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The Exercise and Enforcement of the Child's Freedom of Expression in the Hungarian Civil Proceedings in Relation to the Creation and Application of a Controversial Normative Text

Abstract

In order to give greater prominence to the best interests of children – and to deepen cooperation between EU Member States – the provision* of Act V of 2013 on the Civil Code (hereinafter: the Civil Code) came into force in Hungary on 1 August 2022, which requires courts to notify children with capacity to judge in lawsuits concerning the fate of children, i.e. lawsuits for the settlement of parental custody, or in marriage lawsuits that also include the issue of parental custody, in order to ensure that they have the opportunity to express their opinion. In the more than two years that have passed since then, different judicial practices have developed for this seemingly simple legal text, depending on how the judge in question interpreted the concept of capacity to judge included in the text of the law. This process inevitably created legal uncertainty, which brought to the surface the eternal dilemma of the relationship between legal science and legislation: does the former try to increase its influence on the latter in order to prevent the majority of legal texts from being formed without science, or should we accept that legal practice will shape the law created without science? What impact does all this have on the application of law, on the enforcement of human rights, including children's rights? How can the laws thus created ultimately acquire the correct normative content and result in uniform application of law in the interests of legal certainty?

Answering these questions necessitated research into whether all the aspects that guarantee the predictability and calculability of the legal norm were enforced in the process of legislation. To this end, I not only examined the adequacy of the legislation in connection with the birth of the normative text, but also highlighted and analyzed studies, research and supreme court deci-

* Section 4:171 (4) of the Civil Code

sions that deal with the concept of a child with the capacity to judge and the criteria for assessing it. In addition, the study also presents a part of a research I conducted earlier, in which I sought to answer whether children know their fundamental rights and what they think about their enforcement. In order for the legislator to carry out their activities in accordance with the legal requirements, it is not enough to know the related domestic and international rules and the relevant literature, but they must also know the consciousness of children, as this makes the created law scientific and at the same time predictable.

Taking all these aspects into account, my aim in my studies has not been to provide a comprehensive picture of the existing national legislation on the hearing of children, but to highlight controversial issues and stimulate further reflection.

Keywords: children's rights, freedom of expression, judgment, jurisprudence, legislation, law enforcement.

> A procedure that makes it impossible to ascertain
> the child's best interests does not meet
> the constitutional requirement of a fair trial.[1]

Introduction

The Convention on the Rights of the Child[2] was adopted by the United Nations in 1989 and became law[3] in Hungary in 1991, thus becoming part of the Hungarian legal system. The rights declared in an international convention more than thirty years ago have evolved in domestic law as social relations, family relationships, parental roles and the place of the child in society have changed. As a result, new rules on the exercise of parental authority and on the procedure for contact disputes have been drawn up to enforce certain children's rights, emphasising the best interests of the child. Thus, with effect from 1 August 2022, Article 4:171(4) of Act V of 2013 on the Civil Code (hereinafter: Civil Code) was introduced, with the following wording:

> During its proceeding the court shall hear both parents, except if there is an irremovable obstacle, and notify a child of sound mind of the possibility to make a statement.

The legislation seeks to guarantee the right of the child to freedom of expression by imposing an obligation to notify a child of his or her capacity to judge in civil proceedings affecting his or her fate, but the legislation itself does not interpret the concept of capacity and does not define age. The question therefore arises: in order to enforce the right of the child, is it necessary to supplement or change the text of the provision, i.e. can the jurisprudential tools be used to influence legislation and thus the application of the law, or is it sufficient

[1] 3375/2018. (XII.5.) AB Decision paragraph [53]

[2] Convention on the Rights of the Child, adopted in New York on 20 November 1989

[3] Act LXIV of 1991 on the (proclamation of the) Convention on the Rights of the Child, signed in New York on 20 November 1989

for the legal concept to be interpreted by the highest judicial forum, i.e. to unify the law? Could the failure to do so result in a situation where, although the legislator appears to create the possibility for the child to exercise his or her statutory right and to express his or her opinion freely in court proceedings, in practice the enforcement of the law is only possible within a narrower scope - due to the different interpretation of the conceptual basis - depending on the openness and conscientious attitude of the judge?

