AMERICAN UNIVERSITY OF ARMENIA

DEPARTMENT OF LAW

MASTER'S THESIS

ON

"TERMINATION OF PARENTAL RIGHTS"

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TABLE OF CONTENTS

INTRODUCTION

Termination of parental rights legally stops any relationship between parent and child; it ends all the rights and obligations that a parent has towards the child and is usually described as "civil death penalty" and "family law equivalent of the death penalty in a criminal case".[1] In Armenia the link between the parent and the child can be destroyed only by court decision, and will be done in exceptional cases when being left with the parents/parent is harmful for the child's physical or psychological development.

The purpose of this study is to find out what is the legal basis in Armenia upon which the relationship between child and parents can be terminated. The RA Laws and UN Convention on the Rights of Children are going to be discussed here. For a more comprehensive study, the comparative analysis between Armenian legal practice and international practice will be done. Finally, recommendations and suggestions regarding the possible improvement of national legislation will be revealed.

PRIVATE INTERESTS

In the core concept of family one of the essential aspects is the child-parent relationship. On one side there is a parent with his/her rights and obligations towards the child and on the other side is the child with his or her rights. According to the law, and also unwritten moral norms, the rights and obligations of the parents should not be in a conflict with the rights of the child; and, ideally, parent's rights and obligations should be cohesive with the child's rights. This is the key notion of the "family" as an independent institute on which the whole society is built.

[1] http://www.ipt-forensics.com/journal/volume10/j10_10_19.htm

However sometimes parents and children appear on different sides of barricades. Usually it occurs when there is a conflict of interests, namely if there is a misunderstanding or misinterpretation of parental rights and obligations, which can lead to the abuse of the parental rights which automatically means the violation of the child's rights.

Termination of parental rights is a legal process when both or one parent's rights can be relinquished. In these proceedings the child is always the one whose interests are defended and usually the court will decide the case taking into consideration the "best interests of the child". Proceedings for terminating ones parental rights can be initiated by one of the parents against another parent or by the department of custody and guardianship which is attached to the municipality of each district against one or both parents. Notwithstanding who is the petitioner, the "best interests of the child" are of paramount consideration. (See Appendix II for contact information of Yerevan city municipalities.)

ARMENIAN LEGAL FRAMEWORK

In the framework of Armenian legislation child-parent relationships are regulated by the RA Constitution, RA Family Code, RA Law on Child's Rights and the UN Convention on the Rights of Children. Armenia has ratified the Convention on the Rights of the Child (CRC) in 1993 which places special emphasis on the need for legal protection of the child and the role of the family in realization of its provisions.

The concept of family protection is stipulated in the RA Constitution by the following provisions; Article 48 states that one of the "basic tasks of the State" is to protect the family, motherhood and childhood. The Constitution also gives the rights and puts the obligations on the parents to take care of the education, health and development of their children. Additionally the RA Constitution states that no one shall be deprived from his/her parental rights, unless by the decision of the court in the procedure prescribed by the law (Article 36).

More specifically the parents' rights and obligations towards their children and children's rights in general are described in the RA Family Code (entered into force on 19 April 2005). The basis for relinquishing parental custody is directly stipulated in the RA Family Code (Chapter 11). Articles 59 – 61 describe when and how the parental rights can be terminated and what the consequences of termination of parental rights are.

According to Article 59 of Family Code, parents, or one of them, can be deprived of parental rights if they:

a) Violate the realization of their parental obligations, particularly, paying alimony;
b) Without justifiable reason refuse to take the child from the maternity house or other medical institutions, as well as from rearing, population social protection and other organizations;
c) Abuse their parental rights; in particular, make negative impact on the children by their immoral behavior;
d) Treat the children cruelly, in particular, exercise physical or mental violence towards them, infringe their sexual inviolability;
e) Suffer from chronic drug, alcohol or toxic addiction;
f) Committed intended crime against their children.

The deprivation of parental rights is realized by judicial procedure and can be considered on the basis of application by one of the parents (legal representatives), as well as the departments of custody and guardianship or organizations of orphans (Family Code Article 60). The consequences of deprivation of parental rights are stipulated in Article 61 of the Family Code, which states that "the parent deprived from his/her parental rights loses all legal rights towards the child". It means that the parent loses his right to get living means from the child in the future; and, at the same time, he/she loses the privileges and state allowances that the citizens with children have. However it is important to mention, that the parents/parent whose parental rights have been terminated are/is not exempt from the obligation to care for his/her child's living expenses. On the other hand, in the case of termination of parental rights of one parent or both, the child keeps the right to ownership, particularly the right of inheritance of the property which belongs to the parent/parents. In the cases

when both parents are deprived of their parental rights or it is impossible for the child to live with the other parent (in the cases when only one parent's rights were terminated) the child will be placed under the care of the department of guardianship and custody. The adoption of the child whose parents were deprived of their parental rights is possible not earlier than six months after the court decision entered into force. (For RA Family Code, chapter 11 see Appendix I)

CASE STUDY

Cases on termination of parental rights are exceptional ones in the court practice in Armenia. According to the figures presented by the Court's Statistical Department from 2002 to 2006, inclusive, there were thirteen cases about termination of parental rights in different courts of Armenia.

In six of the thirteen cases mentioned, the plaintiff won the law suit, whereas only in two cases the claims were denied. Two cases were dismissed, because the plaintiff had taken back the claim. The next three cases were not examined as the claimant did not appear before the court even though he/she had been properly informed about the place and the date of the court hearing.

1. In *Martirosyan vs. Grigoryan* the plaintiff insisted that the father of her two children did not fulfill his parental obligations, did not care for the financial needs of children and refused to pay the alimony prescribed by the court decision in 1992. Additionally Martirosyan informed that her ex husband suffered from serious psychological disease and chronic alcohol and drug addiction. Plaintiff's statements about alcohol and drug addiction were affirmed after examination of documents given by the Republican Addiction Clinic stating that the defender was treated by the "Torpedo" anti-alcohol medication. In its judgment the first instance court of Malatia – Sebastia district affirmed that the claim satisfies points *a* and *e* of Article 59 of the RA Family Code and Grigoryan's parental rights were terminated.

2. In *Achapniak District vs. Davoyan,* action was brought based on the written application of citizen of Russian Federation Agaeva asking to terminate the parental rights of Davoyan. Davoyan, a single parent, is Agaeva's daughter who left her four month old son with her mother in 2000. The child was sick and needed medical treatment, but the mother was indifferent about the well-being of her child for already four years, explaining her attitude by being unemployed and not having the means to care for the needs of her child. Davoyan was properly informed about the place and the date of the court hearing but refused to appear before the court saying that she had no compliant about the claim and asked to hear the case without her. The Achapniak and Davitashen district's first instance court decided that the claim should be satisfied based on Articles 59 and 60 of RA Family Code and Davoyan's parental rights were terminated.
3. In *Mkhitaryan and the Department of Custody and Guardianship of Achapniak District vs. Hermqkuntod* the father of the child was asking to terminate the parental rights of his ex de facto wife Hermqkuntod, citizen of Thailand. In 2002 the mother left her nine month old daughter with the father and grandparents and went to Moscow. After six months, during a telephone conversation she informed Mkhitaryan that she had found new love and did not want to be disturbed by him. Regarding the child, Hermqkuntod said that she left the daughter as a "gift" for Mkhitaryan as she did not want to have a child of a different nationality. Mkhitaryan also informed the court that the child needs medical treatment which is available abroad but because the mother's whereabouts are unknown the father can't obtain her permission to take the child to the foreign countries' hospitals. The representative of the Department of Custody and Guardianship of Achapniak District Aslanyan supported the claim stating that according to their examination of the case it became clear that the child had been reared only by the father and for already four years there was no information about the mother. The Achapniak and Davitashen District's first

instance court decided that the claim satisfies the requirements of the Articles 49-51, 59 and 68 of RA Family Code. Hermqkuntod was deprived of her parental rights.

4. In *Minasyan vs. Asatryan* the mother of the child asked the court to terminate the parental rights of Asatryan, as he did not fulfill his parental obligations for already two years. In 2006 when the case was in court Asatryan lived in the Czech Republic and was not interested in the living conditions of his child, nor care for the child's financial needs. After examining the facts of the case, the first instance court of Armavir Mars decided that the claim is well-founded and should be satisfied based on Articles 59 a, 60 and 61 of RA Family Code. Asatryan was deprived of his parental rights.
5. In *Harutyunyan vs. Khazaryan* the facts were as follows: a child was born to an unmarried couple, the father acknowledged paternity, but when the relationship ended the mother asked for support and the father denied paternity saying he had no interest in the welfare of the child Moreover during the previous court hearing about the alimony Khazaryan declared that he is not the father of the child. Being properly informed about the place and the date of the court hearing the defendant failed to appear before the court and did not perform any explanation. The first instance court of Arabkir and Kanaker – Zeitun districts decided that Harutynyan's claim is baseless because she failed to present facts supporting her claim and therefore the claim should be denied. It is worth to mention that during this court hearing the department of custody and guardianship was not represented, even though Article 60 (2) of RA Family Code states that "The cases on deprivation of parental rights are considered with obligatory presence of the departments of custody and guardianship".
6. In *Asatryan vs. Gevorgyan* the plaintiff stated that the father of her two children failed to pay the alimony of 20000 AMD per month for each child decided by the court in 2005 and did not participate in the process of rearing their children. The defendant argued against the claim stating that Asatryan did not allow him to communicate with his children, but he

managed somehow to meet with the children, moreover their son periodically lived with Gevorgyan and he cared for the child's needs. Gevorgyan accepted that he did not pay the alimony, but he insisted that from time to time he performed some financial assistance to the mother of his children. Gevorgyan also brought the counter claim demanding custody over the son and established meeting schedule with his daughter. After examining all the facts and testimonies of the case the first instance court of the Malatia – Sebastia district held that Asatryan's claim about the termination of Gevorgyan's parental rights was groundless and did not correspond with the requirements of the Article 59 of RA Family Code and should be denied. The counter claim of Gevorgyan was satisfied partly. Gevorgyan's requirement about the custody over the son was denied, but his requirement to have scheduled meetings with the daughter was satisfied.

STEP-BY-STEP DESCRIPTION OF THE TRANSACTION

The procedure of termination of parental rights' is regulated by the Article 60 of RA Family Code, which states that the deprivation of parental rights is realized only by judicial procedure and can be considered on the basis of application by one of the parents (legal representative), as well as the departments of custody and guardianship, organizations of orphans and other organizations "who bear the obligations of the protection of the rights of children".

If the applicant is one of the parents, as in the cases N 1,3,4,5 and 6 described in the previous section, the following documents should be presented to the court:

- The application (regulated by RA Civil Procedural Code, Articles 87-88, see Appendix III). Though not stipulated by law, the original application should be presented along with two copies.
- The copy of the child's birth certificate

- The copy of the marriage certificate or divorce certificate or document certifying the fatherhood (if the parents had not been married, but the father had accepted his fatherhood over the child)
- Other documents given by the authorized bodies proving the presence of one or more reasons described in Article 59 of RA Family Code (like the document given by the Republican Addiction Clinic in the case N 1).
- Other documents the applicant believe might be supportive to the application (e.g. testimony of witnesses)
- State fee ticket (4000 AMD)

As soon as the court receives the application it will inform the department of custody and guardianship of that particular district, as according to the law any court hearing about the termination of parental rights should be held with the mandatory presence and participation of the mentioned department (Article 60(2) RA Family Code).After getting the copy of the application the department of custody and guardianship will form the committee consisting of at least three people (usually they are lawyers, pedagogues, psychologists) who will conduct their individual investigation and will try to find out whether the facts indicated in the application correspond with reality. During the court hearing the department will represent its conclusion about the dispute which is persuasive for the court.

When the applicant is the department of custody and guardianship itself (case N 2) the conclusion of the committee should be attached to the application, along with the documents related to the parents of the child (documents indicating whereabouts of the parent/parents), child's birth certificate and other documents proving the legality of the application. In practice close relatives of the child or neighbors inform the department of custody and guardianship about the violation of the child's rights by the parents, as in case N 2 it was the grandmother of the child who asked to terminate the mother's parental rights.

In any case related to the termination of parental rights the court will take into consideration the "best interest of the child" while deciding to satisfy or deny the application. The role of the department of custody and guardianship is crucial in this matter. During interviews with the representatives of departments of custody and guardianship of different districts of Yerevan, the common thing that all of them indicated is that the cases on termination of parental rights are considered to be among the hardest ones, because there are so many nuances that the court should consider before deciding to deprive someone of his/her parental rights.

After deciding to terminate ones parental rights the court should send an extract of the verdict to the State Civic Status Registration Department of the child's birth place within three days after the entry into force of the court decision (Article 60 (4) RA Family Code).

In order to find out what possible obstacles there can be while bringing a claim to the court, an attempt was made to simulate a "sample" transaction. In the first instance court of Arabkir and Kanaker-Zeityun districts the clerk was unwilling to answer any questions, even without knowing the question, which was "what documents should be attached to the application?" After several attempts, the following dialog ensued:

"We are not answering the questions here. Go and hire an attorney" she said.

"I can not afford myself to hire an attorney." I answered.

"Then try to find free legal assistance or go to the Human Rights Defender's office. No one in the court can answer your question."

The example shows that a citizen with lack of legal knowledge and lack of financial means (for hiring an attorney) will face difficulties from the very first step of bringing a case to the court. Going to the Human Rights Defender's office will be useless in this case, because they are not dealing with these kind of issues and if hiring an attorney is not affordable (approximately it will cost $ 500) the only option is the free legal assistance. (See Appendix II for contact information)

INTERNATIONAL BEST PRACTICE

The legal basis and procedures of the termination of parental rights in *Moldova*, *Kazakhstan*, *Tajikistan* (post-soviet countries), *Croatia*, *Iceland* and two sates of USA: *South Carolina* and *New Mexico* are going to be discussed in this section.

In **Moldova**[2], **Kazakhstan**[3] and **Tajikistan**[4] the basis and procedure for terminating the parental rights are very similar to each other and to the legal framework of Armenia, although there are several differences. In all the mentioned countries the parental rights of one or both parents can be terminated if a) the parent/parents violate the realization of parental obligations, refuse to pay alimony; b) refuse to take the child from the maternity house or other medical institution without having justifiable reason; c) abuse their parental rights; d) treat children cruelly (exercise physical or mental violence, infringe sexual inviolability of the child ; e) suffer from chronic drug and alcohol addiction (in Kazakhstan toxic addiction is also included in this point); f) committed intended crime against the health and life of their children or spouse. Here is the main difference with the Armenian legislation, as Article 59 (f) of RA Family Code talks only about the intended crime against the children. Article 67 of Family Code of Moldova has additional point stating that the rights of the parent/parents can be deprived also in other circumstances if it is within the scope of "best interest of the child".

