DOMESTIC VIOLENCE AND CONTACT CONCERNING CHILDREN IN CROATIA.

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1. Introduction

The subject of this paper is contacts between parents and children in cases of domestic violence in Croatia. Domestic violence in terms of this article refers to physical abuse of a child by a parent and domestic violence between parents in child's presence. In both cases a child is exposed to a psychological abuse whereas in the first case he is also a victim of a physical abuse. In this context of domestic violence the term: a child as a victim of domestic violence will be used.

This paper gives provisions on regulation of domestic violence in Croatian legislation. On the other hand it presents provisions by which contacts concerning children are regulated. Provisions by which various state institutions are obliged to cooperate continuously in all cases of domestic violence whit a child as a victim are very important part of Croatian system.

Family law aspect of domestic violence with a child as a victim refers to issuing of protection measures for child's welfare. In some cases the abusive parent doesn't live with a child any more or just temporarily because he was instructed to vacate a family home. It can also be that he is serving his time in prison because of domestic violence. In any of the above case contact with a child becomes an issue.

The following questions are to be considered: Should the abusive parent be allowed to contact with a child? What has to be taken into account when deciding on contacts? How to organize them?

The paper presents some issues, which have to be paid special attention to when deciding on contacts between a parent and a child in cases of domestic violence.

2. Domestic violence and contact concerning children in Croatian legislation
The Croatian Family Law Act of 1998 passed for the first time the protection provision on domestic violence in legislation. On the other hand, the provision on criminal act of domestic violence was passed by Criminal Code 2000. Croatia has followed the pattern of many other countries and in 2003, the Domestic Violence Act, an independent law, was passed.

Contact concerning children as well as protection measures for children's welfare in the area of family law have been regulated by the Family Law Act (2003). Contact concerning children and the protection measures previously mentioned are still in jurisdiction of specialized departments of regular municipal courts and social welfare offices. It is going to be like that until 1 January 2006 when the process of establishing family courts in Croatia is expected to be completed.

2.1. Domestic violence

Protection from domestic violence in Croatia is regulated in several areas: criminal law, misdemeanour law, and family law.

Criminal Law Act (2000) contains separate provisions on criminal acts against marriage, child or minor such as Articles 213 and 215a.

Art. 213 refers to a criminal act of neglect and abuse of a child or a minor. It means that a parent, adoptive parent, foster parent or any other person neglects his obligation of care and upbringing, he abuses the child, forces the child to inappropriate work, mendacity or makes him to behave in a way that is harmful for his development. Unlike this article, which refers to a minor, Art. 215a is about a criminal act of domestic violence between adult family members. According to this article domestic violence is when family members humiliate each other through violence, abuse or through extremely rude behaviour.

If a child witnesses the violence mentioned in Art. 215 a (between adults) then it is also a criminal act pursuant to Art. 213 – child abuse. It is then a concurrence of two criminal offences in one act of domestic violence.

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1 Provision on domestic violence was moved from the Family Law Act (1998) because legislator's aim was not to have penalty elements in provisions of the Family Law Act.
Sanctions according to Criminal Law Act include, among others, safety measures. In criminal proceedings safety measures are issued in most cases of domestic violence and they are: psychiatric treatment or treatment of addiction (Articles 75 and 76 of the Criminal Law Act).

**Domestic Violence Act (2003)** is an independent law that defines domestic violence, family members, and regulates types and aim of sanctions. Characteristic of the Croatian Domestic Violence Act is that protection orders are in the magistrates’ court jurisdiction.

In terms of the Domestic Violence Act the family members are: adults and minors related by marriage, long-term relation (present or ex), relations by blood, relations by affinity and by adoption and guardianship (Art.1).

The Croatian Domestic Violence Act defines domestic violence as: physical and psychological assaults ranging from simple attacks to aggravated physical battery, infliction of physical and psychological pain, fear, violence against personal dignity, humiliating verbal abuse, sexual harassment, stalking and other ways of harassment, unlawful imprisonment and restriction of freedom and communication, destruction of property or attempt of destruction (Art. 4).

According to Domestic Violence Act the following protection measures can be issued: psychosocial treatment, prohibition from contact with the victim, stalking as well as contact in any way; protection measure which instructs the abuser to vacate the family home, guarding the victim, treatment for addiction and prohibition from possessing weapons (Art. 7).

