recent years the trend of growing number of divorces is visible in North Macedonia, too.¹⁷

Divorce is connected with many legal consequences related to the spouses and the common children. The most important consequences associated with divorce are closely related to the exercise of parental rights and responsibilities after divorce. In this sense, which of the spouses shall be entitled with the right to raise the child, by what criteria the court will be guided in

¹² See The Children Act, (Act No. 7 of 8 April 1981 relating to Children and Parents), Art.34 para.2, (16 March 2017), English version available at < <https://www.regjeringen.no/en/dokumenter/the-children-act/id448389/>>; See also Ragni Hege Kitterød, Jan Lyngstad, "Untraditional caring arrangements among parents living apart: The case of Norway," 27 (5) *Demographic Research* (2012), 121-152, at 125.

¹³ See Dutch Civil Code, Art 251 para.2 (English translation has been reproduced with the kind permission of Ian Curry-Sumner and Hans Warendorf. for further translations of Book 1, Dutch Civil code refer to I. Sumner and H. Warendorf, *Family law legislation of the Netherlands*, Antwerp: Intersentia, 2005, Volume 5:EFL Series), available at <<http://ceflonline.net/wp-content/uploads/Netherlands-Parental-Responsibilities-Legislation.pdf>>.

¹⁴ 1950 European Convention on Human Rights, Art. 6, para.1 - "In the determination of his civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law" (16 March 2017), available at < http://www.echr.coe.int/Documents/Convention_ENG.pdf .

¹⁵ Convention on the Rights of the Child, Art. 9, para.1.

¹⁶ According to Matthijs Kalmijn, there were major differences in divorce rate among certain regions in Europe in the period from 1990 to 2000 (divorce rate indicates the number of divorces per 1000 inhabitants). The divorce rate in Western Europe during this period was 2.24, in Northern Europe 2.36, in Central and Eastern Europe divorce rate was the highest- 2.93, and the lowest rate was registered in the South East Europe-0, 84. Divorce rate in Republic of Macedonia in this period was only 0.38, and was significantly lower compared to other countries in the region. See more in Matthijs Kalmijn, *Explaining cross-national differences in marriage, cohabitation, and divorce in Europe, 1990-2000*, *Population Studies*, 61:3, 2007, p. 249.

¹⁷ According to the State Statistical Office, in the Republic of Macedonia there were 710 divorces in 1995, in 2005 the number was 1552, and in 2018 the number of divorces increased to more than 2000.

making its decision, as well as many other similar questions constitute very important issues that in the end, determine the proper physical and mental development of children.¹⁸ Macedonian law provides three grounds for divorce: 1) by mutual consent of the spouses; 2) at the request of one of the spouses if the marriage relationship has been disrupted to that extent which makes common living unbearable and 3) by factual termination of the common life at least for a year. Therefore, the guilt of the partners has no importance in the grounds for divorce in the Macedonian family law. Given the primacy that should be provided to the interest of the children, the legislator provides that in the content of the judgment by which the marriage is divorced, the Court will decide on guarding, upbringing and maintaining of common children.¹⁹ In addition, it should be noted that Family Law Act does not contain specific rules that regulates the exercise of the parental right after divorce.²⁰ This means that after the divorce, the parent to whom children are not entrusted for upbringing and care, does not lose its own parental rights.²¹ But in practice the situation is different. In North Macedonia it is common that the parent of the child, entrusted by the court with the right of upbringing the child (guarding and education are key elements of parental rights) is the one who carries out parental rights and brings most decisions regarding the child. The other parent has the right to maintain personal relations with the child and has the obligation to pay child support. Due to the fact that the children after the divorce are usually entrusted to the mother, the fathers are isolated from the child's life and restrained from the process of bringing the most crucial decisions regarding child's interests.²² Undoubtedly, this legal gap in national legislation related to the exercise of parental rights after

¹⁸ About the exercise of parental rights in practice see more details in: Margarita Toshanova, Svetlana Trajchovska, Jasmina Jovanov-Trajkovska, "The Exercise of Parental Rights, Termination of Parental Rights and Prolongation of Parental Rights", *The Family legislation of the Republic Macedonia*, Editor Dr. Kiril Chavdar, Supreme Court of Macedonia, Skopje, 1994, p. 103-105.

¹⁹ Article 80 paragraph 1 of the Family Law Act .