The procedure of deprivation of parental rights in these three countries also is very similar. According to the Article 68 of Family Code of Moldova, Article 68 of the Law on Marriage and Family of Kazakhstan and Article 70 of the Family Code of Tajikistan deprivation of parental rights is realized only by judicial procedure. The cases on termination of parental rights are considered on the basis of application by one of the parents (in Kazakhstan and Tajikistan the application can be submitted also by the person replacing the parent, in Moldova – by the guardian of the child); as

[2] Family Code of Moldova, Art. 67 (2000)
[3] Law on Marriage and Family of Kazakhstan, Art. 67 (1998)
[4] Family Code of Tajikistan, Art. 69

well as the Departments of Custody and Guardianship and Prosecutor. In Kazakhstan and Tajikistan the cases on deprivation of parental rights are considered with obligatory presence of the Departments of Custody and Guardianship and Prosecutor, whereas in Moldova the presence of the Prosecutor is not required.

In **Croatia**[5] the parental rights can be terminated according to Article 114 of the Family Law (2003). In Croatia the court will deprive the parent from his/her rights if the parent abuses or grossly violates parental responsibilities, duties and rights. (Art. 114 / 1). A parent is deemed to abuse or grossly violate parental responsibilities, duties and rights if he or she: a) exerts physical or mental violence on the child; b) takes sexual advantage of the child; c) exploits the child by forcing it to work too hard or to do work that is not appropriate to its age; d) allows the child to consume alcohol, drugs or other narcotic substances; e) encourages the child in socially unacceptable behavior; f) has abandoned the child; g) does not care for a child with which he or she has not lived for more than three months; h) in the period of one year does not create conditions for life together with the child with which he or she does not live without having any particularly good reason for this; i) does not care for the basic necessities of life of a child with which he or she lives or does not adhere to the measures that have been previously imposed by a competent body for the sake of the protection of the rights and well-being of the child; j) in some other way grossly abuses the rights of the child. (Art. 114 / 2). The procedure for deprivation of parental rights should be instituted by the welfare center as soon as it learns about the circumstances described above. The other parent, the child itself and the court can also file the application. (Art. 114 / 3).

The parent/parents in **Iceland**[6] can be deprived of their parental rights upon the application of the Child Protection Committee, which is operated by the municipalities and should consist of five people. (Articles 10 and 11 of Child Protection Act no. 80/2002). The Committee shall “take court action to deprive a parent or parents of custody if the committee believes: a) that daily care,

[5] Croatia Family Law, Art. 114 (2003)
[6] Iceland Child Protection Act, Art. 10-11 (2002)

upbringing or relations between parents and children are grossly defective, taking account of the age and maturity of the child; b) that an ill child or child with disability is not ensured suitable treatment, therapy or teaching; c) that the child is mistreated, sexually abused or is subject to gross mental or physical harassment or humiliation in the home; d) that it is certain that the child's physical or mental health or his/her development is at risk because the parents are clearly unfit to have custody, due to drug abuse, mental instability or low intelligence, or that the behavior of the parents is likely to cause the child serious harm" (Article 29 of Child Protection Act no. 80/2002). In Iceland the deprivation of parental rights will be exercised only if it is impossible to apply lesser measures, or if those measures have been tried with no positive result.

In the **United States of America** every state has its own statute providing grounds and procedure for termination of parental rights. However one thing is common for all of the states: in the cases about the termination of parental rights the "standard of clear and convicting evidence" (this is the highest standard of proof required in Family Court cases) should be used instead of "fair preponderance of the evidence" *Santosky v. Kramer* 455 U.S. 745. (1982). (See Appendix IV) Here the legal framework of South Carolina and New Mexico will be discussed.

In **South Carolina**[7] the statute provides nine grounds upon which parental rights can be terminated. The complaint can be issued based on several grounds , but the proof of one, along with the "best interests of the child" principle, can be sufficient enough for terminating parental rights. The grounds are as follows:

1. Severity or pattern of abuse or neglect

- the particular child or another child of the family has been abused or neglected by the parent);

2. Failure to remedy conditions

- the willful failure of the parents within six months to remedy the conditions that caused the original removal of the child from the home;

[7] Information packet prepared by the Children's Law Office, University of South Carolina Law School

3. Failure to visit

- the willful failure of the parent to visit his/her child who is out of the parent's custody for a period of six months;

4. Failure to support

- the willful failure of the parent to support his/her child who is out of the parent's custody for a period of six months;

5. Legal Father

- this occurs if the husband of the mother is not the biological father of the child, but he is the legal father. The termination of parental rights of a legal father can be essential in the cases when the child is going to be adopted;

6.Diagnosable Condition

- this includes, but is not limited to alcohol or drug addiction, mental deficiency or illness, extreme physical incapacity of the parent;

7. Abandonment

- defined as " when a parent or guardian willfully deserts a child or willfully surrenders physical possession of the child without making adequate arrangements for the child's needs or the continuing care of the child" (South Carolina Code Ann. 20-7-490);

8. Length of foster care

- "The child has been in foster care under the responsibility of the State for fifteen of the most recent twenty-two months" (South Carolina Code Ann. 20-7-1572);

9. Criminal conviction for abuse

- if the child has been abused by the parent so badly that he needs hospital care, or another child of the family has been killed by the parent.

In South Carolina, the Department of Social Services or any interested party (parents, foster parents, relatives, stepparents and guardians) can file a case for terminating parental rights.

In **New Mexico**[8] there are three grounds for terminating the parental rights:

1. Abandonment (defined in Abuse and Neglect Act 32A-4-2(A)) includes cases when the parent without justifiable cause:
   - Left the child without provision for the child's identification for a period of 14 days, or
   - Left the child with others, including the other parent or an agency, without provision for support and without communication for a period of:
   - three months if the child was under six year of age
   - six months in the child was over six year age
2. Failure to ameliorate the causes and conditions of abuse and neglect (Termination of Parental Rights Statute 32A-4-28 (B)(2)). Here the claimant should show that:
   - The child was abused and neglected; and
   - The conditions and causes of the neglect and abuse are unlikely to change in the foreseeable future.
3. Disintegration of the parent – child relationship accompanied by a psychological parent – child relationship between the child and his caretaker (Termination of Parental Rights Statute 32A-4-28 (B)(3)). Here the following conditions should be present:
   - The child has lived in the home of others (including relatives) either by court order or otherwise for an extended period of time;
   - The parent – child relationship has disintegrated;
   - A psychological parent – child relationship has developed between the substitute family and the child;
   - The child no longer prefers to live with the natural parents if the court determines the child of sufficient capacity to express a preference; and

[8] http://jec.unm.edu/resources/benchbooks/child_law/ch_22.htm

- The substitute family desires to adopt the child.

PROCEDURE EVALUATION

The termination of parental rights is normally the official end of parent-child legal relationship. On one hand this procedure is probably one of the strongest legal mechanisms to protect children, and on the other, it should also secure the rights of the parent/parents. RA Family Code deemed to serve this goal, however after detailed examination of the Armenian legal framework along with the cases and its comparison with the best international practice, several downsides of the method and practice were revealed.

One of the most obvious failings of RA Family Code is the absence of the definition for the "best interests of the child". Nowhere in the law is there the explanation about what is the "best interest of the child" and how the court should decide whether this or that notion is within the scope of the concept or not. For example, AAAA Legal Center provides the detailed explanation of the "best interests of the child" test applicable in Michigan. Here "best interests of the child" defined as the total of particular factors which should be considered and evaluated by the court. Those factors include, but are not limited to the following:

a) The love, affection, and other emotional ties existing between the parties involved and the child;
b) The capacity of the parties ... to give the child love ... and to continue the education and raising of the child in his or her religion ... ;
c) The home, school and community record of the child;

d) Domestic violence, regardless of whether the violence was directed against or witnessed by the child, etc.[9]

According to the section 4, chapter 26 of the Child Welfare Manual[10] prepared by Missouri Department of Social Services the court must apply two part analysis when deciding a case about termination of parental rights: first it should determine whether there are statutory grounds and second, if the grounds exist whether the termination is in the "best interest of the child". The court may deny a claim for termination of parental rights if it finds that the termination is not within the scope of "best interests of the child" even if there are statuary grounds for termination.

Another serious omission found in RA Family Code and namely in Article 59 is the failure to set up the precise time periods after which the parent's conduct will already be labeled as "misconduct and failure to fulfill the parental responsibilities". For example, Article 59 point *a* states that the parent can be deprived from parental rights if he/she "violate the realization of parental obligations, particularly, paying alimony". First of all here it is unclear whether the law talks about the parents who were divorced or about parents living together, as paying alimony is the obligation of a divorced parent. The provision also failed to address how long the parent should not perform his/her parental responsibilities in order to be considered as failure to realize parental obligations. The same comment is applicable for the Article 59 point *b* which allows to terminate parental rights if the parent "without justifiable reason refuses to take the child from the maternity house or other medical institutions, as well as from rearing, social protection and other organizations". Regarding the time period there are several good examples in the legislation of Croatia (Family Law Art. 114, points *g* and *h*) and the Statute of New Mexico (Abuse and Neglect Act 32A-4-2(A) definition of *abandonment*). (See section "Best International Practice")

[9] www.aaaalegalcenter.com/Best.htm

[10] www.dss.mo.gov/cd/info/cwmanual/section4/ch26/sec4ch26sub2.htm

As the Family Code is supposed to protect not only the child's rights, but also the parent's rights another essential omission in Article 59 is worth to be mentioned here. The provisions of the article do not provide for any justifiable excuses for the parents, if they failed to perform their parental obligations. For example, nothing said about the parent being imprisoned, as it is possible that the imprisoned parent wants to communicate with the child, but the circumstances are beyond his/her control.

The above mentioned gaps in the RA Family Code give the full discretion to the judge to decide whether in one case the grounds for terminating the parental rights exist, in another case do not exist, even if the cases will seem to be quite similar, as the cases *Minasyan vs. Asatryan* and *Harutyunyan vs. Khazaryan.* These cases are comparable as in both of them the fathers did not fulfill their parental obligations by not paying alimony, not caring for the needs of the child and not being interested in the well being of the child, but in *Minasyan vs. Asatryan* the claim was satisfied, in *Harutyunyan vs. Khazaryan* it was denied. The example shows that the lack of definitions in the law, as well as the general language of the provisions can result in the failure of the courts to apply the law unanimously. (See court decisions in *Minasyan vs. Asatryan* and *Harutyunyan vs. Khazaryan* in Appendix V)

The Family Code should clearly define the criteria for carrying out the parental duties as well as criteria for defining the failure of parental rights realization, based on which the judges should make decisions. The criteria stipulated by legislation will eliminate subjective decision-making.

RECOMMENDATIONS FOR REFORM

The relations between the child and the parent are probably among the most important ones for creating strong society. The state's role here is to find the golden middle where both child's and

parent's rights will be effectively protected. For ensuring that the goal has been met, the provisions of the Family Code should correspond with the present reality and take into account all the factors that can have an impact on modern family life. Upon the examination of the cases and the practice of foreign countries, a number of reforms in the form of additions and amendments to current law can be offered for securing a better system of protecting family ties:

- From the psychological point of view, the link between child and parent is very complex, thus first of all it is important to define who is a *parent*. In the dictionary "parent" defined as the person who "begets, gives birth to, or nurtures and raises a child; a father or mother."[11] But the life experience shows that an unrelated adult can have a strong psychological parent-like bond with the child and that is why the idea of *de facto parent* should be addressed in the legislation. For example in almost 10 states of US, including California, Maine, Massachusetts, New Jersey and Wisconsin the notion of *de facto parenthood* exists, which means that the person with no legal or biological relationship to a child can claim *de facto parent* status based on the relationship between him/her and the child. The judge will take into account the fact that the adult had fulfilled the functions of the parent for a sufficient length of time.[12]
- With the development of new technologies situations like "surrogate mother" or "sperm donor" are becoming more usual, thus the law should also cover this side of the question. In the Family Code "maternity" is determined on the basis of documents proving the fact of the child's being born from the given mother in the medical institution, and if the child was not born in a medical institution, on the basis of medical documents, statements of witnesses or other proof (Article 35). Examining the situation of surrogate mother, (a woman who receives a fertilized embryo, bears the fetus, gives birth and then surrenders the child

[11] http://www.thefreedictionary.com/parent
[12] www.weeklystandard.com

according to a pre-existing agreement to the other women), it becomes clear that the definition of "maternity" given in the Article 35 can be seriously argued.

Regarding the legal basis for terminating parental rights described in Article 59 of RA Family Code it is worth mentioning that there are some provisions which could be ambiguous in certain cases, for example:

- Point *b* of Article 59 states that the parent can be deprived parental rights if he/she refuses to take the child from the maternity house or other similar institution without justifiable reason. First of all it is unclear what can be classified as "justifiable reason". Second, what if the parent left the child not in the maternity house or other institution described in the article, but in the street or with neighbors and for how long. The law is silent about these situations. It will be more correct to say "if the parent has abandoned the child" and then give the definition what can constitute abandonment.
- Point *c* of the article talks about the abuse of parental rights. Here again there is no explanation of what can be considered the "abuse of parental rights". Article 51 describes parental rights and obligations which include but are not limited to the rights and obligation to rear the child, to take care of the health, to provide the education. Whether the willful failure of the parent to ensure the proper education can constitute the "abuse" or not is unclear from the provision.
- Another important issue not covered by the law is the situation when, for example, a parent treats cruelly one child ("exercise physical or mental violence, infringe child's sexual inviolability"), but there are other children in the family. Is the parent's conduct towards one child enough to deprive the parent from parental rights towards other children too?

Above mentioned reforms of the Family Code will both correspond with the reality and also address very important aspects of the issue taking into consideration the requirements of the

legislation drafting rules, such as the certainty of the law with the use of plain language and definitions of the terms used in the law.

REFORM IMPLEMENTATION

Addressing all the mentioned recommendations for reforms requires close cooperation between public and private sectors – National Assembly of RA, Ministry of Labor and Social Affairs, courts, NGO's, non profit organizations, as well as international organizations like UNICEF, Save The Children, Children of Armenia Fund, World Vision and others.

The National Assembly amends the current law after revealing the existing downsides of the law based on the detailed examination of the situation. The Ministry of Labor and Social Affairs, particularly its Women and Children issues department, is the body whose role is crucial in the process of studying the present and potential problems that institute of "family" could have in Armenia. Currently the department is involved in the process of drafting the law about the amendments to the RA law "On the Children's Rights" and number of draft decisions to the RA Government like "On the Adoption of the Procedures to Provide Lodgings to Children without Parental Care", "On the Procedures of Location of Children Without parental Care in Children Trustee Organizations"[13], etc.

The role of courts in the process of amending RA Family Code is one of the fundamental ones, as the court is the body which has the opportunity to evaluate the effectiveness of the law in practice and directly illuminate the weakness of the particular provisions of the law. Thus the cooperation between courts and other bodies involved in the process might be the most effective and productive one.

