

Problems associated with the right of access in the context of the rights of the child in Latvia

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Abstract. The child is a special right-holder. In the legal system, the status of the child is characterised by substantive rights that are typical only for children and by different means of exercising and safeguarding rights, i.e. the rights of a child are exercised by custodians acting on behalf of the child. It should be noted that the state, which uses the levers of public power, is also involved in the protection and safeguarding of the rights of the child in the most direct way. The right of access should be mentioned as a special right of the child. This comprises the right of a child to direct contacts with the child's parents and siblings. Communication forms an integral part of daily lives of people as social beings. Communication with parents is essential for a child undergoing the process of personality development. The right of access is an absolute right, which may be restricted only in cases specified in laws, provided that access is harmful to a child. Although the right of access is provided for by law, the existing legal framework is still deficient, which is confirmed by frequent disputes arising over the exercise of this right.

Key words: right of access, rights of the child, custodians.

1 Objectives and methodology of the thesis

The objective of the thesis is to research the legal framework dealing with the right of access in the context of the rights of the child by finding a way to make the exercise of the right of access solely in the interests of the child more effective.

The research has employed descriptive and analytical, inductive and deductive methods. Laws, the opinions of legal scholars and case-law have been analysed using these methods; conclusions and suggestions have been formulated.

It has become evident nowadays that the rights of children need to be guaranteed. However, the best and most effective ways of securing children's rights, including the right of access, still remain an open issue. The case-law shows a trend that, in certain cases, the right of access may be used by parents to settle their mutual relationships. This is evidence that the right of access does not always serve its main goal, which is to ensure the best interests of the child. The right of access is referred to in Article 181 of the Civil Law [1], whereby a child may maintain direct contact and personal relations with any of the parents, in both narrow and broad sense, and siblings, grandparents and other persons with whom the child has lived in a common household and developed a close relationship. In assessing the role of access for the development of a child, the concept of parents should be viewed more broadly, namely that a child may maintain direct contact with both biological parents and other relatives with whom the child has developed a close relationship (or an emotional bond). This is an essential aspect because it must always be established with whom of the relatives a child would prefer

to maintain contact when deciding on the procedure for exercising the right of access. The notion “close relationship” is open and must be given substance in each particular case, but it must be interpreted broadly in order to safeguard the best interests of a child. In practice, there is a great deal of discussion as to whether a child should meet and communicate with a new spouse of the divorced parent and spouse’s relatives. It should be concluded that this matter is not dealt with by law. It is not prohibited. The author believes that contact with members of the new family of the parent is permissible provided it is accepted by the child and does not hinder the effective communication between the child and the parent, i.e. their travels together attending cultural events and other activities should be facilitated. The law clearly implies two things. First, it is a child’s right rather than a duty; second, it is a right of a child rather than of child’s parents. Parents must maintain direct contact with their child, thus ensuring the right of access. It is the child who decides on how this right will be exercised. It should be stressed that a child does not possess legal capacity and, accordingly, exercises his/her rights through a guardian who, as a rule, is a parent with day-to-day care of the child. The fact that a parent and not the child brings an action regarding the right of access against the other parent creates a false impression that the dispute involves only the child’s parents and not the child and a parent. The author is of the opinion that, in certain cases, this misunderstanding makes it more difficult to settle the dispute because the child’s right of access may be used by parents to settle problems existing between them. Therefore, such disputes should be solved by means of mediation, with the participation of a family court that would defend the interests of a child. According to the existing legislation, a court must suggest mediation but, as regards family courts, a family court’s opinion is necessary, but it is not required that their official attends court hearings. Practice shows that legislation does not always achieve its aim. Divorce, which quite often implies conflicts between parents, causes an adverse impact on the impartiality of hearings regarding the right of access. Mediation would help understand the causes of a dispute, while a family court’s official would deliver an outside view and defend the child’s interests effectively. Consequently, it would be necessary to amend the existing legislation and define mediation as a mandatory phase of the pre-trial dispute settlement procedure requiring the participation of a family court’s official in the proceedings. This conclusion is consistent with the opinion expressed by legal scholars that a child has turned from a person to be cared for and protected into a right-holder [2]; therefore, the involvement of a child and any adult right-holder in the exercise of their rights is equally fully-fledged. It is clear that, depending on age and social maturity, children are not able to carry out procedural actions independently, and guardians of a child are persons who perform specific procedural actions required for the protection of the child’s rights on behalf and in lieu of the child. This duty is a sort of “representation by legal nature” for guardians of the child [3]. It is established in the case-law that, although a child exercises the right of access independently, the child may need the other parent’s assistance, with no obstacles put to exercising this right [4]. Guardians in their capacity as child’s representatives must act for the child with the utmost care. It should therefore be concluded that the essence of the institution of representation consolidates the parents’ duties laid down in family law.

