Demographic Challenges in Central Europe

Legal and Family Policy Response

Studies of the Central European Professors' Network
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Legal and Family Policy Response

Edited by
Tímea Barzó

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Part I

DEMOGRAPHIC SITUATION

Chapter 1

Population of the World

Daniela Arsenović

Abstract

The world population passed 1 billion for the first time in history in the first half of the 19th century. Since then, the global population has continued to grow, and most regions and countries are experiencing rapid and broad demographic change. In 2022, the world population reached about 7.9 billion people, and according to the current projections developed by the United Nations, it could grow to approximately 9.7 billion in 2050. Until the middle of the 21st century, population growth rates will differ by region, and Central and Southeast Asia will be the most populated areas. A high increase in population is also expected to occur in sub-Saharan Africa, whereas Europe will reach a population peak during the 2030s, with the European population declining until 2050 owing to a low fertility level. With declines in fertility, the world's population is ageing. In 2018, the number of persons in the world aged 65 and over was higher than the number of children under five for the first time. All regions will experience ageing, with faster progress in developing countries than has historically been observed in developed regions. The projected trends in the world population are a common result of population momentum, future levels of fertility and mortality, and regional migration flows. The contribution of these components to future population trends will vary by region and country.

Keywords: demographic change, population growth, fertility, mortality, international migration

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1. Introduction

As a result of changes in fertility and mortality trends, also known as 'demographic transition', the world has faced unprecedented population growth over the past 200 years. However, since the modern era, population trends have been more uncertain than in the past. Although the global population has been studied for decades, the economic, demographic, and social features of population trends, as well as their challenges and consequences, remain the subjects of much research today. One of the most meaningful studies is an article[1] by Malthus in 1798, in which he published his theory of population. Malthus's theory predicted that global food production would increase at an arithmetic rate, while the population would rise at a geometric rate, meaning that in the absence of birth control, the population would double every 25 years.[2] Malthus failed to predict the Industrial Revolution, and most scholars use this as an argument to criticise his theory. However, 'the crucial contribution of Malthus's theory was not its pessimism about innovation but rather its prediction of the demographic consequences of technological change and the inevitable effect of population on the standard of living'.[3] As the current world population is approximately 8 billion people, Malthus's theory of population has become unreasonable. Nevertheless, this theory has been highly influential in economics in the context of investigating the consequences of population growth.[4]

The world's regions are currently at different phases of demographic transition. This chapter summarises trends in population size, fertility, mortality, and international migration, aiming to contribute to a better understanding of global population changes. The beginning of the chapter presents historical trends in world population, followed by the demographic transitions throughout the 18th century, 19th century, and first half of the 20th century. Demographic changes during the second half of the 20th and beginning of the 21st century, as well as estimations for future periods, are also discussed.

2. Historical estimates of world population trends

Defining when humankind came into existence is a complex issue, and the estimations made by palaeontologists and anthropologists are diverse. According to current scientific evidence, the oldest hominins appeared around 7 million BCE,

1 Malthus, 1798.
2 Rahman, 2018, p. 14; Unat, 2020, p. 133.
3 Weir, 1991, p. 401.
4 Montano and Garcia-Lopez, 2020.

whereas the *Homo genus* appeared between 2 and 1.5 million BCE. The advent of modern man, *Homo sapiens sapiens,* dates back to around 190,000 BCE. In that period, population density was very low, and small groups of people lived in isolation, exploiting the environment by hunting and gathering wild food. Life expectancy varied between 15 and 17 years, and the crude birth and death rates were high, resulting in slow population growth. Around 8000 BCE, the world population numbered approximately 5 million. Until 1 CE, the annual growth rate was about 0.05%; by around 1 CE, the global population had grown to 300 million.[5] Despite the fact that, due to a lack of data, information about the prehistory and early historic development of the human population is limited, it is known that changes in population growth shaped three demographic regions in the ancient world:[6]

- The first area was around the Mediterranean Sea; southern, southwestern, and eastern Asia; and Middle America. This was a city-centred zone with agrarian and commercial civilisations.
- The second area included northern Europe, northern Asia, Africa (south of the Sahara), Oceania, and a major part of North and South America. This zone covered isolated regions, mostly villages with tribal economies.
- The third area included southwest and central Asia, inhabited by a nomadic population mostly comprised of mounted herdsmen.

By 1650, the world population had reached about 500 million, with estimations varying between 470 million (by Willcox) and 545 million (by Carr-Saunders). The annual growth rate was lower than in the period from 8000 BCE to 1 CE for several reasons. The rise in population density increased the risk of epidemics, such as the plague events recorded in 541 and 1347 (also known as the 'Black Death'). From 1348–1350, the plague decreased the population of Europe by 20–25%; from then until 1400, this decrease was about 40%.[7] Between 1650 and 1900, the average annual growth rate varied from 3,000 to 7,000 (Table 1). By 1800, the total population of the world had increased to more than 900 million, and at the beginning of the 20th century, it was more than 1.5 billion (Table 2).

5 Kaneda and Haub, 2022.
6 United Nations, 1953.
7 United Nations, 1953.

Table 1. Average annual rates of increase (per 1,000) in estimated world population, 1650–1900[8]

Period	World		Europe, Asiatic USSR, America, and Oceania	
	Willcox's estimates	Carr-Saunders's estimates	Willcox's estimates	Carr-Saunders's estimates
1650–1750	4	3	3	3
1750–1800	6	4	7	7
1800–1850	3	5	8	9
1850–1900	7	6	11	11

At the beginning of the modern era, the estimated size of the world population was still based on uncertain data. In the early modern period, the first censuses were conducted in French and British colonies in Canada and Iceland in 1703. Throughout the 18th century, countries in northern Europe maintained vital registers and census statistics. However, in most parts of Asia, Africa, and Latin America, reliable data only started being collected at the beginning of the 20th century.[9]

Table 2. Historical growth of the world population, estimates by region, 1000–1900[10]

	World	Europe	Russia	America	North America	Latin America	Asia	Africa	Oceania
Clark									
1000	280	32	12	13	←	←	172	50	1
1200	384	45	12	23	←	←	242	61	1
1500	427	62	12	41	1	40	225	85	2
1750	731	102	34	15	2	13	320	100	2
1900	1,668	284	127	144	81	63	985	122	6

8 Source: United Nations, 1953, p. 12.
9 Djurdjev, Arsenović and Marinković, 2016, pp. 9, 33; United Nations, 1953, p. 10.
10 Source: United Nations, 1953, p. 11; Durand, 1974, p. 9. Note: Estimated population in millions.

	World	Europe	Russia	America	North America	Latin America	Asia	Africa	Oceania
Willcox									
1650	470	103	←	8	1	7	257	100	2
1750	694	144	←	11	1	10	437	100	2
1800	919	193	←	29	6	23	595	100	2
1850	1,091	274	←	59	26	33	656	100	2
1900	1,571	423	←	144	81	63	857	141	6
Carr-Saunders									
1650	545	103	←	13	1	12	327	100	2
1750	728	144	←	12	1	11	475	95	2
1800	906	193	←	25	6	19	597	90	2
1850	1,171	274	←	59	26	33	741	95	2
1900	1,608	423	←	144	81	63	915	120	6

3. World population in the 19th century and the first half of the 20th century

World population growth is determined by two factors: fertility and mortality. During the early 19th century, in the now economically developed parts of the world, mortality began a secular decline around 1800, and a few decades later, it was followed by reduced fertility. This process has been known as the 'demographic transition', which, today, is more or less complete.[11]

According to United Nations estimates, in 1800, life expectancy at birth was around 27 years (Table 3). As a result of mortality decline, life expectancy had risen by 20 years by 1950. Several factors contributed to the decrease in mortality. Initially, this decline was due to a reduction in infectious diseases. During the second half of the 18th century, the smallpox vaccine was discovered, and preventive medicine played an important role in mortality reduction. At this time, improvements in

11 Lee, 2003, pp. 167, 170, 173; Bongarts, 2009, p. 2985.

nutrition and hygiene were also important.[12] According to Kirk,[13] there were three stages of mortality decline in the modern world:

- The late 18th century and first half of the 19th century, when the foundation of a modern state with public order reduced death from random violence and local wars between tribes. The development of transport and commerce infrastructure provided better conditions for agriculture and improved nutrition. At this stage, a raise in incomes was also likely important for mortality reduction.
- The late 19th century until World War I was a period of significant revolutions in medicine developed by Robert Koch, Louis Pasteur, Anna W. Williams, and others. Most of the mortality decline during this period was due to a reduction in child and infant mortality.
- World War II and the following period, when penicillin was discovered.

The demographic transition in less developed countries started later, during the first half of the 20th century. Consequently, though life expectancy was 47 years and a significant reduction in infant and child mortality had been achieved in 1950, the regional differences were quite distinguished. In the 1930s, life expectancy was 58.7 years in Western Europe; 61.3 years in the United States, Canada, Australia, and New Zealand; 37.8 years in Latin America and the Caribbean; 31.9 years in East Asia; 31.9 years in South and South-East Asia; and 34.5 years in the Middle East and North Africa.[14]

Table 3. Demographic indicators of world population, 1800–1950[15]

Year	Total population	Population Growth Rate	Life expectancy	Total Fertility Rate
1800	978	0.51	27	6.0
1900	1,650	0.56	30	5.2
1950	2,251	1.80	47	5.0

From 1890 to 1920, marital fertility declined in most European provinces, and between 1870 and 1930, the number of children per woman declined by 40%.[16] The exception was France, where marital fertility started to decline around 1800.[17] Most

12 Lee, 2003, pp. 170–171.
13 Kirk, 1996, p. 368.
14 Van Zanden, 2014, p. 108.
15 Sources: Total population and growth rate: United Nations, 1999; Total fertility rate and life expectancy: Lee, 2003. Note: Population growth rate = %/years.
16 Coale and Treadway, 1986, p. 44, cited in Lee, 2003, p. 173.
17 Djurdjev, Arsenović and Marinković, 2016, p. 49.

theories suggest that fertility decline was associated with changes in the economic environment, which further led to changes in behaviours related to marriage and the desired number of children.[18] Various theories of fertility also support the idea that couples tended to have a certain number of surviving children and did not, thus, need to have more, which likely contributed to fertility decline.[19]

4. World population changes since 1950

At present, the world is populated by about 7.9 billion people, which is more than three times more than in 1950. According to the United Nations, the global population reached 8.0 billion in mid-November 2022.[20] Over the 70 years between 1950 and 2022, the fastest population growth occurred in the 1960s. In the next few decades, population growth slowed and, in 2020, it fell below 1% per year. This growth is projected to continue to slow until 2050 and at the end of this century. The slowing pace of population growth is mostly due to a decline in fertility.[21] Nevertheless, regardless of this decline in fertility, the world population is expected to continue to grow because of population momentum,[22] which occurs when fertility declines but the population continues to increase as a result of the existing age structure. Current projections suggest that the world population could grow to around 9.7 billion in 2050, adding more than 600 million from 2100 (Table 4).

Table 4. World population and annual rate of population change by major area, 1950–2100[23]

	1950	2000	2022	2050	2100
Region	**Population (millions)**				
World	2,499	6,149	7,975	9,709	10,349
Africa	228	819	1,427	2,485	3,924
Asia	1,379	3,736	4,723	5,293	4,673
Latin America and the Caribbean	168	523	660	749	647

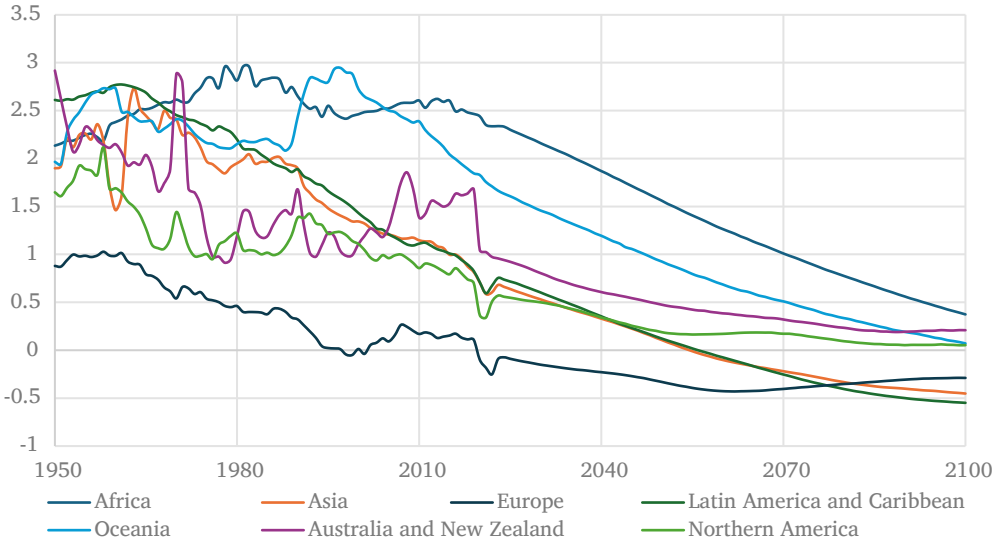
18 Birdsall, 1983.
19 Lee, 2003, p. 174.
20 United Nations, 2022, p. 3.
21 Ibid.
22 Gu, Andreev and Dupre, 2021, p. 605.
23 Source: United Nations, 2022. Notes: Medium scenario. *Excluding Australia and New Zealand.

	1950	2000	2022	2050	2100
Oceania*	2	8	14	20	25
Australia and New Zealand	10	23	31	38	44
Northern America	162	313	377	421	448
Europe	550	727	744	703	587
Region	**Annual Rate of Population Change (%)**				
World	1.70	1.30	0.80	0.50	–0.10
Africa	2.10	2.50	2.30	1.60	0.40
Asia	1.90	1.30	0.60	0.10	–0.50
Latin America and the Caribbean	2.60	1.40	0.70	0.10	–0.50
Oceania*	2.0	2.70	1.70	0.90	0.10
Australia and New Zealand	2.90	1.10	1.00	0.50	0.20
North America	1.60	1.10	0.50	0.20	0.10
Europe	0.90	0.00	–0.30	–0.30	–0.30

Population growth is not equally distributed in all regions of the world. Starting in 1950, more intensive population increases took place in Asia, Africa, and Latin America and the Caribbean. Africa has had the highest growth and is the only world region with a continuously growing rate (more than 2% per year) since 1950. Among the sub-regions, sub-Saharan Africa has been the area with the fastest growth.[24] In 2022, almost 60% of the world's population lived in Asia: with around 1.4 billion inhabitants in 1950, the population of Asia increased by 37% up to 2000 and had added almost 1 million inhabitants by 2022. Populations in Europe and Northern America have been growing at a lower annual rate, particularly in Europe, where the population growth rate was below 1%. In 2022, the European population was the only global population with a negative growth rate (Graph 1). Until the middle of the 21st century, world regions will continue to experience different growth rates, and Central and Southeast Asia will be the most populated areas. A high increase in population is also expected to occur in sub-Saharan Africa, with the number of inhabitants in this region predicted to almost double between 2022 and 2050. According to data from 2022, this region increased at an annual growth rate of 2.5%, which is more than three times higher than the global rate. Europe will reach a peak during the 2030s, and the European population will decline until 2050 owing to low fertility levels.

24 United Nations, 2022. Notes: Medium scenario. *Excluding Australia and New Zealand.

Graph 1. Annual rate of population changes (in %) by major area, medium scenario, 1950–2100[25]



The projected trends in the world population are a common result of population momentum and future levels of fertility and mortality, as well as regional migration flows. The contribution of these components to future population trends will not be equal across regions and countries. According to Gu et al.,[26] in sub-Saharan Africa, relative to the total population in 2020, the highest contribution to population increase (around 53%) from 2020–2050 will be fertility, while population momentum will account for approximately 40% of this increase. The contribution of the other two components – mortality and migration – will be less significant. In Eastern and South-Eastern Asia, the population will increase from 2020–2050 owing to population momentum, mortality will range from 3–5%, and fertility will provide a negative contribution. In Central and Southern Asia and Latin America and the Caribbean, population momentum will be a major driver of future growth. Gu et al. expect that in Europe, population momentum and low fertility will cause population decreases in the next three decades, while in Northern America, population growth is expected to occur due to positive net migration flows.

The transition of fertility and mortality is followed by an increase in life expectancy and, consequently, an increase in the share of the older population (persons aged 65 and over). In 2018, the number of persons in the world aged 65

25 Source: United Nations, 2022. Note: Oceania (excluding Australia and New Zealand).
26 Gu, Andreev and Dupre, 2021, p. 607.

and over was higher than the number of children under five for the first time.[27] From 2015–2020, life expectancy at age 65 was, on average, about 17 years; however, from 2045–2050, this will increase to 19 years. Until the middle of this century, life expectancy at age 65 will increase in all countries.[28] As a result of the increase in life expectancy and the decline in fertility, the share of the older population will continue to rise, and population ageing will accelerate. In 2022, about 10% of the world's population were aged 65 and over, with this figure projected to reach about 12% and 16% in 2030 and 2050, respectively.[29] The highest shares of older adults in the population in 2022 were observed in Europe and Northern America (about 19%) and Australia and New Zealand (17%). According to current trends, by the middle of the 21st century, one in every four persons in Europe and Northern America will be older than 65. In other regions, the population is also expected to age in the coming decades: from 2022 to 2050, the share of the old population will increase from 9% to 19% in Latin America and the Caribbean, from 13 to 26% in Eastern and South-Eastern Asia, and from 3 to 5% in sub-Saharan Africa. In some developed countries, as well as countries with rapid declines in fertility, the share of the older population is much higher. Japan has the most aged population in the world, with 29.8% of persons aged 65 years and over. Italy holds second place with 23.7%, followed by Finland (22.9%), Portugal (22.6%), Greece (22.5%), Bulgaria (22.4%), Puerto Rico (22.4%), Germany (22.2%), Martinique (22.1%), and Croatia (22.0%).[30] Seven out of 10 of the world's oldest countries are in Europe, which is expected given that Europe is the oldest of the world regions.

The increase in average age is a positive achievement for the human population, but, at the same time, presents a significant challenge for humanity. Sander et al.[31] noted three challenges of population ageing: the biological challenge refers to the deterioration in physical strength and mental capacity in old age; the social challenge is to increase the retirement age; and the cultural challenge is to provide the older population with the opportunity to live in age-friendly environments. Other scholars, such as Zaidi,[32] have highlighted five challenges associated with an ageing society: pension policy, health and long-term care policy, employment policy, migration and integration policy, and infrastructure development. Given that the population in developing countries is ageing faster than it did historically in developed regions, developing countries will face these challenges in a shorter time. As such, these countries lack time to prepare for rapid population ageing.

27 United Nations, 2022.
28 United Nations, 2019.
29 United Nations, 2022.
30 United Nations, 2023.
31 Sander et al., 2015, p. 187.
32 Zaidi, 2008, p. 9.

4.1. Trends in fertility

The global total fertility rate (average number of births per woman) began to decline in the early 1960s, from about five births per woman to three births during the early 1990s. In 1994, a year when one of the Cairo Conferences was held, about 46% of the global population, mostly settled in Europe and Northern America, lived in countries with a fertility level below 2.1, which is below the population replacement level.[33] Today, according to the United Nations,[34] about two-thirds of the global population lives in a country or area where fertility is below 2.1 births per woman. In 2022, the global total fertility rate was 2.3 children per woman, and in the medium scenario of assumptions, it is expected to fall to 2.1 children per woman by 2050 (Table 5, Graph 2).

Table 5. Crude birth rate, total fertility rate, and net reproduction rate for the world and major regions, 1950–2010[35]

	1950	2000	2022	2050
Region	**Crude Birth Rate**			
World	36.8	21.8	16.8	14.0
Africa	48.1	38.4	32.1	22.9
Asia	41.7	21.1	14.2	11.3
Latin America and the Caribbean	43.6	22.2	14.6	10.7
Oceania*	43.8	31.8	24.3	17.7
Australia and New Zealand	23.8	13.4	11.6	9.9
Northern America	23.2	14.1	10.9	9.8
Europe	22.2	10.1	9.2	8.8
Region	**Total Fertility Rate**			
World	4.8	2.7	2.3	2.1
Africa	6.6	5.2	4.2	2.9
Asia	5.7	2.6	1.9	1.9

33 United Nations, 2019.
34 United Nations, 2022.
35 Source: United Nations, 2022. Notes: Estimates: 1950–2022; medium scenario: 2023–2050. *Excluding Australia and New Zealand.

	1950	2000	2022	2050
Latin America and the Caribbean	5.8	2.6	1.9	1.7
Oceania*	5.9	4.1	3.1	2.4
Australia and New Zealand	3.1	1.8	1.6	1.7
Northern America	3.0	2.0	1.6	1.7
Europe	2.7	1.4	1.5	1.6
Region	**Net Reproduction Rate (R_0)**			
World	1.64	1.17	1.06	1.01
Africa	1.83	1.98	1.85	1.31
Asia	1.79	1.11	0.90	0.88
Latin America and the Caribbean	2.05	1.22	0.88	0.83
Oceania*	1.87	1.80	1.41	1.10
Australia and New Zealand	1.46	0.87	0.78	0.80
Northern America	1.38	0.96	0.79	0.81
Europe	1.16	0.68	0.72	0.79

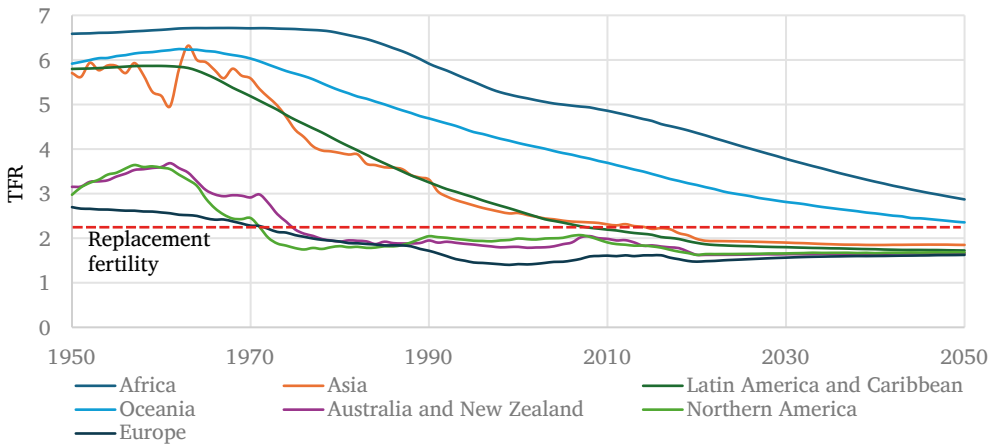
Regardless of fertility decline, the total number of births has shown a relatively stable trend since the second half of the 1980s (about 140 million). In 2022, 134 million babies were born globally. It is expected that the number of newborns will increase slightly (around 138 million) between 2040 and 2045, before declining in 2050 (around 136 million).[36]

Across the regions, fertility levels show wide variations. In 2022, Africa and Oceania (excluding Australia and New Zealand) were the only two regions with a net reproduction rate above 1 and a total fertility rate above the replacement level. The lowest number of children per woman was observed in Europe, at approximately 1.5. After 2000, Asia reached a fertility rate below 2, although some parts continue to have high fertility levels; for example, in 2022, the rate was an average of 2.2 children per woman in Central and Southern Asia. Among the subregions, in 2022, sub-Saharan Africa had the highest fertility level (4.5 children per woman), followed by Northern Africa and Western Asia with 3 and 2.6 births per woman, respectively. Most births occurred in sub-Saharan Africa, Central and Southern Asia, and Eastern and South-Eastern Asia, with shares in the total global births of 30%, 28%, and 18%,

36 United Nations, n.d.

respectively.[37] These subregions are also characterised by a high level of adolescent fertility. In 2021, 13.3 million babies (about 10% of the total number of births in the world) were born to mothers under the age of 20, with half of them in sub-Saharan Africa. In the region of Latin America and the Caribbean, adolescent fertility was even higher, and its contribution to total fertility was 14%.[38] Most governments in countries with high adolescent fertility have adopted policy measures to improve sexual and reproductive health. These measures include school-based sexuality education, which is increasing among young people in secondary school and encouraging girls and young women to postpone giving birth.[39]

Graph 2. Total fertility rate by major area, 1950–2050[40]



In Europe and Northern America, the total fertility rate started to decline earlier than in other parts of the world. In Europe, the number of children per woman decreased below the replacement level between 1975 and 1980. The fall in the fertility rate to below 2.1 was followed by an increase in pre-marital cohabitation, a demographic regime that marked the beginning of the second demographic transition.[41] The concept of the second demographic transition was formulated by Lesthaeghe and Van de Kaa in 1986[42] and has been associated with various structural changes, such as modernisation; the expansion of higher education; the growth of the service economy; cultural changes, most notably secularisation; shifts in personal values; the growing significance of personal expression and fulfilment; and technological

37 Ibid.
38 United Nations, 2022.
39 United Nations, 2019.
40 Source: United Nations. Population division. Data portal. Source year: 2022 Notes: Estimates: 1950–2022; medium scenario: 2023–2050. *Oceania excluding Australia and New Zealand.
41 Lesthaeghe, 2020, pp. 2–9.
42 Lesthaeghe, 2014, p. 18112.

changes.[43] Some scholars have argued against the concept of a second demographic transition, suggesting that this demographic regime will remain a phenomenon typical of the population in North-western Europe and the mostly European population of the United States, Canada, Australia, and New Zealand. According to this theory, the second demographic transition will not spread to the countries of Eastern and Southern Europe or to the other cultures of Latin America and Asia. However, the transition in fertility over the last few decades suggests that the rising proportion of couples in cohabitation and the sub-replacement fertility rate is spreading outside the European cultural area, with most prominent changes in the region of Latin America and the Caribbean.[44]

Significant variations in the fertility rate in different regions necessitate different government policies to address fertility. In 2019, among 197 governments of member and non-member states of the United Nations, about three-quarters had implemented policies to address the fertility rate. In total, 69 governments had implemented policies to decrease fertility, 55 governments had policies to increase fertility, and 19 governments aimed to maintain their country's current fertility rate.[45]

4.2. Trends in mortality

Life expectancy is a key indicator of the health and well-being of a population. A country's life expectancy reflects its social and economic circumstances and the quality of its public health and healthcare infrastructure.[46] Global life expectancy at birth reached 72 years in 2022; this expectancy increased by 5.5 years between 2000 and 2022 and by 25.5 years between 1950 and 2022. Life expectancy at birth in the historically most advanced countries has increased by 2.0–2.5 years per decade over the last few centuries.[47] According to current projections, global life expectancy at birth will reach 77 years by 2050 (Table 7).

Africa is the region with the lowest life expectancy at birth, at below 70 years, while Australia and New Zealand have the highest life expectancy. In Europe, Northern America, and Asia, life expectancy is close to or above 80 years. As these differences are closely associated with socioeconomic development, many international organisations use the classification proposed by the World Bank, which groups countries into low, middle, and high income categories based on the gross national income per capita.[48] According to this classification, in 2022, life expectancy at birth was 80.9 years in high-income countries, 70.8 years in middle-income countries, and 62.3 years in low-income countries.[49] At the country level, the differences are even

43 Van de Kaa, 1994; Sobotka, 2008, p. 172.
44 Lesthaeghe, 2014, p. 18114.
45 United Nations, 2019.
46 Ho and Hendi, 2018; OECD, 2021.
47 Oeppen and Vaupel, 2002; Gu, Andreev and Dupre, 2021, p. 608.
48 Cambois, Duthe and Mesle, 2023, p. 3.
49 United Nations, n.d.

higher. From 2015–2020, the lowest life expectancy was recorded in the Central African Republic (52.7 years), while the highest was observed in Japan at 84.4 years.[50] A significant contributor to the gap between countries with the lowest and highest life expectancies is the under-five mortality rate.[51] Since the middle of the 20th century, the under-five mortality rate has continuously declined, from 224 deaths per 1,000 live births in 1950 to 92.8, 75.6, and 36.9 in 1990, 2000, and 2022, respectively. However, divergences across regions remain large, and in 2022, the under-five mortality rate in low-income countries was 61.7 deaths per 1,000 live births, while it was 4.6 in high-income countries.[52]

Table 6. Life expectancy at birth (years) by gender and world region, 1950–2050[53]

	1950	2000	2022	2050
Region	**Both Sexes**			
World	46.5	66.5	71.7	77.2
Africa	37.6	53.4	62.1	68.3
Asia	42.0	67.6	73.2	79.5
Latin America and the Caribbean	48.6	71.1	73.8	80.6
Oceania*	41.8	64.2	67.8	71.6
Australia and New Zealand	69.0	79.5	83.5	87.0
Northern America	68.0	77.0	78.7	84.0
Europe	62.8	73.5	77.4	83.8
Region	**Male**			
World	44.6	64.1	69.1	74.8
Africa	36.4	51.8	60.2	65.8
Asia	40.6	65.7	70.8	77.2
Latin America and the Caribbean	46.5	67.9	70.6	78.1
Oceania*	40.3	62.3	65.2	68.4

50 Cambois, Duthe and Mesle, 2023.
51 United Nations, 2022.
52 United Nations, n.d.
53 Source: United Nations, 2022. Notes: Estimates: 1950–2022; medium scenario: 2023–2050. *Excluding Australia and New Zealand.

	1950	2000	2022	2050
Australia and New Zealand	66.7	76.8	81.6	85.4
Northern America	65.4	74.4	76.0	82.2
Europe	60.0	69.3	74.0	81.3
Region	**Female**			
World	48.4	68.9	74.4	79.8
Africa	38.8	54.9	64.1	70.8
Asia	43.6	69.6	75.8	82.0
Latin America and the Caribbean	50.8	74.5	77.0	83.1
Oceania*	43.9	66.7	71.0	74.9
Australia and New Zealand	71.6	82.1	85.3	88.6
Northern America	71.0	79.7	81.4	85.8
Europe	65.5	77.8	80.8	86.3

Despite the unprecedented rise in life expectancy, progress slowed in 2020 and 2021, when the COVID-19 pandemic spread across the world. Current evidence suggests that in some parts of Europe and Northern America, progress in life expectancy was already slowing or spinning out even before the pandemic. For instance, in Canada, the United States, and the United Kingdom, life expectancy is lower than what was previously projected. In some regions of the world, life expectancy at birth declined during the late 1980s and 1990s; for example, in sub-Saharan Africa owing to the HIV epidemic, and in Western and Central Africa as a result of various factors, such as malaria, economic crises, and political conflicts. Countries in Central Asia also experienced a decline in life expectancy because a significant share of the Russian population was settled in that part of the continent, and these countries were facing political, economic, and health crises during the collapse of the Soviet Union. The situation was similar in former countries of the Soviet Union in Eastern Europe, where the rise in cardiovascular diseases caused health crises.[54]

Globally, women live an average of 5.3 years more than men. This is mainly because women experience a lower mortality rate at all ages, which is related to a biological advantage and the lower impact of behavioural risk factors.[55] A gender gap in life expectancy has been observed in all regions of the world. In 2022, the gender

54 United Nations, 2022, p. 16; Cambois, Duthe and Mesle, 2023, p. 7.
55 Ibid.

gap varied from 6.8 and 6.4 years in Europe and Latin America and the Caribbean, respectively, to 3.7 years in Australia and New Zealand.

4.3. International migration

International migration is a critical part of the development process in countries of origin, transit, and destination. International migrants include all persons regardless of the reason for their migration. For statistical purposes, refugees and asylum seekers fall under the broad umbrella term 'international migrant', whether or not they have specific legal status and advocacy under international law.[56] Some of the principal historical factors that have contributed to the growth of international migration are the decomposition of medieval society, followed by the renaissance, commercial revolution, colonisation, the agricultural and industrial revolution, the emergence of free market societies, education, and technological headway.[57]

International migration does not have a direct impact on global population growth, and its impact on population growth is significantly lower in most countries than that of other demographic components. Nevertheless, migration has contributed significantly to the growth of certain countries' populations.[58] In some regions of the world, international migration has also become a major driver of population change. From 1980–2000, population growth in high-income countries was mainly a result of natural increases (104 million), whereas the contribution of net international migration was approximately 44 million. However, over the next 20 years, between 2000 and 2020, the contribution of international migration (80.5 million) exceeded that of the natural increase (66.2 million).[59]

In 2020, the COVID-19 pandemic constrained all types of human mobility, including international migration. At the global level, the closure of national borders and travel bans forced hundreds of thousands of people to cancel or delay plans to migrate.[60] According to the United Nations,[61] in 2020, the pandemic likely reduced the number of international migrants by around 2 million globally, corresponding to a decrease of approximately 27% of the growth expected from June 2019 to June 2020. Nevertheless, though COVID-19 caused interruptions in migration in 2020, the overall number of international migrants has increased over the past two decades. In 2020, the number of persons living outside of their country of origin was 281 million.[62] Between 2000 and 2020, most of this flow was due to labour and family migration,[63] while refugees and asylum seekers contributed an increase of 17 mil-

56 Menozzi, 2022, p. 1.
57 Wickramasinghe and Wimalaratana, 2016, p. 13.
58 Gu, Andreev and Dupre, 2021, p. 609.
59 United Nations, 2022.
60 United Nations, 2020.
61 Ibid.
62 Ibid.
63 OECD, 2020.

lion.[64] In 2022, the number of people forcibly displaced was estimated to be around 108 million.[65]

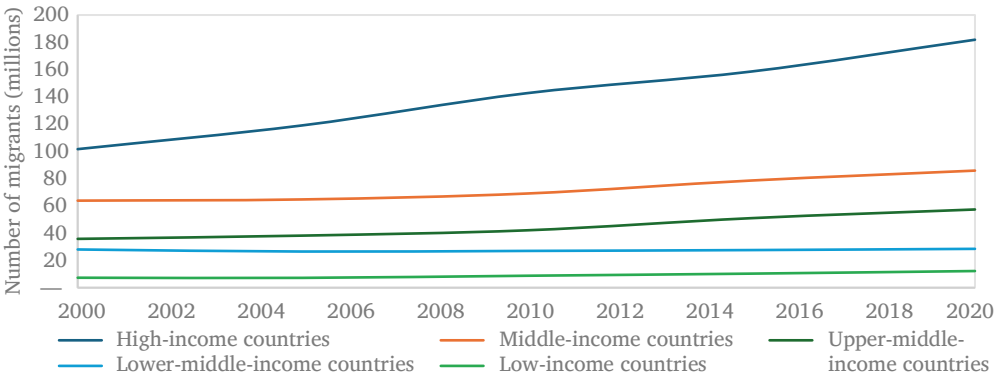
More than half of international migration is oriented towards the high-income countries. In 2020, about 65% of all international migrants lived in high-income countries, 31% lived in middle-income countries, and 4% lived in low-income countries (Graph 3). The regional distribution of international migrants is relatively diverse. In 2020, Europe was home to the highest number of international migrants at about 87 million, followed by Northern America with 59 million, and Northern Africa and Western Asia with approximately 50 million.[66] At the same time, Europe and Northern America are the largest emigrant-origin regions, followed by Central and Southern Asia, and Latin America and the Caribbean.[67]

Large disparities are also observed between nations as the majority of global migrants live in a small number of countries. The United States is the leading destination country, with 51 million migrants in 2020. Germany was the second most popular country of destination with 16 million migrants, followed by Saudi Arabia with 13 million, the Russian Federation with 12 million, and the United Kingdom and Northern Ireland with 9 million. Simultaneously, one-third of international migrants originate from just 10 countries. India is the country with the largest outflow of migration, followed by Mexico, China, and the Russian Federation, with more than 10 million emigrants each.[68] According to the United Nations High Commissioner for Refugees,[69] the highest number of refugees and asylum seekers are hosted in Turkey (approximately 3.6 million), the Islamic Republic of Iran (3.4 million), Colombia (2.5 million), Germany (2.1 million), and Pakistan (1.7 million).

Demographic data show that women comprise around half (48%) of the total number of international migrants, increasing by 26% from 2010. In the same period, the number of male migrants grew slightly faster, by 28%.[70] Female migrations are mostly related to labour, education, and family motivations, with some women leaving their countries due to conflict or persecution. In the regions of Europe, Northern America, and Oceania, the number of female migrants was slightly higher than the number of male migrants. The regions of sub-Saharan and Northern Africa and Western Asia have a significantly higher number of male migrants, while there are slightly fewer female than male migrants in Central and Southern Asia, Eastern and South-Eastern Asia, and Latin America and the Caribbean. In 2020, the median age of international migrants was 39.1 years, and the median age of refugees and asylum seekers was 19.4 years.[71]

64 UNHCR, 2019.
65 UNHCR, 2022.
66 United Nations, 2020.
67 Batalova, 2022, p. 4.
68 United Nations, 2020.
69 UNHCR, 2022.
70 Batalova, 2022, p. 8.
71 United Nations, 2020.

Graph 3. International migrant population by World Bank income group at destination, 2000–2020[72]



The overall impact of migration may have a positive effect for both countries of origin and countries of destination, which has been acknowledged by the 2030 Agenda for Sustainable Development and the Global Compact for Safe, Orderly, and Regular Migration.[73] Globally, 61% of national governments have a policy to maintain the current level of reported migration into their country, whereas 13% have policies to lower the level of immigration, 12% have policies to raise it, and 14% do not have an official policy on immigration. Labour demand is the main reason for the direction of immigration policy for most governments, followed by concerns about employment opportunities for nationals and demographic implications such as population ageing and long-term population decline. Many governments have policies to stimulate the return migration of their own citizens as this could have a positive impact by promoting capital inflow and investment and fostering the transfer of technology and skills.[74]

5. Impact of the COVID-19 pandemic on fertility, mortality, and migration

The recent COVID-19 pandemic had various implications for the population, affecting all three components of fertility, mortality, and migration. The full demographic impact of the pandemic is difficult to quantify owing to differences in methodology and gaps in the collection of demographic data. Nevertheless, a significant

72 Source: United Nations, 2020.
73 United Nations, 2017, p. 1; Gu, Andreev and Dupre, 2021, p. 609.
74 Ibid.

number of scientific papers and reports have examined the pandemic's impact on demographics. The pandemic may have influenced fertility, for example, by causing people to postpone childbearing as they are less likely to have children in a period of uncertainty. Balbo et al. observed lower access to in-vitro fertilisation procedures and options for abortion in several countries.[75] According to the United Nations,[76] the pandemic may have produced short-term reductions in the number of births without affecting long-term trends in countries with low fertility.

The impact of COVID-19 on mortality was traced through estimations of excess mortality[77] and trends in life expectancy. Between 1 January 2020 and 31 December 2021, the World Health Organization[78] estimated 14.9 million excess deaths associated with the pandemic. Meanwhile, research by the COVID-19 Excess Mortality Collaborators[79] reported 18.2 million deaths due to the pandemic in this period. According to the same study, the number of excess deaths due to COVID-19 was highest in the regions of South Asia, North Africa and the Middle East, and Eastern Europe. At the country level, the largest number of excess deaths were estimated in India, the United States, Russia, Mexico, Brazil, Indonesia, and Pakistan. Further, COVID-19 contributed to a decrease in life expectancy at birth by 1.7 years between 2019 and 2021.[80]

As a result of the pandemic-related lockdowns in 2020, international migration flows were drastically reduced or stopped. The closure of borders impacted both circular and permanent migration, affecting the labour market and migrant family relations.[81] The United Nations[82] estimated that the COVID-19 pandemic reduced the number of international migrants by approximately 2 million by mid-2020, which is a decrease of 27% in the growth expected from July 2019 to June 2020. Data from the OECD shows that in 2020, permanent migration inflows to OECD countries fell by more than 30%, with the largest decline being in family migration at more than 35%.[83]

75 Balbo et al., 2020, p. 4.
76 United Nations, 2022.
77 WHO, 2022, 'Excess mortality is calculated as the difference between the number of deaths that have occurred and the number that would be expected in the absence of the pandemic based on data from earlier years'.
78 Ibid.
79 Excess Mortality Collaborators, 2022.
80 United Nations, 2022.
81 Balbo et al., 2020, pp. 4–5.
82 United Nations, 2020.
83 Migration data portal (last updated: 11 July 2023) 'Migration data relevant for the Covid-19 pandemic' [Online]. Available at: https://www.migrationdataportal.org/themes/migration-data-relevant-covid-19-pandemic#key-migration-trends (Accessed: 16 June and 17 July 2023).

6. Conclusion

Despite various possible future scenarios, the world's population is likely to continue to grow. In the upcoming decades, trends in the growth rate will vary by region, with developing regions projected to have more rapid growth than developed regions. Faster growth is expected particularly in areas with high fertility rates, such as countries in sub-Saharan Africa.

Developed regions face the combined trends of decreasing fertility and increasing life expectancy, which are leading to population ageing. Some regions and countries with a high proportion of older adults in the population are already facing ageing. Most countries in developing regions are still in the middle stage of demographic transition, with high fertility rates; for these countries, current projections suggest faster population growth. Currently, developing countries are experiencing more rapid population ageing, and governments and societies in these countries will have a short time frame for adaptation.

Considering the large variation in population trends across regions and countries, there is no singular approach to population policies and demographic measures. Different countries should implement policies specific to their own demographic situation to address the challenges and goals of future population development.

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Chapter 2

Population of Europe – From a Hungarian Perspective

András Pári, Irén Rövid and Tünde Fűrész

Abstract

Population-related questions, such as the population composition of a country, have been a concern for community leaders, professionals, and experts since the beginning of the formation of early societies. Over the last centuries, sociologists and demographers have conducted countless studies to identify the driving forces behind population trends, employing, for example, theories of demographic transitions and economics. At the regional level, the demographic situation is both specific and general, although there are marked differences not only between continents but also between countries within a continent. This is also the case in Europe. In general, we can see a strong and specific migration trend, with declining birth rates and total fertility rates. However, in some European countries, such as Hungary, the demographic picture over the last decade has differed from the overall population trends on the continent: fertility has risen, marriage rates are experiencing a renaissance, and migration has not been the solution to population issues.

According to various United Nations estimates, Europe's population is expected to decline in the coming decades. The consequences of this are somewhat noticeable today, and in those countries where they are felt, various policies are already being put in place to tackle – or try to 'cure' – this specific demographic 'disease'. Since 2010, Hungary has been pursuing a pro-natalist and pro-family 'national medicine' policy, which uses measures to promote the well-being of families. This policy focuses on the family as the most important community, marriage as the most stable form of relationship, and respect for tradition and life. By building on internal resources, sustainability can be ensured in the national population of a country while preserving its economic, cultural, environmental, and value traditions.

András Pári, Irén Rövid and Tünde Fűrész (2024) 'Population of Europe – From a Hungarian Perspective'. In: Tímea Barzó (ed.) *Demographic Challenges in Central Europe. Legal and Family Policy Response,* pp. 47–79. Miskolc–Budapest, Central European Academic Publishing.

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Keywords: demography, population, fertility rate, family policy

1. Introduction

Europe's demographic situation in recent years has been described as a 'demographic winter'.[1] In 2022, the population of the European continent was 745 million, representing 10% of the total world population.[2] In 1950, the population was 550 million; thus, there was an increase of only 35%. This was the smallest increase among all the continents. By 2100, Europe's population is projected to fall to 586 million people, reducing the continent's share of the world population from 10% to less than 6%.[3] Consequently, we face an ageing and declining population in the 'old continent'.[4] In addition, the birth rate and fertility rate, which determine population growth, in the European Union (EU) are well below the population replacement level. Europe's fertility rate fell from 2.77 in 1950 to 1.53 in 2021, and none of the EU Member States currently reaches the 2.1 level that is needed for population reproduction. As a result, projections indicate that population trends will show a continued downward trajectory in the long term. However, the EU's population is still rising and is predicted to continue to do so for decades to come, despite the continuing decline in fertility. This increase in population is not, therefore, a result of organic domestic growth but of additional population inflow from international migration.

Decades earlier, Hungarian-born demographer Pál Demény drew the attention of population policy-makers to the fact that Europe's demographic problem cannot be solved by immigration.[5] While immigration can increase fertility in the short to medium term, it can and does transform the cultural and ethnic composition of the host society if a significant number of immigrants arrive relative to the size of the host society.[6] We agree with Professor Demény that migration is not a good solution to maintain a sustainable population; on the contrary, building on the resources of Europe's own (national) populations is the only viable long-term method of maintaining European society and its economy, culture, values, and environment.

1 Dumont et al., 1986, p. 21
2 United Nations, 2022.
3 HCSO, n.d.
4 '… according to Eurostat population data, in 1960 there were on average three young people (0–14 years old) for every old person (65 years old or over), while in 2060 it is projected that there will be two old people for every young person.' See: Molnár and Fűrész, 2023, p. 37; Population projections, n.d.
5 Demény, 1986, pp. 335–358; Demény, 1988, pp. 451–479.
6 Demény, 2011, pp. 249–274.

2. World demographics

The world population reached 1 billion in 1800, rising to 8 billion over the last two centuries. Based on different scenarios, United Nations (UN) projections estimate a 95% probability that the world's population will rise to between 8.9 and 12.4 billion by 2100.

Around two centuries ago, economic and medical progress led to a sharp decline in mortality, particularly infant mortality, in developed countries. At the same time, the number of children born remained at the same level as before because these societies were unable to adapt sufficiently quickly to the new demographic situation. During the Age of Enlightenment, a relatively significant reduction in the ideal family size and number of children was observed owing to factors such as a shift away from religion and the significant increase in the cost of children's education. Nevertheless, economic and medical progress continued, which further reduced mortality rates. Consequently, population numbers have continued to rise.[7]

Among the theories of population, the first demographic transition[8] stands out. This transition has already taken place in developed countries but has not yet been completed in much of the world, which explains the ongoing rise in the world population. Meanwhile, the second demographic transition[9] defines population trends in the developed world from the 1950s to the 1960s in light of the weakening of normative constraints: access to contraceptives fundamentally changed sexual relationships and broke the link between marriage and childbearing, placing relationship instability at the centre of population issues. This change has delayed marriage – or even caused individuals to sidestep it altogether – and childbearing, and increased childlessness, cohabitation outside marriage, and, ultimately, instability among couples.

In 2021, the world population was 7.91 billion, compared to 7.07 billion in 2011.[10] The EU population in 2021 was 447 million, just 5.7% of the world population, compared to 6.2% in 2011. In 2021, two countries in the world had more people than the total population of the 27 EU Member States: China (1.426 billion; 18.0% of the world's total population) and India (1.403 billion; 17.8%). The UN estimated that India would be the most populous country in the world by 2023.[11] The EU is followed by the United States (337 million; 4.3% of the world's population) and Indonesia (274 million; 3.5%) as the next most populous countries. As of 2021, 10 more countries had a population above 100 million, including Pakistan, Brazil, Nigeria, Bangladesh, Russia, Mexico, Japan, Ethiopia, the Philippines, and Egypt.

7 Pison, 2022, pp. 1–4.
8 Thompson, 1929, pp. 959–975.
9 van de Kaa, 1987, pp. 1–59.
10 United Nations, 2022.
11 United Nations, 2023

Together, the EU and the 14 most populous countries accounted for 69% of the world's population in 2021, down from 70.6% in 2011. The fastest population growth in this decade occurred in two African countries: Ethiopia (31%) and Nigeria (29%). Japan was the only one of the world's largest countries where the population decreased between 2011 and 2021 (-2.7%).[12]

In terms of regional disparities in the less developed world, over the past decades, large parts of Asia and Latin America have experienced an unexpected and rapid decline in fertility, with India (2.03), Iran (1.69), Brazil (1.64), Thailand (1.33) and China (1.16), among others, now having fertility rates below replacement levels.

The core area of population growth in the 21st century is Africa, specifically the sub-Saharan region of the African continent, which begins from the border strip formed by Senegal, Nigeria, and Ethiopia. This is because African countries are still at an earlier stage of demographic transition but have made significant improvements in mortality, that is, an increase in life expectancy, over the past decades, whereas fertility, although declining, is still high at above 2.1 children per woman. As a result, 'Black Africa's' share of the world population is expected to reach one-fifth by 2050'.[13] However, fertility rates are expected to fall below 2.1 thereafter, despite the fact that for a long time, the fertility trend in the developing world has not followed the global pattern.[14]

3. The demographic situation in Europe

In the first decade of the 21st century, Europe was polarised in terms of fertility rates. Northern and Western countries moved upwards towards a fertility rate of 1.9, while Central, Southern, and Eastern European countries moved downwards towards a rate of around 1.3. Research[15] in 2004 examined the variance of the values for the Nomenclature of Territorial Units for Statistics (NUTS) 3 regions from the national average by total fertility rate (TFR). The research findings confirmed that there was a relatively strong spatial effect in fertility, so that in many cases country borders were less important than macro-regional cohesion: the character of a country was more pronounced in the spatial structure of fertility rates than differences between neighbouring regions. For example, the NUTS 3 regions in the eastern German province of Brandenburg had above-average fertility, whereas the NUTS 3 regions in the neighbouring western Polish province of Lubuskie had below-average fertility compared to the rate in the rest of the country,

12 United Nations, 2022.
13 Héran, 2018, pp. 1–4.
14 Reher, 2004, pp. 19–41.
15 Campisi et al., 2020, pp. 1–31.

regardless of having similar levels of TFR relative to each other. Thus, in addition to economic and socio-cultural factors, spatiality also plays a significant role in fertility studies.

3.1. Trends in fertility and live births

In recent years, population growth in the EU has relatively slowed compared to previous decades.[16] The underlying cause of population decline is a TFR below 2.1: when the fertility rate of a population falls below the reproductive threshold, natural decline starts within an average of 40 years, using current mortality rates and excluding migration.[17]

In the future, the European Union's relative demographic weight at the international level will decrease significantly. Its population will decline, albeit in different ways in different states. The financial crisis of 2008–2009 exacerbated the problem as some Member States significantly reduced their budgetary spending on demographic policies, including family policy. It is clear that the EU Member States have long been burying their heads in the sand regarding demographic issues. As far back as the 1970s, Gérard-François Dumont coined the phrase 'a wrinkled Europe'. According to Évelyne Sullerot's 2003 speech, the biggest problem is that governments often see fertility as a private matter for couples, independent of the social context, as if policy incentives have no relation to individual choices.[18]

All childbearing, in all cultures, requires time and resources that are invested into raising children. Consequently, it seems paradoxical that the richest countries in the world, where incomes are the highest, have the fewest children. Indeed, even in the richest countries, typically the best-educated women – presumably with the best income prospects – have the fewest children. A recent study[19] examined the relationship between income and fertility, finding that among Swedish women and men born between 1940 and 1970, those with the lowest average fertility rates at the age of 50 were those who were born in 1940 and who had the highest accumulated net own income (including transfers and benefits). However, this pattern changed in subsequent cohorts. Among women born in 1950, who were already beneficiaries of the extended Swedish welfare state, there was less of a negative relationship between net accumulated income and fertility. For women born in 1960, there was a clear positive relationship between net accumulated income and fertility. The study found that when generous benefits are provided by the state, such as income support during parental leave and childcare allowances, the fertility of women with high incomes (and not just men with high incomes) is higher than that of women and men with low incomes.

16 Eurostat, 2022b.
17 Berde and Drabancz, 2022.
18 Verluise, 2011.
19 Kolk, 2022, pp. 197–215.

3.2. Childbearing indicators: average age of mothers and total fertility rate

One study observed a fertility gap between the children planned and those actually born in European countries, noting that, on average, fewer children were conceived in the birth cohort than previously expected and more of them remained childless than originally planned.[20] The largest differences in fertility were observed in Southern European countries (Italy, Greece, and Spain record only 0.6 children per woman). Both childbearing intentions and actual childlessness are particularly low in Central and Eastern European countries. One of the study's clearest findings is that the highest rates of childlessness among highly educated women (18–26%) are found in German-speaking countries (Austria, Germany, Switzerland) and Southern European countries (Italy, Spain). Highly educated women are more likely to value work than their less-educated counterparts but are less likely to want to remain childless or have fewer children than women with a lower degree of education. Nevertheless, they demonstrate the highest fertility gap and the highest level of childlessness in almost all countries. Consequently, among policies that focus on the needs of women with higher education, support for reconciling work and family life would likely have the greatest impact on fertility rates.

Age and relationship play an important role in fertility intentions; however, employment status, religious affiliation, and general life satisfaction also have a significant impact.[21] Relationship status is key: a person with short-term fertility intentions has a very low chance of achieving them if they are not in a relationship. The legal status of the relationship also seems to have an effect: those in a legally recognised marriage are more likely to achieve their fertility intentions. For men, an optimistic outlook and general satisfaction seem to be important, with those who have a positive view of their current situation and their future more likely to have children and less likely to give up their intentions. One of the main reasons for the gap between the average expected number of children and the TFR in a given period is that young people at present are planning to start a family and have children later than in the past.

After the historically low fertility in Hungary in 2011 (1.23), the TFR started to increase, reaching 1.61 in 2021, due to Eurostat data. Between 2010 and 2021, Hungary recorded the highest increase in fertility rate, with 28.8%, followed by the Czech Republic (21.2%) and Lithuania (15.4%). In most countries, the TFR decreased compared to 2010 (it increased in only 11 countries). Finland (21.9%) and Norway (20.5%) experienced the largest decrease in fertility. With a fertility rate of 1.61 in 2021, Hungary already ranked high in the EU, from the last place in 2010 to the top

20 Beaujouan and Berghammer, 2019, pp. 507–535.
21 Spéder and Kapitány, 2009, pp. 503–523.

third. In 2021, France (1.84), the Czech Republic (1.83), and Iceland (1.82) had the highest TFRs.[22]

In Hungary, a mother's average age at childbearing has risen slowly but steadily over the past few decades. According to Eurostat data, in 2021, women in Hungary had their first child at the age of 28.6. In Bulgaria and Romania, mothers are the youngest at the time their first child is born (26.5 and 27.1 years old, respectively). On average, women have their first child the latest in Spain (31.6) and Italy (31.6).[23]

The general European trend among people living in big cities is to plan and have fewer children and at a later age. This trend was highlighted by the Hungarostudy 2021 study, which showed that in Hungary, families with children consider at least two children per family ideal, regardless of the type of settlement they live in,[24] except in Budapest, where the proportion of families considering one child ideal is the highest. Budapest is home to the highest proportion of individuals who do not plan to have children, although it should be added that the majority of Budapest residents (94%) also consider life with children to be ideal, in principle.

3.3. Ageing and mortality

According to Eurostat data, crude death rates in the EU Member States fell to 9.9 per 1,000 deaths per person in 2001, 9.7 in 2004, and 9.7 in 2006. In 2021, the mortality rates were highest in Bulgaria (21.7 deaths per 1,000 population), Latvia (18.4), Romania (17.5), and Lithuania (17.0), and the lowest in Ireland (6.8), Luxembourg (7.0), and Cyprus and Malta (8.0).

The evolution of mortality rates is influenced by several factors in addition to ageing. Infant mortality has been declining significantly worldwide. Contraception, family planning, rapid advances in medical science, concerted international action against epidemics, and increasing food production, on the one hand, and wars, pandemics, barriers to accessing clean drinking water, uneven access to the increasing amounts of food, and climate change, on the other, all influence the different age structures and life expectancies of people in different regions. In turn, ageing has repercussions on the economy, the labour market, the sustainability of pension systems, and the increasing burden on health and social care systems.

In 2021, life expectancy at birth in the EU was 82.9 years for women and 77.2 years for men (a difference of 5.7 years in favour of women). In 2021, the median age of the EU population was 44.1 years, 14 years above the world average (30 years).

22 Eurostat [Online]. Available at: https://ec.europa.eu/eurostat/databrowser/view/TPS00199/default/table?lang=en (Accessed: 31 August 2023).

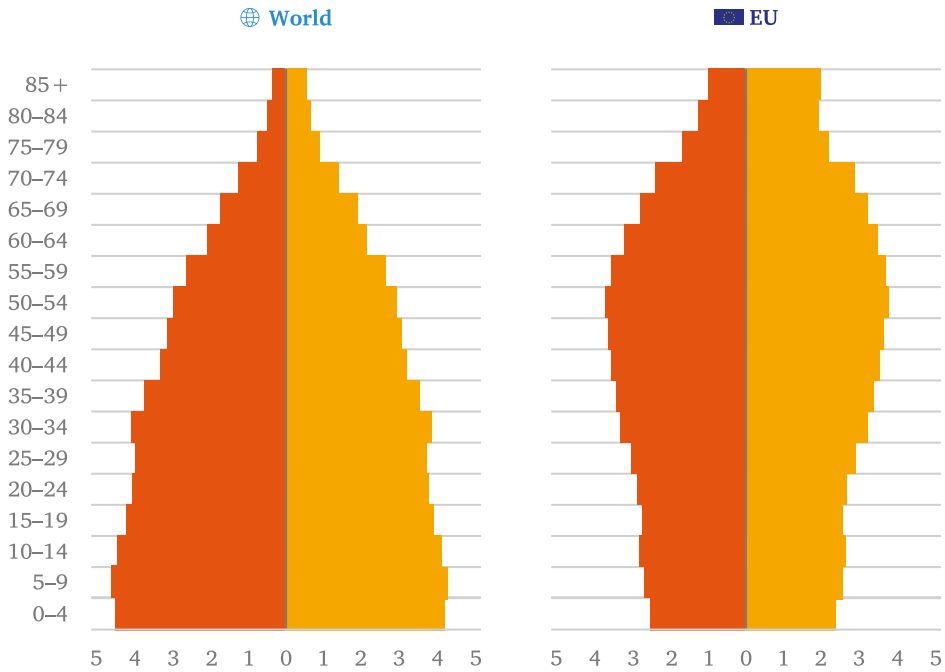
23 Eurostat [Online]. Available at: https://ec.europa.eu/eurostat/databrowser/view/DEMO_FIND/default/table?lang=en (Accessed: 31 August 2023).

24 Kapdebo, Papházi and Tárkányi, 2022, pp. 32–45.

In the world's most populous countries, the median age ranged from 20.2 years (Pakistan) to 37.9 years (China).[25]

The two age trees in Figure 1 illustrate the differences between the world population and the population structure of the EU. The world's population shows a declining five-year age distribution from the age of 35, whereas the EU population is dominated by the 50–54 age group that is close to retirement. A more striking change is the share of the population aged 80 and over, which has almost doubled since 2001 to reach 6% today.

Figure 1. Age trees, World and EU, 2021[26]



As the proportion of the population that is of retirement age rises, the dependency ratio of older people to the working-age population is growing. This is a major challenge for the most developed countries.

The ageing population has far-reaching implications for economic growth, productivity, inter- and intra-generational inequality, and the sustainability of public finances in G20 societies. Old-age dependency ratios are set to rise in all G20 countries over the coming decades, albeit at different rates.[27] Japan has the most rapidly ageing population, with 47 people aged 65 and over for every 100 working-age

25 Eurostat, 2023b.
26 Source: Eurostat. Note: men–left side, women-right side.
27 Rouzet et al., 2019.

adults in 2015, up from 19 in 1990 and predicted to rise to 80 by 2060. Among the developed G20 countries, Italy, Germany, and Korea also face the biggest challenges related to ageing.

In addition to ageing's impact on society, it also places a huge burden directly on families and individuals. Among the growing number of older adults, there is an increasing number of widows and widowers living alone. This particularly affects women who have reached a higher life expectancy. The gap between life expectancy in good health and life expectancy at birth is a good indication of the likely length of chronic diseases in our lives. According to a survey by the World Health Organization, the largest increase in female mortality over the past two decades has been due to Alzheimer's disease and other dementias, with the cases nearly tripling in number. These neurological disorders kill more women than men and cause around 80% more deaths and 70% more disability in women than in men. The World Alzheimer Report states that in 2015, there were 46.8 million people with dementia worldwide. In European countries, an estimated 10.5 million people suffered from dementia. Chronic diseases are responsible for 60% of all deaths worldwide and place a huge burden on the daily lives of patients and their relatives, as well as on society as a whole.[28]

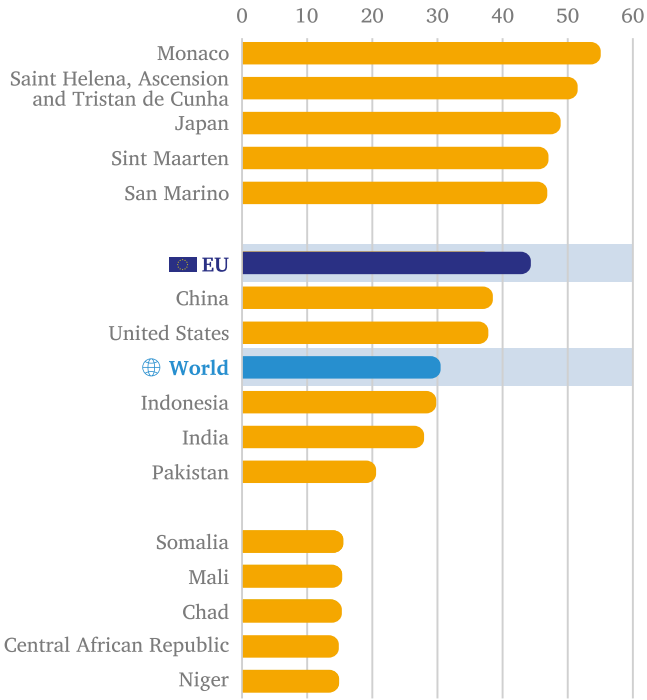
Finally, longer life expectancy has created the need for active ageing, alongside the expectation of an increased number of healthy years. The OECD presents Lithuania as an example of possible 'good practice', as it (Lithuania) recognises the seriousness of the situation and takes a holistic approach to active ageing policy in three dimensions: labour market integration, social policy, and the analysis of participation in public and political life.[29] It provides tailored policy recommendations to improve the well-being of older people in terms of better employment and lifelong learning.

3.3.1. The demographic impact of ageing

An ageing society is characterised not only by increasing life expectancy but also by the declining presence of younger generations. Life expectancy at birth is rising, although the COVID-19 pandemic has almost invariably reduced average life expectancy at birth in the EU-27 (see Figure 2).[30] From 2019 to 2020, the largest declines were in Spain (from 84 to 82.4 years) and Bulgaria (from 75.1 to 73.6 years). In 2020, Bulgaria (73.6 years) had the worst average life expectancy at birth, followed by Romania (74.2 years), Lithuania (75.1 years), and Hungary and Latvia (both 75.7 years), according to the estimated data.

28 Boros, Gábriel and Monostori, 2021, pp. 163–182.
29 OECD, 2023.
30 Eurostat, 2023b.

Figure 2. Median age, world, EU, and selected countries, 2021[31]



In 2021, the median age of the EU population was 44.1 years, 14 years above the world average (30 years). The average age of the EU population increased by 16% from 38 years in 2001 to 44 years in 2020. Among the 27 EU Member States, Italy has the highest average age (47.2 years), and Cyprus (37.7 years) and Ireland (38.1 years) have the lowest. The absolute number of people of retirement age is increasing, with their share of the population rising exponentially as birth rates fall.[32]

Between 2001 and 2020, the share of the population aged 65 and over increased from 16% to 21%, or by 5 percentage points. More strikingly, the share of the population aged 80 and over has almost doubled since 2001, reaching 6%. The ageing process is common to all 27 EU Member States (with the exception of Sweden, where the share of the population aged 80 and over has stagnated at 5%).

As the proportion of retired people increases, the dependency ratio of older people to the working-age population is also declining. In 2001, there were still an average of 3.9 people aged 20–64 (i.e. of an economically active age) per person aged

31 Eurostat, 2023: Key figures on the EU in the world – 2023 edition, pp. 14, doi: 10.2785/515035. https://ec.europa.eu/eurostat/documents/15216629/16118334/KS-EX-23-001-EN-N.pdf/d4413940-6ef7-2fa8-d6f1-a60cdc4b89f3?version=1.0&t=1676459907834

32 Eurostat, 2023b.

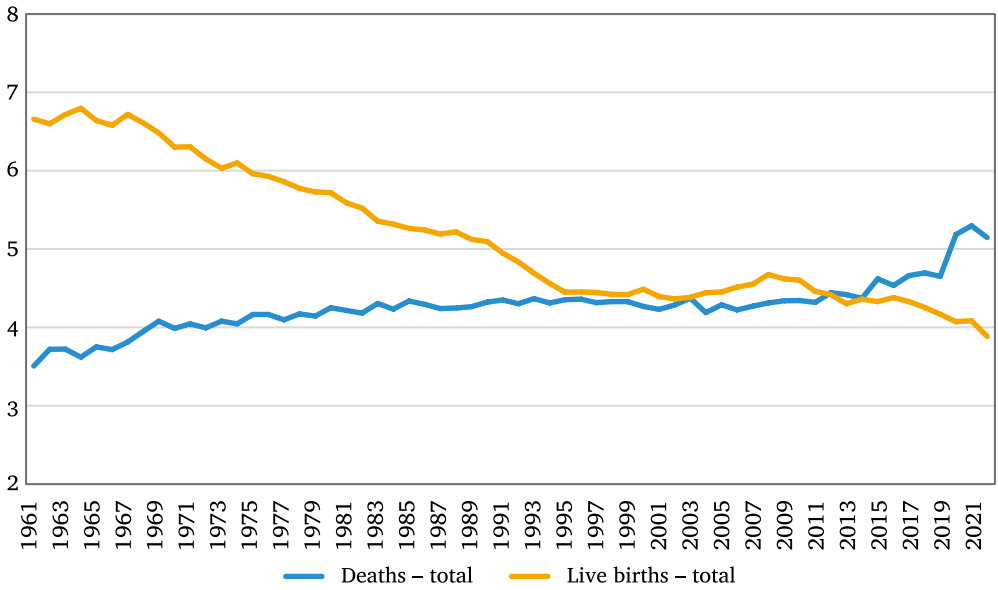
65 and over in the EU. In 2021, the average was 2.8, and Eurostat forecasts that this figure will fall to 1.6 by 2080.

3.3.2. Mortality – the factor of natural decrease

In addition to migration, population trends are determined by the balance between births and deaths. This is the so-called 'natural increase', which is the difference between live births and deaths. Natural decrease is the opposite of this process.

The population of the EU is growing, but this is no longer due to natural increase. The difference between live births and deaths in the EU has decreased significantly since 1961 (see Figure 3), with the natural increase turning into the natural decrease in 2012, when deaths exceeded births. In line with the relatively low fertility rates, mortality rates are expected to deteriorate further as the population ages, and this negative trend is expected to continue.

Figure 3. Live births and deaths in the EU, 1961–2022[33]



3.3.3 The role of young people in Europe

Sólyom[34] stresses that it is important to focus on aspects relevant to young people as they will be the future consumers and the newest voters, and thus, the

33 Source: Eurostat.
34 Sólyom, 2015, pp. 211–228.

development of different social groups and processes will depend on their values and attitudes. The literature is not consistent on who is considered young: until the 2000s, the age limit was set at 29, but in many cases, it has been extended to 35.

The share of young people aged 15–29 throughout the EU was 18.4% in 2010 and 16.3% in 2021.[35] This declining share of young people reflects decades of low and declining fertility and increasing life expectancy. The share of young people is projected to fall further to reach a low of 14.9% by 2052. In 2021, Bulgaria had the lowest share of 18–29-year-olds among the EU Member States (14.2%), whereas Cyprus had the highest (20.7%), with Hungary in the middle (16.6%).

In 2020, 87.2% of young people in the EU lived in the Member State in which they were born. The share of young people born outside the EU was 9.5%, and a further 3.3% were born in the EU but in another Member State. The share of native-born young people was the highest in Slovakia (98.1%) and Poland (98.0%) and the lowest in Luxembourg (57.3%).

In 2021, young people in the EU moved away from their parents at an average age of 26.5. Among EU countries, children left the family nest the earliest in Sweden, at an average age of 19.0. Further, 47.4% of 15–29-year-olds were employed. The Netherlands had the highest employment rate (77.0%) at more than double that of Romania, Spain, Bulgaria, Italy, and Greece. The unemployment rate for young people in the EU was relatively high at 13%. This rate was the highest in Greece (28.4%) and Spain (27.0%). Nine out of ten 16–29-year-olds (91.2%) considered their health to be good. In 2022, young people rated their satisfaction with life 7.4 on a scale of 1 to 10. Between 2013 and 2018, this value increased (from 7.5 to 7.7), returning to the 2013 level in 2021, and declining further (7.4) in 2022. The decline in satisfaction in recent years is explained by the impact of the COVID-19 pandemic, according to the Eurostat summary publication. A total of 25.3% of 15–29-year-olds are at risk of poverty.[36] This rate is the highest in Romania (36.1%) and the lowest in the Czech Republic (10.6%).

3.4. Marriage, the prelude to having children

Marriage has long been the most common and accepted form of relationship in society, despite the fact that there were previously many types of relationships. Since the second half of the 20th century, alternative forms of cohabitation have become increasingly accepted alongside the traditional form. Although society is still pro-marriage, cohabitation is becoming more common across Europe.[37] Consequently, children are often born outside marriage.

In Hungary, 48% of children were born out of wedlock in 2015. However, in recent years, the proportion of children born within marriage has started to increase

35 Eurostat, 2022.
36 Ibid.
37 Pongrácz, 2008, pp. 1–3.

again, and 'in 2022 the proportion of children born in marriage increased to 75%, the highest in 25 years'.[38] The dynamic increase in the number of marriages has been accompanied by a decrease in the number and proportion of children born out of wedlock. This is also a high figure among the EU Member States, with only Greece (83%) and Croatia (76%) having higher rates. In France, only 36% of children were born to married couples in 2022.[39]

The link between marriage and fertility has long been taken for granted by demographers.[40] Fertility studies show that in stable relationships (marriages), the children wished for are born and more children are born overall. However, these studies approach the issue from the opposite direction: in unstable relationships, the children wished for are not born and fewer children are born due to procrastination.[41] In higher-income countries, the positive relationship between the TFR and marriage is less clear as many Western European countries still have high fertility rates despite the fact that the majority of children are born out of wedlock. In Northern European countries, couples marry later, and unmarried women have high rates of childbearing, yet these countries have some of the highest fertility rates among developed countries.

In the US, the average age of first marriage increased from 23.9 in 1990 to 25.3 in 2005. During this period, the fertility rate was approximately 2.1. Between 2005 and 2019, however, the average age at first marriage increased more rapidly, reaching 28 years in 2019, and fertility declined significantly over this period, with the TFR falling to 1.7 in 2019. Looking at fertility in European countries since 2000, the referred study highlights that even in high-income countries, married people have more children than unmarried people. In Ireland, Albania, Turkey, Montenegro, Georgia, and Azerbaijan, married women have on average two more children than unmarried women. Further, in Sweden, Norway, and Denmark, married women have 0.6–0.8 more children than unmarried women. These data illustrate that the 'marriage effect' has a strong influence on fertility.

There is a significant correlation between having children and marital status, according to the Hugarostudy 2021 study,[42] which shows that more than two-thirds of married couples have children, compared to 45% of cohabiting couples and 5–7% of single people. 'Looking at the trend in the number of children, it is clear that the average number of children is highest in [the] case of married couples (1.51) and much lower in [the] case of cohabiting couples (0.79). The nature of the relationship therefore influences the probability of having a child and the number

38 HCSO, 2023c.

39 Eurostat Database, Population and Demography [Online] Available at: https://ec.europa.eu/eurostat/web/population-demography/demography-population-stock-balance/database (demo_fager) (Accessed: 21 August 2023).

40 Stone and James, 2022.

41 Jones, 2007, pp. 453–478; Billari, 2008, pp. 2–18; Spéder and Kapitány, 2009, pp. 503–523; Pári and Balog, 2021, pp. 147–167.

42 Engler, Markos and Major, 2021, pp. 51–69.

of children'.[43] The number of children perceived as ideal is also higher among married couples than among those in other relationships: on average, married people consider 2.26 children in a family to be ideal, cohabiting couples 2.14, and singles 1.88. Another important finding of the Hugarostudy 2021 study is that the desire to start and expand a family is particularly high among married people.

3.5. Migration trends

The balance of external migration, that is, immigration to and emigration from the EU, has been typically positive since 1960, except for periods in the 1960s and 1980s. This has allowed the populations of the Member States to grow overall despite natural mortality and significant regional disparities. However, this reveals a problem: for eight consecutive years (2012–2019), external migration was necessary to avoid population decline, meaning that the EU is permanently unable to reproduce its own population.[44]

Europe is a major destination for global migration flows, with large numbers of migrants arriving from both the northern and southern hemispheres.[45] In this process, the former colonial status of the region (e.g. the relationship between Portugal and Brazil) is also important.[46]

Overall, migratory pressures are becoming an increasingly serious issue as the migration balance of the EU Member States is on an upward trend (0.4 million in 2010, 1.5 million in 2015 and in 2019 also).[47] In terms of destinations, the majority of migrants – 80–90% in the last 10 years – choose the Western European countries that joined the EU before 2004 over, for example, the countries in the Central and Eastern European region that acceded later.[48] By country of origin, the main emigration regions are the Middle East, North Africa, and from the European continent, Albania. Although the number of asylum seekers has increased in recent years, they still represent only half of the total number of foreigners entering the EU.[49] In addition, the issue of illegal migrants to the EU is a further problem. From 2010 to 2020, the number of illegal border crossers varied between 0.1 and 1.8 million per

43 Translation of 'A gyermekszám alakulását vizsgálva egyértelműen látszik, hogy az átlagos gyermekszám a házasságokban a legmagasabb (1,51), az élettársaknál jóval kevesebb (0,79). A kapcsolat jellege tehát növeli a gyermek vállalásának esélyét, illetve a gyermekek számát', Engler, Markos and Major, 2021, p. 56.