**Family Law Act (2003)** contains provisions, which regulate measures for protection of children's rights and welfare. They also include prohibition from contact with a child and restriction of contacts. In cases of domestic violence when a child is a victim, both directly or indirectly, in a criminal or misdemeanour process sanctions are issued which penalize and resocialise the abuser and the intention of these sanctions is also preventative. Nevertheless, family law measures are aimed at restriction, modification or deprivation of parental authority regarding the abusive parent. The parent who abuses a child or acts violently in child's presence at the same violates parental authority and treats the child in a harmful way. Therefore there is no abolition
for such abuser by criminal or misdemeanour sanction. With regard to the above, in all cases of domestic violence besides criminal and misdemeanour process a child should be protected by issuing some of the measures for protection of his rights and welfare.²

Family law protection measures for child's welfare in the Family Law Act are: warning about failures in upbringing (Art. 109), supervision of parental authority (Art. 110), deprivation of parent's right to live with a child (Art. 111), referring a child to institutional care (Art. 112) and finally, deprivation of parental authority (Art. 114 and Art. 115).

A separate protection measure that can be issued refers to prohibition from access to a child, harrassment and contact with a child in any way. This protection measure can be applied to parents, grandparents, siblings, step-brothers and step-sisters, who don't live with a child (Art. 116).

2.2. Contacts concerning children³

Contacts concerning children are defined as personal relationships between a child and a parent who doesn't live with him with the aim to compensate not living together. Contacts include planned visits, spending time together on particular days, weeks or over a longer period of time.⁴

Decision on contacts is made if a child doesn't live with a parent; in most cases it happens after divorces or termination of a long term relationship between child's parents.

The fact of domestic violence can result in a specific situation – separate living of a parent and a child due to a fact that a parent has been instructed to vacate a family home or because he is serving his time in prison.

In any of the above cases the fact of domestic violence has to be taken into account when deciding on contacts.

³ These contacts also include contacts with siblings, step-brothers and step-sisters, grandparents. However, this paper deals with contacts between parents and children.
Contacts concerning children are regulated by the Family Law Act; according to Art. 87 a child has a right to contact with a parent if they live separately. These contacts have to be in child's best interest but it is not always the case. The fact of domestic violence with a child as a victim questions a positive effect of the contact between a child and the abusive parent. A special attention has to be paid to that issue. On the one hand there is a child's need to maintain relationship with a parent and on the other hand there is a risk of a repeated violence or of a bad influence on a child.

Family Law Act regulates contacts in terms that they can be restricted or prohibited. According to Art. 100 contacts can be restricted as follows:
1 restriction referring to time
2 restriction referring to location where contacts take place
3 supervision by the authorized person

Supervision of contacts means appointing a person who will be present during parent's contact with a child. The court orders a social welfare office to appoint the supervisor. He has to meet the requirements for the foster, he mustn't be related by blood or affinity (siblings, step-brother or step-sister). If the contacts have negative effects on a child then a parent can be deprived of them.

3. Concurrence of jurisdiction and obligatory continuous cooperation of all parties involved

3.1. Concurrence of jurisdiction

Criminal offence – neglect and child abuse as well as criminal offence of domestic violence between adults in child’s presence fall within jurisdiction of a criminal court i.e. juvenile court.

Misdemenaour – domestic violence according to the Domestic Violence Act, falls within jurisdiction of Magistrates’ Court.

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5 Child's right to a regular contact with a parent who doesn't live with him is based on Art. 9 item 3 of the UN Convention of Children's Rights.
6 Hrabar, D., supra note 2, at. 45.
7 If several children witnessed domestic violence between adults then it is concurrence of criminal offences in one act. The number of criminal offences depends on the number of children present.
Decision on jurisdiction depends on the severity of the act. It also depends on the fact whether it was an isolated case or repeated domestic violence. In cases of lesser, isolated offences jurisdiction falls within Magistrates’ Court whereas in other cases of domestic violence criminal court has jurisdiction.

Family law protection measures concerning children including contacts with a parent fall within jurisdiction of municipal courts and social welfare offices.

3.2. Legal obligation of all parties to cooperate

Since 2003 the Family Law Act (Art. 4) has regulated more intensive cooperation of all parties in cases of violation of children’s rights, which also includes cases of domestic violence when a child is a victim.

All institutions involved (e.g. kindergarten, schools, health institutions) are obliged to inform the police, public attorney, courts and social welfare offices about their suspicion of domestic violence when a child is a victim.

In most cases the police are first to find out about domestic violence and they inform a social welfare office. At the same time they bring criminal or misdemeanour charges against the abuser.

At this stage, when there is just a suspicion of domestic violence, social welfare office has to take protection measure in order to avoid the risk of further violence. On the other hand, if the social welfare office decides on contacts, the information about domestic violence has to be taken into account.

At the same time criminal or misdemeanour proceedings are in progress.

