

CONCLUSIONS



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1. General remarks

In the “Introduction” of this publication, it was noted that modern European legal culture is based on the triad of Judeo-Christian religion, Greek philosophy, and Roman law. Detailed analyses were carried out on the content of the right to “parental responsibility,” allowing to note several factors common to Central European countries that have influenced their legal systems *in genere* and legal solutions in the field of parental responsibility *in specie*.

The contemporary legal systems of Croatia, the Czech Republic, Hungary, Slovakia, Slovenia, Serbia, and Poland were shaped after the Second World War in the realities of a totalitarian state, which had a significant impact on the state–family relations but also on school–children, school–parents, and, finally—what is fundamental from the point of view of this monograph—parents–children. At that time, general guarantees regarding parenthood and motherhood were entered into the constitution, and fragments of civil codes or separate legal acts referred to as codes/statutes were devoted to them (for example, in Poland, the Act of February 25, 1964—Family and Guardianship Code).

In 1989, the period of systemic transformation began, which also covered broadly understood issues concerning the family and family relations, especially between parents and children. The national systems in this area were much more influenced by acts of international law of a universal and regional character. The enactment of new constitutions (as basic laws in Central European states) did not always result in the adoption of new laws on family matters. It did, however, contribute to the revision of the existing regulations in line with the modernization concept and, above

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all, to adapting them to new standards of human rights protection and a democratic state ruled by law. Recent years have seen an intensified impact of Western legal culture—both in its legal sphere and, above all, in jurisprudence—on the legal systems and jurisprudence in Central European countries. From a legal point of view, it might seem that the basic institutions and values for humans, nations, and states, such as family, parenthood, motherhood, fatherhood, and parental authority/responsibility are properly and sufficiently protected. From a social or formal and legal perspective, they probably are, but many new cultural and social tendencies each year are increasingly questioning the natural order of things protected by law. Interestingly, such questioning of natural legal values is conducted under the slogan of protecting other noble values, such as equality or the prohibition of discrimination and the prohibition of violence against women. Promotion of gender and equality takes place, on the one hand, at the level of—for instance—communications and strategies of the European Commission and the activities of the European Parliament and, on the other hand, in the case law of the ECHR and the Court of Justice of the European Union (cf. “Pancharevo”). It is an extremely “intelligent and media-oriented” action because, in the name of the implementation of universally protected values and principles, including the principle of equality, it is postulated, for example, to recognize same-sex parenthood and to prohibit discrimination of a child based on the parents’ gender. Another area of potential threats to the traditionally understood values of marriage and family is opened by the process of the European Union’s accession to the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and the related legal consequences for states parties to the Convention and member states of the European Union.

Scientific research on parental responsibility has initiated an extremely interesting discussion on the conceptual grid present in the legal acts and scientific publications of Central European countries. It turned out that “parental responsibility” is not an adequate term in all countries and with regard to not all legal solutions.

The analyses show that the legal systems of individual countries include the following concepts: in Croatia, parental responsibility, parental care, and parental rights; in Czech Republic, parental responsibility and parental responsibilities; in Hungary, parental responsibility, parental care, parental liability, and parent–child relationship; in Poland, parental responsibility, parental care, and parental authority; in Slovenia, parental rights and parental care; and in Serbia, parental right and parental care, wherein “parental responsibility” is not accepted in the Family Act of the Republic of Serbia of 2005 as it could be confused with liability for damage (in the Serbian language, both are indicated with the term “*odgovornost*”). The Slovak legislation does not use the term “parental responsibility,” but it operates with the phrase “parental rights and obligations,” which are primarily derived from Section 28 of the Family Act of the Slovak Republic of 2005.

In turn, the jurisprudence of the ECHR includes parental responsibility, parental authority, parental rights, and parental care. Sometimes, the Court uses these terms in the same case or, pointing to these concepts in the legal order of a given state,

moves on to its own legal argumentation without even referring to these concepts. In the case law of the Court, the nomenclature in this respect is not uniform.

Appearing relatively commonly in family codes or other equivalent legal acts containing provisions on the subject matter, the concept of “parental responsibility” seems to undergo an extremely interesting evolution toward “parental care.”

This part of the monograph contains a synthetic elaboration of the subject matter, according to the scheme indicated in the introduction: (2) axiological and constitutional foundations for the protection of parental responsibility; (3) protection of parental authority in the system of legal sources; (4) the concept of a parent; (5) the concept of a child; (6) principles of parental responsibility; (7) the rights and obligations of parents and children resulting from parental responsibility; (8) sexual education children and parental responsibility; (9) detailed issues related to parental responsibility; (10) parental authority in case of divorce; (11) the status of a child not subject to parental responsibility; and (12) *De lege ferenda* conclusions.

2. Axiological and constitutional foundations for the protection of parental authority

The legal systems of modern states—including Central Europe—are based on the concept of the hierarchy of individual sources of law. At the head of the system is the constitution as the basic law, the provisions of which should be consistent with other legal acts. Therefore, despite the increasingly common multicentric nature of legal systems, the provisions of the constitution regarding the protection of the family and the basic values that are associated with it are extremely important.

Constitutional axiology, as confirmed by the jurisprudence and doctrine of law, should be considered when creating law (obligation of the legislature) and when applying the law (obligation of the executive and judiciary). These elements should not be separated from each other but should be implemented by the various bodies in conjunction with each other.

2.1. Croatia

The Constitution of the Republic of Croatia of 1990 is part of the process of developing the family law system, considering international standards of family protection and human rights in general.

One of the freedoms and personal and political rights of citizens is that “*all citizens are guaranteed respect for and legal protection of personal and family life, dignity, reputation, and honor*”¹. As the possibility of parental care is part of the right to

1 Art. 35 of the Constitution.

respect for family life, this provision guarantees legal protection in the event of unjustified restriction of parental care. It should be noted that the Constitution does not contain a definition of parental authority (i.e., who may be entitled to this right); thus, it is left to the legislator to determine the content and scope of these concepts.

From the point of view of the analyzed issues, Art. 62 of the Constitution of 1990 seems to be of great importance: “*The Republic protects maternity, children, and young people, and creates social, cultural, educational, material, and other conditions conducive to the realization of the right to a decent life.*” The constitutional right of parents to independently decide about the upbringing of their children is a *novum*, but it indirectly limits their responsibility for ensuring their children the right to the full and harmonious development of their personality and by ensuring that children have the right to compulsory and free primary school education.

2.2. Czech Republic

Following the adoption of the new Constitution of the Czech Republic of 1992, and especially thanks to the Charter of Fundamental Rights and Freedoms of 1991, the “old” law of the 1960s began to be interpreted and applied anew. The Charter is fully compatible with the broad concept of family life guaranteed by international instruments and European human rights standards. It can be said that the Charter is the “basic pillar” of the creation, interpretation, and application of individual family law norms.

The card provides an overall value through the following wording in the art. 32. sec. 1 of the Charter: “*Parenthood and the family are under protection of the law. Special protection of children and adolescents is guaranteed*”. The Charter also contains many articles devoted to children, among which, from the point of view of this research, these are of particular importance: “*Children born in as well as out of wedlock have equal rights,*”² without any discrimination, as well as “*Parents who are raising children are entitled to assistance from the State*”³.

The Civil Code of the Czech Republic of 2012 respects the “traditional” values of European Christian-Jewish culture and develops “new” ideas anchored in the Charter. It is also worth emphasizing the empowerment of parents of incapacitated children or minors, especially with regard to personal care or contact with the child.

2.3. Hungary

Hungary guards the institution of the family, which is the foundation of the nation’s survival. The bases of the family relationship are marriage and the parent-child relationship. The mother is a woman, and the father is a man. The constitution-maker emphasized the role of the mother as a woman and the father as a man and

² Art. 32 sec. 3 of the Charter.

³ Art. 32 sec. 5 of the Charter.

defined the basic guarantees aimed at protecting children and the rights of future generations. Accordingly, the Basic Law of Hungary of 2011 provides that Hungary protects the right of children to be identified according to the gender assigned to them at birth and ensures their education in accordance with values based on Hungarian constitutional identity and Christian culture.

Hungary promotes the obligation to have and raise children at the constitutional level, and the protection of families is regulated by an executive act.

2.4. Poland

The Constitution of the Republic of Poland of 1997 is the basis for the protection of the family and such aspects of family life as motherhood, fatherhood, parenthood, satisfaction of economic and educational needs, sense of security, and other needs. The principle of protection and care of marriage and family has been included in the basic principles of the political system of the Republic of Poland⁴ and developed in a number of specific guarantees, including equal legal status of women and men in family life⁵, the privacy of family life⁶, the primacy of parents in raising a child⁷, the judicial protection of children in their relations with their parents⁸, help for the mother before and after childbirth⁹, and the child's welfare.¹⁰

Constitutional guarantees in this respect reflect the ideas previously expressed in international documents defining the standards of human rights protection.

2.5. Serbia

Constitution of the Republic of Serbia of 2006 contains several provisions that relate to broadly understood family law. First, the principle of gender equality is guaranteed in Article 15, substantiated through the guarantees of the equality of the mother and father as parents in Art. 65 sec.1, the equality of male and female children and of children out of wedlock and from married couples in Art. 64 sec. 4, and the equality of adoption and parenthood in Art. 6 sec. 5 of the Family Act of the Republic of Serbia of 2005.

The principle of special protection of the family, mother, single parent, and child is set out in Art. 66 of the Constitution, while Art. 63 states the principle of a free decision to give birth and an express prohibition on the cloning of human beings.

The principle of children's rights was first introduced into the Constitution in 2006. A child enjoys human rights appropriate to their age and mental maturity, has

4 Art. 18.

5 Art. 33 sec. 1.

6 Art. 47.

7 Art. 48.

8 Art. 48 sec. 2.

9 Art. 71.

10 Art. 72.

the right to a name and surname and entry in the birth book, the right to know their origin, and the right to retain their own identity. According to Article 64 child shall be protected from psychological, physical, economic, and any other form of exploitation or abuse. The right to education is guaranteed in Article 71.

Parents shall have the right and duty to support and provide upbringing and education to their children, in which they shall be equal. All or individual rights may be revoked from one or both parents only by the ruling of the court if this is in the best interests of the child, in accordance with the law.¹¹

With regard to the upbringing and education of children, Art. 48 of the Constitution is of great importance, which implies respect for diversity.

2.6. Slovakia

As Art. 1 sec. 1 of the Constitution of the Slovak Republic of 1992 states, “*The Slovak Republic is a sovereign, democratic state governed by the rule of law. It is not bound to any ideology or religion.*”

Article 41 of the Constitution of the Slovak Republic, pursuant to which marriage, parentage, and family are legally protected, is the basis of national legislation. Simultaneously, special protection is provided for children and young people. The protection and interest of minors is a priority throughout the legislation. It states that

(1) Matrimony, parenthood, and family shall be protected by the law. Special protection of children and minors shall be guaranteed. (2) A pregnant woman shall be guaranteed a special treatment, protection in employment, and adequate working conditions. (3) Equal rights shall be guaranteed to children born both in a legitimate matrimony and those born out of lawful wedlock. (4) Childcare shall be the right of parents; children shall have the right to parental upbringing and care. The rights of parents may be limited, and minor children may be separated from their parents against the parents’ will only by a court decision, based on the law. (5) Parents taking care of their children shall have the right to assistance provided by the State. (6) Details on the rights pursuant to paragraphs 1 to 5 shall be laid down by a law.

