Legal Aspects of The Termination of Parental Rights in The Legislation of The Republic of Moldova

Veronica Gisca 1

Arina Costin 2

1PhD, associate professor, Academy of Economic Studies of Moldova, gisca.veronica@ase.md, ORCID : 0000-0002-0781-1995

2Undergraduate, Academy of Economic Studies of Moldova, arina.costin@ase.md, ORCID: 0000-0003-3203-6836

Abstract: Termination of parental rights is an extremely important and delicate legal measure, regulated by the Family Code of the Republic of Moldova. This measure allows the courts to take the decision to deprive a parent of parental rights and responsibilities towards the child. This process takes place in exceptional circumstances, such as neglect or abuse of the child, abandonment or other serious actions that endanger the child’s life or development.

The legal procedures associated with the termination of parental rights are rigorous and must always take into account the best interests of the child. The measure has a significant impact on the parent in question, who loses the right to make decisions about the child and is no longer obliged to maintain or have contact with the child.

The main purpose of this legal process is to protect the child and provide a safe and healthy environment for his or her growth and development. Termination of parental rights is taken for the benefit of the child and to prevent any danger or harm to the child.

Accordingly, parental disqualification is an exceptional legal measure taken to protect the best interests of the child in serious situations where the parent is failing to fulfil his or her responsibilities or poses a threat to the child. This measure reflects the priority given to the safety and well-being of the child in the legal system of parental rights.

Keywords: parental termination, parental rights, child, parents, responsibilities.

INTRODUCTION

The termination of parental rights is a highly relevant topic in the context of family law in the Republic of Moldova. The Family Code of the Republic of Moldova contains detailed provisions on the conditions and procedures under which parents may be deprived of their rights over their children. This issue is rooted in the attempt to protect the best interests of the child and to ensure a family environment suitable for the child’s development.

In this scholarly article, we aim to analyse in depth the legal provisions on the deprivation of parental rights under the Family Code of the Republic of Moldova. We will explore the reasons and consequences of this process, highlighting the social and legal implications. We will also examine the judicial practice and recent developments regarding the termination of parental rights in the Republic of Moldova in order to better understand the complexity of this issue in contemporary society.

BASIC CONTENT

Termination of parental rights is the way in which a parent, for reasons related to the protection of the minor, is deprived of the prerogatives of parental authority, if he or she endangers the life, health or development of the child by ill-treatment, alcohol or drug abuse, abusive behaviour, serious negligence in the performance of parental duties or serious harm to the best interests of the child.

Thus, by virtue of a court judgment, the parent will no longer have any or all rights in relation to the child if the parent is found to be engaging in conduct that jeopardises the child’s welfare.

Disqualification from parental rights is therefore a specific sanction of family law, the effect of which is that the parent in question loses the exercise of parental rights in certain cases expressly provided for by law, i.e. for serious offences against the child. Forfeiture is an exception to the rule that parental authority belongs equally to both parents. However, it does not lead to the loss of parental rights, but only to the loss of the exercise of those rights.
According to Article 67 of the Family Code of the Republic of Moldova, parents may be deprived of their parental rights if:

a) they evade the exercise of parental obligations, including the payment of maintenance;

b) refuses to take the child from the maternity ward or from another curative, educational, social welfare or similar institution;

c) abuse their parental rights;

d) behaves cruelly towards the child, using physical or psychological violence, or infringes the child's sexual inviolability;

e) by amoral behaviour, they have a negative influence on the child;

f) suffers from chronic alcoholism or drug addiction;

g) have committed premeditated crimes against the life and health of children or their spouses; and

h) in other cases where the interests of the child so require.

The loss of parental rights occurs if the child's health or physical development is endangered by the way parental rights are exercised, by abusive behaviour or by serious negligence in the performance of parental duties, or if the child's education, teaching or professional training is not carried out taking into account the legislation in force, the court will pronounce the parent's disqualification from parental rights. These penalties, which by law are imposed on parents for failure to perform or improper performance of parental duties, can be classified into two groups:

1. According to the branch of law to which they belong:
   - criminal law sanctions,
   - penalties under criminal law,
   - civil law sanctions,
   - and family law penalties respectively.