²⁰ Unlike the Macedonian law, the Serbian law expressly predicts the existence of two types of parental right – joint and individual exercise of parental rights. For this, see more details in: Slobodan Panov, *Family Law Act*, Faculty of Law, University in Belgrade, Belgrade, 2010; Gordana Kovachek Stanikj, *Family Law Act: Partnership, Children and Custodial Law*, Faculty of Law in Novi Sad, Novi Sad, 2007; p. 310-318; Marija Drashkikj, *Family Law Act and Children's right*, JP Official Gazzete, Belgrade, 2009, p. 288-295; Milan Pochucha, *Family Law Act*, University Chamber Academy, Novi Sad, 2010, p. 182-185. Such a solution is also provided in the domestic legislation of Republic Srpska. Guided by the interests of the child, the Court shall appoint single or joint exercise of parental rights. See more at Suzana Bubich, Nerimana Traljich, *Parental and Custodial Right*, Faculty of Law, University Sarajevo, Sarajevo, 2007, p. 176-182.

²¹ The same view is expressed by Mile Hadzivasilev, above n 9, p. 220-221. Similar view: Margarita Toshanova, Svetlana Trajchovska, Jasmina Jovanov-Trajkovska, above n 10, p. 104.

²² This practice in the Republic of Macedonia is contrary to the provision of Article 76 of the Family Law Act which provides that parents perform their parental rights jointly and in agreement, and it is contrary to the UN Convention on the Rights of the Child. Furthermore, many studies show that the involvement of the father in the child's upbringing and socialization is beneficial for the child's welfare after the divorce. According to analysis of 63 studies that have investigated the relationship between the father and the children who didn't live together after the divorce, Amato and Gilbreht concluded that the proper exercise of parental responsibilities by the father is associated with the children's improved academic outcomes and fewer problems in their psychological development. See more at: Paul R. Amato, above n 4, p. 1280. According to one study, the intensity of contacts with the child's father after divorce positively affects the financial contribution realized by the father concerning the child alimony. See more at: Heather Juby, Céline Le Bourdais and Nicole Marcil-Gratton, *Sharing Roles, Sharing Custody? Couples' Characteristics and Children's Living Arrangements at Separation*, *Journal of Marriage and Family*, Vol. 67, N. 1, p. 157.

the divorce causes problems in practice and is contrary to the purpose of the legislator, who underlines that the child should be guarded, brought up and maintained by both parents, regardless of their status and mutual relations.

Another serious problem in Macedonian family law is connected with the competencies of the Center of Social Affairs in the area of exercising of the parental rights. The Center of Social Work has extremely wide powers in the supervision over the performance of parental rights, and maintenance of personal relations and direct contact with the child. In this sense, the Center of Social Work can take the child from one parent, and entrust the guarding and upbringing of the child to the other parent, or any other person or adequate institution, when parents or the parent with whom the child lives neglected the child in terms of upbringing and education, or when there is a serious danger to the child's proper development and raising.²³ Such a solution is contrary to the UN Convention on the Rights on the Child which provides a judicial review when decisions is made by which a child is separated from one or both parents. This solution is contrary to the Law on Non-Litigation Procedure of the Republic of Macedonia, which envisages that the Court, and not the Center of Social Work is authorized to revoke or restrict parental rights.

If non-resident parent has not provided a child's maintenance for more than three months the Center of Social Work may bring a decision to limit his right to maintain personal relations and direct contact with the child.²⁴ In time of economic crises, when poverty and unemployment are common in Macedonian society,²⁵ this legal solution which gives priority to material values seems illogical and inhuman. This legal solution represents sanction for the parent, but it is a punishment for the child as well, because the child has a right and interest to maintain personal relations and direct contacts with both parents. In order to respect the interests of the child, the state should find other suitable solutions for providing alimony in cases where the parent does not pay child support, rather than envisaging bans for parents in maintaining personal contact with the child.²⁶

The Family Law Act provides other situations when the Center of Social Work is authorized to limit contacts of one parent with the child after the divorce. The Center of Social Work may bring a decision to limit the right of the non-resident parent to maintain personal relations and contact with the child, in cases when the parent has not respected the decision of the Center of Social Work for more than three consecutive times without justification.²⁷ Thereby the legislator leaves a broad discretionary authority to the Center of Social Work to determine if the reasons for which the parent has not respected the decision were justified or not, that nonetheless affects a child's right to maintain personal relations and contacts with the parent. In practice, major problems are caused by the legal solution under which the Center of Social Work may pass a

²³ Article 87 paragraph 1 of the Family Law Act .

