HUMAN RIGHTS DEFENDER
OF THE REPUBLIC OF ARMENIA

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PUBLIC AD-HOC REPORT

ON SOME GAPS IN THE CHILD RIGHTS' RELATED LEGISLATION OF THE REPUBLIC OF ARMENIA.

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> The history will accuse us if we do not try to use our knowledge, our resources and will, so that each new member could enter into such a world, where the irreplaceable years of childhood are fulfilled and protected.
>
> ***Carol Bellamy***
> ***UNICEF Executive Director***

Currently, one of the most important issues set forward towards contemporary states is the protection of child rights. The international community has reflected to the issues of child rights since 1924 bringing in force the Geneva Declaration on Child rights adopted by the League of Nations. Furthermore, a number of human rights documents have been adopted (Universal Declaration on Human Rights adopted in 1948, International Covenants in 1966) and in 1989 the United Nations Convention on the Rights of the Child (UNCRC) was adopted by the United Nations General Assembly, which immediately became a more largely recognized declaration and was accepted almost all countries in the world,

including the Republic of Armenia.

According to the aforementioned documents, the Republic of Armenia has basically accepted that the children are considered as a special vulnerable group in view of the level of their age, mental and physical development and they are in need of special permanent care and protection. Armenia has assumed a number of responsibilities committed under the Convention, including such areas as implementation of the RoA legislative reforms and their compatibility with international standards.

The effective protection of the rights of children requires implementation of a series of comprehensive activities in accordance with priorities set by the state. Within the framework of these activities a special importance is given to the law making process as well as introduction of material and especially procedural norms and their implementation mechanisms.

We, herewith, present some of the existing problems and gaps in the RoA legislation with regard to the protection of child rights in Armenia. We also propose several options for the solution of these problems to improve the RoA legislation and increase the effectiveness of the protection of child rights in the country.

The issues explored by us mainly refer to the deficiencies, gaps and contradictions occurred in different norms of various areas of the RoA legislation. This research encompasses analysis of different provisions of the RoA legislation related to the child rights starting from child birth up to the termination of the child status, as well as some comprehensive and concrete proposals will be presented for the improvement and development of the aforementioned problems.

1. STATE REGISTRATION OF CHILD'S BIRTH, APPROVAL OF CHILD'S IDENTIFICATION, RIGHT TO A NAME, SURNAME

1.1 The non-registration fact of child's birth more frequently happens in the regions of Armenia. The reasons for the fact of non-registered children are different, such as: (a) missing documents that approve child parents' identity as well as problems in obtaining these documents; (b) home delivery cases which are not registered afterwards; (c) poor and difficult access to administrative system, (d) lack of parents' proper understanding of the importance of child's birth registration, etc.

The birth registration is the official verifications on the child's existence. It has an essential role in approving child's identity and protecting his/her rights. It also contributes to the fight against the child trafficking and kidnapping. It is necessary for school attendance, making use of health and other services. The age approval of elderly children is essential in the sense that they are not deprived from their rights prescribed by the law (for instance, marriage, labour involvement, keeping the age for the military call as prescribed by the law and issues on fair trail for children taking into consideration the implementation peculiarities).

The part 1 on the article 7 of the Convention "On Child Rights" defines that "the child should be registered after the birth…"

The State Birth registration affairs are regulated in accordance with the RoA Law "On the Registration of the Civil status acts" and RoA Minister Decree No. 97-Ü of 14. 05. 2007 "On Approving the orders in relation to registration of the civil status acts. The examination of the above mentioned acts illustrates that generally accord-

ing to the RoA Legislation, the state birth registration is ensured immediately after the child's birth. Particularly, according to the amendments made on 08. 04. 2008 in the RoA Law "On State tax", the levying of the state tax for the birth state registration was abolished. Furthermore, in order to ensure the mandatory state registration of the child, we think it is important to include some necessary mechanisms in the RoA legislation. Particularly, we recommend:

(a) To adopt a provision which is in accordance with the RoA Law the woman, who has recently confined shall be checked out from the medical hospital or institution only after presenting the child certificate. Moreover, if the child certificate is not presented in the medical hospital within the deadline set in accordance with the law, then the further expenses of the confined mother for the stay in the medical hospital shall be borne by herself.

Certainly, there can occur a number of other problems in the sense that the name and the surname of the child is recorded in the child's birth certificate in accordance with his/her parents' agreement, whereas in the absence of the parents' agreement and upon the decision of the guardian and trustee body, the court application on this issue is not exceptional, which may require longer tiem. Moreover, one of the parents may be temporarily absent from the republic and have no opportunity to get his/her agreement on the child's name, surname and other issues.

In such cases we think that the name and the surname of the child can be recorded and/or registered on the basis of mother's declaration, and later such registration and/or records can be reconsidered by the request of the other parent.

(b) To define a provision in accordance with the law that the head of communities are to undertake measures to identify child

delivery cases that take place out of the medical hospital (e. g. child delivery at home) and support the registration of the child's birth.

1.2 Part 1 of the article 14 of the RoA Law "On Registration of the Civil Status Acts" (hereinafter *Law on CSA*) numerates principles of the state registration of the child birth, which are described in the article 2 of the RoA Minister Decree No. 97-Ü of 14. 05. 2007 "On Approving the orders in relation to registration of the civil status acts" in detail.