44 Novák and Fűrész, 2021, pp. 17–48.

45 Pison, 2019, pp. 1–4.

46 Góis and Marques, 2009, pp. 21–50.

47 Eurostat Database [Online]. Available at: https://ec.europa.eu/eurostat/databrowser/view/MIGR_IMM8__custom_643357/default/table?lang=en (Accessed: 24 August 2023); Eurostat Database [Online]. Available at: https://ec.europa.eu/eurostat/databrowser/view/MIGR_EMI2__custom_643446/default/table?lang=en (Accessed: 24 August 2023).

48 Eurostat Database, [Online], available at: https://ec.europa.eu/eurostat/databrowser/view/MIGR_EMI2__custom_643446/default/table?lang=en (Accessed: 24 August 2023).

49 Frontex, 2023.

year. As a delayed effect of the 'Arab Spring' starting in 2011 and the Syrian crisis, 2015 and 2016 were outliers, with 2.4 million people entering the EU by irregular means in 2 years. Today, the main sources of irregular migration are Syria, Morocco, Algeria, Tunisia, and Afghanistan.[50]

There has been a correlation between the fertility rate and immigration over the last 10 years. Migration has been lower in the countries that have made the most progress in having children. On the other hand, the number of newborn children is falling in the western and northern parts of the continent, which seems to open up space for immigration policies, with a significant base of newcomers from Africa and Asia.[51]

The main form of emigration within the European Union is mobility for employment.[52] In terms of absolute emigration numbers, three of the four countries (Germany, France, and Spain) with the largest populations have the highest emigration rates. The top three are followed by Romania, where 234,000 people emigrated in 2019 alone. The case of Romania highlights the emigration process typical to the Central and Eastern European region.

The natural population decline could not be offset by immigration during 2020 and 2021 owing to the impact of the COVID-19 pandemic; however, apart from this period, immigration has kept the overall population growth balance positive for decades. Nevertheless, the picture differs significantly across the various Member States.[53]

Most EU countries (Belgium, the Czech Republic, Denmark, Germany, Estonia, Spain, Latvia, Lithuania, the Netherlands, Austria, Portugal, Romania, Slovenia, Finland, and Spain) were expected to experience population growth due to migration, while showing a natural decrease, in 2022. In six countries (Ireland, France, Cyprus, Luxembourg, Malta, and Sweden), both natural increase and positive net migration contribute to population growth.

Of the seven EU Member States that reported a population decline in 2022, only Greece recorded such a decline due to negative natural change and negative net migration. In the other six countries (Bulgaria, Croatia, Italy, Hungary, Poland, Slovakia, and Croatia), positive net migration was not sufficient to compensate for negative natural change.

3.6. The importance of family policy for population growth

The TFR in all EU countries is now below the replacement rate of 2.1, according to Eurostat. In 2010, this indicator was close to or above 2 in Ireland, France, and

50 European Commission, Detection of illegal border crossings – Frontex data [Online]. Available at: https://data.europa.eu/euodp/hu/data/dataset/detections-of-illegal-border-crossings/resource/4256fc16-31f6-4ed0-b816-c5c75c675dfd (Accessed: 24 August 2023).

51 Novák and Fűrész, 2021, pp. 17–48.

52 McCollum et al., 2017, pp. 1508–1525.

53 Eurostat, 2023a.

Sweden but has since started to decline, with fertility rates falling by 16% in Sweden, 13% in Ireland, and almost 10% in France compared to 2010, to around 1.7–1.8.[54] There is a significant difference between the fertility rates of the native and immigrant populations in these countries, with the fertility rate of women from a migrant background in France being twice that of native French women: the former had an average fertility rate of 3.4 per woman in 2010, compared with 1.7 per woman among the latter.

Fertility data clearly show that despite a large wave of immigration in recent years, fertility in Europe has declined and fewer children are being born, with an increasing number of them coming from immigrant backgrounds. In 2013, one in eight children in the EU were born to foreign mothers, rising to one in six in 2021. Two-thirds of births in Luxembourg were to a mother of foreign origin, whereas one in three in Belgium, Germany, Austria, Sweden, Cyprus, and Malta; one in four in France, Spain, and Ireland; and one in five in Italy, Denmark, Greece, the Netherlands, and Portugal were the children of immigrants. In Hungary, the rate was much lower, standing at 4%.

Instead of a quick and seemingly easy migration solution, which causes significant social hardship in the long term, Hungary has chosen the hard way: supporting families. This has now proved to be the more successful way from a demographic perspective. Since 2010, family protection and the pro-natalist approach – the 'pro-family' movement that stabilises the situation of families and encourages childbearing – have been central to Hungarian family policy. After 2010, Hungary promoted family values (the traditional family model) and the decisive community-forming power of the family, whereas in many European countries, migration is seen as a solution to halt population decline.[55]

During this period, the focus of family allowances in Hungary has shifted from benefits based on citizenship to employment-linked allowances, with the family-taxation (since 2011) being the dominant feature and now available to 95% of families with children.[56] Since 2014, it has been possible to claim the allowance not only from personal income tax but also from other social security contributions, which supports lower-income families. The work-based family support system, along with one of its most important elements, the family-based taxation system, also played a significant role in Hungary achieving the second-highest economic growth in the EU in 2019.[57]

From a demographic viewpoint, the most significant impact of Hungary's introduction of a family housing subsidy (CSOK) in 2015 and its continuous expansion

54 Eurostat, [Online]. Available at: https://ec.europa.eu/eurostat/databrowser/view/TPS00199/default/table?lang=en (Accessed: 23 August 2023).

55 Fűrész and Molnár, 2021, pp. 6–17; Gellérné, 2021a, pp. 229–242.

56 Pári, Varga and Balogh, 2019, pp. 12–25.

57 Fűrész and Molnár, 2021, pp. 6–17.

is that for every third family that received it, couples have had a new child, thus increasing the fertility level of these families.[58]

The Family Action Plan introduced in 2019 significantly helped to reduce the financial barriers to starting a family.[59] This set of measures included elements such as the baby expecting subsidy, the CSOK or car purchase support for large families,[60] the grandparental childcare fee (GYED for grandparents), and the personal income tax exemption for mothers with at least four children. As a new element, the government introduced a tax credit for mothers under 30 from January 2023. In this way, Hungarian family support schemes seek to address all life situations, with a particular focus on young people about to have children, the impact of which is also reflected in demographic indicators.

Since 2011, Hungarian population indicators have developed favourably in comparison to those of Europe. According to Eurostat, the TFR, which is an indicator of the propensity to have children, rose in Hungary by the highest rate (30%) in the EU between 2010 and 2021, from 1.25 to 1.61.

However, the improvement in Hungarian demographic indicators after 2010 is due not only to family benefits but also to the increasingly family-friendly attitude of society as a whole. Among Europeans, Hungarians in particular hold the family to be very important,[61] with the highest proportion of Hungarians (almost 100%) agreeing with this idea. As regards the perception of family support measures, there is a consensus that the majority of Hungarian society is satisfied with the measures.

4. Comparing demographic trends between Hungary and Europe

4.1. Hungary's population has been declining since 1981

Hungary's population has been steadily declining since 1981. In 1980, the country's population was just over 10.7 million, the highest in history. In the next four decades, Hungary's population has fallen by one million. The most recent census data

58 Papházi, Nyírády and Pári, 2021, pp. 77–88; Papházi and Pári, 2023, pp. 46–65; Uhljár, Pári and Papházi, 2023, pp. 41–52; Spéder, Murinkó and Oláh, 2020, pp. 39–54.

59 Pári, Varga and Balogh, 2019, pp. 12–25; Fűrész and Molnár, 2021, pp. 6–17; Kapdebo, Papházi and Tárkányi, 2022, pp. 32–45.

60 The car purchase subsidy for large families was available until 31 December 2022. See: https://www.allamkincstar.gov.hu/csaladok-tamogatasa/Csalad_gyermek/nagycsaladosok-autovasarlasi-tamogatasa (Accessed: 24 August 2023).

61 Gyorgyovich, 2022, p. 47.

for 2022 show that the population decline has continued, with Hungary's population standing at 9,604,000 on 1 October 2022, 333,000 fewer than in the 2011 census.[62]

Population decline is linked to negative natural population growth, that is, more people dying than being born. Hungarian society is ageing, and this advancing age structure is causing more deaths than births. Another difficulty is that, in an ageing population such as that of Hungary, while the number of older adults is increasing, the number of women of childbearing age (i.e. 15–49) is falling significantly by an average of 15,000–20,000 a year. During the 2010s, a specific Hungarian phenomenon, or rather endowment, the so-called 'Ratkó effect', had a particularly strong impact on the natural decrease. This decade saw an acceleration in the decline of the baby-bearing age as a very large cohort of people advanced past the childbearing age. Between 2010 and 2020, the number of women aged 20–40 years fell by 17%. Given that fertility increased, this meant that fewer women gave birth to more children in these years, although there was still no breakthrough in the number of births. The result was that, despite rising fertility, there was no significant reduction in the level of negative natural population growth.

4.2. The proportion of people aged 65 and over is rising in all EU Member States

Just over a fifth of the EU population will be aged 65 or over in 2022, according to Eurostat data, an increase of 3.1 percentage points compared to 2012. It is noteworthy that all the EU Member States are witnessing a growing proportion of their population aged 65 and over. In eight Member States,[63] the proportion of older people is at or above the EU average, with Italy and Portugal having the highest proportions and Luxembourg and Ireland the lowest. In Hungary, the rate was 20.5% in the latest data, 3.6 percentage points higher than 10 years earlier. Poland recorded the highest increase over the same period (5.1 percentage points) and Luxembourg the lowest (0.8 percentage points).[64]

According to the 2022 census, one-fifth (21%) of the population in Hungary was aged 65 and over, an increase of 318,000 compared to 2011, which is linked to the children of the 1950s Ratkó era reaching retirement age. The number of economically active people aged 15–64 has decreased significantly by 9%.[65] Population ageing is also associated with fertility below the replacement level and an increase in average life expectancy at birth.

The average life expectancy at birth, which also influences the age composition of a population, was 75.84 years in Hungary in the latest data for 2022. Women continue to live longer, with a more favourable life expectancy (79.05 years) than men

62 HCSO, 2023b.

63 Data from 1 January 2022: Italy (23.8%), Portugal (23.7%), Finland (23.1%), Greece (22.75), Germany (22.1%), Bulgaria (21.7%), Slovenia (21.1%).

64 Eurostat, [Online]. Available at https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Population_structure_and_ageing (Accessed: 24 August 2023).

65 HCSO, 2023b.

(72.55 years). The European Commission forecasts that life expectancy at birth will continue to rise in all EU Member States in the coming decades.

4.3. Hungary had the highest increase in fertility between 2010 and 2021

The TFR is a measure of fertility and shows how many children a woman would have in her lifetime if fertility in a given year were to remain constant. A TFR of 2.1 would be needed for a society to reproduce itself. According to the most recent data, this level (i.e. the level needed for population reproduction) has not been reached by any EU Member State, including Hungary (Eurostat 2023). In Hungary, the TFR was at a historic low in 2011 (1.23), after which there was a significant increase until 2021, when the value of this indicator was 1.59 according to the Hungarian Central Statistical Office[66] and 1.61 according to Eurostat. At the same time, the TFR has been declining at the EU level, falling from an average of 1.57 in 2010 to 1.53 in 2021. Only 10 EU Member States saw an increase in the propensity to have children between 2010 and 2021, with Hungary showing the biggest improvement. Fertility in Hungary has increased from its low in 2011, although the number of women of childbearing age is falling year on year, meaning that fewer and fewer women are having more and more children.

4.4. Hungary has the highest number of marriages per 1,000 inhabitants

Hungarians are pro-family and pro-marriage, as indicated by the fact that the number of marriages per 1,000 in Hungary doubled between 2010 and 2021. This trend has continued to rise steadily during the COVID-19 period, while EU Member States have experienced a decline. In 2021, the number of marriages per 1,000 inhabitants was the highest in Hungary (7.4) among the EU Member States, compared to an average of 3.9 in the other EU countries.[67] The results of the Hungarostudy 2021 survey also show that Hungarians still consider marriage to be the most ideal form of cohabitation, especially for raising children,[68] as evidenced by the fact that 75% of newborns were born within marriage in 2022, compared to 59% in 2010. This is an outstanding achievement at the international level. After Greece, Croatia, and Lithuania, the lowest rates of out-of-wedlock births among the EU Member States are observed in Hungary and Poland, whereas in France, Portugal, and Bulgaria, six out of 10 babies are born out of wedlock.[69]

66 HCSO, n.d.a.

67 Eurostat, [Online]. Available at: https://ec.europa.eu/eurostat/databrowser/view/demo_nind/default/table?lang=en (Accessed: 24 August 2023).

68 Engler and Pári, 2022.

69 Eurostat [Online]. Available at: https://ec.europa.eu/eurostat/databrowser/view/DEMO_FIND__custom_7244091/default/table?lang=en (Accessed: 24 August 2023).

4.5. The family-friendly turnaround in Hungary since 2010

At present, developed countries are facing a crisis of values, which has many social, economic, and societal components. The changes of the 2000s have disrupted the existential and spiritual foundations that are essential for the harmonious functioning of families and society. Families have been pushed into the background by individualistic aspirations and the austerity measures imposed in Hungary under the left-liberal government, which left them financially and existentially insecure.[70]

Since 2010, Hungary has undergone a family-friendly turnaround, with the new conservative government starting to pay special attention to supporting families. The priority was to ensure that having children did not put families at risk of poverty and that they could have the children they wished for, as surveys showed that Hungarians wanted more children than were being born. The legal basis for family-centred governance is laid down in Hungary's Fundamental Law and in Act CCXI of 2011 on the Protection of Families. The Fundamental Law defines the family, thus also providing it with protection. The cardinal law on the protection of the family enshrined the case for and importance of supporting families and conveys, in a separate chapter, that employment and childbearing are factors that mutually reinforce each other for the well-being and prosperity of Hungarians. From 2010 onwards, family policy was defined separately from social policy based on the principle of need and became an independent sectoral policy. Family support was significantly upgraded, and the focus shifted strongly towards support linked to employment and wages.[71] At the same time, this paradigm shift not only took place at the legislative level but was also gradually incorporated into everyday life. Year by year, as families received more attention and support, the number of family-friendly initiatives and programmes increased, with targeted and predictable measures.[72]

Strengthening families is a major task in both material terms and spiritual, intellectual, and cultural terms. The family is the unit in which a person can truly fulfil his or her potential. Satisfaction with life, inner balance, and self-confidence are health-promoting factors, of which the family is the most important source. Research shows that people who are happy, love, and are loved by their families live longer. Having a child is a life task: it gives meaning to life and a secure future for society.[73] The family is a source of strength because its members help each other in a loving community – they relate to each other differently than outsiders. In Hungary, close family ties are the strongest form of social support, far more than all other forms of relationship, owing to historical reasons and the traditionally family-oriented mentality of Hungarians. Being married and being a parent are sources of strength precisely because of the relational embeddedness. Their impact on career,

70 Novák et al., 2018, pp. 210–211.
71 Fűrész and Molnár, 2021, pp. 6–17; Gellérné, 2021b, pp. 91–110.
72 Novák et al., 2018, pp. 210–211; Fűrész and Molnár, 2021, pp. 6–17; Gellérné, 2021a, pp. 229–242.
73 Kopp and Skrabski, 1995.

work, well-being, and health is explained by the multi-directional benefits of family relationships.[74]

As a result of the Hungarian government's targeted family support measures, the propensity to have children has been reversing the steady decades-long decline in the number of children born. According to Hungarian vital statistics, fertility has increased by a quarter in a decade compared to the 2011 low, the number of marriages has doubled, divorces have fallen by a quarter, and the number of abortions has halved.

In the 2024 Hungarian budget, family support was increased by 3.5 times compared to 2010, reaching the highest level in Europe at 3.9% of GDP.[75] Most family support is linked to employment, with a wide range of family benefits available to those having and raising children. As a result, Hungary has seen a simultaneous increase in the propensity to have children and to work.

According to 2021 statistics, 70% of the population in the EU Member States lives in a home or apartment of their own, compared to 92% in Hungary.[76] According to the Századvég Europe Project, Hungary has the highest proportion of people in the EU who consider it important to have their own home (91%), which is a key factor in starting a family and raising children. This makes it a priority for families in Hungary to have access to home ownership, supported by home-ownership programmes. By the end of 2022, it was expected that one in five Hungarian families would have benefited from the Family Housing Subsidy (CSOK).[77]

5. Population projections for Europe and Hungary in the coming decades

5.1. Europe accounts for an ever-smaller share of the world's population

One of today's biggest challenges is demographic change, caused by population growth in developing countries and ageing and subsequent population decline in developed countries. The world population is now estimated by the UN to be over 8 billion and will continue to rise in the coming decades, but at a slower pace.[78]

74 Engler, 2011, 2017.
75 See: https://csalad.hu/csaladban-elni/megorzik-a-csaladtamogatasi-rendszert-a-2024-es-koltsegvetessel (Accessed: 24 August 2023).
76 Eurostat, [Online]. Available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Archive:Housing_statistics/hu&direction=next&oldid=498665 (Accessed: 25 August 2023).
77 Papházi and Pári, 2023, pp. 46–65.
78 Novák and Fűrész, 2021, pp. 11–16; HCSO, 2023a.

According to the mid-range UN projections,[79] Asia will be the most populous region between 2040 and 2050 and in 2100, while Europe's population – and share of the world population – will decline.[80] Whereas 50 years ago, Europe accounted for one-fifth of the world's population, it now accounts for less than one-tenth. Currently, only 9.3% of the world's population lives in Europe, and by 2100, this share is expected to be only 5.7%. In 1950, eight of the world's 25 most populous countries were in Europe; however, in 2023, only five of these countries are European, and by 2100, only Russia is expected to be on the list.

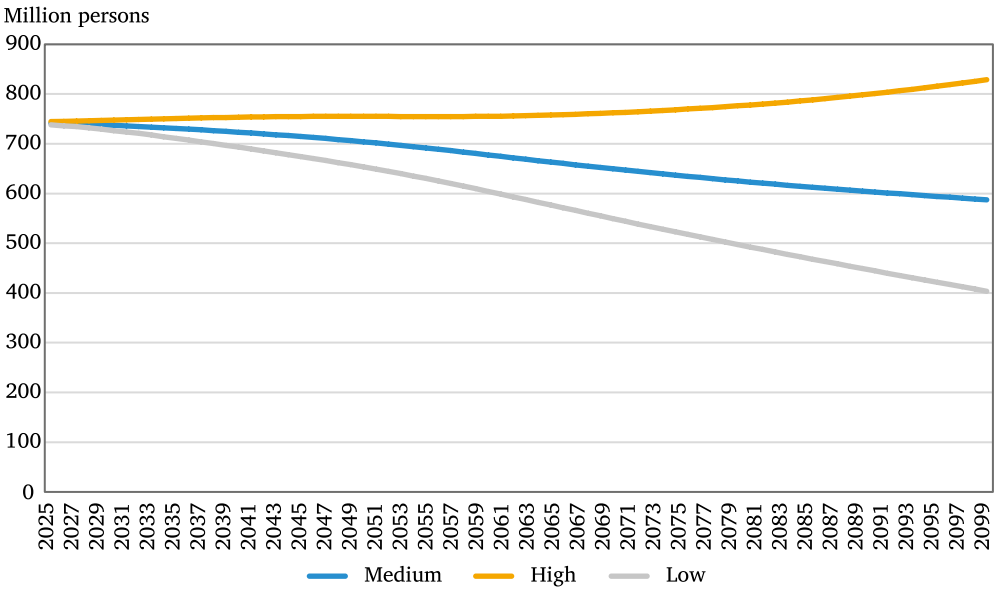
Population projections are based on vital statistics, that is, the number and occurrence of live births, deaths, and emigration. Taking these factors into account, several versions of a projection exist. The baseline or intermediate version indicates the projection that has the highest probability of being achieved in the future.[81] Among the projections, it is important to mention the annual UN calculation, which provides detailed data on world population projections, although the European Commission also regularly produces projections.[82] This chapter focuses on both of these projections, using the most recent data available. However, it should be noted that these calculations were made before the publication of the 2021/2022 census data. The data from the censuses are also part of the projections and will, therefore, be included in the estimates expected in the coming years. Furthermore, the current projections do not reflect the expected demographic changes resulting from the Russian-Ukrainian war as the calculations were made before the outbreak of this conflict:

> The number of Ukrainian refugees, which had reached over five million by June 2022 in EU countries, is high and distributed relatively unevenly among EU countries. Poland and some other Eastern European EU countries, Moldova, but also Germany and Italy received relatively large numbers of refugees. After an initial transition period, some refugees will find access to the labour market of the respective host countries – learning the language of the host country is important here. Therefore, refugees often become guest workers in the medium term. There are analyses of the economic effects of guest workers from Ukraine, for example for Poland, even before 2022, which can be used to estimate the economic effects of accepting Ukrainian refugees in EU countries. In addition, a likely distribution among different EU countries for the case of general migration can be obtained from the literature. In addition, income transfer effects for Ukraine need to be reflected.[83]

79 United Nations, 2022.
80 HCSO, 2023a.
81 The high version of the population projection assumes high fertility, high life expectancy at birth, and a positive migration balance, the latter assuming that the number of immigrants exceeds the number of people leaving the country or a given territorial level. Unlike the high version, the low version is characterised by lower values for the above factors.
82 European Commission, 2021.
83 Welfens, 2022, p. 155.

Europe's population is projected to decline in the coming decades, according to the medium and low versions of the UN's projections (Figure 4). Whereas the former projection estimates the continent's population at 704 million in 2050 and less than 600 million (587 million) in 2100, the latter forecasts an even larger population decline, with Europe's population projected at 654 million in 2050 and 403 million in 2100.

Figure 4. Three versions of the UN population projections for Europe from 2025–2100[84]

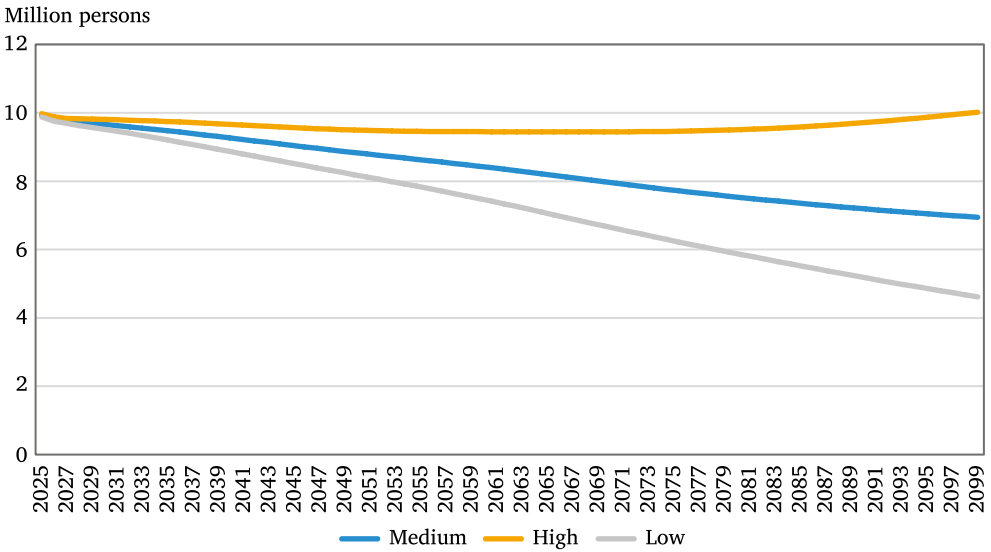


5.2. Population projections for Hungary

According to the medium (baseline) version of the UN population projections, Hungary's population will continue to decline in the coming decades: it is projected to be around 9.3 million in 2040, only 8.8 million in 2050, and less than 7 million in 2100 (Figure 5). The low variant, which assumes low fertility, lower life expectancy at birth, and negative net migration (emigration), also forecasts a continued population decline and an even lower population than before. This variant projects a population of approximately 8.9 million in 2040, 8.2 million in 2050, and less than 5 million in 2100. The high variant is the only estimate for Hungary that, while also projecting a decline until the late 2060s, expects a rise thereafter, reaching 10 million again by 2100.

84 United Nations, World Population Prospects, 2022.

Figure 5. Three versions of the UN population projections for Hungary from 2025–2100[85]



According to the UN, population decline is expected not only in Hungary but also in the vast majority of EU Member States. Looking at Hungary's neighbours, the UN estimates that between 2040 and 2050, Serbia (-8.5%) and Croatia (-7.4%) are expected to see their populations decline at a rate even higher than that of Hungary, whereas Austria (-1.3%) and Slovenia (-2.9%) will experience more modest decreases (Table 1). In Romania, the population is projected to fall by almost the same rate (-4.6%) as in Hungary. However, it is important to note that these projections do not reflect the impact of the war in Ukraine, for example.

Table 1. Medium (baseline) version of the UN population projections for Hungary and neighbouring countries from 2025–2100[86]

million persons

Year	Hungary	Austria	Romania	Serbia	Croatia	Slovenia
2025	9.9	9.0	19.5	7.1	4.0	2.1
2030	9.7	9.1	19.1	6.9	3.9	2.1

85 United Nations, World Population Prospects, 2022.
86 United Nations, 2022.

Year	Hungary	Austria	Romania	Serbia	Croatia	Slovenia
2040	9.3	9.1	18.3	6.3	3.6	2.1
2050	8.8	89	17.5	5.8	3.3	2.0
2060	8.4	8.7	16.6	5.3	3.1	1.9
2070	8.0	8.5	15.5	4.7	2.8	1.8
2080	7.6	8.3	14.6	42	2.6	1.8
2090	7.2	8.1	13.8	3.7	2.3	1.7
2100	6.9	7.9	13.1	3.3	2.1	1.7

4.3. The proportion of older adults in Hungary is expected to be lower than the EU average, whereas the proportion of children is expected to be higher

According to the latest census data for 2022, the age composition of Hungary's population has continued to grow older. The proportion of the population under 45 years old has decreased, whereas the proportion of the population over 45 years old has increased compared to the 2011 census, with the exception of those aged 55–64. According to data from 1 October 2022, one-fifth (21%) of the population was aged 65 and over, and 15% of the population were aged 0–14 (i.e. children). Encouragingly, the number of children under 15 years of age did not change significantly, remaining at 1.4 million, whereas the number of people aged 65 and over increased by 318,000 compared to 2011, which may be linked to the fact that the 1950s Ratkó children reached retirement age. The number of economically active persons aged 15–64 decreased significantly by 9%.[87]

The proportion of older people in the population is rising not only in Hungary but also at the European level. The European Commission projects that the proportion of people aged 65 and over in Hungary will reach 25% by 2040, 28% by 2050, and almost 30% by 2070. With these ratios, Hungary is expected to have a slightly lower and more favourable rate than the EU in all three years under review. Among the Central and Eastern European countries, only the Czech Republic will have a lower share of the population aged 65 and over in 2050 and 2070 than Hungary. The share of the population aged 80 and over will also continue to rise in the coming decades and is projected to be around 12% in Hungary (Table 2).[88]

87 HCSO, 2023b.
88 European Commission, 2021.

Table 2. Projected change in the proportion of the population aged 65 and over in the EU Member States between 2040 and 2070[89]

%

Country name	**2040**	**2050**	**2070**
Poland	25.5	30.4	34.0
Italy	32.2	33.7	33.3
Portugal	30.9	33.7	33.1
Lithuania	29.6	31.6	32.9
Croatia	27.8	30.3	32.7
Malta	22.3	25.6	32.4
Finland	27.0	28.3	32.1
Spain	29.4	32.7	32.0
Latvia	28.7	31.3	31.8
Slovakia	24.6	29.6	31.7
Romania	26.9	30.7	31.5
Bulgaria	27.5	30.8	30.9
Estonia	25.8	28.4	30.5
Slovenia	28.0	30.8	30.4
European Union Total	**27.7**	**29.6**	**30.3**
Luxembourg	22.4	25.7	29.7
Hungary	**24.6**	**27.8**	**29.6**
Austria	26.5	27.8	29.3
France	26.8	27.8	28.7
Netherlands	26.3	26.4	28.6
Germany	27.9	28.1	284
Belgium	25.2	26.4	28.0
Czech Republic	25.0	28.3	27.9

89 European Commission, 2021. Data in the table are presented in descending order by the year 2070.

Country name	2040	2050	2070
Norway	23.3	24.5	27.8
Denmark	25.2	25.6	27.7
Ireland	21.2	24.8	27.5
Cyprus	20.9	22.4	27.1
Sweden	22.8	23.5	26.3

The European Commission forecasts a decline in the proportion of people under 15 in most EU countries between 2040 and 2070, which is linked to falling fertility and an advancing age structure. In Hungary, the proportion of children will be close to 19% in each of the three years under review, which is expected to be somewhat above the EU average. Among the Visegrad Group (V4) countries, only the Czech Republic is expected to have a more favourable rate than Hungary. The neighbouring countries are also expected to have lower rates than Hungary (Table 3).

Table 3. Projected change in the proportion of the population aged under 15 in the EU Member States between 2040 and 2070, based on European Commission projections[90]

Year	2040	2050	2070
Sweden	21.8	21.8	20.9
France	21.6	21.5	20.8
Denmark	21.6	21.0	20.7
Ireland	22.2	22.0	20.6
Czech Republic	19.6	19.9	20.0
Netherlands	20.3	19.9	19.7
Belgium	20.1	20.1	19.5
Germany	18.8	18.8	19.5
Cyprus	20.6	19.8	19.4
Norway	20.4	20.0	19.2

90 Format: European Commission, 2021. The data in the table are presented in descending order by the year 2070.

Year	2040	2050	2070
Hungary	**18.8**	**18.7**	**18.7**
European Union Total	**18.4**	**18.5**	**18.5**
Austria	18.5	18.2	18.4
Latvia	18.1	18.3	18.3
Bulgaria	17.8	18.2	18.2
Estonia	18.3	18.8	18.2
Slovakia	184	18.1	18.1
Slovenia	17.2	17.9	17.8
Romania	18.0	18.0	17.8
Portugal	17.4	17.3	17.7
Luxembourg	18.5	17.9	17.5
Lithuania	17.5	17.1	17.3
Spain	16.3	16.7	16.8
Croatia	17.1	16.9	16.7
Finland	17.4	17.5	16.5
Poland	16.5	16.4	15.9
Italy	15.4	15.6	15.8
Malta	16.4	15.7	15.6

6. Summary and conclusions

Europe, and the EU as part of it, is undergoing a major demographic transformation that will profoundly shape the continent's, cultural, economic, and competitive future. Europe's weight in the world's population has shrunk to less than 10%. The European population is not yet in drastic decline; however, this is due solely to the large-scale, often illegal, immigration that has begun to transform European life, both ethnically and culturally.

On the old continent, there are more and more coffins and fewer and fewer cradles. People in Europe still want more children than are actually born. The gap

between the children that are planned and those that are born is observed in European countries and is particularly high among highly educated women. Nevertheless, this does not mean that women with tertiary education want to remain childless or have fewer children than women with a lower degree of education. Consequently, among policies that focus on the needs of women with higher education, support for reconciling work and family life would likely have the greatest effect on fertility rates.

In every country in Europe, the natural decrease has become a 'natural' phenomenon, with births nowhere near exceeding deaths. Some countries are trying to deal with this situation by increasing migration; however, data from recent years show that it is precisely in the countries with the largest migration surpluses that fertility rates, which are a sign of a desire to have children, have fallen rather than increased. The fertility rate is under 2.1 – that is, the replacement level – in all European countries. Unfortunately, looking at the EU statistics as a whole indicates that both the birth rate and the number of marriages, which are considered to be a prelude to childbearing, are declining. These results are especially important because in stable relationships (marriages), more of the children couples wish to have are born, and more children are born overall. In most European countries, the link between marriage and fertility is clear, although there are some Western European countries where the fertility rate remains high despite the fact that most children are born out of wedlock. Many Western European countries also have high rates of childbearing, yet these countries have some of the highest fertility rates among developed countries.

However, there are exceptions, such as Hungary, which saw the largest increase in childbearing and marriage rates in the EU between 2010 and 2022. Hungary has moved from demographic collapse to the strongest top third within the EU solely through its own efforts and active family policies. The Hungarian family and population policy model offers solutions that work and that have been able to substantially improve Hungary's demographic situation, even despite the unfavourable Hungarian circumstances, such as the significant decline in the childbearing age group. Hungarian family policy has adopted several specific, often pro-natalist measures, many of them aimed at the well-being of families, with a focus on the family as the most important community, marriage as the most stable form of intimate relationship, and respect for tradition and life. Hungarians are traditionally a family-friendly nation who wish to have more children than are born, which is why Hungarian family policy aims to break down barriers to having children and create decent conditions for raising them. The message of the Hungarian example is that having a family and children cannot be a privilege, and it is not just a private matter but the most personal public matter, which must be fought for and acted upon in order to preserve Europe and European culture and values.

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Part II

DEMOGRAPHIC ISSUES FROM AN INTERDISCIPLINARY PERSPECTIVE

Chapter 3

Macroeconomic Impacts of Demographic Change

Michał A. Michalski

Abstract

This chapter explores the relationship between demographic change and the macroeconomic condition of society. It describes three approaches to population growth that are present within economic theory and demonstrates how the last decades have offered evidence that demographic growth should generally not be seen as a threat to socio-economic development. In addition, the chapter discusses selected aspects of the economy in the context of the influence of demographic decline. In connection to this, it presents the simplified scheme of the process of the influence of a decrease in fertility and population ageing on economic stagnation. Finally, the impact of the quality, structure, and stability of the family environment on the economy is examined in the context of positive outcomes such as human and social capital.

Keywords: demographic change, economy, macroeconomic impact, development, family.

1. Introduction – demography is destiny

At present, there are increasingly fewer doubts that ongoing demographic changes, such as a decreasing number of marriages, low fertility, and the ageing of societies have already brought about a substantial shift in the size, age structure, and productivity potential of different populations. A related concern is that this 'demographic winter', as it is sometimes called, has a significant impact on the global

Michał A. Michalski (2024) 'Macroeconomic Impacts of Demographic Change'. In: Tímea Barzó (ed.) *Demographic Challenges in Central Europe. Legal and Family Policy Response,* pp. 83–101. Miskolc–Budapest, Central European Academic Publishing.

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economy, which places the future safety and welfare of our societies at grave risk. Interestingly, the consequences of these negative demographic changes have been neglected and ignored for decades. It is certain that 'the world is undergoing a major demographic upheaval with three key components: population growth, changes in fertility and mortality, and associated changes in population age structure'.[1]

A lack of demographic awareness has also been witnessed in macroeconomic policy debates and discussions, as if the desire and will to have children is some kind of 'physical law' independent from cultural shifts and individual decisions. There is still some difficulty in accepting that it is no longer reasonable to hold such an assumption. In economics, 'most growth models assume that population grows at a constant rate – sometimes zero for simplicity – and many business cycle models fix the size of population in analyzing aggregate demand'.[2] In a sense, the unprecedented demographic shift we are experiencing seems to be a new and unknown phenomenon – at least in the world's most recent history.

One of the signs of the growing awareness of the seriousness of demographic challenges is a new document prepared by the Joint Research Centre and presented by the European Commission in 2023. This is an important turning point because, until now, the European Commission has been rather sceptical of addressing depopulating demographic tendencies (caused by decreasing fertility) and treating them as issues that are potentially dangerous for the stability and future development of the European Union. The document states that,

> [w]hile population growth implies almost by definition higher emissions, at least in the short term, the intrinsic inertia in demographic processes implies that solutions to reduce emissions need to come from reducing inequalities, the greening of the economy and a change in consumption rather than from interventions on fertility.[3]

The demographic consequences for the macroeconomic situation will be more severe in richer countries. According to Bloom, 'in the coming decades, demographics will be more favorable to economic well-being in the less developed regions than in the more developed regions'.[4] In general, it seems that most experts in this field agree that 'population change will have profound implications for national, regional, and global economies'.[5] This chapter discusses the connection between demographic processes and the macroeconomic dimension, pointing out the main issues and aspects of this problem to offer a general overview of the questions and dilemmas in this field. Nevertheless, due to space limitations, it is not possible to describe and

1 Bloom, 2020, p. 6.
2 Cf. Yoon, Kim, and Lee, 2014, p. 21.
3 European Commission, 2023b, p. 1.
4 Bloom, 2020, p. 9.
5 Mason and Lee, 2022, p. 51; cf. Wesley and Peterson, 2017, p. 12.

analyse herein all the specific issues and aspects of the complex macroeconomic domain and their relationship to demographic processes.

2. Does the economy depend on demography? Three different approaches in the economic theory

One of the reasons that it is still not widely accepted that demography drives the economy is the ongoing dispute among economists about the influence of demographic processes on economic outcomes. It should be noted that this debate has a long tradition, dating from at least the times of Thomas Malthus, who warned that population growth would be the main reason for future catastrophic hunger and poverty. Nevertheless, it is important to mention that Malthus based his theory on the assumption of slow technical progress and the belief that the quantity of the resources for growing food was and would continue to be fixed. In the 1790s, Malthus expressed his negative view on the possibility of socio-economic development in light of uncontrolled population growth, writing thus:

> Taking the population of the world at any number, a thousand millions, for instance… the human species would increase in the ratio of 1, 2, 4, 8, 16, 32, 64, 128, 256, 516, etc. and subsistence as 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, etc. In two centuries and a quarter the population would be to the means of subsistence as 512 to 10; in three centuries as 4,096 to 13, and in 2000 years the difference would be incalculable.[6]

Since Malthus's time, this 'Malthusian', and later 'neo-Malthusian', way of thinking has been present in socio-economic policies. History has shown that despite unprecedented demographic growth, humanity has never before experienced such incredible flourishing or such increases in living standards being accessible to so many people. To confirm this perspective, it is worth recalling the words of Noble Prize laureate in Economic Sciences, Gary S. Becker, who, at the end of his life, wrote,

> … we economists (in particular the neo-Malthusians among us) have concentrated on a few potentially harmful effects of population growth on the economy, and ignored what are often – indeed, I think, usually – more important, positive effects. … [P] opulation growth has positive effects and has demonstrated increasing returns, as in the beneficial incentives to medical innovation of larger populations. Unfortunately,

6 Malthus, 1798, cited in Bloom, Canning, and Sevilla, 2003, p. 3.

> insufficient academic attention has been devoted to these positive effects, and this oversight should be corrected.[7]

To comprehend the whole picture of this discussion, which continues mainly in the fields of economics, demography, and ecology, it is useful to present the parties participating in it. In general, we can distinguish three standpoints on the relationship between population growth and macroeconomic impacts. We will start from the 'neutral theory', which does not acknowledge a strong link between demographic processes and economic outcomes. Consequently, this theory concentrates mainly on the potential of the market mechanism to stimulate the economy, leaving aside demographic issues. Economists in this area, as Bloom, Canning, and Sevilla write, 'have been more interested in Adam Smith, and in his narrative of the power of the market, than in Thomas Malthus's dire predictions about population'.[8] What is important is the fact that this theory was the dominant view from the mid-1980s, as Bloom et al. remind us when citing Kelley, who claims that it was already a very influential theory among academics from the 1950s.[9] In a sense, we may ask if our current demographic challenges were not partly influenced by the lack of what can be called 'demographic awareness' among the economists and social policy practitioners who subscribed to neutral theory. In this context, the following statement in *The Demographic Dividend* by Bloom et al. seems to point at this problem:

> [P]opulation neutralism, which has focused on the effects of population *growth*, has encouraged economists to neglect demography when considering the future prosperity and development of the world's countries.[10]

Next among the relevant theories is the so-called 'pessimistic theory', which is built upon the concepts of Malthus, whose views were described earlier in this chapter. This line of thinking has continued, with the most popular and representative publications on this theory being written in the second half of the 20th century. The first of these publications was *Population Bomb* written by Paul Ehrlich in 1968, which was followed by *The Limits to Growth* by Donella H. Meadows, Dennis L. Meadows, Jørgen Randers, and William W. Behrens III in 1972, and *Global 2000 Report to the President: Entering the Twenty-First Century*, which was developed in the United States by The Council on Environmental Quality and the Department of State from 1980–1981. The message communicated by all of these publications was based on the Malthusian concept of the negative impact of (uncontrolled) demographic growth, which was assumed to be a threat and danger to the flourishing and development of society.

7 Becker, 2007, p. 5.
8 Bloom, Canning and Sevilla, 2003, p. 17.
9 Cf. Bloom, Canning and Sevilla, 2003, pp. 17–18; Kelley, 2001, cited in Bloom, Canning and Sevilla, 2003, p. 18.
10 Bloom, Canning and Sevilla, 2003, p. 81.

The third and final theory of relevance here is the 'optimistic theory', which considers population growth a positive factor in terms of socio-economic development. The key authors who have conducted research and developed many arguments for this standpoint include Julian Simon, Herman Kahn, Deepak Lal, and David Lam. In 2011, Lam wrote the article 'How the world survived the population bomb: Lessons from 50 years of extraordinary demographic history',[11] the title of which speaks clearly about the quality and value of the predictions offered by Malthusian and neo-Malthusian 'pessimistic theory'. It is worth mentioning that the 'optimists' were also inspired and somehow preceded by such outstanding economists as Ester Boserup, who indicated that the pressure for the more effective use of resources increases as a population grows; Simon Kuznets, who pointed to the innovation potential of human communities; and Gary S. Becker, who was mentioned earlier.

In fact, as was stressed and widely presented by the 'optimistic' authors, reality proved the 'pessimists' wrong. Per capita incomes have grown by about two-thirds during a time when the world's population has doubled. The famines that have occurred were not as apocalyptic as Ehrlich predicted, and their main cause was not overpopulation and an absolute lack of food but a shortage of resources to purchase it. Technological and organisational progress has accelerated in an unprecedented way, people's participation and the associated social and institutional innovations have sky-rocketed, and the prices of many raw materials have declined.[12]

The main discussion on the macroeconomic impact of demographic changes continues to engage the followers of the 'pessimistic' and 'optimistic' theories. A good representation of the main points and arguments in this area can be found in the *Global 2000 Report to the President* and Simon and Kahn's *The Resourceful Earth*, which offers direct counterarguments to the content of the *Global 2000 Report*.

11 Cf. Lam, 2011.
12 Cf. Bloom, Canning, and Sevilla, 2003, p. 15.

Pessimistic theory	**Optimistic theory**
Global 2000 Report to the President If present trends continue, the world in 2000 will be more crowded, more polluted, less stable ecologically, and more vulnerable to disruption than the world we live in now. Serious stresses involving population, resources, and environment are clearly visible ahead. Despite greater material output, the world's people will be poorer in many ways than they are today. For hundreds of millions of the desperately poor, the outlook for food and other necessities of life will be no better. For many it will be worse. Barring revolutionary advances in technology, life for most people on earth will be more precarious in 2000 than it is now – unless the nations of the world act decisively to alter current trends.[13]	*The Resourceful Earth* If present trends continue, the world in 2000 will be less crowded (though more populated), less polluted, more stable ecologically, and less vulnerable to resource-supply disruption than the world we live in now. Stresses involving population, resources, and environment will be less in the future than now … The world's people will be richer in most ways than they are today …. The outlook for food and other necessities of life will be better… life for most people on earth will be less precarious economically than it is now.[14]

For a complete overview of the discussion taking place in the field of economics, it is worth mentioning the contribution made by Robert W. Fogel and Dora L. Costa and their theory of 'technophysio evolution'. In the context of the macroeconomic impact of demographic processes, this theory should not be ignored because it offers an insightful perspective and shows that it is not justified to treat every historical period of demographic and socio-economic development in the same way, especially the last three centuries. Fogel and Costa describe their theory as follows:

> The theory of technophysio evolution rests on the proposition that during the last 300 years, particularly during the last century, humans have gained an unprecedented degree of control over their environment – a degree of control so great that it sets them apart not only from all other species, but also from all previous generations of *Homo sapiens*. This new degree of control has enabled *Homo sapiens* to increase its average body size by over 50%, to increase its average longevity by more than 100%, and to improve greatly the robustness and capacity of vital organ systems.[15]

Fogel and Costa's contribution is especially important because it demonstrates the need to pay attention not only to the economic or physical domains (in terms

13 The Council on Environmental Quality and the Department of State, 1980, p. 1.

14 Simon and Kahn, 1984, p. 2.

15 Fogel and Costa, 1997, p. 49. On p. 50 of this article, the authors include very insightful figure (Figure 1. *The growth of the world population and some major events in the history of technology*) that illustrates this unprecedented transformation of humanity.

of the natural raw materials available) but also to the social and cultural domain. This domain proves to be unpredictable as a result of innovativeness and the enhancement of human potential by employing scarce resources in new ways that show that the old limits no longer apply. This theory can be confirmed by a comparison of the population and GDP growth rates calculated from 1950 until 2020 using data from 186 countries, as shown in Table 1.

Table 1. Comparison of population and GDP growth rates from 1950–2020[16]

Period	Annual population growth rate	Annual GDP growth rate
1950–1975	1.92%	4.65%
1975–2000	1.65%	3.20%
2000–2020	1.20%	3.58%

Table 1 indicates that from 1950–2020, the GDP growth rate was close to or more than two times larger than the population growth rate. This means that, as Fogel and Costa claim, humanity has learned to effectively increase productivity and improve living conditions on an unprecedented scale.

3. Demographic challenges for the economy in the 21st century

Having considered three theoretical approaches towards the impact of demographic processes on the economy, we now turn to look at the current civilisational context of the third decade of the 21st century. It seems that as the demographic winter proceeds, there are fewer and fewer voices defending the 'neutral' and 'pessimist' theories, and more attention is being given to the 'optimist' theory, which connects welfare and socio-economic flourishing with demographic growth.

When it comes to the current situation and the predicted future, we can observe some characteristic features that are expected to accelerate in the coming years and compose the demographic horizon before us. First, the fertility rate, which has been declining over the last four decades, is unlikely to rise in the near future. Second, the continued increase in longevity is certainly a civilisational achievement, yet combined with falling birthrates, it will contribute to the ageing of societies. Third, given this ageing process, a decrease in the proportion of the working-age population in developed countries will follow. In Europe, this will cause a gradual decline in the

16 Source: Mason and Lee, 2022, p. 57.

European population and further shrinkage of the labour force.[17] At the same time, we should also mention technological developments such as online work and education, the digitalisation of society and the economy, artificial intelligence, the implementation of robots, and large-scale automation, which have already reshaped the macroeconomic context. Finally, attention should also be paid to profound cultural shifts that, for a few decades, have already been transforming families, communities, and societies, such as individualisation and de-familism/post-familism,[18] the mediatisation and digitalisation of socialisation and relationships, and the growing threat of unprecedented loneliness pandemics, which are forcing governments to seek solutions and remedies.

Among these phenomena are some others that were previously unheard of. In our times, a growing number of people are deciding to live alone, are not forming unions, and are not having children. This profound demographic change means that the assumption that people will always have children, which was taken for granted for centuries, is no longer valid. As such, the role of cultural factors, such as values, norms, and beliefs, will have an ever-growing impact on the state of demographic processes in societies and, therefore, their macroeconomic conditions. This intuition was expressed by Nick Schulz, who wrote that 'purely economic explanations for the changes in marriage and birth patterns will get us only a little way in the face of the dramatic scope of changes that have occurred'.[19]

In terms of the economic consequences of current demographic tendencies, it is important to highlight the new challenges that the decreasing and ageing of populations brings. These challenges have been listed in a European Commission document entitled 'The impact of demographic change in a changing environment'.[20] The ageing and shrinking of societies causes a decrease in the working-age group, which, at the same time, puts pressure on the conditions of labour markets and welfare states.[21] This also makes finding the adequate number of properly qualified employees more difficult for employers, profoundly impacting entrepreneurs and economic organisations. One of the publications from the Polish Demographic Congress 2021–2022 states,

> Demographic changes have a huge impact on the functioning of enterprises. The future competitiveness of companies and the efficiency of their operations will depend on the effective engaging of older employees and the development of their skills. In the current market, where the best employees are sought on a global scale, recruiting talent, regardless of their age, is still a challenge for employers. Everyone will face the problem of ageing societies and competitive advantage therefore will be achieved by those companies that will adapt their strategies, internal procedures and policies for upcoming changes at the earliest.[22]

17 Cf. Banco de España, 2018, p. 213.
18 Cf. Kotkin, 2012; cf. Michalski, 2015.
19 Schulz, 2013, p. 31.
20 Cf. European Commission, 2023a, p. 1.
21 Cf. Johansson et al., 2012, p. 13.
22 Trzpiot, 2023, p. 28.

Regarding the impact on welfare states, the ageing and shrinking of the population translates into decreasing tax incomes for the public budget, which is the source of funding for various public services and social policies. This process also increases the old-age dependency ratio and raises the per-capita burden of public debt.[23] As the authors of the European Commission document write, 'to sustain economic growth, the working-age population must increase, labour-force participation rates must go up and/or productivity has to increase through technological advances and/or skills development'.[24] In addition to the aforementioned outcomes, population ageing is also connected with other challenges, such as the need to adapt existing workplaces and modify welfare and public health systems to meet the larger demand for quality healthcare and long-term care services.

Though the knowledge on the above-mentioned relationships seems to offer trustworthy evidence of the generally negative impact of demographic stagnation and decline on the macroeconomic condition of society, the economic standpoint is still not unequivocal. This is visible in the fact that there are generally two approaches to analysing the macroeconomic impact of demographic changes. The first of these approaches can be called the 'standard' approach and accepts assumptions about the constant age-specific behaviours of individuals related to issues such as employment, earnings, consumption, and savings. The main task, therefore, is to assess the implications of demographic changes. The problem in this approach is that it may be misleading: while it is helpful for capturing the so-called 'accounting effects' of demographic processes, it neglects the fact that the behaviours of economic agents can be modified and that institutional aspects can be subject to adjustment. The second approach respects the behavioural, institutional, and global aspects of the economic realm. In this approach, the complexities of the socio-cultural context are taken into account, which enables the tracking of various channels and their interactions. As a result, it offers a more comprehensive oversight as it includes responses to ageing-induced price changes, international differences, and various policy decisions.[25]

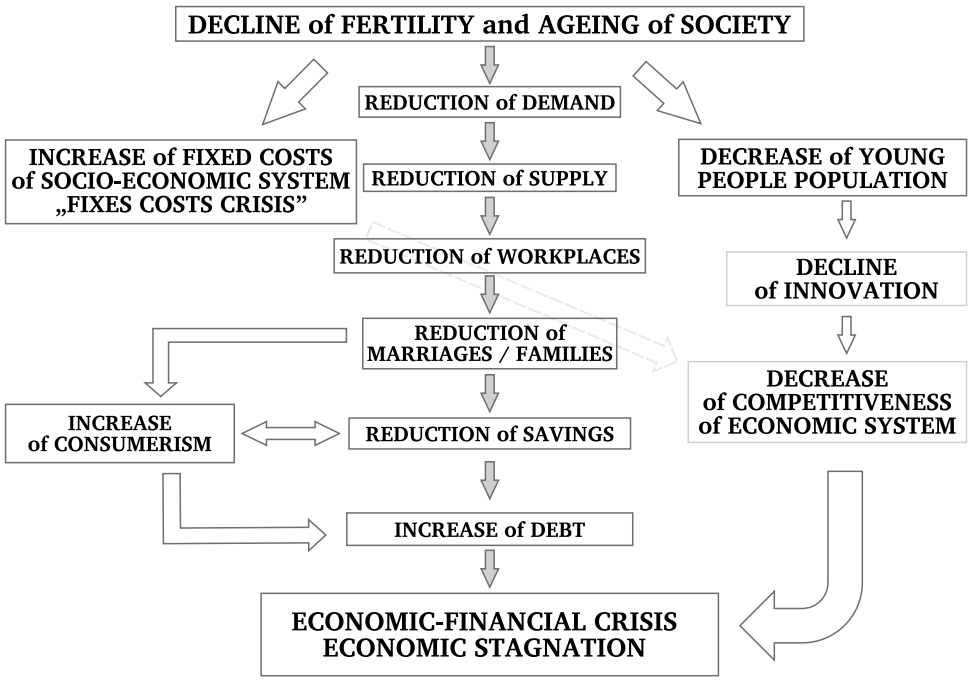
4. From demographic decline to economic stagnation – a chain reaction

This section illustrates the relationship between demographic decline and macroeconomic changes in order to reveal how elements of an economic system are linked to each other. The analysis does not include all the details and nuances of the economy because it would require much more space, and such an attempt would

23 Cf. European Commission, 2023a, p. 1.
24 Cf. Ibid.
25 Cf. Yoon, Jinill, and Jungjin, 2014, p. 10.

hardly be communicative. Therefore, the picture presented in Figure 1[26] is simplified and reduced to selected main aspects of the whole complex realm.

Figure 1. From demographic decline to economic stagnation[27]



Following a decline in fertility, which results, among other consequences, in the ageing of the population, societies that have reached a certain level of civilisational development experience an increase in the fixed costs of their socio-economic systems, which I call the 'fixed-costs crisis' (left side of Figure 1). The efficiency of certain elements of, for example, infrastructure, such as public transport, sewage treatment plants, waterworks, and power lines, must be maintained and secured, regardless of the size of the community that uses them. This means that in the case of shrinking populations, there is a growing financial burden connected with preserving the standard of living. At the same time, owing to falling fertility rates and ageing populations, the population of young people, which automatically becomes a new talent pool will become smaller. Consequently, the potential for innovation will be smaller, thus creating the risk of a decrease in the competitiveness of the economic system (right side of Figure 1). What's more, in the current geopolitical

26 Cf. Michalski, 2014, p. 193.
27 Source: Author's own work.

context, a deficit in the younger generation will also influence the military potential of a society in the case of armed conflict.

Finally, what seems most evident is that a decline in fertility and the ageing of society will result in a reduction of demand given the smaller group of consumers (middle of Figure 1). According to market rules, there will, consequently, be a reduction of supply, which is producers' standard reaction to a falling number of purchases. In the next step, this will most likely result in a reduction in the workforce, which will cause unemployment and a loss of wages as the source of financial means. This changes the material stability of existing families, who will be more likely to put off fertility plans, and may discourage those living alone from starting a family and becoming a parent. Another interesting and not widely recognised consequence of this situation is a decline in savings, which are, in terms of motivation, largely linked to paternal love and care.[28] The other side of this phenomenon is the stronger tendency for consumerism among people living a single life, which can be also juxtaposed with economies of joint consumption that are especially present in households with children, where a lot of goods are used as public goods.[29] The reduction of savings is likely to be linked to an increase in debt, which is a very probable consequence of shrinking tax transfers and lost wages due to a reduction in employment. As a result, all these interrelated phenomena contribute to economic stagnation and economic-financial crisis, which is an increasingly likely reality for many developed countries today. This prediction is supported by Bloom, whose opinion about more positive impact of demographics in case of less developed regions in the coming decades has already been mentioned[30] Similarly, Andrew Mason and Ronald Lee claim,

> Population change will drive large regional shifts in economic activity: decline in the shares of global economic activity in East and Southeast Asia, Europe, and North America; and an increase in the shares of Central and South Asia and sub-Saharan Africa. Economic shifts should be greater than population shifts.[31]

Interestingly, the OECD offered a similar prognosis about a decade ago in a report entitled *Demographic Change and Local Development: Shrinkage, Regeneration and Social Dynamics*. This report noted that 'as a result of falling fertility rates, many cities and regions in OECD member countries are likely to continue to "shrink" in the coming decades, even with some increases in population due to migration (from within or from outside the country)'.[32]

28 Cf. Marshall, 1907, pp. 227–236; cf. Grinstein-Weiss, Zhan and Sherraden, 2006.
29 Cf. Ermisch, 1993, p. 354.
30 Cf. Bloom, 2020, p. 7.
31 Mason and Lee, 2022, p. 58.
32 OECD, 2012, p. 11

Fortunately, this new situation is changing the attitudes of policymakers and experts, although a large group still follow the standpoints of Malthus, Ehrlich, Meadows, and others whose theories did not stand the test of time and turned out to be wrong. This group's current line of argumentation is concentrated around ecological challenges and treats population growth as a threat to natural survival.

Nevertheless, the rational voice of those who call for a demographic renaissance is becoming increasingly heard, and awareness in this aspect is growing. As a consequence, expert voices such as that of Bloom, cited below, are being treated with due attention and seriousness.

> Population aging is sounding alarms worldwide. Whether increased longevity is associated with more or less of a person's life lived in frailty is among the most salient unresolved questions public and private policymakers throughout the world face. Economists continue to express concerns. These relate to downward pressure on economic growth due to labor and capital shortages and falling asset prices in the future as a growing and more aged cohort of older people seeks to support itself by liquidating investments. Another major issue has to do with fiscal stress. Government coffers will be strained by rising pension liabilities and the cost of health and long-term care associated with the expected growth in the incidence and prevalence of chronic diseases such as cancer, among others. These challenges will, however, be partially offset by the increasing, but typically neglected, value older people create through productive nonmarket activities like volunteer work and caregiving. Without historical lessons from a world with such large numbers of older people, there is even more uncertainty about our collective future. However, adopting a business-as-usual approach to the challenges of population aging would be irresponsible.[33]

5. Role of family condition in demographic processes and macroeconomic outcomes

To close this chapter, it is worth examining an issue that is rarely taken into account when considering predicted population change. Demographic analysis is most often concentrated on the quantitative dimension; however, it also seems necessary to take qualitative aspects into account. These aspects were signaled above when the cultural shift was mentioned as the factor that shapes attitudes and decisions on marriage and fertility on an increasingly larger scale and influences the socialisation outcomes of contemporary families. This issue must be discussed when considering the macroeconomic impacts of demographic change because the quality and

33 Bloom, 2020, p. 9.

condition of the family environment play a role in both the quantity and quality of human and social capital.

Currently, these two assets are invaluable for economics, and in this context, the role of family – as the basic transmission belt for culture[34] and the 'factory' of human and social capital – in socio-economic development is understood and recognised on a larger scale.[35] This turns out to be evident when we consider the causes of the higher or lower levels of development in different countries or regions in the world, as evidenced by research on economic culture that has been developing over the years.[36] The example of this research area clearly shows that attempts to deepen our understanding of the causes of certain phenomena and processes taking place in a society cannot ignore explanations of a normative nature. From this perspective, attention should be paid to the importance of family condition for the functioning of the socio-economic order. This means agreeing to the fundamental assumption that not every family situation is equally functional when it comes to economic prosperity and social well-being.

In recent years, there has been an increase in research examining the issue in this way, an example of which is the index of the costs of family breakdown, which has been calculated by the British organisation Relationships Foundation for several years. In 2018, the organisation estimated the 'Cost of Family Failure Index' to stand at £51 billion, compared to £37 billion 10 years earlier.[37] Similar calculations have been undertaken for Poland, which showed that divorces and family breakdowns costed the country around PLN 5.7 billion in 2019.[38] Other studies also indicate that both the family structure and its durability influence children's future economic achievements (*economic mobility*). Authors such as DeLeire, Lopoo, and Schulz state that divorces cause particular harm in this respect.[39]

As for other insights illustrating the importance of a properly functioning family for both individual well-being and the entire socio-economic order, the research of economist James J. Heckman is extremely important. Heckman provides answers to the long-running question of what is most effective in determining the development of children and adolescents, especially in environments at risk of pathological phenomena. As Heckman shows, it is not money and equalising income inequalities that are the most effective strategies for increasing young people's educational and professional opportunities but the quality of the family environment. Taking into account, as Heckman confirms, that families are the main producers of skills, it is not the state and other institutions – although they are necessary and useful in many respects – that have a decisive impact on equipping children with the non-cognitive skills that are critical for future success. Heckman writes,

34 Cf. Merton, 1968, p. 212.
35 Cf. Michalski, 2014.
36 Cf. Harrison and Huntington, 2000; cf. Acemoglu and Robinson, 2012.
37 Cf. Relationships Foundation, 2018.
38 Cf. Michalski and Furman, 2021, p. 9.
39 Cf. DeLeire and Lopoo 2010, p. 2; cf. Schulz, 2013, pp. 50–51.

> Families are major producers of skills. They do much more than pass along their genes. Inequality in skills and schools is strongly linked to inequality in family environments. While the exact mechanisms through which families produce skills are actively being investigated, a lot is already known. Parenting matters. The true measure of child poverty and advantage is the quality of parenting a child receives, not just the money available to a household.[40]

The results of other studies align with Heckman's conclusions. In their book *Growing Up with a Single Parent*, the research duo Sara McLanahan and Gary Sandefur demonstrate that children raised by only one biological parent are in a statistically less favourable situation than children who grow up with both biological parents, regardless of their race, the parents' education, whether the parents were married at the time of the child's birth, or whether the parent who lives with the child enters into another relationship.[41] Another study by Alexandra Usher and Nancy Kober suggests that children brought up in so-called 'disadvantaged' families have fewer opportunities to develop competences, receive fewer incentives to enjoy learning, and are less likely to develop independent learning skills and maintain relationships that can support and reward achievements.[42]

Returning to Heckman's research, we can treat his findings as a summary of the importance of the quality and durability of relationships within the family for children born within them to have the ability to take on various social roles adequately and effectively. Though Heckman is very careful in discussing the structure of the family and its impact on children's socialisation and achievements, he makes it clear that not every form or formula of family life affects well-being and social well-being in the same way, stating:

> Intact families invest greater amounts in their children than do single-parent families, although the exact reasons why are not known. These investments pay off in higher achievement. There are large gaps in cognitive stimulation and emotional support at early ages. They persist throughout childhood and strongly influence adult outcomes. The evidence on disparities in child-rearing environments and their consequences for adult outcomes is troubling in light of the shrinking proportion of children being raised in intact families. … The problem is not just income. Even though income is the standard way to measure poverty, recent research suggests that parental income is an inadequate measure of the resources available to a child. Good parenting is more important than cash. High-quality parenting can be available to a child even when the family is in adverse financial circumstances.[43]

40 Heckman, 2011a, p. 26.
41 McLanahan and Sandefur, 1994, p. 1.
42 Cf. Usher and Kober, 2012, p. 5.
43 Heckman, 2011b, p. 33.

Finally, it is worth foregrounding another study that draws attention to issues other than the structure or durability of the family. The research by Ron Haskins and Isabel Sawhill indicates that a 'traditional' or 'conservative' order of important life decisions makes a difference to living standards. They write,

> Those who finish high school, work full time, and marry before having children are virtually guaranteed a place in the middle class. Only about 2 percent of this group ends up in poverty. Conversely, about three-fourths of those who have done none of these three things are poor in any given year.[44]

This concept has been developed and confirmed by Wendy Wang and W. Bradford Wilcox of the Institute for Family Studies, who report:

> 97% of Millennials who follow what has been called the 'success sequence' – that is, who get at least a high school degree, work, and then marry before having any children, in that order – are not poor by the time they reach their prime young adult years (ages 28–34).[45]

On the basis of these findings, it seems appropriate to seek socio-cultural (including political and educational) and economic solutions that will support factors conducive to fertility, high-quality socialisation, innovation, and social cohesion. If we are aiming for prosperity, economic development, and social well-being, then at the level of shaping socio-economic policy, we cannot ignore the arguments confirming that a permanent, intact family based on formalised marriage is statistically conducive to fertility and the development of good quality human and social capital.

6. Conclusions

In the face of the challenges of our time, there are increasingly fewer doubts that demographic processes do indeed influence macroeconomic performance. Based on the contributions of economists such as Becker, Boserup, Kuznets, Simon, and Fogel and Costa, among others, we can also say that humanity has learned not only to deal with population growth but also to develop economies of scale that, quite often, are possible due to the larger size of local communities and wider societies. As such, from the technological, organisational, and civilisational perspectives, overpopulation certainly should not be seen as a grave threat to humanity. At the same time,

44 Haskins and Sawhill, 2009, p. 9.
45 Wang and Wilcox, 2017, p. 4.

we should not ignore the fact that demographic decline affects aspects of our civilisation, changes the foundations on which every area of the socio-economic order relies, and destabilises the whole process of socio-economic reproduction.

When it comes to economics, there will always be competing ideas and discussions about which elements of the socio-economic realm are interrelated and how strong or weak the influences of these elements are. This is the nature of theoretical disciplines, and we cannot forget that from time to time their findings and forecasts are simply inaccurate. This is also true in the case of economics, which means that interpreting demographic processes and shaping demographic policies cannot be left only to economists. No doubt that regarding issues where the impact of demographic change is unclear, it seems safer and better from a long-term perspective to avoid possible risk and opt for demographic growth rather than decline. This was likely what Ernst F. Schumacher meant when he wrote that 'from an economic point of view, the central concept of wisdom is permanence. We must study the economics of permanence. Nothing makes economic sense unless its continuance for a long time can be projected without running into absurdities'.[46]

We certainly wish for permanence and continuity. Thus, demographic issues should be included in the concept of sustainable development to form a strategically important concept that could be called 'sustainable demographic development'. From this perspective, respecting and taking responsibility for the next generations is not a choice but a duty.[47] We do not have the right to say how many people is enough or too many. This basic truth about our existence was expressed in a simple way by Charles Handy, who wrote, 'We are links in a chain; it is up to us to keep things going because who knows which generation will be the one to make the big difference'.[48] How is our generation supposed to know that?

46 Schumacher, 1993, p. 20.
47 Cf. Michalski, 2018.
48 Handy, 1994, p. 241.

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Chapter 4

The Economy Begins in the Family

Michał A. Michalski

Abstract

This chapter presents the fundamental role of the family as the basic and primary social group for the existence and prosperity of the economy. Economic activity in modern societies is largely organised and conducted by formalised economic organisations. However, within their households, families produce goods and services that constitute an important part of GDP. Families also consume – as well as 'prosume' – distribute, and exchange wealth, and accumulate capital. In addition to examining the role of the family as the basic economic unit, this chapter describes and explains how the functioning of the family creates the necessary ground for the economy and conditions its multidimensional continuity, socio-economic reproduction, and development. In this context, various roles of the family are presented and explained, from the procreative function, which generates population replacement, through the socialisation, education and economic functions. The family is, thus, justifiably presented as an irreplaceable factory of human and social capital and a transmission belt of culture. The chapter collects and combines contributions and arguments from various disciplines, including economics, anthropology, cultural studies, and sociology.

Keywords: economy, family, socio-economic reproduction, development, human capital, social capital.

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1. Introduction

The family is both a universal institution and a group that is the foundation of any society. This has been the case in every time and place in the history of humankind. As the economy is one of the essential sub-systems of society, it can, thus, be said that the family is also the foundation of the economy. This was more evident in the past, before the emergence of the modern economy, which is organised around the enterprise as the dominating unit analysed by economists and modern economics.

Today, it seems that the meaning of the word 'economics', which originates from the Greek words '*oikos nomos*' meaning 'governing or managing the household', is slowly being forgotten; however, we should continue to highlight this fact. The origin of the word also clearly indicates that the family and its household constitute the earliest economic entity – a kind of archetype of the enterprise – and demonstrates the basic processes and problems representing the area of reflection of the economic sciences.

This historical explanation may serve as the simplest argument to demonstrate the basic relation between family life and economics, which is understood as the examination of the sphere and processes of material reproduction. From this perspective, the family appears to not only be the starting point of the larger community and society in general but also the economy of these groups. However, this does not mean that the family and its household can be solely limited to the viewpoint of consumption, with its members as consumers creating demand, as it is sometimes presented in modern economics; rather, the family is also engaged in the exchange, production, and distribution of goods and services. Although this perspective seems to have been gradually breaking into the consciousness of economists, it must be communicated in the field of social and economic policy, where the family is still treated as a cost rather than an investment.

The topic addressed in this chapter may suggest that we are dealing with an entirely new approach, previously non-existent in the social sciences. In reality, however, the analysis undertaken here is primarily a critical review of the related knowledge, within which certain issues and relationships will be drawn out and considered. Furthermore, some 'dogmas' regarding the relationship between the family and the economy will be commented upon and, occasionally, debunked.

The fundamental assumption that frames the reflections undertaken in this chapter is the conviction that an adequate and complete understanding of the economy and its ties to the wider social context requires consideration of the family as the most primordial group and, at the same time, as an institution that precedes and conditions the existence of society. Therefore, the chapter's title 'The economy begins in the family' is not a rhetorical figure or an eye-catching metaphor but a statement of a fundamental fact so often overlooked in economics or social policy. This fact has frequently been excluded in recent sociological, anthropological, philosophical, and political reflections on the functioning of society and the state.

The chapter pursues two theses. According to the first, the family, which functions effectively from the perspective of biological, social, and cultural reproduction – which are critical for the duration and development of society – is an essential key to well-being and prosperity. Consequently, the second thesis presents that the continuity, stability, prosperity, and development of local communities are conditioned precisely by the family.[1]

In this chapter, the family is understood according to the proposal of Mirosława Marody and Anna Giza-Poleszczuk in their book *Przemiany więzi społecznych (Transformations of Social Ties*). This book includes a definition of the elementary family unit, which is a triad consisting of a 'mother, father and child(ren)'.[2] Importantly, this is the minimum group necessary for the reproduction process which, in the context of the considerations undertaken herein, occupies a significant place as it adequately illustrates the often ignored dimension of biological, social, and cultural reproduction that appears to increasingly influence demographic processes and, consequently, economic realities.

2. The family as the basis of society – reproduction and development

To say that the economy begins in the family requires first demonstrating how this basic group conditions the formation, existence, and development of society. This group, which is crucial among the primary social groups and an essential mediator (as sociology has long pointed out), is the link between man and the essential structures of social life.[3] In addition, complementary to the above statement, attention must be drawn to the fundamental importance of the family in ensuring the reproduction of the socio-cultural order. It is this order that can be considered as the starting point or foundation on which the economic system may be built and begin to operate.[4]

In terms of the reproduction of the social order, biological, socio-cultural, and economic areas can be indicated.[5] The processes taking place within each of these areas collectively create the multidimensional realities of a given community. Viewing the family through this particular prism, it becomes apparent that it is a unique space in terms of the reproduction of the social order, as it is in the family that phenomena related to all the aspects of reproduction we are discussing take place in parallel. At

1 Cf. Michalski, 2014a.
2 Marody and Giza-Poleszczuk, 2004, p. 191.
3 Cf. Berger, 1976, p. 401.
4 Cf. Giza-Poleszczuk, 2005, pp. 30–31.
5 Cf. Marody and Giza-Poleszczuk, 2004, p. 187.

the same time, it is interesting to consider this process as the realisation of a spontaneous order which, far from being the result of a centralised planning process, originates as an outcome of independent decisions taken by a myriad of individuals who, in doing so, try to act rationally.[6] Consequently, this process, which takes place simultaneously and in a dispersed manner (because it occurs in particular families), provides flexibility on the one hand, and stability and sustainability on the other. In turn, this phenomenon provides discernible benefits not only at the level of local communities but also in the macrostructures encompassing a region or an entire state.

When discussing the family's contribution to the reproduction of society, it is necessary to start from the level that can be described as the most basic, in other words, that which is directly related to the biological process of procreation. The actual material existence and development of a population *de facto* depends on it. Although this may seem obvious, it is important to point out the irreplaceability of the family in this respect, which is the only unique social group that can develop owing to the fact that new members are born into it. It is this function and potential for procreation that ensures that other groups can grow in numbers and that new citizens appear in society at a macro level. When the family ceases to fulfil this function, the population shrinks, and when the fertility rate falls below the replacement level, intergenerational continuity is jeopardised. In economic terms, this calls into question, among other things, the long-term profitability, legitimacy, and viability of various projects and resources (e.g. infrastructure).