However, the dual nature of the right of access, namely the right of a child to contact and a parent’s duty to ensure such contact, should always be borne in mind. There can be no right of access, unless both these components are present simultaneously. A child must be willing to see his/her parent. For obvious reasons, legislation cannot deal with a situation when a child does not want to exercise his/her right of access. In this case, the child is considered to have waived this right voluntarily. It should be emphasised that parent’s refusal to see the child cannot be treated equally. For parents, access is a duty rather than a right. Parents may not waive their duty to maintain contact with their child. The legislator, however, has not introduced any responsibility for failure to fulfil this duty. It is questionable whether

any legal responsibility can be provided in the case of a duty requiring extremely personal involvement. Punishment for breach of legal duties is what makes legislation different from other types of social regulation (for example, moral standards). The author considers that legal responsibility of a parent should be introduced for refusal to exercise the right of access. The solution of this matter can be twofold. Apart from the above, competent authorities already have legal tools available for penalising parents, namely, in situations when communication is ordered by a court ruling, a parent who fails to comply with the court ruling and maintain contact with the child will be prosecuted. Article 168 of the Criminal Law lays down criminal liability for failure to comply with a court ruling regarding the right of access to the child, where a criminal offence has the following objective indicators: evasion of compliance with a court ruling, failure to comply with or delaying the execution of a court ruling in bad faith [5]. The objective aspect covers all possible forms of failure to comply with a ruling. Such criminal offences are punishable by temporary imprisonment, or community service, or a monetary fine. Punishment is adequate and serious enough. The author has analysed the Latvian case-law and established that no person has ever been prosecuted according to this article of the Criminal Law. This raises the question of whether the right of access is exercised effectively and parents do not evade their duty or law is not applied in situations when parents fail to fulfil their duty of access and, accordingly, a court ruling. Available information suggests that there are problems with the execution of court rulings. For example, 1,163 civil cases dealing with the right of access were heard in Latvia in 2018 [6]. Based on an analysis of statistical data in conjunction with publicly available information, it can be assumed that the respective provisions of the Criminal Law are not applied effectively. Considering that criminal proceedings are normally initiated on the basis of a statement lodged by a party concerned, it should be concluded that parties involved in the protection of the rights of children do not fulfil their duties properly. This mainly refers to parents providing day-to-day care of their children, whose duty would be to facilitate compliance with court rulings, including criminal prosecution of parents breaching the duty of access. Meanwhile, a family court should control parents and interfere in situations when they do not respond. From this viewpoint, cooperation between parents ensuring day-to-day care of their children and family courts should be improved.

The right of access is absolute. It means that a right-holder may not be deprived of this right; however, the right of access may be restricted or suspended temporarily under certain circumstances. This is due to the absolute nature of the right of access. Temporary suspension of access should not be regarded as a sort of punishment of parents. Its legal aim is to restrict any contacts between a child and child's parents that have become harmful to the child for a certain period of time during which the parents may eliminate violations and improve their behaviour. It should be emphasised that, in fact, the restriction of the right of access is a process, which should be divided into the following three phases: assessment of circumstances that have led to the suspension of access, assistance to parents in the elimination of such circumstances and, finally, evaluation of the achieved result, namely whether the parents have rectified the deficiencies. Circumstances are assessed by a family court and a psychologist invited by them, whose opinions are relied on by a court. The legislator has not defined the duration of such restriction or suspension. An analysis of legislation demonstrates that the right of access may be restricted or suspended on the grounds that access affects a child's interests. Circumstances should be assessed only from the standpoint of a child's best interests. Disputes over the right of access are normally referred to courts, and that is why the goal of a court is to identify relevant circumstances, i.e. whether access is detrimental to a child's interests and should therefore be restricted or suspended, and determine the duration of such restriction or suspension. Circumstances leading to the suspension or restriction of the right of access must substantially affect a child's interests and

be supported by relevant evidence. Impairment of a child's interests can have both a legal and emotional or ethical nature. A child's interests can be adversely affected by communication with a parent who is striving to set the child against the other parent or encouraging the child, by either words or conduct, to act contrary to generally accepted behavioural rules (for example, not to go to school, use foul language) or commit administrative offences (for example, to beg, drink alcohol or use drugs); there is no doubt that parent violence, both emotional and physical, is harmful to the child's interests. We should agree with the opinion expressed in the case-law that violence against a child is a circumstance giving grounds for the restriction or suspension of access.