The following issues are not addressed in the principles of part 1 of the article 14 of the *Law on CSA*, such as: neither the mutual agreement approved by the notary (as a basis of the state registration of the child) nor the consent of the recently confined woman is included in the RoA Minister Decree No. 97-Ü of 14. 05. 2007 "On Approving the orders in relation to registration of the civil status acts in the cases to support to birth registration by means of reproductive facility technologies. At the same time part 2 of the article 14 of the *Law on CSA* defines that "In the case of absence of facts on the state child birth registration as prescribed in part 1 of the same article, the state child birth registration is carried out on the basis of the decision which is lawfully in force by the court and verifies the child delivery fact". It can be concluded from the above stated information that in the cases of presence of the notary approved mutual agreement and the consent given by the recently confined woman, the state child birth registration shall be carried out on the basis of the decision lawfully in force by the court, since this fact a source of state birth registration are not prescribed in part 1 of the article 14 of the *Law on CSA*. We suggest including the following phrase "as well as according to other lawful acts" after the phrase of "according to the

part 1 of this article" of the part 2 of the article 14 of *Law on CSA.*

There is one more remark in regard to the phrase of the part 2 of the article 14 of the *Law on CSA,* which refers to the phrase on "verifying facts of child birth". Particularly, it dose not refer to the fact of child delivery, but rather to the fact of verification of child birth delivered by a certain woman.

Taking into consideration this suggestion in the part 2 of the article 14 of the *Law on CSA* the suggested whole phrase would be as follows: ***"According to the part 1 of this article, as well as other lawful acts, in the cases of absence of facts on the state birth registration, the state child birth registration shall be carried out by the lawfully in force decision of the court which is made on the basis of the fact verified be the recently confined woman".***

1.3. The first paragraph of the part 2 of the article 35 of the RoA Family Code on verification of the fact of child identification from registered marriage confirms the presumption of the husband of the child's mother unless otherwise anything else is approved. According to the second paragraph of the 2nd part of the same article the following cases were splited: when the child is born by the divorce, or a marriage which is recognized invalid, or during the period of three hundred days after the death of the child's mother husband. In theses cases it has been defined that the child's fatherhood is decided on the basis of mother's declaration. It can be concluded from the above formulated phrase that in her declaration the mother can indicate any person as a father of the child, whereas the examination of other provisions of the RoA legislation shows that cases prescribed both by paragraph 2 and paragraph 1 of the article 35 of the RoA Family Code, the fatherhood presumption is in force

for the child's mother husband (former husband), while the confusing phrase "on the basis of the mother's declaration" does not explain the main approach of that provision. We suggest merging paragraph 1 and 2 of the article 35 of the Family Code and defining it as follows: ***"If the child is born by the marriage of persons living together, or is born by divorced marriage or marriage recognized as invalid or within the period of three hundred days after the mother's husband death, then the husband (former husband) of the child's mother shall be recognized as the father of the child, unless otherwise anything else is approved. The fatherhood of the child's mother's husband is approved by the state registration of their marriage".***

1.4. The part 1 of the article 39 of the RoA Family Code defines that "According to the article 38 of the same Code the record on parents in the journal of the state registration of births can be disputed only by the court procedure upon the inquiry of the registered person as a child's father or mother, or, basically, a person recognized as a father or mother, or by the inquiry of the parent guardian (trustee) (highlighted by us), as well as by the adult". There is incorrectness in this formulation, since in line with the word "parent guardian", who is recognized as unemployed by the court, the word "trustee" is placed next to it in brackets, which is a mistake and shall be taken out. This is in view of the fact that only a guardianship and not a trusteeship can be provided to an unemployed recognized person, (according to the RoA Civil Code article 31). ***Thus, we suggest taking out the word "trustee".*** A similar mistake is made in the RoA Family Code, part 4 of the article 35, according to which "the recognition of fatherhood is allowed only upon the consent of the adult, but if he/she is recognized as unemployed by the court, then the con-

sent shall be given by his/her guardian (trustee) or the body of guardianship and trusteeship". This is also a mistake and shall be taken out.

1.6. The article 36 of the RoA Family Code on the "Identification of fatherhood in accordance with the court decision" which classifies persons that have right to appeal to the court for identification of fatherhood in accordance with the court decision, states that the fatherhood is decided according to the court procedure upon the application of either ***one of the parents or the mother,*** child's guardian (trustee) or a person, who has taken care of the child accordingly, but once the child becomes an adult it is done upon his/her application. ***We suggest taking out the word "mother" from the article 36 of the RoA Family Code and edit it as follows:***

1.7. According to the article 45 of the RoA Family Code:

"1. The child has a right to have a name, father's name and a surname.

2. The name of the child is given by the consent of the parents, and the father's name is given by the name of the father in accordance with the regulation prescribed by this law.

3. The child's surname is decided by the surname of the parents. If the parents have different surnames, then the child is given the surname of the mother or father according to the parent's mutual agreement.

4. Disputes occurred in the consequence of absence of the consent between parents on the child's name and surname shall be resolved by the guardianship and trusteeship body.

5. If the fatherhood of the child is not identified, then the child's

name is given by the mother's order, the father's name is given according to the name of the person registered as a father, and the surname is given by mother's surname".

We think that the provision of the part 4 of the article 45 of the RoA Family Code on granting a right to the guardianship and trusteeship body to resolve the dispute occurred in the consequence of the absence of the consent between the parents on the child's name and surname has a restrictive nature. Although the decision of the guardianship and trusteeship body can be appealed in accordance with judicial process, the current formulation of the aforementioned provision restricts the right of the parents to directly appeal to the court to resolve the disputes on the name and surname of their child by defining an out-of-court regulation to resolve the dispute. By the way, the resolution of the disputes was previously granted to the court according to part 4 of the article 18 of the Law on CSA. However, according to the law ÐO-64-Ü of 23. 05. 06 the aforementioned provision of the Law on CSA was recognized as invalid. The regulation of this issue was basically remained to be regulated by the RoA Family Code article 45, part 4 only, by which the resolution of the disputes between the parents on the discussed issue is granted to the guardianship and trusteeship body.

