

## **THE ROLE OF THE GUARDIANSHIP AUTHORITY IN THE PROCEDURES OF ENFORCEMENT OF DECISIONS IN THE FIELD OF FAMILY LAW**

Biljana Petrović, Slađana Jovanović

MB University in Belgrade, Faculty of Law, Prote Mateje 21, 11111 Belgrade, Serbia,  
1806biljana@gmail.com

### **ABSTRACT**

In this paper, we will deal with guardianship authorities that participate in the enforcement of decisions in the field of Family Law. The Law on Enforcement Procedure prescribes basic procedural rules of importance for the execution of court decisions in the field of family relations - family law, which refer to the surrender and confiscation of a minor child (Official Gazette, 2004). The provision of Article 222 prescribes the local jurisdiction of the court in the procedures of execution of decisions on surrender and confiscation of a minor child, so that for deciding on the proposal for execution of the court decision ordering the surrender of the child, the competent court which is generally territorially competent for the party requesting enforcement, as well as the court in whose territory the child is located (Official Gazette, 2005). According to Article 223 of the same law, an active identification card for submitting a motion for enforcement may be submitted by a parent or other person to whom the child is entrusted for custody and upbringing, as well as a guardianship authority. The manner of conducting the execution is prescribed by Article 224 of the same law. In the execution procedure, the court pays special attention to the need to protect the best interests of the child. With this provision, the legislator foresaw a kind of gradualness in coercive measures, so he prescribed that the court will leave the enforcement debtor a period of three days from the date of delivery of the decision to hand over the child to a parent or other person or organization entrusted with custody. education, under the threat of a fine.

**Keywords:** Authorities, guardianship, law, children, court.

### **INTRODUCTION**

In order to rationalize the enforcement procedure, the provision of Article 225 of the Law on Enforcement Procedure prescribes the possibility of continuing enforcement according to the same decision which allows enforcement and the same enforcement, if in case the child is found again within 60 days from the day of surrender. is taken away. Of particular importance is the provision of Article 226 of the Law on Enforcement Procedure, which skips the principle of gradual recourse to means of coercion in the usual procedure of surrendering and seizing a child and applies a procedure in which if the child's life, health or psychophysical development is endangered. hand over the imposition of a fine to carry out the execution by taking away the child and handing it over to the parent or other person or organization to which the child is entrusted for custody and upbringing. Also, this execution is carried out in cooperation with the guardianship authority, ie in the presence of the guardianship psychologist, school, family counseling or other specialized institutions for mediation in family relations (Official Gazette, 2005). When analyzing the elements of the content of all legal provisions on the procedure of execution of decisions in the field of family law - surrender and confiscation of a minor child, the basic characteristic of this procedure can be stated: complexity that requires timely, complete, continuous and complementary enforcement (court, guardianship authority and internal affairs services) and other institutions that may influence this procedure (health, education, etc.).

### **Characteristics of the actions of guardianship authorities and courts**

The Ministry of Labor and Social Policy, in accordance with Article 14, paragraphs 1 and 2 of the Family Law, supervises the work of guardianship authorities as well as supervises professional work. Within the organizational structure of the Ministry, the supervision over the work and supervision over the professional work of the guardianship authority is performed by the Sector for Family Care and Social Protection - Department for Administrative Supervision Affairs in the field of family protection. In the realization of its powers, this organizational unit of the Ministry performs not only supervision over the work and supervision over the professional work of the entire activity of the guardianship authority, but also supervision over the work and professional work of the guardianship authority in individual cases. In the exercise of its powers, the Ministry has the authority to issue instructions and orders in order to ensure further legal and standards-based professional work based on the organization of support and protection to a specific user. A significant number of citizens' petitions on the basis of which the Ministry initiates the procedure of supervision over the work and professional work of guardianship bodies refers to the actions of that body in cases in the field of parental rights and protection of children's rights, especially the duration of the procedure. the guardianship authority has certain powers determined by Article 270 of the Family Law and the execution of decisions on the surrender and confiscation of a minor child. The applicants are mainly focused on the problem and not on the role of which authority in certain family law proceedings. Analysis of the content of petitions sent to the work of guardianship authorities related to the implementation of the role of guardianship authorities in enforcement proceedings or in general to the enforcement procedure of court decisions in the field of family law, surrender and seizure of a child indicates that participants in enforcement proceedings:

- Courts and guardianship authorities express a lack of understanding of the purpose of enforcement proceedings from the point of view of protecting the best interests of the child
- Courts and guardianship authorities act in a formalized procedure (procedure for the purpose of the procedure)
- Courts and guardianship authorities in the enforcement process do not have clearly defined roles and limits of action
- Courts and guardianship authorities do not achieve the cooperation necessary for the smooth and purposeful execution of decisions on the surrender and abduction of a child
- Courts and guardianship authorities do not act in a timely manner in specific cases
- Courts and guardianship authorities act in an unplanned and situational manner in the execution of decisions to surrender or seize a child.

The above-mentioned characteristics of the actions of direct participants are a consequence of the lack of understanding of the structure of the act of execution. The current understanding of this procedure among the participants in the execution is reduced exclusively to the act itself, in real time and space, taking the child from the person where the child is and handing the child over to the parent or other person or organization to which the child is entrusted on custody and upbringing. However, execution needs to be understood as a process consisting of three basic phases:

- Preparatory phase - precedes the immediate act of taking the child away
- Immediate phase - the act of execution, confiscation of the child
- Post-phase- procedure after the execution or confiscation of the child and surrender

At each of these stages, direct participants in the enforcement process can and must implement activities that will enable the risks of enforcement in the interests of the minor child and other participants in the enforcement to be reduced to a minimum or eliminated. In that sense, the content of the necessary activities in the procedure of execution of decisions in the field of family law - surrender and confiscation of the child, direct participants in the procedure itself, the court and the guardianship authority are as follows:

- Prioritization of proceedings (court and guardianship authority)
- Planning the enforcement procedure (court and guardianship authority)
- Procedures preceding the immediate act of execution (court and guardianship authority)
- Procedures during the immediate act of execution (court and guardianship authority)
- Proceedings after the immediate act of enforcement (guardianship authority)

In general, the execution of decisions in the field of family law of surrender and confiscation of a minor child must have priority in the actions of the court and the guardianship authority. The passage of time in specific situations can significantly jeopardize the best interests of the child and cause irreparable damage to his growth and development, due to the fact that in these cases the minor becomes subject to low levels of manipulation and induction by the person with whom the child is. loyalty "by sending messages to the official person participating in the execution stating that the person to whom he should be handed over" does not like, that person is abusing him, etc. " This situation in almost all cases determines the behavior and decisions of officials who interrupt the enforcement process, postpone enforcement, etc. which does not reduce the pressure on the child, but only strengthens it, ie complicates the overall relationship in the future. Planning the enforcement procedure by the court, enforcement agent and guardianship authority in the preparatory phase implies intensive cooperation of these institutions, timely notification of the proposal for enforcement of the decision on surrender and seizure of the child and joint decision on the time, place and manner of enforcement. The importance of this joint planning of the procedure and timely notification is indisputable because it enables the guardianship authority, within its competencies, to make relevant assessments on which the decision on the time and place and manner of execution will be based, as well as possible security measures and necessary assistance. from the internal affairs authorities. In the proceedings preceding immediate enforcement, the executing court and the guardianship authority must each, within their statutory jurisdiction, take measures to enable coercion in the enforcement or abduction of the child to be avoided or reduced to a minimum and expedient not to would cause additional traumatization of the minor child as well as not to interrupt or postpone the commencement of the enforcement procedure. In the procedure during the immediate act of execution, the judge and the guardianship authority take into account the execution of activities from the execution plan, which jointly defined and adjusted the activities in the procedure according to objective circumstances. This does not mean that the initiated enforcement procedure should be interrupted or postponed, but by finding a way to force the enforcement procedure to end with the surrender and confiscation of a minor child with as little recourse as possible. Such a positive approach is necessary in any case because all officials who participate in the enforcement procedure in front of the court and guardianship authorities must be aware of the following circumstance: that the final decision of the court must be executed because in the procedure that preceded the adoption of such a decision in accordance with the law, the guardianship authority or some other institution dealing with mediation and family relations in accordance with professional standards unquestionably determines the best interests of the child; that by not executing or postponing the execution of a final court decision in the manner of protecting the best interests of a minor child, only the child is exposed to additional traumatization, manipulation and induction, which can and does irreparable damage to the child's unhindered growth and development. In proceedings after the immediate act of execution, surrender and confiscation of a minor child, the guardianship authority in accordance with Article 6 of the Family Law which stipulates that the state has an obligation to take all necessary measures to protect the child and protect and promote the rights of the child. any kind of assistance and support to the child and his / her family in overcoming traumatic events that affected or could have affected the child before or during the act of forced execution of the decision in the field of Family Law of surrender or confiscation of a minor child. In the implementation of these activities to provide assistance and support to minors and families, the guardianship authority has at its disposal instruments in the field of family law and social protection, as well as the possibility of using the services of institutions in socially organized education, health and some services and programs.