2. As they occur for failure to fulfil duties:
   - with regard to the person of the child,
   - with regard to his property.

These sanctions are provided for by the legislation, namely they are the result of failure to fulfil or improper fulfilment of parental duties concerning the child. As regards the patrimonial component of the protection of the minor, when, as administrators of the child's property, the parents, by their illicit act, have caused damage to the minor, they shall be liable to the minor according to the provisions of tort liability Art. 1398 of the Civil Code of the Republic of Moldova, jointly and severally whenever the parents have jointly and severally administered.

In accordance with Art. 68 of the Family Code of the Republic of Moldova, it stipulates that the forfeiture of parental rights shall be made only by court order. Other bodies cannot examine this matter. The action on the termination of parental rights can be brought by:

- One of the parents (in the absence of parents - the child's guardian);
- the guardianship authority;
- the public prosecutor.

Persons other than those indicated in Article 68 paragraph 2 of the Family Code are not entitled to apply to the court for the termination of parental rights. As a defendant can be one or both parents. Finding that the action on the disqualification from parental rights is filed at the request of one of the parents, the court is obliged in each case separately to determine the place of the other parent, to raise the issue of bringing him/her to the court proceedings and the possibility of sending the child for upbringing in case of such request.
Grounds for the forfeiture of parental rights

§ 1. Failure to fulfil parental obligations, including the payment of maintenance

As a result of the forfeiture, the parent loses parental rights in respect of the person and property of the minor, as well as parental duties, with the exception of the maintenance obligation towards the minor. In other words, the effect of the termination of parental rights is not to affect the child’s rights vis-à-vis his or her parent and, consequently, this sanction does not affect the parent’s obligations in relation to these rights. This ground includes actions or inactions that endanger the child’s physical and mental health, moral development, provision of living and material conditions, teaching and training. If parents systematically evade paying child maintenance, they are also endangering the child’s decent standard of living. In this case it is necessary to bear in mind that if the parent does not pay maintenance for objective reasons, the parental rights cannot be terminated on the basis of this provision.

§ 2. Refusal of the parent to take the child from the maternity ward or other curative, educational, social welfare or similar institution.

Thus, this ground is a very unpleasant one for the child, because the parents refused to take the child home from the maternity home. This often happens when the mother, for reasons unknown to anyone, simply gives up on the child. Once you decide to give life to a child, you must have the desire to have this child and to bear this responsibility until the end, in the sense that you have to raise the child with care until it reaches adulthood. A child’s life is not something you can “play” with, on the contrary you have to take care of it. Many young women who give birth abandon their children because they are too young, or because by the time they find out they are pregnant it is too late to have an abortion, and many such reasons for not taking the child out of the maternity ward, but when they get older they realise that what they have done and how they have done it with their own child is very unpleasant. Of course there are some exceptions to this theme. These are cases when the child has a manifest disability and at the request of the parents or with their consent is placed in a curative institution in the system of social welfare bodies for disabled children.

It shall also not be considered a refusal if the parent who placed the child in a state institution for the upbringing and maintenance of the child, on the grounds that the parent himself has no means of support, consents to the child being placed for adoption in accordance with paragraph 1. 4 Article 124 of the Family Code.

§ 3. Cases where the parent abuses parental rights

This includes parents using the rights they have over children to force the child to drink alcohol, beg, use drugs, engage in criminal activity, in some cases parents forbidding children to attend school in order to force the child to work, and the parent may not spend money on the child’s education and upbringing but use it for personal needs. In other words, parents often use the given actions, which leads to damage to the physical health and moral development of the child. The danger of abuse of parental rights lies in the fact that the child trusts his parents completely, and they, respectively knowing about this, take advantage of the child’s inability to resist, these actions leading to direct violation of children’s rights. In the Convention on the Rights of the Child, it is stated in paragraph 2 Art. 3 that the State is obliged to provide the child with the protection and care necessary to ensure his or her well-being, taking into account all the rights and obligations of parents towards their children, and in case of non-compliance by parents, they shall be punished according to the law.