Understanding and solving the problem requires a complex investigation:

— as a first step, the legislator's purpose must be understood, then
— it must be examined whether the text of the law is understandable and clear, whether its normative content can be recognized during the application of the law,
— is it in accordance with the Fundamental Law and international regulations, and finally
— does it enable the enforcement of the right sought to be ensured, if not, how can the problem be remedied?

During the investigation, I intend to highlight the problems that require solutions in order to ensure uniform application of the law and, through a comparative analysis of the relevant legislation and related court case law, to ensure the enforcement of children's freedom of expression.

In addition, I present the method and results of my research on children's rights and the obligations closely related to them. I believe that the latter provides practicing lawyers with a new perspective on children's rights, allowing space for the more effective enforcement of children's rights in the current legal environment.

Understanding the Legislative Purpose

Article 28 of the Fundamental Law of Hungary (hereinafter: the Fundamental Law) requires the courts to

> interpret the wording of legislation primarily in accordance with its purpose and the Fundamental Law. In determining the purpose of legislation, the preamble to the legislation and the grounds for the proposal to enact or amend the legislation must be taken into account. In interpreting the Fundamental Law and legislation, it must be presumed that they serve a moral and economic purpose which is in accordance with common sense and the common good.

Since the authentic source of revealing the legislative purpose is always the justification for the proposal to enact the normative text, it is also justified in this case to familiarize yourself with the specific justification[4] as an aid to interpretation:

[4] Final submissions to Act LXII of 2021 on international judicial cooperation in matters of parental responsibility, Collection of Justifications, No. 72 of 2021, pp. 927-928.

The normative text of Paragraph 4 of Section 4: 171. of the Civil Code was introduced by Council Regulation (EU) 2019/1111 on Jurisdiction, the Recognition and Enforcement of Decisions in Matrimonial Matters and the Matters of Parental Responsibility and on International Child Abduction (hereinafter: the Regulation), which has been applicable since 1 August 2022. Since the Regulation also aims to strengthen the right of the child to be heard, therefore, according to the justification for the proposal to create a normative text,

> a child who has the capacity to judge must be given a real and effective opportunity to be heard and his or her views must be taken into account in accordance with his or her age and maturity, the absence of which may constitute an obstacle to the enforcement of the decision in another Member State. Accordingly, the Proposal ensures the possibility for a child who has the capacity to judge to express his or her views not only in cross-border but also in domestic cases, in all proceedings concerning parental responsibility and contact, by providing for an obligation for the court or guardianship authority to notify the child of this.

The legislative objective is clear in that it seeks to ensure that "a child with the capacity to judge" has the opportunity to express his or her opinion in parental custody and contact proceedings, also for the reason that the absence of this should not hinder the enforcement of decisions abroad.

Principle of Normative Clarity

Act CXXX of 2010 on Legislation (hereinafter: Jat.) states as a fundamental requirement of legislation that the legislation must have a regulatory content[5] that is clearly understandable for the addressees. This is the principle of normative clarity, which has been confirmed several times in the practice of the Constitutional Court. According to this, legal certainty requires that the text of the legislation is meaningful and clear, and that it contains[6] normative content that can be recognized during the application of the law.

Do these conditions meet the legislator's wording "child with capacity to judge"?

As I mentioned earlier, the Civil Code does not contain a definition of the concept. Government Decree 149/1997. (IX.10.) on Guardianship Authorities and the Child Protection and Guardianship Procedure defines the concept in Section 2 a), which states that

> a child with the capacity to judge is a minor who, in accordance with his/her age and emotional development, is able to understand the essential content of the facts and decisions affecting him/her, and to see the expected consequences, when heard.

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[5] Jat – Par. 1 of Section 2

[6] The Principle of Normative Clarity first was established by 11/1992. (III.5.) AB Decision and then confirmed by 34/2014. (XI.14.) AB Decision.

The Curia and the Supreme Court themselves have dealt with this concept and established it in Directive No. 17, "a child can be considered to have the capacity to judge if, due to his/her age and situation, he or she is able to form his opinion independently and without influence".