### **Instruction on the manner of work of the guardianship authority**

The Ministry of Labor and Social Policy, the Minister, recognizing the importance of the problem in accordance with its powers determined by the Law on State Administration, issued an instruction on the manner of work of guardianship bodies or psychologists in the procedure of execution of decisions in the field of family law. The purpose of the instruction is that within its competence, the Ministry provides professional assistance to social work centers in performing public authority of guardianship authorities in order to improve the protection of children's rights, directs the organization of work and work of employees, which will harmonize and improve professional work in the field of family law, the surrender and abduction of a child, as well as full respect for the European Convention for the Protection of Human Rights and Fundamental Freedoms. Within its competence prescribed by Article 14, paragraph. 1 and 2 of the Family Law and in the procedures of providing professional assistance to the centers for social work in performing public authority of guardianship authorities, the Ministry of Labor and Social Policy stated that guardianship bodies in the enforcement of decisions in the field of family law beyond their authority, which endangers or may endanger the rights of the child, or the child is exposed to a significant degree of traumatization in these actions, which can be avoided or reduced by comprehensive and professional work. For these reasons, the Ministry of Labor and Social Policy assessed that it is necessary to give instructions to the guardianship authority which directs the organization of work and manner of work of employees in order to harmonize the actions of guardianship authorities, improve professional work in enforcement procedures in the field of family law. in full compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms.

### **Obligation of the guardianship psychologist - Center for Social Work**

The purpose of the participation of psychologists - experts of the guardianship authority in the procedure of execution of the decision in the field of family law, surrender and confiscation of the child is to apply the methods and techniques of the scientific discipline for which he is qualified, provide or mitigate the consequences for the minor child, possible stressful situations during the act of execution as well as to work on eliminating or mitigating possible stressful consequences for the minor child after the act of execution itself. When the guardianship authority - the Center for Social Work receives an act by which the competent executive judge in accordance with Article 224, paragraph 4 of the Law on Enforcement Procedure invites the psychologist of the guardianship authority - the Center for Social Work to participate in the execution of the decision in the field of family law, compliance with that act is in any case determined in the first degree of priority "immediately". In cases of execution of a decision in the field of family law - surrender and confiscation of a child, a psychologist - an expert of the guardianship authority has the position of case manager. The psychologist - expert of the guardianship authority is obliged to plan the necessary interventions together with the supervisor immediately after borrowing the case, based on the received summons of the executive judge and within 24 hours at the latest, aimed at achieving the purpose of the psychologist's participation in the enforcement procedure. Intervention planning is usually done on the basis of prior knowledge of the case. If the guardianship authority does not have prior knowledge of the case, planning the intervention includes the procedure of gathering the necessary facts about the case, making an admission assessment. The intervention plan shall contain in particular:

- marking the persons to whom the intervention will be directed;
- the content of any necessary intervention procedure;
- how each intervention procedure will be implemented;
- where each intervention procedure will take place;
- how long each intervention procedure will take;
- who will undertake intervention procedures and with whom;
- how to report and integrate the outcome of each intervention;
- ensure the cooperation of institutions and individuals that will be engaged in the enforcement process.