§ 4. Cruel behaviour towards the child, using physical or psychological violence, infringes the child’s sexual inviolability

Cruelty can be expressed as the hateful attitude, or the mental and physical violence that some parents apply to their children. Thus, the very word violence means a negative phenomenon which manifests itself through physical action, words, emotional and emotional state, humiliation, with the aim of mistreating or suggesting fear. The number of cases of domestic violence is high and the extent of the phenomenon is not fully known, because victims of violence, women and children, are ashamed or afraid to reveal their experience of abuse. Through psychological violence, the parent instills fear in the child, by means of various threats which would make the child stop resisting, and which lead to the child’s compliance with all the instructions imposed by the parents. Physical violence, however, refers to the parent beating the child, hitting the child, inflicting physical pain in various ways, including exploiting the child at work, exceeding the child’s physical strength, depriving the child of food and water. Parents believing they have the right of possession over their children allow themselves to inflict violence on them. According to statistics provided by UNICEF Moldova, 42% of parents,
50% of mothers and 33% of fathers believe that "beating is a heaven-sent punishment", reporting the use of physical punishment to "discipline" children. In rural areas, 57% of mothers and 37% of fathers report using physical punishment in the process of educating children. Children in the RM are subjected to violence regardless of age. Thus, 16, 4% of parents beat their children who have not even reached the age of one. The violation of the child's sexual inviolability is a ground for filing a criminal case against the parent, because even if they are the child's parents, they do not have the right to use children for some sexual crimes. The Criminal Code specifies all the components of sexual offences (Art. 171-175), for which parents are punished in case of their commission.

§ 5. Through the parent’s amoral behaviour, which negatively influences the child

By amoral behaviour of the parent towards the child is meant indecent behaviour, which would lead to negatively influencing the upbringing and education of the child. By means of this theme the parents violate the norms of coexistence that exist in society, to such an extent that the fact traumatizes the child's psychology or puts him/her in a difficult situation, such as the parents' participation in some criminal activities, prostitution, turning the home into a brothel. These facts lead to the child being brought up, contrary to the legal provisions, and to a negative influence on the child. Because once he grows up in such an environment, he will not set an example in the future in society.

§ 6. If the parent suffers from chronic alcoholism or drug addiction

The term alcoholism refers to a pathological condition caused by excessive alcohol consumption, and drug addiction also refers to a pathological condition, but it consists of a permanent attraction to narcotics. Alcoholism and drug addiction are two diseases which lead to the degradation of people, and their danger lies in the fact that parents are usually not aware of their actions, are aggressive, or even if they are not, they are a danger to their own children because they are deprived of parental care, are often hungry, uncared for, suffer from diseases or are left without supervision, and suffer morally and physically. If parents suffer from alcoholism or drug addiction, they are unable to create a decent environment for raising and educating their children, which is detrimental to the children's health and their subsequent development.

§ 7. A parent who has committed premeditated crimes against the life and health of the children or the spouse

The given basis can be invoked in case there is already a court judgment which found that the parent's premeditated actions were directed to commit crimes against his/her minor children - attempt on the children's life, determination and suicide, intentional harm to bodily integrity or health, leaving the child in danger or contaminating him/her with HIV/AIDS. It is not only criminal acts directed against the child, but also those directed against the child's spouse, i.e. the child's other parent, that traumatise the child both physically and mentally. The parent can be deprived of parental rights both when the crime was committed in the presence of the child and when the child was not present, because the tragedy that occurred in the family has a negative impact on the child in any case, in terms of his education and upbringing in normal living conditions for a child.

§ 8. Other cases where the interests of the child so require

Other cases may be when the child's legitimate rights and interests are violated, but these violations cannot be included in the grounds mentioned above. When examining this case, the court must examine very carefully all the issues that prove the violation of the child's rights, the guilt of the parents and the fact that depriving the parents of their rights is in the child's interest. Unlike the legislation of other countries (Art. 109 Family Code of Romania, Art. 63 Family Code of the Russian Federation, Art. 378 Civil Code of France), by inserting this point in Art. 67 of the Family Code the grounds for deprivation of parental rights are no longer limited by the law and the text is no longer of strict interpretation.