A parent's subjective interpretation or suspicions cannot be accepted as sufficient because it cannot be excluded that the parent is driven by personal negative relations with the other parent. In order to be in a position to rule on the restriction of the right of access, a court needs strong evidence that a parent has acted contrary to a child's interests. In addition to general evidence that can be normally accepted for civil proceedings, such as witness statements, pleadings of parties or material evidence, there exist two significant kinds of means of evidence for cases concerning the right of access: a child's statements and a psychologist's opinion. When necessary, reports on psychological examination can also be accepted as evidence. It is set forth in Article 13(3) of the Law of the Republic of Latvia on the Protection of Children's Rights that a child may express his/her opinion about any matters affecting the child, and the child's opinion must be given proper attention, considering the age and maturity of the child [7]. Any ruling that is contrary to the opinion of a child must be explained by a court.

When deciding on the restriction or suspension of the right of access, a court must determine the duration of such restriction or suspension. In accordance with Article 1495 of the Civil Law [8], duration can be specified as a certain period in months or years. Nevertheless, it should be acknowledged that duration defined as a certain period is not relevant for the right of access because this right can be restored as soon as circumstances that gave rise to the restriction or suspension of the right concerned no longer apply rather than upon expiry of the set duration. A psychologist, family court and the child concerned can be involved to establish these circumstances. Accordingly, the restoration of the right of access depends on whether special conditions are met. For instance, the Supreme Court of the Republic of Latvia has held that it can be difficult to enforce a judgment by which the right of access is suspended for three years provided that it can be restored in situations where, based on a psychologist's opinion, access will not be detrimental to the child's safety and health [9]. Therefore, the restoration of the right of access should be linked with a certain condition, which is the time when circumstances that gave rise to the restriction or suspension of access cease to exist. It should, however, be noted that the wording "when circumstances that gave rise to the restriction of access cease to exist", which does not refer to any specific timeframe, is too general and may unjustifiably affect the rights of both a child and a parent. It is indeed an open question who would be entitled to seek revision of the restriction imposed. How often may it be sought? While accepting the aforementioned conclusion of the court that duration based on a pre-requisite that the restoration of access will no longer be harmful to a child can hardly be defined because, to some extent, this wording is contradictory, the author still considers that special regulation is necessary. This means that legislation could define frequency of the revision of circumstances that gave rise to the restriction of access. Similar provisions have been introduced for the restriction of the capacity to act. The second paragraph of Article 364¹ of the Civil Law lays down that a court judgment regarding the restriction of the capacity to act may be reviewed at any time but not less than once every seven years from the date that the judgment has become final [1]. Certainly, a seven-year period is too long for cases dealing with the right of access because a child would become

adult over this time. In this case, a period of two years would be reasonable. Therefore, a court would check whether circumstances that gave rise to the restriction of access have ceased to exist on its own initiative once every two years.

The next step is assistance to parents provided by the state. Children are interested in restoring contact with their parents, and it is the state's job to help parents improve their behaviour and correct errors they have made in communication with children. The state should formulate a clear programme of how customised assistance could be provided to parents whose right of access has been restricted or suspended by a court. It is a state's duty because the state has assumed responsibility for safeguarding the interests of children. The state is not active enough in this respect. Such a programme should incorporate mandatory state-sponsored psychological assistance, social workers' support, involvement of employment officials, namely the assistance of specialists who would be able to both identify deficiencies and provide practical advice for the rectification of erroneous behaviour, which, as a rule, takes the form of alcohol abuse, fits of rage and hatred, unemployment or lack of understanding about a child's needs. At present, parents are those who solve these matters. If parents are motivated, state's assistance can be provided, but it is only possible in situations when parents are really motivated. Meanwhile, parents who lack motivation, who do not understand why their right of access has been suspended and do not want to change their behaviour remain in the grey area. State support cannot reach these people. Cooperation and feedback among courts and municipalities are necessary for improving the existing situation. Court rulings restricting the right of access should be included in a unified register and communicated to competent municipalities, who would organise assistance for parents whose right of access has been restricted or suspended. Systemic support activities would be organised owing to these efforts. The involvement of a parent in support activities and the progress achieved would also help evaluate whether grounds for the suspension of access have ceased to exist. It is also important that decisions on the restoration of the right of access would be much more objective and require less time. Parent information would be dynamic, covering a longer period of time.

