

Protecting The Interests Of The Child Through Freedoms, Human Rights, And The Rule Of Law

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Abstract

Parents, authorities, and courts in their decisions and activities must have as a primary consideration of the best interests of the child. This is exactly what article 2 of the Family Code says. Also, lawmakers also described this in articles 116-122 of the Constitution. This refers to any ratified international agreement which constitutes part of the internal system as published in the Official Gazette of the Republic of Albania. Therefore, it gives people a priority over the laws of the country that they do not agree with. This study aims in understanding the relations between parents and children through parental responsibility and principles which underlie the exercise of parental responsibility. In protecting the interest of the child, there has been an evolution in anthropological and historical aspect of the legal opinion. However, there is a clear difference between the concept of "patria potestas" of the Roman law and parental power conceived by the modern right. The first represents an institute which primarily protects the interests of "Pater familias". Consequently, the head of each family exercise their duties, roles, and authority, majorly in view of the family's welfare. In the second which is the modern concept, the cornerstone of parental power lies not with the idea, but this power is conceived based on the best interests of the child. It states that parents, competent authorities, and courts in the decisions making process, must have the best interests of the child as the primary consideration.

Keywords: Convention, Parents, Competent Court, the Constitution, the modern state

Introduction

The legal spirit of the Rights of the Child¹⁴ is not only in the aforementioned provisions, but also in other provisions of the Constitution.

¹⁴ The Constitution of the Republic of Albania.

Specifically, it is in Sections 52-53-54. Thus, it finds priority over all other rights which are exhaustively competitive in terms of the law regarding the other rights. In this respect, we find instead of comparing the provisions relating to the common law, the codification of family law, constitutional law, the European Convention of Human Rights, the Convention on the Rights of the Child, and the Hague Convention "On Protection of Children and Cooperation for inter country adoption."

Despite the naming convention, agreement, international agreement, treaty, or any other act in the context of the above mentioned, these constitutes sources of family law in the Republic of Albania. As a result, it gives a complete configuration with high interest and protection of the interest of the child in a democratic society, where the rule of law, human rights, and justice are followed.

Parent Child Relations through the Labyrinths of Time

In this context, the legal breath which describes the relationship between parents and children from the beginning, the length of time until the termination of parental responsibility, the rights and duties of the children, and those personal non-property and property of the parents against children, have always takeaway "Protection of the highest interest of the Children ".

Therefore, in this concept, the relationship between parents and children has continued through the labyrinths of time from the Roman Law, Common Law Privacy and Albanian customary canon law, Human Rights, European Convention of Human Rights, the Convention on the Rights of the Child, Convention for the Protection of family law, the codification of thanks, the constitutional law, the Constitution of a modern state, and the Constitution of the Right Modern.

Consequently, we found that all the legal facts, evidence, and the applicable law in space and time have tendency for relationships between parents and children. Here, the trend of modern times is always the favorite for the "Protection of the highest interest of the children" forever.

From a biological perspective, man performs two unconditional reflexes which are reproduction and protection. Subsequently, we can notice that man not have the biological need for sexual relations, but also that of reproducing life extension beings (children). In creating the necessary infrastructure and legacy of relevance to this heritage, we need a parent and children relationship. Generally speaking, we as parents are the archers, while our children are arrows. Therefore, these arrows need to be shot to hit to ten. More importantly, the social climate needs to be directed by elites to create positive energy which would likely lead to prosperity.

Development: Parental Responsibility in the Albanian Legal Opinion

Consequently, we find legal theoretical development of the Albanian legal opinion to be an important place. Parental Responsibility which correlates in terms of positive law has formal sources which are derived from different social behavior, family, and personality. It reshapes them into legal rate whilst giving them the subjective sense of this legal norm to help decompose the true meaning of the legal norm which plays an important role in correcting the implementation of the law.

In this regard, the title “Parental Responsibility” must start with the concept of parental responsibility to continue further with the duration and the exercise of parental responsibility. The concept of parental responsibility lawmaker is embodied in Article 215 of Family Code¹⁵ where it explicitly states that: - "Parental responsibility includes the entirety of the rights and obligations aimed to provide emotional welfare, caring for the child's social and material need, keeping personal relations with him, and providing the upbringing, education, legal representation, and management of its assets.

From a literal interpretation, this provision comparatively confirms that parental responsibility is deemed as an important legal protection of the highest interest of the children. Like any other legal relationship and rates in terms of the general principle of the scale, are the two sides which are both rights and obligations. Also, the parent child relation has in itself, the rights and obligations which lie in the scales protected by the legal institute of parental responsibility.

These special relationships between parents and children are developed through love. However, Article 1 of the International Convention on the Rights of the Child states that: - "Children have the right to live, to grow up to be educated, and to study a world filled with love¹⁶". Therefore, this is the environment I see that we need to bring to our children. This includes the provision of food, shelters, education, and teaching them our cultural heritage. Most important of all, we need to show "LOVE" to them in their daily lives.