In addition, in Civil Decisions No. 418/2001[7] and 1776/2008[8], it was expressed that the decisive nature of the child's opinion can always be assessed after considering all the circumstances of the individual case, taking into account the issue to be decided, the child's age and maturity.

In case decisions No. BH1996.154 and BH2000.451, the court cites Article 12 of the Convention on the Rights of the Child, emphasizing that the Convention unconditionally guarantees children the right to freely express their opinion in all matters affecting them, and requires the child's age and maturity to be taken into account only in assessing how the opinion expressed by the child is to be assessed.

In addition to normative acts and case, also studies emphasize that in many cases, a position can only be taken on the issue of the capacity to judge after a professional examination. I would like to highlight two of the latter:

First, I will cite a study written in 2015, the author[9] of which examined the concept of judgmental capacity using interviews with psychological experts and family law judges, as well as a questionnaire method addressing children and adults, as a result of which among others made the following statement:

> a child who has a stable – or at least developing – "self" in terms of his/her way of thinking and personality is capable of expressing a definite opinion about his/her desire for placement, considering his/her parents, independently and free from negative influence, and thereby bringing his/her well-founded and best-in-interest request to the attention of the court, recognizing and accepting the consequences of the court's decisions regarding child placement, is considered to be a child with judgmental capacity in the matter of placement. He/she also explained that the legislator has established the standard for the opinion of a minor, the judgmental capacity, which does not function as a standard, but requires an individual examination in each individual case, and shows how seriously the child's statement should be taken and how it should be evaluated.

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[7] 418/2001 Civil Principle Decision of the Curia. According to the Curia's finding, children who were 8-12 years old at the time of the final judgment, but who had been living in the defendant's care for years and had no contact with the plaintiff - due to their situation - obviously cannot be considered capable of deciding in what form they wish to exercise their right to contact their mother living in Hungary.

[8] 1776/2008 Civil Principle Decision of the Supreme Court. According to the Supreme Court, a 7-year-old child does not yet have the capacity to judge, and his or her opinion is not decisive in terms of changing the placement, but his or her opinion must be taken into account – given his or her age and maturity – as emotional attachment is also important at this age.

[9] Dr. Viktória Ádámkó, "*Hearing the opinion of a child in possession of his or her capacity to judge - with special regard to child placement*", Family Law, 2015/3, pp. 10-16.

The other author[10] analysed controversial practices in the area of hearing/observing the child, as a result of which he explained that

> As for the capacity to judge, its assessment is another challenge: it is very common to link the capacity to judge to age, but then we come back to the same problem from which we started, namely that rigid age limits do not help to enforce the child's right to be heard. For children who have not reached the age limit, this type of regulation deprives them of the exercise of their rights.

Based on all this, the question arises as to whether a lower-level law can provide a definition for a higher-level law, and if the determination of capacity to judge is in itself a process, the result of a proof, from what facts and data should the court, at the beginning of its proceedings, establish it before the notification of the child? Taking into account the procedural rules, the notification of the child must usually take place simultaneously with the communication of the statement of claim to the defendant and the setting of the trial, without the facts and data necessary for establishing capacity to judge being available to the court during this period. It is important to note that there is little time available for consideration: procedural text[11] stipulates that "In an action where the court decides also a matter concerning a minor child, the time limit for compliance with the general obligation of courts to take measures shall be not more than fifteen days." All this results in the notification obligation being interpreted differently by each court, and even by each judge within the court. Since the norm is unclear, it results in uncertainty during the application of the law and unnecessarily restricts the freedom of expression of children.

Children's Rights versus "a child of sound mind"

When creating legislation, it must be ensured, among other things, that the legislation complies with the substantive and formal requirements arising from the Fundamental Law, as well as the requirements[12] arising from international law and European Union law. After comparing the normative text with the Fundamental Law and the Convention, as a result of the examination using comparative, analytical and interpretative methods, I would like to highlight the following:

According to Article IX of the Fundamental Law, everyone – including children – has the right to freedom of expression.