²⁴ Article 87 paragraph 2 of the Family Law Act .

²⁵ The unemployment and poverty are the two biggest problems which Macedonia faces nowadays, due to the fact that almost 30% of the population is unemployed, and the same is the percentage of the poverty in the country.

²⁶ A good example of a legal solution in cases when the parent is not paying for child support is presented in the Bulgarian Law, where it is envisaged that in this case the child's support falls on the burden of State Budget, which has the right to require execution of the property of the parent who has not paid the support. More on this can be seen at: Ekaterina Mateeva, *Family Law Act of Republic of Bulgaria*, VSU "Chernorizec Hrabar" Sofia, 2010, p. 476-496; Canka Cankova, Metodi Markov, Anna Staneva, Velina Todorova, *Comments of the new Family Code*, IK "Labour and Law", Sofia 2009, p. 420-421; Metodi Markov, *Family and Inheritance law*, Sibi, Sofia, 2009, p. 161.

²⁷ Article 87, paragraph 3 of the Family Law Act .

decision to limit or to ban the parent's right to maintain personal relations and contact with the child for a period of time, but no longer than six months, if the parent has not return the child in the time scheduled by the decision, or if he has retained the child longer than the time specified in the decision.²⁸ Hence, the legislator opted to entrust very wide powers to an extrajudicial authority to limit the contacts of the child with the non-resident parent.

Considering the above, it is necessary for the legislator to review the role and responsibilities of the Center of Social Work, and to transfer its authorities concerning the exercise of parental rights after divorce to the court jurisdiction.²⁹ Otherwise, instead of resolving the problems connected with the exercise of parental rights after divorce, the decisions made by the Centres of Social Work will continue to cause problems in practice, to the detriment of the interests of children.³⁰

In Macedonian Family Law Act there is no precise legal provision under which the parents jointly perform parental rights after the divorce. The joint performance of parental rights arises from the provisions laid down in Article 45 of the Family Law Act³¹, as well as from the Article 76 of the Family Law Act.³² Hence, the legislator has foreseen the joint exercise of parental rights as a basic principle in the family law. However, there is a need to explicitly predict the joint exercise of the parental responsibilities after divorce. In real life in North Macedonia the parent to whom the children have been entrusted for upbringing after divorce makes all the important decisions concerning the rights and the interests of the children, and the other parent is awarded only with the right to maintain personal relationships with the children and the obligation to pay child support. This negatively influences parent's willingness to engage in maintaining a personal relationship with the child, because he is practically excluded from the opportunity to decide on the matters that are crucial for the future of the child. The joint exercise of parental rights after divorce is of mutual interest of the father, of the mother and of the children.³³ In this context, it is important to amend the Family Law Act and to provide that the

²⁸ Article 87, paragraph 5 of the Family Law Act.

²⁹ In the Croatian law, through the narrowing of the competences of the Center of Social Affairs, the jurisdiction of the Non-Litigation Court has significantly increased. In this respect, the Non-Litigation Court is competent to decide with which parent the child will live, about personal relations and direct contacts and the manner and timing of their realization, as well as for the restriction and prohibition of such relationships. For this, see more at: Mira Alinčić, Dubravka Hrabar, Dijana Jakovac-Lozić, Aleksandra Korać-Graovac, above n 33, p. 267-280.

³⁰ In the Republic of Macedonia the children after divorce are usually entrusted for upbringing and education to the mother. The competence of the Center of Social Affairs to restrict the contacts of the child with the father has serious negative implications for the proper development of the child. According to McLanahan, who did an overall analysis of several researches dedicated to the children's welfare after divorce, the lack of contact with the father after the divorce is associated with achieving poorer results at school among observed male and female children, higher unemployment among boys and higher number of juvenile pregnancy cases among the girls. Look at Robert Bauserman, Child Adjustment in Joint-Custody Versus Sole-Custody Arrangements, A Meta-Analytic Review, *Journal of Family Psychology*, Vol. 16, No. 1, 2002, p. 91.

³¹ According to Article 45 of the Family Law Act: "The parental right belongs equally to the mother and the father".