We suggest that the parents are provided with a right to resolve their disputes with regard to the child's name and surname through appealing to the court directly. We suggest editing part 4 of the article 45 of the RoA Family Code as follows: ***"The disputes occurred in the consequence of absence of agreement between the parents on the child's name and surname shall be resolved either by the guardianship and trusteeship body or by the court"***. Moreover, we think that it is worth to reinstate the part 4 of the article 18 of the

Law on CSA, which has stated that "In cases of absence of agreement between the child parents, the name and (or) the surname (in the case of presence of parents' different surnames) shall be registered on the basis of court decision in the birth act registration. The selection of the name and (or) surname for the child shall be in compliancet with child's interests". At the same time, it is necessary to include expression "or guardianship and trusteeship body" after the word "court". In the result, part 4 of the article 18 of the Law on CSA will have the following formulation: ***"In cases of absence of agreement between the child parents, the name and (or) the surname (in the case of presence of parents' different surnames) shall be registered on the basis of the decision of the court or the guardianship and trusteeship body in the birth act registration. The selection of the name and (or) surname for the child shall be in compliance with child's interests".***

1.8. In the result of the analysis of the norms related to the change of the child's name, particularly the provisions of the RoA Government Decree No. 941-Ü of 23. 06. 2005 "On the approval of the regulation and conditions of changing the name" and the article 46 of the Family Code, a collision has been identified between RoA Family Code and the aforementioned provisions. According to the RoA Decree No. 941-Ü, to change the name of the child, who has become ten year old, it was mandatory to have his/her consent, whereas, according to the part 3 of the article 46 of the RoA Family Code, the opinion of the child was mandatory. We think that the RoA Government Decree No. 941-Ü is more suitable, to solve this issue. Therefore, we suggest editing the part 3 of the article 46 of the RoA Family Code as follows: ***"Changing the name and (or) the surname of the child, who is ten year old, shall be done in compliance with his/her consent".***

1.9. The suggestion on editing the part 3 of the article 46 of the RoA Family Code in its turn generates a basis for the amendment of the part 3 of the article 44 of the RoA Family Code, according to which "In cases prescribed by this Code, the guardianship and trusteeship body or the court can adopt a decision on the ten year old child only upon his/her consent". We suggest including the expression "or other body" after the word "court" in the aforementioned article. Thus, the edited article would be as follows: ***"According to the cases prescribed by this Code the guardianship and trusteeship body, the court or other lawful body can have a decision on the ten year old child only upon his/her consent".***

2. RIGHT TO CITIZENSHIP

2.1. As a consequence of imperfect regulatory framework on the procedures of obtaining citizenship a number of issues emerge with regard to the protection of children having a refugee status.

According to the article 20 of the RoA Law "On Refugees", "Refugee children lose their status once their parents obtain citizenship of the Republic of Armenia in compliance with the regulation prescribed by the law…".

After losing the refugee status, the further lawful status of the child is regulated by the RoA Law "On Citizenship", which provides principles for obtaining citizenship. The article 16 of this law states that a child up to 14 years old, shall obtain RoA citizenship, if his/her

parents have obtained RoA citizenship. As a result, if the parents, whose child is under the age of 14 and has a refugee status, obtain RoA citizenship, as a consequence of this fact the child loses his/her refugee status, and obtains the RoA citizenship in accordance with the RoA Law "On Citizenship".

With regard to 14-18 years old refugee children (here we mean persons forcibly migrated from Azerbaijan in 1988-1992), it is worth mentioning that their further lawful status is not under any regulation, in cases, if their parents obtain RoA citizenship. The article 22 of the RoA Law "On citizenship" regulates the procedures on obtaining citizenship for the 14-18 years old children, only in the cases, when their parents ***change their citizenship.*** In regard to ***obtaining citizenship*** by their parents, there is no legislative regulation on the lawful status of 14-18 years old children. Therefore, when the refugee parents of 14-18 years old children obtain RoA citizenship, consequently their refugee children lose their status and become persons without any citizenship.

We suggest two options for resolution of this issue. *On the one hand, if the refugee parents obtain RoA citizenship, an opportunity shall be provided to the 14-18 years old refugee children to either keep their refugee status or obtain RoA citizenship.* In the RoA legislation this approach can be reflected as follows: in accordance with the RoA legislation, it is necessary to separate regulations on the citizenship of refugee children as under the age of 14 and 14-18 years old ones. Therefore, the following will be necessary to ensure:

(a) to alter the set phrase of "refugee children" of the article 20 of the RoA Law "On Refugees" with "under 14 years old refugee children". As a result, the following formulation will be formed: "Refugee children under the age of 14 shall lose their refuge status,

if their parents obtain citizenship of the Republic of Armenia in accordance with regulation prescribed by this law…". (At the same time they will obtain citizenship in compliance with the RoA Law "On Citizenship"),

(b) to add a new provision in the article 20 of the RoA Law "On Refugees" through the following formulation: "Upon the consent of 14-18 years old children they shall lose their refugee status if their refugee parents obtain citizenship of the Republic of Armenia".

(c) to add a new provision in the article 16 of the RoA Law "On Citizenship" through the following formulation: "In case of obtaining citizenship of the Republic of Armenia, the 14-18 year old children, whose parents obtained citizenship of the Republic of Armenia shall be granted RoA citizenship upon their consent".

