



Number: 1013/10

Date: September 27. 2010.

Ministry of Health and Social Care
Attn Minister, Mr Ranko Škrbić,

Social Welfare Centers
Attn Director

Subject: Children without legal basis with third parties,

The complaints to the Ombudsman for Children increasingly indicate to a problem where children, from different reasons, are placed in a situation that even for several years they live with third parties without adequate regulation of that status. Although the persons with whom the children live address social welfare centers for the realization of some of the rights of the child, which indicates that they are familiar with the fact that children are growing up without parental care and custody, the reaction of social welfare centers was absent in the sense that the child is temporarily entrusted to care of the person with whom is already situated, of course, provided that the person meets the conditions stipulated by the law that the child can be entrusted to him , or another person or that supervision is performed by the center.

In considering requests for the surrender of the child, for approval of travel documents, for regulation of contact and similar the centers conduct proceedings under these requirements completely ignoring the fact that the child is with a third party to which, in accordance with the law, it is not entrusted to care and upbringing neither by parents or the competent institutions. Even in the situations where third parties file a claim that children be entrusted to them, the same get rejected.

In practice, we have the following situations

-That a parent dies to whom, by the verdict of divorce, a child has been entrusted to care and upbringing,

-That a parent to whom, by the verdict of divorce, a child has been entrusted to care and upbringing, goes to serve his sentence and is unable to exercise parental right,

-The only parent with whom the child lives is not able to exercise parental right because of the leave for treatment or other reasons,

-That parents have no contact with a child for years whom they left at birth with relatives and similar.

In all these situations, children are with third parties without a legal basis which means without any control and supervision by the competent authority and without any previous verification of whether these persons meet the necessary conditions for care and custody of a child and without any knowledge of whether a child knows why and until when it is in this situation.

Persons with whom the children usually stay are grandmother and grandfather of his father or mother, or aunt and uncle.

Pursuant to Article 85 of the Family Law of Republic of Srpska (Official Gazette of Republic of Srpska " No: 54/02) stipulates that parents exercise parental right by agreement. In case of disagreement of parents on the exercise of parental rights guardianship authority shall decide.

If one parent has died (Article 79, Paragraph 2.), or if one parent is prevented from exercising of parental right (Article 86.), the parental right shall be exercised by the other parent.

If justified interests of children or parents require, minors can live separated from their parents (Article 81.) or when their interests require so, children may be entrusted to care and upbringing to another person (Article 90).

Parents and other family members must not subject a child to degrading treatment, mental and physical punishment or abuse. If the parents or the parent with whom a child lives had abused a child or neglected a child, neglected upbringing of a child or there has been a disturbance in a child's upbringing the guardianship authority may take away a child and entrust it to the other parent, another person or appropriate institution if there is no court decision to entrust a child (Article 97).

The guardianship authority provides special social protection to persons who are under parental care, under conditions and in a manner stipulated by the Family law and other regulations (Article 178).

A minor shall be placed under the guardianship whose parents are absent and are not able to take regular care of their child (Article 201) and they did not entrust him to care and upbringing of a person for which the guardianship authority has determined to meets the requirements for a guardian.

Guardianship authority may entrust a minor protégé to another person for care and upbringing, if it finds that there are justifiable reasons for that (Article 205).

The Law on General Administrative Procedure (“Official Gazette of Republic of Srpska” No: 13/02, 87/07 and 50/10), provides that on the basis of relevant facts set forth in the procedure the body competent for resolving issues a decision on an administrative matter that is the subject of proceedings (Article 190), and that the decision must be delivered to the party in the original or certified copy (Article 194).

From the above stated it is clear that the regulations define situations in which guardianship authority has to react in a manner, that in each specific case, taking into account the child's best interest undertakes those measures of protection that are necessary for his welfare.

This means that all the circumstances, in each specific case, must be evaluated from a position of the interest of a child in terms of what is the best for him in a specific case.

The legislator, in order to protect a child, has given the option to guardianship authority, that when circumstances demand it, it can urgently and adequately respond.

The possibility that has been stipulated by the legislator does not determine the choice of whether the center will proceed or not, but means the responsibility of the center to treatment when conditions for it have been created.

And the conditions have been created in all stated and similar situations, where parents, which undoubtedly have a legally recognized right to exercise parental rights, for whatever reason do not.

In these and similar situations where the parents are prevented from exercising their parental rights and responsibilities, a child is, without the appropriate decision of the competent authority, for longer time, with the third party, usually with close relatives (paternal or maternal grandmother and grandfather or aunt, uncle, etc..), or with a person with whom the child is not related.

From the complaints received in the Institution it is obvious that social welfare centers in these situations do not decide to entrust a child, but wait for the court's decision.

Given that those are usually the cases in which the court makes a final decision, the centers by its acts notify the party on that claiming that by its decisions they do not wish to prejudge the court's decision.

However, despite the undisputed fact and the jurisdiction of the court to decide, in the above stated situations, the center, as a guardianship authority must assume its role.

Court proceeding, regardless of the length of its duration is not nor it can be the reason for waiting to entrust a child to a certain person pending trial or bringing a relevant act of another competent authority. Adoption of a final court decision takes time, and in that time, the child must be under the supervision of the guardianship authority, or the person for whom the guardianship authority has determined can care for the child.

The guardianship authority, by the law protects the interests of a child, which binds it to undertake the necessary measures to protect a child and his interests, including the guardianship as one of the measures. The necessary measures, inter alia require that the guardianship authority immediately upon

acquiring the knowledge that a child is without parental supervision, regardless of the reasons that led to it and regardless of whether the court or other proceeding is in the process, to take measures which will the care of a child, until a final decision of the competent authority on that entrust to a specific person who meets the requirements for that.

Bearing in mind the above stated, the Ombudsman for Children, based on Article 9. of the Law on Ombudsman for Children recommends to the Ministry of Health and Social Welfare as a second instance authority and the authority that supervises the professional work of social welfare centers, to:

- Binds all the social welfare centers, that immediately upon learning that the child is with the third persons to whom, in accordance with the law, it is not entrusted to care and upbringing, undertakes the necessary measures which will regulate the issues of guarding, upbringing and care of children **until the final decision of the competent authority on that, while primarily taking into account the interests of a child in a specific case.**

I expect that, in accordance with the Article 9. of the Law on Ombudsman for Children, you inform the Institution on the measures taken.

Ombudsman for Children

Nada Grahovac LL.M