Certainly, the question remains how parents who lack motivation could be forced to take part in support activities because it can be assumed that a parent lacking self-motivation will not be willing to participate in mandatory activities voluntarily. Legislation should provide for a relevant enforcement mechanism. Interference with private rights of a child's parents is permissible for the sake of protection of the child's interests. Similar provisions have been adopted with respect to child support defaulters, whose car and boat driving licences can be suspended, except for situations when the parent is disabled or unfit for work over a long period of time, or suspension may considerably harm the child's interests (for example, a parent needs this special licence for the performance of his/her professional duties). This is provided by Article 7 of the Maintenance Guarantee Fund Law [10]. Analogous provisions could be introduced with regard to parents refusing to participate in support programmes with the aim of restoring effective communication. A child's rights to maintenance and contact are equally important; accordingly, there is no reason to consider that the adoption of a law with respect to a certain right (the right of access) in addition to that dealing with the other right would lead to excessive restriction of parents' rights.

The right of access is not identical to, but should be linked with, the right of custody. The right of access is a component of the right of custody. Custody has a broader scope than access. It should be noted, however, that the right of access can be viewed as an independent legal institution, which has a theoretical link with custody.

Deprivation of the right of custody per se does not affect the right of access. A parent having no right of custody will still have the right of access. Practice has shown, however, that

actions are quite often brought for the deprivation of the right of custody and the restriction of the right of access simultaneously. This is because one of parents is confident that any contact with the other parent with whom the child does not usually reside may produce an adverse effect on the child. This concern is well-founded in certain cases but this cannot be a priori sufficient to give rise to the presumption that the parent who does not ensure day-to-day custody is not able to maintain effective communication. Deprivation of the right of custody means that a parent with whom the child does not usually reside will have no right to decide on the child's daily needs and will be released from childcare responsibilities. This, however, should not affect communication between the child and the parent and their leisure time together. In some cases, a parent may be deprived of the right of custody for objective reasons, for example, because the parent is living far away from the child, and not because the parent is unable to exercise custody or has some negative traits. Therefore, there is no reason to believe that a parent whose right of custody has been withdrawn is ipso facto unable to maintain contact or has bad traits that would prevent effective communication and affect the child's interests.

The right of custody may be withdrawn in the following two cases: based on a request of either the other parent or an institution that is responsible for the protection of a child's rights, i.e., a family court. Where the deprivation of the right of custody is sought by the other parent, the case is normally handled in a single set of proceedings and the action brought concerns access frequency and procedure. Actions brought for the withdrawal of the right of custody by family courts normally deal with both the restriction of the right of access and placing a child in a care institution because family courts are involved in serious cases, where the lowest possible point has been reached with respect to the safeguarding of a child's interests, namely in situations where the parents of the child are unable to ensure the child's rights or even abuse them, and it is therefore understandable why the suspension of the right of access is sought apart from the withdrawal of the right of custody. This situation is rather ambiguous. The author believes that the restriction of access should be used as a last resort.

As a result of being placed in an extra familial care institution subject to restricted access, the child feels estranged from his/her parents, while the parents are less motivated to restore their right of custody. Placing a child in an extra-familial care institution may lead to a situation when the right of access cannot be exercised physically. The existing legislation does not promote the exercise of the right of access in such situations because no law requires that a child be placed in an extra-familial care institution that is nearer to the parents' home. The state must promote meetings between children and their parents. Researcher A. Haružka has also noted that the European Court of Human Rights has recognised in a judgment delivered on 26 February 2002 in Case 46544/99 *Kutzner v. Germany* that "the fact that a child could be placed in a more beneficial environment for his or her upbringing will not on its own justify a compulsory measure of removal from the care of the biological parents; there must exist other circumstances pointing to the "necessity" for such an interference with the parents' right to enjoy a family life with their child." [11]. It is clearly indicated that a child must be brought closer to his/her parents.