The second approach is that when the refugee parents obtain the RoA citizenship, their children (both under the age of 14 and 14-18 year old ones) also obtain RoA citizenship accordingly. In this case, the article 20 of the RoA Law "On Refugees" shall be remained unchanged, which states that "The refugee children shall lose their refugee status, if their parents obtain citizenship of the Republic of Armenia in accordance with the regulations prescribed by the Law…". At the same time, the set phrase "under the age of 14" shall be amended by the word "child" as mentioned in the article 16 of the Law "On Citizenship", which states that "a child under the age of 14, whose parents obtain the RoA citizenship, shall also obtain RoA citizenship". ***In the result, the article 16 of the RoA Law "On Citizenship" shall have the following formulation: "The child, whose parents obtained RoA citizenship, is also granted with the RoA citizenship".***

3. CHILD'S RIGHTS ON ASSETS; RIGHTS ON RECEIVING LIVING MEANS; RIGHT ON ALIMONY CLAIM

3.1. Part 3 of the article 47 of the RoA Family Code on "Child's rights on assets" states: "3. The child's right on possessing the assets that belong to the child on the basis of right to property is defined by the civil legislation. Responsibilities carried out by parents on possessing the child's assets are regulated by the lawful norms on managing the assets by the guardian prescribed by the the civil legislation".

In this case, it is referred to the article 39 of the RoA Civil Code, which is on "Managing the assets of ward". Part 3 of the aforementioned article states that "The guardian, trustee, their spouses and close relatives do not have a right to have a business with ward, expect for the gifts and assets given to the ward for the use without repayment, as well as make the ward familiar and aware on court or transaction engaged between the ward, the spouse of his/her guardian or trustee, the close relatives".

Whilst comparing part 3 of the article 47 of the RoA Family Code, the part 3 of the article 39 of the RoA Civil Code with the part 3 of article 318 of the same RoA Civil Code, it is revealed that according to the RoA legislation basically it is not possible for parents to preset a gift or an assets to their child under the age of 14 for latter's use without repayment, since the parents, being the official representatives of their children under the age of 14, are also considered as donor (lender) and a representative of the donee (borrower). According to the RoA Civil Code article 318, part 3, it is prohibited to make transaction[1] with himself/herself personally in the name of the person represented.

[1] *The same conclusion refers also to the facts when the adult is recognized as jobless by the decision of the court and a gift or an assets is presented to the them by their guardian for the use without of repayment.*

Factually, although the article 39 of the Civil Code does not directly prescribe prohibition in regulation of this issue, its implementation in current legislation becomes impossible. In the result, as the practice shows, issues arise when parents want to present a gift to their adolescents particularly under the age of 14. In this sense, there are cases of mislead of the law in the notary practice.

We think it is necessary to set a mechanism to implement the right to parents of adolescents, guardians, as well as adults recognized as jobless to present a gift or an assets for the use without repayment to their child (contender). ***We suggest adding a new provision in the part 3 of the article 39 of the RoA Civil Code through the following formulation: "The part 3 of the article 318 of the RoA Civil Code shall not refer to the guardian presenting a gift or assets to his/her contender for the use without repayment".*** At the same time, we suggest adding a provision in the first sentence of part 3 of the article 318 of the RoA Civil Code on "except for the cases prescribed by the law" through the following formulation: ***"The representative cannot make transaction with himself/herself personally in the name of the person represented, except for the cases prescribed by the law…".***

3.2 It is noticeable to mention the requirement of the part 2 of the article 39 of the RoA Civil Code, which states that: ***"The regulation of handling the ward's assets is defined by the law". No such a law has been adopted so far,*** *which could give an opportunity to the guardianship and trusteeship bodies to perform voluntarily in carrying out the responsibilities provided to them by the RoA legislation on handling the issues of assets of the ward.* ***We think adoption of such a law is imperative.***

3.3. The article 3 of the RoA Law "On Minimum Wages" states that "The implications of the Codes of the Republic of Armenia, its laws, the decrees of the President of the Republic of Armenia, the Government of the Republic of Armenia and decisions of the RoA Prime Minister, the lawful acts of the ministries and departments, local self-government bodies, separate lawful entities can not accepted as a calculation basis for the monthly minimum wage as prescribed by this law. The set amount of 1000 Armenian drams is preserved as a calculation basis in the aforementioned lawful acts".

Taking into account the fact that the article 68 of the RoA Family Code sets the minimum size of alimony in accordance with the amount of minimum wage, and at the same time this minimum wage is calculated as 1000 Armenian drams as stated in the aforementioned lawful acts, then we suggest setting the alimony minimum size as seven times more out of the minimum wage. ***Thus, we suggest editing the second paragraph of part 1 of the article 69 of the RoA Family Code as follows: "The size of the monthly payments for each children prescribed by this paragraph shall not be less than the size of the seven times of the set minimum wage, whereas confiscation of alimony from the parents, who get benefit for unemployment shall not be less than 20 percent of the unemployment benefit".***

3.4. The size of payment of alimony to the adolescent with a sustainable amount shall ensure maximum satisfaction for special needs of a child instead of preserving child's former livelihood, as it is prescribed in the article 7 of the RoA Family Code. Thus, we suggest changing the expression on "out of the opportunity of maximum preservation of the benchmark of child's welfare" stated in part 2 of the article 71 of the RoA Family Code with the expression on "out

of opportunity to ensure maximum satisfaction for the needs of a child". ***As a result, the mentioned edited article will be as follows: "The size of the sustainable amount is decided by the court in the view of the opportunity of ensuring maximum satisfaction for child's needs by taking the noteworthy interests as well as assets and family conditions of parties into due consideration".***

3.5. The article 87 of the RoA Family Code "On Alimony paying agreement" states that: "Alimony paying agreement (on alimony amount, conditions and procedure of paying) is concluded between the person obliged to pay alimony and the guardian, and in case of the person obliged to pay alimony and/or the recipient being incapable, between lawful representatives of these persons. Persons with restricted capability conclude alimony paying agreement with the consent of their lawful representatives".