Article 12 of the Convention on the Rights of the Child stipulates that the child who is capable of forming his or her own views shall have the right to express those views freely in all matters affecting him or her, and that the views

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[10] Dr. Orsolya Szeibert: *The hearing/opinion of the child, child support, the situation of cohabiting parents and the five-year old Civil Code - debatable practices,* Family Law, 2019/3. pp. 1-8.

[11] Act CXXX of 2016 on the Code of Civil Procedure of Par. 5. Section 431

[12] Jat – points a) and c) of Par. 4. of Section 2

of the child shall be given due weight in accordance with the age and maturity of the child. To this end, the child shall be given the opportunity to be heard, directly or through his or her representative or an appropriate body, in any judicial or administrative proceedings affecting him or her, in accordance with the procedural rules laid down in national law. In addition, Comment No. 12 on the Rights of the Child to be Heard by the UN Committee on the Rights of the Child states that every child has the right to express his or her views and to have those views heard in all matters affecting him or her, and no child shall be presumed – for example, on the basis of his or her age or state of health – to be incapable of expressing those views.

Based on the text of the Fundamental Law and the Convention, it can be stated that a child has the right to be heard in the proceedings in which he or she is interested, regardless of his or her age.

The regulation contained in Section 4:171 (4) of the Civil Code, which stipulates the obligation of the court to notify only "the child of sound mind", in order to allow the child to make a statement of his/her own free will in a lawsuit affecting his/her fate, is contrary to all of this. After all, if we take into account the aforementioned child rights requirements, the obligation of notifying "the child" should be included in the law without any age limit. The court will have to consider the opinion of the child heard, depending on whether or not he/she has the capacity to judge. At the same time, tying the fundamental right, i.e. the expression of an opinion, to the capacity to judge, and thus to a certain higher age, is contrary to the clear wording and intention of the Convention.

Following the above examination, it can be stated that the recording of the capacity to judge as a restrictive condition adversely affects the enforcement of the fundamental right of the child. Thus, the regulation, since it is not predictable in terms of its application, violates the freedom of expression of children. It cannot be established for what reason the notification generally excludes the child from the possibility of expressing an opinion.

Solutions

The question arises whether the interpretation of the normative text or the unification of the very diverse legal practice can help resolve the contradiction?

Based on practical experience - based on central and local training courses, collegial meetings as professional forums - it can be said that interpretation and legal unification alone are not sufficient, as it would be necessary to amend the text of the law, as can be verified by legal methods, in order to ensure that the different courts and judges of the country do not apply the notification obligation in a significantly different way during their proceedings, as there are courts where they continue to notify only children over the age of 14, there are those

where the age limit is 10, but there are also courts that issue the notification to make a statement to children under the age of 3[13]. All this unpredictability hinders the enforcement of children's rights. The amendment of the normative text would also be justified by the early elimination of anomalies arising during the enforcement of decisions abroad. Practical experience shows that Hungarian judgments or settlements approved by order, during which a 5 or 7 year old child was not notified of the possibility of making a statement in the court proceedings, cannot be enforced abroad. In my opinion, a procedure that does not allow the child's interests to be revealed, and thus does not take the child's interests into account, cannot meet the fundamental legal requirement of a fair trial. Incidentally, the current text of the norm does not meet the legislative purpose either, since according to the justification of the previously cited Proposal, the notification obligation would serve the very purpose of "not being able to refuse the recognition and enforcement of a Hungarian court or guardianship decision in another EU member state on the grounds that the child lacks the opportunity to express his or her opinion."

An investigation conducted with the help of legal science would necessitate a modification of the normative text, thus eliminating the statement "within the child's capacity to judge" and generally restoring the child's freedom of expression in lawsuits affecting him or her.

Until the legal gap is closed, the standardisation of the application of the law will ensure children's freedom of expression in everyday life. In order to facilitate this, I consider it necessary in this study to provide the reader with an insight into how children perceive the right to freedom of expression and its exercise in their immediate and wider environment. This is also important because it is the joint responsibility of all judges hearing family law cases to listen to children in court, to listen to them and to let the child decide for him or herself whether or not to express an opinion. This is a fundamental right of the child, and it is our duty to enforce it! As Dr. Orsolya Szeibert[14] put it in her study quoted above:

> It is the responsibility of society, the family, the parents and not least the law enforcers to fulfil this obligation, and the more educated, the more informed a community (e.g. the professions), the stronger the obligation.