Also in Article 12 of the International Convention on the Rights of the Child¹⁷, their right is guaranteed; and they can freely express their views on any matter that has to do with them. Nevertheless, the age and maturity of the child which is used by the parent for evaluation should come in each case through a decision which should be taken in respecting the aspirations of the child's personality development. This involves the provision of parenting,

¹⁵ Article 215 of the Family Code.

¹⁶ Article 1 of the International Convention on the Rights of the Child.

¹⁷ Article 1 of the International Convention on the Rights of the Child.

material welfare, health care, and physical development of the child's mental, emotional, and social wellbeing.

Also, lawmakers in section 216 of Family Code¹⁸ has defined the duration of parental responsibility which continues until the child reaches adulthood, which according to the law is 18 years old. So this time limit is the length of parental responsibility as well. At this age, they have certain rights. Therefore, one of these is the right of getting married. It is worth mentioning that the restriction of parental responsibility is related to Article 6 of Civil Code where it was stated that women have full legal capacity to act as a result of the legalized marriage¹⁹. Although the general principle of the Legislator determines that at this age, the time limit for parental responsibility was been sanctioned. Thus, this is in special cases with the court's decision, as was specifically stated in Article 7 of the Family Code Wedlock. The legal age of parental responsibility is less than 18 years. Consequently, the limit of parental responsibility in such cases is limited by court order until an age of less than 18 years old, thus determining another time limit on the duration of parental responsibility. There is another special case which limits the duration of parental responsibility where the legislator has determined that parental responsibility ends after attaining the age of maturity. For adults, it ends at the age of 25 years old.

Given the fact that parental responsibility essentially represents a legal relationship between parent and child, as such, it is integrated at certain times. This often begins with the birth of the child, i.e. the person living under Article 2 of Civil Code. Furthermore, this relates to the legal capacity the child enjoys since its conception, until when he/she is born alive²⁰. The relationship between parent and child is necessary that even children have not only rights, but also obligations which involve expressing love and respect for their parents. Also, children provide the assistance their parents needs at all time. This is also defined in section 217 of the lawmaker Family Code-mind among parents. Consequently, the obligation of children aiding their parents in Articles 192-213 of the Family Code always lasts for so long, as it was stated in Article 198 of the Family Code. In the exercise of parental responsibility and in understanding what is most important, the fundamental principle of equality between parents is in relation to the child and his higher interest. Thus, this Family Code gives a sufficient space provisions which step by step shows that the notion of the interest of the child is not only a subjective notion and the first black and white perspective, but it takes character to be shaped. Also, it takes formal objective to interpret in detail

¹⁸ Article 216 of the Family Code

¹⁹ Civil Code Article 6

²⁰ Article 2 of the Civil Code

the cases that are appearing in judicial practice, who is showing interest, what it represents for the child, and whether it constitutes a higher interest for the child or not? ²¹This comes with articles 67 and 108 of Family Code which states that the provisions that adjust with parental responsibility cannot be avoided even if there is no agreement between parents .So, agreement cannot come in as a conflict. The exercise of parental responsibility takes a special character in the classification of exercising parental responsibility under the provisions of articles of Family Code 220, 221, and 222, for children born into legal marriages. In a single family, parents and children are together, and parental responsibility is common in both parents. For children born outside legal marriage, those who were adopted, or those under custody, lawmakers often determines who will be responsible for exercising parental responsibility. It cannot be left unmentioned and not analyzed in this case that the lawmaker has special provisions provided in articles 223, 224, 225, 226, 227, 228, 231, 232, 237, 239, 263, and 306 of the family code. It determines the modalities of the exercise of parental responsibility for any children born as a handicap or entities. Also, sanctions can be imposed by lawmakers on the parents regarding the legal responsibility of the parents who do not fulfill parental obligations in the exercise of parental responsibility which was specifically stated in Sections 223-228 of the Family Code²². In this context, if parental responsibility is exercised contrary to legal provisions, the parents usually face punishment in proportion to the violation of the law. Furthermore, not fulfilling the legal liability may have an adverse impact on the criminal, civilian, family, and administration as stated by the Penal Code, Civil Code, Family Code, and Administrative code.

Consequently, this can happen and will happen only when parents see them not only as a legal obligation in exercising parental responsibility, but as a fulfillment of the moral obligations of the family love and affection they should show to their children. These sanctions could come as a given example of parental responsibility which is defined in section 228 of the Family Code. Thus, it is removed by the court order which sets in motion the other parent or relatives of the child and the prosecutor. These cases occur when a parent or parental responsibility shows gross negligence in the exercise of their duties, or when omission adversely affects the child's education. This is one of the most severe sanctions as provided by Family Code. It is also in pursuant of article 229 of the Family Code court decision. In addition, it states that the effects extend over one or more, or all the

²¹ Sections of the Family Code 220, 221, and 222

²² Articles 223 and 228 of the Family Code

children of the person deprived of parental responsibility. Thus, this is regarded as the legal consequences of parental responsibility.