There is discrepancy in this article, since it states that "the agreement on alimony payment is done between the responsible person as alimony payee and the guardian…". The word "guardian" is not proper to use here, since it is evident that it refers to the person, who receives alimony. We suggest replacing the word "guardian" of the mentioned article with the word "recipient".

3.6. We suggest editing part 3 of the article 71 of the RoA Family Code, particularly, by replacing the expression on "the size of the alimony confiscated by the well secured parent in the benefit of the other parent" with the proposed expression on "the size of the alimony confiscated by the parent in benefit to the other less secured parent, who looks after the child".

4. THE RIGHT OF A CHILD TO LIVE IN A FAMILY, TO GET EDUCATION, TO COMMUNICATE WITH PARENTS AND OTHER RELATIVES, TO EXPRESS HIS/HER PERSONAL OPINION

4.1 The part 2 of the article 41 of RoA Family Code states that: "Each child has a right to live in the family and get education (as much as possible), to know his/her parents, to acquire their due attention and live together with them, except for the cases, if these contradict his/her interests". The expression "as much as possible" is not correctly placed in the mentioned provision. This expression refers to the child right to live in a family and get education. In this case the meaning of the article 7 of the Convention of Child's Right is changed, according to which "…the child, right after his/her birth, shall obtain a right as much as possible, to know his/her parents and get their due attention". Although there could happen also impossible cases for a child to live in a family and get education, the expression on "as much as possible" refers to the right of a child to know his/her parents as per the Convention on Child Rights. Therefore, we suggest making necessary amendments into the first paragraph of part 2 of the article 41 of the RoA Family Code though editing the current formulation as follows: ***"Each child has a right to live in the family and get education, to know his/her parents (as much as possible), to acquire their due attention and live together with them, except for the cases, if these contradict his/her interests".***

4.2. Parents living[2] separately on account of different reasons, shall preserve all rights and responsibilities both towards the child

[2] *It is not referred to the persons deprived from parental rights or persons with limited parental rights. There exist limitations towards these persons prescribed by the RoA Family Code.*

and the other parent with regard to the child as well as towards all other third persons and organisations. The new RoA Family Code has developed this provision in more detail by stating that the parent living separately from a child has a: (a) right to communicate with the child, participate in his/her education, arrange the child's education issues (the article 54, part 1), (b) right to set an agreement with regard to implementation of parental rights (the article 54, part 2), (c) right to receive information on the child (the article 54, part 4). At the same time, in contrast to the old legislation, the article 54 of the new RoA Family code does not straightly indicate the responsibilities of a separately living parent in participation of child's education, however, there exists such a responsibility in accordance with the general principles of the RoA Family Code.

A separately living parent has equally comprehensive parental rights (rights and responsibilities). It is a different question, when the legislative body emphasizes the right of separately living parent as a person living with the child and having ***rights*** in lawful relations with the child. These rights coincide with the ***responsibility*** of the other parent to not to interfere with implementation of these rights. In this regard, we suggest adding a new provision in part 1 of article 54 of the RoA Family Code through the following formulation: ***"A parent, living separately from the child, shall preserve the comprehensiveness of parental rights (rights and responsibilities) towards the child as prescribed by this law: the parent has a right to communicate with a child, participate in his/her education issues".***

4.3. With the purpose of ensuring full implementation of a right for the separately living person on receiving information on the child, we think that the framework of responsible subjects providing

such information shall be expanded, including the parent, whom the child lives with. ***In this regard, it will be necessary to formulate the first sentence of part 4 of the article 54 of the RoA Family Code in the following way: "A separately living parent has a right to receive an information from educational and health institutions, population social security and other similar organisations, as well as from a parent living with a child".***

4.4. According to the part 1 of the article 42 of the RoA Family Code "The divorce of parents, its invalidity or their separate living shall not influence on the child's right". Although the "child right" expression is emphasized here, which obviously refers not only to the right to communication, (since the aforementioned article is on "The right of a child to communicate with his/her parents and other relatives"), but also to all rights of the child, however, to preserve principal of lawful assurances***, we suggest keeping the same sentence in a separate provision, which may be placed before the article 41 of RoA Family Code in the form of the article 40. 1.*** This will draw a special emphasis on the provision which equally refers to all rights of the child.

4.5. There is also a need to make an amendment in the title of the article 56 of the RoA Family Code on "Child's right to communicate with grandfathers, grandmothers, brothers, sisters and other relatives", which we think is not in compliance with the content of the article. According to the article, the communication right of a child is concerned, whereas its context does not refer to the communication right (which is stated in the article 42 of the RoA Family Code). It rather refers to the right of grandfathers, grandmothers,

brothers, sisters and other relatives to communicate with a child**.** ***We suggest changing the title of the article 56 of the RoA Family Code through the following formulation: "The right of grandfathers, grandmothers, brothers, sisters and other relatives to communicate with a child".***

4.6. The part 2 of the article 42 of the RoA Family Code states that: "A child, being in emergency situation (arrested, detained, in medical organization and other cases) has a right to communicate with his/her parents and the close relatives, as well as a parent in emergency situations has a right to communicate with a child in accordance with the regulation prescribed by the law". ***Firstly, there is no such regulation (it is not specified in the RoA law "On keeping arrested and detained person").*** Secondly, in our opinion, the last sentence of the mentioned article, which indicates the parent's right in emergency situations to communicate with a child, is not in compliance with the title of the article on "Child's right to communicate with parents and other relatives". Moreover, in such cases, the whole structure of the Family Code deforms, since there is a provision on parents' rights in the chapter 10 which concerns to child rights, and there is a special chapter 11, which is dedicated to parents' rights.