This constant transmission and preparation of new society members by the family are sometimes taken for granted and, therefore, overlooked; however, it is precisely through this process of reproducing the social fabric (parents passing on their lives to their children) that a community can persist and achieve stability over time. This essential role of the family in the reproduction and existence of society is thoroughly described by Anna Giza-Poleszczuk, who observes,

> The recognition of the family specifically – and not, for example, the individual or the work-related social system – as the basic social system is due to the simple fact that it is the only holistically productive system: reproducing people, goods and symbols. Both human beings and other social arrangements play an important role in reconstructing the environment in which reproduction is realised, but they are in no position to reproduce themselves. It is also worth pointing out that families – to use a biological metaphor – reproduce by budding: a group gives life to a new group; families grow out of families. Today, this is not as tangible as it once was, when the only legitimised way out of the family of origin was to start a family of one's own. However, families are still logically born from families, although they are founded by individuals.[7]

6 Cf. Hayek, 1948, pp. 6–8.
7 Giza-Poleszczuk, 2005, p. 254.

Another dimension that should be highlighted is that of socio-cultural reproduction. An essential element of socio-cultural reproduction is the transmission of culture, sometimes referred to as 'transmission of culture', which we define as 'the values, attitudes, beliefs, orientations, and underlying assumptions prevalent among people in a society'.[8] In the dimension of the family, this means that in the daily interactions between generations, the transmission and perpetuation of rules and norms that are the building blocks of the socio-cultural order takes place. It is no coincidence, in this context, that it is the family that becomes 'the most important transmission belt for the passing on of cultural patterns to the next generation'[9] and an important generator of cultural diffusion.[10] As Franciszek Adamski states,

> [t]he family, which is a certain reflection of the wider society, also from the point of view of being governed in everyday life by these social values and models, becomes for people a bridge connecting them with society and enabling them to become involved in the life of the community in a non-conflictual way, by aligning their individual, personal aspirations with the social ones.[11]

To conclude this section, which was devoted to showing how the family determines the sustainability and reproduction of society in numerous ways, it is worth emphasising that, in this context, family policy, aimed at strengthening the family and supporting the effectiveness of the functions it performs, should be seen as a strategically important area that, in fact, determines the survival and future of the state. This issue is very aptly addressed by Giza-Poleszczuk, who states,

> The relationship between reproduction and co-operation in the economic, political and social (moral) spheres is not causal. Reproduction and co-operation are mutually contingent: reproduction takes place in an environment produced and generated by co-operating individuals, and the collapse of this environment can lead to the collapse of the reproduction process. At the same time, however, the reproduction of populations constitutes, in the long run, the *rationale* and condition of co-operation – the physical death (extinction) of a population naturally puts an end to co-operative structures as well, after all. The continuity of reproduction is not the goal of the process – it is, however, its c o n d i t i o n. In this regard, reproduction in the biological sense and reproduction in the more metaphorical sense of social reconstruction are interlinked.[12]

8 Huntington, 2000, p. XV.
9 Merton, 1982, p. 221.
10 Dyczewski, 2003, p. 40.
11 Adamski, 2002, p. 39.
12 Giza-Poleszczuk, 2005, pp. 30–31.

3. Economy as a social subsystem embedded in and mediated by the family

An important aspect of the topic addressed here is the *rationale* that makes it possible to show that the family is not the same economic entity as those we most commonly associate today with the undertaking of economic activities and, on the other hand, that the family is not completely isolated from activities of an economic nature. The point is, among other things, that family ties and relations constitute a specific substrate, component, and sphere of reference for social relations in general. The family itself is also sometimes described as a support group providing horizontal solidarity, which is indispensable for the economic situation of particular individuals, among other things. This was foregrounded by Anna Kotlarska-Michalska, who notes that 'the place of the family against the background of other micro-, meso- and macro-social structures in building a sense of social security in relation to several important spheres of human life — interpersonal relations, economic life, professional life and health — has been shown in many sociological reports'.[13]

For a more comprehensive understanding of the role of the family and the mediation of economic processes within it, it is necessary to refer to the work of Max Weber. By systematising the issues of economy and household management, Weber helped highlight the fact that the family can legitimately be seen as the primary economic entity and, at the same time, as an institution that indirectly influences the functioning of the economy as a whole.

The first major point Weber makes is that household management is a socially mediated process and, therefore, not something purely individual that takes place in self-imposed isolation from the community. A reference to this is made by Bożena Klimczak, who writes,

> Economics proceeds in social life. Economics does not deal with the kind of activity that involves the solitary production of goods by a solitary individual. Although the case of Robinson Crusoe was once considered, it is not individuals like him, but people bound to each other by the numerous relationships necessary for the production and distribution of goods, that are the focus of economics.[14]

Weber's approach distinguishes between economically *oriented* action and economic action. He states that 'an action is called "economically oriented" when its intentional sense is to take care of the necessity of useful services'[15] and when these actions '(a) are directed principally towards other aims, but in its course take

13 Kotlarska-Michalska, 2004, p. 190; cf. also Balcerzak-Paradowska, 2006, p. 54.
14 Klimczak, 2006, p. 17.
15 Weber, 2002, p. 43.

account of the 'economic state of affairs' (the subjectively recognised necessity of economic endeavour), or when they (b) are principally oriented in this way, but use direct violence as a means of achieving its goals'.[16] On the other hand, management, which is the sphere of the realisation of economic activities, is the ' peaceful economic use of the right of disposal, which is oriented ma i n l y economically'.[17] In Weber's terms, this includes the fact that 'the modern wage-earning economy, and thus its starting point, cannot be primarily "consumption demands" and their "satisfaction". It should include that, on the one hand … useful benefits are desired and, on the other hand – which also applies to a pure, by now completely primitive, needs-satisfying economy – the fact that this desire is attempted to be satisfied precisely by the fact of (even if still primitive and traditionally established) looking after one another'.[18]

In the context of our considerations, this means that such a concept of economics accommodates both a system of economic organisations (associations) acting purposefully and rationally (i.e. in an institutionalised and planned manner),[19] and those that manage themselves as communities, which includes the family.[20] Weber's position is confirmed by Stanisław Kozyr-Kowalski, who states that Weber distinguished between a wage-earning economy and a natural household economy precisely because of the focus on income generation.[21]

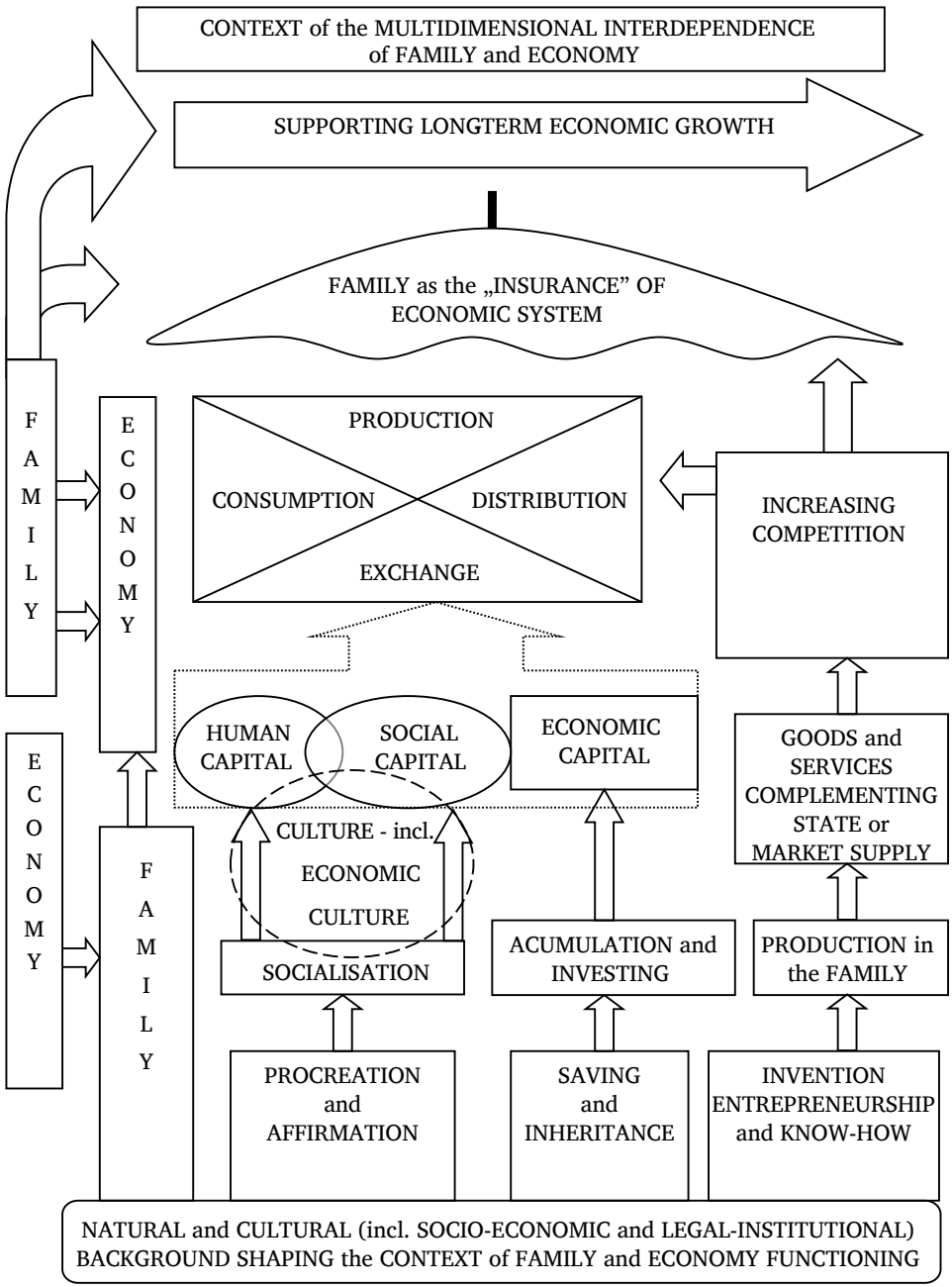
In the context of Weber's classification, it is worth emphasising that the family is both an entity that carries out economic activities and one that undertakes economically oriented activities. When it comes to the former, the family, understood as 'all communities oriented towards the satisfaction of all kinds of needs',[22] is economically active only to the extent that is necessary because of the relationship between needs and goods.[23]

It seems reasonable to assume, based on the above considerations, that the economy and the family are two spheres that interpenetrate without being oppositional or mutually exclusive. However, there is no doubt that priority should be given to the family, which in various ways, enables and conditions the functioning of the economic system.

This assumption is exemplified in Figure 1, which presents all the issues and phenomena that are discussed in this chapter.

16 Weber, 2002, p. 44.
17 Weber, 2002, p. 44; cf. also Weber, 2002, p. 261.
18 Weber, 2002, pp. 43–44.
19 Weber, 2002, p. 43.
20 Cf Weber, 2002, p. 262; cf. Polanyi, 2010, pp. 66–67.
21 Cf. Kozyr-Kowalski, 1984, p. 74.
22 Weber, 2002, p. 262.
23 Cf. Weber, 2002, p. 262.

Figure 1. Context of the multidimensional interdependence of family and economy[24]



24 Source: Based on Michalski, 2014a, p. 199.

4. Family as the primary economic unit – production, consumption, final distribution, exchange, and accumulation

In the past two decades, there appears to be a growing awareness of the economic role of the family as an entity that is not solely and exclusively involved in consumption. One economist who has made an important contribution to this change is Gary S. Becker, who has repeatedly addressed family issues in his research. One of Becker's works, co-authored with Guity N. Becker, states that services and goods produced within the family can account for up to 40% of GDP.[25] Becker and Becker demonstrate very aptly the essential link between the economy and the family: in their book *The Economics of Life*, they conclude that,

families and other households are in fact small factories that, even in the most developed countries, produce many valuable services and goods. They raise children, prepare meals and provide shelter. They care for sick family members, provide care for the elderly, nurture them and perform many other useful tasks.[26]

The arguments presented and referred to in this section together form an illustration of how the family actually fulfils the role of the primary economic agent. The aim, therefore, in the search for the genesis of the economy, is to point out the clues that lead precisely to this social group, which is still sometimes overlooked in discussions of the problems of economic development.

4.1. Production and consumption

The first point to discuss is that, as a consequence of the creation of each new family, another household is created, which is clearly a managing entity. This is described by Patrick F. Fagan, who comments that 'each marriage creates a new household, an independent economic unit that generates income, spends, saves and invests. The vast majority of these new households give birth to children and transform these – largely self-centred – beings into responsible adults, helping to provide the next generation of human capital for the economy'.[27]

This idea is also confirmed by Jan Szczepański, who reminds us that the functioning of families has a significant impact on the economy. According to Szczepański,

> the family is an economic unit, its household is an element of the market, the economic decisions of millions of families contribute to the course of economic life as

25 Cf. Becker and Becker, 2006, p. 168.
26 Cf. Becker and Becker, 2006, p. 167.
27 Fagan, 2010, p. 136.

> much as the macroeconomic decisions of planning institutions, and it is obvious that no too wide a gap can arise between macroeconomic decisions.[28]

It seems that this insufficient awareness of the economic dimension of family functioning may be due to the fact that family life is primarily associated with issues regarding marital and parental relations, as well as those related to upbringing or education. Consequently, it seems necessary to highlight this economic dimension and, at the same time, the importance of the family if we expect social and economic policies to be realistic, adequate, and optimal.

As noted earlier, the theme that regularly emerges when dealing with the economy and the family is consumption. This phenomenon is very accurately diagnosed by Nancy Folbre when she writes that 'conventional macroeconomic theory treats the household as a consumption unit. Businesses are the only real productive entities. Government simply redistributes resources'.[29] This is, of course, a fundamental error that unfortunately continues to affect the way economists around the world are educated and think. It also affects the manner in which economic policies are designed and implemented time and again. As a result, as Stefano Zamagni notes, the family is treated only as 'one of the cost generators in the public budget, not as a strategic resource for society as well'.[30]

When it comes to consumption, it is worth recalling existing studies that show that the family is, in terms of both consumption activity and production activity, a unique entity in its efficiency in optimising costs and maximising utility. This seems particularly important in view of the increasing focus on sustainability and the minimisation of the negative human impact on the environment in recent years. John Ermisch provides very valuable insights in this regard, as well as grounds for the claim that it is the family – which he calls the '*familia oeconomica*' – that should be considered the basic unit of analysis in the economic sciences, instead of the over-individualised and alienated 'economic man' (i.e. *homo oeconomicus*).[31]

Ermisch provides an analysis of the activities carried out on a daily basis in the household, which he refers to as a 'small factory'.[32] This 'factory' generates the so-called 'household product',[33] which is the result of combining the time and labour of family members with the purchase of goods and services on the market. In this context, Ermisch poses the question of whether, given the maximisation of a household's production, its productivity will depend on the number of people involved and the nature of the work performed. To this end, he analyses two separate situations – first, that of a person focusing on paid work outside the home, and second, that of a person devoting themselves to unpaid work at home – concluding that the value

28 Szczepański, 1970, p. 304.
29 Folbre, 2010, p. 12; cf. Esping-Andersen, 2010, p. 51.
30 Zamagni, 2003, p. 230.
31 Cf. Ermisch, 1993, p. 353.
32 Cf. Ermisch, 1993, pp. 353–54.
33 Cf. Ermisch, 1993, pp. 353–54.

of the 'household product' is the same in both situations. In contrast, the situation would be different if these individuals decided to cooperate or exchange as then each of them could achieve a higher 'household product' because both would have a comparative advantage, resulting in a mutual benefit from the exchange.[34] As a result, two people who undertake household interaction would achieve higher total productivity combined.

In this regard, it is also worth referring to the category of *prosumption*, first proposed by Alvin Toffler in 1980 in his book *The Third Wave*.[35] The term, which was coined from the words 'production' and 'consumption', refers to situations in which these two types of activity are involved in the overall activity of a person or group. Prosumption is a very relevant term for this mode of economy, which dominated in the early days of human development. It was only later, as Toffler states, that 'the industrial revolution drove a wedge between the two functions and separated them, introducing a division between producers and consumers'.[36]

At the same time, the category of prosumption fits perfectly into the description of the processes that, in economic terms, take place within the family and its household, and which Toffler very accurately refers to as the 'invisible economy'[37]. Its result, in turn, is 'invisible wealth', which is not registered within calculations of the GDP. This fact prompts Toffler, together with his wife Heidi Toffler in their jointly written book *Revolutionary Wealth*, to refer to GDP as 'gross deceptive product'.[38]

In the area of economics, this problem already exists, although thus far, the interest in it is seemingly still marginal. An economist who can undoubtedly be described as a pioneer in this respect is Becker, who, by the 1980s, had already pointed out the importance of the daily economic activities within family households. As early as 1981, Becker, a Nobel Prize laureate in Economic Sciences, wrote,

> Even if altruism were confined to the family, it would still influence the allocation of a considerable proportion of all resources. Families in all societies, including modern market-oriented societies, are responsible for a large proportion of economic activity – half or more – because they generate most of the consumption, education, health, and other human capital in their members. If I am correct that altruism dominates family behaviour to the same extent that selfishness dominates market transactions, then one must conclude that altruism is far more important in economic life than is commonly recognised.[39]

It is noteworthy at this point to comment a little more extensively on the altruism referred to in Becker's statements. This altruism relates to the question of

34 Cf. Ermisch, 1993, p. 354.
35 Toffler, 1986; cf. Michalski, 2015.
36 Toffler, 1986, p. 310.
37 Toffler, 1986, p. 310.
38 Toffler and Toffler, 2007, p. 197.
39 Becker, 1993, p. 303.

the motivation for economic action, which in classical and neoclassical economics is most often regarded as self-interest. However, self-interest is not a category that can adequately explain economic behaviour within the family. This is precisely because the dominant regulator of most actions in the family is *altruism*, an essential component of love between family members. It is worth asking, then, whether placing the two motivations in opposition to each other, as is often done, really promotes the effectiveness of economic research. Unfortunately, it does not seem to do so, which could go some way to explaining the absence of the family as an important determinant of socio-economic development in contemporary economic policies. In this regard, we should mention the opinion of Philip H. Wicksteed, who, in the first half of the 20th century, wrote that not only is altruism not in conflict with economic activity but that the spheres of economic and non-economic relations intertwine.[40]

To return to the question of the economic activity of the family, we will revisit Becker, who, in an article entitled 'Domestic work: the missing piece of the economic pie', describes families and households as small factories,[41] writing,

> On a continuous basis, regardless of the worldwide level of development, they are the ones who, by undertaking the activities of raising children, caring for them, taking care of the sick and other family members, execute work that results in a range of essential goods and services.

In this way, as Becker points out, the total productivity of individual countries is generally more substantial than what is reported by the still dominant and most widely used tools of economic statistics.[42] However, this economic contribution of households still proves to be relevant, despite the fact that some of the economic activities originally carried out within the family are now carried out by formalised economic agents within the market.[43] As early as 1981, Becker wrote,

> Families in all societies, including modern market-oriented societies, are responsible for a large proportion of economic activity – half or more – because they generate most of the consumption, education, health, and other human capital in their members.[44]

At the same time, Italian economist Zamagni pointed out that 'the family has always been the largest provider of social services (*welfare*)'.[45] Following the same pattern, Danish sociologist Gøsta Esping-Andersen emphasised,

40 Wicksteed, 1933, p. 194.
41 Cf. Becker and Becker, 2006, p. 167.
42 Cf. Wicksteed, 1933, p. 194.
43 Cf. Mueller, 2002, pp. 2–3.
44 Becker, 1993, p. 303.
45 Zamagni, 2003, p. 237.

> Welfare state researchers often mistakenly assume that the modern welfare state has taken over the welfare responsibilities of families. However, if we take a closer look at the post-war decades, we find that this assumption is fundamentally wrong for all states, and if modern welfare states are the point of reference, it is wrong for most of them.[46]

Researchers who have, in recent years, also recognised the importance of the absence of unpaid domestic work in economic statistics include Joseph E. Stiglitz, Amartya Sen, and Jean-Paul Fitoussi. These researchers engaged in a discussion on alternative indicators to GDP in a joint report in which they point out that 'many services, provided by households for themselves, are not included in official measures of income and production, although they are an important aspect of economic activity'.[47] Another researcher, Stein Ringen, notes that the wealth created through household labour is equivalent to that produced within the market. This leads to the conclusion that, thanks to the unpaid domestic labour realised mostly within families, the material standard of living is in fact twice as high.[48]

To return to the category of 'prosumption', it is also necessary to address the issue of consumption, to which the second part of this term refers. As already noted, it is this process that families and households are most often associated with in economics. Although it might be partially true, this notion mostly overlooks an essential aspect related to consumption, an aspect that seems to be particularly relevant nowadays, when great importance is attached to minimising environmental impact and seeking savings in the use of energy and natural resources. Here, I refer to studies that show that, in this respect, the family is proving to be an extremely efficient agent and, at the same time, has great potential for optimising this process. In this regard, the structure of the family also becomes important.[49]

First, it is important to note – following the steps of Ermisch – the so-called beneficial potential of *joint consumption economies*. When many of a family's goods – for example, furniture, household appliances, clothes, or toys – are used by family members living together, they can satisfy the needs of not just one, but several people. In such a situation, these goods function as public goods.[50] Ermisch adds that, on the one hand, this sharing of resources could encourage the expansion of household size, while, on the other, this trend will be inhibited by internal transaction costs and the need for privacy.[51] Ringen also expresses his opinion in this regard, confirming that families with children are sometimes perceived as 'market inefficient'. This view is supposed to be justified by the fact that parents devote a certain amount of time to unpaid work – above all, raising and caring for their offspring – instead of

46 Esping-Andersen, 2010, pp. 72–73.
47 Stiglitz, Sen and Fitoussi, 2009, p. 14.
48 Cf. Ringen, 1997.
49 Cf. Calvi et al., 2020.
50 Ermisch, 1993, p. 354.
51 Cf. Ermisch, p. 355; cf. Ermisch, footnote 1, p. 355.

remunerative activity on the job market. However, apart from the fact that raising children creates crucial human capital for the economy (as will be discussed later), these family households statistically use resources more efficiently. This is due to the fact that, with their larger size, their members report on average fewer needs than those living in households without children.[52] This provides legitimate grounds to claim that the family is the entity managing itself in such a way as to foster sustainable development.[53]

4.2. Final distribution

Another important aspect of the economic process that is not associated with the family in modern economics is the distribution of goods and services. Much attention is paid to this aspect, if only in the context of the redistribution largely carried out by the state, which, for example, interferes with the allocation of income derived from factors of production among citizens by means of the tax system or transfers. In the field of economics, John D. Mueller reminds us that the distribution of wealth also takes place within the family.[54] The distribution of wealth carried out in the family, referred to by Mueller as 'final distribution', takes place differently than in a formalised economy because it is not a transaction undertaken according to the criterion of utility. It is worth adding, given the universality of family life, that we are dealing with a phenomenon that takes place every day and in every place. This means that the omission of 'final distribution' would significantly impoverish any economic theory and, as a result, cause it to lose its analytical and predictive potential as it would overlook an important aspect of economic reality.

A closer look at the nature of this distribution highlights a crucial aspect mentioned by Mueller, as well as by Maria S. Aguirre, which confirms a fundamental characteristic of economic activity in the family. Namely, that the exclusive motive for economic activity is not self-interest, and that is clearly evident in the family, where the acquisition of goods is aimed at transferring them and not selling them to another person, as is the case with parents who, out of love, take care of their children's needs.[55] The implication here is that relationships are not transactions as the other person is not a means to an end, but an end in itself. Meanwhile, it seems that in the dominant current of political economy, which is firmly grounded in neoclassical economics, there is still a kind of dogma of the image of a human being created in the image and likeness of *homo oeconomicus*, who, in a nutshell, is focused on maximising his utility and functions as an individualised agent, in a sense alienated from the community. The reasoning against such a vision of man is, as Aguirre points out, that the aim of human action is not always, after all, to maximise utility

52 Cf. Ringen, 1996, p. 431; cf. Kwiecień, 2023.
53 Cf. Michalski, 2014; cf. Michalski, 2016, pp. 205–214.
54 Cf. Mueller 2010, pp. 213–216.
55 Cf. Aguirre, 2006, p. 446.

but also – when the aim is to satisfy another person's need, as is common within the relationships between family members – to reduce or renounce it.[56]

In this manner, the category of 'final distribution' draws attention to the element of the economic process that is absent from both classical and neoclassical economic theory (see Table 1). In addition, the awareness that, ultimately, the person benefiting from the earnings or profits made is not exclusively the person who has earned them but that these earnings or profits are often the object of sharing with other people vanishes from the horizon of analysis and reflection on the economy.[57] Furthermore, this phenomenon can be conducted not necessarily only according to the rules governing transactions but also according to the logic of giving, based on the above-mentioned altruistic motivation.

Table 1. Distribution, consumption, production, and exchange [58]

Economic process aspect / **Economic theory approach**	**Distribution**	**Consumption**	**Production**	**Exchange**
Scholastic	yes	yes	yes	yes
Classical	*no*	*no*	yes	yes
Neoclassical	*no*	yes	yes	yes
Neoscholastic	yes	yes	yes	yes

4.3. Exchange and accumulation

A topic worthy of attention that is linked to the family's impact on the economy is capital accumulation, which should undoubtedly be considered an important condition for the development of the economy.[59] It also seems particularly relevant today, when the financing of economic investments is most often associated with the formalised institutions of the banking system. It appears, however, that the accumulation and transfer of economic resources within the family – a kind of exchange that often extends over time between generations – results in the intergenerational transfer of capital, whether through mutual gifts or inheritance.[60] This accumulation

56 Cf. Aguirre, 2006, p. 445.
57 Cf. Mueller, 2002, p. 18.
58 Source: Based on Mueller, 2010.
59 Cf. Sułkowski, 2004, p. 45; cf. also Perrot and Martin-Fugier, 1999, p. 123.
60 Cf. Ehrlich and Lui, 1998, p. 390; cf. also Habermas, 2007, p. 128.

and transfer of resources play an important role in terms of the initiation of economic ventures and the continuity of the economic system. This is one of the important dimensions of generational interdependence,[61] which takes place with different intensity, in different directions,[62] and at different stages of family development. At the same time, accumulation clearly shows that the family is also an entity that carries out an exchange of goods and services on an ongoing basis that does not follow the rules of the market.

Based on the process of the accumulation of resources, both material and financial, it is clear that the family and the nature of the relationships within it create a naturally supportive context that Carl Menger described as,

> … the transfer of wealth from the older members of the family to the ownership of the younger ones takes place not as a result of monetary compensation, but as a result of affection. The family, with its specific economic relations, is thus a key factor in the stability of economic relations between people.[63]

The conviction that it is not self-interest but family love that is the main motive for saving can also be found in the work of Alfred Marshall, one of the classics of economics.[64] At the same time, this conviction has been corroborated by recent studies that have shown a correlation between marital status and affluence.[65] One of the multiple facets of the family's ability to accumulate capital is also the potential associated with the creation of new businesses. In a vast number of cases, the origins of new businesses lie precisely in the economic activities initiated at the outset and carried out within the family and household environment.[66] In the context of accumulation and the question of guaranteeing resources to ensure the continuity of the economy, it is worth noting one more dimension of the role of the family in the reproduction of the overall socio-economic order. This dimension is the case of the accumulation and reproduction of capital, particularly financial capital. In discussions on the prospects for economic development, it is sometimes possible to discover the assumption that demographic processes, and more specifically the particularly intensified depopulation processes taking place in many countries today, will not affect the potential and efficiency of economic systems in the future. This is explained, for example, by the fact that technological progress and the increasing efficiency of work organisation will be able to maintain productivity, production levels, and living standards at the same time. It turns out, however, that the mere availability of raw materials and technology, or even capital stocks, will not be a sufficient guarantee of prosperity and abundance in a dozen or more years. In this respect, it is necessary

61 Cf., e.g., Hrynkiewicz, Witkowski, and Potrykowska, 2018.
62 Cf. Michalski, 2014, p. 69.
63 Menger, 2007, p. 232.
64 Cf. Marshall, 1907, pp. 227, 236.
65 Cf. Grinstein-Weiss, Zhan, and Sherraden, 2006.
66 Relationships Foundation, 2009,, p. 31.

to ensure the reproduction of the population, as pointed out by Stanisław Fel, who observes,

> [F]rom the economy's perspective, especially that of consumer goods, it is impossible to secure the future in the sense of saving by stockpiling resources. This can solely be achieved by securing factors of production for the future. Capital, in the sense of the tools of production, is obtained through investment, while the human factor and labour can be secured through the raising of successors.[67]

5. The family – the factory of human and social capital and the transmission belt of economic culture

In addition to the material resources that are of importance to the economy, attention should be given to human and social capitals, which are proving to have increasingly significant relevance in today's economic theory and policies. The links between human and social capitals and the family are very unambiguously documented. Among the numerous authors that have commented on this issue, it is worth recalling, for example, Becker, who stated that 'no discussion of human capital can ignore the influence of the family on the state of knowledge, skills, values, and habits in children'.[68] Also of note is Giza-Poleszczuk, according to whom 'the family supplies the market with people: it is the sole and most important producer of human capital',[69] as well as Fagan, cited earlier. Regarding social capital, it is worth referring to James Coleman, who defined 'social capital' as 'the set of resources rooted in family relationships and in the social organisation of a community that are useful in the cognitive or social development of the child',[70] and Robert Putnam, who argued that the family is the most basic form of 'social capital' and that as the bonds within it become loosened, social decapitalisation is taking place.[71]

This viewpoint is also confirmed by Francis Fukuyama, who considers the family to be the basic unit of social interaction, as it is within this unit that parents cooperate in terms of procreation and the care and socialisation of their children. It is also relevant to mention a creative adaptation of social capital theory, very specifically related to the family, which is of particular interest to us here: the concept of 'family social capital', defined by the Polish economist Jan Jacek Sztaudynger. This concept represents a cognitively interesting attempt to demonstrate the relationship between

67 Fel, 2007, p. 101.
68 Becker, 1993, p. 21.
69 Giza-Poleszczuk, 2005, p. 200.
70 Coleman, 1990, cited in Fukuyama, 2000, p. 42.
71 Cf. Putnam, 2023, p. 6.

the quality of family ties and economic growth. A proposal for measuring this category is the study of the ratio of divorces to marriages.[72] 'Family social capital' (or 'family capital') is defined here as 'the bonds between family members that enable them to cooperate and work together and, at the same time, are not in conflict with the interests of society. These ties are manifested in attitudes of respect, trust, love, interest, care, assistance and concern for family members'.[73]

It is worth taking a moment to place the aforementioned types of capital in the broader context of the sphere of economic culture, the reproduction and transmission of which also take place to a large extent within the family. This means that the daily involvement of parents in the level of care, upbringing, and socialisation of the younger generation transmits and sustains what could be described as the immaterial infrastructure of the economic system, namely, economic culture. Following Peter L. Berger, we will define it here as 'the socio-cultural context of economic activity and the functioning of economic institutions'.[74] It is worth adding that its importance, which is nowadays increasingly recognised, in the context of the unprecedented development of capitalist economies as a result of the so-called capitalist revolution was convincingly described by Berger.

An important and necessary caveat, which is confirmed in the research and literature, must be made here, namely, that the influence of the family on economic culture, and at the same time on the human and social capital generated within it, can be twofold. Values, norms, and attitudes derived from the family can either support and favour, or weaken and hinder, the desired quality of economic activity and, consequently, the achievement of efficiency and development in this respect. In the case of a negative impact, for example, we can speak of the so-called phenomenon of 'amoral familism',[75] which has been described by Fukuyama, among others, as 'the impact of family values on economic life paints a very complex and contradictory picture: in some societies, overly strong families inhibit the development of modern economic organisations while in others, excessive weakness prevents the creation of even basic social structures'.[76]

This means that the family should not be treated as an automatic 'catalyst' for positive economic outcomes, but it should be kept in mind that these outcomes ultimately depend on its condition, form, structure, and the nature of the relationships within it. This issue is clearly signalled, among others, by publications that attempt to show the consequences of the breakdown of marriages and families. Among them, it is worth mentioning the reports 'The taxpayer costs of divorce and

72 Cf. Sztaudynger, 2009, p. 191.

73 Cf. Sztaudynger, 2009, p. 194. It also appears that on the basis of an econometric model constructed in this way, it is reasonable to argue that marriage collapse has a slowing effect on economic growth. Cf. p. 204.

74 Berger, 1995, p. 20.

75 Cf. Sułkowski, 2004, pp. 49–57; cf. Fukuyama, 1997, pp. 120–122. Fukuyama also examines the question of the development and sustainability of family businesses. Cf. pp. 90–95.

76 Cf. Fukuyama, 1997, p. 83.

unwed childbearing' (USA), 'Counting the cost of family failure' (UK), and 'Costs of family breakdown and marriages in Poland' (*Koszty rozpadu rodzin i małżeństw w Polsce*, Poland), which reveal that family disintegration and marriage have very concrete consequences and measurable costs that are borne by society as a whole.[77] In this chapter, when we mention the multidimensional impact of the family, we are making the assumption that it acts functionally and, therefore, by its actions, supports the required socio-economic development, which is the case in the majority of instances.

In the context of the aforementioned socialisation impact of the family, as a result of which human and social capital is generated and economic culture is transmitted, it is worth recalling an observation made by Guido Tabellini. Italian economist Tabellini confirms the fundamental role of the family in that, despite the historical changes whereby economic activity has increasingly shifted from households and household workshops to manufacturers and factories, it is still an economically important actor.[78] Tabellini highlights that the transmission of a particular ethos, which is a component of the culture that influences the economy, is primarily the domain of the family. He notes that although social conventions are sometimes subject to sudden modifications, the beliefs and values that dominate a community tend to be characterised by stability and permanence. They may, of course, be subject to change, but this change happens gradually – not over the course of a few years, but rather over entire generations. According to Tabellini, 'not only are normative values acquired early in life and form the core of an individual's personality, but also learning from experience cannot logically be used to modify one's moral beliefs. Hence, it is more likely that values are transmitted vertically from one generation to the next, largely within the family, than horizontally among unrelated individuals.'[79]

Returning once again to human capital, the importance of which for economic development now seems unquestionable, it is worth mentioning (in addition to Becker, who did a great deal to popularise the concept) what Marshall wrote at the beginning of the 20th century:

> The most valuable of all capitals is the one invested in human beings; and the most valuable part of this capital is the result of the mother's care and influence, so long as she retains her tender and unselfish instincts, which have not been blunted by the effort and burden of unfeminine labour. This directs our attention to another aspect of the rule already noted, that in calculating the cost of producing effective work one must often take the family as our unit. Be that as it may, we cannot treat the cost of obtaining efficient individuals as a separate problem; it must be treated as part of the wider problem of the cost of obtaining efficient individuals including the role of

77 Cf. Scafidi, 2008; cf. Ashcroft, 2016; cf. Michalski and Furman (eds.), 2021.
78 Cf. Berger, 1976, p. 401; Szlendak, 2010, p. 334.
79 Cf. Tabellini, 2008, p. 260; cf. Michalski 2014.

> women who are fitted to make their homes happy, and to bring up children who are strong in body and mind, truthful and tidy, noble and brave.[80]

This quotation explains succinctly why, without the essential work done by parents in families, the economy would have no human capital. This makes it all the more necessary today to remind ourselves that members of society are able, at a certain age, to take on certain social and professional roles largely because they have been prepared for this beforehand. The supremacy of the family in this respect means that it is the family, as Zamagni states, that is 'the first source of positive social influences, i.e. effects that benefit the whole community'.[81] In justifying how the family has a positive impact on society, Zamagni first emphasises the procreative function, through which successive generations are born, conditioning the continuity of the economy. In turn, he draws attention to ensuring the material security of the individual – and minimising the risks associated with this area – through the ability to balance the distribution of income within the family, thus ensuring solidarity and so-called social cushioning. This ensures that the possible consequences of individual failures or crises, such as unemployment or illness, are not so severe for the individual. In this way, the family provides what can be likened to an 'insurance policy' against the problems of not being able to meet certain needs independently in the market area. In this context, it is relevant to recall the aforementioned potential of the family to combine income from the paid work of some members with the resources generated or previously accumulated within the household (e.g. through unpaid domestic work, inheritance, or savings) and redistributed among its members. In doing so, income gaps and disparities are minimised, resulting in greater social cohesion, which is proving to be important for development in various ways.[82] Zamagni also confirms the essential role of the family in the creation of human capital, as well as pointing out its vital importance from the perspective of consumption in terms of correcting and coordinating the demands of the members of the family which 'acts as a filter between the individual and the market in terms of consumer choices'.[83] This seems significant, if only in terms of the consumption activities of the youngest generation, which, on the one hand, is increasingly being treated as an attractive target group and, on the other, are unable to optimally analyse the consequences of their consumer decisions due to their objective immaturity.

80 Marshall, 1907, p. 564.
81 Zamagni, 2003, p. 230.
82 Cf. Zamagni, 2003, p. 231.
83 Cf., p. 232. This implies the importance of the socialisation mechanism as one of the regulators of ethical behaviour in economic life, as discussed by Danuta Walczak-Duraj. Walczak-Duraj, 2002, pp. 266–269.

6. Family – the foundation of the economy: summary

It is no coincidence that the family is referred to as the basic cell of society. This also proves to be true in the economic dimension of the functioning of society. This chapter brings together knowledge that makes it possible to describe the family not only as the oldest and most basic economic unit but also as the area where various elements are generated that together determine the functioning of society and the economy. Although much has been written and said about the family, in economic terms, it seems that this basic social group is still not seen as a key determinant of the prosperity of entire communities and states, which is understood much more broadly than material well-being.

Perhaps this is partly because the family, while it may give the impression of being a simple-structured entity, incorporates a broad spectrum of issues and phenomena that present several research challenges. This was pointed out by one of the main Polish researchers on the family, Zbigniew Tyszka, who stated that,

> the family, despite its small size – in comparison with many other social structures – constitutes an extremely complicated object of research. Within it, we encounter a conglomerate of sociological, economic, cultural, psychological, psychosocial, pedagogical and biosexual phenomena. Numerous important axiological, moral, moral and legal problems are also connected with its functioning.[84]

Regardless of these challenges, there is no doubt that the family is a significant co-creator of society and, at the same time, a condition for the functioning of the economy. Consequently, more research is needed in this area. This is necessary, on the one hand, for economic theory to maintain adequate and reality-consistent assumptions and, on the other hand, for social and economic policies to take into account the fundamental role of the family which, notwithstanding the historical or geographical context, has been, is, and will continue to be the essential foundation of the economy.

84 Tyszka, 1980, p. 11.

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Chapter 5

The Background of Population Decline

Barnabás Lenkovics

Abstract

This chapter endeavours to explore, or at least initiate and inspire exploration into, the underlying causes of *population decline* observable in the so-called 'Western' and 'developed' world, attempting to look beyond aspects of law and jurisprudence. This is approached with a holistic perspective that also takes into account the results of other scientific disciplines. The chapter touches upon the 'global paradox' wherein the developing and impoverished parts of the world struggle with the challenges of *overpopulation*. The chapter perceives a universal (shared and European) *crisis of values* as the principal cause of population decline. Exploring the scope of these issues, it elaborates on the processes of *secularisation* and, indeed, *desacralisation* that have dismantled the sanctity of marriage and the commitment to childbearing, eroded the family as a *community of love*, and subsequently degraded fundamental values represented by the family, such as loyalty, trust, solidarity, altruism, gratitude, and respect. The chapter also engages with the power of *faith and love*, the value represented by these concepts, and the relationship between faith and science, giving attention to each idea proportional to its significance for the subject. It explores the Christian 'good human project' as a civilisational value, as well as its precursor, the idealised human archetype of the *virtuous person* and the *good and caring patriarch* (known as the 'good farmer' in Hungarian civil law). Contrastingly, it investigates the complications arising from the *incursion of dominance*, including systems of dominance related to private property, as well as non-ownership systems. The chapter discusses the *replacement of female dominance with male dominance* and the possibility of a redistribution of roles and the subsequent cooperative accord. It proposes that the resolution to the demographic crisis could be found in the creation of a *civilisation of love*, which indispensably requires a rearrangement of current *value priorities* and

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the promotion of *happiness research* as a new scientific field. Meanwhile, it views the revolution and apparatus of sexuality as one of the false paths of *selfish individualism*. Freedom must be protected from distortion into licentiousness, and fundamental rights (and core values) must be safeguarded against *abuses* by the legal system.

Keywords: Population decline; overpopulation; holistic perspective; crisis of values; community of love; good human project; phenomenon of dominance; civilisation of love; happiness.

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1. Introduction

In addition to our many modern crises (climate crisis, mass migration, global pandemics, the threat of world war), all of Europe – including, notably, the developed and wealthy countries of Western Europe – are now also faced with a *demographic crisis*. There is more demand for coffins than cradles: more people are dying than are being born. The reason for this is, to use a coldly objective phrase, a *lack of social reproduction*. A gap in birth and death rates causes a society's population to decline. In the long run, this will lead to the extinction of the race of humans constituting the society in question. This extinction also implies the slow decay of affected national cultures, as well as of European (Western) civilisation as a whole. Numerous books have been published on the topic, although none have entered the spotlight of media, politics, or society, as if this issue was merely the least significant of the many severe crises facing the world today.[1] In reality, however, it may be the most critical. Moreover, not only do all of these crises end up amplifying each other, but it is quite possible that they are all triggered by the very same causes.

In the history of Europe – much like in the history of the world and of humanity – a number of great civilisations have perished (e.g. Ancient Greece and the Roman Empire), giving rise to the scientific discipline of *civilisation and empire research*. It would behove us to learn from history – the greatest practical teacher of all – and to avoid repeating the same mistakes. Looking at the fraternal war between Russia and Ukraine, however, and observing its escalation, the inadequate and insufficient response of the European Union, the USA, and the UN, and the drift towards the third 'nuclear world war' threatening the extermination of all humanity, may suggest that perhaps Hegel was right after all: 'History teaches us that man learns nothing from history'. It would be high time to finally refute this well-known opinion, otherwise, humanity will forever remain a hotbed of violence, aggression, and war. This reminds me of that 'most despondent creation' of Hungarian literature, Mihály Vörösmarty's poem titled *On Mankind*: 'Man pains the Earth. Beyond the spate / of years of war and

1 Pokol, 2011; Murray, 2018.

peace, / the curses of fraternal hate / upon her brow increase. / And should we think he'll learn in time, / he plots an even viler crime: / from dragon's teeth will spring his budding grain: / All hope is vain! All hope is vain!' Yet we must have hope because *anomie*, the state of total hopelessness, is a severe *mental disorder* on both the individual and societal levels; it is a state of being in which living, having children, giving birth, and being born are all pointless. I believe that there is hope (being the central of the three – *faith, hope, and love* – between faith and love), but more on this later.

If we view the unborn population solely as missing labour, then we can of course replace them either by permitting illegal immigration or by deliberately encouraging legal migrants to settle in a particular country. However, without integration and assimilation, this type of 'social reproduction' can save neither the host nation's culture, nor the European civilisation permitting it. The reason being, that it is evident that social reproduction is a much richer and more complex concept and process than simply replacing labour (*human power*). Its primary (core) condition is, of course, having a sufficient number of births, which in turn naturally (or rather, biologically) requires a sufficient number of heterosexual marriages, a willingness to have children, and a readiness to create new families. The birth of every child is also, in a way, the 'birth' of a new *mother* and a *father*, as well as two *grandmothers* and two *grandfathers*, together forming a family community. A declining birthrate is also a decline in *motherhood*, *fatherhood*, and *families*. Thus, it also matters what kinds of marriages and families we are discussing. A traditional (natural) marriage between a woman and a man creates a *unit* capable of biological reproduction, allowing these two people to form a *couple* for the rest of their lives. Their child will be born as a result of a union of their gametes and gene pools: this new human will be a reproduction of the *parent couple*, and will later, after a long and laborious *socialisation* (educational, nurturing) process, also serve as a reproduction of the society he or she is born into, as well as its material and intellectual (mental, cultural) values. Ideally, there should be no 'broken links' in this causal chain, but in reality, we see weaknesses and breaks in several of these links. To continue our journey, we need to fix the faulty links, then replace and tighten the chain. To properly address the demographic crisis in a broad interconnected system, we need to uncover the causes of the crisis (or rather, of the multiple simultaneous crises) and apply a targeted 'treatment'. A proper treatment first requires an accurate diagnosis. Unfortunately, lawyers are not doctors, and certainly not specialists. Still, they are able to 'convene' a *council* of demographers, sociologists, psychologists, biologists, human ecologists, geologists, theologists, economists, geneticists, historians, and philosophers, and then try to synchronise their opinions (diagnoses). Finally, with appropriate caution and wisdom, they can engage in *social engineering*, translating the final report and the recommended therapy into the language of law. That said, it is important not to undertake an impossible task, unless there is a compelling reason to do so. I believe that the (potential) demise of society, national culture, and (Christian) European civilisation is such a compelling reason. Therefore, in this chapter, I attempt the seemingly impossible task of comprehensively exploring the background of the demographic crisis.

2. A global paradox

Currently, there are two simultaneous *demographic* crises in the world. One is *population decline*: this is the crisis we are currently experiencing and is characterised by a lack of social reproduction. The other is the exact opposite, *overpopulation*: this occurs when societies exceed the socio-economic and environmental carrying capacities of their natural environment. Konrad Lorenz considered overpopulation to be one of the eight deadly sins of civilised humanity.[2] It is a *global paradox* that underpopulation is prevalent in developed, wealthy, Euro-Atlantic *Western* civilisations with Judeo-Christian roots, while overpopulation predominantly affects poorer, developing non-Christian countries and continents (Africa, Asia, and the Middle and Far East). In general, overpopulation is indeed the greater concern as it also relates to the issue of the 'ecological footprint', that is, the lifestyle of the current generation of humans destroying the prospects of future generations. According to noted Hungarian biologist Vilmos Csányi, the Earth is only capable of supporting 2.5 billion people at average European living standards, not 8 billion.[3] To put it in stark terms, the extinction of the human population would be directly beneficial to the Earth, but likely only temporarily if overpopulation continues unchecked, or even if it is merely slowed and not reversed. Drastic legislative restrictions on birth rates (e.g. China's one-child policy) cannot be considered permanent solutions; they merely postpone the issue, which fundamentally stems from the growth-driven economy, in other words, the constant forced expansion (or rather, *deliberate increase*) of production and consumption — in short, *profit-seeking*. It would be more important to restrict these mechanisms than the number of births. However, liberal dogma often obstructs efficient governmental interventions in the 'free-market' economy and its market relationships. Some *ecologist* scientists have already devised proposals for *non-growth-based development* paradigms, using *happiness indices* for comparison instead of indicators of national income and gross national product, but these ideas have not, as of yet, achieved widespread use. I hope that it will not take an *apocalyptic climate catastrophe* or a *nuclear world war* to lend momentum to the concept of environmental, economic, political, and social sustainability. We are already aware of what we should be doing, but out of habit, or due to advertising and marketing pressures, we continue to do the wrong thing. Similarly, the vast majority of young people would prefer to live in a happy marriage and have a large family (they understand what they should be doing); yet, they do not marry (or do so too late) and end up only having one child instead of three. Their *hierarchy* of values is good in theory but poorly realised in practice. Accordingly, more attention should be paid to fundamental values and their hierarchy, and to the desired state of happiness. This applies to individuals just as much as to the state and society as a whole.

2 Lorenz, 1988, pp. 18–20.
3 Csányi, 2015.

3. Core values – guiding principles

Every adult with proper discernment to manage their affairs and live a self-aware life also has fundamental principles by which they live their life, set their goals, and choose the path leading to those goals. In addition, they will use the appropriate tools and methods for asserting their interests without violating their principles. In good marriages, spouses will similarly have common principles and values around which they organise their shared marital lives. This is also true for families, with the family members passing down and retaining the core values of their ancestors. Individuals pass down their *personal*, *marital*, and *familial* values, keeping *tradition* alive; in short, this involves the transmission of proven, tried-and-true values from generation to generation. This sense of tradition encompasses a respect for not just abstract values but also for parents, grandparents, and ancestors. The values of a society or nation are composed of the organising principles of family life, written into law as a constitutional value system, the system of the most fundamental communal guiding principles. This does not merely include principles of law, the constitution, or human rights; rather, it also allows us to derive the society's moral and legal values from the habits of its members' everyday lives, as well as from moral norms, religious commands, philosophies, scientific conclusions, culture, historical experiential knowledge, common beliefs, and ideals.

Károly Szladits spoke in great detail of the *general cultural ideals of humanity*,[4] which can be applied to the *correct interpretation* of written laws. Thus, there is an almost bewilderingly abundant supply of sources whence values can be derived. The real difficulty arises in the criteria used for the selection and compilation of values based on said criteria, as well as the inflation, devaluation, and possibly contradictory interpretations of the selected values. The main selection criterion could be the following: we consider a value to be something that *serves the good of the people*. However, this definition would immediately provoke heated debates in mass society and mass democracy and in our world of global infocommunications. Everyone will have different opinions on what serves the good of whom. As we live in a profit-oriented world, we could also use the criterion of *what people can profit from*, but this is also highly debatable as most of the profits could go to very few people, with only scraps remaining ('trickling down') for the others. We could also apply an exclusionary selection criterion: anything that has *previously failed* in the course of social development or anything that has caused human tragedies and, therefore, has a *negative evaluation* attached to it *cannot be considered a value*. But what exactly is failure, and how extensive would a tragedy have to be to qualify? Moreover, how many people would have to evaluate this negatively, how negative would their evaluation have to be, and who would be doing the evaluation?

As an example, let us examine the ideas of marriage, having children, and founding a family. Monogamous marriage between a man and a woman may have

4 Szladits, 1941, p. 158.

developed very early as a result of natural evolutionary development, even before the agricultural revolution, and would have later also perfectly met the needs of private property, settlement, and farming. In fact, Pope Benedict XVI was convinced that *monotheism and monogamy* were two sides of the same coin and were in perfect harmony with each other in terms of *exclusivity and permanency*.[5] This explains why the Bible and the Catholic Church considered marriage a *sacrament* and deemed it *indissoluble*. Children born from such a marriage were considered a *gift* from God and a *blessing* for the parents. However, *secularisation* – the separation of state and church – put an end to this 'high valuation' with the introduction of *civil marriage*. The number and rate of divorces started to rise sharply, whereas the number of marriages and children decreased. Thus began a decline in the reproductive role played by marriage and family. In lieu of marriage, more and more people opted for loose and temporary, 'alternative' forms of cohabitation and transient relationships as couples or partners; extended 'scheduled' *polygamy* and *promiscuity* became common. With the devaluation of marriage, childbearing, and the traditional family model, their ancillary values – *fidelity, unconditional trust, selfless support, mercy, and self-sacrificing love* – also lost their value. As these marital and familial values are also common core values, their decline also resulted in a weakening of their regulatory effect on society. J. B. Peterson[6] describes this scenario in even starker terms: 'When basic axioms of faith are challenged, the foundation shakes and the walls crumble'. The consequence of this is the aforementioned *anomie*: individuals (and eventually masses) losing their sense of purpose, searching aimlessly for meaning, and losing hope, all of which eventually results in serious mental disorders (e.g. depression, panic disorders). In the absence of solid core values, an increasing number of people feel that they must use immoral means to have a chance of achieving adequate living conditions and a tolerable quality of life. We see more and more unusual, and even extreme, lifestyles and behaviours, with a marked increase in the number of riots, often without the people participating in them even knowing who or what they are fighting against, or why. The end result is often *burnout syndrome*, a complex of burnout symptoms, accompanied by physical, emotional, and mental exhaustion.

Sadly, many examples similar to the fading of marital and family values can also be found in regards to fundamental freedoms, human rights, the values of democracy, and the rule of law: freedom of opinion and speech versus political correctness, freedom of the press and media versus fake news and manipulation, freedom of conscience and religion versus secularisation and desacralisation, and so on. Every (previously absolute) value is open to questioning and its strictures can be loosened, opening it up to *erosion* (and make no mistake, this 'erosion' of values is as dangerous as that of fertile soil). What is more, many deem our existing values as harmful, unnecessary constraints only serving to restrict the expansion of individual freedoms. Core values do indeed have a restrictive role, but they should be seen as

5 Pope Benedict XVI, (2005) p. 10, s. 11.
6 Peterson, 2021, p. 131.

a *protective barrier* (like at the edge of a cliff) or a *guiderail* (like along highways). This protective role and function can be derived from the virtue of *moderation* or the fundamental legal requirement of *intended purpose* (the prohibition against abuse). All of this aims to ensure that *liberty* is not distorted into *libertine* behaviours, self-destructive dependency, or the violation of other people's freedom and dignity. This system of values is also a *framework of values*, much like the boundaries of a sports field. The game can be freely played within the boundaries, but still only with strict adherence to the rules and the principle of *fair play*. Similarly, the exercise of fundamental freedoms, human rights, and statutory civil rights also demands a minimum requirement of formal *legality*, but beyond that, decency, adherence to moral principles (*fair play*), the exercise of rights in accordance with their *intended purpose*, and respect for the inviolable civil and fundamental rights of others are also expected. For instance, freedom of speech cannot extend to the defamation or humiliation of others, the incitement of hatred, or calling for violence. Freedom of religion or atheism cannot include the right to blaspheme or to commit violent acts against other people's faith, religion, or church. Likewise, the right to assemble can only be practiced in a peaceful manner. If these rights are too often exercised in an immoral and improper manner, the entire value system collapses. According to Peterson,[7] 'Under such circumstances, chaos emerges. … It is our destiny to transform chaos into order. … [M]aking what is – and what was – clear and fully comprehended can only protect us'.

4. The loss of common European values

Member State and European Union politicians often like to refer to 'common European values' without ever specifying a single one. Even when they do manage to mention one, it is never the sanctity of heterosexual marriage, nor childbearing or the family, but rather transgenderism or the rule of law. Without specifics, these 'values' are just as empty and meaningless as most other abstract legal concepts. When trying to affirm or refute something by referring to it as a general, abstract concept, it is always necessary to *clearly, plainly, and unambiguously* specify what we are talking about. Specific assertions, facts, or refutations can be debated or explained, and these types of debates can end in consensus; these types of explanations can be accepted. Without this constraint, however, general statements can become an offensive tool, usable as a weapon against anyone. General concepts becoming dogma are particularly dangerous: they exempt their followers from conscious thought and pre-emptively exclude any possibility of debate. It is no coincidence, therefore, that

7 Peterson, 2021, p. 259.

Lorenz also considered the creation of dogmas[8] to be one of the eight deadly sins of civilised humanity. When enforced on the masses, dogmas can be a veritable *weapon of mass destruction*. However, before they become such tools of mass destruction, the ordinary effect of dogmas striving for unquestioned dominance is *value destruction*, acting retroactively ('of the past let us wipe the slate clean'). This is, in fact, the *tyranny* of certain new values – or rather, dogmas presumed to be new and valuable – to the detriment of proven, but old (traditional) values.

Despite our understanding of the pitfalls of fascism and communism, such dogmatic ideas and movements striving for unquestioned dominance are still being 'mass produced' today and have caused a *general crisis and chaos of value*. Many, including Pál Bolberitz,[9] believe that the main cause of this is *secularisation*, a process that began in the 17th century and is still ongoing today. Some 'side effects' of the institutional separation of church and state were the spread of *atheism*, which eventually led to bloody totalitarian dictatorships in the 20th century, as well as the derogation (degradation, erosion) and neglect of Christian faith and value systems. One – but far from the only – example of this would be the *desacralisation*, or 'becoming profane', of the 'sanctity of marriage'. In addition, secularisation was also cited as the reason why the European Court of Human Rights in Strasbourg removed crosses from the classrooms of Italian state schools, and the removal of the cross – the symbol of Christlike (self-sacrificing) love – from the streets, squares, and public spaces of French cities is still ongoing. On the other hand, this very same court considers the use of the red star – the symbol of communism – to be protected by the freedom of speech and expression. Europe is tired of these contradictions. It is exhausted and burned out; its soul is severely damaged. According to Douglas Murray,[10] 'Such visible failure and a sense of lost moorings can be – for the individual as for society – not only a cause for concern but an exhausting emotional process. Reason and *rationalism* had led men to do the most unreasonable and irrational things. It had been just another system used by men to control other men'.

5. Unholy – inhuman

The desacralised, unholy individual can become increasingly empty, devoid of values, 'godless, and thus, *inhuman* and unloving. Sadly, it is possible that this process will continue, repeat, or worsen throughout the 21st century. To quote Sándor Gallai,[11]

8 Lorenz, 1988, p. 75, p. 81.
9 Bolberitz, 2014, pp. 58–62.
10 Murray, 2018, p. 217.
11 Gallai, 2019, p. 16.

> Europe has the highest ratio of secular population in the world, and it is the only continent where the population is declining. It appears that secularisation and the advancement of a materialistic worldview have dangerously devalued families, and have reduced fertility to such an extent that the net population loss of European societies has become alarming.

According to Béla Pokol, this will lead to *demographic collapse*.[12] Douglas Murray[13] believes this to be the '*strange death of Europe*':

> Yet despite having lost our story we are still here. And we still live among the actual debris of that faith. Few people among the crowds flowing through Paris flock to Notre-Dame to pray, but yet it is there. [Here I should interject that they are currently rebuilding the cathedral, because it burned down!] Westminster Abbey and Cologne Cathedral may still dominate the places in which they stand, and though they have ceased to be places of pilgrimage they still signify something, though we do not know exactly what. …. And of course the glorious debris we live among is not only physical but also moral and imaginative.

As a lawyer, the question that immediately occurred to me was: does this 'glorious debris' of our faith (still) exist in law? And as a lawyer trained to favour precise definitions, I immediately challenge myself: but we do not even know what faith is! Finally, as a wise elder, I riposte: well, do we even know what law is? What we do know, however, is the common thread between those two concepts, which is that both of them aim to *improve* and *elevate* humankind, and aid the progression of civilisation in its journey towards *humane humanity*. Both share this common goal, which makes it all the more unfortunate if they end up hindering each other in achieving this goal, or if they fight each other instead of cooperating to achieve it. Another common thread is that both faith and law are systems of core values, behavioural norms, and organising principles, although their methods are different: the norms of faith are written in the human heart and attempt to act from *within* (to encourage good deeds and deter evil), whereas the law operates from *without*, using the coercive power of the government. *Good morals* – which also encompass Christian morals– provide a solid foundation and framework for law, from wherein morals and law can *work together*. Considering the current flood of constitutional fundamental rights and human rights, does the Christian value system of faith and morals still exist, or is law (once again) only preoccupied with its own values (which are actually scavenged from various places, as we have seen), as were the atheistic National Socialist or communist systems of law? After the fall of atheistic communism in our country, in the current age of selfish individualism, the following questions should keep arising in every individual again and again: Do I have faith?

12 Pokol, 2011, p. 185.
13 Murray, 2018, p. 210.

Do I have fundamental principles and values that can guide me in controlling my fate and living my life? The same questions arise on a societal level: do we, and can we, still have common fundamental values and guidelines to help us organise and operate our society and our state, which are slowly but surely disintegrating due to the selfishness of the individual? Universal fundamental freedoms and human rights lay claim to this role, and even to the faith placed in them, but what is it that motivated these *universal* norms, what is their historical background? These needed to be assembled from elements of the *moral world order*, *world religions*, *human culture*, and *civilisation*.

In the Fundamental Law of Hungary, the National Avowal gives us more precise (European and Hungarian) answers to our questions:

> Declaration 1: 'We are proud that our king Saint Stephen built the Hungarian State on solid ground and made our country a part of *Christian Europe* one thousand years ago'.
> Declaration 12: 'We hold that the family and the nation constitute the principal framework of our coexistence, and that our fundamental cohesive values are loyalty, faith and love'.

However, these now constitutional values give rise to further questions. Is Europe still Christian? Is this foundation still solid? Is there still loyalty in marriage, in the family, in the nation? Do we still have faith, do we still believe, do we dare to believe in anything, in anyone? Do we still know what it means to love someone, or what the power of love is capable of? Hungary's Fundamental Law presumes the affirmative to these questions. Even its very name expresses that it wishes to be the *foundation* of Hungarians' personal lives and their communal (familial, societal) coexistence. This foundation and its values are what need to be strengthened and solidified; this individual and communal value system is what needs to be protected so that these values can strengthen, fortify, and even protect us, if need be.

6. The power of faith

Faith is a resource: it is a helpful tool for becoming a person, a good person, and, in fact, a progressively better person. It is also a guarantee of this improvement persevering over time. To live a life of humanity and dignity, one must have faith; there must be a *benevolent God* whose image one bears, to whom one compares oneself, and to whose judgement one wants to measure up. Someone who sets standards for one's life, words, and actions, especially when the individual is incapable of practising the virtue of *temperance (temperantia)*. According to Csányi,[14] most human

14 Csányi, 2018, pp. 137–139.

ethologists agree that 'the capacity for religious faith may have played an essential evolutionary role in the formation of communities', and, I would add, in the ability for humans to become *humane*.

> Among the genes regulating a group of neurotransmitters affecting human motivation and pleasure, one, the VMA2 gene, was found to occur much more frequently in those inclined towards spirituality than in those less so inclined. The media latched onto these findings and began talking about the 'God gene'. … [N]aturally, this gene does not actually provide any evidence whatsoever concerning the existence or non-existence of God. All this shows is that there are *genetic reasons* for certain individuals to be more receptive to the concept of a transcendent world that is beyond them and surpasses them.

The human constructive urge drives us to 'build religion from spirituality'. How do others respond to this?

> Naturally, when a religious community is formed, with its own rules, ideas, and unique culture, even those less inclined toward spirituality can be swept up by this culture, resulting in the establishment of a religion operating with well-formed, social technologies.

In this sense, it could be said in Europe, even the atheists are Christian. In addition, one thing we know from the survivors of concentration and forced labour camps is that there are two things that can help people survive these horrors: *faith* and *family*.

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7. Faith and science

It is well understood that God's existence can be neither proven nor disproven using scientific methods. But why would we even want to? The world's most famous geneticist, Francis S. Collins, responsible for the mapping of the human genome, is an advocate of peaceful collaboration between faith and science:[15]

> The scientific and spiritual worldviews both have much to offer. Both provide differing but complementary ways of answering the greatest of the world's questions, and both can coexist happily within the mind of an intellectually inquisitive person living in the twenty-first century. … [S]cience alone is not enough to answer all the important questions.

15 Collins, 2018, pp. 246–253.

Even Albert Einstein saw the poverty of a purely naturalistic worldview. Choosing his words carefully, he wrote, '*Science without religion is lame, religion without science is blind*'. But what exactly does 'comfortably coexist' mean here?

> I hope you are reassured by the potential for harmony between faith and science. … [S]cience can be a form of worship. Indeed, believers should seek to be in the forefront among those chasing after new knowledge. Science is not threatened by God; it is enhanced. God is most certainly not threatened by science. … [L]et us together seek to reclaim the solid ground of an intellectually and spiritually satisfying synthesis of all great truths.

Let us now project the viewpoints of the human ethologist and the medical geneticist onto state and legal science. This is particularly justified as legal professionals tend to envision themselves as *engineers* of society, constructors *par excellence* of state and social circumstances (and relationships between people). Yet none among them have ever constructed a perfect state, a perfect society (let alone a perfect human), a flawless economy, or a perfect system of law. And why not? This is because the constructors themselves are imperfect, as are the people who create and operate the state and society. A religious command may prescribe '*be perfect, therefore, as your heavenly Father is perfect*', or '*be blameless and pure, so you may appear before the judgment seat of Christ*', but these only *obligate one to strive*, just as one should aspire to goodness, to avoid evil, to overcome evil with good, and so on. The explanation is that the strictness of religious moral law and the love that forgives foreseeable law-breaking both act to steer the believer onto the path of God. That which is above humanity (faith and love) elevates humanity and brings it closer to God; that which is beneath humanity ('predatory' evil and violence) drags humanity downwards, towards the world of instinct. When treading on a slippery slope, it is easier to slide down than to climb up. The path of faith and love is difficult, but straight, and leads upwards. As a pilgrim's song says, 'The path of God is a certain path, Only in Him I trust, His holy Word is a well of pure water, Which refreshes and nourishes me' (Hungarian Evangelical Hymnbook 352). Accordingly, both the separation of state and church and the relationship, alliance, and collaboration between science and religion need to be thoroughly reconsidered in order to adequately protect and realise our fundamental values. This is especially true for issues relating to marriage, childbearing, and family, as fundamental values deserving of special protections, as well as the ancillary values they carry (loyalty, trust, selflessness, gratitude, solidarity, sacrificial love, mutual respect, etc.). As an example, consider the indissolubility of marriage: even if the Catholic Church does not abandon this dogma, it could take the (factual) number and rate of divorces into consideration and further relax its stance on annulment.

8. The good human project

It is believed that life on Earth began approximately 4 billion (4,000 million!) years ago. If calculated from the emergence of the first proto-humans, the process of becoming human began 'merely' 2.5 million years ago and is, in fact, an ongoing process, never to be completed. In my opinion, the process of *becoming human*, as a consequence of both natural and societal evolutionary development, has shifted slightly and has acquired an additional adjective: it is now about *becoming a good person*. This adjective is always subject to *enhancement*; every person can always strive to become *better and better*, and even the *best ever*, but *absolute goodness* can never be attained. The concept of goodness is also in a continual state of change, undergoing enrichment, purification, and increasing in value. The state of *being a good person* can also be described using various synonymous terms: a *humane, honourable, upright, genuine, kind, amiable, friendly, just,* and *virtuous* person is also a *good* person. This process of becoming a 'multifaceted' good person is the *project*, plan, and duty of every single individual. We all possess both the rights and the responsibilities inherent to this process. Success in the *good human project* is only possible if that is included in each individual's *personal life plan* and if every family is committed to supporting this life plan as well. Good people create good families, which, in turn, create good societies and states. This works on a reciprocal basis. Good states are also trying (striving) to make their citizens good people. As Aristotle penned,[16] 'Political science spends most of its pains on making the citizens to be of a certain character, viz. good and capable of noble acts. … [B]ecause the good man sees the truth in each class of things, being as it were the norm and measure of them'. Goodness and virtue, therefore, are the prime attributes of a good person, and are accompanied by justice, rationality, moderation, and the other core virtues.

It is not merely the state-structured society that attempts to shape its citizens into good (better) people: every smaller community within a society endeavours to do the same for the benefit of both the individual and the community. This is especially and primarily true for the family, which is the smallest *natural and fundamental* unit of society. Who could enumerate or say how many times advice and exhortations are uttered in a marriage or family, or how many times one is asked to be a good husband, father, wife, mother, child, boy, girl, sibling, grandparent, or grandchild? All this is accomplished not through coercion or force but through the *power of love*. That power, in turn, is nourished by the *power of faith*. Loving each other to deliver people from evil and to bring them into good. Loving the other person, either because they are a good person, or to shape them into a good person. Bibó István considered the good human project to be the *main purpose of*

16 Aristotle, 1987, p. 23, p. 67.

European societal development.[17] In Europe, Christianity, 'shaped the ideals of the good sovereign, the good noble, the good knight, the good citizen, and the good farmer. … [T]hat each could both provide and receive something, and so to allow even those of low social status a modicum of self-respect. … This worldview could not only justify the existing power differentials and the glaring contradictions of the available social opportunities, but also made it possible to form a critique or – to use an anachronistic phrase – a revolutionary critique of these powers'. In addition to its key values of *brotherhood and loving thy neighbour*, the Christian system adopted two human ideals from the preceding European culture: the ideal of the *virtuous man* from Greek philosophy and the ideal of the *bonus et diligens pater familias* from Roman civil law. In Hungarian civil law, the *good farmer* became the equivalent of the *good* and caring patriarch, whom Károly Szadits called both a '*decent man*' and a '*good man*'.[18] These three human ideals – the virtuous man, the good and caring patriarch, and the good man (the image of God) – have become closely interconnected during the development of European society, and all three remain relevant today. Greek philosophy, Roman civil law, and Christian morality are the *value sources* and foundational pillars of the European Union. 'It would be wise to accept this as historical fact, to take it more seriously than we have so far, and to apply it in practice as well'[19] because *it is good to be good*, particularly if the goodness comes from love.

9. Masterless nature, fatherless society

According to scholars that adopt an evolutionary perspective, the most substantial lifestyle transformation *(paradigm shift)* in the history of humanity was the *Neolithic* or *Agricultural Revolution* approximately 10,000 to 12,000 years ago. Until then, humanity had been leading a migratory hunter-gatherer lifestyle and existed in harmony with nature, living off the land. Humanity claimed (or, in Biblical terms, subjugated) a portion of nature, settling down, cultivating plants, domesticating animals, fabricating tools and other useful objects, constructing houses, stables, and other economic structures, and dedicating considerable time to labour and study. Humans cultivated the land, but in turn, the land cultivated them. They tamed animals and were themselves tamed. They entered the natural cycle, respecting and adhering to its laws. They learned to manage resources sustainably. What they took from nature, they replenished, keeping their resources in balance. They considered their labour and the produced goods as their own property, expected others

17 Bibó, 1986, p. 31, p. 44.
18 Szladits, 1941, p. 365.
19 Lenkovics, 2022, p. 238.

to respect this, and similarly respected the property of other people. They involved their family in their work, with family members assisting one another in larger tasks. The husband performed what work was needed in the outside world, while the wife managed household chores. They exchanged or sold surplus produce and livestock, acquiring what they lacked through trade with others. They learned how to handle money, storing cash reserves just as they did reserves of food, fodder, and firewood, in order to provide year-round for their family. They raised their children to work, sharing their knowledge and bequeathing their estate and wealth to them. They had paternal and marital authority because they earned it. The family farm was, thus, the basic unit of the civil economic system. Good farmers had good reputations, earned respect from others, and had well-deserved (property and labour-based) human dignity and self-respect. They had rights but also burdens, obligations, and risks. Nevertheless, they were free, dependent on no one and nothing, except the laws of nature.

This model of society and family was what inspired Ágost Pulszky to claim that '[p]rivate property is a necessary consequence and requirement of the development of individual personality'.[20] Similarly, the Hungarian Constitutional Court states that the constitution protects the right to property as the material basis of individual autonomy [64/1993. (XII. 22.) ABh.]. In 1905, Ákos Navratil wrote[21] that socialism could never prevail because it would require changing humanity's 'fundamental economic nature'. Unfortunately, he was mistaken. Socialist nationalisation and forced collectivisation, followed by capitalist industry and industrial-scale agriculture ended up successfully altering, and essentially eliminating, family farms and people's fundamental economic nature. It was replaced by a type of human nature more familiar with *wage labour and consumption*, with the family as the basic unit of consumption. Here, the *paternalistic state* is what provides care for the family, mothers, and children on a *social property* basis, with the *welfare state* providing similar care on a capitalist market economy basis. If social security is guaranteed, there is no longer a need for good farmers, good husbands, or good fathers: life can go on without them. The prevailing 'double income family model' neither requires nor tolerates male dominance, nor, indeed, female dominance. The status of 'single mother' is increasingly seen as acceptable, or even privileged and, thus, encouraged. In wealthy countries, 40–60% of children *grow up without a father*, presenting the growing issue of a *fatherless society*. Psychologists believe that this lack of *paternal authority* and *paternal love* – characterised by *discipline, task-giving, and holding the child responsible* – with children no longer being able to place unconditional *trust* in their father or feel *gratitude* towards them, results in negative long-term effects, the study of which is still in its infancy. What is indisputable is that with the disappearance of good farmers and good fathers, nature has become masterless, and society fatherless.

20 Lenkovics, 2018, p. 303.
21 Navratil, 1905, p. 56.

10. Familial and social solidarity

In ancient human communities, the law on the *mandatory sharing of food* was considered paramount.[22] This law was both a necessary condition and a guarantee for survival. No one hunted an animal, caught a fish, or gathered edible plants merely for their own consumption. Everyone had an *altruism account*, which was kept by the community, and the more instances of 'sharing' could be found in this altruism account, the more valuable one was considered to the community as a person. This was the individual's life insurance: arousing feelings of gratitude and an obligation of reciprocity in others. This remains the measure of a person's *humanity* today: the value of a person is the total amount of gratitude felt towards them by others.

Today, it is not only food but generally all 'goods' that must be shared in the name of *equal opportunity* and *social security*. This is served by large, *institutionalised* social insurance distribution systems, including *public education* institutions that provide free basic education and subsidised secondary and higher education, the *public healthcare* system, the *pension system*, and the *social care and support system*. Due to socialisation, no one feels a sense of gratitude for these anymore. During socialism – operating on a social property basis – this applied to even more aspects of Hungarian society. These aspects included the state and local council *rental housing system* – which represented about 40% of all available housing – as well as the *public education system*, *vacation system*, *cultural support system*, and *public transport* subsidies. With 'social ownership', everyone felt even more *entitled*, owing neither thanks nor gratitude to anyone. The historical consequence of this is what is known as the system of *second-generation* human rights, the International Covenant on Economic, Social and Cultural Rights of the United Nations, which is itself largely a consequence of the rivalry of the 'bipolar world order'. The range and especially the extent of these rights have always varied significantly from country to country, and after the collapse of the socialist pole, they have been in global decline. This decline has resulted in more pushback in the former socialist countries, where the strong *sense of entitlement* and *mass democracy* continues to maintain them, albeit at a lower level.