The private sector also has the powerful and decisive role in the procedure of evaluating and reporting the existing problems in the society. In Armenia there are approximately 64 NGO's

[13] http://www.mss.am/eng/about/plansfam.htm

dealing with children and family issues[14]. As NGO's in democratic societies are actively involved in the process of lobbying for this or that law, it is expected that in Armenia there are such that work towards legislative developments and amendments of present legal system.

Among non profit organizations it's worth to mention about the *Fund for Armenian Relief* (FAR) which was established in 1988 after the earthquake in Armenia and whose humanitarian mission is preliminary addressing the problems of vulnerable groups. One of FAR's projects is the creation of Children's Reception and Orientation Center[15] which acts as a "haven" for homeless children. The Center provides psychological and medical assistance to the children, as well as carries their daily needs. The function of the center is to examine the "sociological circumstances" of the particular child's family and based on the analysis to decide about the placement of the child. FAR has also been involved in the drafting "child welfare" laws in Armenia, nine of their drafted laws have been already adopted by the National Assembly.

The role of the mentioned international organizations in reform implementation process is also very important as they can be good experts while revealing the best international practice and its harmonization with Armenian legislation.

Only the joint work of all the stated institutions can give an effective result, as each of them has its own tools and means to observe the family issues.

CONCLUSION

The aim of this paper was to discuss the concept of "termination of parental rights" in Armenia with special attention to the legal framework regulating parent–child relationship. Appropriate articles of the RA Family Code have been analyzed and case studies have been done as

[14] http://www.ngo.am/dir/search_result.asp?shift=9999&scase=0&SID=3&SN=
[15] http://www.farusa.org/whatwedo_projectlist.asp?tt=SD&a=&s=&b=&pp=63&m=

a reflection of the effectiveness or non effectiveness of existing provisions of the law. In order to identify the possible difficulties in the process of bringing a claim to the court, an attempt was done to clarify the procedure of preparing all necessary documents for applying to the court. The outcome of this attempt is discussed in the section "Step-by-step Description of the Transaction". For better understanding of the concept, a comparison was conducted between Armenian law and family laws of Moldova, Kazakhstan, Tajikistan, Croatia, Ireland and two states of USA: South Carolina and New Mexico. Additionally, an attempt was made to reveal the existing and potential downsides of the particular articles of RA Family Code; and, probable recommendations for the reform have been suggested. Finally, the bodies who are competent for executing the recommended reforms have been identified.

ABSTRACT

The tie between the parent and the child, precisely the healthy relationship between parent and child is truly the cornerstone of the strong family. It is impossible to overemphasize the importance of the parent–child link in the process of creating family, which in its turn is considered to be an important and integral part of the society. The family as a unit is very much appreciated in Armenian culture and is defined as a fundamental cell of the society. "The State can be strong only if it consists of strong families" this is how in the Middle Ages, one of the heroes of Muratsan's historical novel described his notion of having a powerful state. Thus, the termination of parental rights can be the destruction of the nucleus of the society, and the provisions of the law should be well-founded in order to eliminate any possible abuse which can be crucial for a child's or a parent's fate.

APPENDIX I

RA FAMILY CODE

CHAPTER 11

ARTICLE 59. DEPRIVATION OF PARENTAL RIGHTS

Parents or one of them can be deprived of parental rights if they:
a) violate the realization of their parental obligations, particularly, paying alimony;
b) without justifiable reason refuse to take the child from the maternity house or other medical institutions, as well as from rearing, population social protection and other organizations;
c) abuse their parental rights, in particular, make negative impact on the children by their immoral behavior;
d) treat the children cruelly, in particular, exercise physical or mental violence towards them, infringe their sexual inviolability;
e) suffer from chronic drug, alcohol or toxic addiction;
f) committed intended crime against their children.

ARTICLE 60. PROCEDURE OF DEPRIVATION OF PARENTAL RIGHTS

1. Deprivation of parental rights is realized by judicial procedure.
The cases on deprivation of parental rights are considered on the basis of application by one of the parents (lawful representatives), as well as the departments and organizations (departments of custody and guardianship, organizations for orphans etc.), who bear the obligations of the protection of the rights of children.
2. The cases on deprivation of parental rights are considered with obligatory presence of the departments of custody and guardianship.
3. If while the consideration of the case on deprivation of parental rights the court finds features of criminally penalized acts in the deeds of one of the parents, it is obliged to inform about that the relevant judicial departments.
4. Within three days after the entry into force of the court verdict on deprivation of parental rights the court is obliged to send the extract of the verdict to the state Civic Status Registration Department of the child's birth place.

ARTICLE 61. CONSEQUENCES OF DEPRIVATION OF PARENTAL RIGHTS

1. The parents deprived of the parental rights lose all the rights based on the blood relations with the child, with regards of who they were deprived of parental rights (in particular, the rights to get living means from the children, as well as the privileges and state allowances provided for the citizens with children).
2. The deprivation of parental rights does not exempt from the obligation to care about the living of the child.
3. The issue of future common living of the child or parents/one of them, deprived of parental rights is solved by the judicial procedure.
4. In case of deprivation of parental rights of the parent or both of them, the child keeps his/her right to ownership and usage of the accommodation, and in case of the absence of accommodation, in accordance with the Apartment Code, the right to be granted accommodation, as well as the property rights based on the blood relations with

parents and other relatives (in particular, the right of inheritance).
5. If it is impossible to give the child to the other parent, or both of the parents are deprived of parental rights, the child is placed under the care of the department of custody and guardianship.
6. In case of deprivation of parents/one of them of parental rights, the adoption of the child is allowed not earlier than six months after the entry into force of the court verdict on deprivation of parental rights.

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¶ÈàôÊ 11.

Ðá¹í³Í 59. ÌÝáÕ³Ï³Ý Çñ³íáõÝùÝ»ñÇó ½ñÏ»ÉÁ

ÌÝáÕÝ»ñÁ Ï³Ù Ýñ³ÝóÇó Ù»ÏÁ Ï³ñáÕ »Ý ½ñÏí»É ÍÝáÕ³Ï³Ý Çñ³íáõÝùÝ»ñÇó, »Ã» Ýñ³Ýù³

³) ã³ñ³Ùïáñ»Ý Ëáõë³÷áõÙ »Ý ÍÝáÕ³Ï³Ý å³ñï³Ï³ÝáõÃÛáõÝÝ»ñÁ Ï³ï³ñ»Éáõó, ÁÝ¹ áñáõÙ³ ³ÉÇÙ»Ýï í×³ñ»Éáõó.

µ) ³é³Ýó Ñ³ñ·»ÉÇ å³ï×³éÝ»ñÇ Ññ³Å³ñíáõÙ »Ý í»ñóÝ»É Çñ»Ýó »ñ»Ë³ÛÇÝ ÍÝÝ¹³ÝÇó Ï³Ù µÅßÏ³Ï³Ý ³ÛÉ Ï³½Ù³Ï»ñåáõÃÛáõÝÇó, ÇÝãå»ë Ý³»õ ¹³ëïÇ³ñ³Ïã³Ï³Ý, ³½·³µÝ³ÏãáõÃÛ³Ý ëáóÇ³É³Ï³Ý å³ßïå³ÝáõÃÛ³Ý Ï³Ù ÝÙ³Ý³ïÇå ³ÛÉ Ï³½Ù³Ï»ñåáõÃÛáõÝÝ»ñÇó.

·) ã³ñ³ß³ÑáõÙ »Ý Çñ»Ýó ÍÝáÕ³Ï³Ý Çñ³íáõÝùÝ»ñÁ, ÁÝ¹ áñáõÙ³ Çñ»Ýó Ñ³Ï³µ³ñáÛ³Ï³Ý í³ñù³·Íáí íÝ³ë³Ï³ñ ³½¹»óáõÃÛáõÝ »Ý ·áñÍáõÙ »ñ»Ë³Ý»ñÇ íñ³.

¹) ¹³Å³Ý³µ³ñ »Ý í³ñíáõÙ »ñ»Ë³Ý»ñÇ Ñ»ï, ÁÝ¹ áñáõÙ³ ýÇ½ÇÏ³Ï³Ý Ï³Ù Ñá·»Ï³Ý µéÝáõÃÛáõÝ »Ý ·áñÍ³¹ñáõÙ Ýñ³Ýó ÝÏ³ïÙ³Ùµ, áïÝÓ·áõÙ »Ý Ýñ³Ýó ë»é³Ï³Ý ³ÝÓ»éÝÙË»ÉÇáõÃÛáõÝÁ.

») ï³é³åáõÙ »Ý ùñáÝÇÏ ³ÉÏáÑáÉ³ÙáÉáõÃÛ³Ùµ Ï³Ù ÃÙñ³ÙáÉáõÃÛ³Ùµ, ÃáõÝ³ÙáÉáõÃÛ³Ùµ.

½) Ï³ï³ñ»É »Ý Çñ»Ýó »ñ»Ë³Ý»ñÇ ¹»Ù ¹Çï³íáñÛ³É Ñ³Ýó³·áñÍáõÃÛáõÝ£

Ðá¹í³Í 60. ÌÝáÕ³Ï³Ý Çñ³íáõÝùÝ»ñÇó ½ñÏ»Éáõ Ï³ñ·Á

1. ÌÝáÕ³Ï³Ý Çñ³íáõÝùÝ»ñÇó ½ñÏ»ÉÁ Ï³ï³ñíáõÙ ¿ ¹³ï³Ï³Ý Ï³ñ·áí£

ÌÝáÕ³Ï³Ý Çñ³íáõÝùÝ»ñÇó ½ñÏ»Éáõ í»ñ³µ»ñÛ³É ·áñÍ»ñÁ ùÝÝíáõÙ »Ý ÍÝáÕÝ»ñÇó Ù»ÏÇ (ûñÇÝ³Ï³Ý Ý»ñÏ³Û³óáõóãÇ), ÇÝãå»ë Ý³»õ ³ÛÝ Ù³ñÙÇÝÝ»ñÇ áõ Ï³½Ù³Ï»ñåáõÃÛáõÝÝ»ñÇ (ËÝ³Ù³Ï³ÉáõÃÛ³Ý »õ Ñá·³µ³ñÓáõÃÛ³Ý Ù³ñÙÇÝÝ»ñÇ, áñµ »ñ»Ë³Ý»ñÇ »õ ³é³Ýó ÍÝáÕ³Ï³Ý ËÝ³ÙùÇ ÙÝ³ó³Í »ñ»Ë³Ý»ñÇ Ñ³Ù³ñ Ý³Ë³ï»ëí³Í Ï³½Ù³Ï»ñåáõÃÛáõÝÝ»ñÇ »õ ³ÛÉÝÇ) ¹ÇÙáõÙÇ ÑÇÙ³Ý íñ³, áñáÝó íñ³ ¹ñí³Í »Ý »ñ»Ë³Ý»ñÇ Çñ³íáõÝùÝ»ñÇ å³ßïå³ÝáõÃÛ³Ý å³ñï³Ï³ÝáõÃÛáõÝÝ»ñÁ£

2. ÌÝáÕ³Ï³Ý Çñ³íáõÝùÝ»ñÇó ½ñÏ»Éáõ Ù³ëÇÝ ·áñÍ»ñÁ ùÝÝíáõÙ »Ý ËÝ³Ù³Ï³ÉáõÃÛ³Ý »õ Ñá·³µ³ñÓáõÃÛ³Ý Ù³ñÙÝÇ å³ñï³¹Çñ Ù³ëÝ³ÏóáõÃÛ³Ùµ£

3. °Ã» ¹³ï³ñ³ÝÁ ÍÝáÕ³Ï³Ý Çñ³íáõÝùÝ»ñÇó ½ñÏ»Éáõ ·áñÍÁ ùÝÝ»ÉÇë ÍÝáÕÝ»ñÇ Ï³Ù Ýñ³ÝóÇó Ù»ÏÇ ·áñÍáÕáõÃÛáõÝÝ»ñáõÙ Ñ³ÛïÝ³µ»ñáõÙ ¿ ùñ»áñ»Ý å³ïÅ»ÉÇ ³ñ³ñùÇ Ñ³ï³Ý³ÇßÝ»ñ, ³å³ ³Û¹ Ù³ëÇÝ å³ñï³íáñ ¿ ï»Õ»Ï³óÝ»É Ñ³Ù³å³ï³ëË³Ý Çñ³í³ëáõ Ù³ñÙÇÝÝ»ñÇÝ:

4. ÌÝáÕ³Ï³Ý Çñ³íáõÝùÝ»ñÇó ½ñÏ»Éáõ Ù³ëÇÝ ¹³ï³ñ³ÝÇ í×ÇéÝ ûñÇÝ³Ï³Ý áõÅÇ Ù»ç ÙïÝ»Éáõ å³ÑÇó »ñ»ù ûñí³ ÁÝÃ³óùáõÙ ¹³ï³ñ³ÝÁ å³ñï³íáñ ¿ ³Û¹ í×éÇ ù³ÕÍ³ÍùÝ áõÕ³ñÏ»É »ñ»Ë³ÛÇ ÍÝÝ¹Ç å»ï³Ï³Ý ·ñ³ÝóÙ³Ý í³ÛñÇ ù³Õ³ù³óÇ³Ï³Ý Ï³óáõÃÛ³Ý ³Ïï»ñÇ å»ï³Ï³Ý ·ñ³ÝóáõÙ Çñ³Ï³Ý³óÝáÕ Ù³ñÙÇÝ£

Ðá¹í³Í 61. ÌÝáÕ³Ï³Ý Çñ³íáõÝùÝ»ñÇó ½ñÏ»Éáõ Ñ»ï»õ³ÝùÝ»ñÁ

1. ÌÝáÕ³Ï³Ý Çñ³íáõÝùÝ»ñÇó ½ñÏí³Í ÍÝáÕÝ»ñÁ ÏáñóÝáõÙ »Ý ³ÛÝ »ñ»Ë³ÛÇ Ñ»ï ³½·³ÏóáõÃÛ³Ý ÷³ëïÇ íñ³ ÑÇÙÝí³Í µáÉáñ Çñ³íáõÝùÝ»ñÁ, áñÇ ÝÏ³ïÙ³Ùµ ÍÝáÕ³Ï³Ý Çñ³íáõÝùÝ»ñÇó Ýñ³Ýù ½ñÏí»É »Ý ¥ÁÝ¹ áñáõÙª Ýñ³ÝóÇó ³åñáõëïÇ ÙÇçáó ëï³Ý³Éáõ, ÇÝãå»ë Ý³»õ »ñ»Ë³Ý»ñ áõÝ»óáÕ ù³Õ³ù³óÇÝ»ñÇ Ñ³Ù³ñ ë³ÑÙ³Ýí³Í ³ñïáÝáõÃÛáõÝÝ»ñÇ áõ å»ï³Ï³Ý Ýå³ëïÝ»ñÇ Çñ³íáõÝùÝ»ñÁ¤£