How to terminate parental rights

The court may order the termination of parental rights at the request of the social welfare and child protection authorities. Thus, according to para. (1) of Article 68 of the Family Code, the termination of parental rights can only take place through the courts. Other legal bodies cannot examine this matter. An action for the termination of parental rights may be brought by the child's other parent, the guardianship authority, the child's guardian or the public prosecutor. The termination of parental rights entails, in principle, the loss for one or both parents of all rights concerning the child. A parent may be deprived of parental rights where his or her conduct constitutes a considerable risk to the child or the child's property. In these situations, the state's legal bodies, which are responsible for the protection of the minor, intervene to separate the child from the
abusive parent and, following a court case, the parent may be deprived of parental rights. If both parents have 
been deprived of their parental rights, a guardianship is opened whereby a guardian is invested with this 
authority. Depending on the situation, this measure may be provisional or definitive. In the case of a request 
for the deprivation of parental rights, the following important documents must be submitted, such as: a 
request for a court order in triplicate, and a report on the child which will include data on the child's 
personality, physical and mental condition, socio-medical and educational history, the conditions in which the 
child was born and brought up, and any other data relating to the child's upbringing and education which may 
contribute to the resolution of the case. Also, even if both parents are deprived of parental rights, the court 
will allow the parent deprived of parental rights to maintain personal links with the child. Taking into account 
the best interests of the child as a priority, it may limit the exercise of this right if there are serious reasons 
that could endanger the child’s physical, mental, spiritual, moral or social development. 

The application for the termination of parental rights shall be considered only with the mandatory 
participation of the guardianship authority. The court is obliged to send a copy of the decision on the 
termination of parental rights to the civil status office within 3 days from the moment when the decision on 
the termination of parental rights became final. The latter, in its turn, shall enter the relevant entries on the 
child’s birth certificate in accordance with Article 69 of the Law on Civil Status Documents. Also, according to 
Article 8(3) of the Civil Status Documents Act, parents who have been deprived of their parental rights cannot 
receive duplicates of the child’s birth certificate.

Effects of the termination of parental rights

Disqualification is a protective measure for minor children, but it is also a serious sanction for parents. This 
measure also has legal effects, which are regulated in Article 69 of the Family Code. The main effect of the 
forfeiture is that the parent loses his or her parental rights in respect of the child, as well as his or her parental 
duties, with the exception of the duty to support the child, namely:

1. The right to educate the child. Disqualified parents may have access to their child only with the permission 
of the guardianship authority. Interviews are granted if the child’s upbringing, education, learning or 
vocational training are not endangered, and are not granted if the parents’ contact with the child is likely to 
cause harm to the child’s physical or intellectual development, if it is obvious that the parents are not capable 
of such contact, if, for some reason, the contact is contrary to the child’s interests, or if the child, during the 
court proceedings, had serious objections to contact with the disqualified parents.

2. The right to defend and represent the child in his/her relations with all natural and legal persons;

3. The right to demand the return of the child from any person who detains him or her without legal grounds;

4. The right to receive the pensions, allowances and other payments due to the child; These will be paid by the 
persons to whom the child will continue to be attached;

5. The right to receive maintenance from the child of full age who is capable of work:

6. The right to inherit the child's estate in the event of the child's death;

7. The right to give consent to the adoption of the child, or emancipation;

8. The right to receive a pension for loss of maintenance in the event of the death of a child of full age;

9. The right to the benefits provided for by labour law for women who have minor children up to a certain age.

The loss of the above-mentioned rights by the parents occurs only in respect of the children who are indicated 
in the court’s decision on the forfeiture of parental rights. If there are other children in the family or if they are 
born after the judgment has been handed down, the parents have all the rights and obligations provided for by 
the legislation in force with regard to these children. Parents deprived of parental rights lose not only rights 
based on the fact of kinship with the child, but also the possibility of acquiring certain subjective personal 
family rights, such as the right to be a subsequent guardian or curator (Article 143 of the Family Code), parent-
educator (Article 150 of the Family Code). Thus, according to Art. 69 of the Family Code, it is stated that: “The 
child whose parents (one of them) are deprived of parental rights retains the right of use of the living space 
and all property rights based on kinship with his parents and natural relatives, including the right to 
inheritance.