The Slovak Republic has acceded to many international agreements—also concerning the family and relations between parents and children—which may, to some extent, influence the setting of norms and the application of the law, as confirmed in Art. 1 clause 2 of the Constitution: “*The Slovak Republic acknowledges and adheres to general rules of international law, international treaties by which it is bound, and its other international obligations.*”

In the future, the regulation of family relations is to be transferred to the Civil Code of the Slovak Republic of 1964 as a separate part of it as part of the upcoming codification of general private law in Slovakia.

¹¹ Art. 65.

2.7. Slovenia

The Constitution of the Republic of Slovenia of 1991 (hereinafter, the CRS) makes reference to children's rights in several articles. Article 14 of the Constitution provides the constitutional legal basis for the equality of children, who are guaranteed the same rights and fundamental freedoms as adults, depending on their age and maturity, regardless of their national origin, race, gender, language, religion, political or other beliefs, material status, birth, education, social status, disability, or any other personal circumstance. Children born out of wedlock have the same rights as children born to it.

Based on Art. 41 sec. 3 of the Constitution, parents have the right to provide their children with religious and moral education in accordance with their convictions. Children's religious and moral direction must be appropriate to their age and maturity and be consistent with their free conscience and religious and other beliefs and beliefs. A child aged 15 or over has the right to make their own decisions regarding religious freedom. The Constitution also provides for the priority of parents as holders of the right and obligation to maintain, educate, and raise children¹².

In turn, Art. 52 sec. 2 of the Constitution guarantees physically or mentally disabled children the right to education and training enabling active life in society, which is related to the principle of equality formulated in Art. 14 of the Basic Law (disability cannot be the basis for differentiated treatment).

Pursuant to the Constitution, children enjoy special protection and care as well as human rights and fundamental freedoms in accordance with their age and maturity.¹³ Concern for the safety and upbringing of their children is a constitutional value.

2.8. The European Court of Human Rights

The European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 protects certain values as fundamental, including respect for family life and the right to found a family. In the Court's view, the Convention must also be interpreted with due regard to the values it protects. The fundamental values protected under the Convention include the right to respect for private and family life, referred to in Art. 8 of the Convention.

The countries of Central Europe have a similar axiology, which results mainly from their similar history and cultural heritage, including legal heritage. As a consequence, the contemporary axiological and constitutional foundations of family protection and the relations between parents and children are similar, with particular emphasis on the values of the family.

¹² Art. 54 sec.1 of the CRS.

¹³ Art. 56 sec. 1.

3. Protection of parental authority in the system of legal sources

3.1. Croatia

In addition to the constitutional protection of the fundamental freedoms and rights of citizens, the Republic of Croatia is bound as a contracting state by certain treaties providing for the protection of human rights (e.g., the International Covenant on Civil and Political Rights of 1966, the United Nations Convention on the Rights of the Child (UNCRC) of 1989 and its protocols, and the European Convention on the Exercise of the Rights of the Child of 1996). In the case of bilateral agreements, mention should be made of the agreement with the Holy See on cooperation in the field of education and culture, under which teaching religion in schools was introduced as an optional subject.

The Constitutional Court of the Republic of Croatia frequently refers to the provisions of international agreements, while ordinary courts do so very rarely.

The basic source of the law on parental care is the Family Act of 2015, but the way of exercising specific parental care content is also influenced by many other regulations (i.e., the Act on Education in Primary and Secondary Schools of 2012, the Act on Social Welfare of 2013, the Penal Code of 2011, the Act on Protection against Domestic Violence of 2017, the Hospitality and Catering Industry Law of 2015, and others). For some of these pieces of legislation, there are also relevant implementing regulations as well as recommendations issued by the competent authorities to help parents with parental care. In 2016, for example, the Electronic Media Council has issued recommendations on the protection of children and the safe use of electronic media.

3.2. Czech Republic

The legal provisions on parental responsibility, anchored in the Civil Code of the Czech Republic of 2012, protect not only minor children but also their parents. Anyone may be in the position of the weaker party—especially underage or underage parents, single mothers, alleged fathers, left-behind parents in the event of a child abduction or illegal transfer of a child abroad, and so on. Therefore, vulnerability in the broadest sense is reflected in the Civil Code. The general protection of the family and family life in accordance with the wishes, choices, preferences, and special needs of family members is guaranteed based on constitutional law and European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.

3.3. Hungary

In addition to emphasizing the importance of upbringing in the family, marriage is seen as a solid foundation of the family that fulfills its role when a lasting and

solid relationship between the mother and father is fulfilled in the responsibility for the children. Without the birth of children and the development of families, there is no lawful sustainable development and economic growth. The Family Protection Act of 2011 (hereinafter, the FPA) states that intergenerational relations—including those between grandparents and grandchildren—are of great importance in the life of families.

The state encourages the presentation of media programs and content that promote the value of the family and the upbringing of children. It has also been declared as a rule that, to protect children, no one under the age of 18 may be shared for any pornographic or self-centered content or that promotes deviation from the assigned gender identity at birth, gender identity, gender reassignment, and homosexuality. Pursuant to the Family Protection Act, the parent is not only obliged but is also entitled to care for a minor child in the family and to provide the child with the conditions necessary for their physical, mental, spiritual, and moral development as well as access to education and health care. The FPA sets out in a separate chapter the obligations and parental rights in respect of which mother and father are equal.

A parent raising a minor child is entitled to benefits in accordance with the provisions of a separate act and benefits ensuring the coordination of the parental role and work. An important legal act in this respect is the Government Decree 149/1997 (IX. 10.) on guardianship authorities and on the protection of children and guardianship proceedings. This decree contains provisions relating to matters relating to the exercise of parental responsibility in cases where guardianship authorities have jurisdiction over disputes between parents.

The Criminal Code of the Republic of Hungary of 2012 provides for the punishment of crimes against the interests of children and the family in several offenses.

3.4. Poland

Among the national regulations concerning the protection of parental responsibility, apart from the Constitution of the Republic of Poland of 1997, the most important are the provisions of the Act of February 25, 1964 of the Family and Guardianship Code—in particular Arts. 87-127.

3.5. Serbia

The main source of law regarding family law in Serbia is the Family Act of 2005, which regulates parental rights and all legal relations between parents and children. According to the Family Act, matters of significant impact are, in particular, considered to be the child's education, important medical procedures for the child, a change in the child's place of residence, and the disposal of the child's property of significant value.¹⁴

¹⁴ Art. 78 sec. 3 and 4 of the Family Act.

Other laws, which primarily regulate other areas of law, contain provisions aimed at protecting the family. By way of example, the following should be mentioned: the Labor Law of Republic of Serbia of 2005, which defines the right to maternity and parental leave and stimulates the birth of the third and fourth child, as the maternity and childcare leave is 2 years instead of the 1 year for the first and second child; the Biomedical Assisted Fertilization Act of 2017, which defines the different procedures (technologies) available to men and women to help them become parents (not including surrogacy); the Law on Financial Support for Families with Children of 2017, which provides for various allowances such as childcare allowance and child allowance (i.e., the amount that each parent receives as financial assistance after childbirth, which is progressive depending on the number of children) and also stipulates payments for maternity and childcare leave in accordance with the Labor Act; the Old-age and Disability Insurance Act of 2003, which favors the birth of a third child, providing that the length of service of the insured—in this case, the woman who gave birth to the third child—is to be calculated during the 2-year maternity leave as a special type of service¹⁵; and the Act on Prevention of Domestic Violence of 2016, which stipulates that state authorities and institutions are obliged to act in a timely manner and to provide legal, psychosocial, and other assistance in the recovery, empowerment, and independence of each victim.

International law is of great importance for the protection of parental responsibility at the Serbian national level. According to the Serbian constitution, the treaties are an integral part of the legal system of the Republic of Serbia and are directly applicable. Ratified international agreements must comply with the Constitution.¹⁶

3.6. Slovakia

In Art. 41 of the Constitution of the Slovak Republic of 1992, the framework for regulating family law has been defined. The importance of the fundamental principles is that they serve as common rules for interpreting family law. These basic principles are contained in Art. 1–5 of the Constitution and represent the values and principles of family law in Slovakia.

Owing to the title issue, the key provisions include the following:

Marriage is a relationship between a man and a woman. Society comprehensively protects this unique relationship and contributes to its well-being. Husband and wife are equal in their rights and responsibilities. The main goal of marriage is to start a family and raise children properly. (Art. 1)

15 Art. 60.

16 Art. 16 sec. 2 of the Constitution.

The family established by marriage is the basic unit of society. Society comprehensively protects all forms of the family. (Art. 2)

Parenthood is a socially recognized mission for men and women. Society recognizes that a stable family environment created by the child's father and mother is the most appropriate for the comprehensive and harmonious development of the child. (Art. 3)

Article 3 was supplemented in 2016 with a second sentence, according to which society recognizes that a stable family environment created by the child's father and mother is the most appropriate for the comprehensive and harmonious development of the child.

All family members have a duty to help each other and, in accordance with their abilities and possibilities, ensure the growth of the material and cultural level of the family. Parents have the right to raise their children in accordance with their own religious and philosophical beliefs and the obligation to provide a peaceful and safe environment for the family. Parental rights and responsibilities belong to both parents. (Art. 4)

In all matters that concern them, the best interests of the minor should be considered.

3.7. Slovenia

The measures taken by the state are based on the Constitution of the Republic of Slovenia of 1991 and the new Family Code of the Republic of Slovenia of 2017 as the basic legal act in the field of family law. Slovenia has also ratified the relevant international treaties: Article 8 of the Constitution states that ratified and published international treaties are directly applicable in Slovenia is a party to the following international agreements, the content of which also affects the area of parental care and the content of the new Family Code.

The case law of the ECHR has also contributed to a better understanding of parental custody in Slovenia and has penetrated into Slovenian case law, which is particularly evident in the principle of proportionality derived from the international law binding the Republic of Slovenia.

The principle of proportionality is the basis for establishing the positive obligations of active state action in terms of the balance between the interests of society and those of the individual. The state has a duty to intervene and protect the child's interests.¹⁷The intervention must always be proportionate; otherwise, the rights of the child and parents may be violated.

¹⁷ Art. 9 the UNCRC of 1989.

3.8. *The European Court of Human Rights*

The ECtHR operates based on an international agreement concluded by individual states in the form of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950. The conclusion of this agreement precedes the jurisprudence of the Tribunal arising from the operation of the Convention; therefore, the jurisprudence of the ECtHR is, by its nature, applied by individual states based on voluntary international acceptance of the *pacta sunt servanda* principle.

It is not easy to establish that, for example, if a solution exists in most European countries, it is already a standard. This is particularly true for sensitive issues such as the national regulation of parental responsibility, which has many components. In fact, this type of assessment comes down to prudence and is generally aimed at protecting the individual in the light of the norms of the Convention.

The jurisprudence of the ECtHR to the legal system of states can be assessed from the perspective of the legal system of a given state (*ad intra*) and from that of the jurisprudence of the Tribunal (*ad extra*). These two perspectives should not be isolated from each other. Both the state and the Court take into account the jurisprudence of the Tribunal and the legal system of the state (including axiology), so that, on the one hand, the jurisprudence of the Tribunal, *de facto* and *de jure*, does not replace or limit the role of state authority without a legal basis, and on the other hand, the state authority protects rights guaranteed by a Convention which they have voluntarily agreed to respect.

As part of the jurisprudence of the ECtHR, the key of a given line of jurisprudence is often to define the scope of the so-called margin of appreciation. Depending on the determination of the scope of this freedom, the judgment of the Tribunal is more or less related to the legal system of a given state, guided by the principle that the less freedom, the greater the intervention of the Tribunal. Simultaneously, it should be noted that the jurisprudence of the ECtHR is not uniform, and individual judgments may or even have to be critically analyzed.