The intervention plan may include procedures that must be performed by other experts from guardianship authorities as well as experts from institutions of other systems. The intervention plan is signed by a psychologist - an expert of the guardianship authority who is in charge of working on the case and a supervisor. Procedures in the intervention in the time before the act of surrender or seizure of the child. The psychologist, the expert of the guardianship authority in the intervention in the time before the surrender or confiscation of the minor child is obliged to make a directed assessment and in particular determine the following:

- the conditions in which the child lives;
- emotional status of the child;
- the way the child reacts to stressful situations and coping mechanisms;
- speed of adaptation to change;
- established emotional relations between the child and the parent or the person with whom he / she lives and who should hand over the child to the other parent or the person to whom the child is entrusted by the decision;
- the attitudes of the parent or person with whom the child lives in relation to the execution of decisions on the surrender of the child as well as the possibility for that parent or person to voluntarily surrender the child without coercion;
- work on motivation of parents or persons with whom the child lives for voluntary surrender of the child;
- the opinion and emotional relationship of the child with the parent or the person to whom the child should be handed over;
- other facts that are of influence on the decisions on the organization of the procedure of execution of the decision on the surrender or confiscation of the child.

During the work on determining the facts referred to in paragraph 1 of this item, the psychologist expert of the guardianship authority is obliged to carry out informative counseling work with the parent or the person with whom the child lives, on the necessity of handing over the child, on the benefits of voluntary handing over on its growth and development, the need to support the child in order to prepare for the transfer to the parent or person to whom it should be handed over, the administrative consequences of avoiding the child's surrender and other relevant facts and circumstances to provide conditions for voluntary surrender. The psychologist - expert of the guardianship authority is obliged to apply his professional knowledge and available methods and techniques aimed at establishing a positive relationship and trust with the child and the parent or the person with whom the child lives and who is obliged to hand over the child. Based on the established facts and achieved results of informative and advisory work, the guardianship authority may decide to propose to the executive judge more detailed conditions for the organization of space and manner of execution of the child's handover, which must be in accordance with the decision on place and manner of execution determined by the executive judge. Guardianship Authority - Center for Social Work has the authority to, in accordance with Article 263, paragraph 1 and Article 264, paragraphs 1, 2 and 3, in connection with Article 12, paragraphs 1 and 2 of the Family Law on Enforcement Procedure, hand over and confiscate a child to an executive judge in accordance with the established facts and outcomes, propose that I bring some of the measures or orders to the enforcement debtor in accordance with Article 303, paragraph 1, item 9 of the Law on Enforcement Procedure, which achieves the purpose of such security or temporarily regulates the disputed relationship. danger of violence or greater irreparable damage. The psychologist - expert of the guardianship authority in the intervention during the act of handing over or taking away the child is obliged to undertake the following in particular:

- to monitor the behavior and reactions of a minor child;
- to monitor the behavior and reactions of the parents or the person with whom the child lives and who is obliged to make the surrender;
- to monitor the behavior and reaction of other participants in the procedure of execution of the decision to hand over or take away the child;

- to use its advice and interventions to reduce or eliminate behaviors that cause or may cause conflict or traumatic reactions of the child or other persons involved in the enforcement proceedings;
- to support the child and other persons participating in the enforcement procedure with their advice and interventions;
- to give an opinion to the executive judge conducting the enforcement procedure on taking actions within his / her competence that may contribute to the execution of the decision on surrender or confiscation of the child;
- to enter his / her observations in the record on the course of execution and by signing the record on execution and participate in the formal legal procedure of execution;
- to undertake other professional actions that will contribute to the execution of the decision to surrender and confiscate the child with the least possible damage to the growth and development of the minor child.

## **CONCLUSIONS**

The expert guardian psychologist is obliged to be guided in his work during the act of execution of the decision on surrender and confiscation of the child by protecting the best interests of the child and the fact that in case of failure to retrieve and confiscate the minor child will be repeated. parental rights or trust in the child does not change. Repetition in a child causes continuous psychological trauma and significantly puts at risk his unhindered growth and development. The psychologist, expert of the guardianship authority is obliged to monitor the parent or the person to whom the child was handed over and the parent or the person who handed over the child or from whom the child was handed over, at least 30 days after the act of handing over or confiscating the child, and in the first 7 days daily. The psychologist-expert of the guardianship authority is obliged to immediately and within 24 hours from the ascertainment of the need to provide support to the minor child, parents and the person whose child was taken away or the parents or the person who handed over the child, make a plan of support and start providing support within 7 days.

## **LITERATURE**

Family Law, Official Gazette of RS, 18/2005, 72/2011, 6/2015.  
Official Gazette of RS, 125/2004.