Wherever the right of access is exercised, it is important to define how a child's right of access can be secured in the most effective way, and it is essential to understand the legal scope of the right of access. What falls within that scope, what specific actions are provided and what their frequency is. Practice demonstrates that access frequency and procedure may be different: at weekends, during school holidays or daily. This mainly depends on the physical possibilities of parents, such as distance, financial situation, etc. It cannot be clearly concluded that daily visits would be more useful than spending time with the other parent at weekends. It should be stressed, however, that the absence of even minimal access should be

viewed negatively. The author believes that guidelines that would define the basic principles of access should be formulated. For example, the legislation dealing with minimum child support has evolved analogously, from general rules whereby parents merely had to pay child maintenance depending on their possibilities and financial situation through to the specific minimum child support payment to be made regardless of the relevant parent's possibilities and financial situation. Minimum access and minimum time to be spent with a child could be defined in a similar manner. It should be stressed that access is a two-way right, where a child has a right, while parents have both a duty and right to maintain personal relationships and direct contact with their child. Both prerequisites must be met simultaneously for the effective exercise of the right: both parents and the child must be willing to establish and maintain direct contact.

According to scientific literature, removed choices become diktat and rights are abused when interpreted too literally and forced upon people. The interpretation affecting children should be selected appropriately because children have insufficient control over their lives, which makes them susceptible to being controlled by over-interpretation [12]. Hence, it is important to establish whether a child really wishes to maintain contacts with a parent with whom the child does not live permanently and take into account the frequency and time of access desired by the child and expected activities during the time they spend together.

Legislation dealing with the right of access has been left open by the legislator. Imperatively, legislation provides for the duty and specifies persons covered by this right, such as parents, siblings, grandparents and other persons with whom the child has lived in a common household for a long time provided it is in the best interests of the child. This could be defined as a quantitative component, but the qualitative component of access, which is the frequency and quality of contacts, is just as important. Practice shows that there are hardly any disputes over the right of access within families. This is evidence that communication with grandparents, siblings and other family members is less important, namely: access to these persons is not considered individually, it is assumed when deciding on contact with a divorced parent that communication with that parent's relatives is guaranteed by default. This, however, should not be regarded as self-evident, considering the interests of a child. The right of access with respect to persons with whom the child has lived in a common household is just as important as communication with a parent; therefore, family courts should carry out both awareness-raising and control activities.

Without protecting the right of access to the fullest extent possible, the right of access is just formalism; accordingly, the safeguarding of children's rights is formal. As regards the right of access, A. Vorobjovs, professor says that any interaction between people can be called access. Means of communication include facial expressions, gestures, actions, words, results of actions [13]. It is concluded that the right of access presumes active cooperation of persons involved over a certain period of time, which includes personal presence, exchange of thoughts, talks and expression of emotions. It should be emphasised that in today's world remote access can also be implemented in the electronic environment, by using modern technologies. This, however, is surrogate access, which is not a substitute for direct physical contact.

Remote communication cannot be regarded as due access. This conclusion is also indirectly confirmed by legislation, namely Article 2(10) of the Brussels Ibis Regulation provides for a special right to take a child to a place other than his or her habitual residence in order to ensure direct contact [14]. Parents seeking to agree on the exercise of the right of access or bring an action must specify the time and place of access. It follows from both the essence of the right of access and Article 244² of the Civil Procedure Law [15]. The frequency and duration of access should be defined on an individual basis. It should be borne

in mind, however, that a child's opinion must be taken into consideration when deciding not only on the establishment of access but also on the procedure of access, with child's interests being paramount in this respect. The author shares the opinion of Associate Professor John Tobin that sometimes children lack the ability to exercise their rights but a child's rights are his/her interests rather than the ability to exercise them [16].

The frequency of communication, which should be regular, also in the form of contact, embodies the substantive nature of the right of access. Regularity means that access must be regular and take place in certain periods of time. This is associated with the nature of access, which is to ensure dynamic information about a child and allow participation of a divorced parent throughout all stages of child's development, while the child would enjoy parent's attention based on the needs that are relevant for a child of a certain age.

It also means the right of a child to see persons with whom the child has lived in a common household because any of these persons (siblings, grandparents) are able to produce a different, but no less significant, impact on the development of the child. It should be concluded that the right of access ensures an educational effect, facilitating various qualities of a child, such as empathy, warm-heartedness and understanding of the family as a value.

2 Results

The right of access is a complicated legal institution. The right of access cannot be viewed only from the standpoint of law as it comprises psychological and emotional aspects because of which enforcement is not possible. Both children and their parents have inalienable rights to build and maintain direct contact with each other. Practice shows that it is mostly parents who do not want or are unable to ensure contact with children with whom they do not usually reside. It is also acknowledged that it is a parent's duty to ensure communication when the parent is not willing to do so. Meanwhile, a child is free to choose whether contact with a parent will be maintained, it is a child's right. This is because the rights of children have priority over those of parents as special attitude is guaranteed for children, considering that they are special right-holders.