The case law of the Tribunal in the field of parental responsibility is not permanent, uniform, and variable; however, owing to the lack of pan-European standards, the Tribunal leaves a margin of appreciation to individual states in the field of parental responsibility, which leads to the maintenance of the current pluralism of legal solutions in this area. Within this margin, in line with the Tribunal's case law, states have both negative obligations to protect family life against unjustified interference and also positive obligations to protect that life.

4. The concept of parent

4.1. Croatia

According to family law, a “parent” is a person from whom a child inherited their origin or a person entered as a parent of a child in the birth book, based on a decision on adoption issued by a competent authority (social welfare office). The Family Act of the Republic of Croatia of 2015 contains provisions concerning the parentage of a child and, pursuant to these provisions, maternity is presumed or established based on a presumption or a court decision.

Pursuant to Art. 58 of the Family Act, “*the mother of a child means the woman who gave birth to the child.*” If maternity cannot be established based on presumptions, court proceedings may be conducted to establish maternity when the claim cannot be upheld, but the court must take evidence.

Paternity can be established by presumption, recognition, or a court decision. The presumption applies to children born in a marriage or within 300 days after marriage annulment, divorce, or death, as a declaration of the death of the deceased spouse.¹⁸ If a person contracts another marriage within 300 days from the termination of the marriage due to death, the father of the child is considered the mother’s husband from the last marriage.¹⁹

This presumption does not apply if the previous marriage is terminated by a court order divorce or annulment of the marriage. In this case, the father of the child is considered the mother’s husband from the previous marriage, unless the mother’s second husband (if the child was born in the mother’s second marriage and no more than 300 days have passed since the first marriage) of paternity with the consent of the mother and her first husband.²⁰

Recognition of paternity is the least credible from the point of view of the truthfulness of the determination of the child’s parentage as the verification of the truthfulness of recognition is entrusted to persons who consent to the recognition of paternity, and these are the mother, child, and/or their guardian, with the prior consent of the social welfare center²¹ on the basis of statutory premises.

In the case of establishing paternity, when the sperm of another man has been used, a similar rule applies: if the child’s father and the man who is in a marriage or extramarital relationship of the mother have consented to medically assisted procreation with the sperm of another man, and the mother’s extramarital partner has

18 Art. 61 of the Family Act.

19 Art. 61 sec. 2 of the Family Act.

20 Art. 61 sec. 3 of the Family Act.

21 Art. 64 of the Family Act.

consented to the recognition of paternity in advance, then the child's father is the mother's marriage or an extramarital partner.²²

It has always been clear in legal theory that the legal position of parents is determined by parentage or adoption. Only parents can be holders of the parental custody right. The legislator is consistent in stating in the Act on the family: "*Paternal care includes the duties and rights and obligations of parents*".²³

4.2. Czech Republic

The Civil Code of the Czech Republic of 2012 regulates the determination of a child's parentage and defines who the child's parents are on absolutely binding principles. According to Art. 775 of the Civil Code, the mother of a child is a woman who gives birth to the child. Under Art. 776 of the Civil Code, the child's father is a man whose paternity is based on one of the three legal presumptions of paternity. The law also protects the so-called the alleged parents in Art. 783 and 830 of the Civil Code.

Adoptive parents will become subjects of parental authority in accordance with the doctrine of full adoption or of imitation of an adoptive nature.

4.3. Hungary

In the case of a child born in marriage, parental responsibility and paternity and maternity status are determined by birth—*ipso iure*, by law. With the exception of specific provisions relating to adoption, parental responsibility may not be waived, and parental responsibility over a minor child may be terminated only by a court in the cases provided for by law. If, for any reason, the child does not have a single parent with parental responsibility, immediate action should be taken with the guardianship authority regarding the future fate of the child and, if necessary, taking them into care.

4.4. Poland

Under Art. 61⁹ of the Family and Guardianship Code of 1964 the mother is a woman who gave birth to a child. An action for the determination of maternity may be brought in the event of a birth certificate of a child born of unknown parents or a refusal of motherhood of a woman entered in the child's birth certificate as their mother²⁴. However, if a woman who did not give birth to a child is entered in the child's birth certificate as the child's mother, the woman's motherhood may

22 Art. 83 sec. 1 and 2 of the Family Act.

23 Art. 91 sec. 1 of the Family Act.

24 Art.61¹⁰ §2 of the Family and Guardianship Code.

be denied.²⁵ The woman who adopted the child is also the mother; upon adoption, a woman who previously enjoyed this status ceases to be a mother (in a formal sense).

The father of the child is identified by the woman who gives birth to the child. Thus, in situations where a woman who is married to a man gives birth to a child, her husband is presumed to be the father.²⁶ If a child is born to an unmarried woman, paternity is established based on paternity recognition when the child's parents agree as to the father's identity and want the child's legal situation to reflect the biological reality or the basis for the judicial determination of paternity. Recognition of paternity is made when the biological father of the child declares, to the head of the registry office, that he is the child's father, and the child's mother confirms it.²⁷ The paternity of a conceived but unborn child may be recognized²⁸; however, paternity cannot be recognized after the child has reached the age of majority.²⁹

After the child's death, the declaration of ineffectiveness of paternity recognition is admissible in the event of the child's death after the initiation of the procedure.³⁰

The recognition of paternity of a child born as a result of medically assisted procreation takes place on the day of their birth, when the man declares that he will become the father of a child conceived in this way and born within 2 years of making this declaration.

4.5. Serbia

Definitions of a parent (mother and father) in jurisprudence and doctrine have a legal basis in the Family Act of the Republic of Serbia of 2005 and are consistent with them. In modern Serbian family law, statutory provisions often establish or define motherhood. This is the case in Serbian family law; the Family Act contains a provision explicitly stipulating that the woman who gave birth to the child should be considered their mother in Art. 42. If a woman who gave birth to a child is not entered in the birth register as the child's mother, her motherhood may be determined by a final court judgment.

The general rule governing who is considered to be the father of a child born into marriage is that the father is the husband of the child's mother. Under Serbian law, the husband of the child's mother is considered to be the father if the child was born within 300 days after the end of the marriage, but only if the marriage was dissolved due to the husband's death and if the mother does not remarry during this period. The husband of the new marriage of the child's mother is considered to be the father

25 Art.61¹² §1 of the Family and Guardianship Code.

26 Art. 62 of the Family and Guardianship Code.

27 Art. 73 of the Family and Guardianship Code.

28 Art. 75 of the Family and Guardianship Code.

29 Art. 75 § 2 of the Family and Guardianship Code.

30 Art. 83 of the Family and Guardianship Code.

of the child born in that marriage, regardless of how short the time may have elapsed between the dissolution of one marriage and the conclusion of the other.³¹

According to Art. 45 sec. 4. if the child was born out of wedlock, paternity must be established by recognition or by court decision. Paternity may be recognized by a person who has reached the age of 16.³² Paternity can only be recognized if the child is alive at the time of recognition; paternity recognition before childbirth is effective but only if the child is born alive.³³ The confirmation is only effective if the mother and, under certain circumstances, the child consent to the confirmation by the father. Mother and child may give consent if they are 16 years old.³⁴

A man claiming to be the child's father may bring an action for paternity within 1 year from the date on which he learned that the child's mother or guardian did not consent to his paternity being recognized and not later than 10 years after the child's birth.³⁵

The paternity of a man considered to be the father of the child may not be questioned, except where the child was not conceived as a result of biomedically assisted fertilization. Under Art. 58 if a child has been conceived with the use of biomedical assistance from donated sperm cells, the paternity of the man who donated the sperm cells cannot be established.

4.6. Slovakia

The Family Act of the Slovak Republic of 2005 does not define the concept of a parent or a child; however, the definition of these terms can be derived from the provisions on the determination of parentage. Art. 82 of the Family Act states that the mother of the child is the woman who gave birth to the child, and Art. 84 of the Family Act regulates three rebuttable presumptions of paternity. When defining the concept of a child to fulfill parental rights and obligations, one should seek support in international treaties and the jurisprudence of courts.

4.7. Slovenia

Starting from Art. 112 of the Family Code of the Republic of Slovenia of 2017, the mother of the child is the woman who gave birth to the child, and this is a basic (mandatory) rule that does not allow for autonomy in determining who will be the child's mother.

The presumption of motherhood is distinguished from that of paternity, and it makes no distinction as to whether a child is born within or outside of marriage. The

31 Art. 45 sec. 1–3.

32 Art. 46.

33 Art. 47.

34 Art. 48 sec. 1, Art. 49 sec. 1.

35 Art. 251.

meaning of motherhood is enshrined in the Constitution of the Republic of Slovenia of 1991 because Art. 53 sec. 3 states that the state protects motherhood and creates the necessary conditions for it. Supplement to this constitutional provision on maternity is Art. 55 of the Constitution.

Article 55 of the Constitution states that parents are free to choose whether or not to give birth to their children. The provisions of the Infertility Treatment and Procedures of Medically Assisted Reproduction Act and the Health Measures in Exercising Freedom of Choice in Childbearing Act are significant.

The father of a child born within a marriage is considered the husband of the child's mother.³⁶ The legal presumption of paternity of a child born within marriage is based on two assumptions: (a) positive presumption—the husband of the child's mother had sexual relations with the wife, the mother of the child, at a critical moment, namely when conception presumably took place; and (b) negative presumption—the wife, mother of the child, did not have sexual relations with another man (i.e., a man who is not married to her) at the critical moment of conception. The novelty is Art. 113, second paragraph of the Family Code.

Under Art. 113 sec. 1 of the Family Code, it should also be pointed out that paternity cannot be recognized as long as there is a legal presumption of paternity.

A priority rule favors a legal presumption; accordingly, the recognition of paternity is subsidiary as it may be granted in the absence of a legal presumption of paternity.

4.8. The European Court of Human Rights

Article 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (*“Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.”*) It refers to the family model traditional in European legal culture, consisting of a man and a woman and a child or children. This article appeared in the original text of the Convention in 1950; nevertheless, in the current jurisprudence of the Tribunal, the interpretation of the text of the Convention is so dynamic that the above notions—albeit lexically unambiguous—may be understood differently by the Tribunal itself. For example, in some cases, the Tribunal has found that the right to consent to same-sex marriages rests with individual countries that are parties to the Convention. It should be noted that Art. 12 of the Convention does not only apply to citizens; thus, parental responsibility also applies to persons who do not have the citizenship of a given state. The protection of the Convention is therefore broad in this respect.

Traditionally, parents are essential to starting a family. The Convention also indicates in Art. 12 that two people are needed to start a family. It is worth noting that assumption is one thing and family functioning is another. In the latter case, the

36 Art. 113 (1) of the Family Code.

family may, in some cases, only consist of one parent and a child or children; after all, it is not controversial to name a widow with children as a family. The concept of parents in the traditional sense also did not raise any doubts.

In the jurisprudence of the Tribunal, one can find a position according to which states can settle the issue of the so-called foster parenting. Less controversial is the argumentation line of the ECtHR jurisprudence, in which, apart from the classic notion of family, there is a tendency to broadly understand the family as such (e.g., single mother with a child, large families, etc.).

5. Concept of a child

5.1. Croatia

Croatian family legislation does not define a “child,” but it only states that a person acquires full legal capacity at the age of 18 or through marriage.³⁷ Under Art. 117 sec. 3 of the Family Act a person who has reached 18 years of age becomes an adult.