2. ÌÝáÕ³Ï³Ý Çñ³íáõÝùÝ»ñÇó ½ñÏ»ÉÁ ÍÝáÕÝ»ñÇÝ ãÇ ³½³ïáõÙ Çñ»Ýó »ñ»Ë³ÛÇ ³åñáõëïÁ Ñá·³Éáõ å³ñï³Ï³ÝáõÃÛáõÝÇó£

3. º»ñ»Ë³ÛÇ »õ ÍÝáÕ³Ï³Ý Çñ³íáõÝùÝ»ñÇó ½ñÏí³Í ÍÝáÕÝ»ñÇ Ï³Ù Ýñ³ÝóÇó Ù»ÏÇ Ñ»ï³·³ÛáõÙ Ñ³Ù³ï»Õ ³åñ»Éáõ Ù³ëÇÝ Ñ³ñóÁ ÉáõÍíáõÙ ¿ ¹³ï³Ï³Ý Ï³ñ·áí£

4. ÌÝáÕÝ»ñÇÝ Ï³Ù Ýñ³ÝóÇó Ù»ÏÇÝ ÍÝáÕ³Ï³Ý Çñ³íáõÝùÝ»ñÇó ½ñÏ»Éáõ ¹»åùáõÙ »ñ»Ë³Ý å³Ñå³ÝáõÙ ¿ µÝ³Ï»ÉÇ ï³ñ³ÍáõÃÛ³Ý ë»÷³Ï³ÝáõÃÛ³Ý Ï³Ù µÝ³Ï»ÉÇ ï³ñ³ÍáõÃÛ³Ý û·ï³·áñÍÙ³Ý Çñ Çñ³íáõÝùÁ, ÇëÏ µÝ³Ï»ÉÇ ï³ñ³ÍáõÃÛ³Ý µ³ó³Ï³ÛáõÃÛ³Ý ¹»åùáõÙª µÝ³Ï³ñ³Ý³ÛÇÝ ûñ»Ýë¹ñáõÃÛ³ÝÁ Ñ³Ù³å³ï³ëË³Ý` µÝ³Ï»ÉÇ ï³ñ³ÍáõÃÛáõÝ ëï³Ý³Éáõ Çñ³íáõÝùÁ, ÇÝãå»ë Ý³»õ ÍÝáÕÝ»ñÇ »õ ³ÛÉ ³½·³Ï³ÝÝ»ñÇ Ñ»ï ³½·³Ïó³Ï³ÝáõÃÛ³Ý Ï³åÇ íñ³ ÑÇÙÝí³Í ·áõÛù³ÛÇÝ Çñ³íáõÝùÝ»ñÁ ¥ÁÝ¹ áñáõÙª Å³é³Ý·áõÃÛáõÝ ëï³Ý³Éáõ Çñ³íáõÝùÁ¤:

5. ºÃ» ³ÝÑÝ³ñÇÝ ¿ »ñ»Ë³ÛÇÝ Ñ³ÝÓÝ»É ÙÛáõë ÍÝáÕÇÝ, Ï³Ù »ñÏáõ ÍÝáÕÝ»ñÝ ¿É ÍÝáÕ³Ï³Ý Çñ³íáõÝùÝ»ñÇó ½ñÏí»É »Ý, ³å³ Ý³ Ñ³ÝÓÝíáõÙ ¿ ËÝ³Ù³Ï³ÉáõÃÛ³Ý »õ Ñá·³µ³ñÓáõÃÛ³Ý Ù³ñÙÝÇ ËÝ³ÙùÇÝ£

6. ÌÝáÕÝ»ñÇÝ Ï³Ù Ýñ³ÝóÇó Ù»ÏÇÝ ÍÝáÕ³Ï³Ý Çñ³íáõÝùÝ»ñÇó ½ñÏ»Éáõ ¹»åùáõÙ »ñ»Ë³ÛÇÝ áñ¹»·ñ»É ÃáõÛÉ³ïñíáõÙ ¿ áã ßáõï, ù³Ý ÍÝáÕ³Ï³Ý Çñ³íáõÝùÝ»ñÇó ½ñÏ»Éáõ Ù³ëÇÝ ¹³ï³ñ³ÝÇ í×ÇéÝ ûñÇÝ³Ï³Ý áõÅÇ Ù»ç ÙïÝ»Éáõ å³ÑÇó í»ó ³ÙÇë Ñ»ïá£

APPENDIX II

USEFUL CONTACTS

Free Legal Assistance

Young Lawyers Union	58 02 99

Yerevan City Municipalities

Ajapniak district	39 21 00
Avan district	62 60 50
Arabkir district	28 11 30
Davitashen district	36 00 80
Erebuni district	57 25 25
Kentron district	52 65 33
Malatia-Sebastia district	77 30 35
Nor Nork district	64 87 45
Nork-Marash district	65 53 93
Nubarashen district	47 60 40
Shengavit district	44 14 93
Kanaker-Zeitun district	28 71 17

APPENDIX III

RA CIVIL PROCEDULAR CODE

CHAPTER 13. BRINGING ACTION.

Article 87. The form and contents of complaint.

1. The complaint is submitted in the written form.
2. The complaint must indicate:
1) the name of the court to which the complaint is submitted;
2) the names (titles) of persons participating in the case, their addresses;
3) the sued amount, if the complaint lends itself to evaluation;
4) facts on which the complaint is based;
5) evidence supporting the grounds of the demands;
6) the calculation of the disputed amount or amount liable to confiscation;
7) the plaintiff's demands, and when bringing a case against a few defendants, the demands of the plaintiff to each of them;
8) a list of submitted documents attached to the complaint.
Other data can also be indicated in the complaint, if they are necessary for the right solution of the ruling, as well as the motions of the plaintiff.
3. The complaint is signed by the plaintiff or a representative authorized by the plaintiff for this purpose.

Article 88. Documents attached to the complaint.

1. Documents which certify the following are attached to the complaint:
1) the fact of payment of the legally established amount of state imposition
2) facts on which the complaint is based.
2. If the complaint is signed by the plaintiff's representative, a certificate of the representative's authority to bring action is attached.
3. To a complaint about enforced signing of an agreement the draft agreement is attached.

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¶ÈàôÊ 13

Ð²ÚòÆ Ð²ðàôòàôØÀ

Ðá¹í³Í 87. Ð³Ûó³¹ÇÙáõÙÇ Ó»õÁ »õ µáí³Ý¹³ÏáõÃÛáõÝÁ

1. Ð³Ûó³¹ÇÙáõÙÁ Ý»ñÏ³Û³óíáõÙ ¿ ·ñ³íáñ:

2. Ð³Ûó³¹ÇÙáõÙáõÙ å»ïù ¿ Ýßí»Ý`

1) ¹³ï³ñ³ÝÇ ³Ýí³ÝáõÙÁ, áñÇÝ Ý»ñÏ³Û³óíáõÙ ¿ Ñ³Ûó³¹ÇÙáõÙÁ.

2) ·áñÍÇÝ Ù³ëÝ³ÏóáÕ ³ÝÓ³Ýó ³ÝáõÝÝ»ñÁ (³Ýí³ÝáõÙÝ»ñÁ), Ýñ³Ýó Ñ³ëó»Ý»ñÁ.

3) Ñ³Ûó³·ÇÝÁ, »Ã» Ñ³ÛóÁ »ÝÃ³Ï³ ¿ ·Ý³Ñ³ïÙ³Ý.

4) Ñ³Ý·³Ù³ÝùÝ»ñÁ, áñáÝó íñ³ ÑÇÙÝíáõÙ »Ý Ñ³Ûó³å³Ñ³ÝçÝ»ñÁ.

5) Ñ³Ûó³å³Ñ³ÝçÝ»ñÇ ÑÇÙù»ñÁ Ñ³ëï³ïáÕ ³å³óáõÛóÝ»ñÁ.

6) µéÝ³·³ÝÓÙ³Ý »ÝÃ³Ï³ Ï³Ù íÇ×³ñÏíáÕ ·áõÙ³ñÇ Ñ³ßí³ñÏÁ.

7) Ñ³ÛóíáñÇ å³Ñ³ÝçÝ»ñÁ, ÇëÏ ÙÇ ù³ÝÇ å³ï³ëË³ÝáÕÝ»ñÇ ¹»Ù Ñ³Ûó Ñ³ñáõó»ÉÇë, Ñ³ÛóíáñÇ` Ýñ³ÝóÇó Ûáõñ³ù³ÝãÛáõñÇÝ áõÕÕí³Í å³Ñ³ÝçÝ»ñÁ.

8) Ñ³Ûó³¹ÇÙáõÙÇÝ ÏÇó Ý»ñÏ³Û³óíáÕ ÷³ëï³ÃÕÃ»ñÇ ó³ÝÏÁ:

Ð³Ûó³¹ÇÙáõÙáõÙ Ï³ñáÕ »Ý Ýßí»É Ý³»õ ³ÛÉ ï»Õ»ÏáõÃÛáõÝÝ»ñ, »Ã» ¹ñ³Ýù ³ÝÑñ³Å»ßï »Ý í»×Ç ×Çßï ÉáõÍÙ³Ý Ñ³Ù³ñ, ÇÝãå»ë Ý³»õ Ñ³ÛóíáñÇ ÙÇçÝáñ¹áõÃÛáõÝÝ»ñÁ:

3. Ð³Ûó³¹ÇÙáõÙÝ ëïáñ³·ñáõÙ ¿ Ñ³ÛóíáñÁ Ï³Ù Ýñ³ ÏáÕÙÇó ¹ñ³ Ñ³Ù³ñ ÉÇ³½áñí³Í Ý»ñÏ³Û³óáõóÇãÁ:

Ðá¹í³Í 88. Ð³Ûó³¹ÇÙáõÙÇÝ ÏóíáÕ ÷³ëï³ÃÕÃ»ñÁ

1. Ð³Ûó³¹ÇÙáõÙÇÝ ÏóíáõÙ »Ý ÷³ëï³ÃÕÃ»ñ, áñáÝù Ñ³í³ëïáõÙ »Ý`

1) ë³ÑÙ³Ýí³Í Ï³ñ·áí »õ ã³÷áí å»ï³Ï³Ý ïáõñùÇ í×³ñí³Í ÉÇÝ»ÉÁ.

2) Ñ³Ý·³Ù³ÝùÝ»ñÁ, áñáÝó íñ³ ÑÇÙÝíáõÙ »Ý Ñ³Ûó³å³Ñ³ÝçÝ»ñÁ:

2. º Ã» Ñ³Ûó³¹ÇÙáõÙÝ ëïáñ³·ñí³Í ¿ Ñ³ÛóíáñÇ Ý»ñÏ³Û³óáõóãÇ ÏáÕÙÇó, ¹ñ³Ý ÏóíáõÙ ¿ Ý³»õ í»ñçÇÝÇë` Ñ³Ûó Ñ³ñáõó»Éáõ ÉÇ³½áñáõÃÛáõÝÝ»ñÁ Ñ³í³ëïáÕ ÉÇ³½áñ³·ÇñÁ:

3. ä³ÛÙ³Ý³·Çñ ÏÝù»ÉáõÝ Ñ³ñÏ³¹ñ»Éáõ Ù³ëÇÝ Ñ³Ûó³¹ÇÙáõÙÇÝ ÏóíáõÙ ¿ Ñ³Ù³å³ï³ëË³Ý å³ÛÙ³Ý³·ñÇ Ý³Ë³·ÇÍÁ:

APPENDIX IV

SUPREME COURT OF THE UNITED STATES

455 U.S. 745

Santosky v. Kramer

CERTIORARI TO THE APPELLATE DIVISION, SUPREME COURT OF NEW YORK, THIRD JUDICIAL DEPARTMENT

No. 80-5889 Argued: November 10, 1981 --- Decided: March 24, 1982

JUSTICE BLACKMUN delivered the opinion of the Court.

Under New York law, the State may terminate, over parental objection, the rights of parents in their natural child upon a finding that the child is "permanently neglected." N.Y.Soc.Serv.Law §§ 384-b.4.(d), 384-b.7.(a) (McKinney Supp.1981-1982) (Soc.Serv.Law). The New York Family Court Act § 622 (McKinney 1975 and Supp.1981-1982) (Fam.Ct.Act) requires that only a "fair preponderance of the evidence" support that finding. Thus, in New York, the factual certainty required to extinguish the parent-child relationship is no greater than that necessary to award money damages in an ordinary civil action.

Today we hold that the Due Process Clause of the **Fourteenth Amendment** demands more than this. Before a State may sever completely and irrevocably the rights of parents in **[p748]** their natural child, due process requires that the State support its allegations by at least clear and convincing evidence.

I

A

New York authorizes its officials to remove a child temporarily from his or her home if the child appears "neglected," within the meaning of Art. 10 of the Family Court Act. *See* §§ 1012(f), 1021-1029. Once removed, a child under the age of 18 customarily is placed "in the care of an authorized agency," Soc.Serv.Law § 384-b.7.(a), usually a state institution or a foster home. At that

point, "the state's first obligation is to help the family with services to . . . reunite it. . . ." § 384-b.1.(a)(iii). But if convinced that "positive, nurturing parent-child relationships no longer exist," § 384-b.1.(b), the State may initiate "permanent neglect" proceedings to free the child for adoption.

The State bifurcates its permanent neglect proceeding into "factfinding" and "dispositional" hearings. Fam.Ct.Act §§ 622, 623. At the factfinding stage, the State must prove that the child has been "permanently neglected," as defined by Fam.Ct.Act §§ 614.1.(a)-(d) and Soc.Serv.Law § 384-b.7.(a). *See* Fam.Ct.Act § 622. The Family Court judge then determines at a subsequent dispositional hearing what placement would serve the child's best interests. §§ 623, 631.

At the factfinding hearing, the State must establish, among other things, that, for more than a year after the child entered state custody, the agency "made diligent efforts to encourage and strengthen the parental relationship." Fam.Ct.Act §§ 614.1.(c), 611. The State must further prove that, during that same period, the child's natural parents failed

> substantially and continuously or repeatedly to maintain contact with or plan for the future of the child although physically and financially able to do so.

§ 614.1.(d). Should the State support its allegations by "a fair preponderance of the evidence," § 622, the child may be declared permanently neglected. **[p749]** § 611. That declaration empowers the Family Court judge to terminate permanently the natural parents' rights in the child. §§ 631(c), 634. Termination denies the natural parents physical custody, as well as the rights ever to visit, communicate with, or regain custody of, the child.[n1]

New York's permanent neglect statute provides natural parents with certain procedural protections.[n2] But New York permits its officials to establish "permanent neglect" with less proof than most States require. Thirty-five States, the District of Columbia, and the Virgin Islands currently specify a higher standard of proof, in parental rights termination proceedings, than a "fair preponderance of the evidence."[n3] The only analogous federal statute of which we are aware **[p750]** permits termination of parental rights solely upon "evidence beyond a reasonable doubt." Indian Child Welfare Act of 1978, Pub.L. 95-608, § 102(f), 92 Stat. 3072, **25 U.S.C. § 1912**(f) (1976 ed., Supp. IV). The question here is whether **[p751]** New York's "fair preponderance of the evidence" standard is constitutionally sufficient.

