

The summary of the doctoral dissertation of Aleksandra Szymanek, MA,

“The Reasons for permanent and temporary obstacles in the exercise of parental authority”

The topic of the doctoral dissertation is the issue of permanent (Art. 111 of the Family and Guardianship Code) and temporary (Art. 110 of the Family and Guardianship Code) obstacles in the exercise of the parental authority. Taking into account the multifaceted nature of the said dissertation, varied methodological tools have been implemented: the theoretical method (exegesis), the psychological-pedagogical method (the analysis of the specialist literature, especially in the context of euro-orphanhood), and the empirical method (the research on the court records and questionnaire surveys).

Based on the court files research it can be concluded that the most common reasons for the interference with parental custody in the form of permanent and temporary obstacles are the following: diseases, emigration, or imprisonment of a parent/ parents.

With regards to the above, the author of this dissertation limited the conducted records research to the analysis of selected cases, in which the main obstacles in the exercise of parental authority were the three aforementioned reasons. The other reasons occurred rarely, and, in many cases, did not independently provide grounds for the ruling on the interference with parental custody.

In the literature to date, there has been no publications on the analysis of the nature of obstacles in the exercise of parental authority.

The aim of this dissertation is to establish when an obstacle in the exercise of parental authority justifies the suspension, and at times the deprivation of parental custody. There are multiple discrepancies between two mentioned legal institutions in terms of premises and effects, which influence their legal nature. Despite these fundamental differences, multiple similarities can also be observed, which causes discrepancies in judicial practice. The analysis of the institutions allows for the conclusion that the definition of obstacles that is regulated by the legislators is rather general. The court's interference with parental authority, in the case of using the Art. 111 of the Family and Guardianship Code can be justified, among other premises, by the occurrence of a permanent obstacle, and the suspension of parental authority, in

accordance with the Art. 110 of the Family and Guardianship Code – by an occurrence of a temporary obstacle. Due to the existing judicial practice in the limitation of parental authority pursuant to Art. 109 of the Family and Guardianship Code in the event of an occurrence of the obstacles discussed, it was also justified to analyse the regulations of this article.

The main thesis of the dissertation is the statement that the choice of the optimal form of the exercise of parental authority that will be with accordance with a child well-being is dependent on the nature of an obstacle. Due to a wide array of factual circumstances occurring in specific cases, it is challenging, or even impossible to point to universal guidelines for using a certain measure of interference by the court. The analysis of the issue allows to unequivocally state that the level of generality in the definition of an obstacle is necessary due to the variety of factual circumstances and justified in the light of the fundamental rule of the family law, which is the rule of the protection of a child's welfare.

An essential issue presented in the dissertation was whether the court's ruling with regards to parental authority is an adequate and optimal measure of interference which takes into consideration the factual circumstances occurring in a given case.

The doctoral dissertation consists of six chapters divided into subsections. In the first chapter the aim and the range of the topic as well as the methodology are presented. In the second an institution of parental authority is discussed and the third chapter is concerned with the analysis of the measures of interference with parental authority.

In the fourth chapter there are the results of the own research documents, which consisted in analysing the case files of 300 court cases with accordance to limitation, deprivation, and suspension of the parental authority.

In the fifth chapter the results of own research documents – surveys are presented, preceded by theoretical considerations on euro-orphanhood. The phenomenon of euro-orphanhood is one of the biggest obstacles in exercising parental authority and this is the reason for conducting the survey on the topic. In the second part of the chapter the issue of euro-orphanhood is presented in the light of the survey research conducted among the workers of social welfare centres. 399 surveys were analysed. The author of the dissertation conducted follow-up research, comparing the results with the data included in an unpublished master's thesis of Krzysztof Paradowski, "Euro-orphanhood in the light of a survey of urban social welfare centres" written in Warsaw in 2013 under the supervision of Prof. Wanda Stojanowska from The Faculty of Law and Administration of the Cardinal Stefan Wyszyński University. The sixth chapter consists of conclusions formulated on the basis of the presented research in the empirical chapters of the dissertation.

The results of the aforementioned own research indicate that legislative changes are unnecessary. Clarifying the terms “permanent” and “temporary” with regards to obstacles in the exercise of parental authority would lead to alarming casuistry, which in turn would do more harm than good. The interpretation of these terms should be determined by the court on condition that a meticulous and rational evidentiary hearing is conducted. The comments included in the summary of the dissertation are of a *de lege lata* proposal nature and others – although not extending beyond the interpretation of regulating the legislative institutions included in the topic of the dissertation, but also equally important for the implementation of the rules of children’s welfare protection.