The current Criminal Code of the Republic of Croatia of 2013 recognizes a person under the age of 18 as a “child” according to the definition contained in the UNCRC of 1989 but provides for criminal liability only in the case of children over the age of 14. Children under the age of 14 may commit only a part of the criminal offense. The Croatian Criminal Code applies to all juvenile offenders and to serious perpetrators under 21—either the Criminal Code or the Law on Juvenile Courts, namely the juvenile criminal justice system.

5.2. Czech Republic

Unlike the UNCRC of 1989, the Civil Code of the Czech Republic of 2012 (hereinafter, the CC) does not define who a child is; however, the concept of a child can be decoded from the rules on the determination of kinship. The law states that it is a relationship based on blood or adoption, which is constructed as a change of status.³⁸ The child is then a descendant in a straight line of the first degree³⁹. A minor child should be understood as a child who has not reached the age of 18⁴⁰. A minor child who is completely incapable of legal acts is a child who has not attained the age of

37 Art. 117 sec. 2 of the Family Act of the Republic of Croatia of 2015.

38 Arts. 771 and 794 CC.

39 See Arts 772 and 773 CC.

40 Art. 30 (1) of the Civil Code.

18 and has not achieved full legal capacity pursuant to a court decision⁴¹ or entering into a marriage⁴².

5.3. Hungary

According to the Civil Code of the Republic of Hungary of 2013—as in the UNCRC of 1989—persons under the age of 18 are considered to be minors; nevertheless, married minors are considered to be of legal age. In cases provided for by law, the guardianship authority may permit a marriage of a minor with limited legal capacity who has reached 16 years of age. If the marriage was annulled by a court decision owing to incapacity or without the consent of the guardianship authority, if it is required owing to minority, the legal age acquired by the marriage ceases to apply. The dissolution of this marriage does not affect the adulthood acquired through the marriage.

5.4. Poland

The legal meaning of being a child is not limited to being under parental authority. The child is a first-degree relative of their parents. The child's origin is determined by their birth certificate. The court may play an important role in the child's marital status in decisions concerning, for example, the determination (denial) of paternity, adoption (dissolution of adoption), and recognition of paternity as well as in decisions declaring such recognition invalid. When a child reaches the age of majority, parental responsibility over them expires. According to Art. 10 § 1 of the Family and Guardianship Code of 1964 the status of an adult is also acquired by a woman who, after reaching the age of 16, marries with the permission of the guardianship court. Upon reaching the age of 13, the child acquires limited legal capacity, and upon reaching the age of 18, full legal capacity and the status of an adult, which results in the expiry of their parents' parental authority.

The age of 13 marks the beginning of the child's legal liability under the Act of October 26, 1982 on proceedings in juvenile cases for every act that constitutes a criminal offense, and not only for manifestations of crime.

Art. 10 § 2 of the Criminal Code of 1997 states at the age of 15, a minor may not only conclude an employment contract but also be criminally liable for the most serious crimes in adulthood, if this is supported by a negative assessment of their personality based on a psychological opinion.

When a woman turns 16, she may marry in line with Art. 10 §1 of the Family and Guardianship Code. A minor, after reaching the age of 16, may consent to medical treatment on their person (except for the consent of the parents; any disputes are resolved by the guardianship court). After reaching the age of 17, the minor is treated

41 See Art. 37 of the Civil Code.

42 Art. 30 (2) of the Civil Code.

under the criminal law as an adult, bearing full responsibility for the commission of the crime.

5.5. Serbia

Serbian family law does not explicitly define the term “child”; thus, the jurisprudence and doctrine adopt the definition of the UNCRC of 1989.

In Serbian family law, most rights are achieved at the age of 18, which corresponds to the definition above.⁴³ In turn, most of them obtain full legal capacity. Full legal capacity may also be obtained before the age of 18 (emancipation) in two ways; both paths are related to family relationships and are limited to the age of 16—the first is marriage, the second is parentage.⁴⁴

5.6. Slovenia

Article 1 of the UNCRC of 1989 (hereinafter, CRC) provides that, for the CRC, a child means every human being under the age of 18, unless most of them attend the law that applies to the child. The previous law did not define a child; however, according to Art. 8 of the Constitution, ratified and published international treaties are directly applicable in the Republic of Slovenia.

Despite the direct application of the CRC, the new Family Code of the Republic of Slovenia of 2017 still expressly provides, in Art. 5, that a child is a person who is under 18 years of age.

Pursuant to the Non-Contentious Civil Procedure Act of 2019 (hereinafter, NCCPA-1), the emancipation of a child before the age of 18 may take place only based on a judgment of a court in non-contentious proceedings. The first exception is the marriage of a child over the age of 15. The court will authorize a marriage if the child has reached such physical and mental maturity that they can understand the meaning and consequences of the rights and obligations arising from marriage.⁴⁵

The second exception occurs when a minor becomes a parent, and the court grants them full legal capacity in non-contentious proceedings on the basis of a filed claim (Art. 152 of the Family Code and Art. 71-75 of Non-Contentious Civil Procedure Act of 2019). Proceedings for full legal capacity may be initiated at the request of a child who has become a parent or with the consent of the child, upon a request submitted by a social welfare center (Art. 71 NCCPA-1).

43 Art. 11 of the Family Act of the Republic of Serbia of 2005.

44 Art. 11(2),(3).

45 Art. 24 of the Family Code in conjunction with Art. 152 of the Family Code

5.7. *The European Court of Human Rights*

The European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 does not define a child, but definitions can be found elsewhere in international law. Adopting the concept of a child as a person who has not yet reached the age of majority means that the parental responsibility itself lasts, as a rule, until the child reaches the age of majority.

In the jurisprudence of the Strasbourg Court and the legal doctrine, it is emphasized that the concept of a child is defined in accordance with Art. 1 of the UNCRC of 1989: “*For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.*”

An analysis of international law, of which the Convention is an element, and the Tribunal’s case law itself leads to the conclusion that the protection of the best interests of the child is of fundamental nature; this is owing to the basic nature of the child. Children have fewer opportunities to defend their rights or perform their duties than their parents. This does not mean, however, that the protection of the child’s best interests takes precedence *ex lege* over the parents.

6. Principles of parental authority

6.1. *Croatia*

The rules on parental care are set out in the introductory part of the Family Act of the Republic of Croatia of 2015 and include the principles of equality, solidarity as the fundamental right of family life, mutual respect and assistance of all family members, primary protection of the welfare and rights of the child, primary parental right to care for the child and the obligation to provide them with assistance by the competent authorities, proportionate and minimal interference in their family life,⁴⁶ voluntary dissolution of family relationships,⁴⁷ and the urgent resolution of family law cases involving children.⁴⁸

The legislator’s goal was to balance all these principles so that they correspond to the contemporary system of family relations. Some of them are used in the family (the principle of equality, the principle of solidarity, the principle of mutual respect and assistance, the principle of voluntary dissolution of family relations). Some others concern the relationship between individual family members and the parties—in

46 Art. 7.

47 Art. 9.

48 Art. 10.

particular, state authorities (the principle of superior parental right to care for the child and the positive obligation of state authorities to provide them with assistance, the principle of proportional interference in family life, and the principle of urgent settlement of family proceedings).

6.2. Czech Republic

The concept of parental authority in the Civil Code of the Czech Republic of 2012 is based on the principles of parental responsibility—not only in terms of terminology but, above all, as a broadly understood set of “rights and obligations” aimed at “promoting and protecting the child’s welfare”—in particular, care, protection and child upbringing, maintaining personal relationships, determination of the place of residence, property management, and legal representation.

The Civil Code defines the most important issues in which the consent of both the child’s parents is required. The list of important matters of the child is illustrative and includes, in particular, non-routine medical and similar interventions, the determination of the child’s place of residence, and the choice of education and employment by the child.⁴⁹ It should be added that the obligation and the right to decide in these matters “extends” the content of parental authority.

6.3. Hungary

Hungary’s 2013 Book of Family Law of the Civil Code sets out the principles governing the exercise of parental responsibility that are important to the parent–child relationship, in line with the minor’s best interests. The obligation of parents to cooperate is an essential requirement, which means that parental responsibility is exercised by the parents in cooperation with each other in the interests of the child’s physical, intellectual, and moral development, regardless of whether the parents live together or separately. Where parental responsibility over a minor is exercised jointly by the parents together or separately, it is accompanied by a shared decision-making right. However, the obligation to cooperate does not always and in all respects constitute the right to consent or joint decision if, after the parents’ separation, only one of the parents exercises parental responsibility over the joint minor child (children). In this case, the separated parent has the right to jointly decide only on important matters relating to the child’s best interests; otherwise, the parent raising the child is only required to inform the separated parent about the child’s development, health, and education. It should be emphasized that in addition to the general obligation of parents to cooperate, the Book of Family Law emphasizes the obligation of the parent who exercises parental authority and the separated parent to cooperate to ensure respect for each other’s family life and peace.

⁴⁹ Art. 877 (2) of the Civil Code.

Neither parent has greater “authority” over the matters relating to the child than the other, who also has parental custody.

Limiting parental supervision to protect the child (children) should only be undertaken in exceptional cases and should always be proportionate to the seriousness of the threat or harm. Therefore, the Act provides that the court or other competent authority may limit or withdraw the parental right to custody in exceptional and justified cases specified in the Act if it deems it necessary to protect the child’s best interests. Ultimately, the Civil Code allows the court to cease parental responsibility if the parent has adopted any unlawful behavior causing serious injury or threatening the child’s interests—including the their bodily integrity, mental, or moral development—or if the parent has been sentenced by a court judgment to imprisonment for an intentional offense committed against any of their children.

6.4. Poland

The primacy of parents in raising a child results from the Constitution of the Republic of Poland of 1997 and acts of international law, the most important of which is the UNCRC of 1989, with its preamble affirming the family.

When it comes to norms, the rank of parents and their paramount importance for the child’s development has been expressed in several of the abovementioned constitutional provisions, with the best interests of the child being a key principle of family law.

The Family and Guardianship Code of 1964 provides that the parents jointly adjudicate on important matters relating to the child,⁵⁰ and in the event of a dispute, a court may be called upon to resolve such a matter.

The principles important from the point of view of the subject matter also include a child’s principle of subsidiarity and judicial protection in relation to its parents and guardians, which is manifested, *inter alia*, in in the prerogative of courts to adjudicate in cases of limitation and termination of parental rights⁵¹ and the obligation to focus on the child in divorce and separation cases, so that no decision is contrary to the best interests of the child.⁵² Moreover, the child’s best interests were the criterion for decisions on parental responsibility, contact, and maintenance.

6.5. Serbia

The Family Act of the Republic of Serbia of 2005 establishes rules concerning the family, adopting constitutional rules but also pointing to other rules. One of the most important principles is that of the best interests of the child.⁵³ However,

50 Art. 97 §2.

51 48 (2) of the Constitution.

52 Art. 56 § 2 of the Family and Guardianship Code.

53 Art. 6 (1).

statutory texts—including the 2005 Family Act—do not contain a definition of this principle (legal norm), according to which the content is subject to interpretation in the jurisprudence.

Another principle is that of the special protection of the family, which has the right to special protection by the state.⁵⁴ It is also the duty of the state to protect the child from neglect and from physical, sexual, and emotional abuse and all forms of exploitation⁵⁵ and to ensure the principle of equating illegitimate children with children born into marriage.⁵⁶ As explained earlier, children out of wedlock have the same rights and obligations as children born within marriage under modern Serbian family law. Under Art. 6 (6) the state is obliged to ensure the protection of children deprived of parental care in the family environment whenever possible. The principle of identifying adoption with origin is sanctioned in Art. 7 sec. 4; the Family Act fully equalizes the rights and obligations of children, regardless of adoption, providing for only one form of adoption, as opposed to the earlier Act on Marriage and Family Relationships of 1980, which recognized two forms of adoption—full and partial.