All of this is noteworthy for us because the extensive system and significant extent of second-generation human rights have relieved and continue to relieve massive burdens from the shoulders of families, as well as from those raising children or providing care for the sick and older adults. From the perspective of the state bearing these burdens, this system could even be seen as a family support system, which could theoretically have encouraged families to have more children. In fact, the exact opposite happened. Childless couples or families with just one child opted to use their private savings gained from public spending to increase their own well-being (spending on larger apartments, foreign vacations, more expensive cars, or entertainment). In the former socialist countries, this was also exacerbated by the

22 Michel and Schaik, 2019, p. 62.

compulsion to close the welfare gap. The lesson from this is that having society and the state support marriage, families, and childbearing can only work if it is done *purposefully, with well-defined conditions, and with appropriate controls*. However, there is currently no consensus on how all of this affects illegal migration, genuine and fake refugees, or global migrants. It should be noted that immense familial solidarity and cooperation is required from the migrants themselves in order to finance their human smuggling operations in the hope of some kind of future return, mainly in the form of social support received from the target country — which, of course, is obviously not intended for that purpose.

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11. Neighbourly solidarity

The history of Europe is principally a *history of war*: wars between countries and peoples, as well as wars fought within them. The most common catalysts for wars have typically been *border disputes*, that is, disagreements about where one country, principality, city, or estate ends and another begins. Fundamentally, of course, these disputes are about the limitations of *dominion* and sovereignty. The pursuit and extension of dominion, over larger territories and more people, is motivated by economic and political *interests*. The zenith – and one hopes, the culmination – of this history was the two horrendous world wars of the 20th century, originating from Europe. The European Union's most significant achievement and merit is that since its inception, there has been no war either among or within its Member States, and no new world war has originated from there. All this is due to the Christian and democratic values of the founding fathers, especially Robert Schuman. *Acts of violence were replaced with gestures of love; the love of weapons was exchanged for the weaponry of love.* It became apparent that hatred begets hatred, meaning that it will keep accumulating in the world, initially manifesting as aggression, then erupting as violence, and eventually degenerating into war. The interminable chain of anger, contempt, scorn, humiliation, degradation, defamation of nations, religious persecution, racial and class hatred, vengeance, retribution, and violent retorsions had to be broken, and indeed the Member States successfully achieved this goal. To do this, they first had to reconcile the varied interests of heavy industry, which is pivotal in wars (the Coal and Steel Community), then extend this reconciliation to the entire economy (the Economic Community), continue with harmonising policies (the European Union), and finally practice shared sovereignty on crucial issues, enabling free movement across borders, and helping the peripheries close the gap. This circle continues to expand with common educational, scientific, cultural, and environmental cooperation. However, forcing further 'unification' (especially 'imperial dreams') cannot be permitted (the current state of affairs has already proved too much for Great Britain!). Europe requires more time, a natural 'gestation period',

for further integration, which must be respected. 'Migration' within the Union (the free flow of labour) from East to West is already in effect, which is advantageous for Western Europe due to the partial replenishment of the populations and labour force of these countries. However, this same process only exacerbates depopulation and its negative consequences in the eastern periphery.

Alongside peace, the other great value provided by European civilisation is *the institutionalisation of social solidarity*. This germinated from the third tenet of the triadic motto of 'liberty, equality, fraternity' – fraternity – and fundamentally originated from the Christian faith. If every person was created by God, no longer a slave but a child of God, then that means every person is a sibling with intrinsic and inalienable dignity, obliged to respect their own humanity, their dignity as a person, and, thus, also the dignity of every other person as well. As emphasised in the opening sentence of the Preamble to the United Nations' Universal Declaration of Human Rights, '… recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'. Article 1 of the Declaration conveys the same content, supplementing it with a universally applicable behavioural norm: 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of *brotherhood*'. Human ethologist Csányi assigns such importance to this sentence that he qualifies it as a '*global thought of the global mind*'.[23] The *spirit of brotherhood (fraternity)* is an easily understandable concept to adherents of any world religion, as well as to non-believers. However, in the language of European Christians, it is named *brotherly love*, extended to all humans as *neighbourly love*. It is the second greatest commandment, after the love of God. *Love your neighbour as yourself.* Respect the human dignity of your human-sibling as your own.

But what does modern psychology have to say about neighbourly love? Erich Fromm puts it like this:[24]

> The most fundamental kind of love, which underlies all types of love, is *brotherly love*. By this I mean the sense of responsibility, care, respect, knowledge of any other human being, the wish to further his life. This is the kind of love the Bible speaks of when it says: Love thy neighbor as thyself. Brotherly love is love for all human beings; it is characterised by its very lack of exclusiveness. If I have developed the capacity for love, then I cannot help loving my brothers. In brotherly love there is the experience of union with all men, of human *solidarity*, of human at-onement. Brotherly love is based on the experience that we all are one. The differences in talents, intelligence, knowledge are negligible in comparison with the identity of the human core common to all men. In order to experience this identity it is necessary to penetrate from the periphery to the core.

23 Csányi, 2018, p. 20.
24 Fromm, 1993, pp. 64–65.

This weighty and meaningful definition helps us better understand the unity between Christ and the church of his followers, the parable of the vine and the branches, the significance of the fruits of active charity and everyday gestures (feeding the hungry, giving water to the thirsty, clothing the naked, taking in the homeless, ministering to the sick, and visiting those imprisoned), as well as the *power* and universal validity of neighbourly love. To actively practice neighbourly love, all we need is to *develop the capacity for love*. To achieve this, however, we need to experience the loving community of a family.

It is clear from Fromm's definition that neighbourly love encompasses *human solidarity*. In addition to freedom and equality from the triadic motto of European enlightenment and citizenship, Article 2 of the Treaty on European Union also emphasises the following values: democracy, the rule of law, justice, solidarity, and equality between women and men. With the experiential knowledge of 40 years of the socialist slogan of 'everyone is equal' behind us, we can better understand the idea of *complementing equality with justice*. However, the idea of exchanging *fraternity* for *solidarity* – especially if this occurs under the aegis of secularisation – is far more controversial. That said, I share the views of János Zlinszky,[25] who argues that 'in the language of Christians, solidarity is *neighbourly love*'. Given that not every person in Europe is a follower of Christ, and there are increasingly many non-believers and even believers who are not Christians, it is reasonable to omit the term 'neighbourly love' from a European Union document, especially since it can be replaced with a synonym. By following the logical path from brotherly spirit, brotherly love, and neighbourly love to human solidarity, we arrive at the same conclusion. Solidarity and communities built in the spirit of solidarity are as vital as food and water. The desire for interpersonal union (love) is just as strong and deeply rooted as hunger and thirst. Even the blindest adherents of *selfish individualism* must take into account the human need to belong to a community, just as atheists must consider the faith of Christians. Thus, it is reasonable to refer to social solidarity in Europe as *neighbourly solidarity*. The primary arenas for education and socialisation towards this ideal are marriage and the family; however, these areas also serve as its advanced educational institutions and universities. The seemingly impossible instructions from Christ – repay with bread, turn the other cheek, overcome evil with good – find their practical application and fieldwork in the family, a *love community*. What works within the familial sphere will likely also function on broader societal scales. Conversely, what fails within the domain of the family might not be worth trying to impose on a grand societal level. Of course, these are merely the most likely outcomes. It is always worth making the attempt.

25 Zlinszky, 2007, p. 20.

12. The incursion of dominance

In marriages, pre-marital relationships (engagements, 'dating') and cohabitation, one of the most prevalent sources of conflict, and often grounds for separation or divorce, is one party's dominance over the other – treating them not as an equal, but as a *subordinate*. To put it in more severe terms, perceiving the other as an *object* instead of a subject: a *non-person*. Fromm cites[26] Max Stirner, who provided an exemplary illustration of 'the bourgeois obsession with property': 'Persons are transformed into things; their relations to each other assume the character of ownership'. This is a clear violation of human dignity. According to the essence of human rights and the protection of core constitutional rights, a person can never be a *legal object*, only a *legal subject* (person). Human dignity is *inviolable*. Special care must be taken to protect it in hierarchical, public authority, and administrative legal relationships, as well as in certain similar relationships pertaining to civil law (labour law, marital and family law, and individuals in schooling, or those residing in homes for children and older adults).

Bibó also observed this 'obsession with property' and the ensuing incursion of dominance, uniquely in connection with 'socialist state property'. When the basic unit of the economy became the *family farm* (including not just agriculture but also small-scale industry and private trade), it became clear that as the owner made strategic and tactical decisions in management, they also ended up deciding the fate and future of the *family*. Typically, this was the man, the *husband and father*, who acted as a caring provider to decide the fate of his wife and children. Ownership and *management* authority also functioned as paternal authority. The only way this would not pose a problem is if the good farmer was also a good husband and father. *Matriarchy* was replaced by *patriarchy*. With the increase in size, concentration, and centralisation of private property and economic units, the degree of proprietary (economic) power likewise increased proportionally, concentrating and becoming centralised in the hands of fewer people, extending over dozens, hundreds, and then thousands of workers. Legal authority *over property* transformed into decision-making authority *over people*. Today, in the era of transnational monopoly capitalism and globalisation, the decisions of corporate leaders affect the destinies of hundreds of thousands or even millions of people, often entire nations. This too is a form of *dominance*, apparent even without a visible empire, conspiracy, or total political dictatorship. However, proprietary (economic) power grew into the most conspicuous example of complete and unlimited *dominance* over people through the merger of socialist *state* property and political *public power*. Hence, Bibó proposed, 'The solution cannot be found in the nationalisation of property, nor necessarily in its collectivisation, but in the *dissolution and humanisation* of property relations'. The fight is, therefore, not

26 Fromm, 1994, p. 75.

against property, but rather against the *phenomenon of dominance over people*, and more recently against the emergence of *global hubs of dominance*.

In seeking the meaning of European societal development, Bibó believed[27] that 'the ever newer incursions of dominance appearing after revolutionary reforms are necessary developments of history, and to struggle against them is in vain; … Nevertheless, a remedy must be found for this state of affairs. The task is not a simple *change of regime*, but the elimination of the *phenomenon of dominance*'. Without this, 'political mass hysteria will become common and extremely dangerous, driving people to the ideology of violence as an ultimate desperate act'. This same idea was articulated in the third declaration of the Preamble to the Universal Declaration of Human Rights: 'Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law'. Tyranny and oppression, subjugation, and dominance can occur not only along an ideological–political–public power axis but, as seen in the introduction to this chapter – from the very beginning of the agricultural revolution – on a family farm basis, within marriages, and within families. Bibó adds that[28] 'with the clear articulation of the programme on social freedom, humanity cannot rest until it finds the correct organisational forms, the *moral impulses* under which this programme of freedom can be realised without the *incursion of dominance*'. Bibó was a true democrat. Even during the communist dictatorship, he was unafraid to say that,

> [M]odern democracy aims at the elimination of the concept of dominance, the phenomenon of dominance. The moral requirement of modern democracy is *equal human dignity*, which means that under the banner of the freedom programme, every person has the right to express their dissatisfaction with the minority governance and their intention to participate in its removal.

Choosing a different minority, however, merely offers a chance – but by no means a guarantee – against the further incursion of dominance. If the incursion of dominance (any type of dominance, whether it stems from the public state authority, capital ownership, or even a civil movement) is humiliating and an affront to dignity, which is not permissible. Thus, the respect for equal human dignity – not just the dignity of others but also the unconditional respect for everyone's own human dignity – must become a *moral impulse*. With this, the prohibition of violating human dignity would become a prohibition against the *incursion of dominance*. This prohibition would, thus, be inscribed as a *principle of natural law* into the 'heart of humanity', becoming an essential part of human nature. Now, in the early 21st century, the incursion of dominance shows itself to be human nature again and again; reversing it would necessitate a paradigm shift. But what would be the opposite of dominance, of

27 Bibó, 1986, p. 93.
28 Bibó, 1986, p. 94.

dominance incursion? Service, self-sacrificing love, solidarity, mutual cooperation, and support. Being humane to one another, being a blessing to one another. Is this possible? As Bibó put it, it has to be, there is no alternative. The battle against the incursion of dominance and the phenomenon of dominance must be waged and won within marriages and families, and then, through families, successfully brought to victory in society as a whole.

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13. Non-proprietorial dominance

The incursion of dominance often rears its head within marriages and families even without an underpinning of ownership, without the one imposing dominance having to possess any property. 'How can people feel like owners of property when they haven't any property to speak of?' Fromm posed in his book *To Have or to Be?*.[29] The answer is somewhat enigmatic: perhaps the greatest enjoyment is not so much in owning material things but in owning living beings. In a patriarchal society, even the most miserable of men in the poorest of classes can be an owner of property – in his relationship with his wife, his children, and his animals, over whom he can feel he is the absolute master. At least for the man in a patriarchal society, having many children is the only way to own persons without needing to work to attain ownership and without capital investment. Considering that the whole burden of childbearing lies with the woman, it can hardly be denied that the production of children in a patriarchal society is a matter of crude exploitation of women. In turn, however, the mothers have their own form of ownership, that of their children when they are small. The circle is endless and vicious: the husband exploits the wife, she exploits the small children, and the adolescent males soon join the older men in exploiting the women, and so on. The male hegemony in a patriarchal order has lasted roughly six or seven millennia and still prevails in the poorest countries or among the poorest classes of society. Emancipation of women, children, and adolescents seems to take place when and to the degree that a society's standard of living rises. Perhaps the only thing I would add is that, in the absence of pension systems, healthcare, and social homes, having a great number of children used to represent – and still does represent – a sort of insurance policy for old age.

As for the enjoyment of dominance over other living beings, Bibó believed that it was caused by the universal human fear of death, or more broadly by fear in general:[30]

> It is another human being who can invoke the greatest fear in me …. If I want to feel powerful and strong, despite the mortal dangers threatening me, despite the fear

29 Fromm, 1994, pp. 74–75.
30 Bibó, 1986, pp. 11–13.

> tormenting me, the most immediate way seems to be by forcing my fellow humans to submit to my will. And in turn, others forcing me to submit is something that can greatly intensify the fear within me. Against this rises the need to be free from the coercion of others.

While this may be the cause of dominance, Bibó himself deems it a false path:[31] 'I can free myself from fear precisely by neither suffering under the oppressive yoke of my fellow human beings, nor holding a fellow human under my own oppressive yoke'. This would certainly be beneficial advice, worth following in every marriage and family. From this and the previous lines of thought, several essential conclusions can be drawn. a) It is the wealthiest countries where the highest level of emancipation, legal equality, and protection of rights for women, children, and youth has been achieved. Presumably, this is because these countries require less paternal and proprietorial dominance for survival, allowing life without existential fear. b) In the world's poorest countries and social strata, 'overpopulation', male dominance, and the subjugation of women (wives and mothers) and children are prevalent. c) With global migration originating from overpopulated countries, the 'population transfer', and the consequent 'civilisation transfer', patriarchal systems and male dominance may yet return to the Western world. d) The total (biological) 'equalisation' of genders fails to resolve this severe issue; on the contrary, it exacerbates it, complicating its solution. e) The solution to the problem is the eradication of the phenomenon of dominance in traditional marriage and family, including a 'redesign' of the male role and a re-distribution of roles without the incursion of dominance.

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14. Players and roles

The *roles played* (or more precisely, the *burdens shared*) within marriages and families between men and women, husbands and wives, fathers and mothers, have undergone enormous changes in the last 100–200 years. We have not yet reached a point of equilibrium, however, and indeed, the pace of change continues to be frantic. These changes are, in part, positive and, in part, negative. The positive aspects include legal equality between women and men, full societal enfranchisement, equality within marriage, and a fairer distribution of duties and burdens. The negatives can be seen when they lead to a war between the sexes, the erasure of the male sex (or both sexes), the biological equalisation of the sexes, and to a complete uniformisation of 'people'. Negative changes can have unforeseeable consequences both for individual personalities (human nature) and for society, potentially causing 'a war of the sexes' or even a 'clash of civilisations'. That said, the

31 Bibó, 1986, p. 12.

positive aspects of these changes need to be stabilised, universalised, and supplemented with further changes.

To evaluate these changes as positive or negative, we must also consider the underlying reasons, the role shifts that have occurred in socio-economic life, and the everyday lives of individuals and families. The *Industrial Revolution* significantly transformed the agrarian nature and structure of the economy. Today, the *family farm* is no longer a fundamental, defining, or formative element of the national economy in the agriculture, industry, or service sectors. Even the *national economy* itself has been integrated into the global economy, which is dominated by the giant companies of transnational monopolistic capitalism. This represents a global *incursion of dominance* on national economies (and also national legal systems, national constitutions, and even human rights). Labour performed on one's own property has been largely replaced by outside labour (wage labour), with external workers labouring on someone else's property, creating a society of *wage labourers*. Men (as husbands and fathers) are no longer the sole providers or heads of families. The 'good and caring patriarch' known from Roman law, and with it the Hungarian *good farmer*, were abstracted into legal concepts and general standards of conduct. Their role in the family needs a thorough reconsideration and redesign.

Similarly, the socio-economic role distribution of women has changed, as has their participation in the division of labour within families and societies. Wage labourer husbands (fathers) never received wages sufficient to support their families (let alone build up savings), which forced women to also integrate into the society of wage labour. In addition, this process was promoted by women's emancipation movements, placing the aspirations of a 'career' and a family in opposition to each other. The model of the *dual-income family* became dominant, in which the woman is as much a provider as the man. However, even their combined income often proves insufficient to provide them with a decent quality of life, once we also consider the costs of child-rearing. Couples end up taking on consumer debts, repaying them together if they can. Alongside women's employment and provision for the family, significantly less time and energy remain for the family, child-rearing, and household management, increasing the demand for men (husbands and fathers) to involve themselves in these areas.

Thus, these significant alterations in external socio-economic and social circumstances reshape the internal relationships between spouses and within families. The change in the division of labour, duties, and burdens between the sexes and in public and all other roles have become new research subjects in several scientific fields, including family law, sociology, psychology, economics, and human ecology. *Men's studies* has even become a subject of research in its own right. *Gender studies* specifically focus on these changes and this area of study. While the word 'sex' denotes *biological sex*, easily and clearly defined, 'gender' denotes *social sex*, which is more complex and variable, dependent on time, space, culture, religion, and upbringing. Biological sex (*male* and *female*) is universally recognised as genetically determined within the natural world, while social concepts of gender, *masculinity* and *femininity*,

are exclusively human social phenomena, dependent on time and place. 'It includes the qualities that characterise our behaviour as a result of changes in social and cultural traditions and roles, which are instilled in us from birth by our environment, and which largely determine our behaviour'.[32]

It is pointless and harmful to blame and condemn the male sex exclusively for all harms suffered by women – even from a historical perspective. This largely explains why men do not wish to form long-term commitments, marry, or have children (become fathers). In an increasingly fatherless society, it would be important to make marriage, family, and having children a more attractive proposition for men, as it was before, but in a different way. 'Once family and dealing with children also become important within the male value system, it will liberate man from worrying exclusively about their workplace and social status. In this spirit, the popular Hungarian slogan 'Change diapers to live a longer life!' should very much be taken to heart by men'.[33] 'The objective of the epidemiological branch of gender studies is to analyse, through objective methods, how the best quality of life, as well as the healthiest and most meaningful ways of living can be ensured for both women and men amidst the new challenges of the 21st century. Consequently, there is currently a greater need for *familism* than for *feminism*'. This is likely the most important issue of our times. It is at least as essential as the social question raised at the end of the 19th century, which, regrettably, Christianity allowed Marxism to answer. Such is the issue of gender today; hence if we leave the matter exclusively to representatives of other interpretations, the consequences will likely be similar. The redesign of the male–female relationship and the strengthening of the family are tasks of paramount importance as they are the natural and fundamental constitutive elements of a society to be rebuilt from small communities, a democratic community without dominance. Since even the smallest community consists of sovereign individuals, it is vital to prevent the further spread of selfish individualism and to alter the *dominating nature* of individuals, the *urge to dominate* others.

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15. Biblical roots

Péter Popper commences his inquiries with the Biblical narrative of creation.

> Then God said, 'Let us make mankind in our image, in our likeness, so that they may rule over the fish in the sea and the birds in the sky, over the livestock and all the wild animals, and over all the creatures that move along the ground'. So God created mankind in his own image, in the image of God he created them; male and female

32 Kopp and Skrabski, 2020, p. 58, p. 69.
33 Kopp and Skrabski, 2020, pp. 62–63.

> he created them. God blessed them and said to them, 'Be fruitful and increase in number; fill the earth and subdue it. Rule over the fish in the sea and the birds in the sky and over every living creature that moves on the ground'. (Genesis 1:26-28). God saw all that he had made, and it was very good. (Genesis 1:31).

In Popper's interpretation,[34]

> Behold the blissful beginning. Man became the lord of the entire created world, of all living beings, except for other people. Man was not given power over his fellow man. Man cannot rule over man. And with this, we have come to Satan's principal temptation of love. Sadly, the motto 'Man is not property!' is not inscribed in human hearts. Satan despises freedom! He despises all forms of freedom, favouring only subjugation, dependency, and slavery. He also despises relationships of freedom, equality, and symmetry.

Humans exercise Biblical authority to rule through the societal and legal institutions of possession and property. The essence of possession is *actual* (physical) *dominance* over the possessed entity, and the essence of property is absolute and exclusive *legal authority* over the subject of property rights. Interpreting these essences broadly according to their own interests, humans have extended their dominion and power over other humans as well. This would explain why 'most deadly conflicts are motivated by acquisition and possession. Strangely enough, it seems that in human relations, the impulses and instincts of acquisition and possession have been humanised the least'. Nevertheless, as Popper writes in *The Scripture: The Old Testament*,[35] 'Power over people is reserved by God for Himself. Therefore … any kind of physical, material, political, spiritual-emotional ownership or exercise of human power over another human is forbidden and blasphemous'. This applies to both male and female dominance within a marriage or a family, but even to parental authority over children, or vice versa! Instead of dominance, the *goal should be unity* between men and women: 'That is why a man leaves his father and mother and is united to his wife, and they become one flesh' (Genesis 2:24). This unity precludes the incursion of dominance over the other party and should benevolently permeate family life and, through it, radiate throughout the entire social community. Even if this would not completely erase the phenomenon of dominance, the currently unbearable oppressive incursion of dominance could be reduced, at least to a tolerable level. Like Bibó, Fromm harbours no illusions:[36]

> With the slow collapse of the old-fashioned, patriarchal type of ownership of persons, wherein will the average and the poorer citizens of the fully developed industrial

34 Popper, 2002, pp. 69–71.
35 Popper, 2004, p. 82.
36 Fromm, 1994, p. 75.

> societies now find fulfilment of their passion for acquiring, keeping, and increasing property? The answer lies in extending the area of ownership to include friends, lovers, health, travel, art objects, God, one's own ego. Persons are transformed into things; their relations to each other assume the character of ownership. 'Individualism', which in its positive sense means liberation from social chains, means, in the negative sense, 'self-ownership', the right – and the duty – to invest one's energy in the success of one's own person. Our ego is the most important object of our property feeling.

However, this negative appraisal is justified only against the type of selfish individualism that prevails at others' expense. Non-selfish, *altruistic individualism* that enriches the value of one's self, enriches one's personality, motivates others, and, thus, promotes a greater degree of freedom and prosperity within the community (the family and the society) is not only tolerable but outright beneficial. Such a development and actualisation of personality is generally a laborious, contentious process, feasible only through much sacrifice and *self-control*. This can also delineate a possible route for diverting the phenomenon of dominance as self-possession in a more positive direction, transforming it into a force for good. So, what is the meaning and the correct interpretation of the Creator's command to 'rule over' the creatures of the Earth in the Book of Genesis? To answer this, three sub-questions must first be addressed: *over what, why, and how should you rule?* Over nature, things, and objects, but never over other people, because they are subjects (persons), not objects! Rule to preserve living nature, to enhance and improve it. Rulers should demonstrate caring, shielding, and protective love towards their subjects. Under such rulership, living nature becomes a *blessing* for humans, and humans also become a blessing for nature and other humans.

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16. A civilisation of love

According to jurisprudential practices, every child has the right to *be part of a family*; to live in a harmonious, peaceful community of love; and to experience parental, fraternal, and grandparental affection. The right to love is, therefore, a fundamental, indeed *the* fundamental human right, a formative force for personality and societal structure; a superhuman power, so to speak. It is not a vacant, contrived abstraction but a communal value grounded in millennia of experiential knowledge, a *generalised ideal* derived from the effectiveness and utility of gestures of love. It is an intrinsic motivational force that could and should be further encouraged and amplified with external support and the power of the law. As love has the capacity to elevate people, it is both understandable and justified that humans have recognised love as a *divine force* and respect it as such. Through love, humans can reach God,

and God can, in turn, reach humans. Love functions reciprocally, as tangible acts, as an abstract concept, and even as a societal organising principle; love is a *win-win* game. Consequently, love *creates peace* between individuals and on a societal level, while its absence or its antithesis (hate) leads to violence and warfare. Thus, love is of the *highest value*, both as a principle for individual living and as a societal organising principle.

For the followers of Christ, the God of the religion of love is himself love incarnate: *Deus caritas est*. This is the title of the first encyclical of the recently deceased Pope Benedict XVI. Thus, where love is present as a fundamental value and a social organising principle within a country's constitution, God will also be present there. Let us, therefore, review this encyclical in greater detail. The Pope took the title, which expresses the essence of Christian faith and religion, from the First Epistle of John: 'God is love. Whoever lives in love lives in God, and God in them' (1 John 4:16). These words declare 'the Christian *image of God* and the resultant *image of humanity* and of *human destiny* with singular clarity'. This remains true despite the word *love* having many different meanings in different languages, or even within a single language.

> We speak of a love of country, a love of one's profession, love between friends, a love of work, love between parents and children, love between siblings and relatives, a love of one's neighbour, and the love of God. Among these diverse meanings, the love of a man and a woman stands out, with an inseparable interplay between the body and the soul, and the promise of enduring happiness. This is understood to be the *archetype* of love, beside which every other form of love pales.

The Greeks called this kind of love *eros*. The love between friends was called *philia*. Christian love was *agapé*. It is this *agapé* that tempers the preceding two types of love, especially *eros*, at times when it degrades rather than uplifts mankind. The Song of Solomon in the Old Testament provides practical guidance for elevation and purification. The love that elevates and purifies *seeks to become definitive* in two senses: exclusivity – 'this one person only' – and also in the sense of 'eternity'. Behold, the *sanctity of monogamous marriage till death do us part*. In this, eros and agapé 'can never be completely separated'. Eros is the ascending, covetous love ever seeking the happiness of the other: caring, self-sacrificing, living for the other. Symbolically, the same love and strong desire permeate the relationship between God and His creation, humankind, as well as between Christ and His Church. This mutual love 'may certainly be called eros, yet it is also totally agapé'; it is a love that forgives, a unity created by love, 'a unity in which both God and man remain themselves and yet become fully one. St. Paul's puts it this way, "He who is united to the Lord becomes one spirit with him"'. (1 Cor 6:17). Similarly, humans become 'whole' in the unity of man and woman. 'That is why a man leaves his father and mother and is united to his wife, and they become one flesh' (Genesis 2:24). Two

important conclusions follow: 'First, *eros, is somehow rooted in man's very nature*. The second: from the standpoint of creation, eros directs man towards marriage, a bond that is unique and definitive. The monogamy of marriage corresponds to the monotheistic image of God'. An increasing number of people – including atheists and those who remarry – believe that both of these concepts (exclusivity and perpetuity) are *fictitious*. However, according to Elemér Hankiss, humans cannot live without fiction.[37] Most human ideals, ideas, and guiding principles are purely fictitious. We know that reality is different, but fiction makes it more manageable for us. Perhaps, fiction is a castle of air, but those can often end up stronger than castles of stone. By aspiring towards and through them, we can become better and more humane individuals.

The *disarming power* of active gestures of love may seem like fiction when contrasted with gestures of violence. Many deem the commands of Jesus to 'turn the other cheek' and 'throw back bread' as unattainable. According to Bibó, this does not mean we should 'passively endure being stoned, but rather that we should find the gesture which arouses shame in the assailant over his own actions'. If we are unable to find such a gesture, 'we have no choice but to defend those entrusted to us to the best of our ability, even using violence as a last resort, if no other means are available'.[38] This would be the case of *counter-violence*, applied in *exceptional cases* of *legitimate defence situations*, as a *last resort*. 'When facing a destructive enemy, it is better to fight than to do nothing. And against an intolerable tyranny, it is better to rebel than to do nothing'. Intolerable tyranny can also exist within marriages and families. The appropriate gesture of love can be most effective at disarming violence within the family, and possibly in a school environment.

There also exists (known) gestures of love that can be effective against a state oppressing its citizens or against a foreign (e.g. colonising) power oppressing the state. Against a colonising power operating through gestures of violence, Mahatma Gandhi successfully – though not without sacrifice – applied gestures of love in the form of nonviolent resistance and non-cooperation. Using the *weapon of love*, he convinced the world and rallied it to his and his country's side, overcoming the much stronger oppressive power. Gandhi learnt much from Jesus; the Christian world could likewise learn much from him:[39]

> Non-violence is therefore in its active form goodwill towards all life. *It is pure love.* I read it in the Hindu scriptures, in the Bible, in the Quran. Non-violence is a perfect state. It is a goal towards which all mankind moves naturally though unconsciously. Man does not become divine when he personifies innocence in himself. Only then does he become truly man. Therefore, though I realise more than ever how far I am

37 Hankiss, 2014, pp. 405–412.
38 Bibó, 1986, pp. 44–45.
39 Gandhi, 1998, pp. 63–64.

> from that goal, for me the Law of complete Love is the law of my being. Each time I fail, my effort shall be all the more determined for my failure.

Gandhi's creed of *pure love*, or the law of complete love, deserves much more attention in international politics and international law; *non-violence* could play a much larger role in preventing and managing conflicts, especially wars. (I will note here that Leo Tolstoy was also an advocate of *peaceful solutions based on love*!) I am convinced that *non-violence* can be extremely effective in preventing and managing marital and familial conflicts, as well as wars. The taming and *humanising* of marriages, families, societies, and the world itself is the most viable path to building a *civilisation of love*. The *law of love* is universally valid, independent of time and space. Love is not the exclusive privilege nor the exclusive obligation of the great world religions and their believers. The law of love is the *supreme moral law and core value* of familial and social life, and is an obligation of all states, whether they be solidary and redistributive, democratic, or social constitutional states. At the centre of the concentric circles of love stands the *family as a community of love*, educating its members to be able to give and receive love, and repay love with gratitude. According to Pope John Paul II,[40] '[t]he family is fundamental to what Pope Paul VI called the "*civilisation of love*", … the family is the *centre and the heart* of the civilisation of love'. Civilisation itself ultimately is nothing but '*the humanisation of the world*'. In the age of globalisation, this means building a distinctive, global system of solidary (loving) institutions, or expanding and developing the specialised institution system of the United Nations, which was designed to perform such functions. This could be served by a *quasi* world government and a *redistributive financial world system* linked to this function (not serving global capital and its profit-seeking, the further enrichment of the increasing number of super-rich global companies, or their owners).

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17. Studying happiness

Every individual's most fervent wish is to be happy. However, the practice of studying happiness as a branch of human sciences is still very new. According to Y. N. Harari,[41] '[s]cholars began to study the history of happiness only a few years ago, and we are still formulating initial hypotheses and searching for appropriate research methods'. 'This is the biggest lacuna in our understanding of history. We had better start filling it'. For instance, by using indicators such as the '*happiness index*' instead of material wealth indicators – gross national product, national income, per

40 Vereb, 2010, p. 174, pp. 194–195.
41 Harari, 2020, pp. 335–352.

capita national wealth – we can affirm the existence of values that are greater and more significant. These values include clean air and drinking water, uncontaminated arable land, nutritious foods, strong familial bonds, dense and sustaining social networks, having children, and so forth. It is no coincidence, then, that this notion originated from Bhutan, one of the poorest countries in the world, materially speaking. In our context, significant attention was given to the study of happiness by Mária Kopp and her husband, Árpád Skrabski. In their book *The Ways and Mazes of the Search for Happiness*,[42] they wrote,

> True happiness, as defined by Aristotle, is not merely a mood or a state, but rather a constant striving. It is our shared values and virtues that differentiate humans from the animal kingdom, and it is also these values which can make us happy, such as wisdom, knowledge, courage, love, humanity, justice, temperance, spirituality, and transcendent experiences. The search for the purpose and meaning of life is the true essence of happiness. If we consider this to be the most important thing, then even if we lose everything (our material goods or our health), we can still live a complete, harmonious, 'healthy' life.

According to this passage, happiness is the *supreme value* in the lives of individual people, and its significance is incalculable. Of course, people do not discard or damage their valuables; on the contrary, they hold them in high regard and safeguard them carefully. As we have seen earlier, the papal encyclical *Deus caritas est* considers the mutual affection, desire, and love between man and woman as such a value. They ascend to pure love, 'offering the promise of happiness' to both parties, their children, and their families. This is the 'archetype of love', beside which every other form of love pales. This is the 'love ever seeking the happiness of the other', which radiates to other members of the family as a community of shared love; parents want happiness for their children, and grandparents want happiness for their grandchildren. The starting point, however – and this can be neither glossed over nor denied – is the instinct for the preservation of the species, the desire between a man and a woman: sexuality. Ever since the 1960s, the world has been in what we might call a *permanent* sexual revolution. Today, this revolution continues to expand in new directions, increasing in momentum. This movement also has its *professional revolutionaries*, who Bibó considered just as much the greatest enemies of democracy as the *professional reactionaries*. Where is the boundary between these two values – love and sexuality – and where are their respective limits? It is worth examining the subject more thoroughly, with a mature, wise, and placid eye.

42 Kopp and Skrabski, 2020, p. 12.

18. The revolution of Eros

Once again, I cite Kopp and Skrabski here:[43]

> Sexuality has the capacity to elevate humanity into the transcendental realm, but it also has the potential to reduce it to a bestial state. This choice is dependent on the quality of the interpersonal relationship between partners. It's not only sexual assault that bestialises the perpetrator, but any act within or outside a relationship where sexuality becomes an end in itself. This elicits disgust in many, who would therefore deem sexuality immoral – although permissible – even within marriage. This is the source of prudery, which has already ruined many relationships. Based on his experiences as a confessor, Catholic theologian professor Tamás Nyíri wrote about the *demon of shame* and the *angel of erotica* [emphasis author's own]. Within a relationship, sexuality can make a person part of the transcendental, divine world, serving as the medium for the full, physical and spiritual union between a woman and a man. It allows one to recognise the transcendental dimensions of the other, sense God's presence in them, and desire to unite with the thus recognised divine being. The Song of Solomon in the Bible and the verses of the mystics use images of sexuality to talk about the union of the soul with God.

Péter Popper[44] expressed similar views in his own writings. The Song of Solomon is 'a compiled collection of songs about love and consummation … How did it ever become a part of the canonised texts? Supposedly Rabbi Akiba was the one who insisted on canonising the Song of Solomon, because he interpreted it as an allegory. The Shulamite represents Israel, the Shepherd is a symbol of God, and love is a metaphor for the mystical attraction driving God and Israel towards each other. Christian interpretation relates these symbols to Christ and the Church' (185). In St. Paul's letter to the Ephesians, we read, 'For this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh. This is a great mystery: but I speak concerning Christ and the church' (Eph. 5:31–32). The longing people have for God and Christ's self-sacrificing love for humans are most vividly described through this metaphor, the strongest desire and union between man and woman.

Csányi also touches on the theological (re)interpretation of sexual desire in his book on St. Teresa of Ávila, titled *The Perfume of Perfection*:[45]

> As an example, we have the beautiful erotic poem of King Solomon, the *Song of Solomon*. It was incorporated into the Old Testament of the Bible, evidently by divine inspiration. This has led to millennia of attempted explanations. Origen, the most

43 Kopp and Skrabski, 2020, p. 158.
44 Popper, 2004, p. 185.
45 Csányi, 2013, pp. 95–96.

> significant early exegete, deemed the Song of Solomon to be erotic only in its words and form; in truth, what matters to the reader is the allegorical meaning, wherein the bridegroom is God and the bride represents initially the Jewish people and later all other nations longing for ultimate redemption. Origen wrote extensive volumes on the allegorical interpretation of the Song of Solomon. Later, those who accepted only the literal interpretation were considered heretics worthy of imprisonment.

According to Csányi, the story reveals the importance society and the church placed on the interpretation of the text. 'This is of course understandable, as society then, like now, rested on a network of interpretations'. The content, purpose, and limits of *modern interpretations* are still hotly debated today. To be certain, let us consider some more opinions.

On this same topic, Hungary's own Nobel Prize-winning scientist Albert Szent-Györgyi wrote:[46]

> Sex and hunger are the strongest appetites in man and therefore evoke the strongest feelings in him. While hunger has often led to war and revolution, sex has not. It has no political import; it is important only ecologically. All the same, it is the strongest driving force in life; without it, of course, life would cease. In sex, the sublime and the vulgar a separated only by a hair's breadth. Christian religions could never find a consistent attitude towards it, making it a sin before marriage and giving it their sanction after marriage. Overlaying it all was the residual feeling that anything having to do with formication was evil – this is the legacy that has been passed down to us by religion. Today, our young people finally seem to be shaking off this anti-natural legacy; perhaps as a result the world will one day soon see a more sensible attitude towards sex.

The sexual revolution began in the 1960s and was largely influenced by two significant scientific advancements: antibiotics and the contraceptive pill. People were liberated from the psychological burden of the fear of sexually transmitted diseases and unwanted pregnancies. This *feeling of liberation* – by extended interpretation – became a symbol in itself: one of liberation from all other religious, moral, legal, traditional, or customary restrictions, prescriptions, expectations, fears, and anxieties. A symbol of *total liberation* from total and non-total dictatorships, powers, and dominions. This feeling of total liberation then extended further – and even more expansively – against marital and familial *commitments*, considering them severe and enduring restrictions on freedom. Many men and women increasingly referred to *childrearing* as a form of voluntary *slavery*, which could be most easily avoided by not having children. This philosophy, of course, would result in them becoming extinct without descendants, and if there are too many such people, it will also cause the extinction of the human race and human society. The question then arises: can one

46 Szent-Györgyi, 1983, pp. 264–265.

be *liberated* from any or all natural laws and human virtues (such as wisdom, insight, temperance, and self-control)? Can one be liberated from the mandates, obligations, prohibitions, and commands of *human dignity* (having been created in the image of God), *humanity*, and *humaneness*: *'do not kill, do not steal, do not lie, do not commit adultery, honour your father and your mother, love your neighbour*'? The answer is obvious: no! Liberation cannot be limitless; freedom cannot be for its own sake. It has human and societal *purposes* that must be respected, thus keeping freedom within bounds. This applies to the *freedom of the angel of erotica*, that is, to *sexual freedom* as well.

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19. Liberty, not libertine

While it might seem simple to delineate the boundaries of sexual freedom in general terms, the issue becomes thornier in the context of specific circumstances and situations. The complexity is heightened by the many nuances on either side of the boundary: affinity, attraction, desire, sexual intercourse, lasciviousness, debauchery, promiscuity, indecency, perversion, licentiousness, (soft and hard) pornography, and so forth. All the while, the Seventh Commandment is simplicity itself: You shall not commit adultery! In his book *The Ten Commandments*, Kálmán Cseri wrote,[47] 'This is where we all feel sin weighing down on us the most severely. If our lives require any kind of reformation and renewal, this is certainly where it would be needed the most. Issues of sexuality, love, marriage, and family are painful for almost everyone. It pains those who have yet to enter into it, those who are fed up with it, those who lack it, and those who have moved beyond it'. According to Cseri, the strict and original interpretation of the commandment is that 'committing adultery actually means to commodify, to sell something'. Nevertheless, even the Bible itself uses it in a much broader sense (sodomy, debauchery, indecency, adultery, etc.). In his Sermon on the Mount, Jesus expands this interpretation even further: 'You have heard that it was said, You shall not commit adultery. But I tell you that anyone who looks at a woman lustfully has already committed adultery with her in his heart' (Matthew 5:27-28). Jesus is, of course, consistent: 'For out of the heart come evil thoughts – murder, adultery, sexual immorality, theft, false testimony, slander' (Matthew 15:19); he wants to eradicate sin at its root. In the sacrament of marriage, all of this is transfigured, and even raw sexual intercourse can transform into a *manifestation of love*. This is even more true of *refined eroticism*, and in fact, by denying the other, these experiences can become a sin.[48] 'Do not deprive each other except perhaps by mutual consent and for a time, so that you may devote

47 Cseri, 1994, p. 157, p. 160.
48 Cseri, 1994, pp. 169–170.

yourselves to prayer. Then come together again' (1 Cor. 7:5). 'Marriage should be honoured by all, and the marriage bed kept pure' (Hebrews 13:4). What this tells us is that everyone must decide personally where the boundary is, and those who are married should decide by mutual agreement. The one thing we can be certain of is that human sexual freedom cannot be the freedom of the instinctive being within, cannot be an end in itself, and cannot be used to objectify one's partner. It is no easy task, but then, neither is becoming and being human.

The commandment of 'You shall not commit adultery' is rightly placed between 'You shall not kill' and 'You shall not steal', encompassing some aspects of both. Of course, it is quite capable of unleashing the demon of shame on its own. Saint Augustine, who had led a licentious life in his youth, was tormented by it even in his older years as a scholar. According to one of his quotations, 'Lord, You advised me a better course though You allowed me a less good'. This might have also been Apostle Paul's *thorn*: 'Therefore, in order to keep me from becoming conceited, I was given a *thorn* in my flesh, a messenger of Satan, to torment me. Three times I pleaded with the Lord to take *it* away from me. But he said to me, "My grace is sufficient for you, for my power is made perfect in weakness". Therefore I will boast all the more gladly about my weaknesses, so that Christ's power may rest on me' (2 Corinthians 12:7–8). Thus, instead of the messenger of Satan, the demon of shame, or the self-tormenting guilt, let us choose and call upon the *angel of eroticism* in our lives, and let us find joy in it. We can even be thankful for it, but without abandoning the humanisation of sexuality, the virtues of moderation, and self-control.

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20. Summary

The prevailing crisis of values intensifies the crisis of (traditional) marriage and family, which, in turn, exacerbates the general crisis of values.

Fundamental freedoms and human rights were originally designed to protect the individual against state overreach and eventually mandated active enforcement by the state. More recently, they have become weapons used by individuals and artificial minorities against the majority and their values, such as marriage and family, as well as against the democracy of the majority.

The family, once a unit of farming and manufacturing, has morphed into a unit of consumption. Welfare states have rendered the provident individual, the good father, and the good farmer redundant, leaving nature 'masterless' and society 'fatherless'.

The mass integration of women into the workforce and wage-earning society has devalued motherhood, disrupted the balance of burden sharing within marriages and families, and overburdened women.

The 'social security' of survival has elevated another strong instinct: the continuation of the species, but only in its pleasure-seeking function, thereby becoming a crucial element of a hedonistic worldview.

Politics, with the media as its ally, has gained excessive powers of manipulation over society, including families, individuals, and particularly children.

Secularisation (the neutralisation and 'de-clericalisation' of the state) and the desacralisation ('desanctification') of people's value systems have, in essence, resulted in the 'devaluation' of society.

The ongoing global migration from overpopulated countries might result not in the replacement of workforces and populations, but rather in population and even civilisation transfers.

Faith adds value to the societal value system and is a natural and renewable resource. The shared goal of both faith and science is the success of the good human project.

Europe serves as a functional role model and example for the world, representing the civilisation of societal solidarity and brotherly love, with the family as its primary building block: a community of love. Everyone, especially children, has a right to live in *harmonious* families.

Our fundamental values are the love between a woman and a man (eros), their unity in marriage (agapé), and the family as a community of love. These, along with their associated values (loyalty, trust, selflessness, gratitude, and respect), are sources of happiness, and their protection is in the overriding interest of children (the future generation).

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21. Conclusions

In this chapter, I attempted to uncover, over an extended timeline and within a wider context, the reasons behind population decline – essentially the absence of societal reproduction – and sought to inspire further contemplation and reflection on this matter. If population decline is a symptom indicating the malaise of the 'Western' (developed and affluent) world, it is insufficient to merely treat the symptom; the ailment should be addressed in its totality. As they say in human medicine, it is not the disease that needs to be treated, but the entire patient – taking their physical, emotional, and intellectual state into consideration. This often requires more than a general practitioner; consultation with specialists may be required. Similarly, legal science needs to be *embedded with the social sciences* and even more broadly, *scientific perspectives*, for the diagnosis of such complex underlying issues and prescription of effective and targeted therapies.

The examination is simultaneously facilitated and complicated by the global paradox wherein most of the world, including the so-called 'developing' and impoverished three-quarters of it, faces a *crisis of overpopulation*. In these regions, the birth rate should be lowered, depending on the available renewable natural resources and the requisites of sustainable development. Both *under-* and *overpopulation* necessitate population policy interventions, impacting individual, familial, and societal values and *value priorities*. However, these interventions would operate in opposite directions to meet the opposite requirements. Childbearing needs to *increase* in the West and *decrease* in other parts of the world. The Earth cannot support eight billion people at the current average standard of living (let alone the 'ideal' standard)! From an environmental perspective, 'Western' population decline is beneficial; however, from the standpoint of culture, science, and human civilisation's current accomplishments, it is both detrimental and perilous. *Societal reproduction* implies much more than simply maintaining the population count. The collapse or demise of Western civilisation would lead to massive cultural regression. This assertion is in no way an advocacy for 'white superiority'. Just as the *non-derogation principle* is foundational for the conservation of nature and all living organisms, protecting the *achieved level of human civilisation* is crucial. Christian morals and European humanism did, do, and can continue to play a significant role in this in the future. As proof, it is enough to consider the support and aid provided to impoverished countries in fields such as university education and scientific pursuits, as well as other areas, and the Western countries can provide similar contributions in health, social, technological, and other domains to the 'developing' areas of the world. The same applies to individual nation-states, their societies, and cultural identities: their diversity enriches the world, preserving and expanding the values of universal civilisation. Hence, addressing their demographic crisis and promoting social reproduction in a broader sense are essential as their values are worthy of preservation and replication.

The *life principles* of individuals, families, and generations and the social *organising principles* emerging from them form a *framework of values* within which individual freedoms and fundamental societal liberties can coexist without transforming into licentiousness or their own antitheses. Legal textbooks often describe *legal principles* as the *mortar* binding and solidifying legal norms, constructing them into a system – a *legal system* – much like how bricks are used to build cathedrals. The solid foundation of the legal system is the *constitutional value system*. National constitutions have already incorporated universally valid fundamental freedoms and human rights as civilisational *foundational values* and 'global thoughts'. These can act as *cohesive* forces within societies and *sustaining* forces for individuals, just as the *hoops* of a barrel hold it together, allowing it to be filled with excellent wine. If someone cuts the hoops, invoking the 'liberation' of the barrel staves, they will end up destroying the barrel and spilling its valuable contents. Likewise, overly pursuing individual freedoms and selfish individualism can break down societies and the smaller communities within them, including marriages and families.

According to universally valid norms and values, 'the family is the natural and fundamental group unit of society', and, thus, deserves protection by society and the state. The family unit was formed thousands of years before Christianity as a community based on love, with values such as *loyalty*, *trust*, *altruism*, *gratitude*, *solidarity*, *cooperation*, *mutual support*, and *self-sacrifice*. These became the fundamental values of *Christian morality*, as well as foundational elements of *social capital*. All of these values are based on love – the *fountainhead of neighbourly love* (extending to all humans) is ultimately the love between a man and a woman (*eros*), the love within marriage, which is characterised by *exclusivity* and *perpetuity*. Through marriage, a complete (physical and spiritual) unity of a *husband-wife and a parent couple* is formed (*agapé*), while still preserving their *individual identities*. In fact, in a good marriage, the personalities of both partners are not only preserved but fulfilled, allowing them to enrich each other. They 'love the other person to deliver them from evil, and to bring them into good', and they do the same with their children as parents. Through familial *socialisation*, every child becomes an adult with a mature personality, capable of giving and receiving love, thanks to the unity of the *strict paternal* and unconditional *maternal love*. No institution outside the family is capable of achieving this level of education and socialisation to the same extent. Elevating human identity through the development and improvement of education, culture, and civilisation (in short, enhancing people's *human qualities*) became the main function of marriage and family. This is the *essence of familism*. Thus, it is the fundamental right of children to *live in families*, and it is crucial to protect the institution of marriage and family, and to preserve and restore the *stature and values of fatherhood and motherhood*.

Social reproduction is clearly a concept that goes beyond merely having more children, also extending to the *reproduction of masculinity and femininity, fatherhood and motherhood*. Indeed, beyond simply reproducing a *community of love*, the family also reproduces cultural *identity* and the *civilisational value community*. This affords an opportunity to *further construct the civilisation of love and fraternal solidarity*. Of course, it also extends to the reproduction of core values (created, preserved, and passed on from generation to generation) represented by marriage and the family, values that constitute societal capital such as loyalty, trust, altruism, and gratitude. These values can also be considered the barometers of *individual and societal happiness*.

This complex perspective also places new challenges and tasks before the law. Marriage and the family are not merely legal institutions but are also natural and societal ones, expanding beyond the reach of legal systems. They are rich sources and repositories of value, requiring legal protections and an expansion of the legal tools available to them. The same applies to childbearing and the protection of children. The fundamental values surrounding marriage, the family, and childbearing must be transformed into legal values and principles, organising the lives of individuals and society. The Fundamental Law of Hungary, particularly its National Avowal, has embarked on this path, and this progress must continue. The now constitutional

values – *Christianity, faith, loyalty, love* – must be expanded, their content must be concretised, and they must be defended against abuse, erosion, and deliberate destruction, as well as from distortion into licentiousness. The idealised human image of European civilisation, which can be separated into three elements – the *virtuous* (humane, kind) individual, the *good and caring patriarch* (the 'good farmer', good husband, and good father), and the *ideal of a good person capable of self-sacrificing love* – is still far from being realised. This *human ideal*, well-known from Greek philosophy, Roman private law, and Christian ethics, awaits reproduction. The rehabilitated and renewed marriage and the family, with their rich stores of value, may be capable of raising and socially replicating such individuals (husbands and fathers, wives and mothers, children and grandchildren). Robust families are *vital resources* for their members, for society, and for the nation as a whole. As *communities of love*, families can save the soul of Europe; as the *civilisation of love*, Europe can, in turn, save the world.

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Chapter 6

Christian Ethics Promoting Factors of the Traditional Model of the Family, With Special Regard to Canon Law

Marek Bielecki

Abstract

This chapter presents the assumptions of Christian ethics relating to the issue of promoting the traditional family model. I analyse the doctrine of particular churches and religious associations, considering both theological issues and the internal law institutions of various confessional entities. Given that the community of Christian churches is extremely broad, the scope of research has been narrowed to only a selection of entities: in light of the number of followers, the considerations mainly cover the teachings of the Roman Catholic Church; however, I also examine the position of selected Protestant and Orthodox communities. The internal law of particular churches and religious associations is characterised by a high level of diversity, and some of the confessions have structured sets of legal regulations. In the case of the Catholic Church, the term 'canon law' is used to describe internal law, which was systematised in 1983 as the Code of Canon Law. The internal norms adopted by the individual churches and religious associations reflect their religious doctrine and constitute their practical dimension.

Keywords: Christian ethics, internal law, church, religious association, family

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1. Outline of the issues

The teaching of Christian churches results from the gospel of Christ and promotes universal values. Respecting these values should be a point of reference for people of good will, regardless of their ideology. Human life is a superior value enrooted in the dignity of the human being as an innate and inviolable category. Personal dignity makes it necessary to promote ideas that protect human life from conception to natural death.

It should first be emphasised that there are some bioethical differences among Christians themselves, especially in matters concerning access to medically assisted procreation (e.g. *in vitro fertilisation)*. A special place where respect for human life should be cultivated is the family, of which Christian churches take special care. In light of the obvious crisis that currently affects this institution, it is critical to present a Christian doctrine that affirms this basic social unit and promotes the implementation of the basic objective of marriage – the procreation and upbringing of children.

As the community of Christian churches is extremely wide, the scope of the research must be narrowed down to only some entities. According to the number of followers and the extensive doctrine on the issues included in the subject under study in this chapter, the considerations mainly focus on the Roman Catholic Church; however, the positions of some Protestant and Orthodox communities are also presented. In the first place, Christian ethics will be the subject of discussion. Nevertheless, it should be emphasised that the comprehension of this concept is not obvious, and the basis for the existing differences are divisions within Christianity. Great splits within the community founded by Jesus led to the separation of three basic movements, Catholic, Protestant, and Orthodox,[1] among which an evolutionary change in the approach to certain problems also appeared.

In studies on this subject, we can find an attempt to specify the terms of Christian ethics. Karol Wojtyła states that, by this concept, we understand those ethical truths that have been revealed by God and are given by the Church as principles of moral conduct. These truths are contained in the sources of revelation (i.e. in the Bible and tradition), and as they are revealed in a supernatural way, they are the object of faith.[2] Accordingly, Józef Keller identifies Christian (Catholic) ethics with moral theology.[3] The link between ethics and theology is also noted in the Protestant doctrine. A characteristic component here is the doctrine of justification by faith (a factor conditioning evangelical theology), which is a grace given to everyone for free. This teaching includes issues such as the relationship between the law and the Gospel, the secular reality of faith, church–state relations, and the anthropology of the justified sinner. The Protestant doctrine also emphasises the

1 Dura, 1998, p. 178.
2 Wojtyła, 1991, pp. 32–33. For more, see: Dura, 1998.
3 Keller, 1957, p. 5.

fact that ethics tries to keep its philosophy, which is conditioned by the changing cultural and social reality, up to date.[4] Further, Margaret Olubiyi highlights the need to identify ethical behaviour with revelations included in the Holy Bible. A believing Christian considers the Church's social teachings and doctrinal indications in matters of faith in his or her daily life.[5] In addition, Adam Dura draws attention to the ambiguity of the concept of Christian ethics, which results from the eclectic nature of Christian morality. I also emphasise that Christian ethics is not a philosophical concept.[6] This chapter considers Christian teachings of both a doctrinal and social nature, which will allow a broader cognitive understanding of ethical issues.

The internal law of individual churches and religious associations is extremely diverse. Some of the confessions have organised collections of legal provisions. In the case of the Catholic Church, the term 'canon law' is used to describe its internal law. Internal norms adopted by individual churches and religious associations are largely based on their religious doctrine. Considerations of Christian teaching on the issues of family and respect for life are related to the principle of cooperation between the state and the Church, which was articulated in social teaching and became a normative rule thanks to its acceptance by the secular legislator. Both entities' interest in 'social problems' results from the fact that, as is emphasised in Pastoral Constitution on the Modern World, *Gaudim et spes* (n. 76),

> … despite the different title, they serve the individual and social vocation of the same people. The better they will develop a proper cooperation among themselves, the more effectively they will carry out this service for the good of all, also considering the conditions of time and place.[7]

The doctrine points out that no specific rules of cooperation have been formulated in this passage but that both entities are left with the possibility of adapting their activities to the current conditions.[8]

The situation of families is closely related to the problem of the demographic crisis that is occurring in Europe. Therefore, both entities should try to find the areas of cooperation. In Poland, the assumptions adopted in the legal act 'Strategia Demograficzna 2040' (Demographic Strategy 2040)[9] should be taken into consideration. To achieve success in the field of demography, the document's authors

4 Mączka, 2019.
5 Olubiyi, no date.
6 Dura, 1998, p. 191.
7 Pastoral Constitution on the Modern World, *Gaudim et spes*, 7 December 1965 [Online]. Available at: https://sip.lex.pl/akty-prawne/akty-korporacyjne/konstytucja-duszpasterska-o-kosciele-w-swiecie-wspolczesnym-286768068 (Accessed: 1 August 2023).
8 Sobczyk, 2005, p. 200.
9 Uchwała nr 224 Rady Ministrów z dnia 15 listopada 2022 r. w sprawie ustanowienia polityki publicznej pt. 'Strategia Demograficzna 2040' (Demographic Strategy 2040) (M.P. 2022 poz. 1196).

foreground the need for cooperation, participation, and communication between the authorities and other partners *working for demographic and family development.* Among these entities, the Act distinguishes, for instance, representatives of associations and non-governmental organisations, social and economic partners, the academic community, private entities, and *churches and religious associations.* For Poland, this cooperation is particularly important in the context of existing conditions. Poland is one of the countries with a fertility rate below the European average. The existing fertility rate of 1.42 children per woman places Poland in 190th place among 208 classified countries and territories. In Europe, several countries, including Italy, Spain, Finland, Greece, and Portugal, face even greater demographic problems. The Act stresses the fact that religious denominations and their organisational units in Poland have a significant influence on the development of family competences. The data for 2018 show that 1,800 religious entities and 700 foundations and associations were active in this area. The main areas in which religious organisations are involved in the development of family competences include education and upbringing (44.8% of organisations), formation activities (10.4%), and other activities (7.7%). Over 27% of church and religious organisations are also involved in social and humanitarian aid, 10.6% of which are related to activities supporting the family.[10]

The principle of cooperation between churches and other religious entities became a systemic principle after the passing of the current Constitution of the Republic of Poland in 1997 (Art. 25(3)).[11] Previously, these issues were regulated by laws defining relations between the state and the Church,[12] as well as the Concordat concluded between the Republic of Poland and the Holy See.[13]

This chapter is comprised of several parts. In the first part, the attitude of the Catholic Church and other churches and religious associations towards the protection of life from conception to natural death is described. The second part is devoted to the demographic issues. In the third part, matters concerning the protection of the family and its members in the teaching of the Christian Churches are presented. Due to the close correlation of the internal law of churches with their ethical teachings, these issues are discussed in the text without a noticeable separation of ethics and law.

10 Ibid.

11 Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz. U. z 1997 r. nr 78 poz. 483 ze zm.).

12 See, m.in.: ustawa o gwarancjach wolności sumienia i wyznania z dnia 17 maja 1989 r. (t.j. Dz. U. z 2023 r. poz. 265) – Art. 16; ustawa z dnia 17 maja 1989 r. o stosunku Państwa do Kościoła Katolickiego w Rzeczypospolitej Polskiej (t.j. Dz. U. z 2019 r poz. 1347 ze zm.).

13 Konkordat między Stolicą Apostolską i Rzecząpospolitą Polską, podpisany w Warszawie dnia 28 lipca 1993 r. (Dz.U. z 1998 r. nr 51, poz. 318).

2. Respect for life in the teachings of Christian churches

Human life is the greatest value and should be protected in an absolute manner. No political or social compromises justify interference in this matter. It is very difficult to define legal solutions that would fully guarantee the prohibition of interference in the existence of a human being at every stage of his or her development. In countries where the church and Christianity are still important parts of everyday life, there is huge social resistance to the introduction of a total ban on abortion. Nevertheless, the Catholic Church and other Christian communities promote a theology of life and respect for every human being.

2.1. The position of the Catholic Church

It should be noted that since its foundations, the Church has taught that human life should be protected and supported in different periods of its development. The Christian doctrine was based on the Bible. One of the first surviving documents containing the principles of faith of the newly formed community founded by Christ is the Didache.[14] As noted by Józef Jankowski, this book is one of the first collections of church teachings and discipline from the first century after Christ (AD 50–80). The book is a collection of the morality, church law, catechetics, and homiletics of the Christian Church. Abortion of a human foetus and the murder of newborn children are strictly prohibited therein.[15]

The author of the 'Letter of Barnabas' (1st–2nd century AD) also warns against killing a foetus or newborn child. As Jacek Salij points out, since the Church encountered the problem of abortion, it has proclaimed that all actions against newly created life are disgraceful. Salij also discusses the views of the first Christian theologians who deliberated on this matter. Clement of Alexandria (approx. 150–212 AD) wrote that those who do not want to have children should not marry, which avoids the possibility of the act of infanticide. Origen, who lived at the same time (approx. 185–254 AD), taught that God commanded married couples to bring up all the children that they were blessed with, without any exceptions, and prohibited the killing of any of them.[16]

The negative attitude of the first Christians towards abortion is demonstrated by the canonical norms of that time. The provisions of the Synod of Elvira in 305 stated that 'if a woman became pregnant during her husband's absence and then she had an abortion, she could not receive Communion for the rest of her life because she had committed a crime' (can. 63).[17] Taking St. Augustine's standpoint on abortion into consideration, there is a dispute in the literature on the subject. Although St. Augustine

14 Jankowski, 1923.
15 Jankowski, 1923, p. 12
16 Poglądy autorów za: J. Salij, 2006.
17 Tamże.

declared the act of abortion to be shameless and immoral and strongly opposed the killing of unborn children, he introduced the idea of two phases of foetal life.[18] In his column entitled 'Women's Hell', Tadeusz Boy-Żeleński quotes St. Augustine's phrase, 'A woman who does the abortion before the soul enters the body is not an infanticide' (*Non est homicida , qui abortum procurat , antequam anime corpori sit infusa*).[19] This view is used by pro-abortionists as evidence that abortion is not a murder in the early stages of foetal growth. Salij disagrees with this information and attributes this quote to Iwo from Chartes, who lived 600 years later. In his work 'Panormia', the medieval lawyer recalled this interpretation in the context of the biblical verse from the Book of Exodus regarding the miscarriage of a woman trying to separate fighting men.[20] A similar controversy as in the case of St. Augustine relates to St. Thomas Aquinas who, referring to Aristotle's standpoint in his summation, accepted that a human embryo is not instantly a human being. As emphasised in the comments, this sentence, taken out of context, refers to Aristotle's concept of plant, animal, and rational souls. St. Thomas does not support this opinion but agrees that the soul is the form of the body. There is also a rational soul that fulfils the functions of a living being: vegetative, sensual. There are, however, natural changes that take place in the human embryo, but the soul is infused by God at the moment of conception.[21]

The value of offspring, which are the natural product of a Christian marriage, is also promoted in the modern teachings of the Catholic Church. In the encyclical *Casti connubi,* Pope Pius XI notes that offspring are the most important among the goods of marriage: a child is a gift of God's will and the perfect fulfilment of a marriage.[22] Although this document does not refer to the issue of abortion, it emphasises the supernatural source of human existence.

The protection of the dignity of human life was included in the encyclical of Paul VI, *Humanae Vitae*.[23] This document describes the Church's attitude to the issue of respecting the holiness of human life. *Humanae Vitae* had a great influence on the later teachings of popes. The Pope emphasises the fact that marriages and love are naturally directed towards procreation and the upbringing of offspring, and thus, children are the most precious gift of marriage (n. 9 *Humanae Vitae*). According to the Pope, it is absolutely necessary to reject any methods regulating the number of children, especially through direct abortion, even for medical reasons, as this would be morally impermissible (n. 14).

18 Kakiet, 2013.
19 Boy-Żeleński, n.d.
20 Salij, 2006.
21 Św. Tomasz o duszy [Online]. Available at: https://opoka.org.pl/biblioteka/F/FA/echo201803-dusza, (Accessed: 2 August 2023).
22 Encyklika papieża Piusa XI Casti connubi o małżeństwie chrześcijańskim z 31 grudnia 1930 [Online]. Available at: https://opoka.org.pl/biblioteka/W/WP/pius_xi/encykliki/casti_connubi_31121930.html (Accessed: 3 August 2023).
23 Encyklika Ojca Świętego Pawła VI 'Humanae Vitae' – O zasadach moralnych w dziedzinie przekazywania życia ludzkiego z 25 lipca 1968 [Online]. Available at: https://opoka.org.pl/biblioteka/W/WP/pawel_vi/encykliki/humane (Accessed: 8 August 2023).

The Second Vatican Council, held in the years 1962–1965, changed the Church's attitude and opened it to the world. Transformations that allowed the introduction of national languages into the church service were also initiated. The Council changed the Church's attitude to many issues in relations with state authorities. During the Second Vatican Council, some postulates for the alteration of canon law were also prepared. These alterations were finally adopted in 1983 in the form of the new Code of Canon Law promulgated by Pope John Paul II. The participants of the Council also spoke on ethical issues, such as the respect for human life, and the duties of the Catholic family based on the marriage bond.

The Pastoral Constitution on the Modern World, *Gaudim et spes*,[24] points out that spouses have the duty to procreate and educate their children. Spouses are God's collaborators in this activity; therefore, living in Christian families, they should care for both their own well-being and that of their present and future offspring. This document also emphasises spouses' responsibility, stipulating that they cannot act according to their own urges but always according to their conscience, which should be adapted to the teaching of the Church (n. 50). John Paul II was a supporter of the protection of human life and emphasised the values of growing up in a family. His encyclical *Evangelium Vitae* (EV)[25] was devoted to these issues. The Pope refers therein to the importance and influence of modern medicine. This particular field of knowledge, which by nature is to serve, defend, and care for human life, becomes, in some cases, a tool directed against a human being, violating the dignity of those who practice it. The problem of overpopulation in some countries is solved in a way that is contrary to the truth and the good of people and nations because human beings at the early stage or those at the end of life are eliminated. Through such actions, the human conscience cannot distinguish between the good and the evil in matters concerning the protection of the fundamental value of human life (n. 4 EV). The Pope compares the attitude of policymakers who use anti-life methods to the biblical pharaoh who, terrified of the growing number of sons of Israel, gave the order to kill every male infant born to a Hebrew woman (n. 16 EV). John Paul II requests all people of good will, regardless of their religion, to defend and promote life in order to avoid the fall of civilisation and its incalculable consequences (n. 91 EV).

John Paul II devoted his apostolic exhortation 'Familiaris consortio' (FC) to the protection of the family and its rights.[26] Therein, the Pope warns about the birth of

24 Pastoral Constitution on the Modern World, *Gaudim et spes*, on 7 December 1965 [Online], available at: https://sip.lex.pl/akty-prawne/akty-korporacyjne/konstytucja-duszpasterska-o-kosciele-w-swiecie-wspolczesnym-286768068 (Accessed: 3 August 2023).

25 Encyklika Evangelium vitae Ojca Świętego Jana Pawła II do biskupów, do kapłanów i diakonów, do zakonników i zakonnic, do katolików świeckich oraz do wszystkich ludzi dobrej woli o wartości i nienaruszalności życia ludzkiego z 25 marca 1995 [Online] Available at: https://www.vatican.va/content/john-paul-ii/pl/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae.html (Accessed: 3 August 2023).

26 Adhortacja apostolska 'Familiaris consortio' z 22 listopada 1981 [Online]. Available at: https://kodr.pl/wp-content/uploads/2017/03/familiaris_consortio.pdf (Accessed: 4 August 2023).

an anti-life morality that results from fears among ecologists and futurologists about the excessive growth of the human population. John Paul II emphasises that the Church firmly believes that human life, even when it is weak and suffering, is always a wonderful gift of God's goodness. The Church's natural aim is to defend life as this institution has always been in favour of life of every condition and at every stage of development. He criticises government actions that aim at restricting the freedom of spouses in deciding about their offspring. The Church disapproves of official pressure to use contraceptives, sterilisation, and abortion. In addition, the Pope observes that rich countries condition the economic support they provide to poor countries on the implementation of anti-life programmes that promote contraception, sterilisation, and abortion (No. 30 FC).

The issue of protecting unborn children was discussed by John Paul II in his next apostolic exhortation, entitled 'Christifideles laici' (Ch.L.).[27] This document points out that no one can estimate the number of unborn children killed in mothers' wombs (no. 5 Ch. L.). The Pope also emphasises that the Church has never given up the struggle against any kind of violence directed towards the right to life. This right belongs to all human beings at all stages of development, from conception to natural death. The right to life exists whether a person is sick or healthy, in good physical shape or with disabilities, rich or poor. All practices that undermine the dignity of human life have been defined as shameful and infecting human civilisation (n. 38 Ch L.). In 'List do rodzin – *Gratissimam sane*' (Gs),[28] John Paul II teaches that a child's life is a gift that God gives to parents and relatives. The process of conception, development in the mother's womb, and giving birth serves to create the appropriate space for the new man to reveal himself as this gift (n. 11 Gs).

John Paul II's teachings on respect for life were also continued by Pope Benedict XVI. In the encyclical *Caritas in Veritate* (CV),[29] he emphasises that one of the most obvious aspects of development today is the issue of respect for life. In some countries, demographic control practices such as promoting contraception and even imposing abortion are implemented. The anti-life law is widespread mainly in economically developed countries. There is a so-called 'anti-natalist' mentality that some seek to pass on to other countries as if it were a form of cultural progress. Benedict XVI emphasises that openness to life represents true development. As society tends to negate and annihilate life, there is no motivation or energy to engage in the service of a human (n. 22 CV).

27 Jan Paweł II Posynodalna adhortacja apostolska 'Christifideles laici' o powołaniu i misji świeckich w kościele i świecie. Dwadzieścia lat po Soborze Watykańskim II z 30 grudnia 1988 [Online]. Available at: https://kodr.pl/wp-content/uploads/2017/02/christifideles-laici.pdf (Accessed: 8 August 2023).

28 Jan Paweł II, List do rodzin – Gratissimam sane – Ojca Świętego Jana Pawła II z okazji roku rodziny z 2 lutego 1994 [Online]. Available at: https://kodr.pl/wp-content/uploads/2017/03/list_do_rodzin.pdf (Accessed: 8 August 2023).

29 Benedykt XVI, Encyklika o integralnym rozwoju ludzkim w miłości i prawdzie – Caritas in veritate z 29 czerwca 2009 [Online]. Available at: https://www.vatican.va/content/benedict-xvi/pl/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate.html (Accessed: 10 August 2023).

In a speech on 26 February 2011 addressed to the members of the Pontifical Academy '*Pro Vita*', Benedict XVI teaches that it is crucial for all of civilisation to defend the right to life of a conceived being for the true good of women. According to the Pope, a decision to abort a foetus will always be against this true good. At the same time, he notes that it is important to provide any necessary care and assistance to women who have had an abortion.[30] The Pope's speech to the Christian Associations of Italian Workers also emphasised that the protection of life from conception to natural death, wherever it is endangered, trampled upon, or insulted, is the first duty that expresses the true ethics of responsibility.[31]

In his apostolic exhortation 'Amoris Laetitia',[32] Pope Francis foregrounds the fact that a child is a gift for the family. Unfortunately, many children are rejected at the beginning of their lives. For the Pope, this is shameful and unacceptable. Parents should make every effort to ensure that a child could never think he or she was a mistake (AL n. 166). Francis addresses every pregnant woman to enjoy the gift of motherhood. Nothing should influence a pregnant mother to have any doubts and fears about giving life (AL 171).

Respect for human life is not only included in the papal teaching: other institutions of the Church also refer to these issues in their documents. In the report for Pope Francis from the Synod of Bishops, which took place on 24 October 2015, attention is drawn to the fact that the fertility of the spouses is spiritual.[33] The act of procreation should be perceived as an expression of parents' responsibility for the care and upbringing of children (n. 50). It was also emphasised that the presence of large families in the Church is a blessing for both the Church and all of society. It is necessary to show common gratitude to those families who decide to have children and raise them with love, especially when the children have disabilities. The bishops inform the Pope that economic, cultural, and educational factors often influence decreases in the number of births; therefore, there is a need to disseminate documents promoting the culture of life (n. 62).

The Charter of Family Rights (CFR)[34] is a Holy See document that tries to comprehensively protect the institution of the family and its rights. The indications contained in the Charter are addressed to all entities that believe that the security of the

30 Polskie Stowarzyszenie Obrońców Zycia Człowieka, 2023.

31 Dla dobra człowieka i całego społeczeństwa, – przemówienie do chrześcijańskich Stowarzyszeń Pracowników Włoskich L'Oser-vatore Romano – wersja polska 26 (2006) nr 4 s. 27.; cyt. za: Lubiński, 2014.

32 Posynodalna adhortacja apostolska Amoris Laetitia Ojca świętego Franciszka z 19 marca 2016 [Online]. Available at: https://kodr.pl/wp-content/uploads/2018/10/07_papa-francesco_esortazione-ap_20160319_amoris-laetitia_pl.pdf (Accessed: 8 August 2023).

33 Synod Biskupów. XIV Nadzwyczajne Zgromadzenie Ogólne. Relacja końcowa Synodu Biskupów dla Ojca Świętego Franciszka (24 października 2015) [Online]. Available at: https://kodr.pl/wp-content/uploads/2017/02/Synod-o-Rodzinie-dokument-ko%C5%84cowy.pdf (Accessed: 8 August 2023).