³² According to Article 76 of the Family Law Act: "The parents carry out the parental right mutually and by agreement".

³³ According to Marjorie Lindner Gunnoe and Sanford L. Braver the benefit for the father in case of of joint exercise of the parental rights after divorce consists of feeling less emotional loss and depression, anger and discontinuity in performing of the parental role. The benefit for the mother consists in a father's greater willingness to pay child support, more assistance in taking care for the child and more time for professional development. The benefits for the child is better relationships with both parents, better cooperation between parents in the exercise of the parental responsibilities and better child adjustment after divorce. See more at: Marjorie Lindner Gunnoe and Sanford L.

joint exercise of parental rights after the divorce should be a fundamental principle. The law should provide that the court may entrust the exercise of parental rights to one of the parents, only if that is required by the interests of the child.

In the context of the exercise of parental responsibilities, it is important to take account of the child's autonomy and the influence of his will and his wishes, especially if, given the age and maturity, the child is capable of forming an opinion on relevant issues concerning his rights and interests. Connected with this, of great importance is the question of the possibility for the child to be heard in procedures before the state authorities who decide on specified issues relating to the rights and interests of the child. These are essential questions, because only if parents and state agencies really take account of the views, opinions and wishes of the child, we can speak of a real application of the UN Convention on the Rights of the Child, which considers the child as a subject of rights, rather than as a passive object of care.³⁴ This concept is accepted in the European Convention on the exercise of rights of the child.³⁵

Many European legislation explicitly stipulates the obligation of parents, in the exercise of parental responsibilities, to take into account the opinions and views of the child. The Italian Civil Code provides that parents have the right and obligation to support, educate and raise their children, taking into account their abilities, natural inclinations and aspirations.³⁶ Courts in Italy take account of the wishes and autonomy of minors. The court in Bologna in 1973 ruled that the minor may leave the parental home in order to maintain the relationship that they tried to forbid.³⁷ The child's right to autonomy is provided in case law in other European countries, and the child's right to make decisions for themselves and their rights and interests is accepted in the particularly important and influential case *Gillick v. West Norfolk and Wisbeach Area Health Authority in the UK*.³⁸ Based on the decision in this case, in the English case law appeared new institute: mature minor under 16, which opens numerous dilemmas. Namely, it is unclear how it will be determined whether the minor has sufficient understanding and intelligence to be able to

Braver, The Effects of Joint Legal Custody on Mothers, Fathers, and Children Controlling for Factors That Predispose a Sole Maternal versus Joint Legal Award, *Law and Human Behavior*, Vol. 25, No. 1, Special Issues on Children, Families, and the Law (Feb., 2001), p. 26.

³⁴ In the article 12, paragraph 1 of the UN Convention on the rights of the child is determined that States Parties shall assure to the children a right to their own opinion, right of free expression of opinions in all matters affecting the child, given due weight to the opinion of the child in accordance with the age and maturity of the child.

³⁵ In Article 3 of the European Convention on the exercise of rights of the child from 1996 is determined that: "A child considered by internal law as having sufficient understanding, in the case of proceedings before a judicial authority affecting him or her, shall be granted, and shall be entitled to request, the following rights: a. to receive all relevant information; b. to be consulted and express his or her views; c. to be informed of the possible consequences of compliance with these views and the possible consequences of any decision".

³⁶ See more at L. Lenti, *Droit de la famille: Italie*, Juris-Classeur de Droit Comparé, Éditeur Michèle Klein, Paris 1997.

³⁷ See more at F. Boulanger, *Droit civil de la famille*, Aspects comparatives et internationaux, Economica, Paris, 1994, p. 238.

³⁸ In this case, the mother of four girls under 16 year disputed the decision of the Department of Health and Social Security, according to which doctors, in exceptional cases, can give advice and prescribe treatment in the field of contraception for girls under 16 years of age, without the consent of parents. Ms. Gilik asked the court to revoke this decision, because it violates her rights as a parent. House of Lords rejected the appeal. In explanation of the judgment, House of Lords states: "The right of parents come behind children's rights to make their own decisions when they reach the age and intelligence sufficient to form an opinion and decide on areas and issues that require a decision." See more in M.T. Meldeurs-Klein, *La personne, la famille et le droit, Trois décennies de mutations en occident*, Brylant, Bruxelles, L.G.D.J. Paris, 1999, p. 359

make decisions for themselves and their rights and interests and whether this could lead to possible danger to the rights of children. According to Cretney, it is a factual issue that should be resolved within each case, depending on the complexity of the issues in question, and the emotional and intellectual maturity of the juvenile.