The Serbian Family Act contains a provision on respect for family life in Art. 2 (2) “Everyone has the right to respect for his family life”

Pursuant to Art. 67 of the Family Act, parental rights are derived from the obligations of parents and exist only to the extent necessary to protect the child’s personality, rights, and interests.

6.6. Slovakia

The principle of the child’s best interests is the guiding principle of all family law, and some authors even consider it to be the very basis of such law. This is based not only on domestic law but also on sources of international law—in particular, the UNCRC of 1989.

6.7. Slovenia

The Civil Code defines parental care in Art. 6, which is further elaborated on in subsequent regulations; therefore, parental care constitutes all the obligations and rights of parents to create, according to their abilities, the conditions to ensure the child’s full development. Parental care belongs to both parents, and this definition is derived from a constitutional provision that grants parents the right to support, educate, and raise their children.⁵⁷

The principle of the best interests of the child is a fundamental principle of children’s rights: it orders that parents, in all their activities relating to a child, take care

54 Art. 2.

55 Art. 6 (2) and (3).

56 Art. 6 (4).

57 Art. 54, p. 1, point 1 of the Constitution of the Republic of Slovenia of 1991.

of the child's welfare and raise them with respect for their person, individuality, and dignity.⁵⁸

The principle of the primacy of parental care entitles parents to take precedence over all others in their care and responsibility for the best interests of the child,⁵⁹ while Art. 135 of the Family Code shows that parents have primary and equal responsibility for the child's care, upbringing, and development.

The principle of parental equality gives parents primary and equal responsibility for the care, education, and development of their child, whose best interests must be their most important concern. The parents have equal civil rights and bear the consequences for their children, both during and after marriage.

The principle of joint parenting/guardianship is the starting point for implementing parental care under the new Family Code. Parental care is shared by both parents. Art. 6 (2) of the Family Code, reflecting the principle of equality of parents, and in line with the principle of equality, parents agree to perform the duties and rights that constitute their parental care.

6.8. The European Court of Human Rights

Different rules of parental responsibility in Europe should protect the pluralism of legal solutions. A position in the case law of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 provides that, since social changes occur in different countries, this could lead to the setting of European standards for parental responsibility. However, in the same case law, the family in its traditional sense is repeatedly challenged; nevertheless, there is no Europe-wide standard for the exclusive determination of parental responsibility.

7. Rights and obligations of parents and children resulting from parental authority

7.1. Croatia

In the Croatian family law, the right and obligation to protect a child's personal rights to health, development, care and protection, upbringing, and education, establishing personal relationships and determining the place of residence, are included in the content of parental care. The same applies to the right and obligation to manage

58 Art. 7 (1) of the Family Code of the Republic of Slovenia of 2017.

59 Art. 7 (2) of the Family Code.

the child's property and the right and obligation to represent the child's personal and property rights and interests.⁶⁰

According to Art. 86 of the Family Act when exercising parental care, parents must consider the rights of the child. In contemporary legislation, the parents' obligation to respect the child's opinion according to their age and maturity is particularly important. The child's obligations are guided by the general principle of solidarity, according to Art. 4 (1) of the Family Act "*all family members must ... respect each other and help each other*". Pursuant to Art. 89, "*the child must respect his parents and help them perform tasks in the family according to his age and maturity and pay attention to all family members.*"

In relation to employed and earning children, they must pay for their own maintenance and education.⁶¹ The most recent family law did not explicitly include alimony in the content of parental care (we consider this to be an unintentional omission by the legislator), although the family law tradition has always interpreted it as part of parental care.

7.2. Czech Republic

The consent and cooperation of both parents are key words of the Civil Code of the Czech Republic of 2012—whether they live together or are *de facto* separated or divorced. When it comes to making decisions, special rules apply for everyday matters, important matters, and urgent decisions about the child. If the parents are unable to reach an agreement on important matters relating to the child (e.g., in matters relating to the child's residence, representation, property matters, education, health care, personal care [custody] and alimony, and contact with the child)—in particular, in the case of actual separation—the court decides. Thanks to the UNCRC of 1989, a child is not treated as a subject of decision-making but as an active person: their autonomy, the right to participate, and the right to self-representation in court proceedings concerning them are respected. The law confirms that parents play a key role in the care, protection, and upbringing of a child and that they should be versatile role models for their children, especially with regard to family lifestyle and behavior.⁶²

Under Art 31 of the Civil Code Parents jointly represent their minor child in those legal actions to which the child is not entitled, but each of them may act independently.⁶³

According to the Charter, the Civil Code states that parents have the right to decide on the child's education or career path in the exercise of parental responsibility.

60 Art. 92 of the Family Act of the Republic of Croatia of 2015.

61 Art. 90 of the Family Act.

62 Art. 884 of the Civil Code.

63 Art 892 (2) and (3) of the Civil Code.

The right of the child to freedom of religion or to not follow a religion is guaranteed in relation to human rights standards.⁶⁴ Parents may regulate the exercise of the child's rights in a manner appropriate to the development of their children's abilities in accordance with the Freedom of Religion Act of 2002, Art. 2 (2).

Other provisions indicate that parents have the obligation and the right to represent the child in legal actions for which the child has no legal capacity (§ 31, § 892 to 895 of the Civil Code); accordingly, a parent cannot represent a child if a conflict of interest may arise between them and the child or between the children of the same parents.

Pursuant to the Civil Code, the protection and management of a child's property belongs to parental authority. With regard to this matter, the law contains many general and specific provisions (§ 896 to 905 of the Civil Code) that should always be interpreted and applied in accordance with the principle of the best interests of the child and their welfare.

7.3. Hungary

The Hungarian legislator indicated the following rights and obligations resulting from parental authority: choosing a minor's name; taking care of a minor; determining a child's place of residence; and managing a child's financial affairs, including the right and obligation to represent the child in legal forums and the right to exclude custody and other forms of social care.

In the family, the mother and father have the same rights and obligations resulting from parental responsibility, except for those specified in a separate act. A parent is obliged and entitled also to care for a minor child in the family, to raise them responsibly, and to provide them with the conditions necessary for physical, mental, and moral development and access to education and healthcare.

7.4. Poland

According to Art. 87 of the Family and Guardianship Code of 1964 parents and children have a duty to respect and support each other. Decisions should, as far as possible, consider the child's justified wishes.⁶⁵ However, in cases where the child can independently make decisions and declarations of will, they should listen to the opinions and recommendations of parents formulated for the good of the child.⁶⁶ Parental authority may be exercised only through behavior aimed at protecting the child's best interests.⁶⁷ Behavior should be characterized by care for the child's dignity and rights,⁶⁸ and therefore, it should be an expression of concern for the

64 Art. 15 of the Charter.

65 Art. 95 § 4 of the Family and Guardianship Code; compare Art. 72 of the Constitution of the Republic of Poland of 1997 and Art. 12 of the UNCRC of 1989.

66 Art. 95 § 2 of the Family and Guardianship Code.

67 Art. 95 § 3 of the Family and Guardianship Code.

68 Art. 95 § 1 of the Family and Guardianship Code.

child's physical and spiritual development. Its ultimate goal is to properly prepare the child for adulthood.⁶⁹ A dependent child who lives with their parents also has a duty to help them in their household.⁷⁰

The provisions of the Family and Guardianship Code regulate several issues related to the rights and obligations arising from parental authority.

7.5. Serbia

The content of parental rights covers the rights and obligations of the parent caring for the child and includes the child's protection, upbringing, representation, and maintenance as well as the management and disposal of their property.⁷¹ The Family Act of the Republic of Serbia of 2005 expressly states that parents have the right to receive all information about their child from educational and healthcare institutions⁷².

The Family Act directly restricts parental autonomy in the area of raising a child, forbidding parents from leaving a preschool child unattended⁷³ and forbidding parents from entrusting a child—even temporarily—to a person who does not meet the requirements to be a guardian.⁷⁴ Parental autonomy in the field of child upbringing is limited by the provision prohibiting degrading actions and punishments that offend the child's human dignity, and parents are obliged to protect the child against such actions of other people.⁷⁵

The legal status of a child is regulated in accordance with international documents and modern standards. The Family Act regulates the child's following rights: the right of the child to know who their parents are, to live with them, and to maintain personal relations with them and other persons; the right to a proper and full development; and the right to education, opinion, and duties. The main responsibility of the child is to help parents according to their age and maturity. In addition, a child earning or receiving an income from assets is obliged to partially support themselves as well as the parent and the minor brother or sister.⁷⁶

7.6. Slovakia

In accordance with the Family Act of the Slovak Republic of 2005 and the relevant jurisprudence, parental responsibility is a relatively complex set of rights and obligations that include, in particular, the constant and consistent care for the upbringing,

69 Art. 95 § 2 of the Family and Guardianship Code.

70 Art. 91 of the Family and Guardianship Code.

71 Arts. 67–74.

72 Art. 68 (3).

73 Art. 69 (3).

74 Art. 69 (4).

75 Art. 69 (2).

76 Arts. 59–66.

maintenance, and comprehensive development of a minor child; the representation of a minor child; and management of a minor's property.

The specificity is that, while caring for a small child is related to the parent's full legal capacity, the maintenance obligation continues even when the parent does not have full legal capacity.

Likewise, the limitation, deprivation, and suspension of parental rights and obligations does not release the parent from the obligation to maintain the child.

Parental rights and obligations with regard to the child's care and upbringing, the representation of the child, and the management of the child's property expire *ex lege* when the child reaches the age of majority.

The content of parental rights and obligations includes, *inter alia*, constant and consistent care for the upbringing, maintenance, and comprehensive development of a minor child.

7.7. Slovenia

Under Art. 6 the Family Code of the Republic of Slovenia of 2017 both parents share responsibility for parental care. Parents have the right and duty to look after and educate their children. Children's rights correlate with the responsibilities of parents. Art. 136 sec. 1 of the Family Code stipulates that parental care includes the following obligations and rights of parents: taking care of the child's life and health, upbringing, protection, and care; child supervision; care for the child's education; representation for and maintenance of the child; and management of the child's property. Parents have autonomy in the exercise of parental care, but the best interests of the child limit this. Accordingly, state authorities, public service providers, public authorities, local authorities, and other natural and legal persons have a duty to promote the best interests of the child in all activities and proceedings relating to them.

7.8. The European Court of Human Rights

The European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 does not contain an extensive catalog of the rights and obligations of parents or children; therefore, it is important to analyze the jurisprudence of the ECtHR as an entity interpreting the norms of the Convention—for example, the right to found a family. In the case law of the Tribunal, there is also a reference to the so-called basic elements of family life, one of which is the mutual relationship between parents and children.

Parental responsibility extends throughout the child's life; an example is the Tribunal's judgments on the parents' decisions to provide medical assistance to a child.

8. Sexual education of children and parental responsibility

8.1. Croatia

In 2012, the Ministry of Education tried to introduce a new content into the school curriculum, namely health education—not as a separate subject but as teaching content to be taught in different school subjects.