[13] Family law conferences held at the Hungarian Judicial Training Academy on June 10-11, 2024 and June 24-25, 2024, at which judges from various county courts presented the legal practice they apply.

[14] Dr. Orsolya Szeibert: university professor, full-time employee of Eötvös Loránd University since 2001, head of the Department of Civil Law. Her primary research areas are international and European comparative family law, children's rights, marriage law and legal regulations concerning civil partners.

Enforcement of the Child's Right to Free Expression in Micro- and Macro-Environments

I have always been particularly interested in children's rights. Previously, as a teacher, I dealt with children every day, as a law student I wrote my final thesis on the topic of "Children's Rights", and today, as a civil judge, I often hear children of different ages directly. While working with them, I was concerned with the question of how well children know their rights and obligations, what their opinions are about certain of their rights, and what opportunities and possible obstacles there are to enforcing their rights enshrined in law.

In my thesis entitled Children's Rights[15], I sought answers to the above questions using the questionnaire method. The questionnaire used for data collection contained both closed questions, i.e. questions with predetermined answer options, and open questions, in which the answer could be written freely. In the analysis nearly 80 children aged 7-17 took part, of whom 17 were aged 7-10, 29 were aged 11-14, and 31 were aged 15-17. They had to interpret all children's rights, but for the purposes of this study I will focus on those related to freedom of expression.

The Fundamental Law of Hungary guarantees everyone, including children, the right to free expression of opinion, and also establishes the limits of the exercise of the right, as free expression of opinion is possible while respecting the human dignity of others.

In the questionnaire, they had to interpret the line of the law that states that "the child has the right to respect for his or her human dignity". All the answers reflected the children's high level of emotional disposition, which emotions were coupled with real knowledge, as they all correctly interpreted the right to human dignity. Most of them used the words esteem, understanding, and equivalence, but there were some who elaborated on their interpretation:

> Just because one is a child, one is a HUMAN being, a sentient being and should not be underestimated.
>
> A child should retain the "health" of his individuality, not be humiliated.
>
> Do not oblige a child to do something he or she does not want, something that is humiliating, hurtful or offensive.

Regarding the right to free expression, the experience I could draw from the answers given was that children exercise their right to express their opinion most freely in their micro-environment, such as in the family, among friends, at school. Of these, they are also more courageous in expressing their opinions, whether positive or negative, at home, in a family atmosphere:

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[15] Marianna Demeter: *Thesis entitled Children's Rights*, University of Miskolc, Faculty of Political Science and Law 2001, consultant: Dr. Klára Kaiser.

> I often express my opinion about family travel and family issues. Especially about smoking, because I don't like my parents smoking.

At school, we have to be more careful about respecting boundaries:

> We make democratic decisions in class, about many things during voting.

The lesson from this is that a narrower environment is able to tolerate the excesses resulting from the expression of opinion and to adjust the right to free expression within healthy boundaries. At the same time, I found their opinion expressed in relation to adult society thought-provoking, because according to children, it is difficult to get the truth to be accepted when a child says:

> Once in a store (because of my age) they tried to sell me a faulty product. When I noticed, I told the salesperson that faulty products cannot be sold to a child either.

I attach great importance to this latter statement because if a child grows up in a society where his/her participation is taken for granted, not only in the family, at school, but also in the adult society, then it is also self-evident that a court might listen to him/her, be interested in his/her opinion, and take it into account in its decision. Therefore, I do not believe that tying a child's ability to express their opinion in court to a condition, such as the ability to judge, is correct or well-founded legislation.