The child's right to express an opinion that should be taken into account is provided in other European jurisdictions. The Swiss Civil Code stipulates the obligation for the parents, when they make important decisions for the child, to take care for his opinion.³⁹ Moreover, the children in Switzerland, that have reached certain level of maturity, have the right to independently organize their lives.⁴⁰ In the Czech Republic, the legislator has also taken into account the views of the child.⁴¹ The Family Law stipulates that when a child is capable of forming their own opinions and to understand the measures that relate to it, it has the right of parents to obtain all information necessary to plead all measures of parents.⁴² In France, the child's right to express their opinion is based on the amendments of the Civil Code of 1993,⁴³ and the children's right to express their opinion in some countries, such as Poland, is provided in the Constitution.⁴⁴

North Macedonia does not provide consistent application of Article 12 of the UN Convention on the Rights of the Child, although the Act on protection of the children provides that the opinion of the child should be taken into account when deciding for his rights and obligations.⁴⁵ However, the Family Law Act, which regulates the most important issues related to the rights and interests of children, does not contain any general provision that parents and state institutions should take into account the opinion and the wishes of the child when deciding about his rights and interests. There are several articles of the Family Law Act, pertaining to the maintenance of personal contacts of the child with the parent, when parents do not live together,⁴⁶ or adoption,⁴⁷ or designation of a guardian,⁴⁸ where the Family Law Act provides for an obligation to take into consideration the wishes of the child. However, for some extremely important situations, such as, for example, the question whether the child should live with the father or the mother after divorce, Family Law Act does not provide an obligation for the Court and Center for Social

³⁹ See article 144, paragraph 2 of the Swiss Civil Code.

⁴⁰ See more G. Guillod, *Droit de la famille: Suisse*, Juris – Classeur de Droit Comparé, Éditeur Michèle Klein, Paris, 1999.

⁴¹ Generally, the child has a right to be heard in any proceedings in which is decided about essential matters relating to the child (Sec. 31 para. 3 Czech Family Code).

⁴² M. Zuklinova, *Droit de la famille: République Tchèque*, Juris-Classeur de Droit Comparé, Éditeur Michèle Klein, Paris, 1999, p. 11.

⁴³ According to Article 388-1 of French Civil Code (since the Act of No. 93-22 of 8 January 1993) the minor child can be heard before the court or before the person appointed by the court, in any proceedings related to the child.

⁴⁴ Article 72 sec. 3 of the Polish Constitution provides a rule, according to which, when assessing a child's rights, the public authorities and persons responsible for the child should hear the child and, to the extent possible, take the child's opinion into consideration.

⁴⁵ In the article 3 b from the Act on Protection of the Children is determined that the State has a duty to ensure the right of the children to express their views on all matters that concern them and that the views of children should be given due weight in accordance with their age and maturity.

⁴⁶ In article 79, paragraph 2 of the Family Law Act is prescribed that the the Centar for Social Affairs will inform the child and takes onto account his views and opinions depending on age and level of development of the child, when it is deciding about maintaining personal relations of the child with the parent.

⁴⁷ Article 103, paragraph 1 of the Family Law Act prescribes that the adoptee who is older than 12 years should give consent to establishing of the adoption.

⁴⁸ In article 135, paragraph 4 of the Family Law Act is determined that in deciding about the guardian, the Center for Social Affairs should take into account the wishes of the person under guardianship.

Affairs to hear the child and to take into consideration his wishes and opinions. Because of this, we believe that the Civil Code of the Republic of Macedonia should provide a general obligation for the parents, as well as for all public authorities to have an obligation to hear the child, and to take his views into consideration, according to the age and the maturity of the child.⁴⁹

⁴⁹For the opportunity to take into account position of the child in determining questions relating to it, see more Bo Borce Davitkovski, Gordana Buzarovska, Gordan Kalajdziev, Dejan Mickovik, *Comparative Review of the Legislation in the Republic of Macedonia and the Convention on the Rights of the Child*, UNICEF, Ministry of Justice, Skopje, 2010 p. 104-112.