B

Petitioners John Santosky II and Annie Santosky are the natural parents of Tina and John III. In November, 1973, after incidents reflecting parental neglect, respondent Kramer, Commissioner of the Ulster County Department of Social Services, initiated a neglect proceeding under Fam.Ct.Act § 1022 and removed Tina from her natural home. About 10 months later, he removed John III and placed him with foster parents. On the day John was taken, Annie Santosky gave birth to a third child, Jed. When Jed was only three days old, respondent transferred him to a foster home on the ground that immediate removal was necessary to avoid imminent danger to his life or health.

In October, 1978, respondent petitioned the Ulster County Family Court to terminate petitioners' parental rights in the three children.[n4] Petitioners challenged the constitutionality of the "fair preponderance of the evidence" standard specified in Fam.Ct.Act § 622. The Family Court Judge rejected this constitutional challenge, App. 29 30, and weighed the evidence under the

statutory standard. While acknowledging that the Santoskys had maintained contact with their children, the judge found those visits, "at best, superficial and devoid of any real emotional content." *Id.* at 21. After **[p752]** deciding that the agency had made "'diligent efforts' to encourage and strengthen the parental relationship," *id.* at 30, he concluded that the Santoskys were incapable, even with public assistance, of planning for the future of their children. *Id.* at 33-37. The judge later held a dispositional hearing and ruled that the best interests of the three children required permanent termination of the Santoskys' custody.[n5] *Id.* at 39.

Petitioners appealed, again contesting the constitutionality of § 622's standard of proof.[n6] The New York Supreme Court, Appellate Division, affirmed, holding application of the preponderance of the evidence standard "proper and constitutional." *In re John AA,* 75 App.Div.2d 910, 427 N.Y.S.2d 319, 320 (1980). That standard, the court reasoned, "recognizes and seeks to balance rights possessed by the child . . . with those of the natural parents. . . ." *Ibid.*

The New York Court of Appeals then dismissed petitioners' appeal to that court "upon the ground that no substantial constitutional question is directly involved." App. 55. We granted certiorari to consider petitioners' constitutional claim. **450 U.S. 993** (1981).

II

Last Term, in *Lassiter v. Department of Social Services,* **452 U.S. 18** (1981), this Court, by a 5-4 vote, held that the **[p753]** **Fourteenth Amendment**'s Due Process Clause does not require the appointment of counsel for indigent parents in every parental status termination proceeding. The case casts light, however, on the two central questions her -- whether process is constitutionally due a natural parent at a State's parental rights termination proceeding, and, if so, what process is due.

In *Lassiter,* it was

> not disputed that state intervention to terminate the relationship between [a parent] and [the] child must be accomplished by procedures meeting the requisites of the Due Process Clause.

Id. at 37 (first dissenting opinion); *see id.* at 24-32 (opinion of the Court); *id.* at 59-60 (STEVENS, J., dissenting). *See also Little v. Streater,* **452 U.S. 1**, 13 (1981). The absence of dispute reflected this Court's historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the **Fourteenth Amendment**. *Quilloin v. Walcott,* **434 U.S. 246**, 255 (1978); *Smith v. Organization of Foster Families,* **431 U.S. 816**, 845 (1977); *Moore v. East Cleveland,* **431 U.S. 494**, 499 (1977) (plurality opinion); *Cleveland Board of Education v. LaFleur,* **414 U.S. 632**, 639-640 (1974); *Stanley v. Illinois,* **405 U.S. 645**, 651-652 (1972); *Prince v. Massachusetts,* **321 U.S. 158**, 166 (1944); *Pierce v. Society of Sisters,* **268 U.S. 510**, 534-535 (1925); *Meyer v. Nebraska,* **262 U.S. 390**, 399 (1923).

The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to **[p754]**

destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.[n7]

In *Lassiter,* the Court and three dissenters agreed that the nature of the process due in parental rights termination proceedings turns on a balancing of the "three distinct factors" specified in *Mathews v. Eldridge,* **424 U.S. 319**, 335 (1976): the private interests affected by the proceeding; the risk of error created by the State's chosen procedure; and the countervailing governmental interest supporting use of the challenged procedure. *See* 452 U.S. at 27-31; *id.* at 37-48 (first dissenting opinion). *But see id.* at 59-60 (STEVENS, J., dissenting). While the respective *Lassiter* opinions disputed whether those factors should be weighed against a presumption disfavoring appointed counsel for one not threatened with loss of physical liberty, *compare* 452 U.S. at 31-32, *with id.* at 41, and n. 8 (first dissenting opinion), that concern is irrelevant here. Unlike the Court's right-to-counsel rulings, its decisions concerning constitutional burdens of proof have not turned on any presumption favoring any particular standard. To the contrary, the Court has engaged in a straightforward consideration of the factors identified in *Eldridge* to determine whether a particular standard of proof in a particular proceeding satisfies due process.

In *Addington v. Texas,* **441 U.S. 418** (1979), the Court, by a unanimous vote of the participating Justices, declared:

> The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, is to **[p755]** "instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication."

Id. at 423, quoting *In re Winship,* **397 U.S. 358**, 370 (1970) (Harlan, J., concurring). *Addington* teaches that, in any given proceeding, the minimum standard of proof tolerated by the due process requirement reflects not only the weight of the private and public interests affected, but also a societal judgment about how the risk of error should be distributed between the litigants.

Thus, while private parties may be interested intensely in a civil dispute over money damages, application of a "fair preponderance of the evidence" standard indicates both society's "minimal concern with the outcome," and a conclusion that the litigants should "share the risk of error in roughly equal fashion." 441 U.S. at 423. When the State brings a criminal action to deny a defendant liberty or life, however,

> the interests of the defendant are of such magnitude that historically, and without any explicit constitutional requirement, they have been protected by standards of proof designed to exclude, as nearly as possible, the likelihood of an erroneous judgment.

Ibid. The stringency of the "beyond a reasonable doubt" standard bespeaks the "weight and gravity" of the private interest affected, *id.* at 427, society's interest in avoiding erroneous convictions, and a judgment that those interests together require that "society impos[e] almost the entire risk of error upon itself." *Id.* at 424. *See also In re Winship,* 397 U.S. at 372 (Harlan, J., concurring).

The

> minimum requirements [of procedural due process] being a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action.

Vitek v. Jones, **445 U.S. 480**, 491 (1980). *See also Logan v. Zimmerman Brush Co., ante* at 432. Moreover, the degree of proof required in a particular type of proceeding "is the kind of question which has **[p756]** traditionally been left to the judiciary to resolve." *Woodby v. INS,* **385 U.S. 276**, 284 (1966).[n8]

> In cases involving individual rights, whether criminal or civil, "[t]he standard of proof [at a minimum] reflects the value society places on individual liberty."

Addington v. Texas, 441 U.S. at 425, quoting *Tippett v. Maryland,* 436 F.2d 1153, 1166 (CA4 1971) (opinion concurring in part and dissenting in part), *cert. dism'd sub nom. Murel v. Baltimore City Criminal Court,* **407 U.S. 355** (1972).

This Court has mandated an intermediate standard of proof -- "clear and convincing evidence" -- when the individual interests at stake in a state proceeding are both "particularly important" and "more substantial than mere loss of money." *Addington v. Texas,* 441 U.S. at 424. Notwithstanding "the state's 'civil labels and good intentions,'" *id.* at 427, quoting *In re Winship,* 397 U.S. at 365-366, the Court has deemed this level of certainty necessary to preserve fundamental fairness in a variety of government-initiated proceedings that threaten the individual involved with "a significant deprivation of liberty" or "stigma." 441 U.S. at 425, 426. *See, e.g., Addington v. Texas, supra,* (civil commitment); *Woodby v. INS,* 385 U.S. at 285 (deportation); *Chaunt v. United States,* **364 U.S. 350**, 353 (1960) (denaturalization); **[p757]** *Schneiderman v. United States,* **320 U.S. 118**, 125, 159 (1943) (denaturalization).

In *Lassiter,* to be sure, the Court held that fundamental fairness may be maintained in parental rights termination proceedings even when some procedures are mandated only on a case-by-case basis, rather than through rules of general application. 452 U.S. at 31-32 (natural parent's right to court-appointed counsel should be determined by the trial court, subject to appellate review). But this Court never has approved case-by-case determination of the proper *standard of proof* for a given proceeding. Standards of proof, like other

> procedural due process rules[,] are shaped by the risk of error inherent in the truthfinding process as applied to the *generality of cases,* not the rare exceptions.

Mathews v. Eldridge, 424 U.S. at 344 (emphasis added). Since the litigants and the factfinder must know at the outset of a given proceeding how the risk of error will be allocated, the standard of proof necessarily must be calibrated in advance. Retrospective case-by-case review cannot preserve fundamental fairness when a class of proceedings is governed by a constitutionally defective evidentiary standard.[n9] **[p758]**

III

In parental rights termination proceedings, the private interest affected is commanding; the risk of error from using a preponderance standard is substantial; and the countervailing governmental interest favoring that standard is comparatively slight. Evaluation of the three *Eldridge* factors

compels the conclusion that use of a "fair preponderance of the evidence" standard in such proceedings is inconsistent with due process.

A

> The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be "condemned to suffer grievous loss."

Goldberg v. Kelly, **397 U.S. 254**, 262-263 (1970), quoting *Joint Anti-Fascist Refugee Committee v. McGrath,* **341 U.S. 123**, 168 (1951) (Frankfurter, J., concurring). Whether the loss threatened by a particular type of proceeding is sufficiently grave to warrant more than average certainty on the part of the factfinder turns on both the nature of the private interest threatened and the permanency of the threatened loss.

Lassiter declared it "plain beyond the need for multiple citation" that a natural parent's "desire for, and right to, 'the companionship, care, custody, and management of his or her children'" is an interest far more precious than any property **[p759]** right. 452 U.S. at 27, quoting *Stanley v. Illinois,* 405 U.S. at 651. When the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it.

> If the State prevails, it will have worked a unique kind of deprivation. . . . A parent's interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one.

452 U.S. at 27.

In government-initiated proceedings to determine juvenile delinquency, *In re Winship, supra;* civil commitment, *Addington v. Texas, supra;* deportation, *Woodby v. INS, supra;* and denaturalization, *Chaunt v. United States, supra,* and *Schneiderman v. United States, supra,* this Court has identified losses of individual liberty sufficiently serious to warrant imposition of an elevated burden of proof. Yet juvenile delinquency adjudications, civil commitment, deportation, and denaturalization, at least to a degree, are all reversible official actions. Once affirmed on appeal, a New York decision terminating parental rights is *final* and irrevocable. *See* n. 1, *supra.* Few forms of state action are both so severe and so irreversible.

Thus, the first *Eldridge* factor -- the private interest affected -- weighs heavily against use of the preponderance standard at a state-initiated permanent neglect proceeding. We do not deny that the child and his foster parents are also deeply interested in the outcome of that contest. But at the factfinding stage of the New York proceeding, the focus emphatically is not on them.

The factfinding does not purport -- and is not intended -- to balance the child's interest in a normal family home against the parents' interest in raising the child. Nor does it purport to determine whether the natural parents or the foster parents would provide the better home. Rather, the factfinding hearing pits the State directly against the parents. The State alleges that the natural parents are at fault. Fam.Ct.Act § 614.1.(d). The questions disputed and decided are **[p760]** what the State did -- "made diligent efforts," § 614.1.(c) -- and what the natural parents did not do -- "maintain contact with or plan for the future of the child." § 614.1.(d). The State marshals an array of public resources to prove its case and disprove the parents' case. Victory by the State

not only makes termination of parental rights possible; it entails a judicial determination that the parents are unfit to raise their own children.[n10]

At the factfinding, the State cannot presume that a child and his parents are adversaries. After the State has established parental unfitness at that initial proceeding, the court may assume at the *dispositional* stage that the interests of the child and the natural parents do diverge. *See* Fam.Ct.Act § 631 (judge shall make his order "solely on the basis of the best interests of the child," and thus has no obligation to consider the natural parents' rights in selecting dispositional alternatives). But until the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship.[n11] Thus, **[p761]** at the factfinding, the interests of the child and his natural parents coincide to favor use of error-reducing procedures.

However substantial the foster parents' interests may be, *cf. Smith v. Organization of Foster Families,* 431 U.S. at 845-847, they are not implicated directly in the factfinding stage of a state-initiated permanent neglect proceeding against the natural parents. If authorized, the foster parents may pit their interests directly against those of the natural parents by initiating their own permanent neglect proceeding. Fam.Ct.Act § 1055(d); Soc.Serv.Law §§ 3846.3(b), 392.7.(c). Alternatively, the foster parents can make their case for custody at the dispositional stage of a state-initiated proceeding, where the judge already has decided the issue of permanent neglect and is focusing on the placement that would serve the child's best interests. Fam.Ct.Act §§ 623, 631. For the foster parents, the State's failure to prove permanent neglect may prolong the delay and uncertainty until their foster child is freed for adoption. But for the natural parents, a finding of permanent neglect can cut off forever their rights in their child. Given this disparity of consequence, we have no difficulty finding that the balance of private interests strongly favors heightened procedural protections.

B

Under *Mathews v. Eldridge,* we next must consider both the risk of erroneous deprivation of private interests resulting from use of a "fair preponderance" standard and the likelihood that a higher evidentiary standard would reduce that risk. *See* 424 U.S. at 335. Since the factfinding phase of a permanent neglect proceeding is an adversary contest between the State and the natural parents, the relevant question is whether a preponderance standard fairly allocates the risk of an erroneous factfinding between these two parties. **[p762]**

In New York, the factfinding stage of a state-initiated permanent neglect proceeding bears many of the indicia of a criminal trial. *Cf. Lassiter v. Department of Social Services,* 452 U.S. at 42-44 (first dissenting opinion); *Meltzer v. C. Buck LeCraw & Co.,* **402 U.S. 954**, 959 (1971) (Black, J., dissenting from denial of certiorari). *See also* dissenting opinion, *post* at 777-779 (describing procedures employed at factfinding proceeding). The Commissioner of Social Services charges the parents with permanent neglect. They are served by summons. Fam.Ct.Act §§ 614, 616, 617. The factfinding hearing is conducted pursuant to formal rules of evidence. § 624. The State, the parents, and the child are all represented by counsel. §§ 249, 262. The State seeks to establish a series of historical facts about the intensity of its agency's efforts to reunite the family, the infrequency and insubstantiality of the parents' contacts with their child, and the parents' inability or unwillingness to formulate a plan for the child's future. The attorneys submit documentary evidence, and call witnesses who are subject to cross-examination. Based on all the evidence, the judge then determines whether

the State has proved the statutory elements of permanent neglect by a fair preponderance of the evidence. § 622.