34 Karta Praw Rodziny przedłożona przez Stolicę Apostolską wszystkim ludziom, instytucjom i władzom zainteresowanym misją rodziny w świecie współczesnym (1983) [Online]. Available at: https://kodr.pl/wp-content/uploads/2017/03/karta_praw_rodziny.pdf (Accessed: 8 August 2023).

family is something important and desirable. The introduction directs society, the state, and international organisations to do everything possible to provide significant assistance that can contribute to reinforcing the family's unity and stability so that it can meet the challenges it faces (CFR lit l). Human life should be protected from conception and should be surrounded by care and respect. Consequently, the act of abortion is a direct violation of the fundamental right of every human being to life (CFR Art. 4 lit. a i b.).

The Congregation for the Doctrine of the Faith issued the instruction *Donum vitae* (IDv)[35] on 22 February 1987. The introduction of this instruction emphasises that the life of every human being from conception should be respected in an absolute way because it is blessed. Moreover, it holds that the authorities should respect the natural rights of individuals, such as the right to life and physical integrity from the moment of conception until death, the right of the family and marriage as an institution, and the right of the child to be conceived, born, and brought up by his or her parents (IDv n. 1).

The instruction *Dignitas personae*[36] of the Congregation for the Doctrine of the Faith deals with bioethical problems related to, among other things, *in vitro fertilisation*. It is strongly emphasised here that the cryopreservation (freezing) of human embryos is incompatible with the expected respect for them. In this process, human embryos are exposed to the danger of death or the violation of their physical integrity because a significant number of them do not survive freezing and multiplication.

The Catholic Church speaks out on many biotic issues that both directly and indirectly concern interference in human life. The North American Episcopate posed a question to the Congregation for the Doctrine of the Faith regarding sterilisation in Catholic hospitals.[37] The position clearly indicates that any sterilisation, by its nature, directly aims at preventing procreation and, therefore, is contrary to the teachings of the Church. The Church absolutely prohibits direct sterilisation, regardless of its intention. Christians cannot be justified by any regulations of a public authority, even if they may be imposed on the society in which they live, because this would violate the dignity of a human being. The Congregation emphasises that as life is a gift, its beginnings and final stages cannot be rejected in any way; on the contrary, each phase of life must be given special care (n. 1).

35 Kongregacja Nauki Wiary, Instrukcja o szacunku dla rodzącego się życia ludzkiego i o godności jego przekazywania . Odpowiedzi na niektóre aktualne zagadnienia – Donum vitae (22 luty 1987) [Online]. Available at: https://kodr.pl/wp-content/uploads/2018/10/donum_vitae.pdf (Accessed: 8 August 2023).

36 Kongregacja Nauki Wiary, Instrukcja *Dignitas personae* dotycząca niektórych problemów bioetycznych [Online]. Available at: https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20081208_dignitas-personae_pl.html (Accessed: 8 August 2023).

37 Kongregacja Nauki Wiary, Odpowiedź na pytanie Konferencji Episkopatu Ameryki Północnej dotyczące sterylizacji w szpitalach katolickich – Quaecumque sterilizatio [Online]. Available at: https://kodr.pl/wp-content/uploads/2018/10/quaecumque_sterilizatio.pdf (Accessed: 9 August 2023).

The Pontifical Council for the Family (now, the Dicastery for the Laity, Family and Life), issued a declaration on the reduction of embryos.[38] This declaration states that every embryo should be considered and treated as a human being with the due respect to its dignity. An unborn child possesses fundamental human rights, particularly the right to life from the moment of conception, which cannot be violated in any way. The reduction of embryos, which is based on the direct and deliberate elimination of an innocent human being, should be regarded as selective abortion.

The Catechism of the Catholic Church (CCC),[39] which is a body of doctrinal principles, states that conjugal love is destined to be productive and to be realised in the common work of preserving creation (CCC 1604). This document devotes a separate title to abortion, which strongly conveys that human life should be respected and protected in an absolute way from the moment of conception. From the first moments of existence, a human being should be granted certain rights, most importantly, the inviolable right of every innocent being to life (CCC 2270). The CCC also emphasises the fact that the Church has always taught that every abortion is morally wrong. Direct and intentional abortion is against the moral law (CCC 2271). The Code of Canon Law, promulgated in 1983,[40] penalises crimes against human life, but it does not contain a term defining who a human being is and from when it begins. Undoubtedly, the ecclesiastical legislator should consider whether such a provision should be included in this document.[41] In can. 1398, the ecclesiastical legislator specifies that any person who undergoes an abortion, after having obtained its effect, will be subjected to excommunication by the force of the law itself. In the commentary on the Code of Criminal Procedure, the authors point out that effective termination of pregnancy is required for it to be considered the commission of an abusive act. It is irrelevant whether the death of the foetus occurs inside or outside the womb: the criminal nature of the act is not changed by the circumstances accompanying the successful termination of pregnancy. However, there is no crime if the action taken is not aimed at aborting the foetus, even if it could accidentally cause it. The means used to induce the abortion are also irrelevant to the fact of committing the crime.[42]

Despite the passage of years, the teachings of the Catholic Church have not fundamentally changed regarding issues that concern the respect for human life and its dignity. This largest Christian denomination takes an uncompromising attitude in the face of its enemies and critics. The Church does not 'keep up to date' in terms of basic principles; thus, it cannot be demanded to reject its centuries-old teachings because then the Church would no longer be the Church. Naturally, the doctrine has

38 Deklaracja Papieskiej Rady ds. Rodziny w sprawie redukcji embrionów z 12 lipca 2000 [Online]. Available at: https://opoka.org.pl/biblioteka/W/WR/rady_pontyfikalne/r_rodziny/redukcja_embrionow_12072000.html (Accessed: 9 August 2023).

39 Katechizm Kościoła Katolickiego z 11 października 1992 [Online] Available at: http://www.katechizm.opoka.org.pl/ (Accessed: 9 August 2023).

40 Kodeks Prawa Kanonicznego z 1983 r. – stan prawny na dzień 18 maja 2022 r., Pallotinum 2022.

41 Pankiewicz, 2020, pp. 27–47.

42 Krukowski, Lempa and Wójcik, 1987, p. 278.

evolved with regards certain issues, such as those related to state–Church relations. However, the protection of innocent lives is a value that cannot be ignored under any circumstances.

On 18 July 2023, European bishops gathered in the Commission of the Bishops' Conferences of the European Union (COMECE) and issued a statement criticising the draft of the amendment to the EU Charter of Fundamental Rights, which provides the right to abortion.[43] According to the bishops, the proposed amendment would restrict the dignity of the human being and would, thus, be in direct violation of the current law of the European Union. It was emphasised that human dignity is the dominant value in the Treaties and the EU Charter of Rights and that respecting it at every stage of life, especially in situations of complete vulnerability, is a fundamental principle in a democratic society. The bishops also pointed out that the European Union has no competence to regulate the issue of abortion. In addition, the European Court of Human Rights has never recognised the right to abortion as a human right protected by the European Convention on Human Rights, while recognising the right to life as such. COMECE also declared that the care of pregnant women is a duty of both the Church and the public in the European Union.[44]

3. Positions of selected Protestant and Orthodox Churches

This part of the chapter presents the positions of the Protestant and Orthodox Churches that have a regulated legal situation. Along with the Catholic Church, these entities belong to the family of Christian communities. Their religious doctrine, teachings on ethical matters, and internal law are largely similar, although there are also some differences. Since the Reformation initiated in the 16th century by Martin Luther, several currents of Protestantism have developed, including Lutheranism, Calvinism, Anglicanism, Baptism, Methodism, and Pentecostalism (the Pentecostal movement) founded in the 20th century.[45] Tadeusz Jacek Zieliński notes that individual Protestant denominations do not form identical organisational entities; instead, they consist of many communities (religious associations), most often of a national range, but remain in contact with other Churches of the same denomination. To assess whether a given religious association can be considered Protestant, its doctrine and whether it belongs to a worldwide Protestant organisation should be verified.[46]

The official statements of the Protestant confessions functioning in Poland provide insights into the basic doctrinal principles of these communities. The protection of

43 Payne, 2023.
44 Ibid.
45 Zieliński, 2015, p. 82.
46 Zieliński, 2015, pp. 82–84.

human life is a concern of the Evangelical-Augsburg Church in Poland, which issued a document on this subject in 1991.[47] The document's authors clearly state that the Evangelical Augsburg Church in Poland is in favour of the protection of life from the moment of conception. However, it is not the Church's duty or obligation to impose penalties for the act of abortion; this is a matter for the secular authorities. The use of abortion pills was strongly criticised, whereas discussions on the permitted or prohibited means and methods of prevention were considered pointless since they have no biblical justification. This Church does not raise any objections to the use of preventive methods in conjugal intercourse (except for abortion pills) in order to introduce conscious parenthood in family planning and to protect women's health. Nevertheless, the Church is strongly against abortion on demand. However, it considers itself to be incompetent to compile the catalogue of risks in the case of pathological pregnancies. The decision on abortion was, thus, left to the parents and the medical council in the case of a threat to the mother's life. There is also no indisputable opinion presented on the possibility of terminating pregnancy in situations where the foetus has defects, for example, a failure in nuclear or chemical mechanisms. According to the document's authors, this issue requires extensive analysis by competent specialists in genetics, medicine, ethics, and theology.[48]

The possibility of using contraceptives in the family planning process is also expressed in the position of the Supreme Council of the Pentecostal Church in the Republic of Poland. This community also excludes abortion pills and considers abortion a sin (n. 10). This position is consistent with the teachings of the Assemblies of God Church in the United States, which is the largest Pentecostal community in the world. In 2010, this community issued a statement that the practice of abortion is wrong and is against God's commandments. This statement also conveyed that at the moment of fertilisation, the embryo becomes a human being and, therefore, should be protected.

Protestant churches are more open-minded on issues of contraceptive application than the Catholic Church. Basically, they stipulate no obstacles to using contraceptives except for abortion drugs. Abortion is criticised and treated as a sin, although some communities do not express themselves clearly regarding situations in which the mother's life is endangered or the foetus has defects. Some differences can also be observed in the case of penalties for a possible act of abortion. While the Catholic Church implements excommunication for this act, which means exclusion from its ranks by the law itself, some of the Protestant communities assign a possible punishment for abortion to secular authorities.

In addition to Catholicism and Protestantism, the third existing variety of Christianity is Orthodoxy. The term 'Orthodoxy' itself denotes the doctrine, liturgy, and

47 Oświadczenie Kościoła Ewangelicko-Augsburskiego w sprawie ochrony życia z 1991 [Online]. Available at: https://old2020.luteranie.pl/o_kosciele/oswiadczenia_kosciola/w_sprawie_ochrony_zycia.html (Accessed: 9 August 2023).

48 Ibid.

organisation of the Christian churches separated from Rome in 1054. The division of Christianity into Eastern and Western varieties was the result of struggles between Rome and Constantinople over the supremacy of Christianity. The Polish Autocephalous Orthodox Church (PAOC) has been present in Poland since 13 November 1924 after the head of the Orthodox Church in Poland asked the Ecumenical Patriarch of Constantinople, Gregory VII, for autocephaly. Officially, this decision was announced on 17 September 1925.[49] According to the data presented in the Small Statistical Yearbook of 2023, Orthodoxy is the second religious denomination after Catholicism, with about 504,000 followers. The largest Orthodox communities are PAOC with 503,966 believers, the Eastern Church of the Old Believers in Poland with 1452 believers, and the Old Orthodox Church of the Old Believers with 500 believers.[50] The Orthodox Church also presents a strong standpoint on bioethical issues, declaring abortion unacceptable. According to the leader of the PAOC, a conceived child is a fully valuable person who reacts to external conditions, and his or her murder is not acceptable under any circumstances. The act of procreation itself is considered not only as a human activity aimed at sustaining the species but also as a gift from God.[51]

Throughout all branches of Christianity, the Christian respect for human life and dignity is a common feature. Although there are some differences regarding stances on certain issues, even the existing doctrinal alterations do not affect the perception of Christian communities as promoters of pro-life civilisation. The current culture of the secularisation of life, which is focused on removing religious features from the public space, necessitates the cooperation of all Christians in protecting the inviolable values.

4. Demographic issues in the teachings of the Church

Churches and religious associations recognise existing demographic problems in their teachings. The rapid population growth that took place in the 20th and 21st centuries and the related problems have been reflected in official statements and issued documents. Whereas developing countries face the phenomenon of overpopulation, the problem of depopulation is a challenge in some European countries. The inability to replace the generations implies very negative consequences that mainly affect the economic sphere, although this is not the only area exposed to danger. The economic effects of the demographic decline include, for instance, decreases in

49 Romanowicz, 2015, pp. 159–160.
50 Główny Urząd Statystyczny, Mały Rocznik Statystyczny Polski 2023 r., Warszawa 2026 r., p. 117.
51 Główny Urząd Statystyczny, Mały Rocznik Statystyczny Polski 2023 r., Warszawa 2026 r., pp. 179–185.

the state income, working-age population, and retirement and disability benefits; the need to extend the retirement age; or the need to eliminate the shortage of employees by replacing them with emigrants.[52] Both the economy and the educational system are painfully affected by a shrinking population. Schools are being closed, especially those in small towns. Universities have also been forced to shut down some fields of study, meaning teachers must retrain for other professions.

Countries affected by this phenomenon must take various actions to encourage families to raise more children. It is extremely important for the authorities to cooperate with various institutions in activities that can contribute to improving the existing situation. Churches and religious associations seem to actively support the authorities' efforts to increase population growth.[53] The Catholic Church, which affirms life and criticises all attempts to shorten its duration, directly supports activities aimed at slowing the decrease in birth rates. It is worth emphasising, however, that in the official teachings of the Church, there are also references that directly focus on the issue of demographics.[54] The Papal teachings of the 20th century began to directly note the issue of the world's population. A comprehensive interpretation of this phenomenon is contained in Pope John XXIII's encyclical *Mater et Magistra*,[55] in which the Pope responds to the problem of overpopulation in economically less-developed countries. In connection with this situation, some opinions that sought to counteract the phenomenon of overpopulation through all possible means of birth control emerged. Believing in the wisdom of people to use the gifts of the Earth to meet human needs, John XXIII warns against implementing particular solutions that 'violate the moral order established by God'. According to the Pope, demographic problems cannot be solved by applying methods that would be disgraceful for humans, which result from a materialistic concept of life; rather, the solution should be found in economic development and social progress that respects true human values, both individual and social. Global cooperation that can enable the proper use of human potential is required.[56]

The Second Vatican Council focused on the issue of demography in the Pastoral Constitution on the Contemporary Church *Gaudium et Spes.* The Fathers of the Council first emphasised the need for international cooperation to assist those countries affected by the problem of overpopulation. They proposed that support from richer countries should include both direct donations and help in the field of education so that less-developed countries can overcome the emerging difficulties themselves. However, the Council warned against implementing publicly or privately recommended, and sometimes even imposed, solutions that are against the moral law (n. 87).

52 Wójcicki, n.d.
53 Młyński, 2016, p. 154.
54 Makowski, 2011, pp. 241–302.
55 Jan XXII, Encyklika Mater et Magistra o współczesnych przemianach społecznych w świetle nauki chrześcijańskiej z 15 czerwca 1961 [Online]. Available at: https://opoka.org.pl/biblioteka/W/WP/jan_xxiii/encykliki/mater_magistra_15051961 (Accessed: 10 August 2023).
56 Ibid.

Paul VI considers demographic issues in the encyclical *Populorum Progresio* (PP).[57] The Pope admits that the accelerated demographic growth is blocking the development of societies, and that the population seems to exceed the available resources. In many people's opinion, this situation requires taking radical measures that could reduce the number of births. Within the boundaries of their competence, public authorities can interfere in these matters provided that the actions taken are consistent with the moral law and respect the freedom of spouses. Paul VI speaks of depriving the individual's dignity when the right to marriage and procreation is interfered with and notes that it is the parents' right to consciously determine the number of children they have (n. 37 PP).

In his statements and published documents, John Paul II also refers to the phenomenon of overpopulation. He continues the teaching of Paul VI in the encyclical *Sollicitudo rei socialis* (Srs).[58] The Pope divides the world into a 'South zone' and a 'North zone'. In the South zone, overpopulation is a huge problem affecting the region's development, whereas the North zone is witnessing a decrease in the birth rate and, as a result, an ageing population. John Paul II clearly states that the problem is not only the rapid increase in population but also its decline. Campaigns aimed at reducing the number of births have been criticised as these actions often represent a form of blackmail: rich countries make their economic aid dependent on the implementation of such campaigns. This favours the introduction of racist forms of eugenism and is a false and incorrect conception of true human development (n. 25 Srs). In the apostolic exhortation *Familiaris consortio,* John Paul II emphasises the need to intensify efforts to communicate the authentic teachings of the Church in relation to the problem of overpopulation. The Pope directs his words to theologians, who should clarify the biblical foundations, ethical motivations, and personal reasons in accordance with the Catholic doctrine. This should be done in an accessible way so that as many people as possible are familiarised with the position of the Catholic Church, given that misunderstandings about the institutions of marriage and the family result in a deformation of the truth about Man (No. 31 FC).

Benedict XVI's encyclical *Caritas in veritate* also deals with the challenges of overpopulation and depopulation, perceiving both phenomena as dangerous. A morally responsible openness to life is, in the Pope's opinion, a social and economic wealth. Large countries have been able to lift themselves out of poverty owing to their large populations and the skills of their people, although the decrease in birth rates is becoming a serious problem for rich societies. The Pope also presents the negative

57 Paweł VI, Encyklika o popieraniu rozwoju narodów, Populorum Progresio z 26 marca 1967 [Online]. Available at: https://www.mop.pl/doc/html/encykliki/Encyklika%20Populorum%20progressio.htm (Accessed: 10 August 2023).

58 Jan Paweł II, Encyklika Sollicitudo rei socialis. Skierowana do biskupów, kapłanów, rodzin zakonnych, synów i córek Kosciola oraz wszystkich ludzi dobrej woli z okazji dwudziestej rocznicy ogłoszenia Populorum progressio z 30 grudnia 1987 [Online]. Available at: https://www.vatican.va/content/john-paul-ii/pl/encyclicals/documents/hf_jp-ii_enc_30121987_sollicitudo-rei-socialis.html (Accessed: 8 August 2023).

economic effects of depopulation, for instance, crises in the social welfare system, a reduction in savings, a decrease in investments and a reduction in the number of qualified employees. A small number of people in families can also lead to the failure of social relationships and the impossibility of guaranteeing effective forms of solidarity (n. 44 CV).

In addition, Pope Francis draws attention to the issue of demographics in his teachings. In the encyclical *Laudato Si* (Ls), he accuses some people of suggesting that the birth rate should be reduced instead of solving the problems of the poor. The Pope notes that blaming demographic growth for existing problems, rather than the culture of extreme and selective consumerism, is a way of neglecting the real threat (n. 51 LS).

The reasons why the Catholic Church deals with the phenomenon of demographics seem obvious. These reasons include the respect for human life from conception to natural death and the concern for respecting the inherent and indisputable dignity of every individual. In their official statements and documents, Popes not only highlight the problem of rapid population growth on a global scale but also note the negative consequences of the decrease in birth rates in some regions.

5. Protection of the family and its individual members in the teachings of Christian churches

As the most basic social unit, the family is a point of interest for both the state and individual churches and religious associations. Young people's attitudes, which are later employed in adult life, are formed within the family. The importance of the family in shaping the personality and character traits of its individual members cannot be underestimated. Parents, who apply the right and duty to bring up their children, are particularly responsible for that task. Both secular and ecclesiastical legislators constantly express their respect for this institution. It is worth quoting the regulations included in the Constitution of the Republic of Poland, where Art. 18 states that marriage, as a union of a man and a woman, family, motherhood, and parenthood are under the protection and care of the Republic of Poland. The well-being of the family should also be a point of reference for the state's cooperation with churches and religious associations (Art. 25(1) of the Constitution of the Republic of Poland).

5.1. The Catholic Church and the rights of the family

The Catholic Church supports the traditional family model based on the institution of marriage between a man and a woman. The Church believes that families

should be provided with appropriate support from the state in material and spiritual matters in order to properly meet their needs.

The teachings of the Popes of the Catholic Church are full of statements concerning the institution of a family and its rights. It is impossible to present all of these numerous statements and regulations; therefore, the most representative of the Catholic doctrine are selected here.

On 10 February 1880, the encyclical of Pope Leo XIII dedicated to Christian marriage – *Arcanum Divinae Sapientiae* (ADS) – was published.[59] Therein, the Pope points out that the source and beginning of the family, and consequently of the entire human community, is the marriage of a man and a woman. Spouses should demonstrate the utmost mutual love, fidelity, and care for each other. The husband is the head of the family, and the wife is his companion. Divorces, which have a destructive effect on the upbringing process of children, seem to be a threat to the institution of marriage; therefore, it is significant for both the Church and the state to take steps to counteract them (n. 5–17 ADS).

In the encyclical *Casti Conubi*, Pius XI also teaches about the necessity of the permanence of marriages. The stability of marriage is the source of honest life and the purity of morals. The preservation of these values ensures the happiness of a state. The condition of a state is reflected by the condition of its families and citizens; therefore, initiatives aimed at protecting the stability of marriage serve the common interest. The family is more important than the state, and those who are likely to have children with disabilities should not be restricted from marrying. Moreover, state authorities cannot interfere in the family system but should ensure social and economic conditions that allow the heads of families to earn enough to provide the whole family with the necessary support. The state should act in accordance with the principle of subsidiarity. If private expenses are not efficient enough to meet the needs of the family, the state is responsible for filling the deficiencies. The Pope encourages the authorities to avoid introducing the institution of divorce.

Identifying the tasks of the family and the Church in the upbringing of children was emphasised by Pius XI in the encyclical *Divini Illius Magistri*.[60] As the Church and the family both come from God, they carry out a similar mission. The family is obliged to bring up children and be responsible for this process. This is a family right of a primary nature, which cannot be removed by anyone, even the state authority. Pius XI teaches that the mission of upbringing belongs to the family and the Church, not the state.[61]

59 Leon XIII, Encyklika Arcanum Divinae Sapientiae o małżeństwie chrześcijańskim z 10 lutego 1880 [Online]. Available at: https://kodr.pl/wp-content/uploads/2018/10/leon_xiii_arcanum_divinae.pdf (Accessed: 10 August 2023).

60 Pius XI, Divini Illius Magistri – O chrześcijańskim wychowaniu młodzieży z 1929 [Online]. Available at: https://www.ekai.pl/dokumenty/encyklika-divini-illius-magistri/ (Accessed: 10 August 2023).

61 Ibid.

Taking the teachings of the Second Vatican Council into account, in *Humanae Vitae*, Paul VI teaches about the inseparable relationship between conjugal love and the act of procreation. The mutual love of spouses requires them to identify their tasks in procreation. Responsible parenthood appears when spouses can recognise their duties towards God, themselves, the family, and society (n. 10 EV). In *Evangelium Vitae,* John Paul II draws attention to the difficult economic situation of families in the poorest countries. He regrets that marriages and families are often left with their own problems. There are many examples of extreme poverty, deprivation, and insecurity, where human suffering reaches its limits and women are subjected to extreme harassment. In such circumstances, the Pope states that standing for life and defending it becomes a heroic act (n. 11 EV).

As Pope Francis emphasises in the encyclical *Lumen Fidei*, the necessity to pass on the faith is the duty of parents. Particular care should be given to young people who are going through complicated, amusing, and important periods of their lives. Young people must feel the closeness and care of the family and the ecclesial community as they mature in faith (n. 53).[62]

The papal teachings on the family were not only included in encyclicals: other documents also draw attention to the important role of this institution in a society. Paul VI's apostolic exhortation, *Evangelii nuntaiandi* (En), focuses on the relationship between the family and the Church.[63] In the mission of the family in the area of the secular apostolate, all its members should be involved in this work appropriate to their age and abilities. The family is to become a 'proclaimer of the Gospel', for other families as well as for the environment in which it functions (n. 71 and 72 En). John Paul II often spoke about the need to value the importance of the family. In the apostolic exhortation *Redemtoris Custos*, he refers to the significance of the Holy Family. The Pope emphasises the fact that the modern family is given the mission of guarding revelation and spreading love. As the Holy Family, all families should create a 'domestic Church' where faith and love will grow (n. 7).[64]

The exhortation *Christifideles Laici* is devoted to the role of the laity in the Church. John Paul II teaches therein that marriage and the family are the basic ground for the social commitment of lay Catholics. The family is also the source of life and love and where they are born and grow. The family has an irreplaceable value for society; therefore, this institution should be given special care. The Pope mentions actions directed against the family, including abortion campaigns and totalitarian politics. Today's hedonistic and consumerist mentality does not promote the development of

62 Franciszek, Encyklika Lumen Fidei – o wierze z 29 czerwca 2013 [Online]. Available at: https://kodr.pl/wp-content/uploads/2018/10/franciszek-lumen_fidei.pdf (Accessed: 11 August 2023).

63 Paweł VI, Adhortacja apostolska – Evangelii nuntiandi – O ewangelizacji w świecie współczesnym z 8 grudnia 1975 [Online]. Available at: https://opoka.org.pl/biblioteka/W/WP/pawel_vi/adhortacje/evangelii_nuntiandi.html (Accessed: 11 August 2023).

64 Jan Paweł II, Adhortacja apostolska – Redemtoris Custos – o Świętym Józefie i jego posłannictwie w życiu Chrystusa i Kościoła z 15 sierpnia 1989 [Online]. Available at: https://kodr.pl/wp-content/uploads/2018/10/adhortacja_redepmptoris_custos.pdf (Accessed: 11 August 2023).

the family. The task of the laity in the Church is to ensure that the family is aware of its identity and recognises the fact that it is the first and basic social unit with a special mission. The family itself should be an active and responsible promoter of its rights. Families should demand respect for their rights from authorities. The Pope states that civilisation and the stability of nations depend primarily on the condition of families. The Church is, thus, aware that the future of humanity depends on the family condition (n. 40 Ch. L.).

The text of the exhortation of John Paul II, *Familiaris cosortio*, is devoted entirely to issues concerning the family. This document basically recognises the value of family and marriage, which are some of the most precious goods of humanity. As the foundation of society, the family has tasks to perform in the fields of creating a community of life, serving life, participating in the development of a society, and participating in the life and mission of the Church. Though the basic tasks of the family in relation to society are the procreation and education of children, they cannot be limited only to these issues. Families should act to meet the needs of society, including the care of the poor and those in need (Nos. 17 and 44 FC). The Church strongly defends family rights from both society and the authorities, especially in situations where these entities assume that they can replace the institution of the family. In the exhortation, the Pope formulates a collection of family rights, which includes intimacy of spousal and family life; the permanence of bonds and the institution of marriage; expressing faith and defending it; bringing up children with the necessary means, tools, and institutions according to one's own religious and cultural traditions and values; obtaining physical, social, political, and economic security, especially for the poor and the sick; homes that allow for a suitable family life; representation of the family to public economic, social, and cultural authorities and lower authorities, either directly or by associations; associated with other families and institutions for the proper and passionate fulfilment of the family's tasks; the protection of minors by appropriate institutions and legislation against harmful drugs, pornography, alcoholism, etc.; appropriate entertainment that also serves family values; living and dying with dignity and in a manner respectful of a human being; an the emigration of the whole family to find better living conditions (No. 46 FC).

The announcement of the FC exhortation resulted in the development by the Holy See of the Charter of Family Rights (CFR).[65] This document was created at the request of the Synod of Bishops, which was devoted to the tasks of the Christian family in the modern world. The purpose of the CFR is to present believers and non-believers with the Church's perception of the family and its rights.[66] The institution of the family is based on a marriage of a man and a woman and is permanent,

65 Karta Praw Rodziny przedłożona przez Stolicę Apostolską wszystkim ludziom, instytucjom i władzom zainteresowanym misją rodziny w świecie współczesnym z 1983 [Online]. Available at: https://www.srk.opoka.org.pl/srk/srk_pliki/karta.htm (Accessed: 11 August 2023).

66 Ibid.

voluntary, public, and willing to procreate. Moreover, the family is perceived as a natural and primary relationship in relation to both the state and other communities, with its own indisputable rights. As a legal, social, and economic subject, the family is also a community of love and solidarity. Its competences include the transmission of cultural, ethical, social, spiritual, and religious values that are important for the development of both its individual members and the development of society. National authorities and international organisations should do everything to secure the needs of the family at the political, economic, social, and legal levels (Introduction – CFR). The family has the right to exist and develop; thus, public authorities should recognise and support basic family values such as dignity, independence, intimacy, integrity, and stability (Art. 6 of the CFR). The sphere of social security is essential for the proper functioning of the family. Therefore, benefits received by the family should ensure its success and stability, and the opportunity for healthy recreation (Art. 10 of the CFR). Payment for work should be sufficient to establish and maintain a family. In addition, it is necessary to provide housing that is suitable for family life and adapted to the number of its members (Arts. 10 and 11 of the CFR).

In 1994, John Paul II addressed a letter to the families entitled '*Gratissimam sane*'. According to this document, the family is the path of the Church: it is the first and most important path, special, unique, and irreplaceable, just as a human being is (n. 2 Gs). As in the past, the family is currently perceived as the basic expression of the social nature of Man. The Pope emphasises the importance of a woman and a man in the institution of the family. The family is a community of living together – *comunio personarum* (n.7 Gs); thus, there is no difference in the missions of a husband or a wife, which are both equally important. As the most basic and smallest unit of society, the family demands respect for its rights. John Paul II emphasises that the family primarily expects recognition of its identity and subjectivity. Consequently, as a union of a man and a woman, marriage serves the well-being of the family and aims at the procreation and education of children. The Pope excludes the possibility of accepting unions other than heterosexual unions as marriages. According to the Pope, movements that aim to legalise same-sex marriages are dangerous for the future of the family and society (n. 17 Gs).

There are also references to the Christian family in Pope Francis' apostolic exhortation *Evangelii Gaudium* (EG).[67] It has been noted there that the family is currently undergoing a deep cultural crisis, as are other communities and social bonds. However, in the case of the family, this situation is particularly dangerous because it affects the basic unit of society, where people learn to live together in a society and in diversity, and where parents pass on the faith to their children (n. 66 EG). A postmodern and globalised individualism, which favours a lifestyle that deforms familial bonds, is a threat to the identity of the family. A Christian's duty is to care

67 Franciszek, Adhortacja apostolska – Evangelli Gaudium z 24 listopada 2013 [Online]. Available at: https://kodr.pl/wp-content/uploads/2018/10/adhortacja_evangelii_gaudium.pdf (Accessed: 11 August 2023).

for others; therefore, initiatives aimed at protecting rights and building social and cultural progress are reasonable in Pope Francis's view (n. 67 EG).

Social issues and the economic situation of families were included in the final report of the Synod of Bishops for Pope Francis.[68] The bishops point out that as a place of joy and experience, the family is the first and basic school of society (n. 2). Public authorities are obliged to act to support the family through appropriate pro-family policy and the activation of civil society. Actions supporting families should be specified in such a way as to create a modern social welfare system. This will allow for a rational redistribution of funds and for levelling the negative effects of social inequalities.

The Catechism of the Catholic Church specifies that some communities, such as the family and the state, correspond more directly to human nature (n. 1882 CCC). State authorities should care for the common good, which is realised in social well-being and community development. The authorities should also settle disputes concerning particular interests. However, it is necessary to provide everyone with the foundations that allow them to lead a truly human life. Food, clothing, work, education, culture, reliable information, and the right to establish a family are the most crucial of these foundations (n. 1908 of the CCC). The deepening interdependence between people requires the community of nations to take specific actions. Refugees and emigrants dispersed all over the world should be given special care, and special actions should be taken to support the families of these people to ensure they have a dignified life (n. 1911 CCC).

In the Code of Canon Law, the ecclesiastical legislator states that married couples have a special duty to contribute to the building up of the People of God through marriage and family. They should do this in a way that is consistent with their vocation. Parents, therefore, have an essential duty and right to educate their children because they have given their children life (can. 226). The Catholic Church takes special care of the family, which is the basic social unit and is believed to be the foundation of the Church and the state. Both these communities should, thus, guarantee the rights that allow the family to develop with dignity. Consequently, the teachings of the Church highlight that the marriage of a man and a woman is the source and beginning of the Christian family and that any attempts to interfere with the essence of this institution should be considered forbidden. Spouses are obliged to care for each other for the security of the family and their offspring.

Analysing the teaching of the Catholic Church indicates an evolution in the perception of the roles of men and women: whereas the encyclicals of Popes from the beginning of the 20th century emphasised the dominant role of the father in comparison to a woman, it is now stressed that the roles of both spouses are identical. Undoubtedly, this is the result of social changes and the guaranteeing of women's

68 Synod Biskupów. XIV Zwyczajne Zgromadzenie, Relacja końcowa dla Ojca Świętego Franciszka (24 października 2015) [Online]. Available at: https://kodr.pl/wp-content/uploads/2017/02/Synod-o-Rodzinie-dokument-ko%C5%84cowy.pdf (Accessed: 12 August 2023).

rights by secular authorities. An example can be found in the provisions of the Polish Constitution, in which Art. 33 sec. 1 provides that a woman and a man in the Republic of Poland have equal rights in family, political, social, and economic life. The Church also emphasises that parents have the primary right to bring up their children in accordance with their own beliefs. No institution can impose a model of upbringing and education that would be contrary to the expectations of parents and legal guardians.

5.2. The family in the teachings of non-Catholic Christian churches

The priority of the family and the rights of parents in the upbringing of their children are also a significant part of the teachings of non-Catholic Christian churches. This part of the chapter presents the positions of select Protestant and Orthodox communities, as expressed in their official documents and internal laws. In the creed of the Southern Baptist Convention, which is the largest Protestant organisation in the United States, there are elements regarding the institutions of marriage and the family.[69] Chapter VIII, entitled 'The Family', states that God established the family as the basic institution of human society. This institution consists of people related by blood or joined by marriage or adoption. Marriage is the union of one woman and one man who commit themselves to persevere in a mutual covenant for the rest of their lives. Husband and wife are of equal value for God because they have been created by Him. A husband's duty is to love his wife and provide for her, and to protect and guide his family. Accordingly, a wife's duty is to accept her husband's leadership as the Church submits to Christ's headship. In addition, her duties include respecting her husband and helping him in running the home and raising children. Children, thus, are the blessing and inheritance of God from the moment of conception. It is the parents' responsibility to teach their children God's vision of a marriage. In addition, parents must teach their children spiritual and moral values and prepare them to make Bible-based choices. In turn, children are obliged to respect and obey their parents.[70]

On 3 May 1997, the Baptist Church of Poland presented its position on marriage and the family.[71] In this document, the institution of marriage is acknowledged as a permanent union between a man and a woman, which can only be ended by the death of the spouse. Divorce is considered inconsistent with God's will and is possible only in the cases listed in Mt 19:9 (fornication, adultery) and Cor 7:15 (Paul's privilege – leaving a non-believing person). Spouses have the right

69 Comparison of 1925, 1963, and 2000 Baptist Faith and Message [Online]. Available at: http://www.sbc.net/bfm/bfmcomparison.asp (Accessed: 12 August 2023).

70 Ibid.

71 Stanowisko Kościoła Chrześcijan Baptystów w RP w sprawie małżeństwa i rodziny – Uchwała Międzykonferencyjnego Zjazdu Delegatów Kościoła Chrześcijan Baptystów w RP z dnia 3 maja 1997 r. w sprawie małżeństwa i rodziny [Online]. Available at: https://baptysci.pl/naszawiara/stanowiska/stanowisko-kosciola-w-sprawie-malzenstwa-i-rodziny (Accessed: 12 August 2023).

to plan their family according to their own will using contraceptives, except for abortion pills.[72] The Supreme Council of the Pentecostal Church in Poland has also expressed its position on marriage, divorce, remarriage, and family planning.[73] This position is largely consistent with the teachings of the Baptist Church in Poland: it emphasises that marriage is an institution established by God and a monogamous and permanent union between a man and a woman. Marriage is contracted in public in accordance with current legal (secular) and church regulations. Divorce is believed to be immoral but possible in some cases (the so-called 'Matthew clause' and two 'St. Paul clauses'). Spouses may freely and conscientiously plan their family life using methods of contraception, with the exception of abortion drugs.[74]

The holiness, indissolubility, and divine origin of marriage are also underlined in Orthodoxy based on the biblical tradition. The domestic Church is born out of conjugal love, and when children are born, they bring a new quality to fatherhood and motherhood. Children and the time of their upbringing are treated in the Orthodox Church as a sign of God's blessing, and any interference in the unborn life is unacceptable.[75] The vision of the family in the whole of Christianity is similar. The institution of the family, which comes from God, is based on the inseparable union of a man and a woman. The Christian family has independence in the methods it uses to bring up its offspring. However, there are differences in the views on family planning and the use of contraceptives compared to the teachings of the Church.

6. Summary

The ethics and internal laws of various churches and religious associations support ideas aimed at solving demographic problems. By affirming human life from conception to natural death, Christian communities attempt to preserve lives regardless of social status or health. Christian churches perceive the issue of population from a dual perspective: on the one hand, there has been a rapid increase in population on a global scale, while on the other hand, some countries are facing a significant decrease in population. There is a need to intensify the cooperation of the entire international community in order to deal with the emerging problems. Unfortunately, human nature has been unchanged for centuries, and there will always be some countries that desire to impose their standpoints on others, regardless of

72 Ibid.

73 Stanowisko Naczelnej Rady Kościoła Zielonoświątkowego w RP w sprawie małżeństwa, rozwodu, powtórnego małżeństwa oraz planowania rodziny z 10 maja 2010 [Online]. Available at: http://sienna.waw.pl/wp-content/uploads/2019/08/stanowisko-nrk-mrpmpr.pdf (Accessed: 12 August 2023).

74 Ibid.

75 Leśniewski, 2016, pp. 124–129.

the social costs. The current Russian invasion of Ukraine directly affects problems related to the world's demographic situation. Cutting off the possibility of supplying grain and food to countries affected by famine is an inhumane act that interferes with the essence of society. Christian churches and religious associations mostly criticise Russia's aggressive actions; however, unfortunately, there are some communities that try to justify these actions. To remain reliable, Christianity needs to present a unified and consistent standpoint that criticises existing evil. Summarising the above findings, the following conclusions can be drawn:

The teachings of Christian churches are based on the Gospel of Christ and express universal values, which should be a point of reference for people of good will, regardless of their ideology.

Human life is a superior category enrooted in the dignity of a human being as an inherent and inviolable value.

Human life is the greatest value and should be protected in an absolute manner. No political or social compromises justify interfering in this matter.

It is very difficult to define specific legal solutions that would fully guarantee the prohibition of interference in the existence of a human being at every stage of his or her development. Even among Christians, there are some differences in their views on bioethical issues, especially those related to medically assisted procreation and the use of contraceptives.

The understanding of the concept of Christian ethics is ambiguous. The basis for the existing differences includes divisions within Christianity, which led to the separation of three basic movements: Catholic, Protestant, and Orthodox.

The internal law of individual churches and religious associations is recognised with a large level of diversity. Some of the confessions have arranged collections of legal provisions. In the case of the Catholic Church, the term 'canon law' is used to describe the internal law. Internal norms adopted by specific churches and religious associations are largely based on their religious doctrine.

Christian teachings on the issues of a family and respect for life are related to the principle of cooperation between the state and the Church, which was articulated in the social teachings of the Second Vatican Council and became a normative rule owing to its acceptance by the secular legislator.

In the doctrine of the Catholic Church, marriages are directed by their nature towards procreation and the upbringing of offspring. Children are the most precious gift of marriage. Limiting the number of children, especially through direct termination of pregnancies, even for medical reasons, should be absolutely rejected as morally unacceptable.

The teachings of the Second Vatican Council clarify that spouses have a duty to procreate life and raise children. Parents are God's collaborators in this work; living in Christian families, they should care for their own well-being as well as for that of their present and future children. The teachings also emphasise that parents should not act according to their own urges but always according to their conscience, which is adapted to the teachings of the Church.

John Paul II promoted the protection of human life and emphasised the values of growing up in a family. The Pope was aware of the existence of an anti-life morality that stems from fear among ecologists and futurologists about the excessive growth of the human population. According to John Paul II's teachings, human life, even when it is weak and suffering, is always a wonderful gift of God's goodness.

The teachings of Benedict XVI highlight that the law against life is popular mainly in economically developed countries. There exists a so-called 'anti-natalist mentality' that some try to impose on other countries as if it represented cultural progress.

Benedict XVI emphasises that openness to life is the true approach to development. In a situation where society tends to negate and annihilate life, there is no motivation or energy to engage in the service of human good.

Pope Francis stresses the fact that a child is a gift for the family. Unfortunately, many children are rejected from the beginning of their lives. For the Pope, this is a shameful and unacceptable situation. Parents should make every possible effort to ensure that a child could never think that he or she was a mistake.

Respect for human life is not only covered in the papal teachings: other institutions of the common Church also refer to this issue in their documents.

The Code of Canon Law, promulgated in 1983, penalises crimes against human life but does not contain norms defining who a human being is and when his or her beginning is. Undoubtedly, the church legislator should consider the legitimacy of establishing regulations relating to these issues.

The Catholic Church's uncompromising stance on bioethical issues faces enemies and critics. The Church does not 'keep up to date' in terms of basic principles. However, the Church cannot be demanded to reject its teachings because then it would no longer be the Church.

The religious doctrine of non-Catholic Christian communities, including their teachings on ethical matters and their internal law, is largely in line with the position of the Catholic Church, although there are some differences.

The Evangelical Augsburg Church in Poland supports the protection of life from the moment of conception. However, the Church does not believe that it is its task to impose penalties for the act of abortion – this is the responsibility of the secular power. The doctrine of this Church strongly criticises the use of abortion drugs, whereas it considers discussions about legal or illegal preventive measures and methods pointless as they have no biblical justification.

The Evangelical Augsburg Church in the Republic of Poland does not clearly express its views on the possibility of terminating a pregnancy in situations when the foetus shows defects. This issue requires extensive analysis by experienced specialists in the fields of genetics, medicine, ethics, and theology.

The Orthodox Church also takes a strong stand on bioethical issues by declaring abortion unacceptable. A conceived child is a fully valuable person who reacts to external conditions, and his or her murder is not acceptable under any circumstances.

The act of procreation is perceived not only as a human activity aimed at prolonging the species but also as a gift from God.

Churches and religious associations recognise existing demographic problems in their teachings. The rapid population growth that took place in the 20th and 21st centuries and the related problems have been reflected in official statements and issued documents.

The Catholic Church deals with the phenomenon of demography owing to its respect for human life from conception to natural death and for the inherent and absolute dignity of each individual.

In affirming life and criticising all attempts to interfere with its duration, the Catholic Church directly supports activities aimed at stopping the decrease in birth rates. Papal teachings in the 20th century began to directly examine the issue of the world population.

Pope John XXIII emphasises that demographic problems cannot be solved by means that are disgraceful to Man; rather, the solutions should be found in economic development and social progress that respects true human values, both individual and social. Global cooperation that can enable the proper use of capital and human potential is required.

Pope Paul VI teaches that public authorities can get involved in matters of demographics within the limits of their competence, as long as the actions taken are in accordance with the assumptions of the moral law and respect the freedom of spouses. Paul VI speaks of depriving the individual of his dignity when the right to marriage and procreation is interfered with. It is the right of parents to consciously determine the number of children they have.

John Paul II states that the problem is not only the rapid growth of the population but also its decrease. He criticises campaigns that aim to reduce the number of births, perceiving them as a form of blackmail because rich countries make economic aid conditional on the implementation of such campaigns. This favours the introduction of racist forms of eugenism and is a manifestation of an incorrect concept of true human development.

Benedict XVI notes that wealthy countries were able to get out of poverty thanks to their large populations and the skills of their inhabitants and that the decrease in births is becoming a serious problem for rich societies. A small number of people in families can also weaken social relations and make it impossible to guarantee effective forms of solidarity.

Pope Francis points out that blaming demographic growth, rather than the culture of extreme and selective consumerism, for existing problems is a way of avoiding the real threat.

As the most basic social unit, the family is a point of interest for both the state and individual churches and religious associations. The attitudes of young people, which later serve them in adult life, are formed within the family. Particular responsibility lies with parents who implement the right and duty to bring up their children.

The Catholic Church supports the traditional family model based on the institution of marriage between a man and a woman. Families should be provided with adequate state support in material and spiritual matters in order to properly meet their needs.

According to the teachings of Pius XI, the family is more important than the state, and those who are likely to have children with disabilities should not be restricted from marrying. Moreover, state authorities cannot interfere in the family system but should ensure the social and economic conditions that allow heads of families to earn enough to provide the whole family with the necessary support.

John Paul II draws attention to the difficult economic situation of families in the poorest countries. He regrets that marriages and families are often left with their own problems. In addition, he states the family has a unique value for society and that this community should, therefore, be given special care. The Pope mentions actions directed against the family, including abortion campaigns and totalitarian politics. The hedonistic and consumerist mentality also does not support the development of the family.

John Paul II perceives the family as the foundation of a society, with tasks to perform in the fields of creating a community of life, serving life, participating in the development of society, and participating in the life and mission of the Church.

In the teachings of the Catholic Church, the institution of the family is based on the marriage of a man and a woman and is permanent, voluntary, public, and open to procreation.

The Catholic Church also teaches that the family is a natural and primary relationship in relation to both the state and other communities, with its own indisputable rights. As a legal, social, and economic subject, the family is also a community of love and solidarity.

An evolution in the perception of the roles of men and women can be noted in the teachings of the Catholic Church. While the encyclicals of Popes from the beginning of the 20th century emphasise the dominant role of the father in comparison to a woman, it is now stressed that the roles of both spouses are identical.

The priority of the family and the rights of parents in the upbringing of their children are also a part of the teachings of non-Catholic Christian churches.

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Chapter 7

Constitutional Foundations of Family Policy

Paweł Sobczyk

Abstract

Family policy comprises 'the totality of legal norms, actions, and measures launched by the state in order to create appropriate conditions for the family to come into being, to develop correctly, and to fulfil all socially important functions'. Owing to the hierarchical structure of modern legal systems, a special part of family law should be attributed to the Constitution as a fundamental law, normalising the foundations of the state system and the legal status of its citizens, enacted in a special procedure. Given their level of generality, the norms contained in the Constitution as the fundamental law of the state require clarification and elaboration in lower-level Acts, most often in ordinary laws and executive Acts issued by executive authorities. This chapter aims, first, to determine if and what the constitutional basis of family policy is in the Central European countries of Croatia, the Czech Republic, Poland, Romania, Serbia, Slovakia, Slovenia, and Hungary. Second, the chapter undertakes a decoding of the constitutional provisions on the protection of the family, marriage, children, and the mother before and after childbirth in these countries to find common solutions for Central European constitutionalism in family policy. Third, an analysis of the constitutional provisions of the above-mentioned countries seeks to determine an optimal model from the perspective of the implementation of family policy and its fundamental goal of stabilising and supporting family life by meeting the needs of families, and (perhaps) to establish a model for a 'constitutional family policy' for Central Europe.

Keywords: Child, constitution, demography, family, family policy

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1. Introduction – family policy

'Family policy is the totality of legal norms, actions and measures activated by the state in order to create appropriate living conditions for the family: its formation, its proper functioning and its fulfilment of all important social roles'.[1] The aim of family policy is to stabilise and support family life by meeting the needs of families. It is important given that these needs affect a large proportion of the population.[2]

The concept of 'family policy' is not new. It is assumed to have been used as early as the 1940s within European discussions on social policy in relation to families and children. Later, the term came to be associated with the term 'government action in favour of children and their families, especially such state policy aimed at influencing the situation of families, with children, or of individuals in their family roles'.[3] The rationale behind family policy is society's 'need' for children 'to be healthy, well-educated and, in the future, to be productive workers, citizens and parents'.[4]

Family policy is based first and foremost on legislation, through which the state seeks to create appropriate living conditions for families. In this way, through its law-making activity, the state can stimulate and support demographic processes and influence the families' quality of life, especially that of families with many children because they are under its protection and care and, on in some modern European Constitutions, even 'special'.

Owing to the hierarchical structure of modern legal systems, a special part in family policy should be attributed to the Constitution as a fundamental law, normalising the foundations of the state system and the legal status of its citizens and enacted in a special procedure.[5] As Hans Kelsen wrote, 'The constitution is the

1 Kamerman, 1994.

2 Zimmerman, 1995. Similarly, in the Polish literature on the subject, family policy is defined by Kurzynowski as 'the totality of legal norms, actions and measures launched by the state in order to create appropriate conditions for the family to come into being, to develop correctly and to fulfil all socially important functions. The objectives of family policy can be defined as the creation of general conditions for the formation, development and satisfaction of the living and cultural needs of the family, optimal conditions for the education and upbringing of the young generation and equality of their start in life and at work – equality of life chances'. Kurzynowski 1991.

3 Balcerzak-Paradowska, 2004.

4 Kemerman, 1994.

5 A very interesting compendium on the history and contemporary concept of constitution is contained in a study: 'The author begins his reflections with an analysis of the etymology and meanings of the term "constitution". The word is derived from constituere, a Latin verb meaning to construct; to establish; to resolve, to place, which – as we can guess – refers to the foundations of a state's system of government. So the constitution means a regulation, order or decree being a result of such establishment. The meanings of this term are subsequently discussed. Then, the author reviews various definitions of the constitution, starting with 18th c. definitions and ending with 20th c. ones, on the basis of mostly German, Anglo-Saxon, French and Polish literature. Subsequently, the author formulates his own definition of the constitution. He arrives at the conclusion that this is the basic law regulating the foundations of a state's system of government and the legal status of its citizens, which law is passed according to a special procedure'. Malajny, 2018, pp. 3–22.

principle that determines the creation of laws, the general norms which the organs of the state, in particular the courts and state officials, are tasked with enforcing. This rule for the creation of legal norms which, above all, shape the state system, this definition of the organs and procedures of the legislature – is the actual, original and narrower conception of the constitution'.[6]

The Polish 'Constitutional Tribunal considers that one of the features of the Constitution, as a fundamental law, is its character of a normative act, i.e. an act entirely constructed of provisions that may constitute the foundation for the construction of legal norms. Although, as already mentioned, the degree of precision and concreteness of individual provisions of the Constitution varies, this does not change the fact that the possibility of extracting specific legal content from each of them should be presumed'.[7]

A hierarchically ordered legal system is based not only on the assumption of concretisation of the Constitution by laws but also on the assumption of elimination from this system of norms contrary to the Constitution. This elimination is carried out based on the rules of exegesis adopted in the legal system. Among these rules, the conflict rule *lex superior derogat legi inferiori* plays a special role. However, it should be emphasised that the application of this rule gives rise to several theoretical and practical difficulties.[8]

Given their level of generality, the norms contained in the Constitution as the fundamental law of the state require clarification and elaboration in lower-level Acts, most often in ordinary laws and executive Acts issued by executive authorities. In some cases, the system legislator explicitly indicates that a specific matter requires regulation in an Act of subconstitutional rank, thereby obliging the legislator to be active in the area of legislation. Hence, it is difficult to overestimate the significance of constitutional guarantees, not only in relation to family policy.

With the above in mind, this chapter aims, first, to determine if and what the constitutional basis of family policy is in the Central European countries of Croatia, the Czech Republic, Poland, Romania, Serbia, Slovakia, Slovenia, and Hungary. Second, it undertakes a decoding of the constitutional provisions on the protection of the family, marriage, children, and the mother before and after childbirth in these countries to find common solutions for Central European constitutionalism in family policy. Third, an analysis of the constitutional provisions of the above-mentioned countries seeks to determine an optimal model from the perspective of the implementation of family policy and its fundamental goal of stabilising and supporting family life by meeting the needs of families, and (perhaps) to establish a model for a 'constitutional family policy' for Central Europe.

6 Kelsen, 1923.

7 Order of the Constitutional Tribunal of 22 March 2000, ref. no. P 12/98, OTK ZU 2000, No. 2 item 67.

8 Wronkowska, 2001.

2. Constitutional guarantees for family policy in Central European states – an overview

2.1. Constitution of the Republic of Croatia of 22 December 1990

The 1990 Constitution of the Republic of Croatia[9] was the first new Constitution in the countries of Central and Eastern Europe. It was enacted after the political transformation that began in Poland in 1989 and that contributed to the transformation of the political, social, and economic systems in the countries in this part of Europe. This Constitution refers to Western European solutions,[10] both in terms of the state system (the principle of the separation of powers and other related principles) and the regulation of the status of the individual in the state.[11]

Title II of the Constitution of Croatia ('Basic Provisions') begins with Art. 1, which lists the four guiding ideas of the political system in the country: the republican form of government, unitarism, democracy, and the welfare state.[12] This article states, 'The Republic of Croatia is a unitary and indivisible democratic and social state'. The following footnote is a clear reference to the German doctrine of the social legal state, that is, the protection and support of citizens, including the family.[13]

Of relevance to the family issues at hand are two articles that form a subtitle on economic, social, and cultural rights.[14] Art. 55 reads, 'Each employee shall be entitled to remuneration enabling him/her to ensure a free and decent life for himself/herself and his/her family'. This is the realisation of inviolable dignity, from which other rights, including social rights, follow.[15] Wages in themselves are protected as a lever to secure the basic needs of the family.[16] In turn, Art. 51 states, 'Everyone shall participate in the defrayment of public expenses, in accordance with their economic capacity. The tax system shall be based upon the principles of equality and equity'.[17] This provision provides for social justice and proportional equal participation in public expenses, which are then redistributed as support for families and children, among others.[18]

As can be seen from the provisions cited above, the Croatian legislator has only indirectly addressed the issue of family protection through a general statement that

9 The consolidated text of the Constitution of the Republic of Croatia as of 15 January 2014. Edited and translated by the Constitutional Court of the Republic of Croatia. Consolidated text, Official Gazette Nos. 56/90, 135/97, 113/00, 28/01, 76/10, 5/14.
10 Poniatowski, 2022, pp. 13–35.
11 Garlicka and Garlicki, 2007.
12 Karp and Grzybowski, 2007, pp. 18–22.
13 Rodin, 1998, pp. 111–118.
14 Graovac, 2021, pp. 37–76.
15 Graovac, 2022, pp. 37–72.
16 Josipović, 2016.
17 Składowski, 2013, pp. 65–104.
18 Garlicka and Garlicki, 2007.

Croatia is a 'social state'. Guarantees regarding the provision of wages to employees that enable them to live with dignity 'for himself/herself and his/her family', to which a fair tax system is also supposed to contribute, are also only indirectly addressed.[19] The conglomerate of welfare state provisions indicates that the state is responsible for the family and, through selected instruments, can stimulate family policy, in particular, towards improving fertility rates.[20]

2.2. Constitution of Romania of 21 November 1991

Romania's Constitution was adopted on 21 November 1991[21], less than a year and a half after the start of constitutional work, spurred on by the presidential and parliamentary elections of 30 May 1990. This Constitution was adopted in a referendum on 8 December 1991.

Among the general principles indicated in the Romanian Constitution, the following is of particular relevance to this chapter: 'Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and shall be guaranteed'. According to Ros, 'The concept of the welfare state is a result of the proximity between political power and civil society. The conception about legal state — proper for an industrial emancipated society — requires a balance between state intervention in the social and economic life, and liberal democratic principles and also, the state assumes the fact that has the obligation to ensure a decent life for its citizen'.[22]

In the extremely comprehensive 'Title II – Fundamental rights, freedoms, and duties', there is no provision that directly refers to family policy. Nevertheless, as in other Constitutions of Central European States, the Romanian legislature has affirmed a number of freedoms and rights that relate to matters of marriage, family, maternity, and the protection and care of children and young people.[23] It follows from Art. 26 that (1) 'The public authorities shall respect and protect the intimate, family and private life, (2) Any natural person has the right to freely dispose of himself unless by this he infringes on the rights and freedoms of others, on public order or morals'. What emerges from this footnote is not just the concept of family life but the notion of individual and family self-determination in accordance with the constitutionally prescribed framework.[24]

19 Karp and Grzybowski, 2007, p. 18–22.
20 Puljiz, 2000, pp. 61–79.
21 See: www.cdep.ro, Monitorul Oficial al României part I, no. 767 of 31 X 2003. English text of the Romanian Constitution, available at: https://www.cdep.ro/pls/dic/site2015.page?id=371&idl=2&par1=2 (Accessed: 25 April 2024).
22 Ros, 2011, pp. 16–28.
23 Zlatescu, 2013.
24 Varga, 2022, pp. 221–240.

Art. 29(6) on freedom of conscience enshrines the guarantee that '[p]arents or legal tutors have the right to ensure, in accordance with their own convictions, the education of the minor children whose responsibility devolves on them'. It is clear from this text that the Romanian Constitution upholds freedom of conscience while guaranteeing the right of parents or legal tutors to educate their children in accordance with their own convictions.[25]

In turn, Art. 34(3), dedicated to the 'Right to protection of health', indicates that '[t]he organization of the medical care and social security system in case of sickness, accidents, *maternity* [emphasis added by the author] and recovery, the control over the exercise of medical professions and paramedical activities, as well as other measures to protect physical and mental health of a person shall be established according to the law'. The Constitution also refers to the protection of health, with an emphasis on maternity, which provides a high level of protection for pregnant women.[26]

Among the guarantees concerning the status of the individual, the Romanian legislator refers directly to the family. Art. 48, in particular, entitled 'Family', is devoted to these issues: '(1) The family is founded on the freely consented marriage of the spouses, their full equality, as well as the right and duty of the parents to ensure the upbringing, education and instruction of their children. (2) The terms for entering into marriage dissolution and nullity of marriage shall be established by law. Religious wedding may be celebrated only after the civil marriage. (3) Children born out of wedlock are equal before the law with those born in wedlock'. This regulation of the Constitution constitutes the ideological foundation for the institution of the family in Romania. In retrospect, the strong position of the family should be viewed positively due to the civilisational and cultural changes affecting legislation.[27]

The legal framework on family policy is complemented by a provision protecting children. In the comprehensive Article 49 of the Constitution, entitled 'Protection of children and young people', the Romanian legislator has included the following specific guarantees:

> (1) Children and young people shall enjoy special protection and assistance in the pursuit of their rights. (2) The State shall grant allowances for children and benefits for the care of ill or disabled children. Other forms of social protection for children and young people shall be established by law. (3) The exploitation of minors, their employment in activities that might be harmful to their health, or morals, or might endanger their life and normal development are prohibited. (4) Minors under the age of fifteen may not be employed for any paid labour. (5) The public authorities are bound to contribute to secure the conditions for the free participation of young people in the political, social, economic, cultural and sporting life of the country.

25 Simion and Criste, 2017, pp. 263–272.
26 Şaramet, 2020, pp. 29–40.
27 Varga, 2022, pp. 221–240.

This regulation, on the one hand, broadly protects children and young people and, on the other, provides for their activation and the provision of conditions for their participation in the public life of the country.[28]

It is important to note that in the Romanian Constitution, as in the Constitution of the Republic of Poland, the issue of the status of the individual (freedoms, rights, and citizenship) is placed before the solutions concerning systemic issues. Title II of the Romanian Constitution includes: Common provisions (Chapter I), Fundamental rights and freedoms (Chapter II), Fundamental duties (Chapter III), and Advocate of the People (Chapter IV).[29] Such an arrangement confirms the hierarchy of constitutionally protected values as the guarantees concerning the status of the individual have been placed before provisions concerning the organisation and exercise of power in the state.

2.3. Constitution of the Republic of Slovenia of 23 December 1991

On 23 December 1991, the Slovenian Assembly adopted the Constitution of the Republic of Slovenia, which, as the supreme legal act of the new state, laid the foundations of state power and the position of individuals in the country.[30] It should be mentioned that Slovenia became a sovereign state on 25 June 1991 when the Assembly of the Republic of Slovenia adopted the Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia.[31]

The Republic of Slovenia guarantees the protection of human rights and fundamental freedoms to all persons in its territory irrespective of their national origin, without any discrimination whatsoever, in accordance with the Constitution of the Republic of Slovenia and the treaties in force. The Italian and Hungarian national communities in the Republic of Slovenia and their members are guaranteed all rights deriving from the Constitution of the Republic of Slovenia and the treaties in force.[32]

Art. 2 of the Constitution, found among the 'General provisions', lays down that 'Slovenia is a state governed by the rule of law and a social state', which undoubtedly has indirect implications for the state's family policy.[33] As Mavčič points out, 'The principle of the rule of law (the principle of legality) means that all State bodies must act on the basis of the constitution and statutes. Any self-interest which is imposed on the principle of expedience is, as a rule, excluded. The principle of the rule of law or the principle of legality is closely bound with the legislative function of a

28 Teaca, 2017, pp. 160–174.
29 Zlatescu, 2013.
30 See: www.dz-rs.si, http://biblioteka.sejm.gov.pl/konstytucje-swiata-slowenia/. English text of the Constitution, available at: https://tinyurl.com/y23yx3u8. Text published in 'Uradni List Republike Slovenije' 1991 R. I No. 1–4 of 25 July 1991.
31 See: Republika Slovenija, n.d.
32 Mavčič, 2009, pp. 14–19.
33 Kraljić, 2021, pp. 255–286.

contemporary State. Because a statute is the most direct reflection of sovereignty, the activity of the administration and the judiciary must be subordinated to a statute; within this scope, the principle of legality and the rule of law are reflected'.[34]

The detailed regulations on the status of the individual are formulated in chapter (part) two of the Constitution, entitled 'Human rights and fundamental freedoms'. Within the provisions of this chapter, four articles attract particular attention from a family policy perspective. The first of these (Art. 53. 'Marriage and the family') states that marriage is based on the equality of spouses:

> Marriages shall be solemnised before an empowered state authority. Marriage and the legal relations within it and the family, as well as those within an extramarital union, shall be regulated by law. The state shall protect the family, motherhood, fatherhood, children, and young people and shall create the necessary conditions for such protection.

This provision indicates the object and subjects of protection. The Slovenian Constitution is part of a trend observed in Central European countries to protect the family, motherhood, fatherhood, and children as the basis of the demographic system of the state.[35]

In contrast, Art. 54 guarantees the fundamental rights of parents and formulates their duties:

> Parents have the right and duty to maintain, educate, and raise their children. This right and duty may be revoked or restricted only for such reasons as are provided by law in order to protect the child's interests. Children born out of wedlock have the same rights as children born within it.

Both the right and the duty to provide education and care for children derive from this regulation. Characteristic of the Slovenian Constitution is the indication of the possibility to terminate parental rights, which is a sign of a certain modernism.[36]

Central to the considerations at hand are the guarantees on the freedom to decide whether to bear children: 'Everyone shall be free to decide whether to bear children'. This freedom is related to the state's obligation to 'guarantee the opportunities for exercising this freedom and shall create such conditions as will enable parents to decide to bear children'. The above guarantees are found in Art. 54 of the Slovenian Constitution. The Slovenian legislature formulates relatively detailed – for the constitutional level – guarantees of children's rights.[37] Indeed, Art. 56 of the Constitution states,

34 Mavčič, 2009, p. 21.
35 Mavčič, 2008, pp. 271–299.
36 Kraljić, 2022, pp. 217–251.
37 Ibid.

> Children shall enjoy special protection and care. Children shall enjoy human rights and fundamental freedoms consistent with their age and maturity. Children shall be guaranteed special protection from economic, social, physical, mental, or other exploitation and abuse. Such protection shall be regulated by law. Children and minors who are not cared for by their parents, who have no parents or who are without proper family care shall enjoy the special protection of the state. Their position shall be regulated by law.

This indicates that children are protected across the economic, social, cultural, physical, and psychological dimensions. Children who do not have parents remain under special protection – the Constitution refers here to a separate law, which sets out the state's obligations towards this group of children.[38]

It should be pointed out that the Slovenian Constitution regulates family policy issues on an ongoing basis. It provides a certain core that refers to special laws, thus ensuring the flexibility of this policy.[39]

2.4. Constitution of the Slovak Republic of 1 September 1992

The Constitution of the Slovak Republic[40] was adopted by the Parliament on 1 September 1992 and entered into force one month later. Earlier, on 17 July 1992, the Slovak National Council adopted the Declaration of Sovereignty of the Slovak Republic as the basis of the sovereign state of the Slovak people.[41]

In the Constitution of Slovakia, as in several other basic laws of Central European states, issues concerning the status of the individual are regulated in the chapter preceding the institutional regulations devoted to the most important organs of the state.[42] This legislative solution is an expression of the importance that the legislature attaches to the freedoms, rights, and duties of the human being and the citizen.[43]

The general norm prescribing the protection of human life is formulated in Art. 15 of the Slovak Constitution:

38 Pavlovic, 2001, pp. 130–151.

39 Malačič, 2005, pp. 11–18.

40 'Zbierka zákonov Slovenskej republiky': no. 244 of 1998. English text: https://www.ustavnysud.sk/en/ustava-slovenskej-republiky. In Slovak, 'Ústava Slovenskej republiky'.

41 Cibulka, 1995, pp. 95–115.

42 As noted by Skotnicki, 'The Constitution of the Slovak Republic refers in its content to the legacy of Czechoslovak constitutionalism, both of the interwar period and of the socialist state, as well as to the regulations that were adopted after November 1989. This is evident both in the construction of the supreme organs of the state and their mutual relations (this applies in particular to the Parliament and the president), as well as in the inclusion of many citizens' social rights in the Basic Law. The act is also very clearly modelled on the Czechoslovak Charter of Fundamental Rights and Freedoms of 9 January 1991, a number of whose provisions it transposes verbatim'. Skotnicki, 2003, p. 19.

43 Chmielewski, 2011, pp. 26–36; Cacko, 2012.

> (1) Everyone has the right to life. Human life is worthy of protection already before birth. (2) No one may be deprived of life. (3) Capital punishment is not permitted. (4) It is not a violation of rights under this article, if someone is deprived of life as a result of an action that is not deemed criminal under the law.

At first glance, it would seem that the Slovak Constitution broadly guarantees the right to life. However, the constitutional framework is only a guideline for the statutory regulations and the moral-ethical discourse that takes place in Slovakia between the pro-life and pro-choice communities.[44] This is also confirmed by the position of the Constitutional Court, which indicates that,

> The task of the Constitutional Court in this proceeding is neither to answer the philosophical, moral, or ethical question about the beginning of the human life, nor to answer the question about rightness or morality of abortions, nor to answer the question about optimal legal regulation of abortions in the Slovak Republic. The task of the Constitutional Court is to answer the question, what are the constitutional limits which the Constitution imposes on the legislator in the abortion issues.

On the other hand, in Art. 38, the Slovak legislature formulates specific rules on health protection:

> (1) Women, minors, and persons with impaired health are entitled to an enhanced protection of their health at work, as well as to special working conditions. (2) Minors and persons with impaired health are entitled to special protection in labour relations and to assistance in professional training. (3) Details concerning rights listed in paragraphs 1 and 2 shall be laid down by law.

The Slovak state is obliged by law to provide citizens with free healthcare and hygiene assistance, based on health insurance.[45] Moreover, special protection should be given to women, minors, and persons with a deteriorated state of health. Three factors have influenced this shape of the existing regulations: tradition, doctrine, and economics.[46]

Crucial from the perspective of family policy, however, are the provisions contained in Art 41 of the Constitution.[47] The general guarantees are enshrined in the first paragraph: '(1) Marriage is a unique union between a man and a woman. The Slovak Republic comprehensively protects and cherishes marriage for its own good'. The subsequent paragraphs of this article elaborate on its provisions. Attention should be drawn, in particular, to the content of Article 41(2), 'Special care, protection in

44 Laclavíková and Švecová, 2019, pp. 131–141.
45 Garayová, 2022, pp. 253–291.
46 Zvolenská, 2014, pp. 88–101.
47 Garayová, 2021, pp. 221–254.

labour relations, and adequate working conditions are guaranteed to a woman during the period of pregnancy', and the obligation of the State formulated in paragraph 5 of this provision, 'Parents caring for children are entitled to assistance from the state'. For the sake of completeness, it should be highlighted that the Slovak legislature has equalised the rights of children born in and out of wedlock (Article 41(3): 'Children born in and out of wedlock enjoy equal rights'.) and guarantees the right of parents to care for and raise their children (Art. 41(4)) 'Child care and upbringing are the rights of parents; children have the right to parental care and upbringing. Parents' rights can be restricted and minors can be separated from their parents against their will only by a court ruling on the basis of law')[48]. The provision of Art. 41 is a buckle linking the aspects of marriage and the protection of the youngest members of society as the clearest starting point for the creation of migration policies. However, Slovakia is a country with heated debates on worldviews, evidenced by the fact that a referendum on the traditional family took place in 2015 but was declared invalid due to insufficient turnout (21.41%). In addition, there may be legal changes in the future that will affect the shape of constitutional provisions and pro-family and migration policies.[49]

The 'Common provisions for chapters one and two' include, among other provisions, the following:

> Article 51 (1) The rights listed under Article 35, Article 36, Article 37, paragraph 4, Articles 38 to 42, and Articles 44 to 46 of this Constitution can be claimed only within the limits of the laws that execute those provisions. (2) The conditions and scope of limitations of the basic rights and freedoms during war, under the state of war, martial state and state of emergency shall be laid down by the constitutional law.

This provision imposes a certain safety clause for the assertion of selected rights.[50]

As an aside, it is important to note the position of the Slovak Constitutional Court on how a legal norm concerning fundamental rights and freedoms in the Slovak Republic should be interpreted. Upon the settlement of a case related to the right to property, the Constitutional Court stated that,

> the interpretation of a legal provision cannot limit, or possibly prohibit, the actual exercise of a fundamental right. A gap in a legal regulation cannot result in a violation of a given right guaranteed by the Constitution of the Slovak Republic. In such a case, it is necessary to make an interpretation that not only does not violate this right, but, on the contrary, guarantees it.[51]

48 Lanczová and Laclavíková, 2018, pp. 205–228.
49 Kroslak, 2015, pp. 149–167.
50 Chmielewski, 2009, pp. 35–48.
51 Breichová Lapčáková and Chmielewski, 2017.

2.5. Constitution of the Czech Republic of 16 December 1992

The Constitution of the Czech Republic[52] *of 16 December 1992 replaced the Constitution of the Czechoslovak Republic on the territory of the Czech Republic. The Basic Law, in force since 1 January 1993, stipulates, inter alia, that* the Czech Republic is a sovereign, unitary, and democratic state governed by the rule of law based on respect for human and civil rights and freedoms.[53] Divided into eight chapters, the Constitution regulates matters of the state system and, above all, the political system, including the legislative, executive, and judicial powers.[54]

Following the example of French constitutional solutions, the 1992 Constitution of the Czech Republic does not address issues directly related to the status of the individual. Instead, these issues are addressed by the Resolution of the Presidium of the Czech National Council of 16 December 1992 on the proclamation of the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic.[55] Art. 32 of the Charter is devoted to the family, as follows:

> (1) Motherhood and the family are under the protection of the law. Special protection shall be provided for children and adolescents. (2) A pregnant woman shall be guaranteed special care, protection of the employment relationship and proper working conditions. (3) Children born within and outside marriage shall have equal rights. (4) The care and upbringing of children is the right of parents; children have the right to parental upbringing and care. The rights of parents may be restricted, and minor children may be separated from their parents against their will only by a court decision based on the law. (5) Parents who have custody of their children shall be entitled to state support. (6) The details shall be determined by law." The provision comprehensively addresses family policy through the multi-faceted protection of motherhood, children, and parents.[56]

52 Text in Czech, available at: https://www.hrad.cz/cs/ceska-republika/ustava-cr 'Sbírka zákonů České republiky', no. 1/1993. In Czech 'Ústava *České republiky'*.

53 Kruk, 2018, pp. 47–62.

54 Witkowski and Jirásková, 2014, pp. 15–27.

55 The text of the resolution and the text of the Charter were promulgated in 'Sbírka zákonů České republiky' 1993 No. 1 of 28 December 1992, pp. 17–23. It is worth recalling the text of the preamble to the Charter: 'The Federal Assembly, on the basis of the drafts of the Czech National Council and the Slovak National Council, recognising the inviolability of the inherent rights of man, the rights of the citizen and the primacy of the law, referring to the universally accepted values of mankind and to the democratic and self-governing traditions of our peoples, remembering the bitter experience of the times when human rights and fundamental freedoms were suppressed in our homeland , Nourishing the hope that these rights will be guaranteed by the joint efforts of all free peoples, Recognizing the rights of the Czech and Slovak peoples to self-determination, Conscious of their share of responsibility towards future generations for the fate of all life on earth, Expressing the will that the Czech and Slovak Federal Republic shall enter with dignity among the States whose values it respects, have adopted this Charter of Fundamental Rights and Freedoms'.