Therefore, we suggest taking out the last sentence of the part 2 of the article 42 of the RoA Family Code and adding the same content in the chapter 11. It can be expressed as the article 56. 1, with a title on: **"The right of a parent, in the emergency situation, to communicate with a child" and with a content on "A parent, in an emergency situation (arrested, detained, in medical institution or other cases), has a right to communicate with his/her child in accordance**

with the regulation prescribed by the law".

5. THE CHILD'S RIGHT ON LIVING SPACE

5.1. Children are mainly deprived of the housing right because of the parents' divorce when the child remains with the parent, who does not have a right to housing, whereas the owning spouse demands expel of other spouse and the child.

The legal solution of this issue is provided in the article 225 of the Civil Code and in the article 16 of the Law of the Republic of Armenia "On Children", which have certain discrepancies between each other. For example, the article 225 of the Civil Code states that:

"1. A person's right to living space is the right to dwell in the living space which is under the ownership of another person. The right to use living space is a person's inseparable right which cannot be alienated, cannot be an independent subject of pledge, rental or gratuitous use, and cannot be passed to another person by succession or by the assignee". Also, members of the family (spouse, adolescents) of the person with the right to use the living space can dwell with him/her without the consent of the proprietor.

2. The origin, conditions of implementation and termination of the right to use living space are defined by a notarized written agreement with the proprietor. The right to use living space derives from the order established by the law on the state registration of rights to property, as from the time of registration of that right":

Without discussions on uncertainties in the article (which do not directly relate to child rights), let us draw your attention to the following issue: according to the content of the article, written notarized agreement with the proprietor serves as a sound basis for the

right to use the living space (whereas, for family members of the person with such right, this right derives from kinship relations, as it follows from part 2 of the article 225 of the RoA Civil Code). Therefore, it traces that implementation of the child's right to use the living space becomes impossible in cases when the child's lawful representative is the proprietor of the house. On the one hand, it becomes clear that the latter is the owner of the house, and, on the other hand, he/she is the child's lawful representative. But as the representative is not entitled to engage a contract on behalf of the represented person in relation to him/herself (according to part 3 of the article 318 of the RoA Civil Code), it proves that the owner parent or any other lawful representative cannot engage a contract agreement with the child on the use of the living space.

Under such conditions the protection of child rights is subject to threat, and the claim of the proprietor to expel his/her spouse and the child seems to be natural. However, the article 6 of RA Law "On Child's Rights" states that "A child, who is a family member of the renter or the owner of the living space, has the right to dwell in the living space occupied by the renter or the owner, regardless of the place of his/her residence". Taking the aforementioned as a basis, we can conclude that in case of the adolescent's lawful representative, i. e. the parent and the proprietor of the living space, who is the same person, the adolescent have a right to use the living space, and this right can be terminated only through termination of the parent's property right.

Therefore, the article 225 of the RoA Civil Code engages a contract agreement with the proprietor as a ground for the right to use the living space, which becomes impossible in case of adolescent, as it was illustrated above. This also provides the proprietor with the

opportunity to raise a legal claim before the other spouse who is not considered a proprietor to expel the child from the living space. On the other hand, the article 16 of RoA Law "On Child's Rights" takes kinship relations as a basis for the origin of the right to use the living space .

We think it is necessary to abolish this discrepancy and to provide a right in the legislation which will enable the adolescents to use the living space derive from kinship relations with the owner of the space and not from the agreement engaged with himself/herself. We recommend to adopt the same approach not only towards the legal relations of receiving the right to use the living space by juvenile family members of the proprietor, but also towards those of other family members (e. g. spouse, parents): whereas RA Law on Child's Rights provides children, who are in such situation, other members of the family of the proprietor of the living space remain vulnerable and according to the current legislation, they have to engage a contract with the proprietor to obtain a right to use the living space.

5.2. The next issue related to the adolescents' interests in the sphere of housing affairs concerns to the cases of expel of the living space by the proprietor, who has adolescents living in the same area. The issue is that the child becomes homeless as a result of actions of the parent with proprietor status.

As already mentioned above, under the article 16 of RoA Law "On Child Rights" a child, who is a family member of the proprietor has a right to live in the space occupied by the proprietor, regardless his/her place of residence. But it turns out that the proprietor alienates the living space, and as a matter of a fact, fore faults abiding

place, and consequently this right of the child is also infringed.

In this particular case, we face collision of two essential principles: inviolability of property right and protecting the child's interests.

The legislation of some of states does consider alienation by the proprietor of the living space, where his/her juvenile family members live in case of presence of the contest of the trusteeship and guardianship bodies, if they involve the interests of the adolescent.

For example, the article 292 of the Civil Code of Russian Federation is titled "Rights of the family members of the proprietor of the living space". The literary translation of part 4 of the mentioned article is the following: "In case of alienation of the living space, where the proprietor's family members under trusteeship or guardianship or the proprietor's juvenile family members without parental care (of which the trusteeship or guardianship body is informed about), and in case if it affects the rights and legal interests of the mentioned persons, it is allowed under presence of consent by the trusteeship or guardianship body":

We believe that the similar provision can be set also by the legislation of the Republic of Armenia, along with elaboration of an effective mechanism on the order and conditions of the contest or its refusal by a guardianship and trusteeship body in order to exclude the abuse of powers they are given and the groundless refusal to give the contest or legal provision of it. Besides, RoA legislation should make a provision for the opportunity for court appeal to withhold this contest. It is also necessary to develop a mechanism of control over the process of alienation and acquisition of those housings, where adolescents abide or will abide.