At such a proceeding, numerous factors combine to magnify the risk of erroneous factfinding. Permanent neglect proceedings employ imprecise substantive standards that leave determinations unusually open to the subjective values of the judge. *See Smith v. Organization of Foster Families,* 431 U.S. at 835, n. 36. In appraising the nature and quality of a complex series of encounters among the agency, the parents, and the child, the court possesses unusual discretion to underweigh probative facts that might favor the parent.[n12] **[p763]** Because parents subject to termination proceedings are often poor, uneducated, or members of minority groups, *id.* at 833-835, such proceedings are often vulnerable to judgments based on cultural or class bias.

The State's ability to assemble its case almost inevitably dwarfs the parents' ability to mount a defense. No predetermined limits restrict the sums an agency may spend in prosecuting a given termination proceeding. The State's attorney usually will be expert on the issues contested and the procedures employed at the factfinding hearing, and enjoys full access to all public records concerning the family. The State may call on experts in family relations, psychology, and medicine to bolster its case. Furthermore, the primary witnesses at the hearing will be the agency's own professional caseworkers, whom the State has empowered both to investigate the family situation and to testify against the parents. Indeed, because the child is already in agency custody, the State even has the power to shape the historical events that form the basis for termination.[n13] **[p764]**

The disparity between the adversaries' litigation resources is matched by a striking asymmetry in their litigation options. Unlike criminal defendants, natural parents have no "double jeopardy" defense against repeated state termination efforts. If the State initially fails to win termination, as New York did here, *see* n. 4, *supra,* it always can try once again to cut off the parents' rights after gathering more or better evidence. Yet even when the parents have attained the level of fitness required by the State, they have no similar means by which they can forestall future termination efforts.

Coupled with a "fair preponderance of the evidence" standard, these factors create a significant prospect of erroneous termination. A standard of proof that, by its very terms, demands consideration of the quantity, rather than the quality, of the evidence may misdirect the factfinder in the marginal case. *See In re Winship,* 397 U.S. at 371, n. 3 (Harlan, J., concurring). Given the weight of the private interests at stake, the social cost of even occasional error is sizable.

Raising the standard of proof would have both practical and symbolic consequences. *Cf. Addington v. Texas,* 441 U.S. at 426. The Court has long considered the heightened standard of proof used in criminal prosecutions to be "a prime instrument for reducing the risk of convictions resting on factual error." *In re Winship,* 397 U.S. at 363. An elevated standard of proof in a parental rights termination proceeding would alleviate

> the possible risk that a factfinder might decide to [deprive] an individual based solely on a few isolated instances of unusual conduct [or] . . . idiosyncratic behavior.

Addington v. Texas, 441 U.S. at 427.

> Increasing the burden of proof is one way to impress the factfinder with the importance **[p765]** of the decision, and thereby perhaps to reduce the chances that inappropriate

terminations will be ordered. *Ibid.*

The Appellate Division approved New York's preponderance standard on the ground that it properly "balanced rights possessed by the child . . . with those of the natural parents. . . ." 75 App.Div.2d at 910, 427 N.Y.S.2d at 320. By so saying, the court suggested that a preponderance standard properly allocates the risk of error between the parents and the child.[n14] That view is fundamentally mistaken.

The court's theory assumes that termination of the natural parents' rights invariably will benefit the child.[n15] Yet we have noted above that the parents and the child share an interest in avoiding erroneous termination. Even accepting the court's assumption, we cannot agree with its conclusion that a preponderance standard fairly distributes the risk of error between parent and child. Use of that standard reflects the judgment that society is nearly neutral between erroneous termination of parental rights and erroneous failure to terminate those rights. *Cf. In re Winship,* 397 U.S. at 371 (Harlan, J., concurring). For the child, the likely consequence of an erroneous failure to terminate is preservation of **[p766]** an uneasy *status quo.*[n16] For the natural parents, however, the consequence of an erroneous termination is the unnecessary destruction of their natural family. A standard that allocates the risk of error nearly equally between those two outcomes does not reflect properly their relative severity.

C

Two state interests are at stake in parental rights termination proceedings -- a *parens patriae* interest in preserving and promoting the welfare of the child and a fiscal and administrative interest in reducing the cost and burden of such proceedings. A standard of proof more strict than preponderance of the evidence is consistent with both interests.

"Since the State has an urgent interest in the welfare of the child, it shares the parent's interest in an accurate and just decision" at the *factfinding* proceeding. *Lassiter v. Department of Social Services,* 452 U.S. at 27. As *parens patriae,* the State's goal is to provide the child with a permanent home. *See* Soc.Serv.Law § 384-b.1.(a)(i) (statement of legislative findings and intent). Yet while there is still reason to believe that positive, nurturing parent-child relationships exist, the *parens patriae* interest favors preservation, not **[p767]** severance, of natural familial bonds.[n17] § 384-b.1.(a)(ii). "[T]he State registers no gain towards its declared goals when it separates children from the custody of fit parents." *Stanley v. Illinois,* 405 U.S. at 652.

The State's interest in finding the child an alternative permanent home arises only "when it is *clear* that the natural parent cannot or will not provide a normal family home for the child." Soc.Serv.Law § 384-b.1.(a)(iv) (emphasis added). At the factfinding, that goal is served by procedures that promote an accurate determination of whether the natural parents can and will provide a normal home.

Unlike a constitutional requirement of hearings, *see, e.g., Mathews v. Eldridge,* 424 U.S. at 347, or court-appointed counsel, a stricter standard of proof would reduce factual error without imposing substantial fiscal burdens upon the State. As we have observed, 35 States already have adopted a higher

standard by statute or court decision without apparent effect on the speed, form, or cost of their factfinding proceedings. *See* n. 3, *supra.*

Nor would an elevated standard of proof create any real administrative burdens for the State's factfinders. New York Family Court judges already are familiar with a higher evidentiary standard in other parental rights termination proceedings not involving permanent neglect. *See* Soc.Serv.Law §§ 384-b.3.(g), 384-b.4.(c), and 384-b.4.(e) (requiring "clear and convincing proof" before parental rights may be terminated for reasons of mental illness and mental retardation or severe and repeated child abuse). New York also demands at least clear and convincing evidence in proceedings of far less moment than parental rights termination proceedings. *See, e.g.,* N.Y.Veh. & Traf.Law § 227.1 (McKinney Supp.1981) (requiring the State to prove traffic **[p768]** infractions by "clear and convincing evidence") and *In re Rosenthal v. Hartnett,* 36 N.Y.2d 269 326 N.E.2d 811 (1975); *see also Ross v. Food Specialties, Inc.,* 6 N.Y.2d 336, 341, 160 N.E.2d 618, 620 (1959) (requiring "clear, positive and convincing evidence" for contract reformation). We cannot believe that it would burden the State unduly to require that its factfinders have the same factual certainty when terminating the parent-child relationship as they must have to suspend a driver's license.

IV

The logical conclusion of this balancing process is that the "fair preponderance of the evidence" standard prescribed by Fam.Ct.Act § 622 violates the Due Process Clause of the **Fourteenth Amendment**.[n18] The Court noted in *Addington:*

> The individual should not be asked to share equally with society the risk of error when the possible injury to the individual is significantly greater than any possible harm to the state.

441 U.S. at 427. Thus, at a parental rights termination proceeding, a near-equal allocation of risk between the parents and the State is constitutionally intolerable. The next question, then, is whether a "beyond a reasonable doubt" or a "clear and convincing" standard is constitutionally mandated.

In *Addington,* the Court concluded that application of a reasonable doubt standard is inappropriate in civil commitment proceedings for two reasons -- because of our hesitation to apply that unique standard "too broadly or casually in noncriminal cases," *id.* at 428, and because the psychiatric evidence ordinarily adduced at commitment proceedings is **[p769]** rarely susceptible to proof beyond a reasonable doubt. *Id.* at 429-430, 432-433. To be sure, as has been noted above, in the Indian Child Welfare Act of 1978, Pub.L. 9508, § 102(f), 92 Stat. 3072, **25 U.S.C. § 1912**(f) (1976 ed., Supp. IV), Congress requires "evidence beyond a reasonable doubt" for termination of Indian parental rights, reasoning that "the removal of a child from the parents is a penalty as great [as], if not greater, than a criminal penalty. . . ." H.R.Rep. No. 95-1386, p. 22 (1978). Congress did not consider, however, the evidentiary problems that would arise if proof beyond a reasonable doubt were required in all state-initiated parental rights termination hearings.

Like civil commitment hearings, termination proceedings often require the factfinder to evaluate medical and psychiatric testimony, and to decide issues difficult to prove to a level of absolute certainty, such as lack of parental motive, absence of affection between parent and child, and failure of parental foresight and progress. *Cf. Lassiter v. Department of Social Services,* 452 U.S. at 30; *id.* at 44-46 (first dissenting opinion) (describing issues raised in state

termination proceedings). The substantive standards applied vary from State to State. Although Congress found a "beyond a reasonable doubt" standard proper in one type of parental rights termination case, another legislative body might well conclude that a reasonable doubt standard would erect an unreasonable barrier to state efforts to free permanently neglected children for adoption.

A majority of the States have concluded that a "clear and convincing evidence" standard of proof strikes a fair balance between the rights of the natural parents and the State's legitimate concerns. *See* n. 3, *supra.* We hold that such a standard adequately conveys to the factfinder the level of subjective certainty about his factual conclusions necessary to satisfy due process. We further hold that determination of the precise burden equal to or greater than that standard **[p770]** is a matter of state law properly left to state legislatures and state courts. *Cf. Addington v. Texas,* 441 U.S. at 433.

We, of course, express no view on the merits of petitioners' claims.[n19] At a hearing conducted under a constitutionally proper standard, they may or may not prevail. Without deciding the outcome under any of the standards we have approved, we vacate the judgment of the Appellate Division and remand the case for further proceedings not inconsistent with this opinion.

It is so ordered.

1. At oral argument, counsel for petitioners asserted that, in New York, natural parents have no means of restoring terminated parental rights. Tr. of Oral Arg. 9. Counsel for respondents, citing Fam.Ct.Act § 1061, answered that parents may petition the Family Court to vacate or set aside an earlier order on narrow grounds, such as newly discovered evidence or fraud. Tr. of Oral Arg. 26. Counsel for respondents conceded, however that this statutory provision has never been invoked to set aside a permanent neglect finding. Id. at 27.

2. Most notably, natural parents have a statutory right to the assistance of counsel and of court-appointed counsel if they are indigent. Fam.Ct.Act § 262.(a)(iii).

3. Fifteen States, by statute, have required "clear and convincing evidence" or its equivalent. See Alaska Stat.Ann. § 47.10.080(c)(3) (1980); Cal.Civ.Code Ann. § 232(a)(7) (West Supp.1982); Ga.Code §§ 24A-2201(c), 24A-3201 (1979); Iowa Code § 600A.8 (1981) ("clear and convincing proof"); Me.Rev.Stat.Ann., Tit. 22, § 4055.1.B.(2) (Supp. 1981-1982); Mich.Comp.Laws § 722.25 (Supp. 1981-1982); Mo.Rev.Stat. § 211.447.2(2) (Supp.1981) ("clear, cogent and convincing evidence"); N.M.Stat.Ann. § 40-7-4.J. (Supp.1981); N.C.Gen.Stat. § 7A-289.30(e) (1981) ("clear, cogent, and convincing evidence"); Ohio Rev.Code Ann. §§ 2151.35, 2151.414(B) (Page Supp. 1982); R.I.Gen.Laws § 15-7-7(d) (Supp. 1980); Tenn.Code Ann. § 37-246(d) (Supp. 1981); Va.Code § 16.1-283.B (Supp. 1981); W.Va.Code § 492(c) (1980) ("clear and convincing proof"); Wis.Stat. § 48.31(1) (Supp. 1981-1982).

Fifteen States, the District of Columbia, and the Virgin Islands, by court decision, have required "clear and convincing evidence" or its equivalent. *See Dale County Dept. of Pensions & Security v. Robles,* 368 So.2d 39, 42 (Ala.Civ.App.1979); *Harper v. Caskin,* 265 Ark. 558, 560-561, 580 S.W.2d 176, 178 (1979); *In re J.S.R.,* 374 A.2d 860, 864 (D.C.1977); *Torres v. Van Eepoel,* 98 So.2d 735, 737 (Fla.1957); *In re Kerns,* 225 Kan. 746, 753, 594 P.2d 187, 193 (1979); *In re Rosenbloom,* 266 N.W.2d 888, 889 (Minn.1978) ("clear and convincing proof "); *In re J.L.B.,* 182 Mont. 100, 116-117, 594 P.2d 1127, 1136 (1979); *In re Souza,* 204 Neb. 503, 510, 283 N.W.2d 48, 52 (1979); *J. v. M.,* 157 N.J.Super. 478, 489, 385 A.2d 240, 246 (App.Div.1978); *In re J. A.,* 283 N.W.2d 83, 92 (N.D.1979); *In re Darren Todd H.,* 615 P.2d 287, 289 (Okla.1980); *In re*

William. L., 477 Pa. 322, 332, 383 A.2d 1228, 1233, *cert. denied sub nom. Lehman v. Lycoming County Children's Services,* **439 U.S. 880** (1978); *In re G.M.,* 596 S.W.2d 846, 847 (Tex.1980); *In re Pitts,* 535 P.2d 1244, 1248 (Utah 1975); *In re Maria,* 15 V.I. 368, 384 (1978); *In re Sego,* 82 Wash.2d 736, 739, 513 P.2d 831, 833 (1973) ("clear, cogent, and convincing evidence"); *In re X.,* 607 P.2d 911, 919 (Wyo.1980) ("clear and unequivocal").

South Dakota's Supreme Court has required a "clear preponderance" of the evidence in a dependency proceeding. *See In re B.E.,* 287 N.W.2d 91, 96 (1979). Two States, New Hampshire and Louisiana, have barred parental rights terminations unless the key allegations have been proved beyond a reasonable doubt. *See State v. Robert H.,* 118 N.H. 713, 716, 393 A.2d 1387, 1389 (1978); La.Rev.Stat.Ann. § 13:1603.A (West Supp.1982). Two States, Illinois and New York, have required clear and convincing evidence, but only in certain types of parental rights termination proceedings. *See* Ill.Rev.Stat., ch. 37, ¶¶ 705-9(2), (3) (1979), amended by Act of Sept. 11, 1981, 1982 Ill. Laws, P.A. 82-437 (generally requiring a preponderance of the evidence, but requiring clear and convincing evidence to terminate the rights of minor parents and mentally ill or mentally deficient parents); N.Y.Soc.Serv.Law §§ 384-b.3(g), 384-b.4(c), and 384-b.4(e) (Supp.1981-1982) (requiring "clear and convincing proof" before parental rights may be terminated for reasons of mental illness and mental retardation or severe and repeated child abuse).