The protection of children against sexually explicit content is provided for in the Electronic Media Act of 2021 and in the Ordinance on the Protection of Minors in Electronic Media of 2015. The Electronic Media Act contains a general rule in Art. 5 (1) by which “*it is prohibited to physically, mentally or morally harm minors by means of audio-visual commercial communications*”; however, it provides no explanation as to what this actually means. The regulation only clarifies that “*programs that may harm the physical, mental or moral development of a minor are all kinds of programs containing scenes of ... sex and sexual abuse*” unless “*in an appropriate manner*” and “*through reasoned content, they illustrate or analyse topics in the programs educational, documentary, scientific and informative.*”

8.2. Slovenia

Experts point out that in Slovenia, sexuality education in primary education is not properly regulated, and no laws govern who can provide formal or informal sex education in educational settings. In practice, this is mainly done by biology teachers in the field of biology. Some schools employ external providers—most often nurses or other professionals (such as the VIRUS Society). As these sex education programs are voluntary, few schools are involved in them as they are not systematically regulated.

9. Detailed issues related to parental authority

9.1. Croatia

Pursuant to Art. 86 (1) and (2) of the Family Act of the Republic of Croatia of 2015, parents and other persons caring for children must respect their opinion depending on their age and maturity. This provision has the significance of a recommendation in everyday family and community life, although this significance is strong and imperative. The right of the child to get to know the most important circumstances of the case, receive advice, express its opinion, and be informed about the possible consequences of respecting their opinion in proceedings where it is

decided on their rights or interests is stipulated in the Act with more details, even at the level of principle. Indeed, in the event of a conflict of interest between the child and their parents, the child will not be represented in the proceedings by the parent(s) but by a special guardian.

The child can and is required by law to make statements on particular status issues for themselves.

In accordance with family law, a child over the age of 16, who, in the opinion of a doctor, has sufficient information to be able to form their own opinion on a specific case and who is mature enough to make a decision on preventive, diagnostic, or therapeutic treatment in health or therapy may independently express consent to a medical examination, examination, or intervention (informed consent in Art. 88 [1]). The Family Act does not decide whether termination of pregnancy is a medical intervention involving serious risks, but in practice, medical regulations do, according to which a minor over 16 years of age may voluntarily consent to the termination of pregnancy. If she is under the age of 16, the consent of her parents or guardian will be required.⁷⁷ The legislator distinguishes the management of the child's income or property.

9.2. Czech Republic

In accordance with Art. 38 (4) of the Act on Health Services of the Czech Republic of 2011, “*a minor patient ... may be in emergency care without consent*” in the event of “*emergency or emergency childcare*” or “*health services necessary to save life or prevent serious damage to health*”. The right of a minor patient to the continuous presence of their parent during healthcare or hospitalization is also expressly guaranteed.⁷⁸

Abortion is relatively liberally regulated in the Abortion Act of 1986, and the decisive age limit is 16 years.

According to the School Code, a child may attend two primary schools, which can be accessed with an alternating parental care system; however, the question arises as to whether it is always in the best interests of the child to visit two schools—for example at weekly intervals. Accordingly, a parent cannot represent a child if a conflict of interest may arise between them and the child or between the children of the same parents.

It should be emphasized that, in 2021, the Civil Code of the Czech Republic underwent a significant change aimed at protecting “children of debtors” and “correcting bad practices.”

If a parent has committed an intentional criminal offense against their child not only directly but also indirectly, or if the parent has used their child who is not criminally responsible for the crime, or if the parent has committed the crime as an

77 Art. 18 (2) of the Act on Health Measures on the Exercise of the Right to the Freedom of Decision-Making on Giving Birth of 2017.

78 See Art. 28 (e).

associate, guide, assistant or organizer of the crime committed by their child, the court assesses whether there are grounds for depriving a parent of their parental responsibility.⁷⁹

9.3. Hungary

Hungary's 2013 Book of Family Law of the Civil Code sets out—in the absence of joint parental supervision—the rights and obligations of a parent living in separation from a child in a separate section. In this context, the parent decides together with the parent caring for the child about important issues concerning the child's fate, which is also the responsibility of the parent (defining and changing the child's name, the place of residence outside the parent's place of residence, the child's stay abroad, the change of a child's citizenship, and the child's school and career).

Pursuant to the provisions of the applicable act on health protection, a parent (statutory representative) has a much narrower decision on the treatment of a minor than on their own. The exercise of the right to consent is limited to two areas.

The Primary Health Care Act of 2015—albeit to an extremely limited extent—provides a broader right to self-determination for people over 16 years of age. An important rule, however, is that this law does not apply to abortion because Art. 8 of the Act LXXIX of 1992 on the protection of fetal life states that a declaration of a legal representative of a person with limited legal competence is required to recognize an abortion application for the validity of a declaration of a person with limited legal capacity, and the application for termination of pregnancy in a legally incapacitated person is filed in her legal representative.

The Book of Family Law also guarantees that the alleged father, who has been raising the child as his own in the family for a long time, may be entitled to contact the child in justified cases. If the intimate relationship between a child and the man he loves as a father is broken overnight, it can seriously harm the child's mental development and emotional security.

From 2020, in the event of a breach of a visitation order, the district court may be ordered to execute a visitation order.

9.4. Poland

Parental authority may be limited if the child's best interests are at stake. The measures of limiting parental responsibility are listed in Art. 109 §2, 3 and 4 of the Family and Guardianship Code of 1964; however, this is not an exhaustive catalog. It begins with the mildest persuasive measures—such as, for example, obliging the parents and the minor to work with a family assistant or sending the child to a nursery—and includes the most severe limitation of parental authority, namely placing the minor in foster care (foster family, family home, or care and education center).

⁷⁹ Section 871 (2) Civil Code.

The corrective mechanism adopted in Art. 109 of the Family and Guardianship Code can be seen as a kind of preventive measure to avoid abuse and neglect that may lead to the cessation of parental responsibility. According to Art. 572 of the Code of Civil Procedure of 1964 anyone who knows about the event justifying the initiation of proceedings is obliged to notify the guardianship court. The court may decide to suspend parental responsibility in case of a short-term obstacle to its exercise, in line with Art. 110 of the Family and Guardianship Code.

9.5. Serbia

If the property was acquired by employing a child, the child has the right to manage and dispose of it independently if they are over 15 years of age.⁸⁰ If the property was acquired, for example, by a gift or inheritance, then the parents have the right to manage and dispose of it. Under Art. 72/3 of the Family Act parents have the right to take legal action to manage and dispose of the income earned by a child under the age of 15 from participation in theatrical performances, films, the media, and so on. As a child under the age of 15 cannot enter into an employment relationship as such cases are governed by the relevant contracts.

Parents have the right and duty to develop relationships with their children based on love, trust, and mutual respect and to guide the child to accept and respect the emotional, ethical, and national identity of their family and society.⁸¹

According to Art. 71 of Serbia's Constitution provides for compulsory primary education. The 2005 Family Act of Serbia provides that a child has the right to education in accordance with their abilities, wishes, and inclinations. Under Art. 71 of the Family Act the child has the right to decide about their education, and parents have the right to educate their child in accordance with their religious and ethical convictions.

In line with Art. 62/2 of the Family Act a 15-year-old child who can reason may consent to any medical intervention. Pursuant to the Act on Termination of Pregnancy in a Healthcare Institution of 1995, a pregnant woman over 16 years of age has the right to apply for termination of pregnancy on her own. Moreover, a child of 15 years of age who is able to reason has the right to the confidentiality of the data contained in their medical records⁸².

9.6. Slovakia

The Civil Code of the Slovak Republic of 1964 regulates only direct representation. Indirect representation is possible (e.g., a contract for the sale of goods in the context of Art. 733 of the Civil Code). In particular, a minor child's legal representative is

80 Art. 192/1, Art. 193/1, Art. 64/3 of the Family Act of the Republic of Serbia of 2005.

81 Art. 70 of the Constitution of the Republic of Serbia of 2006.

82 Art. 24/1.

their parents who have full legal capacity and who have not been deprived of parental rights and obligations or have been suspended from exercising parental rights and obligations. The obligation to represent a minor child applies only to those legal acts that a minor child cannot perform independently.

When a minor child reaches a certain age, they may act on their own behalf, especially in purely personal matters or in employment law (e.g., submitting an application for marriage by a minor over 16 years of age, drawing up a will in the form of a notarial deed by a minor over 15 years of age, and acquiring rights and incurring obligations in employment relationships through own legal acts, an ability acquired on the day that a natural person turns 15).

The parents' obligation and right is to manage the property of a minor child only to the extent that the minor child is not capable of acquiring rights and incurring obligations through their own legal acts, depending on their mental and volitional maturity to their age. Article 9 of the Civil Code states that "*minors have the capacity only to perform legal acts which by their nature are appropriate to maturity of mind and will be appropriate for their age.*" The maintenance obligation of parents toward a minor child does not expire, even if the minor's property brings income (e.g., in the form of dividends, interest, or rent).

9.7. Slovenia

The provisions of Slovenian law contain several legal solutions concerning the broadly understood exercise of parental authority. As an example, some legal solutions concern the following issues: the parents are the legal representatives of their children;⁸³ marriage registration;⁸⁴ the obligation to enroll the child in school; consent to medical intervention; free decision to conceive a child; and the right to protect their privacy and personal rights. Consent of the person exercising parental responsibility should not be necessary in the context of preventive or advisory services offered directly to the child (paragraph 8 of the Directive 95/46/EC of the European Parliament and of the Council of October 24, 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data).

Regarding offering information society services directly to a child, the processing of a child's personal data is lawful when the child is 16 or older. If the child is under the age of 16, such processing is only lawful if and to the extent that the person with parental care has consented to it.

9.8. The European Court of Human Rights

In the subjective aspect of parental responsibility, public institutions should be mentioned, which in some cases may intervene and thus be, indirectly, the subject of

83 Art. 145 of the Family Code of the Republic of Slovenia of 2017.

84 Art. 30 (1) of the Family Code.

these relations. The essence of the intervention may be, for example, the withdrawal of parental authority in the event of a threat to the child's life. However, arbitrary or disproportionate interventions may be the basis for finding a violation of the Convention by the Tribunal.

Many of the rulings of the ECHR concern the protection of family ties and of children from deportation (even children who have committed a crime).

It can be noted that in the jurisprudence of the Tribunal, in relation to some Western European countries, a position regarding the interpretation of legal provisions is concerned with parental responsibility and the right to custody, irrespective of the parents' sexual orientation and the interests of the child.

10. Parental authority in the event of divorce

10.1. Croatia

The first and fundamental principle in all proceedings, as well as in divorce proceedings, is that of the protection of the child's best interests. Accordingly, the competent authorities are obliged to take legal action and make decisions, always suggesting and considering the protection of such best interests. The second important principle is the principle of the amicable resolution of family matters, while the third principle relates to the proportionate and weakest interference in family life.

To implement the above principles, prior to divorce, counseling is compulsory for parents⁸⁵ who have minor children together. A custody agreement or decision always includes a contact arrangement.

Both the parents' shared parental care plan and the court's decision may be changed owing to the application of the *rebus sic stantibus* clause of Art. 107 para. 2 and others. It is enough to know that there has been a significant change. Any parent or child can apply to the court for a new parental custody ruling or agree on a new shared parental custody plan, which must be approved by the court in a non-contentious procedure to become enforceable.

10.2. Czech Republic

According to the Book of Family Law, divorce does not abolish shared parental authority and responsibility for the child's fate. If the child's parents are *de facto* separated, or their marriage is about to dissolve, the court will determine how each parent will care for the child and support them in the future, taking into account the

85 Art. 7 of the Family Act of the Republic of Croatia of 2015.

child's best interests.⁸⁶ The law prefers parental consent, which must be approved by the court, especially in the event of divorce. The criteria for putting a child in personal care (custody) are defined in the Act in a very general manner.⁸⁷

In the case of alternating (serial) personal childcare (custody), both the mother and father look after their child at intervals that may or may not be the same length. The Act clearly states in Art. 907 (1) that "if a child is to be entrusted to joint care, the parents must agree to it".