As a result of the research, the author has arrived at the following:

- 1) the right of access should be exercised solely in the interests of the child;
- 2) the right of access is an absolute right, which should be used regardless of whether parents have custody of the child;
- 3) the right of access is not part of the right of custody;
- 4) there is a lack of legal instruments that would prevent the use of the right of access contrary to its goal;
- 5) the state has no tool available that would ensure systemic parent support aimed at removing obstacles that led to the restriction or suspension of access.

3 Conclusions

The right of access exercised by parents neglecting the best interests of their child, when the child is used merely as a tool to settle their mutual relationships, is a major concern.

As regards existing disputes, it is more likely that a decision on the exercise of the right of access might not fully meet the best interests of the child. The improvement of the existing legal framework must be focused more on laws that would eliminate the sources of disputes.

It should be borne in mind that the right of access is an independent legal institution governing legal relationships between parents and children in the building and maintenance

of their direct contact. The state has a duty to ensure the respect of this right in the event of non-compliance for objective or subjective reasons. A child as a special right-holder has priority status in these legal relationships. Measures associated with the right of access can be qualified as ensuring access, the restriction or temporary suspension of access, the removal of obstacles that led to the restriction or suspension of access, the restoration of access. Officials involved in these stages should respect the interests of children, and their decisions should be in line with these interests. It should be borne in mind that, in fact, parents do not have their own interests in legal relationships as their interests arise from and are subordinate to the interests of children. Therefore, a policy pursued by the state in this respect should support parents, meanwhile safeguarding the interests of children in order to respect their rights.

4 Proposals

The legal framework dealing with access will definitely evolve. The first issue would be that parents should be encouraged to fulfil their duty to ensure access. Both motivational and enforcement mechanisms should be used, which would allow for the selection of the most appropriate tool depending on specific circumstances based on a parent's behaviour and the extent of the parent's motivation and involvement. In some situations, a parent who is striving to improve behaviour and restore contact with a child but is unable to do so due to external circumstances needs only motivational support. If a parent maliciously evades his/her responsibilities, enforcement or punishment is necessary.

The state has various social support tools available, such as extra benefits, development of leisure facilities, etc. It is essential to introduce a requirement that, if necessary, a child be placed in an extra-familial care institution that is nearer to the parents' home. This would facilitate communication between parents and their children, and it would be easier to implement this requirement.

The second issue to be considered by the legislator would be the introduction of adverse consequences for parents avoiding the fulfilment of their duty to provide access. Considering that administrative penalties would not be directly applicable in this case, other solutions must be found. A child as a right-holder requiring special protection has a right to state's interference with private relationships, namely parent-child relationships; therefore, proper legislation is permissible.

But, before introducing any punishment mechanisms, the state should formulate and implement a support policy, whereby the assistance of psychologists, social workers and employment officials would be provided for parents. Parents may be held responsible for their non-compliance with support activities only in the presence of due support.

The interruption of the right of access should be as short as possible. An emotional bond can be lost, and, as a result, the longer the interruption period, the harder the restoration of contact. Therefore, activities of a preventive nature should rather be facilitated. As regards the divorce of parents with minor children, a family court should be involved during the divorce process. The role of a family court would be to promote mediation, also if parents have voluntarily agreed on their divorce and all related matters, such as child maintenance, right of access and custody. Divorcing without conflict is not a guarantee that there will be no dispute over the right of access. Mediation is a means of identifying the cause of a dispute and preventing any controversies at their source.

The legal framework governing access has both the potential and need for development. It should be admitted that the existing legislation is rather declaratory. The state has defined that the right of access is an inalienable right of children, while the subsequent implementation of this right is left freely to the discretion of parties concerned. The above means that it

is parents who must ensure contact. Given that the protection of children's rights is a state priority, greater involvement of the state would be necessary for the solution of these matters. The author believes that the involvement of the state might take the form of legislation that would support parents and help them to overcome problems that led to the restriction or suspension of access or, as regards parents who lack motivation and do not want to cooperate, introduce adverse legal consequences. Within the frame of this process, a family court should be an authority representing a child and safeguarding the child's interests apart from a natural guardian. Only complex solutions involving parents, state and municipal officials and, certainly, children will bring the best result for the assurance of the right of access.

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