56 Králíčková, 2021, pp. 77–110.

As can be seen from the above, the Czech legislator did not explicitly address the issue of family policy but, nevertheless, confirmed that maternity and the family are under the protection of the law. A pregnant woman is guaranteed special care,[57] protection of the employment relationship, and proper working conditions.[58]

It should be noted that, in accordance with Art. 41 (1) of the Charter, the rights referred to in Arts. 26, 27 (4), 28 to 31, 32 (1) and (3), 33, and 35 of the Charter may be asserted only within the limits of the laws that implement these provisions. At the same time, '(2) Whenever the Charter refers to a law, it shall be understood to mean a law of the Federal Assembly, insofar as it does not follow from the constitutional division of legislative powers that it is for the laws of the National Councils to regulate'.[59]

2.6. Constitution of the Republic of Poland of 2 April 1997

As mentioned in the above discussion on the Constitution of Croatia, the political changes in Central Europe began first in Poland with the amendment of the Constitution of the Polish People's Republic of 1952 in April and December 1989 and the partially free parliamentary elections that took place on 4 June 1989. Unfortunately, numerous political disputes, the twice-shortened terms of office of the Sejm and the Senate, and the lack of clear systemic foundations for the adoption of the new Constitution meant that the new Polish Constitution was only adopted on 2 April 1997 by the National Assembly, adopted in a referendum on 25 May 1997, and entered into force on 17 October 1997.

After a long and sometimes stormy discussion at the Constitutional Committee of the National Assembly and the National Assembly, it was possible to work out a consensus on not only the basic systemic solutions concerning the organisation and manner of exercising power in the state but also the status of the individual.

There are no solutions in the Polish Constitution that directly refer to family policy.[60] Nevertheless, both the first chapter, entitled 'Republic', and the second chapter, 'Freedoms, rights and duties of man and citizen', include provisions indirectly referring to this subject.

It follows from Art. 18 of the Constitution of the Republic of Poland that '[m]arriage as a union between a man and a woman, family, maternity and parenthood are under the protection and guardianship of the Republic of Poland'. When formulating the above norm, the legislator was undoubtedly guided by the awareness of the value of marriage and family and their importance for the existence and functioning of the nation.[8] In the light of the axiology adopted in the Constitution in force in Poland, the family and marriage are values that occupy a particularly high rank in the hierarchy of constitutional values.[9]

57 Králíčková, 2022, pp. 73–104.
58 Králíčková, 2021 pp. 85–98.
59 Zemánek, 2007, pp. 418–435.
60 Andrzejewski, 2021, pp. 151–190.

Specific principles are formulated in Chapter Two of the Polish Basic Law among the provisions regulating human and civil freedoms and rights. It follows, *inter alia*, that the status of marriage, family, maternity, and parenthood is based on the following provisions: Art. 33(1) – the principle of equality between women and men in family life; Art. 47 – the right to the legal protection of private life, family life, honour, and reputation and to decide on one's own personal life; Art. 48(1) – the right of parents to bring up their children in accordance with their own convictions; Art. 48 – the right of children to an upbringing that takes into account their level of maturity and their freedom of conscience, religion, and belief; Art. 53(3) – the right of parents to ensure that their children are brought up and receive moral and religious instruction in accordance with the parents' convictions; Arts. 64(1) and (2) – right of inheritance; Art. 65(3) – the prohibition of the employment of children under the age of 16; Art. 68(3) – the right of children and pregnant women to special health care; Art. 68(5) – the promotion by public authorities of the development of physical culture, especially among children and young people; Art. 70(3) – the freedom of parents to choose for their children schools other than public ones; Art. 71(1) sentence 1 – the state's taking into account, in its social and economic policies, of the welfare of the family; Art. 71(1), sentence 2 – the right of a family in a difficult material and social situation, particularly one with many children and one-parent families, to special assistance from the public authorities; and Art. 71(2) – the right of the mother to special assistance from the public authorities before and after the birth of her child.[61]

Of the above provisions, the guarantees enshrined in Art. 71 are of key importance for family policy in the state:

> The state, in its social and economic policy, takes into account the good of families. Families in a difficult financial and social situation, especially those with many children and single-parent families, have the right to special assistance from the public authorities. The mother, before and after the birth of her child, has the right to special assistance from the public authorities.

According to the Polish Constitutional Tribunal, Arts. 71(1) and (2) of the Constitution of the Republic of Poland, indicated above in its title, orders the organs of public authority to 'pursue such social and economic policy which takes into account the good of the family and grants families in a difficult material and social situation the right to special assistance from public authorities'.[13] In accordance with its place in the scheme of the Fundamental Law, this provision focuses on social aspects, in other words, (1) the state's obligations towards the family and (2) the assistance provided to a mother in connection with the birth of a child (2).

In the interpretation of the Constitutional Tribunal, the constitutional legislator, 'by ordering general concern for the well-being of every family, has determined that families in difficulty benefit from "specific" assistance – that is, beyond the scope of

61 Syryt, 2023, pp. 975–1010.

"ordinary" consideration of their needs'.[62] Assistance to families in difficult material and social situations, especially those with many children and single-parent families, should go beyond the usual assistance provided to those supporting children or other individuals.[63] The interpretation of the terms 'family welfare' and 'special assistance' plays an important role in the implementation process. What is the good of the family must be decided by the legislator, taking into account not only the political convictions of the majority but also the requirements that the Constitution sets in this regard. According to the Constitutional Court, 'special assistance' 'undoubtedly has a concrete dimension and it is possible to determine whether the legislator has equipped the public authorities with the legal means to provide it'.[64] In paragraph 2 of the Constitutional article in question, the legislator stated that the mother has the right to special assistance from the public authorities, the scope of which shall be determined by law, before and after the birth of the child.

The constitutional norm contained in Art. 71(1) of the Constitution of the Republic of Poland of 2 April 1997 complements the general principle formulated in Art. 18 and constitutes the direct context of the title obligation of public authorities expressed in Art. 71(2).[65] This norm orders the state to 'pursue such a social and economic policy which takes into account the good of the family and grants families in a difficult material and social situation the right to special assistance from the public authorities'. In this respect, the constitutional injunction for the state to take into account the good of the family in its social and economic policy has the character of a programmatic norm, which is primarily addressed to the public authorities. The beneficiaries of the assistance provided by the state are the family members as it is they who primarily have the capacity to be the subject of constitutional law. Material assistance provided by public authorities may not concern only a part of families on the basis of criteria that are incompatible with Art. 71(1) of the Constitution of the Republic of Poland. An example of such incompatibility is the repealed regulations concerning the single parent allowance, in which,

> aid was not provided at all for families with many children, and on the other hand it was provided not only for families that are single-parent families, since the criterion of single parenting and maintenance of a child was detached from the findings as to whether in a particular situation the obligation to raise the child rests with one person or both parents.

In the Court's view, the repealed rules for granting the allowance contributed to unequal treatment of children, differentiated on the basis of criteria not provided for by the legislator in Art. 71(1) of the Constitution.

62 Judgment of 8 May 2001, ref. P 15/00, OTK ZU 2001, No. 4, item 83; Sobczyk, 2008, p. 389.
63 Judgment of 15 November 2005, ref. P 03/05, OTK ZU 2005, No. 10A, item 115.
64 Judgment of 8 May 2001, ref. P 15/00, OTK ZU 2001, No. 4, item 83.
65 Borysiak, 2016, p. 1634.

Art. 71(2) is linked to the principle of maternity protection, which is formulated in Art. 18 of the Constitution.[66] The central point of reference of this constitutional guarantee is the birth of a child as the provision refers to the mother 'before and after the birth of the child'. Thus, the provision applies to pregnant women and women in the first period after childbirth.[67] The obligation of public authorities to provide assistance is not clarified at constitutional level in terms of either the forms or the scope of that assistance. The legislator only indicated that it was to be 'special' aid, which means that the aid may go beyond the scope of simply taking into account the family's needs.[68] It is the task of the ordinary legislator to specify the forms and scope of assistance, depending on the material and social situation of the mother.[69]

Similarly, in Art. 68(3) of the Constitution of the Republic of Poland, the legislator formulated the public authorities' obligation to provide special healthcare to children, pregnant women, people with disabilities, and older adults. As noted by the Constitutional Tribunal, 'specific health care ex definitione goes beyond the sphere of ordinary, universal health care, and should therefore be intensified, more intensive or more specialised, i.e. adapted to the specificity of the needs characteristic of a given group of entities'.[70]

This provision constitutes an exception to the principle of equality in citizens' access to healthcare services financed from public funds, referred to in Art. 68(2) of the Constitution. Nevertheless, above-standard, privileged healthcare for pregnant women and children is understandable: in the opinion of the Constitutional Tribunal, these individuals have an increased demand for healthcare services for obvious reasons.[71] As in the case of Art. 71(2) of the Constitution, the constitution-maker did not indicate the forms and methods of providing special healthcare but limited itself to defining it as 'special healthcare', taking into account preferences in terms of the possibility of using healthcare services.

2.7. Constitution of the Republic of Serbia of 30 September 2006

The Constitution of the Republic of Serbia was adopted by the National Assembly in Belgrade on 30 September 2006 and approved in a republican referendum on 28–29 October 2006.[72] It is evident from the very first article of this Constitution that the 'Republic of Serbia is a state of Serbian people and all citizens

66 Smyczyński, 2022, p. 190.
67 Garlicki and Derlatka, 2016, pp. 775–776.
68 Andrzejewski, 2022, pp. 147–185.
69 Garlicki and Derlatka, 2016, p. 776.
70 Judgment of 22 July 2008 ref. K 24/07, Dz.U. 2008 no 138 item 874.
71 Judgment of 22 July 2008 ref. K 24/07, Dz.U. 2008 no 138 item 874.
72 The Constitution of the Republic of Serbia was promulgated in the Official Gazette of the Republic of Serbia 'Službeni glasnik RS', No. 98 of 10 November 2006. Text in both Serbian and English languages: http://www.parlament.rs/national-assembly/important-documents.531.html. Text in Serbian, Polish, and English: https://biblioteka.sejm.gov.pl/konstytucje-swiata-serbia/. (Accessed: 25 April 2024).

who live in it, based on the rule of law and social justice, principles of civil democracy, human and minority rights and freedoms, and commitment to European principles and values'. This article points to the framework of the state, that is, the democratic rule of law, respect for the dignity of the individual, and the protection of the vulnerable.[73]

Among the freedoms and human rights enshrined in the Constitution of Serbia, the Right to life is confirmed, with Art. 24 stating, 'Human life is inviolable. There shall be no death penalty in the Republic of Serbia. Cloning of human beings shall be prohibited'. The protection of life and the integrity of human life through the prohibition of human cloning is clearly indicated.[74]

The right to marry and the equality of spouses is also affirmed at the constitutional level. Art. 62 lays down that,

> Everyone shall have the right to decide freely on entering or dissolving a marriage. Marriage shall be entered into based on the free consent of man and woman before the state body. Contracting, duration or dissolution of marriage shall be based on the equality of man and woman. Marriage, marital and family relations shall be regulated by the law. Extramarital community shall be equal with marriage, in accordance with the law.

The right to marriage and family is treated as a universal right endorsed by the state authority. Compared to other countries in the region, the provision is characterised by its level of detail and clear definition of marital rights and obligations.[75]

A corollary of the above guarantees is the 'Freedom to procreate' referred to in Art. 63: 'Everyone shall have the freedom to decide whether they shall procreate or not. The Republic of Serbia shall encourage the parents to decide to have children and assist them in this matter'. The freedom to procreate enshrined in the Constitution of Serbia is unique in contemporary Constitutions, not only of the Central European States but *in genere*. Therefore, special attention should be paid to this provision in the context of this chapter. In this article, the Serbian legislator guaranteed, as a first step, the freedom of decisions regarding procreation, and then obliged the state authorities (literally, the Republic of Serbia) to encourage ('shall encourage') parents to decide to have a child and to 'assist them in this matter'.[76]

The rights of the child and the rights and duties of parents have also been guaranteed at the constitutional level in Serbia. Interestingly, the rights of the child were enshrined by the system legislator first, with the rights of parents in second place.[77] Art. 64 – 'Rights of the child', reads,

73 Bujwid-Kurek, 2011, pp. 93–115.
74 Popović, 2021, pp. 87–110.
75 Kovaček Stanić, 2021, pp. 191–220.
76 Jancić, 2021.
77 Šahović and Savić, 2016.

> A child shall enjoy human rights suitable to their age and mental maturity. Every child shall have the right to personal name, entry in the registry of births, the right to learn about its ancestry, and the right to preserve its own identity. A child shall be protected from psychological, physical, economic and any other form of exploitation or abuse. A child born out of wedlock shall have the same rights as a child born in wedlock. Rights of the child and their protection shall be regulated by the law.

This exercise indicates the position of the child in Serbia's legal system and the scope of protection, which is precisely delimited.[78]

With regard to parents, the Serbian legislature mentions not only their rights but also their duties. This is evident from both the title of the Art. 65, 'Rights and duties of parents', and its content:

> Parents shall have the right and duty to support, 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.

The provision outlines the equality of parents in participating in the upbringing of the child and indicates that only the court may limit or revoke parental rights, as long as this is in the best interests of the child.[79]

Complementing the above guarantees is the constitutional-level provision of 'special protection' for the family, mother, single parent, and child in Art. 66:

> Families, mothers, single parents, and any child in the Republic of Serbia shall enjoy *special protection* [emphasis added by the author] in the Republic of Serbia in accordance with the law. Mothers shall be given special support and protection before and after childbirth. Special protection shall be provided for children without parental care and mentally or physically handicapped children. Children under 15 years of age may not be employed, nor may children under 18 years of age be employed at jobs detrimental to their health or morals.

It should be noted that this is another regulation characteristic of Serbia. The state specifically protects single mothers and women in the postpartum period. Moreover, the Constitution explicitly mentions the support of unaccompanied children and persons with physical and mental disabilities.[80]

The guarantees enshrined in the Serbian Constitution are the most comprehensive in terms of family protection, as well as being consistent and multifaceted. Indeed, the state protects marriage, the couple, the family, the mother before and

78 Cvejić-Jančić, 2008, pp. 145–166.
79 Šahović and Savić, 2016.
80 Kovaček Stanić, 2022, pp. 187–216.

after childbirth, and children. Although the legislator does not explicitly refer to the issue of family policy, the proposed guarantees aimed at protecting marriage and the family indirectly fit into the concept of the demographic development of the country. The wording of Art. 63 of the Constitution, which implies the state's obligation to encourage and assist parents in their decision to have a child, and Art. 66 of the Constitution, which implies, *inter alia*, that '[m]others shall be given special support and protection before and after childbirth', should be considered crucial in this regard.[81]

2.8. Constitution of Hungary of 25 April 2011

The Hungarian Constitution was adopted by the National Assembly on 18 April 2011, signed by the President of the Republic on 25 April 2011, and came into force on 1 January 2012.[82] Since then, the Constitution has been amended several times.[83]

The Hungarian Constitution begins with the exhortation 'God bless the Hungarians', followed by the 'National Avowal' and the 'Fundation'[84]. Among these foundations, the Hungarian legislature includes Art. L) which reads,

> (1) Hungary shall protect the institution of marriage as the union of one man and one woman established by voluntary decision, and the family as the basis of the survival of the nation. Family ties shall be based on marriage or the relationship between parents and children. The mother shall be a woman; the father shall be a man. (2) Hungary shall support the commitment to children. (3) The protection of families shall be regulated by a cardinal Act.

This article states the indisputable and fundamental role of the traditional family in the Hungarian state.[85]

The Hungarian solutions in force are, therefore, a development of earlier constitutional provisions in this regard. In addition to the protection of marriage, as a union between a man and a woman, and the family, the Hungarian legislature indicates that the mother of a child can only be a woman, and the father can only be a man. Furthermore, Art. L) guarantees that 'Hungary shall support the commitment to children'.[86] Of all the provisions analysed in this chapter, this is the broadest reference to family policy, which should be understood to mean that the Hungarian

81 Golić and Logarusić, 2023, pp. 34–56.
82 The Hungarian Constitution was published in the official publication organ 'Magyar Közlöny', No. 43/2011. English text version: https://njt.hu/jogszabaly/en/2011-4301-02-00 (Accessed: 25 April 2024).
83 Varga, 2021, pp. 245–278.
84 Csink and Fröhlich, 2012, pp. 12–25.
85 Bielecki, 2020, p. 24.
86 Constitution of Hungary.

state will support both parents to create the conditions for the birth of children and support children after birth.[87]

The issues concerning the status of the individual are located immediately after the 'Fundation' and before the constitutional part of the Hungarian Basic Law. As in other constitutions of Central European states where this solution has been adopted, this clearly indicates the position of the individual in the state. Among 'Freedom and Responsibility', several provisions should be highlighted that indirectly refer to family policy.

The guarantees of human dignity deserve special recognition, not least from the point of view of the deliberations carried out. Article II of the Hungarian Constitution states that '[h]uman dignity shall be inviolable. Every human being shall have the right to life and human dignity; the life of the foetus shall be protected from the moment of conception'. What distinguishes the Hungarian guarantees from those of other Constitutions is the protection of human life from the moment of conception, in the context of human dignity ('the life of the foetus shall be protected from the moment of conception').[88]

Important guarantees in the field of child protection, although not explicitly related to family policy, derive from Art. XVI, which reads,

> (1) Every child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development. Hungary shall protect the right of children to a self-identity corresponding to their sex at birth, and shall ensure an upbringing for them that is in accordance with the values based on the constitutional identity and Christian culture of our country. (2) Parents shall have the right to choose the upbringing to be given to their children. (3) Parents shall be obliged to take care of their minor children. This obligation shall include the provision of schooling for their children. (4) Adult children shall be obliged to take care of their parents if they are in need.

The provision is a guarantee for the care and development of children in a Christian spirit. The protection here is twofold: first, on the part of the parents, and second, on the part of state institutions.[89] An elaboration of the guarantee for the protection of children is provided for by Art. XVIII, which states, '(1) The employment of children shall be prohibited, except in those cases specified in an Act where there is no risk to their physical, mental or moral development. (2) By means of separate measures, Hungary shall ensure the protection of young people and parents at work'.

The solutions adopted in Art. XIX should be regarded as similar to the constitutional guarantees in other countries in terms of social support for families:

87 Sápi, 2021, pp. 111–150.
88 Deli and Kukorelli, 2015, pp. 337–347, pp. 341–343.
89 Murray, Swadener, and Smith, 2019.

> (1) Hungary shall strive to provide social security to all of its citizens. Every Hungarian citizen shall be entitled to assistance in the event of maternity, illness, invalidity, disability, widowhood, orphanage and unemployment for reasons outside of his or her control, as provided for by an Act. (2) Hungary shall implement social security for those persons referred to in paragraph (1) and for others in need through a system of social institutions and measures. (3) The nature and extent of social measures may be determined in an Act in accordance with the usefulness to the community of the beneficiary's activity. (4) Hungary shall contribute to ensuring a life of dignity for the elderly by maintaining a general state pension system based on social solidarity and by allowing for the operation of voluntarily established social institutions. An Act may lay down the conditions for entitlement to state pension also with regard to the requirement for stronger protection for women.

This provision broadly refers to social issues, indicating that the Hungarian state is committed to such issues. The Constitution obliges those in power to protect older adults, sick people, and individuals with disabilities through institutionalised tools, underlining the commitment to Hungary's Catholic tradition and cultural heritage.[90]

The wording of Art. XX of the Constitution stipulates interesting constitutional guarantees. While the content of the first paragraph is relatively common in modern Constitutions – (1) Everyone shall have the right to physical and mental health – paragraph (2) represents a significant *novelty*:

> (2) Hungary shall promote the effective implementation of the right referred to in paragraph (1) through agriculture free of genetically modified organisms, by ensuring access to healthy food and drinking water, by organising safety at work and healthcare provision and by supporting sports and regular physical exercise as well as by ensuring the protection of the environment.[91]

In conclusion, it must be stated that the Hungarian legislature has unequivocally opted for the legal protection of human life from the moment of conception, which is unique in modern Constitutions.[92] These guarantees have been – rightly – linked to human dignity. In addition, it should be noted that the other provisions of the Constitution on the protection of marriage, family, and children – which generally match the guarantees in this regard contained in the basic laws of other states – are considerably more detailed, thus obliging the ordinary legislature to take specific measures for their implementation. This limits the scope of the interpretations of the legislator and the constitutional court'.[93]

90 Szilágyi, 2021, pp. 197–219.
91 Julesz, 2018.
92 Barzó, 2022, pp. 105–146.
93 Trócsányi, 2017, pp. 23–52.

3. Summary

This chapter's analysis of the constitutional guarantees on family policy in Croatia, the Czech Republic, Poland, Romania, Serbia, Slovenia, Slovakia, and Hungary allow various conclusions to be drawn. The object and essence of any modern Constitution is to define the foundations of the state system, understood as the political, social, and economic system. The title 'family policy' of the state is not considered by the doctrine as a usual constitutional matter and is not formulated as a constitutional principle. As can be seen from this chapter's analysis, the constitutional basis of family policy can be decoded from various constitutional provisions, and its subject matter can be regarded as a component co-creating the political, social, and economic systems indicated above.[94]

In the Constitutions analysed, both among the provisions concerning the foundations of the political system and, above all, among the guarantees concerning the status of the individual, there are provisions relating indirectly to family policy. As such, the legislation in the basic laws created after the political and socio-economic changes of the 1990s refer to these issues.[95]

Fundamental constitutional significance is held by the guarantees, formulated in most of the Constitutions analysed herein, concerning the protection of marriage, family, and (much less frequently) maternity and paternity. Such guarantees have the character of programmatic norms, the development and implementation of which is the task of both state and local self-government authorities.

A characteristic feature of the Constitutions of Croatia, the Czech Republic, Poland, Romania, Serbia, Slovenia, Slovakia, and Hungary is the special position of guarantees concerning the status of the individual in the systematics of these normative acts. Most often, directly after the basic decisions concerning the constitutional principles, the Constitutions contain provisions concerning the freedoms, rights, and duties of a human being and citizen. Only then are the provisions concerning the organisation and legislative, executive, and judiciary functioning of the authorities presented. This legislative technique unequivocally indicates the hierarchy of constitutional matters in the general systematics of fundamental laws. The importance of such a solution is difficult to overestimate, especially in the context of jurisprudence and the relationship between the individual and the state.

The catalogues of human and civil freedoms, and rights and obligations, are usually based on fundamental universal values (principles) such as human dignity, freedom, and equality. In this way, the legislators of the Central European states refer to international regulations for the protection of human rights, both at the universal level (Universal Declaration of Human Rights, International Covenants on Rights) and at the regional level (European Convention for the Protection of Human Rights and Fundamental Freedoms). Particularly important guarantees – not only

94 See: Sobczyk, 2022, pp. 293–339.
95 See: Barzó, 2021, pp. 287–322.

from the point of view of family policy issues – are enshrined in the Hungarian Constitution of 25 April 2011. The Hungarian constitutional legislator decided that '[h]uman dignity shall be inviolable. Every human being shall have the right to life and human dignity; the life of the foetus shall be protected from the moment of conception'. A characteristic feature of this provision and unique in the world is the protection of human life from the moment of conception in the context of human dignity ('the life of the foetus shall be protected from the moment of conception').

Crucial to family policy – understood primarily in terms of birth rate – are the constitutional provisions concerning support for the family and, especially, for the mother and child. The solutions of the Serbian Constitution of 30 September 2006 should be regarded as exemplary in this respect, not least because of their high level of detail. Art. 24 stipulates, 'Human life is inviolable…'. However, of vital and exemplary importance for family policy is the wording of Art. 63: 'Everyone shall have the freedom to decide whether they shall procreate or not. The Republic of Serbia shall encourage the parents to decide to have children and assist them in this matter'. The Serbian Constitution guarantees, in the first instance, the freedom to decide on procreation and obliges the Republic of Serbia to encourage ('shall encourage') parents to decide to have children and 'assist them in this matter'. It is clear from this provision that the legislator attaches great importance to the issue of population growth. The remaining provisions on the protection of marriage, family, and children, which are extremely detailed for the nature of the Constitution as the basic law of the state, are contained, in particular, in Art. 66:

> Families, mothers, single parents and any child in the Republic of Serbia shall enjoy special protection in the Republic of Serbia in accordance with the law. Mothers shall be given special support and protection before and after childbirth. Special protection shall be provided for children without parental care and mentally or physically handicapped children. Children under 15 years of age may not be employed, nor may children under 18 years of age be employed at jobs detrimental to their health or morals.

Although similar approaches have been found in other Constitutions of Central European states (e.g. the 1997 Constitution of the Republic of Poland), they are not as detailed and multifaceted as that of Serbia.[96]

This chapter's analysis of the constitutional foundations of family policy allows for one more remark. Pro-family and pro-natalist issues have received the most attention from the legislators of the two most recent Constitutions, that is, the Serbian Constitution of 2006 and the Hungarian Constitution of 2011. In addition to worldview and political considerations, there may be several reasons for this, among which the demographic problems that affected Western Europe specifically at the turn of the 20th century and the emerging symptoms of a demographic crisis in the

96 See: Lenkovics, 2021, pp. 9–36.

countries of central Europe at the beginning of the 21st century seem to be primary. In these states, the problems that so-called negative birth rates entail for the state were realised sooner than in others. Of course, one should be aware that constitutional guarantees will not solve the problem of 'more coffins than cradles' in Europe; however, they should be a strong impetus for the ordinary legislator – in accordance with the hierarchical structure of the system of sources of law – to provide all forms of support for parents, families, and children through the public authorities. Ultimately, it is up to the ordinary legislature to develop constitutional safeguards, as even the best constitutional solutions may not be sufficient if they are passive.

De lege ferenda constitutionalis, it should be postulated to the legislators in Croatia, the Czech Republic, Poland, Romania, Slovenia, and Slovakia that, as part of the constitutional amendment procedures, they should extend, specify, or, if necessary, introduce family policy guarantees into the Constitutions, following the example of the Serbian and Hungarian guarantees. In turn, *de lege ferenda*, it should be postulated that, regardless of the degree of detail in the programmatic norms concerning the obligation of public authorities to respect, protect, and care for marriage, the family, and children, legislators should, within the available methods and forms, provide at the statutory level the best possible guarantees and support in this sensitive aspect for each state. It is no coincidence that several Constitutions refer to 'special' protection and care for the mother, family, or child. The constitutional legislator, thus, unequivocally indicates that these are not to be standard or average measures, but special, above-average measures to which the legislative, executive, and judicial organs, and the organs of local self-government are obliged.

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Chapter 8

Demographic Challenges – Labour Law Responses

Nóra Jakab

Abstract

Demographic challenges raise complex cross-policy issues. This chapter addresses the narrow issues of labour law regulation and the broader issues of employment and social security in the context of the ageing society as a demographic challenge. The chapter first examines issues related to labour law issues, which is the broad framework within which we can present the qualitative criteria for a life worthy of the active and inactive (i.e. once working) person. To find solutions to the demographic challenges, the chapter briefly summarises the results of two recent studies. A well-functioning social system goes hand in hand with a well-functioning economy. The challenge is combining both economic and social aspects in a balanced manner.

Keywords: labour law regulation, employment, social security, sustainability, human resources, generation gaps

1. Identifying the problem

All countries face major challenges to ensure that their healthcare and social systems are ready to face the current demographic shift. In 2050, 80% of older people will be living in low- and middle-income countries. The pace of population ageing today is much faster than in the past: in 2020, the number of people aged 60 years and older outnumbered children younger than 5 years.

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Between 2015 and 2050, the proportion of the world's population over 60 years will nearly double from 12% to 22%.[1] The complexity of the problem is compounded by the fact that the ageing of society poses several challenges for labour law, employment policy, fiscal policy, and social care systems. At the same time, fertility rates and youth employment are falling (see the data below), with youth unemployment also forming part of the demographic challenge.

Pressure persists to maintain adequate and financially sustainable levels of pensions as population ageing is accelerating in most OECD countries. In 1980, there were two people older than 65 years for every 10 people of working age in the OECD countries. That number increased to slightly over three people in 2020 and is projected to reach almost six people by 2060. The working-age population, measured using fixed age thresholds, is projected to decline by more than one-third by 2060 in several countries.[2]

Pressure on social care systems can be reduced by reforming the pension system; however, at the same time, the demand for workers, services, and industries to care for older adults will increase. A large number of new jobs and businesses that are adapted to the needs of older citizens will be created in sectors such as health and long-term care, pharmaceuticals, and housing. The growing number of people of non-working age is increasingly dependent on the declining number of people of working age (see the data below). This could slow economic growth, lead to lower tax revenues, and threaten the financial sustainability of social protection systems. One obvious solution is to keep older workers in the labour market, but this requires increased attention to health and safety at work, working hours and work organisation, and retraining and training.[3]

1 WHO, 2022.

2 Pensions at Glance 2019: OECD and G20 Indicators.

3 European Council, 2005.
Particular attention should be paid to policies for the sustainable integration of young people into the labour market in the context of the European Commission's mutual learning programme on employment. The aim should be to increase youth employment; priority should be given to improving the situation of the most disadvantaged young people, particularly those living in poverty, and to initiatives to prevent early school leaving, in national policies for social inclusion. Employers and businesses should be called upon to demonstrate their social responsibility in the area of the professional integration of young people. In addition, young people should be encouraged to develop their entrepreneurial spirit, and the promotion of young entrepreneurs should be facilitated.
In this regard, an important document is the Communication from the Commission to the Council on European policies concerning youth. Agenda for Europe's youth: Implementing the European Youth Pact and promoting active citizenship. European Commission, 2005, COM(2005)206 final. This document sets out measures for the employment, integration, and social advancement of young people.
The Employment Guidelines, now part of the Integrated Guidelines, proposed for the period 2005–2008, are at the heart of the European Employment Strategy and play a key role in coordinating Member States' employment policies. The guidelines address the question of how employment policies can promote quantitative and qualitative job creation and set out three priorities in this context: sustainably increasing employment rates and modernising social protection systems; improving the

As indicated above, the situation of young people is a major demographic challenge. Compared with previous generations, the life stages of today's young people are being extended, and the road to the next stage of their development is longer and more circuitous. In preparing the mid-term review of the Lisbon Strategy, the European Council considered the importance of demographic factors in shaping Europe's future. As the European Commission's Green Paper on the challenge of demographic change concluded, the decline in the birth rate and the increase in life expectancy have led to dramatic changes in the number and age composition of the European population. The number of young people aged 15 to 24 is expected to fall by 25% between 2005 and 2050, from 12.6% to 9.7% of the total population. On the other hand, the proportion of the population aged 65 and over is expected to increase from 16.4% to 29.9%. The Green Paper draws attention to the implications of these changes for Europe, particularly for young people. Young people can make a significant contribution to the Lisbon Strategy's objectives of job creation and growth as they are the workers and employers of the future and a source of much-needed skills in research, innovation, and entrepreneurship. These objectives can only be achieved if young people are provided with high-quality education and training adapted to the needs of the labour market and are equipped with the necessary knowledge, skills, and competences. This can only be achieved by removing the obstacles of poverty and social exclusion. Efforts must also be made to tackle gender inequalities, with young women experiencing higher rates of unemployment and poverty and young men higher rates of early school leaving.[4]

In July 2023, 2.683 million young persons (under 25) were unemployed in the European Union (EU), of whom 2.206 million were in the euro area. The youth unemployment rate in the EU was 13.9%, down from 14.2% in June 2023, and 13.8% in the euro area, which was stable compared with the previous month. Compared with June 2023, youth unemployment decreased by 58,000 in the EU and increased by 12,000 in the euro area. Meanwhile, compared with July 2022, youth unemployment decreased by 85,000 in the EU and 80,000 in the euro area.[5]

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adaptability of workers and enterprises and increasing the flexibility of labour markets; and investing in human resources through education and skills.
Member States will take steps to promote youth employment. They aim, *inter alia*, to reduce youth unemployment, create employment opportunities, develop personalised action plans to help jobseekers and provide them with advice and training in the job search process. In 2005, the Commission and the Member States put young people at the centre of the mutual learning programme for employment. Through the social inclusion strategy, the Commission and the Member States aim to help the young people most in need.
See: Communication from the Commission to the Council on European policies concerning youth. Youth issues on the agenda: Implementing the European Youth Pact and promoting active citizenship European Commission, 2005, COM(2005) 206 final.

4 See: Communication from the Commission to the Council on European policies concerning youth. Youth issues on the agenda: Implementing the European Youth Pact and promoting active citizenship European Commission, 2005, COM(2005) 206 final; Communication from the Commission Green Paper, 'The challenge of demographic change: New forms of solidarity between the generations', European Commission (2005) COM(2005) 94 final.

5 Eurostat, 2023a.

In addition to young people, older people also play a significant role in the current demographic challenges. The number of older people in Europe is rising rapidly due to increasing life expectancy and declining fertility. The proportion of people aged 65 and over in the working-age population (15–64) is expected to reach 50% by 2050, double the current rate. These demographic developments have significant social and economic consequences. While the positive effects of longer life expectancy should not be overlooked, this situation creates significant challenges for labour supply and the functioning of social protection systems. As the latter is based primarily on the principle of solidarity within and between generations, we must preserve a balanced distribution of resources between the different age groups.

Older people make a significant contribution to the economy and society; however, their contribution can be further enhanced by improving their health and education levels. To this end, their potential should be harnessed by optimising opportunities for their physical, social, and mental well-being throughout their lives. This is the aim of the 'active ageing' policy approach: to ensure a better quality of life for all ages, improve productivity, and develop strong solidarity between generations in our ageing societies. The policy approach of 'active ageing' promoted in the context of the *European Year for Active Ageing and Solidarity between Generations* will also facilitate employment and reduce poverty and social exclusion, thereby contributing to the Europe 2020 goals.[6] An active ageing approach should be promoted in relation to employment, social inclusion, and independent living, taking into account the differences in institutional arrangements and resources between Member States and the specific circumstances and challenges they face. Promoting active ageing requires action by a wide range of stakeholders across various policy areas. These stakeholders include public authorities at different levels, employers, businesses and social partners, civil society organisations, service providers, and the media. Social innovation and the better use of new technologies can make a significant contribution to promoting active ageing. Moreover, opportunities for active ageing should be available to all groups of older people, regardless of gender, origin, cultural background, or disability. Active ageing can also encourage greater solidarity among older people. By increasing the number of older people who are able to meet their own needs, active ageing will enable society to better support those older adults who are most in need. [7]

6 Europe needs to act on the Europe 2020 strategy in the areas of employment, skills, and the fight against poverty. See: Europe 2020.

7 Council of the European Union (EPSCO), 2012.
See also Decision 2011/940/EU of the European Parliament and of the Council of 14 September 2011 on the European Year for Active Ageing and Solidarity between Generations (2012), the Council Decision of 14 September 2011 establishing a general framework for equal treatment in employment and occupation (2000/59/EC), the Council Decision of 14 September 2011 on the European Year of Actnive Ageing and Solidarity between Generations (2012), the Council Decision of 14 September 2011 on the European Year of Ageing (2012) and the Council Decision of 14 September 2011 on the European Year of Equal Opportunities for All.

Demographic changes will reduce the working-age population in the future. Currently, only two-thirds of the working-age population is employed: in the US and Japan, this figure is over 70%. Employment rates are particularly low for women and older people. Young people have been hit hard by the global financial crisis, with a 21 % unemployment rate. There is a high risk that those who are not in the labour market or are only loosely connected to it will lose this connection altogether. Approximately 80 million people have only low or basic skills, and lifelong learning mostly benefits the most skilled. By 2020, the number of jobs requiring tertiary qualifications will increase by 16 million, and the number of jobs for the low-skilled will fall by 12 million. For longer careers, we may need to learn or develop new skills throughout our lives. Before the crisis, 80 million people were at risk of poverty, including 19 million children. In addition, 8% of people in employment do not earn enough to live above the poverty line. The unemployed are particularly at risk.[8]

Action to address these priorities will require the modernisation and strengthening of employment, education and training policies, and social protection systems by increasing labour market participation, reducing structural unemployment, and strengthening corporate social responsibility among business actors. Access to childcare facilities and other care for dependents will play an important role in this respect. Implementing flexicurity principles and enabling people to acquire new skills will be key in adapting to new conditions and possible career changes. We need to make a major effort to tackle poverty and social exclusion and reduce inequalities in health, ensuring that everyone benefits equally from growth. Just as important is the ability to ensure healthy and active ageing and, through this, social cohesion and greater productivity.[9]

It can be seen, therefore, that demographic challenges raise complex cross-policy issues. Among these issues, this chapter focuses on labour law regulation in the narrow sense and employment in the broader sense, as well as social security issues, in the context of the ageing society as a demographic challenge.

2. Labour law legislation – values

This chapter first examines labour law issues. This is the broad framework within which we can present the qualitative criteria of a life worthy of the active and inactive (i.e. once working) person. Heracleitos stated that the only constant is change itself. So it is with labour law, which is constantly changing. In this change, we have sought permanence, which we have seen only in fundamental rights and other values.

8 Europe 2020 Strategy, p. 20.

9 Ibid. For more on the problem, see: Mélypataki et al., 2023, pp. 38–54; Hajdú and Chen, 2022, pp. 536–546.

In the 20th century, farming organisations were transformed into huge, vertically structured production systems that shifted to mass production. Employment relationships were created for full-time, indefinite periods, with the hope that the job would last for the worker's lifetime. Of course, these jobs have not disappeared, but there are clear signs of change, which is weakening the employment model that was prevalent in the 20th century. People are changing jobs more frequently, with fixed-term contracts, seasonal work, and temporary agency work. More people are self-employed, working hours are flexible, and the nature of work has become more varied and flexible. New forms of employment have, therefore, emerged.

Over the past 25 years, labour market flexibility has increased. In 2016, a quarter of all new contracts were for 'non-traditional' forms of employment, and over half of all new jobs in the past 10 years have been in 'non-traditional' forms.[10] Digitalisation has facilitated the emergence of new types of employment, and demographic changes have led to a more diverse active population. The flexibility provided by the new forms of employment has contributed significantly to job creation and labour market growth. More than 5 million jobs have been created since 2014, of which almost 20% correspond to new forms of employment. The ability of these employment forms to adapt to economic change has allowed new business models to emerge, including in the social economy, and has enabled people who were previously excluded to enter the labour market.[11] The EU currently has 236 million women and men in employment, representing the highest employment level ever in the Union. Self-employment and atypical forms of employment together account for a significant share of the labour market. In 2016, 14% of workers in the EU were self-employed, 8% were temporary full-time employees, 4% were temporary part-time employees, 13% were permanent part-time employees, and 60% had a full-time contract of indefinite duration.[12]

The prevalence of atypical work and self-employment varies widely across Member States, regions, sectors, and generations. The share of younger workers aged 20 to 30 working under temporary contractual arrangements or 'on other contracts or without a contract' is twice as high as in the other age groups. The gender distribution is also evident, with men dominating among the self-employed and women in temporary and/or part-time positions.[13]

Social exclusion affects many groups that are unable to participate in the benefits of the labour market, influencing the aim to increase employment rates through

10 Non-traditional forms include permanent part-time and temporary full-time and part-time employment. COM (2017) 797.

11 Here, we note that equal opportunity policy may strongly discourage labour law from applying flexible rules.

12 European Commission, 2018, COM(2018) 132 final, p. 1.

13 Ibid.

macroeconomic policies.[14] New regulatory techniques are needed, as opposed to the previous system based on hierarchy and instruction. Examples include tax relief for employees and the self-employed, the operation of occupational pension schemes, employee share ownership, or temporary subsidies for business organisations when they employ long-term jobseekers. New information and consultation mechanisms are required that favour a partnership between employer(s) and the worker community.[15]

The *fundamental value of labour law* is that it *provides* economic *security* and, thus, *predictability,* both internally, by providing rules to protect workers, and externally, through the state's provision of a social safety net if workers are unable to work in a situation of disruption.[16] Labour law is underpinned by core values that are the building blocks of decent work. Since the European Pillar of Social Rights, this branch of law has been based on rights and principles that, in my view, list the qualitative criteria for a life worthy of an active and once-working person.

The Pillar changes the game in European politics in general and, in particular, in the way we think about social Europe. Its content has clear implications for labour law and employment. However, we must be critical as to whether this document really changes the rules of the game in European labour law. We can assume that the Pillar is indeed a decisive moment in this respect, but for this to be true, it must be able to resolve the tension between the economic and social dimensions of the Union.[17] In my view, a minimum standard of *life worthy of a working person* is set out in this document, in which the value of work is unquestionable. A work-based society is one that can remain truly competitive in the 21st century. In the Pillar, the European Commission provides a guideline on how and under what conditions this should be achieved.

The preamble of the Pillar stresses,

> Economic and social development are closely linked and the creation of a European Pillar of Social Rights should support efforts to develop a more inclusive and

14 The assessment of policies and institutions is determined by their ability to fulfil the potential of the individual. Consequently, those who have been outside the labour market for a long time have good reason to question why its functioning does not allow access to paid work. Deakin and Rogowski, 2011, pp. 238–241.

15 Hugh et al. 2012, pp. 38–44; see also: Rogowski et al., 2011.

16 The role of labour law is not only to reduce the risk of exclusion: it is also important to give people as much freedom as possible through labour relations. The aim is the well-being of the individual, which the legal system either helps or frustrates. The capability-based approach to understanding the relationship between the legal system and the market (labour market) is based on two assumptions: 1. There is a role here for legal regulation, which can transform the functioning of the market. This is the key to the co-development and interaction of the legal system and the economy. In other words, access to the market is not only a negative freedom of the individual but also a real capacity to enjoy the social rights recognised by the legal system. 2. A reflexive and learning-oriented approach to regulation and governance is needed to ensure the effective co-development of institutions, that is, learning from coordination problems through a diversity of living models. Deakin and Rogowski, 2011, pp. 238–241.

17 Hendrickx, 2018, p. 49.

sustainable employment model, which will improve Europe's competitiveness and strengthen investment, job creation and social cohesion.[18]

The Pillar states that economic and social development can be pursued together in line with the following principles: *equal opportunities and the right to work*,[19] *decent work*,[20] and *social protection and social inclusion*.[21] I believe that these are the principles and values that should guide the employment of all workers, including active older people.[22]

18 European Commission, 2017, COM(2017) 2600 final.

19 The employment model is based on equal opportunities. In this framework, everyone has the right to quality and inclusive education, training, and lifelong learning. The equal treatment of women and men and equal opportunities must be ensured in all areas. Everyone has the right to equal treatment in employment, social protection, and education, as well as access to the goods and services available to the public.

20 The section on fair working conditions describes the basic rules of the game of labour law, with the following principles and rights as the main pillars: safe and flexible employment; protection of wages; information on terms and conditions of employment; protection against dismissal; social dialogue and worker participation; work-life balance; a holistic, safe, and decent working environment; and data protection.

21 Childcare and child support: children have the right to affordable, high-quality early childhood education and care. Children also have the right to protection from poverty.
Social protection: irrespective of the nature and duration of their employment relationship, employees and self-employed workers are also entitled to adequate social protection under similar conditions.
Unemployment benefits: unemployed people have the right to receive activation allowances and job-search allowances from public employment services for a reasonable period of time, in proportion to the contributions they have paid and in accordance with national eligibility rules, to help them (re)enter the labour market. These allowances should not act as a disincentive to a rapid return to employment.
Minimum income: everyone who lacks sufficient resources has the right to benefits that guarantee an adequate minimum income, ensuring a decent life and effective access to goods and services at all stages of life. For those who are able to work, minimum income benefits should be combined with measures to encourage (re)integration into the labour market.
Retirement income and old-age pensions: retired workers and self-employed persons are entitled to a pension providing an adequate income in proportion to the contributions they have paid. Women and men should have equal opportunities to acquire pension rights. In old age, everyone has the right to the resources they need to live with dignity.
Healthcare: everyone has the right to timely access to affordable preventive and curative healthcare.
Social inclusion of people with disabilities: people with disabilities have the right to income support that provides them with a life with dignity, services that enable them to participate in the labour market and society, and a working environment adapted to their needs.
Long-term care: everyone has the right to affordable, long-term, quality care services, especially home care and community-based services.
Housing and assistance for homeless people: people in need should have access to good quality social housing or housing assistance. Vulnerable people have the right to adequate assistance and protection against forced eviction. Homeless people should be provided with adequate shelter and services to promote their social inclusion.
Access to basic services: everyone has the right to good quality basic services, including water, sanitation, transport, financial services, and digital telecoms. Support for access to such services must be accessible to those in need.

22 European Commission, 2021, COM(2021) 102 final.

3. Outline of demographic trends

People worldwide are living longer. At present, most people can expect to live into their 60s and beyond. Every country in the world is experiencing growth in both the size and proportion of older persons in the population. By 2030, one in six people in the world will be aged 60 years or over. At this time, the share of the population aged 60 years and over will increase from 1 billion in 2020 to 1.4 billion. By 2050, the world population of people aged 60 years and older will double (2.1 billion). Further, the number of people aged 80 years or older is expected to triple between 2020 and 2050 to reach 426 million. While this shift in the distribution of national populations towards older ages – known as 'population ageing' – started in high-income countries (for example, in Japan, 30% of the population is already over 60 years old), it is now low- and middle-income countries that are experiencing the greatest change. By 2050, two-thirds of the world's population over 60 years will live in low- and middle-income countries.[23]

The young population is decreasing worldwide, including in the EU and the Central European countries,[24] whereas the older adult population is increasing.[25] Fertility rates currently average 1.67 across OECD countries, well below the level that ensures population replacement. The trend to fewer children has been ongoing since the late 1950s but slowed, on average, around the turn of the century. The fall in fertility rates reflected changes in individuals' lifestyle preferences, family formation, and the constraints of everyday living, such as those driven by labour market insecurity, difficulties in finding suitable housing, and unaffordable childcare.[26] Remaining life expectancy at 65 significantly contributes to well-being at older ages. It also influences the finances of retirement income systems. From 2015–20, in OECD countries, women aged 65 could expect to live on average an additional 21.3 years, which is forecast to increase to 25.2 years by 2060–65. Men of the same age could expect to live 18.1 more years in 2015–20, with a projected increase of 4.5 years by 2060–65 to reach approximately 22.5 years. Gender gaps are, therefore, expected to decrease slightly over the next 45 years (from 3.3 to 2.7 years on average in OECD countries).[27]

23 WHO, 2022.

24 OECD, 2023a.

25 OECD, 2023b.

26 Pensions at a Glance 2021: OECD and G20 Indicators. The total fertility rate is the number of children that would be born to each woman if she were to live to the end of her child-bearing years and if the probability of her giving birth to children at each age were the currently prevailing age-specific fertility rate. It is generally computed by summing up the age-specific fertility rates defined over a five-year interval. A total fertility rate of 2.1 children per woman – the replacement level – broadly ensures a stable population size given the assumptions of no migration flows and unchanged mortality rates. By 2060, the total fertility rate is projected to be 1.74 in Poland, 1.71 in Slovakia, 1.78 in the Czech Republic, 1.75 in Slovenia, and 1.70 in Hungary.

27 Pensions at a Glance 2021: OECD and G20 Indicators.

From 2020 onwards, the COVID-19 crisis had a significant impact on employment in many countries. Nevertheless, the broad pattern of employment rates across countries and age groups remains structural. The employment rate falls with age in all OECD countries, often sharply. The average employment rate across all OECD countries in 2020 was 71.9% for individuals aged 55 to 59, 50.7% for the 60–64 age group, and 22.9% for those aged 65–69. Employment rates for men are higher than for women among older workers in all but two OECD countries, Estonia and Finland, averaging 14 percentage points across all countries.[28]

The average effective age of labour market exit remained below 64 in 2020 in more than half of OECD countries for men and in more than three-quarters of these countries for women. Average exit ages are at 61 years or below for men in Belgium, France, Greece, Luxembourg, the Slovak Republic, Spain, and Turkey and at 60.5 years or below for women in Belgium, Colombia, Greece, Hungary, Luxembourg, Poland, the Slovak Republic, Slovenia, Spain, and Turkey. The expected life years after labour market exit indicator measures the remaining life expectancy at the average age of labour market exit by gender. In 2020, the OECD average was 23.8 years for women and 19.5 years for men.[29]

Expenditure for 'social protection' remained by far the most important COFOG (Classification of the Functions of Government) division[30] in 2021 in the EU and in all reporting Member States and EFTA countries. This reflects the core function of government to redistribute income and wealth, financed by compulsory payments. Unsurprisingly, the expenditure category dominating this division is 'social benefits and social transfers in kind (purchased market production)'. Social benefits are paid to households to alleviate social risks and needs. Examples include unemployment benefits and pension payments. In the EU in 2021, social benefits and social transfers in kind (purchased market production) comprised slightly more than 89% of expenditure in the social protection COFOG division. Additionally, in 2021, expenditure on social protection in the EU stood at €2,983 billion, equivalent to 20% of total expenditure on social protection, 5 % of GDP, and 39.9 % of total expenditure. By far the most significant expenditure group in this division, 'old age' (10.8 % of GDP), relates mainly to pension payments. Expenditure in 'sickness and disability' (2.9 % of GDP), the second largest group, comprises mainly social payments in cash or in kind related to social insurance schemes. Social protection accounted for the largest area of general government expenditure in 2021 in all EU Member States. The ratio of government social

28 Ibid.

29 Ibid.

30 This classification divides general government spending into 10 categories according to their purpose: general public services; defence; public order and safety; economic affairs; environmental protection; housing and community amenities; health; recreation, culture, and worship; education; and social protection. See: https://www.insee.fr/en/metadonnees/definition/c1064#:~:text=The%20COFOG%20(Classification%20Of%20the%20the%20funds%20are%20used (Accessed: 15 July 2023).

protection expenditure to GDP varied across EU Member States from 8.7% of GDP in Ireland to 24.8% in France.[31]

While the COVID-19 pandemic has naturally taken centre-stage in people's and policy makers' minds, the biggest long-term challenge for pensions continues to be providing financially and socially sustainable pensions in the future. As stressed regularly in previous editions of *Pensions at a Glance* and the *Pensions Outlook*, putting pension systems on a solid footing for the future will require painful policy decisions: asking citizens to either pay more in contributions, work longer, or receive lower pensions.[32] Between 2000 and 2017, total (public and private) pension expenditure increased by 1.5% of GDP on average among OECD countries. Demographic changes alone are estimated to have contributed to raising pension expenditure by 2.5% of GDP; this increase was partly offset by strong labour market performance in many countries, especially among older workers. There were no common trends across countries in changes in pension benefit ratios (average pensions relative to average wages). Ageing is expected to further raise spending pressure in the OECD by an additional 3.5% of GDP on average by 2035. In the absence of new resources for pension financing, it is crucial to continue increasing employment prospects for older workers, including through the design of pension policies, in order to preserve the level of old-age benefits while limiting spending increases.[33]

4. Strategies to address demographic challenges

As early as 1999, Samorodov noted that older workers were the losers in the labour market as a result of official employment policies and labour market measures, especially in OECD countries. Current policies on older workers still tend to

31 Eurostat, 2023b. Nine EU Member States – France (24.8% of GDP), Finland (24.6% of GDP), Italy (23.4% of GDP), Austria (21.9% of GDP), Denmark (21.1% of GDP), Belgium (21.0% of GDP), Germany (20.9% of GDP), and Greece and Spain (both 20.6% of GDP) – devoted at least 20% of GDP to social protection, with Norway being the highest among the EFTA countries (18.6%). At the other end of the scale, Ireland (8.7 % of GDP), Malta (11.0% of GDP), Cyprus (12.5% of GDP), Hungary (13.1% of GDP), Romania (13.3% of GDP), Bulgaria (13.4% of GDP), Estonia (13.5% of GDP), Czechia (13.6% of GDP), and Latvia (13.8% of GDP), as well as Iceland among the EFTA countries (13.2 % of GDP), each spent less than 14% of GDP on social protection.

32 Pensions at a Glance 2021: OECD and G20 Indicators.

33 Ibid. On average in the OECD, people aged 65 and over receive 88% of the income of the total population. Those aged over 65 currently receive about 70% or less of the economy-wide average disposable income in Estonia, Korea, Latvia, and Lithuania, and about 100% or more in Costa Rica, France, Israel, Italy, Luxembourg, and Portugal. Based on current legislated measures, the normal retirement age will increase by about an average of 2 years in the OECD, from 64.2 years in 2020 to 66.1 years in the mid-2060s for men. The future normal retirement age is 69 years or more in Denmark, Estonia, Italy, and the Netherlands, which have all linked the retirement age to life expectancy, while it is 62 years in Colombia, Luxembourg, and Slovenia.

view them as a labour reserve rather than as active labour market participants. The widely used 'early retirement' is effectively a 'hidden inactivity' approach. In the long term, early retirement policies are not sustainable for addressing the employment consequences of ageing: such policies reduce the revenue side of social security systems while increasing expenditure. It is already very costly, and early retirement may become economically unrealistic, especially in view of the impending crisis in the financing of pension systems.[34]

In 2020, Harasty and Ostermeier outlined the projected trend in the labour market participation of older workers up to 2030. Regarding activating the potential labour force, a large proportion of the young population is not in education, employment, or training. In addition, young and adult women in particular are disproportionately excluded from the labour market, often because of their involvement in family caring responsibilities. At the company level, workplaces and work organisation need to be adapted to the needs of older workers, for example, by providing flexible working arrangements and removing physical barriers. Public awareness campaigns, close cooperation with employers' organisations, and the provision of financial incentives to recruit or retain older workers could support these efforts. Public employment services should offer training opportunities and career guidance services tailored to the needs of older workers.

Creating better and more productive jobs, investing in training and education throughout the lifecycle and providing opportunities for continuous retraining and upskilling can make social protection systems sustainable and strengthen labour market information systems. Employers and public employment services can help overcome the difficulties that older workers face in using new technologies through targeted training. Employers could also promote intergenerational teamworking, which would increase the exchange of knowledge between younger and older workers and break down prejudices and stereotypes.

Harasty and Ostermeier's predictions proved to be correct. To address the current demographic challenges, I now propose solutions based on the results of two studies.

4.1. Employment crises and how to deal with them

Demographic changes mean that, as technology advances year on year, there is a growing gap not only between the old and the young but also between the generations that are closer together. Different skills mean different motivations, which can lead to conflicts. Employers need to be able to manage these conflicts, all the more so as the current labour market is characterised by a high turnover of staff. Managing intergenerational differences is in the interests of both the employer and employee representatives: it is in the joint interest of employers and trade unions to address the problems arising from the generation gap, and it would be important for

34 Samorodov, 1999, p. 32.

both organisations to retain young workers and motivate the older generation at the same time. This problem is a serious issue for human resources policy, which the institution of generational management can help to address.[35]

Some research shows that there is a wide variation in the proportion of people of different generations in the labour market. In half (52%) of the organisations surveyed, the average age of employees was between 36 and 45. In the second most common case, the average age of employees fell into the younger age group between 26 and 35. Employees in only 7% of organisations had an average age above 45 owing to a higher proportion of older workers. Some argue that micro-generations[36] (those born at the borderline between two generations) should also be addressed separately. In the case of multigenerational teams, generational conflicts may inevitably arise. To keep up with the constant changes, companies need to create a multigenerational work environment that ensures that each generation contributes its most valuable knowledge to the company's activities. The technical innovation of the younger generations needs to blend with the professional knowledge of the X and Boomer generations. However, this inevitably leads to conflicts in the workplace. It is precisely these two areas, knowledge sharing and technology, that are most prone to conflict.

Conflicts that arise, and their resolutions, are always an opportunity for a company to introduce appropriate changes. The success of the management of such a conflict is an indicator of the success of the subcontracting itself, whether it is an internal or an external stimulus. All generations agree that there is usually a difference in values behind their conflicts. However, the development of values does not only depend on generational affiliation. The fact that generations do not always have a conflict of values as a result of working together demonstrates that this is the case, evidenced by the fact that generations tend to use the same negative labels for each other. As such, the real cause of conflicts is usually deeper than differences in values. One possible problem is when there is an inadequate flow of communication within the company. The importance of this is illustrated by the fact that different generations have different needs in terms of the amount of information they require. However, it should also be noted that some conflicts arise precisely because the information received is sufficient for members of one generation and insufficient for members of the other generation to do their job properly. Another common problem is that members of different generations do not interpret the same information in the same way. In such instances, it is important to encourage team members to get to know each other and giving too much information in meetings can be a good practice. There has never been a problem with giving too much information; thus,

35 The management of employment crisis situations was examined in the course of the GINOP -5.3.5-18 'Supporting the implementation of thematic projects aimed at improving adaptability in the labour market', entitled 'Promoting intergenerational cooperation in retail workplaces; with the cooperation of stakeholders and the involvement of the University of Miskolc'. The study was led by the author of this chapter.

36 Csutorás, 2020, p. 38.

essentially, all generations get what they want and leave the meeting with the right amount of information. As no two company structures are exactly the same and are comprised of different-sized groups according to the characteristics of the company's activities, each company must be individually prepared to deal with the generational problems that arise if it is to operate effectively in the future.[37]

Intergenerational understanding can be fostered by encouraging dialogue and promoting cooperation. Annual satisfaction surveys, the selection of the right leadership style, and mentoring programmes involving several generations can also be effective solutions. Promoting diversity in the organisation itself (not just generationally) creates an inclusive environment, which also encourages acceptance of any differences in attitudes.

To address the employment crisis in a given workplace, I consider it important to highlight the Council declaration on the European Year for Active Ageing and Solidarity between Generations. Demographic change can be successfully managed, *inter alia*, by adopting a positive, life-course approach that focuses on the potential of all generations, especially the older age groups. Actions are needed to enable both men and women to remain active as workers, consumers, carers, volunteers, and citizens, and to preserve solidarity between generations. Generational differences and the resulting conflicts between workers in all workplaces are not a new problem of the 21st century. However, never before has there been such a deep divide between active generations working in the same workplace. The widening of the generation gap is also exacerbated by the continuous development of technology. While there are smaller gaps between Generation X and the Boomer generation, Generation Y and especially Generation Z are much further apart. Consequently, there is a need for labour market and social programmes based on solidarity and shared values to resolve intergenerational conflicts. These programmes should focus on vocational education and training in later life, healthy working conditions, age management strategies, employment services, actions to prevent age discrimination, employment-friendly tax/benefit schemes, experience transfer, and reconciling work and care.

Increasing social cohesion, inclusion, and empowerment can be realised by giving people opportunities to participate in political, social, recreational, and cultural activities throughout their lives; volunteering to maintain social networks and reduce isolation; and acquiring new skills that contribute to personal fulfilment and well-being.

Labour market participation can be encouraged through actions to involve younger and older people in training and lifelong learning, facilitating intergenerational knowledge transfer, and measures to reconcile work and private life.

Recognising the values and contribution of all age groups to society is important and helps create a positive image of and attitude towards all age groups. Different age groups should be involved in decision-making (policy formulation and implementation), paying particular attention to their concerns and listening to their views in research processes that may affect them.

37 Ibid, pp. 45–49.

Promoting research and innovation to improve the lives of older people is also crucial, including ensuring a barrier-free environment for all.

Social inclusion can be fostered to enable longer and independent lives by facilitating e-inclusion, e-health, and other innovations in information and communication technologies, thus contributing to the development of a 'silver economy'.

Health promotion, disease prevention, and early diagnosis throughout the life cycle, as well as rehabilitation for active and healthy ageing and independent living that takes into account the different needs of women and men for each service, and future research, are all important issues.

Adapting social security systems is also crucial to be able to provide sustainable and adequate pensions, which will contribute to reducing the number of older adults, especially women, living below the poverty line and enable them to live with dignity.

Vocational education and training in later life means women and men of all ages should have the opportunity to participate in education, training, and skills development to help them enter (or re-enter) the labour market and find quality jobs.

Healthy working conditions result in a working environment that enables workers to maintain their health and well-being and, thus, ensures their lifelong employability.

In terms of age-management strategies, careers and working conditions should be adapted to the changing needs of ageing workers, avoiding early retirement.

Employment services for older workers include counselling, job placement services, and support to re-enter the labour market, which should be provided for those who wish to remain in work.

Preventing age discrimination means younger workers should have the same rights as older workers. Age should not be a determining factor in deciding whether a worker is suitable for a job, negative age stereotypes and discriminatory treatment of older workers in the workplace should be eliminated, and the contribution of older workers should be highlighted.

Employment-friendly tax/benefit systems need to be adapted to make it worthwhile for older people to work, while ensuring adequate levels of benefits.

Experience transfer involves tapping into the experience of older workers through mentoring and mixed-age groups.

Reconciling work and care involves creating appropriate working conditions and leave schemes for both women and men, which should be put in place to enable workers to keep their jobs as non-professional carers and to re-enter the labour market.

Specific labour market and social programmes should be based on openness. These may stem from the need to introduce skills already in public education that facilitate the development of generational intelligence. It is necessary to develop programmes that support both younger and older generations. In addition to supporting these generations, companies should also be encouraged to develop policies and programmes that can address generational conflicts and, thus, stop – or at least slow down – labour market turnover.

The labour market and social programmes to be developed should be based on knowledge sharing through a specific mentoring programme, in which both older and younger generations can mentor older adults. With the development of digital technologies, reverse socialisation has already taken place. Future labour market programmes should be multi-layered, taking into account the specificities of each generation. They should also facilitate a healthy degree of both intergenerational competition and solidarity.

In the light of the above, I propose, first and foremost, the development of active labour market instruments that can help to address generational conflict on a societal scale and include the above-mentioned elements. This is all the more important because members of the early-career Generation Z and the older generation, even those approaching retirement, are equally at risk and can be significant competitors. The competition between members of school cooperatives and members of public interest pension cooperatives is a good example of this. Such a programme will help employers develop an organisational culture in which the generational problem can be addressed through both generational management and corporate social responsibility.

The source of the problems and the extent of the conflicts also depend on the representation of each generation in the workplace: the number and size of multi-generational groups is important. Successful HR management is only possible if we identify and understand generational differences and their impacts on employees. A realistic goal is not to eliminate generational differences but rather to create generational harmony (synergy). We need to find ways to focus on the similarities between generations and respect any differences. All generations have a preference for value-creating work, a decent living, and satisfactory working conditions; thus, a common intrinsic motivation can be created through the contribution they can all make to the success of the commercial business that employs them. Furthermore, a discourse between employees and employer is essential for finding common values.

Based on generational considerations, a personalised incentive scheme can be developed that is tailored to the different needs of the generations and, thus, motivates employees in an individualised manner. By improving working conditions, companies can also help to keep employees healthy. This is important not only in jobs that pose obvious risks to physical health because, today, work stress is one of the major problems affecting health and, thus, a country's human resources.

Tackling the employment crisis resulting from demographic change appears to warrant a comprehensive set of policy and HR tools. However, there are also relevant labour law regulatory instruments, among which I highlight partnership-based negotiations between workers' representatives and employers. These instruments allow for more efficient communication in the workplace and more effective information and consultation rights, which are critical but currently seem to be weak in many countries. All this is made meaningful through social dialogue. It is also important to introduce or enhance family-friendly labour laws, such as paid parental leave, flexible working arrangements, and support for caregiving responsibilities, and to

encourage and regulate flexible work arrangements like remote work, part-time work, and telecommuting to adapt to changing workforce demographics.

In summary, this section sought to address the crisis situations arising from generational differences by looking at broader employment issues and solutions.

4.2. Conclusions of the Central European research

Demographic changes have a major impact on the functioning of the social security system, as described above. Among the responses to demographic challenges, social security issues are summarised in this section. The Central European research, supported by the Central European Academy, has identified good practices and actions for the sustainability of social security systems in the region, based on reports on eight countries (Poland, Slovakia, the Czech Republic, Slovenia, Romania, Croatia, Serbia, and Hungary).

Social security law is specific in that it not only covers social events that occur to individuals but must also consider the overall social policy, social protection, and challenges of a society as a whole. The scope and extent of the provision of social security and social services is historically and economically determined. The social safety net in any given country is dictated by political, economic and, as a direct consequence, legislative conditions. As a result of the oft-mentioned social conditions, it is the legislation of social security and social assistance that particularly comes to the forefront of political interest. With regards to different crises, one of the greatest challenges in the long term is undoubtedly to deal with the demographic crisis, which is defined by low birth rates and an ageing population.[38]

Bearing in mind the numerous social factors that affect the functioning of the social security system, most modern pension systems, whose main source of financing is mandatory pension and disability insurance contributions, cannot smoothly ensure the payment of benefits without appropriate state intervention, which covers the deficit. In the 1950s, the FPR Yugoslavia spent a total of 11.04% of its national income on social benefits, including allocations for benefits other than pensions. In the 1990s, the Netherlands allocated 13.6% of GDP, Italy 13.5%, Greece 12.7%, France 12.2%, Sweden 10.3%, and Germany 10.3%. Another group includes countries that set aside between 8% and 10% of GDP for the sustainability of pension systems, including Spain (9.4%), the United Kingdom (8.9%), Poland (8.5%), and New Zealand (8.2%). A third category includes countries that allocated between 3% and 7%: the United States of America (6.6%), Chile (6%), Japan (5.5%), Canada (4.8%), Australia (4. 6%), Argentina (3.6%), and Turkey (3.3%). A fourth group includes countries that spent between 1% and 3% of GDP – China (2.6%), Brazil (2.4%), Egypt (2.3%), Tunisia (2.3%), Costa Rica (2.0%), and Singapore (1.4%). A final group comprises mostly developing countries that allocated less than 1% of GDP for the sustainability of pension systems, including Kenya. Though these data were recorded in 1990s, recent statistics indicate

38 Dolobáč, 2023.

that there have been no major changes, although owing to numerous demographic shifts, especially the rise of the average life expectancy, allocations for pensions are higher than before. Most authors believe that the ideal proportion for the sustainability of a country's pension system is four employees who will pay contributions for pension and disability insurance per one pension beneficiary.[39]

Regarding the sustainability of pension systems, the report of the Committee for Social Protection of the European Union should be considered. An alternative model should be sought, instead of strictly tightening the conditions for the old-age pension and other benefits that are provided within pension and disability insurance systems. Appropriate proposals relate to the sustainability of the appropriate amount of pension that would ensure an adequate level of social security, guaranteeing intergenerational fairness, and maintaining the idea of solidarity within the pension system and a balance between rights and obligations.[40]

According to the country reports on sustainability issues, it can be concluded that good practices have been related to the employment and rehabilitation of people with disabilities, which undoubtedly has a positive impact on the sustainability of the social security system. The social security system could also be largely steered towards sustainability by the development and implementation of long-term care rules. We have paid special attention to this in the country chapters; however, apart from the Slovenian and Romanian examples, no progress has been made in the region so far.

Th Czech proposal is to ensure the greater financial stability of social insurance. To do so, it is necessary to consider unifying the collection of public health insurance premiums with social security premiums and contributions to state employment policy. In this way, the considerable administrative costs associated with the operation of these systems can be reduced. The idea *de lege ferenda* is also to unify administrative decision-making and remedies in all sectors of social insurance and social security by introducing a two-stage administrative procedure that involves non-independent administrative tribunals as a second administrative instance body deciding on appeals against decisions.

According to the Slovenian proposal, the constitutional review concerning future amendments and the enforcement of the human right to social security certainly seems more important than ordinary judicial review. From this perspective, it is important that the right to social security, protected by Art. 50 of the Slovenian

39 Bojić, 2023.

40 Bojić, 2023. Based on the reports submitted by the Member States, the Committee for Social Protection of the European Union issued a special report in which, among other things, the issue of the sustainability of pension systems was addressed. The Member States previously agreed on 10 common goals for future pension reforms: 1. sustainability of a more appropriate pension amount; 2. ensuring intergenerational equity; 3. maintaining the idea of solidarity within pension systems; 4. maintaining a balance between rights and obligations; 5. ensuring that pension systems support equality between men and women; 6. ensuring transparency and predictability; 7. ensuring that pension systems are even more flexible in light of the constant social changes; 8. facilitating the adaptability of the labour market; 9. ensuring the consistency of pension schemes in general pension systems; and 10. ensuring the sustainability of public finances.

Constitution, can, alongside several other social (human) rights, be enforced before the Constitutional Court. Following the exhaustion of domestic legal remedies, a motion can be filed before the European Court of Human Rights whenever any social right protected by the Council of Europe can be merged with a breach of a Convention right. Furthermore, the interplay between public and private health insurance or, put differently, public and private income protection in times of incurred sickness and injury, will be crucial in the future to safeguard the long-term financial sustainability of public healthcare and health insurance, especially occupation-based social insurance schemes developed around 150 years ago.

Several changes have occurred and several measures have been taken to achieve the sustainability of the pension system in the Central European countries. For example, a person who retires prematurely may experience a 15% reduction in the level of their calculation percentage; public expenditure in the field of pensions has been limited, regulated by a limited calculation but an unlimited contributory base; the years of salaried employment that make up the pension base are still limited; a process of gradually increasing and equalising the universal retirement age for both sexes is underway; conditions for pension eligibility have been tightened; and a points-based calculation of pensions has been applied.

In most modern countries, the number of employees who support the number of existing pensioners is unsustainably small owing to the policy of full employment from the period of socialism and the possibility of early retirement during the period of the transition process. This dependency ratio can be improved by boosting fertility through an increase in financial support for pregnant women (pregnancy allowance, increasing maternity pay) and, subsequently, for families (tax bonus, increased childbirth allowance, etc.), as observed in Poland, Hungary, and Slovakia.

Here, I stress that the sense of vulnerability could be overcome by strengthening economic resilience. There will be no well-functioning social system without a well-functioning economy. The challenge is combining both the economic and social aspects in a balanced manner. In this dilemma, considering how best to finance social security is crucial. The public expenditure on social protection is very high; therefore, in times of demographic challenges – whether they are a result of migration or an ageing society – it is critical to find sustainable ways of financing social expenditures.

5. Summary

Following this chapter's analysis, several important findings can be highlighted. The pressure on social care systems can be reduced by reforming the pension system, as we have seen in the Central European Region. However, at the same time, the demand for workers, services, and industries to care for older adults will increase. A large number of new jobs and businesses that are adapted to the needs of older

citizens will be created in sectors such as health and long-term care, pharmaceuticals, and housing. Further, the growing number of people of non-working age is increasingly dependent on the declining number of people of working age. This could slow economic growth, lead to lower tax revenues, and threaten the financial sustainability of social protection systems. One obvious solution is to keep older workers in the labour market, but this requires increased attention to health and safety at work, working hours and work organisation, and retraining and training.

Addressing the current demographic challenges requires modernising and strengthening employment, education and training policies, and social protection systems by increasing labour market participation, reducing structural unemployment, and strengthening corporate social responsibility among business actors. Access to childcare facilities and other care for dependents will play an important role in this respect. Implementing flexicurity principles and enabling people to acquire new skills will be key in adapting to new conditions and possible career changes. We need to make a major effort to tackle poverty and social exclusion and reduce inequalities in health, ensuring that everyone benefits equally from growth. Just as important is the ability to ensure healthy and active ageing and, through this, social cohesion and greater productivity. It can be seen, therefore, that demographic challenges raise complex cross-policy issues, of which this chapter addressed the narrow issues of labour law regulation and the broader issues of employment and social security in the context of an ageing society as a demographic challenge.

This chapter first examined labour law issues. This is the broad framework within which we can present the qualitative criteria of a life worthy of the active and inactive (i.e. once working) person. In the face of constant change, we have sought permanence, which we have seen only in fundamental rights and other values. The European Pillar of Social Rights states that economic and social development can be achieved together on the basis of the following principles: *equal opportunities and the right to work, decent working conditions,* and *social protection and social inclusion*. I believe that these are the principles and values that should guide the employment of all workers, including active older people.

To find solutions to the current demographic challenges, I briefly summarised the results of two studies. One of these studies found that labour market and social programmes based on solidarity and shared values are needed to resolve intergenerational conflicts. These programmes should focus on vocational education and training in later life, healthy working conditions, age management strategies, employment services, the prevention of age discrimination, employment-friendly tax/benefit systems, experience transfer, and the reconciliation of work and care. Addressing employment crises arising from demographic change appears to warrant a comprehensive set of policy and HR tools. However, there are also relevant labour law instruments, among which I highlight partnership-based negotiations between workers' representatives and employers. These instruments allow for more effective communication in the workplace and more effective information and consultation rights, which are very important but currently seem weak. All this is made

meaningful through social dialogue. Based on another study, which analysed reports on sustainability issues from individual countries, it can be concluded that good practices have been related to the employment and rehabilitation of people with disabilities, which undoubtedly has a positive impact on the sustainability of the social security system.

The social security system would be largely steered towards sustainability by the development and implementation of long-term care rules. We have paid special attention to this in the country chapters; however, apart from the Slovenian and Romanian examples, no progress has been made in the region thus far. Several changes have occurred and several measures have been taken to achieve the sustainability of the pension system in the Central European countries. The dependency ratio can be improved by boosting fertility through an increase in financial support for pregnant women (pregnancy allowance, increasing maternity pay) and, subsequently, for families (tax bonus, increased childbirth allowance, etc.)