10.3. Hungary

Parents should establish, for their child, such a system and lifestyle as they consider appropriate with regard to the care provided, be it with express consent or by presumption. However, the law sets two important limits to the parental agreement: on the one hand, if the parents separate, they exercise joint parental supervision to ensure that the child's life is balanced; on the other hand, in matters requiring immediate attention, in the case of joint custody, the parent has the right to decide for themselves in the best interests of the child, which must be immediately communicated to the other parent. In addition to the joint exercise of parental responsibility, the agreement between separate parents may have several contents.

In a case for parental responsibility, the parents' agreement on joint parental responsibility or on its division may be approved by the court by taking into account the best interests of the child, but it may also be resolved by a judgment of a joint application of one of the parties or parties. From January 1, 2022, in the event of a disagreement between parents living separately and at the request of one of the parents, the court may decide to award joint parental responsibility if it considers it to be in the minor's best interests.

Hungary's 2013 Book of Family Law of the Civil Code provides that parents may initiate mediation to settle their relationship before or during the resolution proceedings and the settlement of disputes related to divorce by mutual consent.

10.4. Poland

In the divorce judgment, the court is obliged to adjudicate on parental authority over the minor child of the parties involved, on the child's contacts with the parent who will live away from the child after the divorce, and on how the parents will support the child.⁸⁸ To create the best possible situation for the child despite their parents' divorce, institutions of mediation and parental agreement were created. Their task is to deal with matters related to the situation after divorce. When adjudicating a divorce, the court is obliged to consider what the parties have jointly agreed

⁸⁶ Arts. 906 et seq. of the Civil Code of the Czech Republic of 2012.

⁸⁷ Art. 907 of the Civil Code.

⁸⁸ Art. 58 § 1 of the Family and Guardianship Code of 1964.

in the form of a written agreement between the spouses regarding the exercise of parental responsibility, as well as contact with the child after divorce and alimony if such arrangements are in accordance with the best interests of the child.

The law is evolving toward strengthening the tendency to grant foster care, providing it directly in the provisions of the Code of Civil Procedure of 1964. In addition to deciding on foster care, a formula often used is to grant both parents full parental authority but to entrust direct care to one of the parents. The latter is obliged to inform the other about important matters concerning the child (upbringing, education, health) in which parents should be jointly involved.

All matters relating to the child to be decided in the divorce decree may be modified according to the criterion that everything should be done in the child's best interests.

10.5. Serbia

Parents may continue to exercise parental rights jointly even after divorce, provided that they conclude an agreement on the joint exercise of parental rights and if the court decides that this agreement is in the child's best interests.⁸⁹

In Serbian family law, a special solution is concerned with the parents' right to jointly and unanimously decide on matters that significantly affect the child's life if the parents do not live together (child education, greater medical interventions on the child, change of the child's place of residence, and disposal of the child's property of significant value)—(Art. 78 sec. 4 of the Family Act).

The Serbian Family Act states that a child has the right to maintain a personal relationship with the parent with whom they do not live; thus, the child is expressly entitled to this right. A child who has reached the age of 15 and can reason has the right to decide whether to maintain a personal relationship with the parent with whom they do not live.⁹⁰

It should be noted that preventing the enforcement of the decision to maintain a minor's personal relationship with a parent is an offense under Art. 191 (2) of the Criminal Code of the Republic of Serbia of 2005.

10.6. Slovakia

The divorce or separation of the parents of a minor child affects the lives of all those involved and necessarily entails a new arrangement of family relationships.⁹¹

Regarding the issue of exercising parental rights and obligations of parents after divorce (similarly applies to parents of a minor child who do not live together), we consider it important to point out the ruling of the Constitutional Court of the Slovak

89 Art. 75–76 of the Family Act of the Republic of Serbia of 2005.

90 Art. 61.

91 Sections 24 and 36 of the Family Act.

Republic, Case No. PL ÚS 26/05, which did not grant the petition of the Brezno District Court to declare the incompatibility of Sections 24 and 25 of the Family Act with Article 41 of the Constitution of the Slovak Republic. The applicant's main argument for the alleged incompatibility is the fact that the court, in the decision dissolving the marriage, determines who will represent the child and administer their property after the divorce without deciding on the suspension, limitation, or deprivation of parental rights, thereby effectively depriving one of the parents of their parental rights, which belong to both parents. The petitioner believed such legislation deprives one of the parents of these parental rights without fulfilling the conditions established by the Family Act; however, in the opinion of the Constitutional Court, the legislator did not intend to restrict parental rights, although the way it is worded indicates the possibility of interpreting the application of this provision as a restriction of the parental rights of one of the parents, which must actually occur after the parents' divorce.

The national legislation regulates the criteria to be considered by the courts when deciding on the exercise of parental responsibility in a relatively strict manner; these are, however, developed by constructive case law. The reference to the case law of the Czech courts is justified by the common legal culture and the proximity of the legislation, which is based on historical reciprocity.

10.7. Slovenia

If the court finds that the agreement is not in the children's best interests, it will not be bound by the claims made in the divorce petition and may even rule without making a claim. It can therefore order *ultra et extra petitum*, which it cannot do in the event of divorce by mutual consent.

Pursuant to the Residence Registration Act, one of the parents may declare the child's habitual residence with the consent of the other parent. However, the consent of the other parent is not required when declaring the child's permanent residence, if the child's place of permanent residence is determined by the agreement on guardianship, upbringing, and maintenance of joint children or by a decision of the competent court.⁹²

If the parents do not live together and the child does not live in the care of both parents, the parent with whom the child lives in care decides on matters concerning the child's everyday life. In contrast, both parents decide on matters critical to the child's development by mutual consent and in the best interests of the child (e.g., decisions regarding the child's education, profession, serious medical interventions, religious education, vacations outside the country, origin, change in surname, disposal of property of significant value, and action for contesting paternity—Art. 151 (4) of the Family Code of the Republic of Slovenia of 2017). These matters require the consent and common regulation of both parents.

⁹² Art. 5(5)(5) of the Residence Registration Act.

Parents are free to reach an agreement by using the help of a social welfare center or mediators. If the parents still disagree on an issue that significantly affects their child's life, they can go to a court that will have the child's best interests in mind.

According to Art. 141 of the Family Code the child has the right to contact both parents, and both parents have the right to contact the child, whose best interests are ensured through contact. The right of access includes the right to visit the child, the right to participate in the child's upbringing, the right to take the child on vacation, and so on. The parent entrusted with the care and upbringing of the child, or another person with whom the child has been placed, must refrain from anything that obstructs or prevents contact.

11. The status of a child not subject to parental authority

11.1. Croatia

From 2014, Croatian family law introduced the concept of “dormant parental care,” according to which parents temporarily—but not permanently—lose parental care rights, although this situation can be extended until the child reaches the age of majority.

Under Art. 114 of the Family Act of the Republic of Croatia of 2015 Art. 114 of the Family Act of the Republic of Croatia of 2015 dormant parental care caused by existing legal obstacles takes place when the child's parent is a minor (minor) or a person deprived of legal capacity and incapable of parental care.

There is another group of reasons for dormant parental care, when the parent is absent or their temporary stay is unknown or, for objective reasons, they cannot provide parental care for a long time.⁹³ The court must make a ruling in uncontested proceedings, and the parent cannot exercise parental custody until the court has established that the circumstances (for which dormant parental custody has been awarded) have ceased (regardless of whether the parent has returned in the meantime and wants to take over direct parental custody of the child).

Custody may be interrupted if the parents have regained parental custody, if their right to parental custody has been restored, if their legal capacity to exercise parental custody has been (re) established, and if the child's minor parents have reached the age of majority or have entered into marriage, thus becoming eligible legal actions. Custody also ceases in the event of adopting a child or when a life partner of the same sex has taken over custody of the partner pursuant to Art. 44 of the Same-Sex Life Partnership Act on partnerships of people of the same sex.

⁹³ Art. 115 of the Family Act.

11.2. Czech Republic

If the situation is serious and the child is in danger, their health and life are at risk, and the courts must change the scope of parental authority as well as parents' contacts with the child. In extreme cases, the courts deprive parents of parental authority or remove the child from the family of origin and place them in foster care.

From the date of entry into force of the decision on adoption, parental responsibility is vested in the adopter of a child because the adoption of a minor who is not fully capable is always a "full adoption," respecting the doctrine of adoption *natura imitatur*.⁹⁴

11.3. Hungary

The law provides for placement of a child with a third party—usually a close relative—under two conditions that must occur cumulatively: the exercise of parental authority by either parent jeopardizes the child's welfare, and the third party themselves requests that the child be placed with them. If neither parent is suitable for the child's custody and there is no third party with whom the child can be placed, and the custody of the child seems justified in the interests of the minor, the court shall immediately request the guardianship authority to take the necessary measures.

11.4. Poland

The guardianship court is obliged to appoint a legal guardian for a child over whom neither parent has parental authority.⁹⁵

Legal guardianship is a substitute for parental authority (i.e., the guardian appointed by the court takes care of the child and property) and is also their legal representative.

The most important difference between custody and parental authority is that the guardian is supervised by the court, which may call the guardian to clarify matters relating to the child, and the guardian must also obtain the court's consent when deciding on all relevant matters concerning the child and their property.

11.5. Serbia

The Family Act of the Republic of Serbia of 2005 provides that a child without parental care who can be adopted is a child who has no living parents, a child whose parents are unknown or where their place of residence is unknown, a child whose parents are completely deprived of parental rights, a child whose parents

94 Art. 794 of the Civil Code of the Czech Republic of 2012.

95 Arts. 145 et seq. of the Family and Guardianship Code of 1964.

are completely deprived of legal capacity, or a child whose parents consented to adoption.⁹⁶

The scope of care and protection of adoptive parents is in line with the rights and obligations of the child and their parents.⁹⁷

Foster care can also be established if the child is under parental care but has a developmental impairment or behavioral disorder. The scope of care and protection of a foster parent includes the right and obligation to protect and raise a child, and the foster parent is obliged to take special care to prepare the child for independent life and work.⁹⁸

The parents of a child placed in foster care have the right and obligation to represent the child, manage and dispose of the child's property, maintain the child, maintain personal relations with the child, and decide on matters significantly affecting the child's life, jointly and with the consent of the foster parent, unless the parents are fully or partially deprived of parental rights or legal capacity or do not care for the child or care for them improperly.⁹⁹ The guardianship body will first try to accommodate the child in the family of a relative.¹⁰⁰

11.6. Slovakia

The violation of rights by inadequate educational means is sanctioned by family law norms in the form of interference with parental rights and obligations and *de facto* modification of their exercise (educational measures, interference in the exercise of parental rights and obligations, substitute care, restriction, or prohibition of contact).

The Explanatory Memorandum to the Family Act states that “upbringing is understood in its broadest sense as care for the person of the child, in which substantial decisions are also made. It includes care for the education and for the development of the child's individual, physical, and mental faculties, in contrast to personal care, which can also be provided by persons who are not the child's legal representatives. Even if a child is placed in one of the forms of foster care, the parents or guardian remain responsible for the child's proper upbringing.

The statutory regulation does not preclude parents from entrusting another person with the right of personal care of a minor child or from handing over the care of the child to a specialized institution. The foregoing does not necessarily imply that the exercise of parental rights would be contrary to the interests of the minor child—particularly in the case of a disabled parent who is unable to provide for the exercise of personal care but is interested in their child, is emotionally attached to

96 Art. 91.

97 Art. 104.

98 Art. 119.

99 Art. 120.

100 Art. 124.

them, and has contact with them and has an educational influence on them in the course of that contact.

