

**PRIVACY AND AUTONOMY IN SERBIAN FAMILY LAW**Professor Dr. Olga Cvejić Jančić<sup>1</sup>**ABSTRACT**

Although most family law issues are highly pervaded by private concerns (marital relationships, parent–child relationships, adoption, guardianship, foster relationships and so on), these issues cannot and should not be only the private matter of any given person. There is no room for doubt that the state should have some influence in regulating these relationships. Yet the question is how extensive this influence should be and how much space should be left for private regulation of family law issues. But why should family issues not be free of state influence and coercion in the first place? There are at least two reasons for that.

Firstly, family relationships do not affect only the relations between two adult persons but affect or may affect the children, whose lives, upbringing, education and future in general cannot only be a private matter among their parents and their families. While historically mostly a matter for the church, it is nowadays the state which ensures the protection, proper upbringing and education of children, who, as immature, dependent and vulnerable beings have the need for long-term care and custody by others (parents, guardians, foster families and the like). This is the most important reason why the state should regulate family relations. The best interest of the child is nowadays the prevailing principle in the regulation of family law issues, and should be guaranteed by the state.

The second reason for state intervention in family law matters is that, even if family relations affected only adults, the state should intervene by enacting legal norms to balance the inequalities that not so infrequently arise in family relations (e.g. different educational, social, economic and other statuses). The state should strive to ensure legal protection, security and justice for everyone, preventing violence, exploitation and injustice in all fields of life, including family life.

Furthermore, family matters should not be regulated only by state norms: some space should be left for autonomous regulation by the persons involved. Otherwise, the system would be very rigid and totalitarian in its aspiration to control everything, even the private life of its citizens.

The question is thus: to what extent should the state intervene and regulate family relations and to what extent should they only be a private matter for each person or

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family? In this paper, we deal with autonomy in the field of marital and parental relations, including the autonomy of the spouses regarding property relations, divorce, parental rights and guardianship.