A well-functioning social system goes hand in hand with a well-functioning economy. The challenge is combining both the economic and social aspects in a balanced manner. To complete this task, each participant – including the state, public authorities at different levels, employers, businesses and social partners, civil society organisations, service providers, and the media – must take responsibility.

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Chapter 9

The Impact of the Demographic Ice Age on Economic Growth, Public Policy, and the Sustainability of Pension Systems

Judit Barta and Péter Novoszáth

Abstract

Over the past decades, the demographic conditions of European countries have been characterised by decreasing fertility rates and, consequently, fewer births and an ageing society. The Member States of the European Union face similar demographic problems, with the number of births stagnating or decreasing and the total fertility rate falling beneath the 2.1 value necessary for the simple reproduction of the population. The European Union does not have a family policy, and the Member States deal with the challenges arising from the 'demographic ice age' through different methods at the national level, taking into account their countries' different needs and cultural backgrounds, and especially their ever-shrinking financial possibilities, with little success. This chapter analyses in detail the effects of demographic changes on economic growth, labour markets, monetary policy, budgetary and other government policies, and, ultimately, the sustainability of pension systems and retirement livelihoods. The chapter attempts to demonstrate that a coherent family policy and other related government policies could have a positive effect on the current unfavourable demographic processes within individual countries, as well as on their expected negative consequences, if they were to focus on the demographic challenges in a meaningful way. The conditions in Hungary are described, in addition to international trends.

Keywords: Economic theory of fertility, family policy, demographic winter, demographic ice age, family benefits, family policy, fertility rate, number of live births, pension system, minimum pension, supplementary pension, old age

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1. Introduction

The world's population continues to grow, albeit at a slower pace than at any time since 1950 owing to declining fertility rates. According to some forecasts, the number of people in the world, estimated at 7.7 billion in 2019, may increase to approximately 8.5 billion in 2030, 9.7 billion in 2050, and 10.9 billion in 2100.[1] There are several reasons why the human population is growing despite falling fertility rates. Total fertility has declined significantly in recent decades. Almost half of the world's population lives in a country or area where lifetime fertility is less than 2.1 live births per woman, that is, it does not reach the level where the population growth rate is at least zero in the long term. However, in 2019, fertility was on average above this level in other parts of the world such as sub-Saharan Africa (4.6 live births per woman), Oceania (excluding Australia and New Zealand (3.4), North Africa and Western Asia (2.9), and Central and South Asia (2.4).

In many high-income countries, as well as in Europe and Central Asia, fertility rates have been declining since the 1990s and are now below the replacement rate. In Europe, the effect of the decline in the fertility rate is increased by emigration affecting individual Member States and other European countries. The combination of these two issues is expected to lead to a net population decrease between 2015 and 2050. According to these forecasts, among the high-income countries, the populations of Germany and Japan will decrease by 7.7 and 15.1%, respectively, during this period. However, the most extreme population decline is expected in the developing countries of Europe and Central Asia; for example, according to forecasts, Bulgaria's population is expected to shrink by 27.9% by 2050 due to low fertility and a high net migration rate.[2]

In the EU Member States, forecasts predict that population decline is only one of the problems we face: the phenomenon of an ageing society, that is, the increase in the proportion of people over 65 within the society, also contributes to the demographic challenges. This trend is the combined result of declining fertility (decrease in the number of births) and an increase in life expectancy.

In this chapter, we examine those countries experiencing population decline rather than rapid population growth. We then explore the possible consequences of this issue and whether it makes the various current social and economic systems, and especially pension systems, unsustainable. The chapter's main goal is to comprehensively reveal what demographic problems the European Union (EU) Member States are facing and how these challenges can be remedied. Another goal is to demonstrate which countries have been able to break the negative trends of demographic changes and whether more positive trends can be expected to develop by following their practices. Thereafter, we consider the most important effects of demographic changes on economic growth, labour markets, monetary policy, budgetary and

1 United Nations, 2019.
2 World Bank, 2013, pp. 142–143.

other policies, and, ultimately, the sustainability of pension systems. The purpose of the chapter is not to develop numerical forecasts, as many forecasting companies and professionals already specialise in this; however, we quote the most important findings of these international organisations in several places. In addition to these sources, we refer to the databases and thematic publications of the EU, Eurostat, the United Nations (UN), the Organization for Economic Cooperation and Development (OECD), and the World Bank, as well as articles and studies related to the topic.

2. Demographic trends – the main characteristics of the demographic ice age in Europe

Family patterns have changed significantly over the past 50 years owing to new trends in partnerships and childbearing. The 1960s marked the end of the so-called 'Golden Age', when the rate of marriages and childbearing at a relatively young age was still relatively high, the number of divorces was low, and traditional family forms prevailed. Currently, traditional family forms and a variety of non-traditional relationships coexist.[3] In almost all European countries, the fertility rate is much lower than the population replacement level, the age of marriage and parenthood has been postponed or does not happen at all, and marital and non-marital relationships – even between couples with children – have become fragile.[4] The emphasis on family diversity, thus, requires the modernisation of family support policies. New forms within the family, as well as the needs of 'non-standard' families, must be taken into account. Modernisation, however, is a multifaceted concept as family policies include wide-ranging state interventions in relation to many aspects of the lives of women, men, couples, parents, and children.[5] This includes reconciling work and family responsibilities, mobilising the female workforce, promoting gender equality, ensuring the financial sustainability of social protection systems, combating child and family poverty, promoting child development, and generally strengthening the well-being of children in the early life.[6]

2.1. Development of the total fertility rate in EU Member States

The total fertility rate is one of the most commonly used fertility indicators. This rate shows how many children a woman would give birth to on average during her lifetime if the fertility data for the given year were constant. By projecting the

3 European Commission, 2016.
4 Oláh, 2015.
5 Thévenon and Neyer, 2014.
6 OECD, 2011.

cross-sectional data, we can determine how many children a woman would have in total if she had a chance of having a child during her lifetime and, thus, characterise the propensity to have children among women of childbearing age in the given period. In reality, of course, a woman's life path does not always develop according to this pattern, and, given that the age-specific fertility rate changes from year to year, the total fertility rate also changes. It is important to be aware that the total fertility rate is, therefore, sensitive to changes in the timing of having children, which can result in fluctuations in the ratio in different years. At the same time, fertility conditions are most comprehensively reflected by this indicator, even if it is also subject to distortions in those periods when changes in the timing of childbearing occur. In international comparisons, the total fertility rate is most often used.[7] This rate is the average number of live births that a woman could give birth to in her lifetime if her fertile years were in accordance with the age-specific fertility rates of the given year. This ratio, thus, represents the complete fertility of a hypothetical generation, which is calculated by adding the age-specific fertility rates for women in a given year (assuming that the number of women is the same at each age). The total fertility rate is also used to indicate reproduction-level fertility; in more developed countries, a ratio of 2.1 is considered the reproduction level.[8]

According to some economists,[9] if the economically ideal birth rate is 2.5–3 children per woman, and the replacement rate is 2.1, then it is worth examining where the fertility rate of each country currently stands. Europeans have generally had fewer children in recent decades, and this pattern partly explains the slowdown in EU population growth (see Population and population change statistics for more). Today, no European country meets the ratio of around 2.1 live births per woman, which, according to experts, would be necessary for the population to remain constant in that country, not considering migration. This is one of the reasons why some call today's era the 'demographic winter'.[10]

The total fertility rate is comparable across countries because it takes into account changes in population size and structure. In 2019, the total fertility rate in the EU was 1.53 live births per woman, compared to 1.54 in 2018. This rate rose to 1.57 in 2010, after which a decline began after 2018 to 1.50 in 2020, followed by a modest recovery in 2021 to 1.53.[11] The current total fertility rate in Europe shows that no longer-term supply of the population can be ensured in any European country or the continent as a whole (see Table 1). Among the EU Member States, France reported the highest total fertility rate in 2019, with 1.86 live births per woman, followed by Romania with 1.77 live births, and Ireland, Sweden, and the Czech Republic with 1.71 live births each. In contrast, the lowest total fertility rates in 2019 were

7 Kapitány and Balázs, 2015.
8 United Nations, 2019.
9 Rogers, 2020.
10 Tóth, 2022; Novoszáth, 2022.
11 Eurostat, 2023.

recorded in Malta (1.14 live births per woman), Spain (1.23 live births per woman), Italy (1.27 live births per woman), Cyprus (1.33 live births per woman), and Greece and Luxembourg (both 1.34).[12] A total fertility rate below 1.3 live births per woman is often referred to as 'low-low fertility'. On the Catholic holiday of the Holy Family in December 2021, Pope Francis criticised the 'demographic winter' of his adopted country of Italy, stating that the declining preference for having children harms not only families but also the country and society as a whole.[13]

In the majority of EU Member States, the total fertility rate fell significantly between 1980 and 2000–2003: by 2000, values fell below 1.30 in Bulgaria, the Czech Republic, Greece, Spain, Italy, Latvia, Slovenia, and Slovakia. After the low point between 2000 and 2003, the total fertility rate increased in many Member States. By 2019, all Member States except Malta, Spain, and Italy reported total fertility rates above 1.30 (Table 1).

Table 1. Total fertility rate 1960–2021[14]

	1960	1970	1980	1990	2000	2010	2018	2019	2020	2021
EU						1.57	1.54	1.53	1.50	1.53
Belgium	2.54	2.25	1.68	1.62	1.67	1.86	1.62	1.60	1.55	1.60
Bulgaria	2.31	2.17	2.05	1.82	1.26	1.57	1.56	1.58	1.56	1.58
Czechia	2.09	1.92	2.08	1.90	1.15	1.51	1.71	1.71	1.71	1.83
Denmark	2.57	1.95	1.55	1.67	1.77	1.87	1.73	1.70	1.68	1.72
Germany					1.38	1.39	1.57	1.54	1.53	1.58
Estonia	1.98	2.17	2.02	2.05	1.36	1.72	1.67	1.66	1.58	1.61
Ireland	3.78	3.85	3.21	2.11	1.89	2.05	1.75	1.71	1.63	1.78
Greece	2.23	2.40	2.23	1.39	1.25	1.48	1.35	1.34	1.39	1.43
Spain			2.22	1.36	1.22	1.37	1.26	1.23	1.19	1.19
France					1.89	2.03	1.87	1.86	1.83	1.84
Croatia						1.55	1.47	1.47	1.48	1.58
Italy	2.40	2.38	1.64	1.33	1.26	1.46	1.29	1.27	1.24	1.25
Cyprus				2.41	1.64	1.44	1.32	1.33	1.36	1.39

12 Eurostat, 2022.
13 Allen, 2021.
14 Source: Authors, based on the Eurostat database (Total fertility rate [TPS00199]).

	1960	1970	1980	1990	2000	2010	2018	2019	2020	2021
Latvia					1.25	1.36	1.60	1.61	1.55	1.57
Lithuania		2.4	1.99	2.03	1.39	1.5	1.63	1.61	1.48	1.36
Luxembourg	2.29	1.97	1.5	1.6	1.76	1.63	1.38	1.34	1.36	1.38
Hungary	2.02	1.98	1.91	1.87	1.32	1.25	1.55	1.55	1.59	1.61
Malta			1.99	2.02	1.68	1.36	1.23	1.14	1.13	1.13
Netherlands	3.12	2.57	1.6	1.62	1.72	1.79	1.59	1.57	1.54	1.62
Austria	2.69	2.29	1.65	1.46	1.36	1.44	1.47	1.46	1.44	1.48
Poland				2.06	1.37	1.41	1.46	1.44	1.39	1.33
Portugal	3.16	3.01	2.25	1.56	1.55	1.39	1.42	1.43	1.41	1.45
Romania			2.43	1.83	1.31	1.59	1.76	1.77	1.80	1.81
Slovenia				1.46	1.26	1.57	1.60	1.61	1.59	1.64
Slovakia	3.04	2.41	2.32	2.09	1.30	1.43	1.54	1.57	1.59	1.63
Finland	2.72	1.83	1.63	1.78	1.73	1.87	1.41	1.35	1.37	1.46
Sweden		1.92	1.68	2.13	1.54	1.98	1.76	1.71	1.67	1.67
Iceland						2.20	1.71	1.74	1.72	1.82
Liechtenstein						1.40	1.58	1.48	1.46	1.53
Norway						1.95	1.56	1.53	1.48	1.55
Switzerland						1.52	1.52	1.48	1.46	1.52
United Kingdom						1.92	1.68			
Montenegro						1.7	1.76	1.77	1.75	1.76
Moldova						1.30				
North Macedonia					1.88	1.56	1.42	1.34	1.31	1.44
Albania						1.63	1.37	n.a.	1.34	1.31
Serbia					1.48	1.4	1.49	1.52	1.48	1.52
Turkey						2.04	1.99	1.88		
Ukraine						1.43	1.20	1.14		
Kosovo							1.61	1.55		

Over the past 45 years, total fertility rates in EU Member States have generally converged: while in 1970, the difference between the highest rate (recorded in Ireland) and the lowest rate (recorded in Finland) was about 2.0 live births per woman, by 1990, the difference between the peak in Cyprus and the trough in Italy narrowed to 1.1. By 2010, the difference further decreased, falling to 0.8 live births, with the highest rate in Ireland and the lowest in Hungary. By 2019, the gap had decreased to 0.7, when the highest total fertility rate was recorded in France and the lowest in Malta.[15]

2.2. Trends in the number of live births in EU Member States

The number of births in Europe has been decreasing continuously since 2011 (Table 2), largely as a result of multifaceted, gendered social and economic developments.

Table 2. Trends in the number of live births in EU Member States, number 2011–2022[16]

	2011	2015	2016	2017	2018	2019	2020	2021	2022	Change 2011–2022
EU*	4,458	4,331	4,380	4,328	4,253	4,169	4,071	4,088	3,885	–573
Belgium	128,705	122,274	121,896	119,690	118,319	117,695	114,350	118,349	114,095	–14,610
Bulgaria	70,846	65,950	64,984	63,955	62,197	61,538	59,086	58,678	56,596	–14,250
Czechia	108,673	101,764	112,663	114,405	114,036	112,231	110,200	111,793	101,299	–7,374
Denmark	58,998	58,205	61,614	61,397	61,476	61,167	60,937	63,473	58,430	–568
Germany	662,685	737,575	792,141	784,901	787,523	778,090	773,144	795,492	738,856	+76,171
Estonia	14,679	13,907	14,053	13,784	14,367	14,099	13,209	13,272	11,646	–3,033
Ireland	74,033	65,536	63,841	61,824	61,022	59,289	55,959	60,553	57,634	–16,399
Greece	106,428	91,847	92,898	88,553	86,440	83,763	84,764	85,346	75,899	–30,529
Spain	470,553	418,432	408,734	391,265	370,827	358,747	340,635	336,823	329,892	–140,661
France	824,263	799,671	784,325	770,045	759,199	754,008	735,775	742,602	723,567	–100,696
Croatia	41,197	37,503	37,537	36,556	36,945	36,135	35,845	36,508	33,883	–7,314

15 Eurostat, 2023a.

16 Source: Authors, based on the Eurostat database (Live births and crude birth rate [TPS00204]). *thousand persons; **2011–19; ***2011–18; ****2011–20.

	2011	2015	2016	2017	2018	2019	2020	2021	2022	Change 2011–2022
Italy	546,585	485,780	473,438	458,151	439,747	420,084	404,892	400,249	392,598	–153,987
Cyprus	9,622	9,170	9,455	9,229	9,329	9,548	9,930	10,309	10,151	+529
Latvia	18,825	21,979	21,968	20,828	19,314	18,786	17,552	17,421	15,954	–2,871
Lithuania	30,268	31,475	30,623	28,696	28,149	27,393	25,144	23,330	22,068	–8,200
Luxembourg	5,639	6,115	6,050	6,174	6,274	6,230	6,459	6,690	6,495	+820
Hungary	88,049	92,135	95,361	94,646	93,467	93,100	93,807	94,003	89,669	+1,620
Malta	4,165	4,325	4,476	4,319	4,444	4,350	4,414	4,395	4,309	+144
Netherlands	180,060	170,510	172,520	169,836	168,525	169,680	168,681	179,441	167,504	–12,556
Austria	78,109	84,381	87,675	87,633	85,535	84,952	83,603	86,078	82,627	+4,518
Poland	388,416	369,308	382,257	401,982	388,178	374,954	355,309	331,511	305,132	–83 284
Portugal	96,855	85,500	87,126	86,154	87,020	86,579	84,530	79,582	83,671	–13,184
Romania	196,242	201,995	205,773	210,590	210,290	199,720	198,302	193,191	183,630	–12,612
Slovenia	21,947	20,641	20,345	20,241	19,585	19,328	18,767	18,984	17,627	–4,320
Slovakia	60,813	55,602	57,557	57,969	57,639	57,054	56,650	56,565	52,668	–8,145
Finland	59,961	55,472	52,814	50,321	47,577	45,613	46,463	49,594	44,951	–15,010
Sweden	111,770	114,870	117,425	115,416	115,832	114,523	113,077	114,263	104,734	–7,036
Iceland	4,492	4,129	4,034	4,071	4,228	4,452	4,512	4,879	4,391	+101
Liechtenstein	395	325	378	338	378	356	353	375	364	–31
Norway	60,220	58,815	58,890	56,633	55,120	54,495	52,979	56,060	51,480	–8,740
Switzerland	80,808	86,559	87,883	87,381	87,851	86,172	85,914	89,644	82,371	+1,563
United Kingdom**	807,776	776,746	774,386	754,754	730,918	712,699				–95,077
Bosnia-Herzegovina***	31,875		29,276	29,158	29,467					–2,408
Montenegro	7,215	7,386	7,569	7,432	7,264	7,223	7,097	7,033	7,021	–194
Moldova	39,182	40,855	39,961	36,640	34,764	32,022	30,730		26,952	–12,230

	2011	2015	2016	2017	2018	2019	2020	2021	2022	Change 2011–2022
North Macedonia	22,770	23,075	23,002	21,754	21,333	19,845	19,031	18,648	18,073	–4,697
Albania	34,285	32,715	31,733	30,869	28,934	28,561	28,075	27,211	24,688	–9,597
Serbia	65,598	65,657	64,734	64,894	63,975	64,399	61,692	62,180	62,700	–2,898
Turkey*	1,241	1,326	1,310	1,291	1,249	1,184	1,113	1,080	1,036	–205
Ukraine	502,595	411,781	397,037	363,987	335,874	308,817	293,457	271,983		–230,612
Kosovo ****	27,626	24,594	23,416	23,402	22,761	21,798	27,709			+83

Although the birth rate improved somewhat in the 2000s and stabilised in the following decade, the number of live births continued to decline starting in 2011. This decline accelerated during the COVID-19 pandemic, likely due to uncertainty about the pandemic's development and consequences. Contrastingly, the number of live births increased somewhat in 2021, although it did not yet approach the pre-pandemic level. Among the EU Member States, the largest absolute decrease in the number of live births (153,987) occurred in Italy in the period between 2011 and 2022. A greater decrease occurred only in Ukraine, where the number of live births decreased by 230,612 people in the same period, which clearly supports the impact of the war on the development of the number of live births. In addition to Italy, the decrease in the number of live births exceeded 100,000 from 2011–2022 in two other countries, Spain and France, and 80,000 in two countries, the United Kingdom and Poland. On the other hand, in some European countries, the number of live births increased in the period between 2011 and 2022, although these increases were relatively small. For example, the number of live births increased by 76,171 in Germany, 4,518 in Austria, 1,620 in Hungary, 1,563 in Switzerland, 820 in Luxembourg, 529 in Cyprus, 144 in Malta, 101 in Iceland, and 83 in Kosovo.

The occurrence of the demographic ice age is indicated if, on the one hand, the total fertility rate in a country does not reach the value of 2.1 necessary for the simple reproduction of the population. The number of live births is also decreasing. The examined data clearly show that, based on these criteria, most countries in Europe have now reached the period of the demographic ice age. According to the American economist Rogers, just as the ice age in geohistorical history caused a prolonged standstill in the biological development of life on earth, the 'ice age' we are now entering will cause a long stagnation or even a regression in the economic development of mankind. Our standard of living may rise rapidly for a long time to come, or it may remain unchanged. Innovation will be gradual and concentrated in certain areas, as opposed to the widespread leaps and bounds of the 20th century.

There are many factors at play in today's world economy that are leading to this new global economic ice age.[17]

2.3. Development of demographic trends in the NUTS-2 regions of the EU

In recent years, Eurostat has expanded the range of statistics it provides in order to cover, in addition to national and regional information, other territorial typologies, taking into account the growing needs of political decision-makers, especially in the context of cohesion and territorial development. This new regional classification of EU Member States is based on a hierarchy of regions and divides each Member State into regions that are classified according to the Nomenclature of Territorial Units for Statistics (NUTS) levels 1, 2, and 3 (from largest to smallest). NUTS is based on Regulation 1059/2003/EC of the European Parliament and of the Council of 26 May 2003 on the creation of a common classification of territorial units for statistical purposes (NUTS), which is regularly updated. Some EU Member States have a relatively small population and/or area, and therefore, it may not be possible to divide them into some (or even all) of the different levels of the NUTS classification. For example, Estonia, Cyprus, Latvia, Luxembourg, and Malta each consist of one NUTS level 2 region according to the 2021 version of the NUTS classification, which is also the basis for the classification of regional information in this chapter. Most of the regional statistics in this chapter refer to NUTS level 2 regions and come from Eurostat's regional database. However, depending on the availability of data, some maps and figures are also shown for NUTS level 1 regions (more aggregated geographical information) or NUTS level 3 regions (the most detailed level of regional information). The latter were only available for a limited number of demographic or economic indicators. There may also be special cases (usually due to limited data availability) where certain regions are compared at different NUTS levels in the same map or figure: these cases are included to improve data coverage. If there is little or no regional data available for a given EU Member State, then national data are used. In all cases where we use source data (online data) rather than data from Eurostat's various publications, we have applied them in such a way as to reflect any additional national data tables that may have been used. Where the maps and/or figures are based on different territorial levels, the determination of the number of regions in the accompanying commentaries is systematically based on the different territorial levels for which data were available in each country at that time.[18]

If we examine the development of demographic trends by region in the EU Member States, we can see notable and significant differences. On the one hand, the sad fact that, despite the importance of the topic, Eurostat does not have up-to-date data on many regions can be determined. In the case of the United Kingdom, this may be partially justified by Brexit, but in the case of the German regions, it is not.

17 Rogers, 2020.
18 Eurostat, 2023b.

On the other hand, this figure still gives a comprehensive picture of the EU Member States as a whole, primarily of the large differences that can be experienced today between the individual regions of these states.

To explore the causes of the significant differences in detail, further investigations are needed to establish what different social, economic, governmental, and regional policies underpin them. In this chapter, owing to scope limitations, we only show which regions have particularly high or low fertility rates.

From the data, it can be established at first glance that currently only five EU Member States have regions where the total fertility rate is clearly higher than the other regions (Table 3). Ten regions of France, four regions of the Czech Republic, three regions of Romania, two regions of Ireland, and one region of Hungary were among the 19 regions with the highest fertility rates in the EU. The small beauty of the matter is that five of these French regions (Mayotte, Guyane, La Réunion, Guadeloupe, and Martinique) are not located in Europe. As a result, there is only one region in the EU where the total fertility rate reached the value of 2.1 corresponding to the reproduction level: this region is in Romania and covers the north-eastern part of the country, hence the name 'Nord-Est', and is traditionally part of the historical region of Moldavia (mainly Western Moldavia and South Bukovina).

Table 3. Development of the total fertility rate in the EU NUTS-2 regions for the 19 regions with the highest fertility rates in 2021 2010–2021[19]

	2010	2013	2014	2015	2016	2017	2018	2019	2020	2021
Mayotte			4.12	4.88	4.96	4.92	4.66	4.60	4.17	4.66
Guyane	3.37	3.46	3.43	3.43	3.60	3.91	3.78	3.73	3.68	3.67
La Réunion	2.36	2.41	2.44	2.46	2.43	2.44	2.40	2.39	2.37	2.44
Guadeloupe		2.27	2.27	2.18	2.21	1.98	2.10	2.30	2.35	2.20
Nord-Est	1.41	1.80	1.92	2.01	1.95	2.16	2.09	2.14	2.17	2.17
Martinique	2.02	1.91	2.08	1.94	1.90	1.87	1.91	2.00	1.89	1.94
Provence-Alpes-Côte d'Azur	2.05	2.07	2.06	2.02	2.00	1.98	1.96	1.96	1.91	1.93
Střední Čechy	1.58	1.54	1.61	1.64	1.69	1.79	1.74	1.76	1.75	1.90
Northern and Western		1.98	1.94	1.94	1.94	1.88	1.89	1.87	1.77	1.90

19 Source: Authors, based on the Eurostat database [Total fertility rate by NUTS 2 region (TGS00100)].

	2010	2013	2014	2015	2016	2017	2018	2019	2020	2021
Pays-de-la-Loire	2.13	2.07	2.03	1.96	1.91	1.88	1.86	1.85	1.83	1.88
Sud-Est	1.32	1.57	1.67	1.72	1.77	1.89	1.84	1.84	1.86	1.88
Southern		1.96	1.93	1.93	1.86	1.84	1.85	1.76	1.72	1.88
Centre – Val de Loire	2.09	2.02	2.02	1.94	1.93	1.88	1.87	1.88	1.86	1.88
Jihovýchod	1.49	1.47	1.57	1.59	1.66	1.73	1.76	1.77	1.75	1.87
Île de France	2.05	2.01	2.04	2.00	1.98	1.95	1.94	1.93	1.88	1.86
Haute-Normandie	2.10	2.03	2.00	1.97	1.95	1.91	1.90	1.88	1.84	1.86
Centru	1.40	1.60	1.70	1.71	1.76	1.88	1.84	1.85	1.86	1.86
Észak-Magyarország	1.41	1.52	1.65	1.66	1.77	1.82	1.84	1.83	1.88	1.85
Střední Morava	1.46	1.42	1.47	1.55	1.61	1.67	1.71	1.67	1.75	1.85

Currently, we can find regions in five EU Member States where the total fertility rate is clearly the lowest compared to other regions (Table 4). Eights regions each of Spain and Italy, two regions of Poland, and one region each of Malta and Portugal were among the 20 regions with the lowest fertility rates in the EU. Among these regions, there were also three where the total fertility rate did not even reach 1, two of them in Spain (Canarias and Principado de Asturias) and one in Italy (Sardegna).

Table 4. Development of the total fertility rate in the EU NUTS-2 regions for the 20 regions with the lowest fertility rates in 2021
2010-2021[20]

	2010	2013	2014	2015	2016	2017	2018	2019	2020	2021
Canarias	1.11	0.99	1.04	1.05	1.06	1.05	0.98	0.94	0.88	0.86
Principado de Asturias	1.04	0.96	0.99	1.01	1.04	1.03	1.03	0.96	0.92	0.95
Sardegna	1.19	1.11	1.10	1.09	1.07	1.06	1.02	1.00	0.97	0.99

20 Source: Authors, based on the Eurostat database (Total fertility rate by NUTS 2 region [TGS00100]).

	2010	2013	2014	2015	2016	2017	2018	2019	2020	2021
Galicia	1.09	1.04	1.07	1.10	1.12	1.12	1.04	1.02	1.02	1.01
Cantabria	1.26	1.18	1.15	1.15	1.15	1.17	1.12	1.07	1.07	1.04
Castilla y León	1.20	1.13	1.17	1.18	1.18	1.14	1.14	1.13	1.10	1.08
Molise	1.24	1.17	1.16	1.17	1.15	1.19	1.09	1.15	1.06	1.08
Basilicata	1.20	1.12	1.15	1.17	1.17	1.19	1.13	1.15	1.14	1.11
Illes Balears	1.35	1.22	1.24	1.24	1.26	1.22	1.22	1.14	1.12	1.13
Malta	1.36	1.36	1.38	1.37	1.37	1.26	1.23	1.14	1.13	1.13
Swieto-krzyskie		1.19	1.21	1.21	1.23	1.29	1.29	1.26	1.20	1.13
Comunidad de Madrid	1.37	1.29	1.35	1.37	1.36	1.33	1.27	1.23	1.16	1.15
Warminsko-Mazurskie	1.40	1.27	1.32	1.27	1.32	1.45	1.39	1.35	1.30	1.16
Umbria	1.42	1.37	1.32	1.27	1.26	1.24	1.21	1.20	1.16	1.18
Lazio	1.46	1.42	1.35	1.32	1.33	1.27	1.22	1.18	1.18	1.18
Extremadura	1.34	1.22	1.29	1.28	1.30	1.29	1.22	1.22	1.20	1.19
Toscana	1.42	1.35	1.35	1.30	1.30	1.28	1.25	1.21	1.17	1.20
Marche	1.42	1.34	1.35	1.33	1.32	1.25	1.22	1.19	1.19	1.20
Puglia	1.35	1.28	1.28	1.24	1.25	1.24	1.22	1.20	1.18	1.20
Norte	1.27	1.10	1.09	1.17	1.24	1.24	1.26	1.26	1.26	1.20

The transformation of the demographic situation has an impact on the structure of the population of the EU regions, which (among other things) results in the following:[21] a) metropolitan areas, which are often characterised by relatively young populations, large numbers of people living alone, high costs of living, diverse educational opportunities, and a vibrant labour market; b) cities in former industrial centres that are economically backward and characterised by relatively high levels of unemployment, poverty, and social exclusion; c) commuter zones/suburban areas often inhabited by families; d) coastal and rural locations, some of which can be considered retirement locations for relatively well-to-do retirees; e) other rural

21 Eurostat, 2023.

and remote regions with declining populations and a relatively ageing population structure, which are also characterised by limited labour market opportunities and relatively poor access to many services.

The current family policies differ in the development of special tools for meeting various needs; however, there are also significant differences in the extent and at what pace individual countries react to the new family patterns. Based on this diversity, experts distinguish three main clusters among OECD countries:[22]a) The Nordic countries (Denmark, Finland, Iceland, Norway, and Sweden) provide comprehensive support for working parents with children of all ages through a combination of generous parental leave and widely available childcare services. Family policies place great emphasis on social and gender equality, providing both parents with the opportunity to take care of their children. They support children of all ages to receive high-quality care and education. b) English-speaking countries (Ireland and the United Kingdom, Australia, New Zealand, and to some extent Canada and the United States) offer much less time and in-kind support for parents with young children. Financial support is primarily aimed at low-income families and preschool children. The level of support varies. c) Western continental and Eastern European countries form a more heterogeneous group and occupy an intermediate position between the English and Scandinavian countries. These countries generally focus on financial support, whereas in-kind support for children under the age of three and assistance to dual-earner families are more limited. France stands out from other continental countries, with relatively high public spending for families with children and support for working women. Southern European countries support working families to a lesser extent, and public spending on family cash benefits and childcare services in these countries is moderate.

The data on the evolution of the total fertility rates more or less reflect the clusters established by experts, although many differences also appear. In most of the Scandinavian countries (Sweden, Denmark, Iceland, Norway), fertility is above average compared to other European countries. At the same time, Finland's fertility level does not even reach the EU average. The reasons for this are analysed by Rotkirch and Miettinen.[23] In terms of the fertility rate, the Western continental and Eastern European countries are not located between the English and Scandinavian countries but behind the countries of these two clusters, with the exception of France. Among the EU Member States, France undoubtedly has the highest total fertility rate, which is assumed to be closely related to public spending on families with children. Useful information on the relationship between family policy and high fertility in France can be found in the works of Zsuzsanna Stefán-Makay.[24] In the case of the Anglo-Saxon countries (Ireland and Great Britain), the fertility index is outstanding and higher the than average among European countries. The southern

22 Thévenon, 2011.
23 Rotkirch and Miettinen, 2017.
24 Stefán-Makay, 2009, 2010.

countries (Greece, Cyprus, Malta, Portugal, Italy, and Spain) are separated from the rest of the European countries at the end of the list as they currently have the lowest fertility rate in Europe. While the value of the total fertility rate indicator is above average in Montenegro, Latvia, Lithuania, Romania, and the Czech Republic among the Eastern-Central European countries, the other countries belonging to this group can be found in the lower-middle part of the European ranking. At the beginning of the 1990s, the fertility level in Latvia, Poland, Macedonia, and Slovakia exceeded the value of 2 and almost reached the level of 2.1 necessary for population reproduction. Among the Central and Eastern European countries, the total fertility rate in Hungary was the lowest between 2008 and 2012 (1.25) (Table 1). At that time, forecasts regarding the expected development of Hungary's population predicted that it would decrease significantly over the next half-century, in addition to the low fertility rate.[25] In the years that followed, fertility demonstrated an upward trend, and from 2016, at a higher than previous level of 1.49 total fertility rate, the growth came to a halt.[26] The total fertility rate began to increase in 2020 and 2021 (1.59) but fell in 2022 to 1.52. This was presumably influenced by the COVID-19 pandemic.[27]

In Hungary, the Family Protection Action Plan resulted in the introduction of many new family protection measures. As part of this, primary school children receive support such as free textbooks and free meals. Women who have children receive various types of financial support: they can stay at home with state support until the child is 3 years old, but if they return to work, they can also receive family support. Women who foster three or more children may receive special support. The family allowance is allocated to families with children, depending on the number of children. Mothers raising four or more children are exempt from personal income tax. Those raising young children receive tax relief and labour law benefits. In addition, those who have children receive housing support, and those with large families receive car purchase support. The newly married can receive baby support, which takes the form of a discounted loan, with the repayment and interest rate conditions of this loan becoming increasingly favourable as the number of children increases. Grandparents can also receive a childcare fee if they are actively involved in the care of a young child so that the parent can work.[28]

The effect of the Family Protection Action Plan was evident in 2020 and 2021,[29] which saw a significant increase in the number of births in Hungary, a trend that was broken by the COVID-19 pandemic. The effect of this plan was also then moderated by the inflation and economic crisis following the outbreak of the war in Ukraine.[30] According to the theory of the second demographic transition, a qualitatively new

25 Földházi, 2014.
26 KSH, n.d.a.
27 KSH, n.d.b.
28 Barzó summarises the Hungarian family support policy and the forms of family support. Barzó, 2023.
29 Kapitány and Spéder, 2021.
30 Kapitány and Spéder, 2021.

era had already emerged in the population history of Europe and the developed countries of the world in the 1960s and 1970s, whereas in the less developed countries, such as those of Eastern and Central Europe, this era began significantly later, from the beginning of the 1990s. The representatives of this theory consider the two main elements of the comprehensive transition to be the change in childbearing behaviour and the transformation of family and marriage-cohabitation relationships. Marriage rates go down, divorce rates go up, and single-parent families become more common. The rate of cohabitation outside of marriage increases, becoming an alternative 'family' form. In addition, new forms of coexistence emerge. As a result of the changes in fertility and mortality, the affected populations begin to age rapidly, and in several cases, a permanent decrease in the size of the population can be observed. According to the second demographic transition theory, fundamental changes in values are behind the transformation of behaviour related to the family, relationships, and fertility. The essence of these changes is that the traditional value system mediated by local and religious communities has weakened and been replaced by the values of self-realisation and self-fulfilment. The focus has shifted from the family to the individual. The quality of relationships has increased, and the expectations of partners have increased, which is why relationships have also become fragile. As a result of such changes in values, individuals prefer forms of cohabitation with less commitment, opting for cohabitation or visiting relationships over marriage and postponing having children. The theory of the second demographic transition is quite strongly contested, and serious doubts arise as to how generalisable this theoretical framework is. For example, it is highly questionable how far the demographic processes of post-socialist countries can be fitted into this theory.

Overall, it can be said that favourable, renewable, and multi-element family policies have an encouraging effect on having children and a positive effect on the fertility rate. This conclusion is supported by the Hungarian example: according to statistical data, the new family allowances introduced in 2019 had an encouraging effect. However, the effects of family policy can be moderated or diverted by other factors (pandemics, economic crises, etc.).

3. Consequences of insufficient reproduction in Europe

The consequence of persistently low fertility is the ageing of the population. In the EU, there is currently one person over 60 years old for every three working-age residents (a ratio of 1:3). However, if the current demographic trends continue, this ratio will be only 1:2 in 20 years as the former baby boom generations reach this age limit. Consequently, the affected societies must prepare for much higher expenses

than at present. The European Commission's Fiscal Sustainability Report[31] provides a detailed forecast of the expected magnitude of additional expenditures. It is clear from the above that a low fertility level causes serious economic surpluses and a loss of yield for the affected societies; thus, increasing the fertility rate is a significant economic issue throughout Europe. Demographic changes can affect the underlying growth rate of the economy, structural productivity growth, living standards, savings rates, consumption, and investment, as well as long-term unemployment, equilibrium interest rates, housing market trends, and demand for financial assets.

3.1. Demographic effects on economic growth

The expected slowdown in population growth and labour market participation will affect long-term economic growth and the composition of this growth. The key determinants of an economy's longer-term growth rate are growth in the labour force and structural productivity, that is, how efficiently the economy combines its labour and capital inputs to create output. Demographic data suggest that labour force growth in the future will be much slower than in recent decades, which will affect long-term economic growth.[32]

Demographic factors influence the participation rate of the working-age population and those who take up work. Due to the decrease in the fertility rate, the future growth of the working-age population is slowing down. The other relevant demographic dimension is the age composition of the working-age population. It is important that at a specific age threshold, typically in the early 50s, the willingness to participate in work begins to decline sharply. An increase in the proportion of older adults in the population reduces the average participation rate and, thus, the number of potentially employable people.[33]

Based on the composition of GDP, the growth of a country's economy can be driven by exports, investment, and consumption. Until 2008, most countries placed great emphasis on the role of exports as the driving force of their economies. Thereafter, in view of the severe impact of the subprime market crisis on export demand, the focus of the economic growth strategies of several countries shifted to investments and consumption. Investment in human development has become a key factor for future economic growth. According to the World Bank Group, achieving the ambitious goals of the future will, therefore, require the fullest possible use of human resources. Households' contribution to general growth and their own well-being depends mostly on the wealth they control, the return on these assets, and how intensively these assets can be used. Assets come in many forms, including human capital (education, health, nutrition), financial capital, physical capital (land, machinery), and social capital. Many of these assets – especially human and social capital – have

31 European Commission, 2020c.
32 Mester, 2018.
33 World Bank, 2016.

their own intrinsic and asset value. In themselves, they are types of goods that both contribute to well-being and increase people's ability to generate income.[34]

In 2022 there were 18 NUTS level 2 regions in the EU where the GDP per capita exceeded the EU average by at least 50%. Among these relatively 'rich' regions, the highest level of regional GDP per capita was observed in Luxembourg, where the rate was 2.7 times the EU average. The GDP per capita in Luxembourg was almost 10 times higher than in the French archipelago of Mayotte.[35] The example of Mayotte confirms that a high GDP per capita is not a prerequisite for high fertility but that it raises much more complex questions. The example of Luxembourg also supports the fact that if the GDP per capita is high somewhere, this does not automatically result in high productivity. Consequently, we need to separately analyse the relationships between fertility, employment rates, and labour productivity in order to understand how low fertility, a low employment rate, and low labour productivity cause low economic growth, and how high fertility, a high employment rate, and high labour productivity can result in high levels of economic growth.

Despite the effects of population growth and the expected slowdown in labour market participation, EU forecasters predict stable potential GDP growth in the long term, but only based on productivity (Table 5). According to the EU forecast, labour productivity growth will be higher in countries with relatively low per capita GDP by EU standards, especially in the first half of the forecast period. This reflects the assumed process of catch-up economies, to which the development of human capital and the rapid growth of total factor productivity contribute to a very large extent. This is the case, for example, in Romania, Poland, and the Baltic countries. Overall, therefore, in their prognoses, EU experts predict stable, albeit undoubtedly not very large, economic growth in all EU Member States until 2070, despite the well-known negative demographic effects.[36] At the same time, a big question is what would happen if the member countries acted much more forcefully and effectively against the negative demographic effects than at present, or if these effects were to worsen further. In any case, it is already surprising that EU forecasters predict better prospects for countries outside the eurozone than for those in the eurozone.

34 World Bank, 2014.
35 Eurostat, 2023.
36 European Commission, 2020c.

Table 5. Breakdown of annual average potential GDP growth rates 2019–2070 (%)[37]

Country	GDP growth in 2019-2070	Labour productivity (GDP per hour worked)	TFP*	Capital deepening	Labour input	Total population	Employment rate	Share of working age population	Change in average hours worked	GDP per capita growth from 2019–2070
Belgium	1.2	1.2	0.8	0.4	0.0	0.1	0.1	–0.2	0.0	1.2
Bulgaria	1.2	2.1	1.3	0.8	–0.9	–0.6	0.0	–0.3	0.0	1.9
Czechia	1.6	2.0	1.3	0.7	–0.3	–0.1	0.0	–0.3	0.0	1.7
Denmark	1.7	1.5	1.0	0.5	0.2	0.1	0.3	–0.2	0.0	1.6
Germany	1.2	1.4	0.9	0.5	–0.2	0.0	0.0	–0.2	0.0	1.3
Estonia	1.9	2.2	1.4	0.8	–0.3	–0.2	0.1	–0.2	–0.1	2.1
Ireland	1.8	1.5	1.1	0.5	0.2	0.6	–0.2	–0.1	0.0	1.1
Greece	1.2	1.5	1.0	0.4	–0.3	–0.4	0.3	–0.2	0.0	1.6
Spain	1.4	1.5	1.0	0.5	0.0	0.0	0.2	–0.2	0.0	1.4
France	1.3	1.3	0.8	0.5	0.1	0.1	0.1	–0.2	0.0	1.3
Croatia	1.1	1.8	1.1	0.7	–0.7	–0.6	0.1	–0.2	0.0	1.7
Italy	1.0	1.3	0.8	0.4	–0.2	–0.2	0.2	–0.2	0.0	1.3
Cyprus	1.9	1.5	0.9	0.6	0.4	0.5	0.2	–0.2	0.0	1.4
Latvia	1.2	2.3	1.4	0.9	–1.1	–0.9	0.1	–0.2	0.0	2.2
Lithuania	1.2	2.2	1.3	0.9	–1.0	–0.8	0.1	–0.2	0.0	2.1
Luxem-bourg	1.8	1.1	0.7	0.4	0.7	0.5	0.4	–0.2	0.0	1.3
Hungary	1.8	2.1	1.3	0.7	–0.3	–0.2	0.2	–0.2	0.0	2.0

37 Source: European Commission, 2021, p. 42. *Labour productivity, defined as output per hour worked, depends on the amount of capital stock per worker and technological and institutional factors grouped under total factor productivity (TFP).

Country	GDP growth in 2019-2070	Labour productivity (GDP per hour worked)	TFP*	Capital deepening	Labour input	Total population	Employment rate	Share of working age population	Change in average hours worked	GDP per capita growth from 2019–2070
Malta	2.2	1.8	1.2	0.6	0.4	0.7	0.1	–0.3	–0.1	1.5
Nether-lands	1.3	1.3	0.9	0.5	0.0	0.1	0.1	–0.2	0.0	1.2
Austria	1.3	1.4	0.9	0.5	0.0	0.1	0.1	–0.2	0.0	1.2
Poland	1.5	2.3	1.5	0.9	–0.8	–0.4	–0.1	–0.3	0.0	1.9
Portugal	1.2	1.7	1.1	0.6	–0.5	–0.4	0.1	–0.3	0.0	1.6
Romania	1.7	2.6	1.6	0.9	–0.9	–0.7	0.0	–0.2	0.0	2.4
Slovenia	1.6	1.9	1.3	0.6	–0.3	–0.1	0.1	–0.2	0.0	1.7
Slovakia	1.3	2.1	1.3	0.8	–0.7	–0.3	–0.1	–0.3	0.0	1.6
Finland	1.2	1.5	0.9	0.5	–0.3	–0.2	0.1	–0.2	0.0	1.4
Sweden	1.8	1.4	0.9	0.5	0.4	0.5	0.1	–0.1	0.0	1.3
Norway	1.7	1.5	0.9	0.5	0.2	0.5	–0.1	–0.1	0.0	1.2
EA	1.3	1.4	0.9	0.5	–0.1	0.0	0.1	–0.2	0.0	1.3
EU	1.3	1.6	1.0	0.5	–0.2	–0.1	0.1	–0.2	0.0	1.4

3.2. Demographic effects on the labour market

Demographics affect labour supply. Typically, as death rates fall and people live longer, the supply of labour increases – although increased life expectancy means that individuals need to work longer to have more savings for retirement. However, the ageing of the population generally leads to an overall downward trend in labour market participation.[38]

The COVID-19 crisis had a significant impact on the EU labour market. With the exception of key workers, the number of people working from home has generally increased. Other members of the workforce were affected in different ways

38 Mester, 2018, pp. 402, 399–413.

by the changed situation: some were furloughed, others became unemployed, and many self-employed individuals lost their sources of income. The crisis has more strongly affected certain labour market groups, such as young people, temporary employees, those in precarious employment, or those engaged in leisure, hospitality, and transport activities. In this chapter, we present data for people aged 20–64. The reason for defining this age range is that the proportion of young people staying in education until their late teens (and beyond) is increasing, potentially limiting their participation in the labour market, whereas, at the other end of the age spectrum, the vast majority of people in the EU retire after the age of 64. [39]

In recent decades, one of the EU's main political objectives has been to increase the number of workers. This goal has been part of the European Employment Strategy since its inception in 1997 and was later incorporated into the Lisbon and Europe 2020 strategies. The employment rate is included as one of the indicators of the social scoreboard, which is used to monitor the implementation of the European Pillar of Social Rights. The EU has set an employment rate target that by 2030, at least 78% of the population aged 20–64 will be employed. The employment rate is the ratio of employed persons (of a given age) to the total population (of the same age). Before the outbreak of the COVID-19 crisis, the employment rate of the EU's working-age population (20–64 years) had risen for six consecutive years to 73.1% by 2019; this pattern came to an abrupt end in 2020 as the rate fell by 0.9 percentage points. In 2021, the employment rate of the EU recovered from the loss that occurred during the initial phase of the pandemic. In 2022, there was even faster growth, with the ratio increasing by 1.5 percentage points to reach an all-time high of 74.6%. In more detail, the highest regional employment rate in 2022 was in the Finnish Åland Islands at 89.7%. The next highest rates were in the Polish capital region of Warszawski stołeczny (85.4%), the Dutch city of Utrecht (85.1%), and the Swedish capital region of Stockholm (also 85.1%). Several other capital regions had relatively high employment rates, including Budapest in Hungary (84.7%), Bratislavský kraj in Slovakia (84.5%), Praha in the Czech Republic (84.4%), Sostinės regionas in Lithuania (84.4%), and Noord-Holland in the Netherlands (83.5 %).[40]

In 2022, more than two-fifths of EU regions had already reached or exceeded the EU's employment rate target (in 102 out of 241 countries for which data are available; no recent data are available for French Mayotte). These regions are mainly concentrated in the Czech Republic (all eight regions), Denmark (all five regions), Germany (36 out of 38 regions; the exceptions are Bremen and Düsseldorf), Estonia, Malta, the Netherlands (all 12 regions), and Sweden (all eight regions). Most of the regions characterised by a relatively low employment rate were rural, sparsely populated, or peripheral regions of the EU, including regions in Spain and Italy (especially in the south), most of Greece, some regions of Romania, and the outermost regions of France. The majority of these regions are characterised by a lack of employment

39 Eurostat, 2023
40 Eurostat, 2023.

opportunities for people with medium and high qualifications. Economically unadapted former industrial regions form another group that demonstrates relatively low employment rates. For some of these regions, globalisation has had a negative impact on traditional areas of their economy (e.g. coal mining, steel or textile production). Examples include a group of regions from north-eastern France to Région Wallonia in Belgium.

Around a quarter of all EU regions (61 out of 241) for which data are available had an employment rate below 71.5% in 2022. Among these were three regions in southern Italy – Sicily, Calabria, and Campania – where less than half of the working population was employed. The lowest regional employment rate was in Sicily at 46.2%. The largest regional differences in employment rates were observed in Italy. Within individual EU Member States, there were often significant differences between regions in employment rates in 2022; for example, it was common for the highest employment rates in most multi-regional Eastern and Baltic Member States to be in the capital regions, as was the case in Bulgaria, the Czech Republic, Croatia, Lithuania, Hungary, Poland, Romania, Slovenia, and Slovakia. This pattern was also observed in Denmark, Ireland, Greece, and Sweden. However, the situation was reversed in many western Member States, such as Belgium and Austria, where the capital regions had some of the lowest regional employment rates. Between 2011 and 2021, there was modest convergence in regional employment rates across the EU as the coefficient of variation fell from 11.9% to 11.2%. Eight (out of 17) EU Member States reported a decrease in differences within the regions during this period; the largest decreases – in relative terms – were experienced in Finland, the Czech Republic, and Hungary. By contrast, the largest increase was registered in Poland, where regional differences increased by more than a third; Portugal and Austria reported growth by more than a quarter.[41]

Overall, it can be concluded that in those countries and regions where the employment rate and labour productivity are higher, significant economic development can be achieved with appropriate policies, even despite lower productivity.

3.3. Demographic effects on monetary policy

According to some experts, monetary policy cannot significantly affect the rate of growth, the level of potential output, or the long-term natural rate of unemployment, which must be considered as part of the economic environment. It is also necessary to take demographic downward pressure into account when shaping monetary policy. In addition, demographic changes can also affect the transmission mechanism of monetary policy to the economy, especially the strength of wealth effects and income effects. Older people tend to have more wealth than younger people and typically have investments, while using their wealth to finance their consumption during retirement. Younger people tend to be borrowers, but they face stricter credit

41 Eurostat, 2023.

conditions than older people because they have fewer assets. Young borrowers will enjoy the reduction in interest rates to a lesser extent, but older people will benefit more from the higher returns on invested assets; the converse applies when interest rates are raised. Demographic change may mean that wealth effects become an important channel through which monetary policy affects the economy.[42]

Another important monetary policy consequence of demographic change is its effect on the equilibrium long-term interest rate. For example, participants of the Federal Open Market Committee have lowered their estimates of the pooled funds rate, which will be consistent with maximum employment and price stability over the longer term: the median estimate dropped from 4% in March 2014 to 2.8% today. The empirical estimates of the equilibrium real feed base interest rate, the so-called 'r-star', although very uncertain, are also lower than in the past. Demographic change may play a role in this decline if it results in a lower long-term growth rate of consumption and, thus, output, which is a key determinant of equilibrium interest rate in the longer term. The magnitude of any effect is difficult to determine because it operates along complicated dynamics. Static analysis might suggest that as longevity increases, people will want to accumulate more assets to finance their retirement, and this would put upward pressure on asset prices and, therefore, yields. In addition, as people tend to reduce their exposure to risk as they age, they are expected to shift towards fixed-income assets, which increases risk premiums and lowers risk-free interest rates. This is the offsetting effect that puts upward pressure on interest rates from these exchanges, as well as from government spending on retirement benefits. The magnitude and even the signs of the effect of demographic change on interest rates is, therefore, an empirical question.[43]

As income is the most important and fundamental factor affecting household consumption, there is considerable literature on its impact. Examples include the Keynesian theory of absolute income consumption,[44] the Duesenberry theory of relative income consumption,[45] the Modigliani theory of life cycle consumption,[46] and the Friedman theory of constant income consumption.[47] However, in recent years, few scholars have used direct data on income to study its effects on consumption. Nevertheless, from the perspective of the formation of monetary policy and the sustainability of pension systems, the extent to which the population of a country or a region is able and willing to accumulate savings is of particular importance. Therefore, in our research, we first examined how the profile of net primary incomes per capita developed in the EU Member States and regions. Thereafter, we also explored how much debt households have, that is, how much room for manoeuvre they have in terms of spending their income. Overall, we were interested in to what

42 Bean, 2004; Imam, 2013.
43 Mester, 2018.
44 Keynes, 1965.
45 Duesenberry, 1949.
46 Modigliani, 1986.
47 Milton 1986.

extent people in each country would be able to invest part of their income in long-term pension savings based on their income. A separate question in this regard is whether they are willing to spend their available income in this way and to what extent they would spend it on pension savings; however, due to scope limitations, we do not deal with these considerations in this chapter.

In 2020, there were 24 regions in seven different EU Member States with a per capita income of at least a purchasing power standard (PPS) of 26,500. These regions were concentrated in Germany (16 regions), and the highest income levels were predominantly in the western (and not the eastern) regions. A further five regions were located in the Benelux countries, and the remaining three were in France, Italy, and Austria. At the other end of the range, primary income per capita in 25 regions in eight different EU Member States was less than PPS 10,750 in 2020. With the exception of the two outermost French regions, Mayotte and Guyane, these regions were concentrated in Greece or Eastern Europe and included eight of the 13 regions that comprise Greece and five of the six regions that make up Bulgaria (with the exception of the capital region Yugozapaden), four of the eight regions in Romania, three in Hungary, two in Croatia, and one in Slovakia. Upper Bavaria had the highest primary income per capita. In 2020, primary income per capita ranged from PPS 36,800 in Oberbayern (Southern Germany) to PPS 6,100 in Severozapan (Bulgaria), meaning the average income level in Oberbayern was about six times the level registered in Severozapaden. The ranking was topped by three other German regions with the highest per capita primary income – Stuttgart, Hamburg, and Darmstadt – followed by Luxembourg.[48]

Regional differences in income levels tend to be lower when analysed based on disposable (rather than net primary) income, given the redistributive nature of tax and welfare systems. In the EU, the average disposable income per capita was €17,200 in 2020, while the GDP per capita was €30,000 on average. There were 17 NUTS level 2 regions that showed a positive change in 2020 in terms of both disposable income per capita and GDP per capita. These regions were mainly concentrated in the northern or eastern Member States of the EU: four regions in Poland; three in Bulgaria; two each in Denmark, Ireland, and Sweden; both regions in Lithuania; and one region each in Finland and Luxembourg. Conversely, in 85 NUTS level 2 regions, a decrease was registered for both indicators. This group included all regions of Greece, Hungary, Austria, and Portugal, as well as the vast majority of regions in Italy (16 out of 21) and Spain (15 out of 19).

The indebtedness of households is another limitation in terms of the use of available income. According to the 2021 report issued by the EU Macroeconomic Imbalance Alert Mechanism, household debt exceeded the reference value in several Member States in 2019: in Denmark, Finland, France, Greece, the Netherlands, Portugal, Spain, and Sweden, debt levels in this year exceeded both the fundamental reference value and the prudential threshold.[49]

48 Eurostat, 2023, p. 130.
49 European Commission, 2020a, p. 42.

Overall, we found that there are currently significant differences in the EU countries in terms of how much available income people have, from which, if they wanted, they could spend more on long-term pension savings than at present. This spending is influenced by several public policy measures, which can significantly improve or significantly worsen people's spending situation.

3.4. Demographic implications for fiscal and other government policies

The growing population of seniors will put significant pressure on the social security and medical care systems in states where these systems are structured as pay-as-you-go programmes, with current workers subsidising current retirees. However, in other developed countries, in which the pension and health funds are financed on a different principle, demographic changes will also have a similarly significant impact. Projected longer-term fiscal imbalances are unlikely to be sustainable, and it seems probable that governments will need to respond with a combination of increased borrowing, reduced benefits, higher taxes, programme restructuring, and policies aimed at stemming the rate of growth in healthcare costs. Longer-term fiscal sustainability depends on which combination of these approaches is used and how effective the measures are. According to the projections of the US Congressional Budget Office, the federal deficit in the United States as a proportion of GDP will more than triple over the next 30 years, from 2.9% in 2017 to 9.8% in 2047.[50] During this period, social security and healthcare spending is projected to rise from 8% to 12.4% of GDP. As a result, the federal government debt-to-GDP ratio will rise dramatically, from 77% in 2017 to 150% by 2047. This growth is dwarfed by the increase in debt used to finance World War II. It is debatable to what extent such growth alone will crowd out productive investment and lower economic growth. However, the European sovereign debt crisis of 2009–2012 shows that high debt levels can cause serious problems if investors lose confidence in governments' ability to service debt, which resulted in a jump in interest rates that were previously considered risk-free.[51]

If financing the lack of resources with increased government borrowing is not desirable, then raising taxes and reducing benefits or other expenses is not very attractive either. Depending on how they are implemented, such policies could ultimately hurt the economy's longer-term growth prospects and worsen the fiscal outlook. Moreover, in a world where countercyclical fiscal policy is limited, business cycle volatility may increase and monetary policy may move closer to the zero lower bound more often, potentially necessitating the use of non-traditional policy tools such as asset purchases and forward guidance that match monetary policy to the economic goals of policymakers.[52] More effective policies to combat the effects of an

50 Congressional Budget Office, 2017.
51 Mester, 2018.
52 Kiley and Roberts, 2017, pp. 317–396.

ageing population on fiscal imbalances, focused on reducing rising deficits such as healthcare costs, could achieve far greater results than they currently do. Moreover, policies to increase labour force growth and productivity would address not only fiscal imbalances but also pressures on longer-term growth from demographic or other sources. Attention should be paid to policies that support further training; promote research, development, and innovation; and encourage people to work longer. However, the latter is largely a matter of people's health status.

On average, OECD countries spend 2.29% of GDP on family benefits, with large differences between countries. While public spending on family benefits in France and Sweden is close to 3.5% of GDP, in Costa Rica, Mexico, Spain, Turkey, and the United States, these expenditures are much lower at below 1.5% of GDP. The OECD data clearly indicates that there are significant differences between individual countries in terms of spending on family benefits, from which it unequivocally follows that they could spend significantly more on this than at present in order to achieve much greater results in addressing the unfavourable demographic situation. It can also be seen from the OECD data that, of the three available options, family tax benefits are used the least by the countries concerned, with France, Germany, Hungary, Switzerland, Italy, and Portugal making use of the family tax benefits to a greater extent.[53]

3.4.1. Impact of demographic changes on people's health status and the development of healthy life expectancy

Health is an important priority for most Europeans, who expect to receive effective health services, for example, if they have an illness or accident, as well as timely and reliable public health information. In 2021, about 8.9% of the population of the Anatolikí Makedonía ke Thráki region of Greece had an unmet need for medical examination. Further, in the same year, 2.0% of the EU population aged 16 and over reported not having access to necessary medical examination or treatment in the past 12 months due to issues with funding, distance/transportation, and/or waiting lists (hereinafter, unsatisfied needs for medical examination). An analysis of NUTS level 2 regions shows that this ratio ranged from 0.1% in Germany (national data), Cyprus and Malta to 8.9% in the Anatolikí Makedonía ke Thráki region of Greece (the data for Belgium, Italy, and Serbia refer to level 1 regions; for the Czech Republic, Germany, Spain, France, the Netherlands, Austria, Portugal, and Turkey only national data are available).[54] The regional distribution of this indicator was balanced: 53 regions had a share higher than the EU average, 50 regions had a share lower than the EU average, and two regions had a share equal to the EU average. At the top end of the distribution were 12 regions with at least 6.0% of people aged 16 and over that self-reported not having a medical examination in

53 OECD, 2023.
54 Eurostat, 2023.

2021. These regions were mainly located in Greece (six regions) and Romania (three regions); the remaining three regions with a relatively high share were Estonia, Stredné Slovensko in Slovakia (2020 data), and Wielkopolskie in Poland. At the other end of the distribution were nine regions in the EU where less than 0.5% of the population aged 16 and over reported an unmet need for medical tests in 2021. This group included three Hungarian regions – Central Transdanubia, Southern Transdanubia, and Southern Great Plain – Cyprus, and Malta, as well as the Czech Republic, Austria, the Netherlands, and Germany (only national-level data are available for the latter four).

In the EU, the number of healthy life years at birth was 64.2 years for women in 2021 and 63.1 years for men, which is approximately 77.4% and 81.7% of the total life expectancy for women and men, respectively.[55] An important question is whether EU citizens spend the additional years of life gained through longer lifespan in good or bad health. Given that life expectancy at birth cannot fully answer this question, indicators of health expectancy, such as the number of healthy life years (also known as 'chronic disease-free life expectancy'), have been developed. These indicators focus on the quality of life spent in a healthy state, rather than the number of life years expected, as measured by indicators such as life expectancy. Healthy life years are important indicators of the relative health of the population in the EU.

The expected number of healthy life years at birth was higher for women than for men in 18 Member States. In 2021 the gender gap is generally relatively small, with only six Member States reporting a gap of more than 3 years in favour of women: Lithuania, Poland, Slovenia, Bulgaria, Latvia, and Estonia (see Table 6). It may seem surprising when considering public perceptions, but in several countries, especially those that are not EU Member States such as Iceland, Norway, and Switzerland, the life expectancy of men at birth exceeds that of women. However, the same situation can be observed in some EU Member States, such as Denmark, Portugal, the Netherlands, and Sweden, although to a lesser extent than in the non-Member States mentioned above. Among the EU Member States, the number of healthy life years expected for women at birth in 2021 was the highest in Malta at 68.5 years, whereas the lowest was in Denmark at only 54.8 years, a difference of 13.7 years. A similar comparison of men shows that in 2021, the lowest number of expected healthy years was 52.2 years in Latvia, whereas the highest was 68.9 years in both Malta and Sweden, a difference of 16.7 years. These data also clearly show how large the differences are between the individual member countries in terms of their citizens' quality of life. If we compare the data on healthy years of life with that on retirement ages, it is striking that in the vast majority of EU Member States, both women and men still spend their healthy years at work. Only four countries (Malta, Italy, Ireland, and Sweden) deviate somewhat from this.

55 Eurostat, 2023c.

Table 6. Development of healthy life years and retirement ages in EU Member States in 2021[56]

	Healthy years of life at birth			Retirement age	
	Female	**Male**	**Deviation**	**Female**	**Male**
EU	64.2	63.1	1.1		
Malta	68.5	68.9	–0.4	63	
Italy	68.5	67.7	0.8	67	
Ireland	68.0	66.4	1.6	66	
Sweden	67.9	68.9	–1.0	62–68	
Slovenia	67.3	63.7	3.6	60–65	
France	66.9	65.5	1.4	66 years 7 months	
Cyprus	66.8	64.5	2.3	65	
Greece	66.6	64.7	1.9	67	
Germany	66.5	64.7	1.8	65 years 9 months	
Bulgaria	65.1	61.6	3.5	66	
Poland	64.6	60.7	3.9	60	65
Belgium	64.4	64.8	–0.4	65	
Hungary	63.5	61.6	1.9	65	
Czechia	63.4	60.7	2.7	63 years and 10 months	
Spain	62.6	63.0	–0.4	66	
Finland	61.7	61.6	0.1	63 years and 9 months – 68 years	
Luxembourg	61.6	62.3	–0.7	65	
Austria	61.3	61.5	–0.2	60	65
Lithuania	59.8	55.4	4.4	63 years and 4 months	64 years and 2 months
Netherlands	59.6	61.0	–1.4	66 years and 4 months	

56 Source: Authors own work based on Eurostat, 2023, and Harker, 2022.

	Healthy years of life at birth			Retirement age	
	Female	**Male**	**Deviation**	**Female**	**Male**
Croatia	59.3	57.9	1.4	62 years and 9 months	65
Romania	58.2	57.3	0.9	61 years and 6 months	65
Estonia	58.0	54.9	3.1	64	
Slovakia	57.5	56.2	1.3	62 years and 8 months	
Portugal	57.4	59.3	–1.9	66 years and 6 months	
Latvia	55.4	52.2	3.2	64	
Denmark	54.8	58.2	–3.4	67	
Norway	66.7	70.5	.3.8		
Switzerland	59.3	63.2	–3.9		
Iceland	59.0	65.7	–6.7		

The total number of deaths in the EU increased by more than half a million between 2019 and 2020. Although excess deaths were observed across Europe for most of the period, the peaks and intensity of outbreaks varied widely across countries. Italy was the first country to reach a peak in excess deaths in March 2020, followed by Spain, Belgium, Luxembourg, the Netherlands, and Sweden in March and April that year. In the countries of Central and Eastern Europe, the death rate was higher in the autumn months of 2020 and in the spring of 2021. According to the most recent data available, excess mortality continues to vary across the EU. In October 2022, little or no excess deaths were registered in Bulgaria and Romania, whereas an excess mortality rate of 23.0% was registered in the most affected country, Germany.

Table 7 contains data that are generally available for 2020 on both the relative number of NUTS level 1 regions and the main causes of death. Eight regions in the EU had a standardised mortality rate of at least 1,500 deaths per 100,000 inhabitants. Most of the deceased had a relatively low standard of living as their GDP per capita (expressed in PPS) was generally less than two-thirds of the EU average. This situation was most notable in Severna i Yugoiztochna (Bulgaria), which recorded the highest mortality rate in the EU (1,854 deaths per 100,000 inhabitants) and the lowest GDP per capita (39% of the EU average). Other regions with particularly high mortality rates included all four regions of Romania, two non-capital regions of Hungary, and the other Bulgarian region (Yugozapadna i Yuzhna tsentralna). A similar pattern was frequently observed in different regions of each EU Member State. For example, in the three largest Member States, the highest standardised mortality rates in 2020

were recorded in Sachsen-Anhalt (eastern Germany), Sur (southern Spain), and Hauts-de-France (northern France). These regions are relatively disadvantaged, and the level of GDP per inhabitant is much lower than their corresponding national average. However, a different pattern was observed in Italy as the highest death rate in 2020 was registered in Nord-Ovest, which is a relatively wealthy region. This can be linked to the impact of the COVID-19 crisis because many areas of northern Italy were particularly affected in the early stages of the outbreak (as hospitals were overwhelmed in some regions). In 2020, almost a third of all deaths in the EU were attributable to diseases of the circulatory system. In 2020, the three main causes of death in the EU were diseases of the circulatory system, malignant tumours (hereafter, cancer), and COVID-19. Diseases of the circulatory system, including heart disease, hypertension, and pulmonary disease, accounted for nearly one-third (32.4%) of all deaths. Cancer accounted for 22.8% of all deaths in the EU.

Table 7. Mortality rates and leading causes of death in 2020: regions with the five highest rates (% of all deaths, based on standardised death rates per 100,000 inhabitants by NUTS 1 region)[57]

Diseases of the circulatory system	**Circulatory system**	**Cancer**
1. Yugozapadna i Yuzhna tsentralna Bulgaria (BG4)	63.5	13.9
2. Severna i Yugoiztochna Bulgaria (BG3)	62.2	13.5
3. Macroregiunea Patru (RO4)	59.7	15.0
4. Macroregiunea Trei (RO3)	56.6	16.0
5. Macroregiunea Unu (RO1)	56.0	16.3
EU	32.4	22.8
Cancer	Cancer	Circulatory system
1. Pays de la Loire (FRG)	29.1	21.0
2. Nouvelle-Aquitaine (FRI)	28.8	21.0
3. Åland (FI2)	28.7	35.0
4. Ireland (IE0)	28.5	27.7
5. Noord-Nederland (NL1)	28.1	24.5

57 Source: Authors own work based on the Eurostat database.

Diseases of the circulatory system	Circulatory system	Cancer
EU	22.8	32.4
COVID-19	COVID-19	Circulatory system
1. Comunidad de Madrid (ES3)	29.2	18.2
2. Région de Bruxelles/ Brussels Hoofdstedelijk (BE1)	23.9	17.9
3. Centro (ES4)	20.0	21.8
4. Région wallonne (BE3)	19.4	19.9
5. Ile-de-France (FR1)	18.0	16.7
EU	8.4	32.4
Diseases of the respiratory system	Respiratory system	Circulatory system
1. Região Autónoma da Madeira (PT3)	17.1	37.5
2. Canarias (ES7)	12.0	27.8
3. Malta (MT0)	11.0	31.0
4. Danmark (DK0)	10.4	21.4
5. Ireland (IE0)	10.3	27.7
EU	6.7	32.4

Overall, the population of the EU currently spends its healthy years working. By the time the period of long-term illness begins, this population will be retired, which assumes that health expenditure will increase during its retirement years. From the above data, we can conclude that effective measures in many regions could significantly reduce the occurrence of some causes of death (e.g. those related to COVID-19). As a result, many more people could stay healthy and able to work for longer. It is also clear that effective healthcare is a key issue in this regard.

4. The impact of demographic changes on the sustainability of pension systems

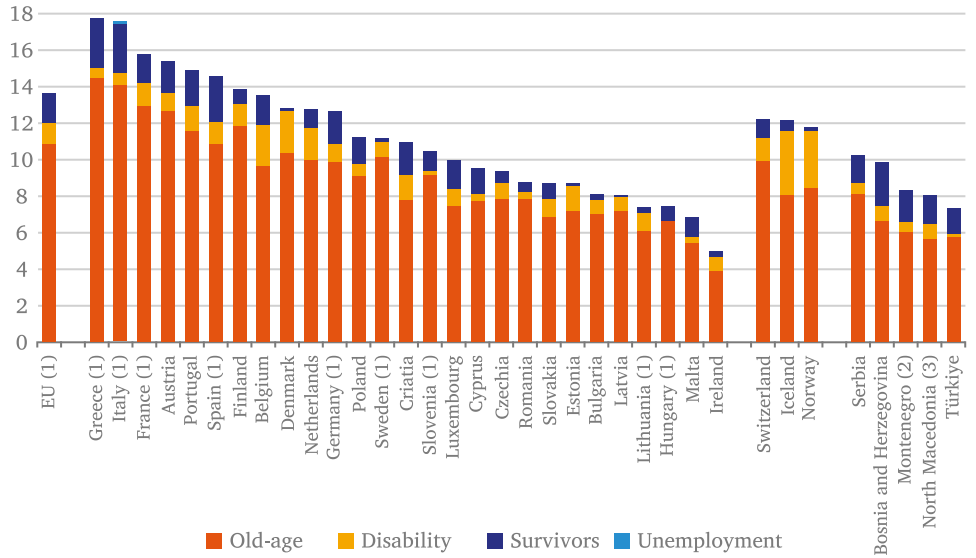
Among EU residents, the proportion of older adults in the total population is increasing every year. In 2020, 20.6% of the EU population was aged 65 or over, which is 3.0 percentage points higher than the ratio a decade ago. Among the EU Member States, Italy had the highest proportion of older adults in the total population in 2020 (23.2%), followed by Greece and Finland (22.3%), Portugal (22.1%), Germany (21.8%), and Bulgaria (21.6%). The lowest shares were recorded in Ireland (14.4%) and Luxembourg (14.5%). At the regional level, the highest proportion of older adults was found in Chemnitz in Germany (29.3%), followed by Liguria in Italy (28.7%), Epirus in Greece (27.3%), Limousin in France (27.1%), and Saxony-Anhalt in Germany (27.0%). The lowest shares were recorded in France's two overseas regions, Mayotte (2.7%) and French Guiana (6.1%), and the Spanish autonomous region of Melilla (11.1%).[58]

Around €1,832 billion was spent on pensions in EU Member States in 2020. This amount is increasing with the ageing of the population, although in 2012, it already amounted to €1,485 billion. Relative to GDP, EU pension expenditure accounted for 13.6% of total economic output in 2020. The relative importance of pension spending varied widely among EU Member States: in 2020, this ratio peaked in Greece, at 17.8% of GDP, followed by Italy, where this spending amounted to 17.6% of GDP. At the other end of the range, Lithuania, Hungary, Malta, and Ireland reported that pension expenditure was less than 8.0% of their GDP (see Figure 1). When examined in more detail, the largest part of the aggregated pension expenditure of the EU Member States comprised old-age pension benefits, which amounted to €1,384 billion in 2020. The distribution of expenses between the different types of pensions (old-age, disability, surviving relatives) and unemployment benefits varied depending on the differences in the design of countries' social protection systems. However, it is important to note that though a pension can perform several functions at the same time, based on its primary purpose, it can be recorded under a single function, which may affect the reported distribution of expenses.

Each country provides pension benefits under different circumstances and for different purposes. For example, the statistics presented refer to aggregated data, although different pension systems invariably provide different levels of benefits, often reflecting contribution levels that are not necessarily comparable across countries or that are not even uniform within countries. Consequently, it is not advisable to combine data on total expenditure and the total number of beneficiaries, and a more detailed comparison of information on expenditure and beneficiaries is likely to provide more meaningful results. However, it is important to be aware that even at a more detailed level, data are often aggregates, and the characteristics of their components can vary significantly.

58 Eurostat News, 2021.

Figure 1. Pension expenses as a proportion of GDP by type of pension in EU Member States in 2020[59]



4.1. The impact of population ageing on the sustainability of old-age pension systems based on social solidarity and living in old age

In 2020, more than 17% of the EU population was aged 65 or over. Eurostat estimates that this share will reach 30% by 2060. In 2019, for every person aged 65 or over, there were on average 2.9 working-age people, which represents the number of working-age contributions (including employer contributions) that could, in principle, cover an average old-age pension. This figure is projected to fall to 1.7 by 2070, that is, 1.7 working-age people for every person over 65.[60] Another document confirms, even though a little later in time, that the EU working age population is projected to fall (by 57.4 million by 2100) and that the old-age dependency ratio is expected to rise (from 30% to 60% by 2100, i.e., 1.7 working-age people for every person over 65).[61] The old-age dependency ratio indicates the ratio between the number of people aged 65 and over and the number of people aged 20–64 (i.e. working age).