Magistrates’ and criminal courts have legal obligation to deliver all final judgments on domestic violence with a child as a victim to social welfare offices.

Although the judgment is a proof of a committed domestic violence, suspicion of domestic violence has to be taken into account when deciding on contacts concerning children and it has to be the basis for protection measures. This happens much earlier than criminal or misdemeanour proceedings are completed.

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8 Social worker investigates the situation in the family and if necessary, monitors the family over a certain period of time. Based on his observation he makes a report. A team of experts (social worker, psychologist and lawyer) decide on protection measures and on contacts depending on circumstances.
The final judgment on domestic violence when a child is a victim plays the most important part in deciding on protection measures the most radical of which is deprivation of parental authority. One of the reasons for deprivation of parental authority is physical and psychological abuse and domestic violence in child’s presence (Art. 114 paragraph 2 Family Law Act).

In judicial practice, deprivation of parental authority should be issued for all the parents who are sentenced because of a criminal act - child’s abuse and neglect.  

4. Decision on contact concerning children in cases of domestic violence

There are three ways to find out about domestic violence:
- information by parents, child and any other person or institutions;
- information by the police or public attorney which has to be delivered to a social welfare office in cases of intervention or initiation of criminal or misdemeanour prosecution and
- information based on a final judgement which has to be delivered to a social welfare offices by courts.

In all the above cases, the information about domestic violence has to be taken into consideration when deciding on contacts concerning children. It can be a decision made for the first time or the one that has to be changed due to the new fact – domestic violence.

If the information about domestic violence is based on a final judgement, the issue to be solved is: should contacts be allowed, restricted or forbidden.  

In all the other case if there is just a suspicion of domestic violence and not a final judgement, the fact of domestic violence has to be investigated.

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9 Hrabar, D; Family law protection of children- victims of domestic violence with a special view to deprivation of parental authority, International Workshop on Domestic Violence, Dubrovnik, 21./22 May 1988, at.107
10 The question is: Why to decide on contacts when there is a legal prerequisite for deprivation of parental authority – final judgement which confirms the fact of domestic violence? However, this kind of judgement doesn’t always result in deprivation of parental authority because of an individual approach to every case of domestic violence.
11 In divorce process in particular, fraud by parents is not rare. On the one hand the parent who has custody over a child alleges abusive behaviour of the other parent in order to restrict his contacts with a child. On the other hand, the parent who has right to contacts uses them to control his ex-spouse.
Every decision on contacts in cases of domestic violence (no matter whether there is just a suspicion or it has been proved in proceedings) to rely on experts’ opinion. The final decision on contacts is made by a team of experts made up of psychologist, psychiatrist and a social worker. If the decision is to be made by court the experts' opinion is taken into account.

Contacts between an abusive parent and a child are restricted whereas in cases when they are harmful for a child they are forbidden.

Restriction of contacts is performed in a way that a social welfare office appoints a person to be present during contacts. That person has to keep records and report to the office. Therefore, in order to ensure professional supervision, that person should be a social worker or a psychologist.

A special programme has to be created by the team of experts. It includes professional treatment of the whole family, both parents and a child. If a parent refuses the measures of the programme he can be prohibited from contacts.

5. Conclusion

In all legal systems when deciding on contacts concerning children in cases of domestic violence the most important issue is whether to allow contacts between the abusive parent and a child or not. This is a matter of discussion among professionals: in theory and practice.

Among other arguments against contacts between the abusive parent and a child there are: risk for a child and the other parent, negative influence of contacts on a child, spouses’ intention to control or abuse each other misusing contacts.

On the other hand, the most important reason for contacts to be allowed is child’s need to have relation with both parents in order to ensure a normal and healthy psycho-physical development.

In most cases it is not easy to answer the question whether to allow, restrict or forbid contacts.

Divorce and post divorce period is the time when violence occurs for the first time or it is more intensive. That happens because of stress caused by divorce, but it cannot be justified.
There are no two similar cases of domestic violence. Every family, especially the one in which domestic violence has happened, creates a Gordian knot made up of different characters, life experience, and circumstances. It has to be untied when deciding on contacts concerning children – always in child’s best interests.

Neither law nor theory can answer what a child’s best interest in a concrete case is. A correct answer can be given, and a correct decision on contacts can be made only by an individual and interdisciplinary approach to every family and the focus should be maintained on the needs of a child.

In every case the correct answer always should be: the child’s best interest means upbringing by both parents.

According to Janet R. Johnston and Linda Campbel that children don’t want to lose their parents; they want domestic violence to stop.\(^\text{12}\)