The deprivation of parental rights entails the isolation of the child from his or her parents, with the aim of 
protecting the child's physical and mental health and ensuring favourable conditions for his or her upbringing.
and education. Thus, in practice, maintaining the child’s right to use the living space is problematic. Because, taking into account the housing legislation, several situations are possible:

- The family lives in a state apartment - so in this case the parents can be evicted without being offered alternative accommodation,
- The house or apartment is owned by the parent who has not been deprived of parental rights - the parent who has been deprived of parental rights can be evicted without being offered other accommodation,
- The dwelling belongs to the parents with joint ownership in common, or to the parent who has been deprived of parental rights with personal ownership - this parent cannot be evicted because he/she has not been deprived of ownership.

If the child cannot be transferred to the other parent or if both parents are deprived of parental rights, the child is placed at the disposal of the guardianship authority, so that the latter can take the child into care as a child deprived of parental care and choose one of the appropriate forms of education. If the child is deprived of parental care, he or she may be placed under guardianship or curatorship, as the case may be; offered for adoption, placed in a family-type children's home or in a state educational or curative institution.

CONCLUSION

In my opinion, bringing a human being into the world and guiding it from infancy to adulthood is in most cases a process full of difficulties and problems, both for the parent and the child. Most adults accept this challenge with joy and eager biological destiny. The concept of parenthood includes those skills that are necessary to successfully lead the child to maturity. There is some contradiction in this, while parenting advice comes in many forms, from books and magazines to educational courses and personal experiences passed on by well-meaning family members, it is only when you get to have a child that you really learn how to parent. A good parent strives to ensure the safety and physical health of children, as well as their emotional, mental and spiritual development. This may involve almost no direct teaching, much of the guidance parents give their children is taken from their attitudes.

Thus, if a parent reacts calmly with encouragement to failure, the child will learn that failing at some things is part of life, that the important thing is to try harder at the next opportunity. Such a lesson will help the child develop self-confidence. Developing self-confidence, self-esteem, self-awareness in children, awareness of limits and developing a sound reasoning with the help of the parent are also qualities of a good parent. So is encouraging good citizenship behaviour, making children aware of the needs of others, encouraging them to develop a responsible attitude towards society as a whole and towards the environment. Equally important is the delicate process of enabling children to develop their unique personalities and fulfil their potential, whatever their abilities. Supporting children's developing personalities, allowing them to express their individuality and giving meaning to their unique identities is the primary responsibility of the parent. It is unfair and yet almost natural nowadays for some parents to struggle with fate to have children and not be able to, others to make superhuman efforts to battle their sons’ illnesses, while others don't give a damn about the poor souls who end up suffering severe trauma. They are children abused, beaten, unjustly abandoned by their parents. There is only one solution for them: forfeiture of parental rights. Unfortunately, the measure does not have the effects that we could rely on. Most of these pseudo-parents thankfully say that they have been relieved of certain obligations, such as bringing them up, educating them, and many others, but it is nevertheless up to them to support their children.

In view of this, I consider the disqualification from parental rights to be a rather mild measure, because there are some parents who do not care at all about their own children, and they should be punished more severely. Once you want to give life to a child, you have to think it through and take on some responsibility for raising it and providing it with the necessary education. However, having no other solution, it is necessary, moral and obligatory for the court to do so in the countless unfortunate cases, to deprive the parents of their parental rights and take the children to children's homes or give them up for adoption, etc.

REFERENCES

7. Family Code of Romania, which was repealed with the entry of the new Civil Code in 2011,
8. Family Law, Dr. Valentina Cebotari, 2nd edition. Revised, Chisinau 2008,
9. Family Law, Lilia Mărgineanu, Gabriel Mărgineanu, Chisinau 2002,
11. Family Law theory and practice, Adriana Corhan, Lumina Lex, Bucharest 2001,
12. Family Law, Emese Florian, Limes Publishing House, Cluj-Napoca 2003,
13. T. Hentea, Decease of parental rights, in Justitia Noua, no 11/1964,
14. Draft law on the special protection of children at risk and children separated from their parents
15. Law No 61/1991 on the punishment of offences against the rules of social coexistence, public order and peace.