The raised questions related to the housing relationships of citi-

zens are only a small part of the whole scope of existing problems. We believe that the comprehensive solution can be given through the adoption of a new RoA Housing legislation (the old one has expired according to the RoA Law on 04. 10. 2005 192-N) and through introducing corresponding changes and amendments of other legal acts of the Republic of Armenia. We consider it necessary to adopt a new RoA Housing Legislation.

6. CHILD'S RIGHT TO WORK

6.1. The Republic of Armenia has ratified the UN Convention No. 138 "On Minimum age" on 03.10.2005. The Convention affirms that according to the labour minimum age set by the State members can not be less than the age of finishing the mandatory school education and in all cases shall not be under the age of 15.

According to the nature or implementing circumstances, the employment age which has possible hazard in terms of health, security or morals shall not be under the age of 18. The national legislation of the member states may permit employment from the age of 13 to 15 only in cases if the work is not hazardous for his/her health or growth and easy work which does not disrupts school attendance.

The Republic of Armenia, in accordance with the point 1 of the article 2 of the Convention, has declared *that in the area of employment or laour as well as registered transportation within its territory, the minimum employment age is 16.*

The article 32 of the RoA Constitution defines that "…Children until the age of 16 are not forbidden to get a permanent employment. The regulation of their temporary employment is prescribed by law".

According to the RoA Constitution the employment of the children under the age of 16 is basically permitted, regardless the prohibition of labour, at the same time setting regulations and conditions of their temporary employment are be to regulated by the law.

This provision is put in detail in the RoA Labour Code the part 2 of the article 17, which states that "Those adolescent citizens, who are between the age of 14 to 16 and have a written consent of one of his/her parents, adopter or a trustee, are considered as employed". According to the part 3 of the same article it has been forbidden to have a labour contract with or involve citizens under the age of 14.

It turns out that according to the RoA legislation it is forbidden to involve children under the age of 14 into labour employment, whereas children between 14 to 16 ages may get temporary employment in accordance with regulations and conditions prescribed by the law. Moreover, by saying temporary employment, the contractual hourly based labour is meant.

However, it is notable to mention that the hourly contractual agreements cannot ensure involvement of children of the age from 14 to 16 in labour which is hazardous for their health, which directly may affect on their health and growth. Consequently, the emphasis shall not be put on the nature of the permanent or hourly employment, but rather on permission of such type of work which are not hazardous for the health, rights and interests of the children between the age of the 14-16. We think, that the implementation of both permanent and hourly basis mechanism does not ensure protection of child rights.

In view of this point and in order to ensure harmonization of the ILO Convention No. 138 with RoA Legislation, we think, it is necessary to undertake the following steps:

(a) In the RoA Labour Code, it is necessary to explicate the concept of the Convention, according to which "…The national legislation of the member states may allow 13-15 years old to be employed only in cases that are not hazardous for their health, growth and do not disrupts their attendance to the school". This means, that the Labour Code shall indicate such type of work for 14-16 years old ones, which can satisfy three criteria: ***(1) job which is not hazardous for their health and growth, (2) does not disrupts the school attendance, (3) easy job.*** Thus, taking into consideration the ILO 190 Recommendation ("On Immediate Implementation Measures on Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour"), as well as consulting with the representatives of the units of employees and employers, the we suggest defining the list of labour, that satisfy the abovementioned requirements.

(b) We think it is necessary to edit the part 2 of the article 17 of the RoA Labour Code as follows: *"Juvenile citizens between the age of fourteen up to sixteen are considered employed if they have written consent of one of their parents, adopter or trustee on labour agreement to a job, which is easy, not hazardous for health or growth and does not disrupt school attendance".* It could also be adopted in the form of a separate provision, for example, signing a labour contract with juveniles at the age from fourteen to sixteen. It is important to keep the concept.

(c) To align the proposed aforementioned amendments to be made in the RoA Labour Code, it is necessary to edit article 19 of the RoA Law "On Child Right". Firstly, it shall be clarified that juvenile from 14 to 16 age can be employed, instead of the "up to the age of 16" (as it is indicated in this provision), since juvenile under fourteen are also counted as children up to sixteen year old. Secondly, it

is necessary to explicate the nature of the work, which may involve children of this age, i. e. the work should be easy, do not harm the child's health or growth and the school attendance. This can be referred to the RoA Labour Code instead (on the abovementioned provisions through stating that children from 14- to 16 can be involved in labour in accordance with the written consent of one of the parents, guardian or trustee in compliance with regulation and conditions set in the RoA Labour Code as well as in the type of works indicated in the law).

6.2. On 22.03.2005 the Republic of Armenia has ratified the ILO 182 Convention on the "Worst forms of Labour". The concept of the "Worst forms of child labour" is explained in the convention. The agreed countries guarantee that their domestic legislation will regulate those types of labour, which may harm the child's health or growth, security or morality by its nature or implementation conditions. While setting the types of the work, the recommendation of the relevant provisions of the 190 Recommendations of ILO Convention shall be taken into account. For the purposes of this Convention, the term ***the worst forms of child labour*** comprises:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

It shall be noted that according to the mentioned Convention, only children under 14 shall not be involved into the work, but also persons under 18, i. e. according to the convention, those who are not 18 years old are still considered as a child.

In order to harmonize to requirements of the convention with the RoA legislation, we think it is necessary to:

(a) define those works in the RoA Labour code that may harm the child's health, security or morals by their nature or implementation conditions. It shall also be mentioned that persons under 18 shall not be involved in such type of work.

Moreover, while defining such type of work, 190 Recommendations of ILO Convention 1999 shall be taken into consideration.