Concluding Thoughts

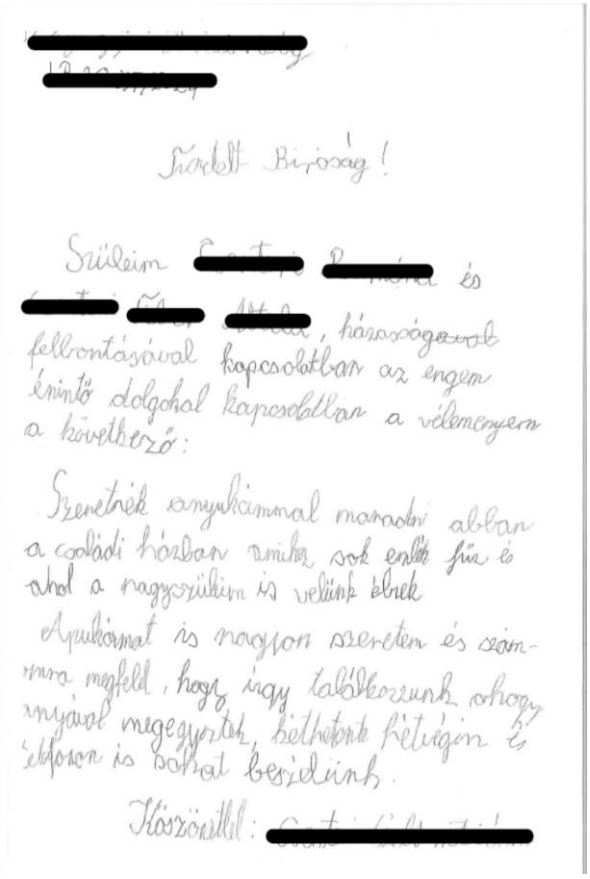
Comparing the provision of Section 4:171.§ (4) of the Civil Code with the requirements of children's rights and taking into account that freedom of expression, as a constitutional fundamental right, is enjoyed by everyone, including children, without restriction, it can be stated that the legislation should be amended as soon as possible in order to ensure that the notification obligation ensures the possibility of making a statement for all children. A possible way to change the legislation is through judicial initiative[16], during which, in the interests of legal certainty and the protection of children's fundamental rights, the judge may also initiate an investigation of the legislation's unconstitutionality and conflict with international treaties in his motion. Until the legislation is amended, the Curia would be responsible for ensuring the unity of judicial application of law based on the investigations of jurisprudence and analytical groups.[17]

[16] Act CLI of 2011 on the Constitutional Court, Section 25: Judicial initiative for individual norm control procedure and Section 32: Examination of the conflict with an international treaty.

[17] The task of the judicial practice analysis group is to examine case law. The areas of examination are determined annually by the President of the Curia. The judicial practice analysis group prepares a summary opinion on the results of the examination (Act CLXI of 2011 on the organisation and administration of courts, Section 29).

As a result of research, based on my practical experience I believe that every child, regardless of their age, should be treated as an independent individual and that the child should feel that they are taken seriously. Thus, if the child's opinion is obtained and heard in court with sufficient empathy and age-appropriate treatment, it will not only strengthen their self-esteem and self-confidence, but also help the judge in making his/her decision. I believe that success is achievable with sufficient openness and empathy!

Proving all this here (1. Figure) is a nice example of a statement sent to the court by a 9-year-old boy in his parents' divorce lawsuit[18]:



Tisztelt Bíróság!

Szüleim [redacted] és [redacted], házasságuk felbontásával kapcsolatban az engem érintő dolgokkal kapcsolatban a véleményem a következő:

Szeretnék anyukámnál maradni abban a családi házban amiben sok emlék fűz és ahol a nagyszüleim is velünk élnek.

Apukámat is nagyon szeretem és számomra megfelel, hogy úgy találkozunk ahogy anyával megegyeztek, láthatok hétvégén és ekkor is sokat beszélünk.

Köszönettel: [redacted]

1. Figure: Statement of a 9-year-old child in a civil proceeding

Source: Gyöngyös District Court, case of 2024

[18] The statement was sent to the court by mail by the child of the parties in the divorce case pending before me, after he was informed of the lawsuit affecting his fate (in 2024., Gyöngyös District Court).

> Dear Court!
> My opinion regarding the divorce of my parents regarding the matters that concern me is as follows:
> I would like to stay with my mother in the family house that I have many memories of and where my grandparents also live with us.
> I also love my father very much and it is appropriate for me that we meet as agreed with my mother, every two weeks on weekends and we talk a lot on the phone.
> Thank you: signature of the child

When such a letter is read out in front of the parents in the courtroom, it helps a lot in resolving disputes between the parties in a peaceful and reassuring manner with the utmost regard for the best interests of the child.