11.7. Slovenia

The new the Family Code of the Republic of Slovenia of 2017 introduced a new institution, the so-called “Giving parental care to a relative.” Pursuant to Art. 231 para. 1 of the Family Code, the court may grant parental custody to a relative of a child whose parents are no longer alive if this is in the best interests of the child and the relative is ready to take over the custody and meets the conditions for adopting the child.

Under Art. 231 (2) of the Family Code the court may grant joint parental care only to married or cohabiting relatives who meet the necessary conditions. A relative who is granted parental care will receive the same rights and obligations as the child’s parents and will become the child’s legal representative.

According to Art. 218 (2) of the Family Code child whose parents are unknown or whose place of residence has not been known for a year can also be placed for adoption.

If parental care is withdrawn, the court also decides whether the child should be placed with another person, in foster care or in an institution, and whether they should be cared for.¹⁰¹

12. De lege ferenda conclusions

12.1. Croatia

It would be a good idea to closely observe the social changes taking place in society and to strengthen the rights of parents, as long as these promote the welfare of children in pluralistic societies. Simultaneously, adequate support should always be provided to parents as they are torn between private life and business responsibilities.

12.2. Czech Republic

Currently, the Parliament of the Czech Republic has made no official proposals on parental responsibility legislation as such, although much is being discussed informally, especially regarding the previous pending draft submitted before the last elections in 2021, equating—or at least bringing on a more even level—the situation of divorcing parents of a minor child and that of unmarried parents of a minor child who split up without state intervention by mutual informal agreement.

¹⁰¹ Art. 176 (4) of the Family Code.

The pending project was based on the opinion that parents of a minor child know their child very well and try to act in their best interests even during the separation. If enacted, the divorce of the husband and wife, who can agree on the divorce and the property and housing consequences of the divorce, as well as the divorce relating to their minor children, would be amicable, efficient, and speedy. The divorcing couple would only have to submit to the judge a joint application for divorce, a property and housing contract, and an agreement for a minor child in terms of custody, maintenance, and, if necessary, visiting rights. The divorce judge would not have to approve either the property agreement or the guardianship and alimony agreements for minor children.

12.3. Hungary

Defining and emphasizing the rules governing the exercise of parental responsibility is a very good solution in national legislation as it can support the courts in cases where specific legal rules governing the dispute cannot be clearly defined.

The legislator should place greater emphasis on the principle of the best interests of the child and the child's right to self-determination, even if elevated to the rank of a general principle of the Civil Code of Hungary.

The law does not require any specialization in family or child protection law, which should be an important requirement in this case. A similar problem occurs in courts where family law cases are heard by judges of general civil law, even though family law cases differ both in number and nature from traditional civil proceedings. Additionally, the creation of child-friendly courtrooms in courts does not change this trend as judges cannot use the courtroom without special training.

A related and particularly important aspect is to jointly obtain the opinion of a minor child as the decision may have a decisive impact and affect the child's life. For this reason, the decision on foster care should always be taken by the parents or the court, considering the views, points of view, and conclusions of the child—and, if the child does not yet have the capacity to adjudicate, their opinion, not only in justified cases or at the request of the child reaching the age of 14 years.

The Book of Family Law defines, in a separate chapter, the rights and obligations of the parent who is separated from the child in the absence of joint parental authority. Thus, the separated parent decides jointly with the parent exercising parental responsibility over the child on important matters concerning their fate, but it is also the responsibility of the parent. The law lists these cases in an exclusive list; however, this does not include exercising the right to self-determination with regard to child healthcare, including the right to consent to invasive medical procedures. The law only requires the parent with parental responsibility to inform the other parent about the development, health, and education of the minor child, which does not even allow the parent to obtain information directly from the teacher or doctor about the child's learning progress, health and upbringing, or possible diseases. This legislation unnecessarily and disproportionately restricts the rights of the separated parent who does not exercise parental responsibility.

12.4. Poland

The analyses conducted with regard to the Polish law in the field of parental authority allow for the formulation of the following postulates.

In court proceedings about family matters, it is necessary to move away from the adversarial approach (antagonizing the parties or participants) in favor of conciliatory solutions. This is important for divorce, separation, and the establishment of alimony.

The legitimacy of deciding on foster care should be considered after the period of parental cooperation following the divorce decree (minimum 6 months). During the divorce proceedings, the parties should prove that their relationship has completely and permanently broken down, including in the spiritual (emotional) sphere, which is incompatible with the parental educational community.

Any child court hearing should always be held in the presence of a psychologist. When deciding to replace custody over a child, it should be obligatory to obtain a psychological opinion.

There are grounds to support the postulates of child protection in divorce proceedings (by proxy) as the parents involved in the dispute may not recognize the child's needs and may provide them with inadequate protection.

In case of parents who make it difficult for a child to contact their relatives—especially with a parent who lives away from the child or threatens the child's welfare—the courts should consider limiting their parental authority (requiring participation in therapy or supervision by a probation officer) and the possibility of the child living with the other parent. A foster family that makes it difficult or impossible for parents and other close relatives of the child to contact them is the basis for terminating the foster relationship.

Training for family judges should include learning to cooperate with institutions operating in the social environment to support families (local government, nongovernmental, churches, and religious associations).

The guardianship court should be entitled to grant the status of a pregnant minor if, according to the psychological and pedagogical opinion, she is mature enough to exercise parental authority over the child after childbirth.

12.5. Serbia

Even though the Serbian term “parental responsibility” emphasizes the personality, rights, and interests of the child, *de lege ferenda* seems appropriate to change it and replace it with the term “parental care” (“*roditeljska briga*”) as a term more in line with contemporary trends in family law.

In terms of solving the parents' conflict, *de lege ferenda* is proposed. The competent authority should be a court, which has jurisdiction to rule on the most important matters relating to the child as the judges acting in family law should be particularly specialized in the field of family law and children's rights. The court

should have different options for resolving the conflict. First, when trying to reconcile parents, the court should be able to use family mediation conducted by competent authorities (court, guardianship authority, marriage or family counseling center, or other institution specialized in mediating family relations). In addition, the court should be able to authorize one of the parents to act independently with regard to one or more specific decisions. Finally, the court should be empowered to make its own decisions. The court should be free to choose the options that it deems most appropriate for the present situation in the child's best interests. This will depend on various circumstances, such as whether the matter is urgent, whether the parental conflict is exceptional or frequent, and others. *De lege ferenda*, it would be critical to pass a law on child abduction.

12.6. Slovakia

Family law, together with other branches of private law, should be concentrated in the new Civil Code in the near future, and with that, our hope is that the concept of parental responsibility will be emphasized a lot more.

The Slovak Family Act currently does not define the concept of parent nor that of child. However, the definition of these terms can be deduced from the provisions on the determination of parenthood.

In defining the concept of child for the purpose of exercising parental rights and obligations, it is necessary to look for support in international treaties and the case law of the courts. This is an area where we are anticipating changes in the near future.

It also seems desirable to regulate assisted contact, which is currently sorely lacking in our legislation. Parent-child contact is such an important factor in the healthy development of a minor child that it requires sensitive regulation.

If the need for assisted contact has already arisen in the main proceedings, the involvement of a third party, such as the Office of Labor, Social Affairs, and the Family, could prevent the enforcement proceeding itself precisely through the active approach of social workers. This would eliminate the problem of contact on a wider scale.

Equally interesting is the possibility of legislative improvement of the post-divorce arrangement of family relations by means of a probationary period of custody. This is considered a preferable alternative to subsequent proceedings for a change in the child-rearing environment if it becomes apparent that, for whatever reason, alternate care by both parents has failed after a certain period of time.

In terms of process and new legislation that might incentivize parents to agree on the exercise of parental rights and responsibilities, I suggest that expert evidence be prepared by two independent expert witnesses (a man and a woman), which would inevitably involve a higher cost; however, this would remove any doubt of gender bias against the person by the expert witness, which is currently a common complaint.

The Slovak legal order currently lacks the determination of the goal of a minor's proper upbringing. Thus, I believe that it is important for the aims of education to be clearly defined.

Positive results could be achieved by strictly defining the roles of parents in upbringing, at least in as much detail as, for example, the Czech legislator has done in Art. 884 of the Civil Code: "*Parents have a decisive role in the upbringing of a child. Parents are to be all-round role models for their children, especially when it comes to the way of life and behavior in the family.*"

A further positive step would clearly be a substantive definition of the concept of "upbringing of a minor" to provide a clear legal framework for the rights and obligations of parents. Inspiration could again be taken from the Czech regulation, which, in the new Civil Code in Art. 858, defines parental responsibility as

Parental responsibility includes the duties and rights of parents, which consist in taking care of the child, including in particular taking care of the child's health, physical, emotional, intellectual and moral development, protecting the child, maintaining personal contact with the child, ensuring the child's upbringing and education, determining the child's place of residence, representing the child and managing the child's property; it arises from the birth of the child and ceases when the child acquires full legal capacity. The duration and extent of parental responsibility may be changed only by the court.

The Slovak legislation lacks a more detailed enumeration, and even the draft of the new legislation includes, in the framework of a person's care for the child—only that the parents have the right to have the child with them, to take care of them personally, and to protect them. However, this wording is not exhaustive and should be changed to include "*to have the child with them, to determine his/her place of residence, to care for him/her personally, to protect the child's interests, to direct and guide his/her actions and to supervise him/her.*"

12.7. Slovenia

Slovenia has left open the possibility of a more modern definition of motherhood and fatherhood, continuing the traditional approach. It should be borne in mind that the development of medicine meant that the traditional presumption of motherhood did not always correspond to the realities of the situation. This will be given for surrogate motherhood and donor gametes; nor should we ignore the possibility that a person who is legally and medically male may give birth to a child.

Indeed, although very few cases of this kind deviate from the traditional definition of motherhood, the unification of legal regimes should also be considered.

It should also be remembered that all countries deal with multiple secondary families in which the stepfather or stepmother also plays a role. Here, too, some countries have taken a step forward and discussed the subject. An appeal should

also be made to other countries to encourage them to tackle this issue more actively at the legislative and judicial level. It should not be forgotten that, here too, party autonomy and consensual resolutions come to the fore.

12.8. The European Court of Human Rights

In the context of the jurisprudence of the ECHR, it can be postulated that the constitutional axiology of a given state (or, in a comparative aspect, a group of axiologically similar countries) should be analyzed each time before the judgment is issued by the ECtHR, with particular attention being paid to the guidelines for linguistic, systemic, and functional interpretation. Especially in matters of parental responsibility, decisions issued under the legal order of states operating under a different axiology should not be cited without reflection.

Since individual concepts are not independent in the context of parental responsibility, they should be interpreted in relation to other concepts of a subjective nature, with particular regard to the directives of systemic and functional interpretation.

13. One final conclusion

The main task of the international research team was, *inter alia*, to find an answer to the question about the content and limits of parental responsibility/authority, the role of the state and the EU, the scope of rights and obligations of family members, sexual education, and the reaction of individual countries' legal systems to new pan-European programs and strategies as well as policies in the field of equality promotion and non-discrimination.

The first research results indicated in this summary, as well as in individual chapters of the book, indicate the need to intensify the legal protection of the existing traditional values on which the identity of states with a similar constitutional axiology is based.¹⁰²

102 Thank you, Mrs. Jowita Sosnowska for help in developing materials for this study.