Besides the aforementioned effects that brings the judicial decision of removing parental responsibility, this decision brings other consequences and other effects which analytically corresponds to the incompatibility of this subject to be the guardian pursuant of Article 270.

The provision of Article 223 of the Family Code is a provision for the child's protection in relation to sanctions of the loss of parental responsibility, as well as accountability to this loss of parental responsibility.

Family Code of Article 228 of both these provisions together with Article 223 and Article 228 of the Family Code aim to deprive the exercise of the rights and obligations of parents who are considered unworthy to care continuum for their children²³ To implement the sentence of the loss of parental responsibility, it is necessary for the parent to be convicted by a final decision of committing offenses contemplated by lawmakers according to the Penal Code. In these cases or in other cases when there is dissolution of marriage, the court may make a decision to transfer the exercise of parental responsibility or a part of it. Thus, this person should be understood as one of the minor penalties in relation to other sanctions that is foregoing, and which has a temporary nature. This may continue for some time until parents prove to the court changing circumstances related to the conditions of the court's previous decision. So, these decisions are always changeable and are constantly taken by the court to protect the best interests of the child in relation to acts or omissions committed against them. However, this is usually done by the parents when exercising the obligations they have.

Legal Representation of Children

In family law in the relations between parents and children aside from those of non-pecuniary personal character which I have treated above, an important aspect is the parental responsibility of the child's wealth. In Albanian, juridical opinion is treated carefully. The care of the child is not only in terms of protection, but also his right to property. Family Code of Article 217 clearly shows once again that a set of closely related interests between affective value and material value exists between parents and children. Therefore, the lawmaker described in a whole chapter on how Family Code regulated property relations between parents and children have been drafted. This rule was established for legal representation and administration of property to the child and use of that property through various legal actions. It states that the property belonging to the child may be

²³ Article 217 of the Family Code

movable or immovable property. Consequently, other real rights over them are acquired through inheritance, donation, various contracts, those in favor of third persons, the income obtained by work, or a family activity.

In this context, an important role in protecting the interest of the child occupies the child's legal representative under Article 232 of the Family code. This states that the parent represents his minor child in the all legal actions because he/she has not attained the age of 14; however, this is with the exception of those who are under the law, of which a minor cannot fulfill ²⁴.

A minor who has attained the age of 14 perform the legal actions, but always with the prior consent of the parent. This excludes those who, by law, can be performed by them. Due to the obligation of parents about their child representation which stems from legislation, parents are considered as legal representative of the children in conducting legal transactions. Thus, this is considered before a court or any public or non-public institution that examines the scope of the right of the child's action.

Legal representation always depends on the character of the case. In this context, we also defined the scope and limits of the legal representation because the substitution of the will of the child in conducting legal transactions, applies only to actions which are not closely personal. In Article 64 of Civil Code representation, it is not possible in those cases where the law states that the action must be carried out by the subject himself²⁵. From here, legal liability incurred arises from infringement of legal representation. Failing liability litigation constitutes a premise for the loss of parental responsibility as a parent in the exercise of parental responsibility. Legal representation neglects or performs it in conflict with the law and the interest of the child. Therefore, this was the reason for the consequences that resulted through sanctions imposed in these cases by lawmakers.

Although children are holders of the rights obtained as described above, the exercise of rights for the underage children would be performed by parents who exercise parental responsibility through legal representation and legal management of their wealth. Thus, this they do simultaneously and classification of legal actions management of this property is seen as one of the most important prerogatives regarding ordinary management division and unusual wealth of the child-mind of the legal regime of management actions.²⁶Subsequently, this excludes it from representing the operations and

²⁴ Article 232 of the Family Code

²⁵ Articles 64 of the Civil Code

²⁶ Article 237 of the Family Code

management to the rest of the right of use of the property of the child by the parent according to Article 237 of Family Code

Conclusion

Universal Declaration of Human Rights defines the family as the natural and fundamental nucleus of society which enjoys the protection of the State. Society is already becoming aware of this context of providing children with the necessary information and education regarding their rights. Being convinced that the family is the basic unit of the society is the natural environment for the growth and well-being of all its members. Particularly, the children should have the necessary protection and support that can fully assume its role in the community. Consequently, the child should grow up in a family environment, in an atmosphere of happiness, love, and understanding. Also, they should be educated in the spirit of the ideals proclaimed in the Charter of the United Nations, especially in the spirit of peace, dignity, tolerance, freedom, equality, and solidarity.

In this way, Honor the Past! Respect the Present! Enjoy the Future!

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