I conclude my study with the thoughts of a former State Secretary for Public Welfare *Imre Dréhr*[19], formulated almost 100 years ago:

> Even the most perfect child protection laws are worthless if they lack the social conscience that alone can make child protection a living reality.

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Realizacja i egzekwowanie wolności wypowiedzi dziecka w węgierskich postępowaniach cywilnych w związku z tworzeniem i stosowaniem kontrowersyjnego przepisu normatywnego

Abstrakt

W celu skuteczniejszego zagwarantowania nadrzędnego dobra dziecka – przy jednoczesnym pogłębianiu współpracy między państwami członkowskimi Unii Europejskiej – na Węgrzech w dniu 1 sierpnia 2022 r. weszła w życie nowelizacja ustawy nr V z 2013 r. o kodeksie cywilnym (dalej: KC), zawierająca przepis , który w postępowaniach dotyczących losu dziecka, a więc w sprawach o uregulowanie władzy rodzicielskiej oraz w sprawach rozwodowych obejmujących kwestię władzy rodzicielskiej, nakłada na sądy obowiązek poinformowania dziecka posiadającego zdolność do wyrażenia własnego stanowiska w celu zapewnienia mu możliwości przedstawienia swojej opinii. W ciągu ponad dwóch lat od wejścia w życie tego – pozornie prostego – przepisu ukształtowało się zróżnicowane orzecznictwo, w zależności od tego, jak sędzia rozumiał pojęcie zdolności dziecka do wyrażenia własnego stanowiska, które ustawodawca wprowadził do tekstu normatywnego. Proces ten nieuchronnie doprowadził do powstania niepewności prawnej i unaocznił odwieczny dylemat relacji między naukami prawnymi a ustawodawstwem: czy nauki prawne powinny dążyć do większego wpływu na proces legislacyjny, aby zapewnić, że teksty prawne będą tworzone na podstawach naukowych, czy też należy pogodzić się z tym, że to praktyka orzecznicza będzie kształtować prawo powstałe bez udziału nauki? Jakie konsekwencje ma to dla stosowania prawa, realizacji praw człowieka, w tym praw dziecka? Jak zapewnić, aby stanowione w ten sposób przepisy prawne, uzyskując właściwą treść normatywną, prowadziły do jednolitego stosowania prawa dla zagwarantowania bezpieczeństwa prawnego?

Odpowiedź na te pytania wymagała zbadania, czy w procesie legislacyjnym uwzględniono wszystkie przesłanki zapewniające przewidywalność i kalkulowalność normy prawnej. W tym celu analizie poddano nie tylko poprawność procesu legislacyjnego w kontekście powstania przepisu, lecz także wybrane opracowania naukowe, badania oraz orzeczenia sądów wyższych instancji do-

tyczące pojęcia dziecka posiadającego zdolność do wyrażenia własnego stanowiska i kryteriów jego oceny. Ponadto częścią opracowania jest prezentacja wyników mojego wcześniejszego badania, w ramach którego starałam się ustalić, czy dzieci znają swoje podstawowe prawa i jak oceniają ich realizację. Aby bowiem ustawodawca mógł działać zgodnie z wymaganiami stawianymi przepisom prawa, nie wystarczy znajomość przepisów krajowych i międzynarodowych oraz literatury przedmiotu, niezbędna jest również wiedza o świadomości dzieci, ponieważ to właśnie ona czyni prawo naukowym i przewidywalnym.

W niniejszym opracowaniu nie dążyłam do przedstawienia pełnego obrazu obowiązujących krajowych regulacji dotyczących wysłuchania dziecka, lecz do podkreślenia kontrowersyjnych kwestii i zachęcenia do dalszej refleksji.

Słowa kluczowe: prawa dziecka, wolność wypowiedzi, zdolność do wyrażenia stanowiska, nauki prawne, ustawodawstwo, stosowanie prawa.