So far as we are aware, only two federal courts have addressed the issue. Each has held that allegations supporting parental rights termination must be proved by clear and convincing evidence. *Sims v. State Dept. of Public Welfare,* 438 F.Supp. 1179, 1194 (SD Tex.1977), *rev'd on other grounds sub nom. Moore v. Sims,* **442 U.S. 415** (1979); *Alsager v. District Court of Polk County,* 406 F.Supp. 10, 25 (SD Iowa 1975), *aff'd on other grounds,* 545 F.2d 1137 (CA8 1976).

[4.] Respondent had made an earlier and unsuccessful termination effort in September, 1976. After a factfinding hearing, the Family Court Judge dismissed respondent's petition for failure to prove an essential element of Fam.Ct.Act § 614.1.(d). See In re Santosky, 89 Misc.2d 730, 393 N.Y.S.2d 486 (1977). The New York Supreme Court, Appellate Division, affirmed, finding that "the record as a whole" revealed that petitioners had "substantially planned for the future of the children." In re John W., 63 App.Div.2d 750, 751, 404 N.Y.S.2d 717, 719 (1978).

[5.] Since respondent Kramer took custody of Tina, John III, and Jed, the Santoskys have had two other children, James and Jeremy. The State has taken no action to remove these younger children. At oral argument, counsel for respondents replied affirmatively when asked whether he was asserting that petitioners were "unfit to handle the three older ones, but not unfit to handle the two younger ones." Tr. of Oral Arg. 24.

[6.] Petitioners initially had sought review in the New York Court of Appeals. That court sua sponte transferred the appeal to the Appellate Division, Third Department, stating that a direct appeal did not lie because "questions other than the constitutional validity of a statutory provision are involved." App. 50.

[7.] We therefore reject respondent Kramer's claim that a parental rights termination proceeding does not interfere with a fundamental liberty interest. See Brief for Respondent Kramer 11-18; Tr. of Oral Arg. 38. The fact that important liberty interests of the child and its foster parents may also be affected by a permanent neglect proceeding does not justify denying the natural parents constitutionally adequate procedures. Nor can the State refuse to provide natural parents adequate procedural safeguards on the ground that

the family unit already has broken down; that is the very issue the permanent neglect proceeding is meant to decide.

[8] The dissent charges, post at 772, n. 2, that

> this Court simply has no role in establishing the standards of proof that States must follow in the various judicial proceedings they afford to their citizens.

As the dissent properly concedes, however, the Court must examine a State's chosen standard to determine whether it satisfies "the constitutional minimum of 'fundamental fairness.'" *Ibid. See, e.g., Addington v. Texas,* **441 U.S. 418**, 427, 433 (1979) (unanimous decision of participating Justices) (**Fourteenth Amendment** requires at least clear and convincing evidence in a civil proceeding brought under state law to commit an individual involuntarily for an indefinite period to a state mental hospital); *In re Winship,* **397 U.S. 358**, 364 (1970) (Due Process Clause of the **Fourteenth Amendment** protects the accused in state proceeding against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged).

[9] For this reason, we reject the suggestions of respondents and the dissent that the constitutionality of New York's statutory procedures must be evaluated as a "package." See Tr. of Oral Arg. 25, 36, 38. Indeed, we would rewrite our precedents were we to excuse a constitutionally defective standard of proof based on an amorphous assessment of the "cumulative effect" of state procedures. In the criminal context, for example, the Court has never assumed that "strict substantive standards or special procedures compensate for a lower burden of proof. . . ." Post at 773. See In re Winship, 397 U.S. at 368. Nor has the Court treated appellate review as a curative for an inadequate burden of proof. See Woodby v. INS, 385 U.S. 276, 282 (1966) ("judicial review is generally limited to ascertaining whether the evidence relied upon by the trier of fact was of sufficient quality and substantiality to support the rationality of the judgment") .

As the dissent points out, "the standard of proof is a crucial component of legal process, the primary function of which is 'to minimize the risk of erroneous decisions.'" *Post* at 785, quoting *Greenholtz v. Nebraska Penal Inmates,* **442 U.S. 1**, 13 (1979). Notice, summons, right to counsel, rules of evidence, and evidentiary hearings are all procedures to place information before the factfinder. But only the standard of proof "instruct[s] the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions" he draws from that information. *In re Winship,* 397 U.S. at 370 (Harlan, J., concurring). The statutory provision of right to counsel and multiple hearings before termination cannot suffice to protect a natural parent's fundamental liberty interests if the State is willing to tolerate undue uncertainty in the determination of the dispositive facts.

[10] The Family Court Judge in the present case expressly refused to terminate petitioners' parental rights on a "non-statutory, no-fault basis." App. 22-29. Nor is it clear that the State constitutionally could terminate a parent's rights without showing parental unfitness. See Quilloin v. Walcott, 434 U.S. 246, 255 (1978) ("We have little doubt that the Due Process Clause would be offended '[i]f a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest,'" quoting Smith v. Organization of Foster Families, 431 U.S. 816, 862-863 (1977) (Stewart, J., concurring in judgment)).

[11.] For a child, the consequences of termination of his natural parents' rights may well be far-reaching. In Colorado, for example, it has been noted:

> The child loses the right of support and maintenance, for which he may thereafter be dependent upon society; the right to inherit; and all other rights inherent in the legal parent-child relationship, not just for [a limited] period . . . , but forever.

In re K.S., 33 Colo. App. 72, 76, 515 P.2d 130, 133 (1973).

Some losses cannot be measured. In this case, for example, Jed Santosky was removed from his natural parents' custody when he was only three days old; the judge's finding of permanent neglect effectively foreclosed the possibility that Jed would ever know his natural parents.

[12.] For example, a New York court appraising an agency's "diligent efforts" to provide the parents with social services can excuse efforts not made on the grounds that they would have been "detrimental to the best interests of the child." Fam.Ct.Act § 614.l.(c). In determining whether the parent "substantially and continuously or repeatedly" failed to "maintain contact with . . . the child," § 614.1.(d), the judge can discount actual visits or communications on the grounds that they were insubstantial or "overtly demonstrat[ed] a lack of affectionate and concerned parenthood." Soc.Serv.Law § 384-b.7.(b). When determining whether the parent planned for the child's future, the judge can reject as unrealistic plans based on overly optimistic estimates of physical or financial ability. § 384-b.7.(c). See also dissenting opinion, post at 779-780, nn. 8 and 9.

[13.] In this case, for example, the parents claim that the State sought court orders denying them the right to visit their children, which would have prevented them from maintaining the contact required by Fam.Ct.Act. § 614.1.(d). See Brief for Petitioners 9. The parents further claim that the State cited their rejection of social services they found offensive or superfluous as proof of the agency's "diligent efforts" and their own "failure to plan" for the children's future. Id. at 10-11.

We need not accept these statements as true to recognize that the State's unusual ability to structure the evidence increases the risk of an erroneous factfinding. Of course, the disparity between the litigants' resources will be vastly greater in States where there is no statutory right to court-appointed counsel. *See Lassiter v. Department of Social Services,* **452 U.S. 18**, 34 (1981) (only 33 States and the District of Columbia provide that right by statute).

[14.] The dissent makes a similar claim. See post at 786-791.

[15.] This is a hazardous assumption, at best. Even when a child's natural home is imperfect, permanent removal from that home will not necessarily improve his welfare. See, e.g., Wald, State Intervention on Behalf of "Neglected" Children: A Search for Realistic Standards, 27 Stan.L.Rev. 985, 993 (1975) ("In fact, under current practice, coercive intervention frequently results in placing a child in a more detrimental situation than he would be in without intervention").

Nor does termination of parental rights necessarily ensure adoption. *See* Brief for Community Action for Legal Services, Inc., *et al.* as *Amici Curiae* 22-23. Even when a child eventually finds an adoptive family, he may spend years moving between state institutions and "temporary" foster placements after his ties to his natural parents have been severed. *See Smith v. Organization of*

Foster Families, 431 U.S. at 833-838 (describing the "limbo" of the New York foster care system).

[16.] When the termination proceeding occurs, the child is not living at his natural home. A child cannot be adjudicated "permanently neglected" until, "for a period of more than one year," he has been in "the care of an authorized agency." Soc.Serv.Law § 384-b.7.(a); Fam.Ct.Act § 614. l.(d). See also dissenting opinion, post at 789-790.

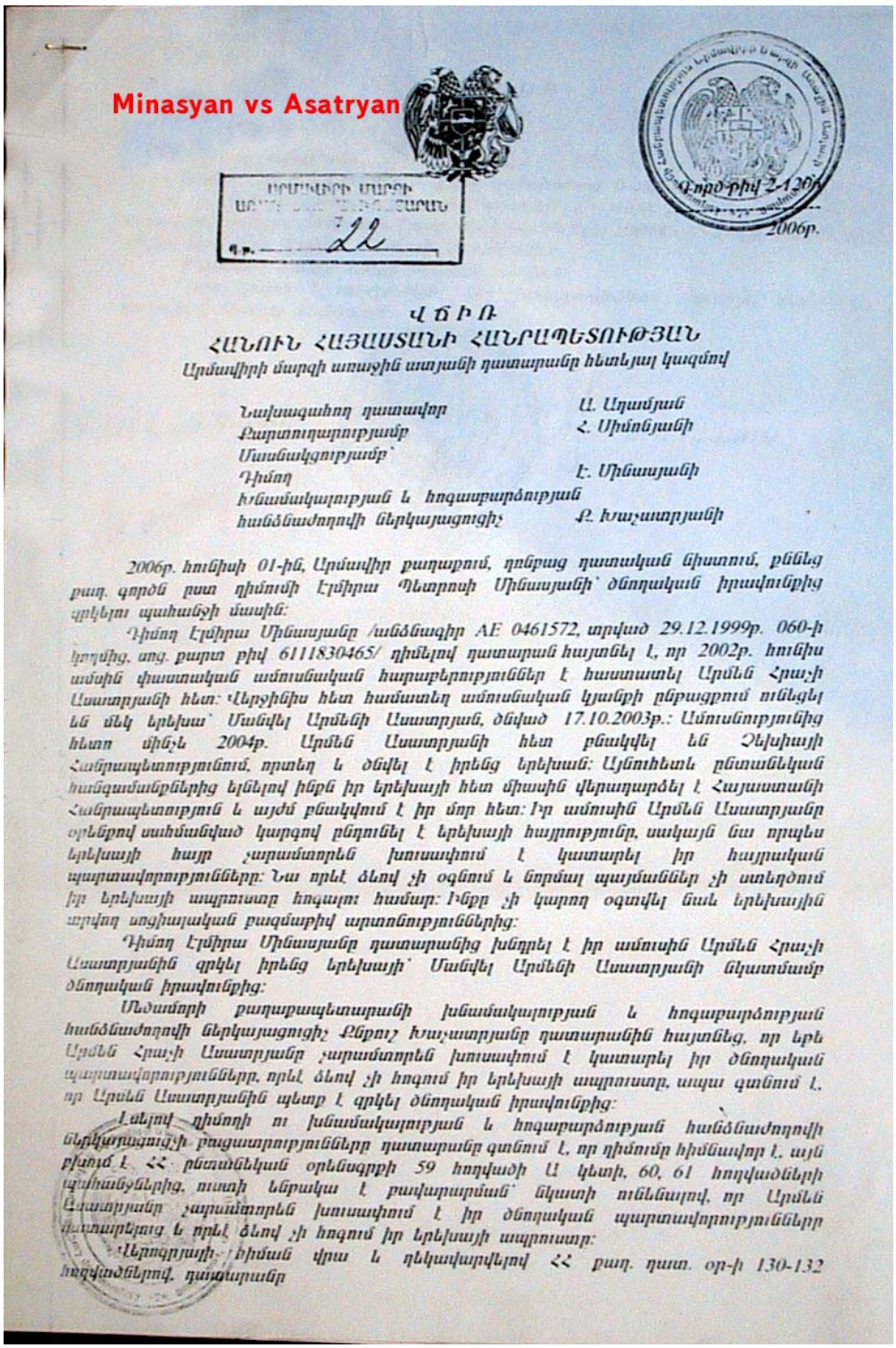
Under New York law, a judge has ample discretion to ensure that, once removed from his natural parents on grounds of neglect, a child will not return to a hostile environment. In this case, when the State's initial termination effort failed for lack of proof, *see* n. 4, *supra,* the court simply issued orders under Fam.Ct.Act § 1055(b) extending the period of the child's foster home placement. *See* App.19-20. *See also* Fam.Ct.Act § 632(b) (when State's permanent neglect petition is dismissed for insufficient evidence, judge retains jurisdiction to reconsider underlying orders of placement); § 633 (judge may suspend judgment at dispositional hearing for an additional year).

[17.] Any parens patriae interest in terminating the natural parents' rights arises only at the dispositional phase, after the parents have been found unfit.

[18.] The dissent's claim that today's decision "will inevitably lead to the federalization of family law," post at 773, is, of course, vastly overstated. As the dissent properly notes, the Court's duty to "refrai[n] from interfering with state answers to domestic relations questions" has never required "that the Court should blink at clear constitutional violations in state statutes." Post at 771.

[19.] Unlike the dissent, we carefully refrain from accepting as the "facts of this case" findings that are not part of the record, and that have been found only to be more likely true than not.