(b) In chapter 20 of the RoA Criminal Code "On Criminals against the interests of child and the family", it shall be set a crime or complete the list of existing crimes mentioned in the same chapter that under the threat of criminal liability it is forbidden to treat children under the age of 18:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

7. PROTECTION OF CHILD RIGHTS AND LEGAL INTERESTS BY HIS/HER PARENTS

7.1. The article 14 of the RoA Law "On Child rights" states that "the protection of child's rights and legal interests by his/her parents or other lawful representatives is their key responsibility. In case of violation of the Legislation of Republic of Armenia by the child, the parents or other lawful representatives shall carry the responsibility in accordance with regulations set in the Civil Code of the Republic of Armenia".

The article 1067 of the RoA Civil Code, which sets a responsibility for the damage caused by the child under 14, provides that: "the damage caused by the adolescent (little child), who is not 14 years old yet, the responsibility shall be carried out the parents, adopters or guardians, unless otherwise it is approved that the damage was not caused by the adolescent (little child)". Basically, the 14 year old adolescent is granted with full tortious liability, whereas children of this age may not be considered sane person: The question is, if it turns out that the damage was caused by the child's fault, would he/she is able to compensate it.

It is important to mention that this provision was set in accordance with the amendments made in the article 1067 of the RoA Civil Code on 21. 02. 07.

8. GENERAL CONCERNS

8.1. From the point of view of effective protection of child rights, we give importance to the implementation of measures for the

development of the guardianship and trusteeship bodies. It is necessary to draw special importance on setting the functions of these bodies and their implementation mechanisms, since they have a special role in the area of child right protection.

The practice shows that the guardianship and trusteeship bodies are not fully informed on their functions and regulation. During the resolution of the disputes around the child occurred between the parents as well as conclusions made by the court are mainly in favour of parents' interests rather than a child. According to the RoA legislation the life conditions of the child, the appointing guardian and his/her parents are not sufficiently examined; it is not always that the child protection principle is prioritized while resolving disputes on child; in case of existence of sufficient facts they do not apply to court to deprive or limit the rights of parents or one of them; they are not interested in identifying children without parental care or children receiving not a proper parental care; they are getting involved with these issues only once they are asked for. It is obvious that the existence of this body is of formal nature. Thus, we think it is necessary:

(a) to set the status and responsibilities of this body in accordance with RoA law, as well as establish an authorized government entity to oversight the function of this body,

(b) to envisage recruitment of two more staff in the Commission which is to be affiliated to the guardianship and trusteeship body, e. g. these could be positions for a secretary and a lawyer at the commission,

(c) to set the features and content of responsibilities of the commission member in cases they do not carry out their responsibilities or carry out them not properly, as well as develop an oversight mechanism over their activities,

(d) to set regulation on possessing the assets of the guardian in accordance with law, which should have been adopted immediately after the adoption of the RoA Civil Code for the implementation of the requirements of article 39.

In view of the aforementioned, we think it is necessary to adopt RoA Law "On Guardianship and trusteeship", which will include the above-mentioned suggestions.

8.2. It is necessary that the National Commission on Child Rights has higher status (adjunct to the Prime Minister) to ensure more efficient implementation. It is important that the Commission is chaired by either the Prime Minister or the Deputy Prime Minister. This will ensure implementation of instructions given to the line ministries. It is essential to establish a group of specialists, to be paid by the state, which shall analyze the situation and present annual reports on the state of the affairs and changes.

8.3. As a general concern, it should be noted that there are cases when violations of child rights are consequences of the child's family social security, existence of other social issues, not a full labour engagement of the family members, etc. Consequently, the child right protection shall be observed within the context of family protection. From this viewpoint we give importance to not only child rights protection, but also to the establishment and development of the environment which ensures this protection, since this environment is the cornerstone of the family. **We think, that it is necessary to promote state policy for strengthening and protecting the family.**

Under the international and local legislation commitments of the

principles on prioritizing the family education of children, we think that the state shall take special care of not only children, their rights, but also the family as an entirety, because if the family is "healthy", then the probability of the protection of a child and his/her rights is higher.

8.4. The next concern is that although there are relevant laws on child rights protection, their implementation mechanisms are not in place, and the material norms lack of procedural basis. Some of them are indicated below, for instance:

I. The article 110 of the RoA Family Code defines the responsibilities of educational, medical, social protection population and other type of organisations (where the children, without parental care, live), officials, guardianship and trusteeship body, governor's office (Yerevan municipality), officials and heads of RoA Government authorized bodies to handle issues in regard with identification, registration and family placement of children without parental care. Furthermore, it is envisaged that the heads of these organisations and officials shall carry liabilities in accordance with the regulations prescribed by the law, if they do not carry out their responsibilities, present not real facts, as well as do such activities that are on hiding the child from the family for educational purposes. ***We think it is necessary to explicate the nature and content of these responsibilities in accordance with the RoA Legislation.***

II. The article 115 of the RoA Family Code states that: "Persons carrying out arbitrage activities for child adoption shall hold a responsibility in accordance with the regulation prescribed by the law". ***We think it is necessary to explicate the nature and content of these responsibilities in accordance with the RoA Legislation.***

III. Likewise, it is necessary to explicate ***the nature and content of responsibilities*** for those persons, who are guilty in not providing information intentionally and without respectful reasons, as it is prescribed in the parts 1 and 2 of the article 99 of the RoA Family Code.

By summarizing our analysis, we want to note again that it is not a full-fledged document and it has a continuation. Through this initiative in the area of child right protection, the RoA Human Rights' Defender commences a process of examination and elaboration of concrete suggestions and recommendations in the RoA Legislation related to the protection of child rights, since, firstly, there is a need to have a comprehensive legislation without deficiencies and collisions, and only after to ensure due implementation of its provisions in practice.

PUBLIC AD-HOC REPORT

ON SOME GAPS IN THE CHILD RIGHTS' RELATED LEGISLATION OF THE REPUBLIC OF ARMENIA