APPENDIX V



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ՀԱՆՈՒՆ ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅԱՆ
Արմավիրի մարզի առաջին ատյանի դատարանը հետևյալ կազմով

Նախագահող դատավոր Ա. Աղամյան
Քարտուղարությամբ Հ. Սիմոնյանի
Մասնակցությամբ՝
Դիմող Է. Մինասյանի
Իրավասակալության և հոգաբարձության հանձնաժողովի ներկայացուցիչ Ք. Խաչատրյանի

2006թ. հունիսի 01-ին, Արմավիր քաղաքում, դռնբաց դատական նիստում, քննեց քաղ. գործն ըստ դիմումի Էմիլիա Պետրոսի Մինասյանի՝ ծնողական իրավունքից զրկելու պահանջի մասին:

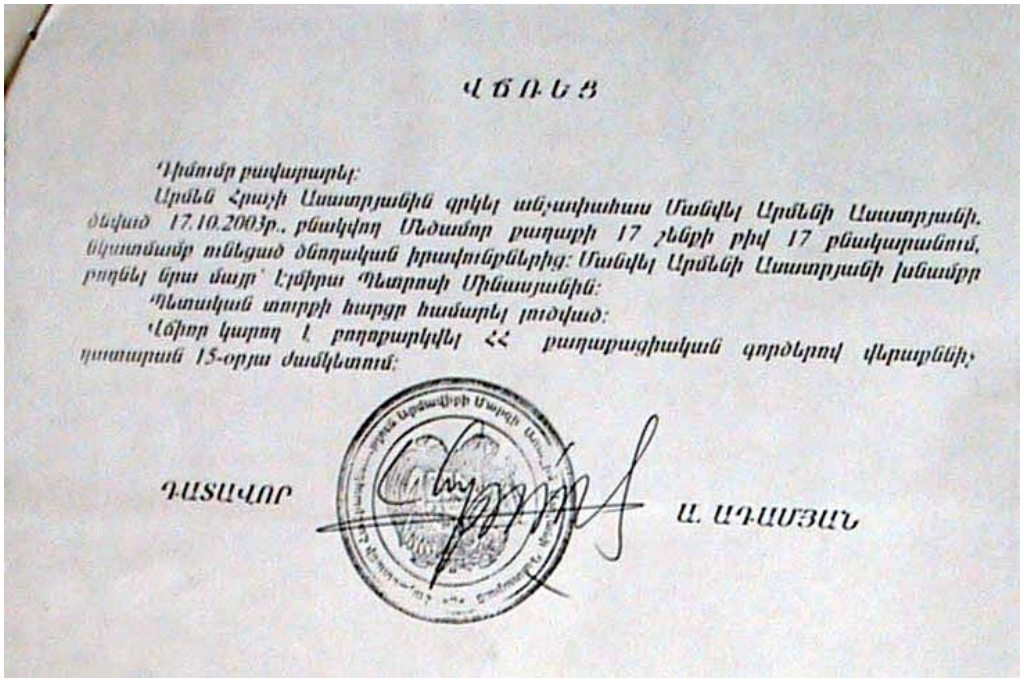
Դիմող Էմիլիա Մինասյանը /ծննդագիր AE 0461572, տրված 29.12.1999թ. 060-ի կողմից, սոց. քարտ թիվ 6111830465/ դիմելով դատարան հայտնել է, որ 2002թ. հունիս ամսին փաստական ամուսնական հարաբերություններ է հաստատել Արմեն Հրաչի Ասատրյանի հետ: Վերջինիս հետ համատեղ ամուսնական կյանքի ընթացքում ունեցել են մեկ երեխա՝ Մանվել Արմենի Ասատրյան, ծնված 17.10.2003թ.: Ամուսնությունից հետո մինչև 2004թ. Արմեն Ասատրյանի հետ բնակվել են Չեխիայի Հանրապետությունում, որտեղ և ծնվել է իրենց երեխան: Այնուհետև ընտանեկան հանգամանքներից ելնելով ինքն իր երեխայի հետ միասին վերադարձել է Հայաստանի Հանրապետություն և այժմ բնակվում է իր մոր հետ: Իր ամուսին Արմեն Ասատրյանը օրենքով սահմանված կարգով ընդունել է երեխայի հայրությունը, սակայն նա որպես երեխայի հայր չարամտորեն խուսափում է կատարել իր հայրական պարտավորությունները: Նա որևէ ձևով չի օգնում և նորմալ պայմաններ չի ստեղծում իր երեխայի ապրուստը հոգալու համար: Ինքը չի կարող օգտվել նաև երեխային տրվող սոցիալական բազմաթիվ արտոնություններից:

Դիմող Էմիլիա Մինասյանը դատարանից խնդրել է իր ամուսին Արմեն Հրաչի Ասատրյանին զրկել իրենց երեխայի՝ Մանվել Արմենի Ասատրյանի նկատմամբ ծնողական իրավունքից:

Մանտոյի քաղաքապետարանի խնամակալության և հոգաբարձության հանձնաժողովի ներկայացուցիչ Ք.Խաչատրյանը դատարանին հայտնեց, որ նրան Արմեն Հրաչի Ասատրյանը չարամտորեն խուսափում է կատարել իր ծնողական պարտավորությունները, որևէ ձևով չի հոգում իր երեխայի ապրուստը, ապա գտնում է, որ Արմեն Ասատրյանին պետք է զրկել ծնողական իրավունքից:

Լսելով դիմողի ու խնամակալության և հոգաբարձության հանձնաժողովի ներկայացուցչի բացատրությունները դատարանը գտնում է, որ դիմումը հիմնավոր է, այն բխում է ՀՀ ընտանեկան օրենսգրքի 59 հոդվածի 4 կետի, 60, 61 հոդվածների պահանջներից, ուստի ենթակա է բավարարման՝ նկատի ունենալով, որ Արմեն Ասատրյանը չարամտորեն խուսափում է իր ծնողական պարտավորություններ կատարելուց և որևէ ձևով չի հոգում իր երեխայի ապրուստը:

Վերոգրյալի հիման վրա և ղեկավարվելով ՀՀ քաղ. դատ. օր-ի 130-132 հոդվածներով, դատարանը



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Վիճումը բավարարել:

Արմեն Հրայրի Ասատրյանին զրկել անչափահաս Մանվել Արմենի Ասատրյանի, ծնված 17.10.2003թ., բնակվող Մեծամոր քաղաքի 17 շենքի բիվ 17 բնակարանում, նկատմամբ ունեցած ծնողական իրավունքներից: Մանվել Արմենի Ասատրյանի խնամքը բողնել նրա մայր՝ Լիլիթա Պետրոսի Միքաելյանին:

Պետական տուրքի հարցը համարել լուծված:

Վճիռը կարող է բողոքարկվել ՀՀ քաղաքացիական գործերով վերաքննիչ դատարան 15-օրյա ժամկետում:

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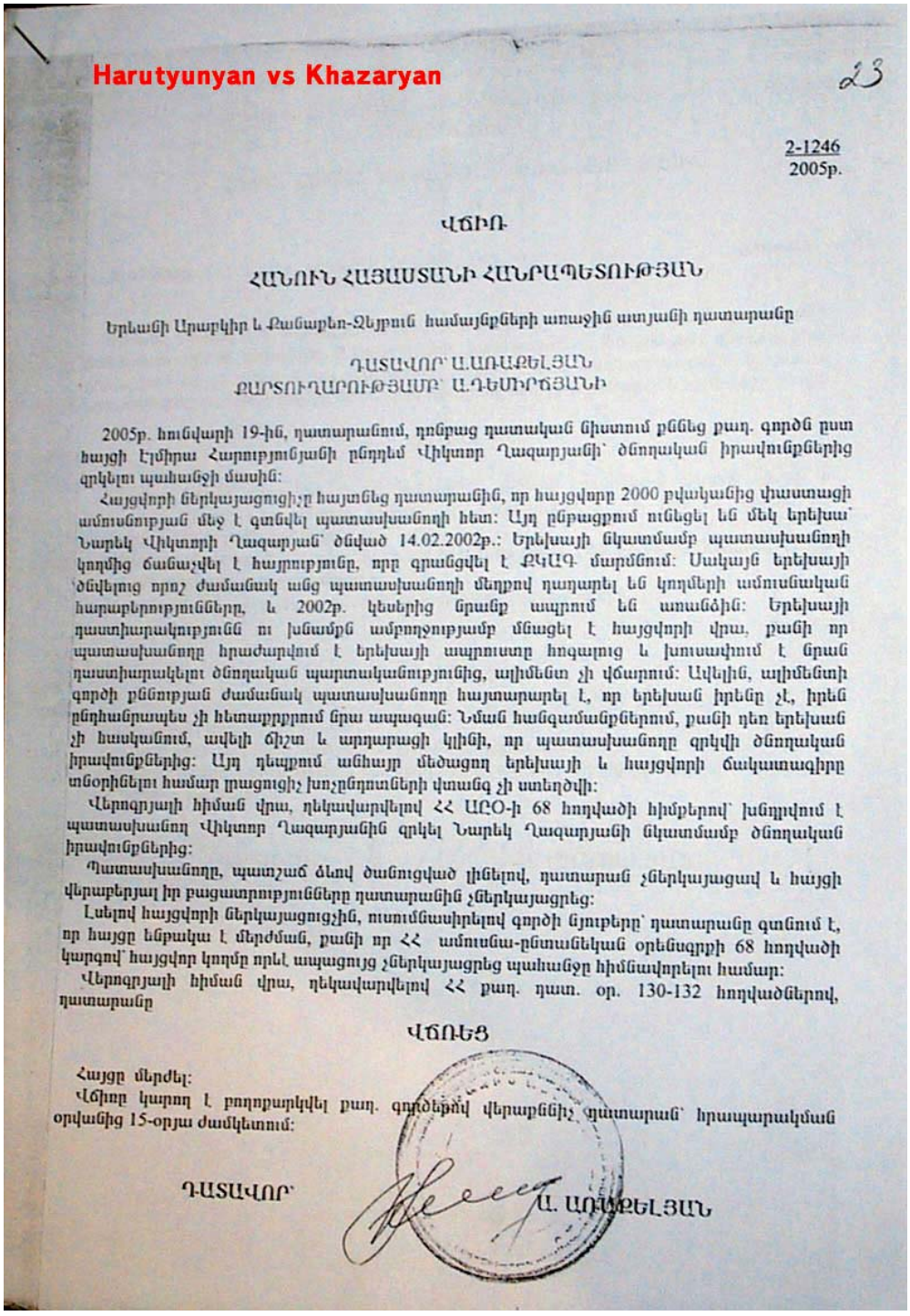

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ՀԱՆՈՒՆ ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅԱՆ

Երևանի Արաբկիր և Քանաքեռ-Զեյթուն համայնքների առաջին ատյանի դատարանը

ԴԱՏԱՎՈՐ Ա.ԱՌԱՔԵԼՅԱՆ
ՔԱՐՏՈՒՂԱՐՈՒԹՅԱՄԲ՝ Ա.ԴԵՄԻՐՃՅԱՆԻ

2005թ. հունվարի 19-ին, դատարանում, դռնբաց դատական նիստում քննեց քաղ. գործն ըստ հայցի Էլմիրա Հարությունյանի ընդդեմ Վիկտոր Ղազարյանի՝ ծնողական իրավունքներից զրկելու պահանջի մասին:

Հայցվորի ներկայացուցիչը հայտնեց դատարանին, որ հայցվորը 2000 թվականից փաստացի ամուսնության մեջ է գտնվել պատասխանողի հետ: Այդ ընթացքում ունեցել են մեկ երեխա՝ Նարեկ Վիկտորի Ղազարյան՝ ծնված 14.02.2002թ.: Երեխայի նկատմամբ պատասխանողի կողմից ճանաչվել է հայրությունը, որը գրանցվել է ՔԿԱԳ մարմնում: Սակայն երեխայի ծնվելուց որոշ ժամանակ անց պատասխանողի մեղքով դադարել են կողմերի ամուսնական հարաբերությունները, և 2002թ. կեսերից նրանք ապրում են առանձին: Երեխայի դաստիարակությունն ու խնամքն ամբողջությամբ մնացել է հայցվորի վրա, քանի որ պատասխանողը հրաժարվում է երեխայի ապրուստը հոգալուց և խուսափում է նրան դաստիարակելու ծնողական պարտականությունից, ալիմենտ չի վճարում: Ավելին, ալիմենտի գործի քննության ժամանակ պատասխանողը հայտարարել է, որ երեխան իրենը չէ, իրեն ընդհանրապես չի հետաքրքրում նրա ապագան: Նման հանգամանքներում, քանի դեռ երեխան չի հասկանում, ավելի ճիշտ և արդարացի կլինի, որ պատասխանողը զրկվի ծնողական իրավունքներից: Այդ դեպքում անհայր մեծացող երեխայի և հայցվորի ճակատագիրը տնօրինելու համար լրացուցիչ խոչընդոտների վտանգ չի ստեղծվի:

Վերոգրյալի հիման վրա, ղեկավարվելով ՀՀ ԱԸՕ-ի 68 հոդվածի հիմքերով՝ խնդրվում է պատասխանող Վիկտոր Ղազարյանին զրկել Նարեկ Ղազարյանի նկատմամբ ծնողական իրավունքներից:

Պատասխանողը, պատշաճ ձևով ծանուցված լինելով, դատարան չներկայացավ և հայցի վերաբերյալ իր բացատրությունները դատարանին չներկայացրեց:

Լսելով հայցվորի ներկայացուցչին, ուսումնասիրելով գործի նյութերը՝ դատարանը գտնում է, որ հայցը ենթակա է մերժման, քանի որ ՀՀ ամուսնա-ընտանեկան օրենսգրքի 68 հոդվածի կարգով՝ հայցվոր կողմը որևէ ապացույց չներկայացրեց պահանջը հիմնավորելու համար:

Վերոգրյալի հիման վրա, ղեկավարվելով ՀՀ քաղ. դատ. օր. 130-132 հոդվածներով, դատարանը

ՎՃՌԵՑ

Հայցը մերժել:

Վճիռը կարող է բողոքարկվել քաղ. գործերով վերաքննիչ դատարան՝ հրապարակման օրվանից 15-օրյա ժամկետում:

ԴԱՏԱՎՈՐ՝ Ա. ԱՌԱՔԵԼՅԱՆ

APPENDIX VI

LIST OF SOURCES USED

- *Constitution of the Republic of Armenia,* Art. 36 and Art. 48, 2005
- *Convention on the Rights of the Child* (ratified by Armenia in 1993)
- *Family Code,* Art. 59-61, 2005 (Republic of Armenia)
- *Civil Procedural Code,* Art. 87-88, 1998 (Republic of Armenia)
- *Family Code,* Art. 67, 2000 (Moldova)
- *Law on Marriage and Family*, Art. 67, 1998 (Kazakhstan)
- *Family Code,* Art. 69 (Tajikistan)
- *Family Law,* Art. 114, 2003 (Croatia)
- *Child Protection Act,* Art. 10-11, 2002 (Iceland)
- Children's Law Office, *Termination of Parental Rights*, University of South Carolina, 2003
- http://www.ipt-forensics.com/journal/volume10/j10_10_19.htm
- http://jec.unm.edu/resources/benchbooks/child_law/ch_22.htm
- www.dss.mo.gov/cd/info/cwmanual/section4/ch26/sec4ch26sub2.htm
- www.aaaalegalcenter.com/Best.htm
- http://www.thefreedictionary.com/parent
- www.weeklystandard.com
- http://www.mss.am/eng/about/plansfam.htm
- http://www.ngo.am/dir/search_result.asp?shift=9999&scase=0&SID=3&SN=
- http://www.farusa.org/whatwedo_projectlist.asp?tt=SD&a=&s=&b=&pp=63&m=
- Martirosyan vs. Grigoryan N 2-7287, 2005
- Achapniak District vs. Davoyan N 2-1111, 2005

- Mkhitaryan and the Department of Custody and Guardianship of Achapniak District vs. Hermqkuntod N 2-1983, 2006
- Minasyan vs. Asatryan N 2-1206, 2006
- Harutyunyan vs. Khazaryan N 2-1246, 2005
- Asatryan vs. Gevorgyan N 2-3385, 2006
- Santosky v. Kramer 455 U.S. 745. (1982).