59 Source: Eurostat.

60 Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the impact of demographic change, COM/2020/241 final.

61 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Demographic change in Europe: a toolbox for action, COM/2023/577 final.

In the absence of reforms, an increase in the number of pensioners and a decrease in the number of working-age people could trigger a crisis in the public pension systems that are based on social solidarity and funded on a pay-as-you-go basis. In the compact nature of pay-as-you-go funding, contributions paid by active workers are used to pay current pensions. If the number of contributors decreases, with a corresponding decrease in the amount of contributions paid, but the number of funded pensioners remains the same or increases, the system will run a deficit for the same level of old-age pension. The state may be the primary source of the shortfall, but, according to EU rules, this should not be excessive and should not lead to significant budgetary expenditure as this could hamper growth. One option is to increase the level of contributions paid or to impose new taxes to raise resources; however, either way, the burden falls on the working-age population.

In sum, the growing number of pensioners will have to be supported by a steadily shrinking working-age population to generate the resources needed to pay pensions and finance health services.[62] 'Such developments can place a double burden on younger generations, raising questions about intergenerational equity'.[63] The double burden on the younger generation can be avoided if the state reduces the level of initial pensions and indexes current pensions. These solutions will lead to a reduction in the level of state pensions, worsening the replacement rate. Projections show that in most Member States, the pension-to-earnings ratio for retirees in 2059 will be lower than for retirees with similar careers in 2019.[64] In this situation, pensioners will need some additional support in the form of additional income, such as a supplementary pension.

In July 2010, the European Commission launched a European-level debate on the main challenges facing pension systems and published a Green Paper on pensions. The results are summarised in the Commission's communication 'White Paper – An Agenda for Adequate, Safe and Sustainable Pensions in Europe' of 16 February 2012.[65] According to this White Paper, the current challenges include ensuring the long-term financial sustainability of pension systems and the adequacy of pensions, including improving replacement rates and avoiding poverty in old age. In its resolution of 21 May 2013 on an adequate, safe, and sustainable European pensions agenda,[66] the European Parliament stressed that first pillar public pensions should remain the main source of income for pensioners. In the future, however, there will be a greater need for supplementary pensions. The Parliament's resolution proposes a multi-pillar pension system for Member States, with the following combination as the optimal one: a) a universal, pay-as-you-go, public pension; b) a funded, occupational, supplementary pension, resulting from collective agreements at the national,

62 Council Conclusions on 'Demographic Challenges – the Way Ahead' 2020/C 205/03.
63 Green Paper on Ageing – Fostering solidarity and responsibility between generations, COM/2021/50 final.
64 European Commission, 2021, p. 15.
65 White Paper – An Agenda for Adequate, Safe and Sustainable Pensions, COM(2012) 55 final.
66 European Parliament resolution of 21 May 2013 on an Agenda for Adequate, Safe and Sustainable Pensions (2012/C 188 E/03).

sector, or company level, or resulting from national legislation, accessible to all workers concerned; c) an individual third-pillar pension based on private savings.

Subsequent projections have also confirmed[67] the need for funded or unfunded public and/or private pensions to complement public pay-as-you-go pensions in most Member States. 'Supplementary pensions can play a key role, especially when the level of public pay-as-you-go pensions is expected to decline'.[68] The EU advises and expects the reform of public pension systems to improve their financial sustainability, considering it important to extend working lives (i.e. to raise the retirement age). According to Eurostat's latest population projections, the old-age dependency ratio in the EU in 2040 would only remain at the 2020 level if the working life were extended to 70. However, there is considerable variation between Member States, indicating different challenges across Europe. For the old-age dependency ratio to remain constant in 2040 compared to 2020, it is projected that Malta, Hungary, and Sweden would only need to extend working life to 68 years, whereas Lithuania and Luxembourg would need to extend it to 72 years.[69]

In addition to raising the retirement age, the EU proposes to make postponing retirement more attractive and to support working during retirement as a solution.[70] To prevent poverty in old age, the so-called Green Paper on pensions suggested that it would be a good idea to set a guaranteed minimum old-age pension rate, even at the EU level, which would ensure that people of retirement age could live on their pension. However, the European Parliament's resolution in response to the Green Paper[71] pointed out that there is no possibility of setting an adequate pension level at this level because of differences in earnings and living conditions across the Member States. At the same time, this resolution called on the Commission to draw up guidelines that allow Member States to set criteria for minimum levels of adequate pensions. It expected Member States to define adequacy as a condition for older people to have a decent living. Reflecting on this, the 'Towards adequate, sustainable and safe European pension systems' Green Paper by the Committee on Employment and Social Affairs notes that the different income conditions and social security arrangements in the Member States do not allow or justify a single minimum pension rate set at the EU level.[72]

67 European Commission, 2018.

68 Draft Joint Employment Report from the Commission and the Council accompanying the Communication from the Commission on the Annual Growth Survey 2017, COM/2016/0729 final.

69 Green Paper on Ageing – Fostering solidarity and responsibility between generations, COM/2021/50 final

70 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Demographic change in Europe: a toolbox for action, COM/2023/577 final.

71 Adequate, sustainable and safe European pension systems. European Parliament resolution of 16 February 2011 on 'Towards adequate, sustainable and safe European pension systems' (2012/C 188 E/03).

72 Green Paper – 'Towards adequate, sustainable and safe European pension systems' of 3 February 2011 (2010/2239(INI)).

The EU-funded research has not yet gone beyond a theoretical approach, nor have concrete criteria for determining an adequate minimum pension been established. The Pensions Adequacy Report 2021, produced every 3 years since 2012 by the Social Protection Committee and the European Commission, also only indicates the efforts made by some Member States to protect low-income pensioners and which Member States have introduced a basic or minimum pension to cover daily living costs.[73] Based on the data extracted from Hungary's 2022 census, there were 6.2 million people aged 15–64 and 2 million older adults (65 and over) in 2022. According to this data, there are currently three working-age people for every pensioner. By 2070, this ratio will fall below two.[74] The proportion of the population aged 65 and over was below 10% of the total population until 1970, rising to 21% in 2022.[75] Hungary's working-age population is expected to fall by 4%, or around 250,000 people, by 2030.[76] As one of the highest in the EU, the projected long-term increase in pension expenditure in Hungary is expected to rise from 8.3% of GDP in 2019 to over 12.4% in 2070, further increasing the burden on future taxpayers.[77] To stabilise public debt in the long term, the Commission's assessment of the country report is that budgetary pressures as a result of ageing populations, in particular expenditures of public pensions and healthcare, need to be addressed.[78] Reform solutions for the state pension system in Hungary are currently being developed.

The Hungarian pension system is based on two pillars: a compulsory social security pension scheme (hereinafter, 'the state pension')[79] and a system of voluntary institutions allowing individual provision. Act LXXXI of 1997 on Social Security Pension Benefits and Act CXXII of 2019 on Entitlements to Social Security Benefits and on Funding These Services contain rules on the old-age state pension.

The amount of the initial old-age pension depends mainly on the earnings during working age and the length of service. It is also influenced by the so-called valorisation multiplier, which is used to calculate the present value of previous active-age earnings. The pension is indexed in order to maintain its real value. Hungary has a price index, with pensions rising in line with inflation. If the rate of increase in

73 European Commission, 2021, p. 62 and pp. 113–118.
74 European Commission, 2022, p. 7.
75 KSH, n.d.d.
76 European Commission, 2022, p. 7.
77 European Commission, 2022, p. 8.
78 Commission Staff Working Document 2022, Country Report – Hungary, Accompanying the document Recommendation for a Council Recommendation on the 2022 National Reform Programme of Hungary and delivering a Council opinion on the 2022 Convergence Programme of Hungary, SWD/2022/614 final.
79 According to Act LXXXI of 1997 on Social Security Pension Benefits Section 1, the operation and improvement of the compulsory social security pension scheme is the responsibility of the state. The social security pension system is designed to provide benefits to insured persons in their older years or to their relatives in the event of their death.

average earnings is higher than the increase in annual inflation and, hence, the increase in pensions, pensions become devalued relative to average earnings and the replacement rate of pensions decreases.[80]

The retirement age in Hungary has risen relatively rapidly in recent years, from 62 in 2014 to 65 in 2022. Life expectancy at birth has not followed this dynamic: it is projected to be 72.55 years for men and 79.05 years for women in 2022, an increase of 1 year for men and about 6 months for women compared to 2012.[81] If a person does not retire at retirement age but continues to work, their pension increases by 2 percentage points per year. After 40 years of work, the pensioner receives 80% of the present value of their earnings, and after 2 years of additional work, they will receive 84%. The final pension amount may also be affected by the valorisation multiplier at retirement, which follows the increase in average wages. It is, therefore, possible that the income calculated in present value terms could have also increased significantly over the 2 years; in other words, the retiree would receive 84% of the higher income.

The second, supplementary pension pillar emerged after the change of regime (1989) and is operated by several state-recognised institutions. The first legislation allowing institutional voluntary pension provision, Act XCVI of 1993 on Voluntary Mutual Insurance Funds, was adopted in 1993. This was followed by the mandatory funded pension scheme,[82] Act LXXXII of 1997 on Private Pensions and Private Pension Funds, which introduced the private pension fund system and was amended in 2011 to remove its mandatory nature and make it voluntary. The amendment abolished mandatory pension provision in Hungary.

As a consequence of the mandatory implementation of Directive 2003/41/EC, Act CXVII of 2007 on Occupational Retirement Pensions and Institutions was adopted in Hungary, which allowed the establishment of an occupational pension provider from 2008. In voluntary provision, the occupational pension does not play a role as the focus of this form of pension saving is on the commitment of the employer, not the pension provider. It is the employer who decides whether to introduce an

80 The pension replacement rate shows how the starting pension rate compares with the average wage in the last year of work. Among the Member States, the replacement rate in Hungary has been relatively high for many years, although this has recently changed. The pension replacement rate was 67% in 2016, the fourth highest in the EU. Despite all the extra benefits (pension premiums), pensions grew by only 2.8%, while wage growth was 9.2% per year. As a result, the replacement rate, expressed as the ratio of average pension to average net wage, fell from 67% in 2016 to 53% in 2019. The trend continued after 2020, with average pensions now at just over half of the average Hungarian wage due to the faster rate of wage growth and pensions rising, KSH, 2018, pp. 66–67; European Commission, 2022, p. 28; Note: The average replacement rate in OECD countries is 63% of the average wage. See: http://www.oecd.org/australia/PAG2017-AUS.pdf (Table 4.8) (Accessed: 25 January 2024); Süle-Szigeti, 2020.

81 KSH, n.d.c.

82 The idea behind funded pension schemes is that members' monthly contributions are set aside and invested during the so-called 'accumulation period', or vesting period, to provide the funding for future pension provision. Biometric risks (death or disability during the accumulation period) and investment risks are borne by the member.

occupational pension scheme, and those who wish to make this provision cannot be members individually or join such an institution as members.

With Act CLVI of 2005, the state also made it possible to save for pensions not only through institutions, but also individually, with the introduction of the so-called 'pension savings account', which any person can open voluntarily. Those who want to save for their retirement can also choose from a range of life insurance products. These contracts can be concluded with market insurers and are, therefore, not institutions and legal arrangements set up by the state for the purpose of saving for retirement. However, the state has been supportive of such contracts, introducing a tax relief in 2014: if the life insurance contract taken out meets the criteria laid down in the Personal Income Tax Act, the state will credit a certain amount of the tax paid to the insurance contract.

The second pillar now includes the pan-European individual pension product, introduced by Regulation (EU) 2019/1238 of the European Parliament and of the Council, which any citizen of a Member State can use through providers registered for this purpose. There are, therefore, several options for working-age people to supplement their future social security pension. The state also provides tax relief for certain institutions, such as voluntary pension savings, pension insurance, and pension savings accounts. The existing institutions have the potential to provide a supplementary pension that supports old age living, with the possibility to choose an annuity and no limit on the amount that can be paid.

However, it should be pointed out that in Hungary, occupational pensions have not been promoted and are not popular among employers. This could be helped primarily by tax relief, and the role of the state could be strengthened. The way to do this is for public employers to join the scheme or to set up providers. In their current state, occupational pensions are not well suited to play the role of a second pillar. Experience shows that employers in Hungary will support their employees' pension savings if they receive some form of tax relief. Currently, there are no such incentives.

According to Article 20(3) of Act LXXX of 1997 on the Eligibility for Social Security Benefits and Private Pensions, the amount of the old-age full pension may not be less than the minimum amount of the old-age pension determined by a separate law. Article 11 of Government Decree 168/1997 (X. 6.) on the implementation of Act LXXXI of 1997 on the Eligibility for Social Security Benefits and Private Pensions stipulates the minimum amount of the old-age full pension, which was HUF 28,500 per month as of 1 January 2008. The original purpose of the old-age pension minimum was to set a minimum amount in order to determine the lowest limit that ensures a (albeit scarce) living. However, this minimum amount has now lost its practical relevance. On the one hand, even the lowest amount of the full old-age pension exceeds this amount and, on the other hand, in today's economic conditions, it is not even sufficient to provide a scarce old-age living.

The state's only obligation under the Fundamental Law is to contribute to the provision of an old-age living by maintaining the state pension system and enabling the operation of social institutions established on a voluntary basis. The Fundamental Law is silent on the need for the state to ensure the necessary level of subsistence in old age. If we compare the Hungarian old-age pension minimum with the minimum pensions (basic pensions) provided by other Member States, it is almost the lowest.[83]

The sustainability of pay-as-you-go public pension systems is significantly affected by the phenomenon of an ageing society: though it will still be possible to fund them, they will be able to provide fewer services in the future, which will jeopardise livelihoods in old age. The EU and its Member States are seeking to mitigate the negative effects on the sustainability of old-age pension systems not through family policy instruments (support for childbearing) but rather through pension reforms, in particular, by raising the retirement age and keeping people of retirement age in the labour market. In addition, the aim is to avoid the impoverishment of pensioners and strongly encourage supplementary pension savings among those who can afford them.

5. Accuracy and uncertainty of various population forecasts – main findings of EU long-term forecasting

Many different national and multilateral institutions estimate historical population data and make projections. The United Nations Population Division (UNPD) has published population estimates, vital statistics, and projections for all countries since 1951, and currently from 1950 to 2100. The World Bank Group also produces population projections that rely on UNPD data but include country-specific differences that have been well-identified and discussed with the UNPD. Several research institutes have demographic programmes, including the Wittgenstein Center, which is affiliated with the International Institute for Applied Systems Analysis (IIASA).

A wide range of methodologies are used to predict future populations. The dominant methods of making forecasts are deterministic models, which use 'cohort components' based on the age structure of the population and the components of change: births, deaths, and migration. Future uncertainty is conveyed through alternative assumptions about these key variables to develop different scenarios.[84] The UN World Population Projection for 2015 covers different scenarios with different

83 European Commission, 2021, pp. 114–115.
84 Cohen, 2001; Lutz, Sanderson, and Scherbov, 2001.

assumptions on fertility, mortality, and migration.[85] Among the high (+ half child), medium, and low (- half child) fertility variants, the medium variant typically receives the most attention, and the other two convey uncertainty about the predictions, especially in the outer years. Uncertainty in population projections that adopt this deterministic approach is related to assumptions about fertility, mortality, and migration.

UN projections are also methodologically advanced by using parametric functions to model demographic change.[86] Currently, total fertility rates and life expectancy for a given country are modelled using a Bayesian hierarchical model that relies on information from other countries to estimate parameters around the world average. This method provides estimates of, for example, the total fertility rate where uncertainty increases over time and is higher in countries with higher initial fertility. The UNPD now uses probabilistic approaches, along with the presentation of alternative scenarios, to illustrate uncertainty about future trends. Other projections, such as those of the IIASA, take a more structural approach, specifically considering the effect of education on fertility rates: as the populations of high-fertility countries become more educated, their fertility rates decline. This is one of the reasons why the IIASA's long-term forecasts tend to differ significantly from those of the UN. The former predict that global population growth will most likely reach its peak by the end of this century, whereas the latter holds that the global population will continue to grow even after 2100.[87] The main sources of this difference are the projections for Asia and Africa, where many countries have high fertility rates and low levels of education.[88]

The EU's long-term forecasts are based on commonly agreed methods and assumptions. These are included in the relevant studies by the European Commission and the European Economic Policy Committee (EPC).[89] The starting point was the Eurostat population forecast for 2019–2070. Population projections are based on Eurostat's demographic projections with a base year of 2019, named EUROPOP2019. GDP growth projections were based on the T+10 medium-term projections of the EPC Output Gap Working Group, according to the Commission's 2020 spring forecast (with EUROPOP2018 as the base year and 2018 as the most recent at that time). These forecasts do not take into account the impact of the COVID-19 pandemic as the EUROPOP2019 forecasts were finalised by Eurostat in April 2020. In addition, the EPC agreed on common assumptions and methodologies for forecasting key macroeconomic variables for all Member States based on proposals made by the Commission services (DG ECFIN) and the EPC Working Group on Ageing Populations and Sustainability. (AGW). These include labour

85 World Bank, 2016.
86 Wilmoth, 2015.
87 Gerland, 2014; Lutz et al., 2007.
88 World Bank, 2016, pp. 138, 283.
89 European Commission (DG ECFIN) and Economic Policy Committee (AWG), 2020.

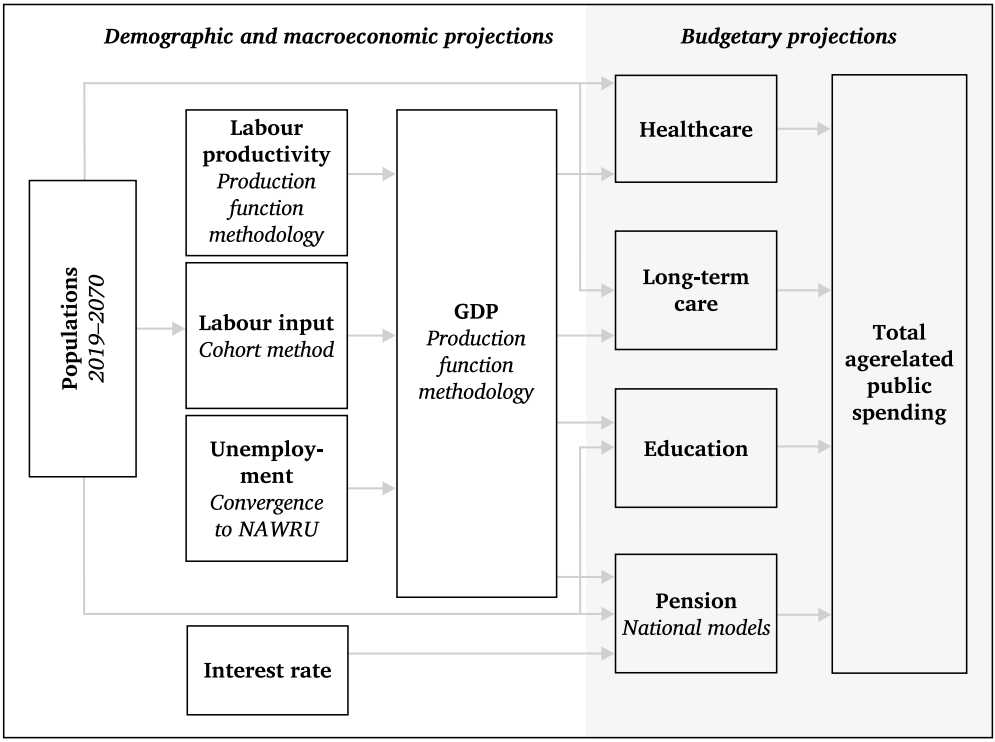
force coverage (participation, employment, and unemployment rates), labour productivity, and the interest rate. This set of variables made it possible to derive the GDP of all Member States until 2070. The macroeconomic assumptions underlying the report were agreed upon in the first half of 2020 and published in November 2020.

Based on these assumptions, a separate budget forecast was prepared for four government expenditure items: pensions, healthcare, long-term care, and education. From this round onwards, the EPC decided not to include unemployment benefit projections, which were already considered not a strictly age-related expenditure item. The pension forecasts are based on the Member States' own national models, reflecting current pension legislation. To ensure the high quality and comparability of the pension forecast results, the AWG and the Commission services conducted an in-depth peer review in several meetings between September and December 2020. The forecasts include the pension legislation in force at the time. This report does not include further reform measures after 31 December 2020. In this way, the forecasts have the advantage of capturing the country-specific circumstances prevailing in different Member States owing to different pension legislation while ensuring consistency by basing the forecasts on commonly agreed basic assumptions. The forecasts for healthcare, long-term care, and education were prepared by the European Commission services (DG ECFIN) on the basis of the common forecast model for each expenditure item, taking into account country-specific settings where appropriate. The results of these separate projections were aggregated to provide an overall projection of public expenditure on ageing (see Figure 2).[90]

Long-term projections show where (i.e. in which countries), when, and to what extent ageing pressures will accelerate as the baby-boom generation retires and the EU population is expected to live longer in the future. The forecasts are, therefore, useful in highlighting the immediate and future policy challenges for governments posed by projected demographic trends. At the level of individual countries, the report provides a very rich set of information covering a long period (up to 2070), compiled in a comparable and transparent manner. At the same time, one of the main weaknesses of the EU's forecasts is that, although they take many factors into account, they also ignore several other factors (e.g. those that are presented in this chapter) that can have a significant impact on the development of individual Member States.

90 European Commission, 2020c, pp. 1–3, 375.

Figure 2. Overview of the EU's 2021 forecasting practice[91]



The other main weakness of these forecasts is that they do not show any development alternatives or breaking points that would encourage individual countries to make decisions and adopt measures for the future that differ from the previous ones.

The main findings of the latest EU long-term base case forecast can be summarised as follows. Under the baseline scenario, the total cost of ageing (including spending on pensions, healthcare, long-term care, and education) will increase in the long term at the EU/EA aggregate level. This cost, which accounted for 24% of GDP in 2019, is forecast to rise by 1.9 percentage points for the EU as a whole. Table 8 indicates the expected changes for each member country; however, there are significant differences in long-term spending trends between EU Member States and over time. According to EU forecasts,[92] a decrease in all ageing-related expenditure relative to GDP is expected in eight Member States (Greece, Estonia, Portugal, France, Latvia, Spain, Croatia, and Italy). In all of these countries, a long-term decline in the pension ratio relative to GDP is expected (in Greece and Portugal, this

91 Source: European Commission, 2021, p. 2.
92 European Commission, 2021, p. 8.

rate exceeds 3 percentage points of GDP). However, with the exception of Greece, Estonia. and Latvia, overall spending declines are expected to rise above the current EU average, particularly for Italy and Portugal (2.5 percentage points of GDP or above). The ageing-related expenditure ratio is expected to rise moderately (by up to 3 percentage points of GDP) for another five countries (Denmark, Lithuania, Cyprus, Bulgaria, and Sweden). With the exception of Denmark and Sweden, spending on ageing in these countries is currently well below the EU average.

Table 8. The total cost of ageing as a percentage of GDP – base case, changes in expenditure from 2019–2070[93]

Country	Pensions	Healthcare	Long-term care	Education	Total
Slovakia	5.9	2.5	2.1	0.4	10.8
Luxembourg	8.7	1.1	1.4	–0.8	10.4
Slovenia	6.0	1.5	1.3	0.1	8.9
Malta	3.8	2.6	1.9	–0.3	8.0
Norway	2.6	1.1	3.9	–0.6	7.1
Ireland	3.0	1.4	1.9	–0.1	6.2
Czechia	2.9	0.9	1.7	0.6	6.1
Hungary	4.1	0.9	0.7	–0.1	5.5
Belgium	3.0	0.6	2.1	–0.4	5.4
Netherlands	2.3	0.8	2.7	–0.5	5.5
Romania	3.8	0.9	0.4	–0.1	5.1
Poland	–0.2	2.6	1.6	–0.1	4.0
Austria	1.0	1.2	1.8	–0.1	3.8
Finland	1.3	0.8	2.1	–0.9	3.4
Germany	2.1	0.4	0.2	0.5	3.3
Sweden	–0.1	0.8	2.2	–0.5	2.3
Bulgaria	1.4	0.2	0.1	0.4	2.1
Cyprus	2.1	0.3	0.3	–0.7	2.0

93 Source: Authors own work based on European Commission, 2021. Created with Datawrapper.

Country	Pensions	Healthcare	Long-term care	Education	Total
Lithuania	0.4	0.6	0.8	–0.1	1.6
Denmark	–2.0	0.9	3.4	–0.8	1.5
Italy	–1.8	1.2	1.0	0.4	–0.1
Croatia	–0.7	0.7	0.2	–0.5	–0.3
Spain	–2.1	1.3	0.8	–0.4	–0.4
Latvia	–1.2	0.4	0.2	0.0	–0.6
France	–2.2	1.1	0.8	–0.6	–0.8
Portugal	–3.2	1.6	0.4	–0.1	–1.3
Estonia	–2.3	0.8	0.3	–0.4	–1.6
Greece	–3.8	0.8	0.0	–0.6	–3.7
EU	0.1	0.9	1.1	–0.2	1.9

The increase in the ageing-related expenditure ratio is projected to be the largest in the remaining 15 countries (Germany, Finland, Austria, Poland, Romania, the Netherlands, Belgium, Hungary, the Czech Republic, Ireland, Norway, Malta, Slovenia, Luxembourg, and Slovakia), rising by 3 percentage points at or above GDP. Pension spending is increasing in all of these countries, and by more than 3 percentage points of GDP in Luxembourg, Slovenia, Slovakia, Hungary, Malta, Romania, and Ireland. In Finland, Austria, and Belgium, the expenses related to ageing already exceed the EU average. Looking at the base-scenario components of ageing-related expenditures, the growth until 2070 will be determined mostly by long-term care and health expenditures.

All in all, although these forecasts are undoubtedly useful in that they shed light on certain future challenges, they fundamentally allow the continuation of previous bad habits and practices without changes or with only minor changes. From this perspective, the practice adopted by the World Bank is particularly noteworthy, according to which different assumptions about future fertility rates can lead to significantly different population forecasts in the long term. It would be worthwhile for the EU to conduct a similar exercise in order to ensure that the Member States are aware that they have both considerable room for manoeuvre and a particularly great responsibility in shaping future processes related to demography. Several decisions and measures could be implemented that could even cause a significant shift that contributes to successfully overcoming the current demographic ice age.

6. Conclusions – more effective public policies could encourage favourable demographic changes within countries and regions

In summary, demographic changes are leading to a slower-growing and older population. This transition is likely to exert downward pressure on the growth rate of potential output, the natural rate of unemployment, and long-term equilibrium interest rates. The magnitude and timing of these effects are uncertain because they depend on complex dynamics and the behaviour of consumers and businesses. Demographic change can also affect business cycles and the transmission mechanism of monetary policy. Monetary policymakers should continually assess these structural and cyclical effects when determining appropriate policy. Demographic trends are also a challenge for fiscal decision-makers. Growing fiscal imbalances are projected to lead to higher levels of government debt-to-GDP, potentially putting upward pressure on interest rates and crowding out productive investment.

Ultimately, the decreasing preference for having children causes damage not only to families but also to countries and the affected societies as a whole. In this regard, the President of the Hungarian Republic stated that the affected countries may end up in a worse situation as a result of the demographic ice age than as a result of global warming.[94] Despite this, there are practically no studies that have considered these negative consequences in sufficient detail, analysed them, or explored the possible damage – thus far, most studies have only examined the negative consequences of high fertility.[95] Consequently, as a kind of exploratory research, this chapter undertook a detailed investigation of the main negative effects caused by the demographic ice age. Thereby, it gives an initial impetus to further research, which we hope will analyse these effects in more detail and attempt to quantify the damage that the processes of the demographic ice age will cause.

As we have established, there are many forecasts in this area. Although these forecasts are undoubtedly useful in terms of drawing the attention of the concerned countries and EU leaders to several negative prospects, in fact, these countries and leaders currently significantly underestimate the true magnitude of the problem and, thus, tend to believe that it is not really urgent. They have a lot to do in the future. Even today, as this chapter shows, the situation is worse than these forecasts predict. An even bigger mistake is that the forecasts do not shed light on which areas and which public policies (economic policy, employment policy, monetary policy, budgetary policy, health policy, regional development policy, etc.) and measures could achieve significant changes, even in the short term, by stimulating the number of live births and not only employing financial means. At the same time, each member country should rethink these forecasts within its own jurisdiction and create a

94 Gennarini, 2023.
95 For example, see: World Bank, 2010.

database that can be used to make much more accurate and realistic estimates of the social and economic effects of demographic changes than at present. These estimates should be determined much more precisely for the respective countries and regions in order for their governments to determine the scope and possibilities of future measures.

Through this chapter, above all, we wish to emphasise the fact that much more attention should be paid to solving the everyday problems and difficulties of single people than at present, and especially to why people have far fewer children today than even a decade ago. While the decreasing number of live births should be addressed, it should also be ensured that far fewer people than at present die prematurely as a result of often incredibly trivial, preventable causes, such as high child mortality, road and other accidents, air pollution,[96] diseases caused by other environmental hazards, various epidemics, and chronic diseases. We are convinced that the majority of these could be significantly reduced and prevented with minimal expenditure. Today, the EU and all its Member States have a huge institutional system and a range of public policies available to achieve the necessary changes in these areas. Even a minimal improvement could bring about positive effects on the number of people of working age and entrants, improving the balance of the active and inactive populations.

Though we have dealt with it extensively before, one area is not addressed by this chapter: the level of happiness of societies. Many studies have already shown that those who have and raise one or more children are much happier than single people who do not have children, and the positive effects of this are often incalculable.[97] Finally, let us mention one more important issue:

> Globalization in its current form marks the end. Instead of being open, accessible and integrated as it has been for decades, the world is now filled with technology-based walls and barriers. Technology is causing the world to split and crack on almost every level. The world has become vertical …. The nation that will be among the first to formulate national future programmes in the MI reality will rule the entire world and the era.[98]

Consequently, the formulation of an appropriate future concept also becomes a key issue in terms of demographics, that is, how many of the young people living in the EU will want to have children and raise and educate them, and how much of their time and income they are willing to devote to this. The signs in this regard are not at all encouraging: in many countries and regions of the EU, an increasing

96 According to a European Environment Agency report, 400,000 people died in Europe due to air pollution in 2021 alone. Deaths from fine particulate matter were highest in Poland, Italy, and Germany, whereas nitrogen dioxide and ozone had the greatest impact on deaths in Turkey, Italy and Germany. Reuters, 2023: 'Almost 400,000 deaths in Europe in 2021 attributable to filthy air.

97 Balásházy, Major and Farkas, 2018.

98 Prakash, 2021.

number of people no longer want to bring children into today's world owing to wars, epidemics, climate change, and many other reasons and come to the conclusion that the world that is corrupted to the core. In our opinion, this is what needs to be radically changed as soon as possible.

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Chapter 10

Family Policy Aimed at Demographic Incentives in EU Law

Ágoston Korom

Abstract

This chapter examines the discretion conferred on the Member States of the European Union (EU) in relation to the application of family policy that aims to improve the demographic situation. Incentives for childbearing in pension schemes, as well as the status of the family and the related subsidies, fall within the competence of the Member States. The European Commission generally formulates recommendations in that regard, which lack binding force.

Nonetheless, in these fields, the Court of Justice of the European Union (CJEU) gives effect to primary and secondary EU law ensuring equal treatment of men and women. State subsidies with objectives related to demography do not 'prevail' in the case law of the CJEU. Examining the *ratio decidendi* of the existing case law, it is clear that this is not limited to the acknowledgement of childbearing in pension schemes but covers all state subsidies with similar objectives. In my opinion, this case law is a major obstacle to achieving the related national goals; thus, it is necessary to harmonise the EU law in force and the objectives related to demography.

Keywords: state subsidies; demography; case law; CJEU; marital status; subsidies; competence; Member States; EU law; national legislature on family status; demographic objectives; solutions

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1. Introduction

For experts in demography, family, and other related issues,[1] even the title of this chapter may be startling as family status and the related subsidies fall within the scope of Member State competence. Family policy that is aimed at incentives related to demography is also an area that falls within the scope of the competence of Member States. Neither can we find European Union (EU) law that covers an acknowledgement of childbearing in pension schemes as the most important issues regarding pensions also fall within the scope of the competences of Member States. From time to time, the European Commission formulates recommendations of an economic or other nature in that regard for Member States, but these recommendations lack binding force.

The Court of Justice of the European Union (CJEU) exercises significant control over national legislation regulating the acknowledgement of childbearing in pension schemes,[2] implementing the provisions of EU law that prohibit discrimination on the grounds of sex or age. Subsidies related to family status and other related benefits also fall within the scope of Member State competence. However, the settled case law of the CJEU – based, again, on the requirement for the equal treatment of men and women and the prohibition of discrimination based on age – has developed quite an expansive interpretation in this field.

This chapter analyses the relevant case law of the CJEU with regard to the impact it may have on the family policies of Member States that aim to improve their demographic situations. I will also touch upon an examination of whether the Member States have any discretion related to labour migration, which severely affects the demographic situation of those Member States in Central Europe, with particular regard to sensitive areas such as the migration of physicians and specialist medical staff.

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2. The assessment of subsidies with objectives related to demography in the CJEU case law

2.1. Judgment in the Joseph Griesmar case[3]

The plaintiff in the main proceedings of the Joseph Griesmar case was a civil servant and father of three children. His pension was calculated without taking into account the service credit in respect of his children as, according to French legislation,

1 Apart from penning this paper, the author has not examined any demographic, family law, or other related subjects. He only undertook to participate in the present research, that is, in the examination of the discretion conferred on the Member States by EU law, because the said research sought to fill a gap.

2 For further details in that regard, see: Homicskó, 2023, pp. 149–187.

3 Judgment of the CJEU, C-366/99.

only female civil servants were entitled to such credit. The plaintiff claimed that this constituted a breach of the primary and secondary European Union (EU) law that prohibits discrimination on the grounds of sex, referring to Arts. 119 and 141 EC, as they were numbered at the time, as well as Directive 79/7/EEC.

First, the CJEU recalled that the pensions concerned should be understood to fall within the category of 'pay' for the purposes of Art. 141 EC.[4] The CJEU also examined whether discrimination on the grounds of sex could be established in this case. The principle of equal pay requires that female and male workers receive equal pay provided that they are in comparable situations.[5] According to settled case law, in principle, the situations of male and female workers are comparable as regards child-reading,[6] with the exception – according to the case law – of maternity leave.[7]

In the proceedings, the French government explained that the service credit is reserved for female civil servants who have had children in order to address a social reality, arguing that women play a predominant role in raising and educating children.[8] Thus, this credit aims to compensate for the disadvantages women incur in the course of their professional careers as a result of child-rearing, even if they have not ceased working in order to bring up their children.[9]

According to the CJEU's interpretation, the situations of a male and a female worker may be comparable as regards bringing up children as the fact that the disadvantages arising from child-rearing are generally incurred by women does not prevent their situation from being comparable to that of male workers who have assumed the task of bringing up their children and have, thereby, been exposed to the same career-related disadvantages.[10] The CJEU pointed out that the relevant French legislation[11] does not permit a male worker to receive the service credit, even if he is in a position to prove that he did, in fact, assume child-rearing responsibilities.[12] The Court decided that it was clear that the related national legislation introduced a difference in treatment on the grounds of sex and further examined whether such different treatment is justified.

The French government emphasised[13] the greater frequency of the use of parental leave by female workers and the fact that the duration of their careers is on average 2 years shorter than those of male workers. The French government also stressed that the raising and education of children is one of the most important factors in

4 Judgment of the CJEU, C-366/99, para. 38.
5 Judgment of the CJEU, C-218/98.
6 Judgment of the CJEU, C-366/99, paras. 39 and 41.
7 For further case law, see 312/86 and C-285/98.
8 Judgment of the CJEU, C-366/99, para. 51.
9 Ibid.
10 Judgment of the CJEU C-366/99, para. 56.
11 Art. 12 of the French Civil and Military Retirement Pensions Code.
12 Judgment of the CJEU, C-366/99, para. 57.
13 Judgment of the CJEU, C-66/99, para. 60.

explaining the earlier retirement of female civil servants. The service credit was designed to offset those disadvantages.

The CJEU in no way questioned that Art. 6 of the Agreement on Social Policy of 1993 allows Member States to, *inter alia*, maintain or adopt measures to offset or prevent the disadvantages incurred by women in relation to their careers. However, according to the CJEU's interpretation, the national measure at issue in this case was not of that nature.[14]

2.2. Judgment in the Leone case[15]

The plaintiff in the main proceedings of the Leone case applied for early retirement with the immediate payment of his pension as a father of three children. The application was refused on the grounds that the plaintiff had not taken a career break for each of his children, as is required by the relevant legislation. The plaintiff maintained that, although ostensibly neutral, the relevant regulation was, in fact, more advantageous for women, resulting in indirect discrimination on the grounds of sex to the detriment of male workers.

The opinion of the Advocate General noted that according to the case law, the related national measures constitute the pay received in respect of employment and, as such, fall within the scope of[16] Art. 141 EC, which requires equal pay for female and male workers. The Advocate General also recalled that according to the established case law,[17] a provision, criterion, or practice that is ostensibly neutral as it applies to men and women without distinction, but that in practice puts one of these categories of persons at a disadvantage compared with the other, results in indirect discrimination based on sex. Such a difference in treatment is contrary to EU law, unless the situation of one worker is not comparable to that of the other, or unless the difference can be justified by a legitimate objective and the means employed to achieve it are appropriate and proportionate.[18]

However, a further criterion added by the CJEU derogates somewhat from the opinion of the Advocate General. The Court held that indirect discrimination on the grounds of sex arises where a national measure, albeit formulated in neutral terms, puts considerably more workers of one sex at a disadvantage compared to those of the other sex.[19] The CJEU found it clear that a national provision[20] providing a service credit, such as that at issue in this case, to benefit civil servants of both sexes provided that they have had a career break of at least 2 consecutive months in order to care for their children, appears to be neutral as the possibility of taking

14 Judgment of the CJEU, C-66/99, para. 62.
15 Judgment of the CJEU, C-173/13.
16 Opinion of the Advocate General, C-173/13, para. 23.
17 Idem, para. 24.
18 Idem.
19 Judgment of the CJEU, C-173/13, para. 41.
20 Judgment of the CJEU, C-173/13, paras. 43–44.

such a career break does not appear to be legally open only to civil servants of one sex.[21] However, the Court held that, notwithstanding the appearance of neutrality, it is clear that the criterion used in the national regulation leads to a situation where many more women than men receive the benefit of this advantage.[22]

The plaintiff in the main proceedings and the European Commission maintained that the French Republic substituted a new mechanism for the earlier one, which, under the guise of measures that are ostensibly neutral as to the sex of the persons to whom these measures apply, in reality, uphold the aims of the earlier mechanism and ensured that the actual effects of it are maintained and perpetuated.[23] The plaintiff in the main proceedings considered that, in essence, the French government's intent was to compensate for the career-related disadvantages suffered by civil servants in the course of their career resulting from the time spent on child-reading.[24]

In the proceedings, the French government further argued that the requirement prescribed by the national legislation for the service credit can be justified from several aspects as taking a career break has a direct impact on the amount of a civil servant's pension, either because no account is taken of periods of career break for the purposes of calculating the pension,[25] or because of the career slowdown they entail. The service credit is, thus, aimed at providing financial compensation for this negative impact.[26]

According to the Court's interpretation, the fact that the service credit scheme for pension purposes includes maternity leave among the forms of career break allowed under the applicable rules, given the minimum duration and mandatory nature of that leave under the national law, means that female civil servants who are the biological parent of their child are, in principle, those who are in a position to benefit from the service credit advantage. After analysing the relevant legislation, the CJEU pointed out that it cannot be concluded or can only partially be concluded that the service credit scheme is genuinely aimed at the objective indicated by the French government.[27] Furthermore, the CJEU criticised the fact that this service credit is fixed, in a uniform manner, for a year, irrespective of the actual duration of the career break.[28]

The CJEU further examined whether the national legislation at issue reflects a concern to attain the aim indicated by the French government, pursued in a consistent and systematic manner by this Member State. In the CJEU's interpretation,

21 According to the national legislation, both male and female civil servants may take career breaks as part of adoption leave, parental leave, parental care leave, or leave in order to be available to bring up a child of less than 8 years of age.
22 Judgment of the CJEU, C-173/13, para. 45.
23 Judgment of the CJEU, C-173/13, para. 61.
24 Idem, para. 62.
25 Judgment of the CJEU, C-173/13, para. 63.
26 Idem.
27 Judgment of the CJEU, C-173/13, para. 65.
28 Judgment of the CJEU, C-173/13, para. 66.

the national legislation failed to meet these rather strict requirements, due, *inter alia*, because under the relevant provision, the service credit is also granted to female civil servants[29] who have given birth during their years of study.[30] A further 'criticism' on the part of the CJEU concerned the fact that under this service credit scheme, in the case of certain children, such as those who were placed under the guardianship of the pension holder or his or her spouse, where this involves actual and permanent custody of the child, the granting of the service credit is subject not only to the criteria of a career break of 2 months but also to the requirement that the children must have been brought up by the applicant for at least 9 years.[31]

The CJEU also examined whether the indirect discrimination identified in the analysis of the national legislation can be justified under Article 141(4) EC. The CJEU recalled its case law, according to which this provision of primary EU law states that in order to ensure the actual equal treatment of male and female workers, Member States may maintain or adopt measures that provide for specific advantages to allow the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.[32] However, according the CJEU's interpretation, this article cannot be applied to the national measures at issue[33] as, according to the established case law, the measures provided for therein are not appropriate to help those concerned in their professional life and, thereby, ensure full equality in practice between male and female workers.[34]

2.3. Judgment in the WA v Instituto Nacional de la Seguridad Social case[35]

The Spanish legislation in the main proceedings of the *WA v Instituto Nacional de la Seguridad Socia*l case, which was 'examined' by the CJEU, grants a pension supplement to women who have at least two biological or adopted children on account of their demographic contribution. Under this national legislation, the supplement was unavailable to men. Applying the specific criteria developed in its case law in this area, the CJEU's judgment examined the difference in treatment. The plaintiff in the main proceedings was a father of two children who challenged a decision refusing to grant him this particular pension supplement.

It is worth examining the most important findings of the opinion of Advocate General Michal Bobek in this case. The opinion stressed that, based on the judgments

29 The CJEU's related criticism targets the fact that no career break was required in that case for the female civil servants to be admissible for the said service credit.

30 Judgment of the CJEU, C-173/13, para. 70.

31 Judgment of the CJEU, C-173/13, para. 72.

32 Judgment of the CJEU, C-173/13, para. 100.

33 Another pension-related credit was also examined by the CJEU in the said judgment; however, as it does not derogate in essence from the presented case law, it is not separately analysed in this chapter.

34 Idem, para. 101.

35 Judgment of the CJEU, C-450/18.

in the Griesmar and Leone cases, the pensions at issue were occupational pensions and, thus, fell under the scope of the principle of equal pay in Art. 157 TFEU. The opinion pointed out that this was the first case where the CJEU had the opportunity to decide whether the approach developed in the previous judgments was applicable to this area, in other words, to benefits that constitute part of a general social security pension scheme. The opinion examined the objectives of the national legislation: according to the relevant Spanish provision, the national law concerned was introduced in acknowledgement of a 'demographic contribution' to social security, although the law adopting the measure does not contain any more specific justification.[36]

The Advocate General found it hard to see how women and men are not in a comparable situation regarding their demographic contribution to the social security system. However, it was clear from the proceedings that the measure concerned was inspired by and pursued a much broader objective, that is, to reduce the gender gap[37] as women more often give up their work to take care of their children, which has a direct impact on both their income and pension, giving rise to a phenomenon known as 'double penalty'.[38] Further statistical evidence presented in the proceedings showed that social security contributions relate directly to gender and the number of children, and that the pension gender gap has a greater impact on women who are mothers of two or more children.[39]

It was clear to the Advocate General from the above-mentioned considerations that the legislation at issue is, in fact, not aimed at protecting women who assume the responsibilities of childcare as it does not contain any condition that would link the concerned benefit with actual childcare. According to the Advocate General's opinion, this results from the fact that the law does not require individuals to demonstrate an interruption of employment[40] or, at least, some reduction of working hours.[41] The Advocate General added that even if that were the stated objective – that is, if we assume that, based on the criteria of EU law,[42] it would not follow that this measure is not aimed at compensating for the disadvantages incurred by female workers who assume childcare responsibilities of – it would be of little avail as the CJEU has consistently held that men and women are in a comparable situation with regard to childcare.[43]

36 Opinion of the Advocate General, C-450/18, para. 58.
37 It should be noted that the Spanish Constitutional Court also found this compensation to be the primary objective of the national measure at issue.
38 Opinion of the Advocate General, C-450/18, paras. 58-61.
39 Opinion of the Advocate General, C-450/18, para. 62.
40 The question arises whether women raising children can be disadvantaged in terms of a reduction in social security contributions, regardless of whether they took leave, their employment was interrupted, or their working hours were significantly reduced.
41 Opinion of the Advocate General, C-450/18, para. 63.
42 Idem.
43 It is clear that the CJEU has the monopoly on the authentic interpretation of EU law, yet it is hard to see how any interpretation can override the facts and tendencies supported by national law as EU law can rather be understood as an obligation for Member States.

According to the settled case law of the CJEU related to this area, discrimination arises due to the application of different rules to comparable situations or the application of the same rule to different situations.[44] The CJEU recalled that Directive 79/7/EEC prohibits either direct or indirect discrimination on the grounds of sex, with reference – in particular – to marital or family status as regards the calculation of benefits.[45] According to the CJEU's interpretation, the grounds of a demographic contribution to social security cannot justify men and women not being in a comparable situation with regard to the award of the pension supplement at issue in this case.[46]

However, the Spanish government explained in the proceedings that the objective pursued by the measure concerned is not only related to demographic goals but also aims to reduce the gap between the pension payments received by men and women. In addition, the Spanish government maintained that the pension supplement at issue is justified on the grounds of social policy as extensive statistical data reveal a difference between the pension payments of men and women, as well as between the pension payments of childless women or those who have had one child and the payments of women who have had at least two children.[47]

According to the CJEU's interpretation, as regards the objective of reducing the gap between the pension payments of men and women, the national measure at issue was intended to protect women in their capacity as parents. The situation of a father and that of a mother may be comparable as regards child-rearing. According to the CJEU's interpretation, the fact that women are more affected by the occupational disadvantages entailed in bringing up children, as it is generally women who carry out that task, does not prevent their situation from being comparable to that of a man, as held in the case law of the CJEU,[48] in accordance with the judgment in the *Griesmar* case.

Accepting the findings of the opinion of the Advocate General, the CJEU held that the existence of statistical data is not sufficient to reach the conclusion that men and women are not in a comparable situation. This was a derogation from the prohibition, set out in Art. 4(1) of Directive 79/7/EEC, that states that all direct discrimination on the grounds of sex is possible only in the situations exhaustively listed in the provisions of that Directive.[49]

Art. 4 of Directive 79/9/EEC recognises the legitimacy of protecting a woman's biological condition during and after pregnancy, as well as that of protecting the special relationship between a woman and her child following childbirth.[50] However,

44 Judgment of the CJEU, C-450/18, para. 42.
45 Judgment of the CJEU, C-450/18, para. 38.
46 Judgment of the CJEU, C-450/18, para. 47.
47 Judgment of the CJEU, C-450/18, paras. 48–49.
48 Judgment of the CJEU, C-450/18, paras. 50–53.
49 Judgment of the CJEU, C-450/18, para. 54.
50 Judgment of the CJEU, C-450/18, para. 56. For further case law, see the Judgment of the CJEU C-184/83, para. 25, and the Judgment of the CJEU C-5/12, para. 62.

according to the CJEU's interpretation, there is nothing in the measure at issue that establishes a link between the award of the concerned pension supplement and taking maternity leave or the disadvantages suffered by a woman in her career as a result of being absent from work during the period following the birth of a child. In addition, this pension supplement is also granted to women who have adopted children; thus, the CJEU construed that the national legislature did not intend to limit the application of the measure to protecting the biological condition of women who have given birth.[51]

Furthermore, the CJEU accepted the statement of the Advocate General that the national provisions do not require women to have actually stopped working at the time they had their children; thus, the condition relating to maternity leave is absent. That is particularly the case when a woman has given birth before entering the job market.[52] Therefore, according to the CJEU, it must be held that the concerned pension supplement does not fall within the scope of the derogation from the prohibition set out in Art. 4(2) of Directive 79/7/EEC

In the following, the CJEU applied its case law, formulated, *inter alia*, in the *Leone* case,[53] holding that, for the same reasons, the measure at issue does not meet the criteria set out in EU law.

3. The role of marital status and the related benefits in the CJEU case law

Before presenting the relevant case law, it is worth examining an answer given to a question for written answer to the European Commission in relation to policies to support families. This question for written answer sought to understand, *inter alia*, whether the Commission considered that supporting Europeans in having more children might also alleviate labour force issues. The second part of the question asked the Commission, with essentially identical content, whether it planned to promote the idea of having more children in light of the current demographic crisis and if not, why? This question for written answer noted[54] that the European Commission has gone to great lengths to promote LGBTQI+ rights and the idea of 'rainbow families', and sought to know whether the Commission considered promoting and facilitating motherhood and proposing policies that support and encourage larger traditional families. According to the Members of the European Parliament who submitted the question, this should also form a part of the 'European way of life'.

51 Judgment of the CJEU, C-450/18, para. 58.
52 Judgment of the CJEU, C-450/18, paras. 59–60.
53 Judgment of the CJEU, C-450/18, para. 65.
54 Question for written answer E-001856/2023

In its answer, the Commission noted that labour shortages are shaped by cyclical drivers and structural determinants, including a reduction as a result of demographic trends, which was analysed by the Commission's 'Employment and Social Developments in Europe 2023' report. The Commission stressed that starting a family and having children[55] is an individual choice and pointed out that it supports Member States in creating favourable social and economic conditions that enable individuals to plan their family lives.[56]

Second, the Commission turned to presenting the related instruments at the EU level. In this regard, the Commission's answer mentioned the Directive on work-life balance, the Pregnant Workers Directive, the European Care Strategy, the European Child Guarantee, the Council Recommendation on early childhood education and care, and the support for investments in childcare facilities under the Recovery and Resilience Facility, as well as the Council Recommendation on adequate minimum income. Finally, the Commission stressed that it is committed to protecting the rights of all families, as enshrined in the EU Charter of Fundamental Rights.[57]

3.1. Judgment in the Tadao Markuo case[58]

Let us first examine the most important finding of the opinion of Advocate General D. Ruiz-Jarabo Colomer in the *Tadao Markuo* case. In 2001, the plaintiff in the main proceedings entered into a life partnership with a person of the same sex, who died in 2005. In the same year, the plaintiff applied for a widower's pension, which was refused on the grounds that, based on the relevant laws, surviving life partners are not entitled to the same benefits as surviving relatives.

The plaintiff lodged an appeal against the decision. According to the interpretation of the Bayerisches Verwaltungsgericht (the Bavarian Administrative Court), the relevant German legislation requires marriage for an individual to be eligible for the widower's pension and holds that the applicable provisions are not to be interpreted broadly. The administrative court added that these provisions are compatible with Paragraph 3 of the German Basic Law.

The Advocate General found it clear that Directive 2000/78 should be applied in this case. The observations lodged by the government of the United Kingdom and the

55 However, noteworthily, nothing in the question for written answer indicates that the Members of the European Parliament who submitted the question would query the individual freedom of choice as regards the starting of families and having children.

56 This may also mean that, in principle, the creation of an environment favourable for planning family life falls within the scope of Member State competence. Nonetheless, the Commission failed to explain in detail the help it provides for Member States to support large families, as indicated in the question.

57 In that regard, the respect for private and family life, home, and communications set out in Art. 7 of the Charter of Fundamental Rights of the European Union should definitely be mentioned. In addition, the right to marry and the right to start a family set out in Art. 9 of the Charter certainly belongs to this issue, which, under the said provision, is to be ensured in accordance with Member States' legislation regulating the exercise of these rights.

58 Judgment of the CJEU, C-267/06.

European Commission are noteworthy. The United Kingdom submitted that in the light of recital 22 to Directive 2000/78, the application of this Directive is excluded in the case of national laws on marital status and the benefits dependent thereon.[59]

Conversely, according to the European Commission, Directive 2000/78 – which, *inter alia*, prohibits discrimination on the grounds of age – should be applied in this case[60] because it satisfies the conditions laid down in the CJEU case law.[61] From recital 22 to the said Directive, the European Commission inferred that Member States have no obligation to place registered partnerships on an equal footing with marriage.[62] However, according to the European Commission's interpretation, if a Member State does treat the two institutions in the same way, the criteria set by the principle of equal treatment must be respected.[63] Pursuant to recital 22 to Directive 2000/78, this directive is without prejudice to national laws on marital status and the benefits dependent thereon. [64]

The Advocate General stressed that the Community has no powers with regard to marital status, which is set out in both Art. 3(1) of the Directive and recital 22 in its preamble – referenced also by the United Kingdom government – thereby leaving intact the competence of the Member States in this sphere and accepting each Member State's definition of marriage, singleness, widowhood, and other forms of 'civil (marital) status'. Nonetheless, according to the Advocate General's interpretation, Member States[65] must exercise that competence in a manner that does not infringe upon EU law.[66] Based on this, the Advocate General found no grounds for disapplying Directive 2000/78 in this case.[67]

59 Opinion of the Advocate General, C-267/06, para. 26.

60 Pursuant to Art. 1 of the said Directive, the purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age, or sexual orientation as regards employment and occupation. However, it should be noted that recital 22 prescribes that the Directive is without prejudice to national laws on marital status and the benefits dependent thereon.

61 Opinion of the Advocate General, C-267/06, para. 27.

62 Opinion of the Advocate General, C-267/06, para. 27.

63 Opinion of the Advocate General, C-267/06, para. 27.

64 The government of the United Kingdom stressed also in this regard that the said Directive is to be construed within the limits of the areas of competence conferred on the Community, which do not include the benefits dependent on marital status. From that, the United Kingdom government concluded that it is not appropriate to consider the rest of the questions referred for a preliminary ruling. Though the Advocate General found that the observation submitted by the United Kingdom government appears well founded, he did not agree with it. In the Advocate General's view, the introductory recitals are useful as criteria for interpretation; nonetheless, their significance must not be overstated.

65 The opinion stressed that the principle of non-discrimination on grounds of sexual orientation is included in Art. 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as in Art. 21 of the Charter. According to the Advocate General, the fact that this principle is fundamental in nature means that respect for the right is guaranteed in the European Union, pursuant to Art. 6 TEU.

66 Opinion of the Advocate General, para. 77.

67 Opinion of the Advocate General, C-267/06, para. 81.

Following these findings, the Advocate General analysed the EU law related to the prohibition of discrimination on the grounds of sexual orientation. The Advocate General's opinion found that if Directive 2000/78 was applied in the case, the national measure at issue should be examined in light of the prohibition of discrimination on the grounds of sexual orientation. The Advocate General stressed that, together with the right of free movement, the principle of equal treatment is the most long-standing and well-established principle of the Community, which began with equal pay for men and women, and later extended beyond the boundaries of this field.[68] According to the Advocate General's opinion, this process continued with groups with certain sexual identities, starting, *inter alia*, with the decriminalisation of same-sex relationships and continuing with the combat against the prejudice and discrimination affecting homosexuals. The Advocate General considered the resolution of the European Parliament in this regard.[69]

The opinion made reference to the fact that not all Member States had outlawed discrimination on the grounds of sexual orientation and neither it this mentioned in the European Convention for the Protection of Human Rights and Fundamental Freedoms, although the case law of the European Court of Human Rights has held that the right to respect for sexual orientation falls within the scope of the convention.[70] The opinion also noted a similar omission in the Universal Declaration of Human Rights of 1948 and the International Covenant on Civil and Political Rights of 1966. According to the CJEU's interpretation, the survivor's benefit at issue falls within the scope of Directive 2000/78.[71] The requirements set out in this Directive preclude national legislation under which, after the death of a life partner of the same sex, the surviving partner does not receive a survivor's benefit equivalent to that granted to a surviving spouse.[72]

3.2. Judgment in the MB v Secretary of State case[73]

In the light of the impact of changes in gender on state retirement pensions and the provisions related to discrimination on the grounds of sex, the judgment in the case *MB v Secretary of State for Work and Pensions* should be mentioned.[74] The plaintiff in the main proceedings was born a male in 1948 and married in 1974. She began to live as a woman in 1991 and underwent sex reassignment surgery in 1995. However, the plaintiff did not hold a full certificate of recognition of her change of gender, as pursuant to the legislation of the United Kingdom, in order for that

68 Opinion of the Advocate General, C-267/06, para. 83.
69 The opinion's starting point was the Resolution of the European Parliament of 8 February 1994 on equal rights for homosexuals and lesbians.
70 Opinion of the Advocate General, C-267/06, para. 86.
71 Judgment of the CJEU, C-267/06, para. 61.
72 Idem, para. 73.
73 Judgment of the CJEU, C-451/16.
74 Judgment of the CJEU, C-451/16.

certificate to be granted, her marriage would have to be annulled. Having reached the age of 60, the plaintiff applied for the retirement pension to which women over 60 are entitled pursuant to the relevant regulation. The application was rejected, as the plaintiff could not be treated as a woman for the purposes of the relevant legislation.

Through the questions referred to preliminary ruling in the legal dispute, the referring court essentially sought to understand whether the provisions of Directive 79/7 – the objective of which is to prevent discrimination in social security benefits on the grounds of sex – must be interpreted as precluding national legislation that requires a person who has changed gender to satisfy the condition of not being married to a person of the gender that he or she has acquired following that change in order to claim a certain type of state retirement pension. The CJEU recalled that although EU law does not detract from the competence of the Member States in matters of civil status and the legal recognition of a change in a person's gender, when exercising that competence, they must comply with EU law and, in particular, with the provisions relating to the principle of non-discrimination.[75]

According to the judgment in the *Richards* case[76] and the case law cited therein, in the scope of the application of Directive 79/7, the principle of non-discrimination should also be applied in the case of a change of gender. Based on the case law, although Member States themselves establish the conditions for the legal recognition of a person's change of gender,[77] the fact remains that, for the purposes of the application of Directive 79/7, persons who have lived for a significant period as a gender other than their birth gender and who have undergone a gender reassignment operation must be considered to have changed gender.[78]

The CJEU stressed that the national legislation at issue treats individuals who have changed gender less favourably as, in order to gain access to a state retirement pension, the condition of marriage annulment does not apply to persons who have retained their birth gender and are married. It follows that the national legislation treats a person who has changed gender after marrying less favourably than it treats a person who has retained his or her birth gender and is married. The CJEU further examined[79] whether the situations of these two categories of persons are comparable.

In the case law examined in this chapter, strong counter-opinions were formulated by the government of the United Kingdom, which holds that the purpose of the national legislation concerned is to avoid the existence of marriages between persons of the same sex; therefore, in this case, such a difference means that the situations

75 Judgment of the CJEU, C-451/16, para. 29.
76 Judgment of the CJEU, C-423/04
77 Judgment of the CJEU, C-451/16, para. 35.
78 Judgment of the CJEU, C-451/16, para. 35.
79 Judgment of the CJEU, C-451/16, para. 39.

of those persons are not comparable.[80] According to the settled case law, the comparability of situations must be assessed in a specific and concrete manner, inter alia, in the light of the objective pursued by the national legislation, which in the case at hand is ensuring protection against the risks of old age.[81]

In the CJEU's interpretation, the difference of marital status invoked by the government of the United Kingdom is not relevant in terms of the pension at issue in this case.[82] The CJEU also held that the national legislation did not meet the conditions set by Directive 79/7.[83]

4. The limitation of the right of free movement of physicians and specialist medical staff in the CJEU case law

4.1. Judgment in the Nicolas Bressol case[84]

The CJEU's judgment in the *Nicolas Bressol* case[85] may bear significance in relation to the possible limitation of the right of free movement guaranteed by citizenship of the Union. After presenting this judgment, I examine whether it has any impact on the Member States of Central Europe.

As regards the circumstances of the case, it is noteworthy that the dropout rate of students at medical universities in France is traditionally very high. Therefore, students with French citizenship enrol in French-speaking universities in Belgium – whose population is much smaller than that of France – and, after obtaining their degree, typically return to the country of their citizenship to practice their profession. It is unnecessary to describe in detail the fact that this process led to almost unbearable conditions in Wallonia, the French-speaking region of Belgium, where the lack of physicians and specialist medical staff caused a public health emergency. However, in principle, the provisions of EU law do not allow the restriction of the right of free movement, the introduction of higher tuition fees,[86] or other similar measures for citizens of other Member States.

For the above reasons, the legislature introduced restrictive measures for students of other Member States in the medical courses at French-speaking universities in Belgium. The Belgian government intended to justify the introduced discrimination with the goal of protecting the homogeneity of the higher education

80 Judgment of the CJEU, C-451/16, para. 40.
81 Judgment of the CJEU, C-451/16, paras. 41–43.
82 Judgment of the CJEU, C-451/16, para. 46.
83 Judgment of the CJEU, C-451/16, para. 52–53.
84 Judgment of the CJEU, C-73/08.
85 Judgment of the CJEU, C-73/08.
86 Access to education is guaranteed by citizenship of the Union.

system and public health. Noteworthily, as regards the homogeneity of the higher education system, the Belgian government claimed that the presence of non-resident students in these medical courses had reached a level that was likely to cause a deterioration in the quality of higher education owing to the inherent limits in the capacity of the educational establishments to welcome them and in the staff available.[87]

According to the CJEU, from the outset, it cannot be excluded that the prevention of a risk to the existence of a national education system and its homogeneity may justify a difference in treatment. However, in the CJEU's view, the justifications put forward must be examined jointly with those linked to the protection of public health as, in the case at hand, they are the same.[88] Noteworthily, the European Commission stated that it took the risks referred to by the Belgian government very seriously, but that, lacking in all the facts, it was unable to judge whether the justification was well founded.[89]

In its assessment, the CJEU cited the judgment in the *Hartlauer* case.[90] It follows from that case law that a difference in treatment based indirectly on nationality may be justified by the objective of maintaining a balanced high-quality medical service open to all, in so far as it contributes to achieving a high level of health protection. Thus, it must be determined whether the legislation at issue is appropriate for securing this objective and whether it goes beyond what is necessary to attain it.[91]

Through the first and second questions referred to preliminary ruling, the referring court sought to know whether the relevant provisions of EU law should be interpreted as meaning that they preclude a Member State measure that may restrict the number of students with citizenship of other Member States allowed to enrol for the first time to obtain a medical doctor degree or participate in other medical training if an influx of non-resident students arrive, and, as a result of that process, too few students residing in the host community obtain diplomas. It was not disputed in the proceedings that Belgium's national measure introduced a difference in treatment based indirectly on nationality. According to the settled case law, however, such a difference in treatment is prohibited, unless objectively justified in accordance with the CJEU case law as, in such a way, even a difference in treatment based indirectly on nationality may be justified in certain situations.[92] It is for the acting Member State court to decide whether there are genuine risks to public health. The CJEU recalled its case law, which held that discrimination based on nationality[93] can be justified by the objective of maintaining a balanced high-quality

87 Judgment of the CJEU, C-73/08, para. 52.
88 Judgment of the CJEU, C-73/08, paras 53–54.
89 Judgment of the CJEU, C-73/08, para. 61.
90 Judgment of the CJEU, C-169/07.
91 Judgment of the CJEU, C-73/08, para 61.
92 Judgment of the CJEU, C-73/08, paras. 47–50.
93 Judgment of the CJEU, C-73/08, paras. 62–63.

medical service open to all. As mentioned above, the CJEU cited the judgment in the *Hartlauer* case[94] in that regard.[95]

As regards the consequences of the judgment in the *Bressol* case and the relevance of the case law for Central European Member States, a question for written answer was submitted[96] to the European Commission. In its answer, the Commission pointed out, *inter alia*, that a Member State could limit the number of non-resident students from other Member States enrolling for the first time in certain medical and paramedical courses if such a restriction was justified in order to protect public health. Furthermore, the Commission stressed that – even in cases concerning conditions for access to education – the *Bressol* case should not be seen as establishing a general exemption from the prohibition of discrimination. In the Commission's interpretation, aside from the derogations from the right to equal treatment provided for in the Free Movement Directive,[97] each potential restriction of students' right to equal treatment should be assessed on a case-by-case basis.

The written answer to the question lacked a response to the question of whether the CJEU's judgment in the Bressol has certain relevance in the Central European Member States. However, indirect conclusions may follow from the Commission's answer, which highlighted that it is also important to distinguish between the restriction at stake in the Bressol case (which concerns the inward mobility of students) and a potential restriction of the outward mobility of medical professionals. This finding may mean that it is not to be applied in the case of Central European Member States. Nonetheless, in the remaining part of its answer, the Commission explained that any restriction of outward mobility could only be accepted if it was justified in line with EU law and, in particular, with the case law of the Court. In my opinion, the Commission's view was based on the existing case law.

Nevertheless, in its judgment in the *Hartlauer* case,[98] the CJEU not only examined the restriction of the inward mobility of students based on the right of free

94 It is of prior importance that in the said judgment, the CJEU did not examine the citizenship of the Union, but the restriction of one of the most important fundamental economic freedoms, that of the freedom of establishment. In the main proceedings, a company established in Germany applied for permission to set up a private healthcare institution in Vienna. According to the Winer Landesregierung, dental care was adequately ensured in Vienna by public and private non-profit health institutions and other contractual practitioners. Based on expert findings, the Winer Landesregierung held that the health institution whose establishment was sought would not have the effect of substantially accelerating, intensifying, or improving the provision of dental medical care. According to the CJEU's interpretation, Arts. 43 and 48 EC preclude national legislation such as that at issue, under which authorisation is necessary for opening a dental clinic and where the system of prior administrative authorisation is not based on a condition capable of adequately circumscribing the exercise by the national authorities of their discretion. This is because such national legislation is not appropriate for ensuring the attainment of the objectives of maintaining a balanced high-quality medical service open to all and preventing the risk of serious harm to the financial balance of the social security system.

95 Judgment of the CJEU, C-169/07.

96 Question for written answer, E-002128/2023.

97 Directive 2004/38/EC of the European Parliament and of the Council.

98 Judgment of the CJEU, C-169/07.

movement ensured by the citizenship of the Union but also the national legislation restricting the operation of the concerned internal market in the scope of the application of one of the most important fundamental economic freedoms: the freedom of establishment. Although the CJEU eventually found that the concerned national measure was precluded by the right of the freedom of establishment, this decision did not follow from the fact that the public interest related to public health – which was obviously less compelling than that in the *Bressol* case – was not suitable to justify a restriction of the freedom of establishment. Rather, the CJEU held that this national legislation was not capable of adequately circumscribing the exercise by the national authorities of their discretion and that it was not consistent in implementing the public interest objectives indicated by it.

Thus, it does not follow that, under certain circumstances,[99] in the case of one or more Central European Member States, the CJEU would not recognise the possible restriction of outward mobility for reasons of public health.

5. Summary

The most essential question examined in this chapter is how family policy that serves to improve the demographic situation can be placed within the framework of EU law. All in all, it can be determined that, in principle, the area examined in this chapter falls within the scope of Member State competence.[100] The European Commission's written answers also prioritise Member State powers and responsibilities in this area. In legal terms, the Commission primarily takes the Charter of

99 It should be stressed that I do not intend to promote the restriction of the free movement of physicians, and the arguments presented against it here are based solely on the examination of the discretion provided to the Member States to adopt regulations.

100 The question for written answer to the European Commission concerned the migration of the labour force from the Central European Member States. Question for written answer E-002977/2023 sought to know, *inter alia*, what impact the process of labour force migration has on the economic growth of the affected Member States and on the financing of their pension system. In addition, a written answer was sought to the question of whether the Commission plans to adopt measures over and above the cohesion and structural funds in order to limit, *inter alia*, this potential damage, with specific EU funding aimed at solving this problem.
In his answer, Nicolas Schmit made an indirect reference to the responsibility of the Member States, explaining that many workers return to their country of origin, 'provided' that the situation in their country of origin allows it.
The Commission stressed that Romania ranks first in terms of the number of migrating workers, followed by Poland, also highlighting Italy and Portugal. Nonetheless, Schmit acknowledged that the migration of the labour force is expected to also reduce contributions and, later, pensions.
It is clear from the remaining part of the written answer that the European Commission intends to address the demographic problems of the Central European Member States by raising the socioeconomic dynamism of the respective territories and promoting education.

Fundamental Rights of the European Union into account as regards family-related issues. According to the Commission, Member States must address the demographic challenges primarily through educational opportunities and economic development, with a vision that promotes predictable conditions. It is also clear from the given answers that the European Commission does not find it necessary to implement any specific measures to address the problems arising in the fields of economy, growth, or the payment of pensions owing to the migration of the labour force from the Central European Member States, applying an almost pure economic approach in that regard. However, in the long run, this economic approach may not be sufficient to overcome the demographic challenges faced; thus, the introduction of a family policy with incentives related to demography may become necessary.

The CJEU case law analysed in this chapter sheds light on the fact that, despite the resolution of the Commission, EU law may have a major impact on Member State family policies that promote incentives related to demography. It must be stressed that in the examined case law, the CJEU interpreted the EU law provisions rather expansively.

Consequently, researchers addressing this issue from the perspective of national law have not assumed at first sight that the EU provisions under examination here have any relevance in terms of Member States' family policies. In my view, it is crucial to differentiate between the recommendations formulated by the European Commission in this area– which are mostly of an economic nature and lack binding force – and the CJEU case law affecting Member States' family policies aimed at incentives related to demography as the latter, under certain circumstances, may prevent the achievement of the objectives pursued by the national legislature.

The examined case law of the CJEU can be placed in two categories in terms of its impact on family policy with incentives related to demography. First, I analysed the case law related to the acknowledgement of childbearing in pension schemes and pension-related benefits aimed at improving the demographic situation. In the judgments examined herein, the CJEU found that such Member State benefits were 'incompatible with EU law'. Second, we turned to examining the CJEU case law on family status and the related Member State subsidies. It can be ascertained that the CJEU achieved significant legal development in this area, holding that Member States must consider the requirements set by EU law in many fields, even though they fall within Member State competence.

Regarding the implementation of pension scheme subsidies aimed at improving the demographic situation, the following conclusions can be drawn. In the present state of development of EU law, primary and secondary EU Acts prohibiting the different treatment of men and women do not allow Member State legislature to recognise the practice, based on social realities, that, in general, women spend more time on child-rearing than men, which also affects their pension. Although the relevant Acts of EU law allow for the introduction of maternal benefits, they are strictly limited to childbirth and the weeks following it.

In light of the existing case law, it is also not possible to acknowledge the demographic contribution of women through pension schemes. The relevant Acts of EU law allow Member States to provide compensation to a disadvantaged group despite the provisions prohibiting the different treatment of men and women. Nevertheless, the case law precluded such compensation in the case of women who have three or more children, even if the given Member State presented detailed statistical data to support the fact that the pension provided to women raising three or more children was significantly less than that of the rest of the population, leading to social disadvantages.

However, even if, in order to prevent these problems, the Member State legislature chooses the seemingly obvious solution of avoiding direct discrimination in the provision of such benefits on the grounds of sex, it is not certain that these measures will not be precluded by EU law: in the judgment in the Leone case analysed above, the CJEU found that the concerned measure – though apparently neutral in terms of sex – introduced indirect discrimination on the grounds of sex as the benefit was used in greater proportion by women. In addition, in the judgment in the Leone case, further – at first sight not very logical – criticism was formulated against the national legislation, which resulted from specific control criteria developed in relation to EU law. The subject of such criticism was that the benefit introduced by the national legislature also applied to adopted children and those who were born before the women concerned entered the job market.

The social reality – mentioned in the judgment in the *Griesmar* case – is that women spend more time on child-rearing than men, giving rise to the phenomenon known as a 'double penalty' mentioned in the case law, meaning that women not only incur disadvantages in their career but will also receive less pension. If this reality continues and the EU law continues not to allow Member State legislature to address this problem, then a significant number of women may be discouraged from having children. This finding does not require extensive support: a national family policy promoting incentives related to demography can only lead to the expected positive impacts if the relevant legislation exists in the long term and those concerned can rely on the benefits specified in the national measure. Thus, it is crucial that such Member State measures are in line with EU law.

Second, while family status and the related state subsidies fall within the scope of Member State competence – which is also recognised in the case law – as in other areas, the Member States must take EU law into account here as well. Contrary to the above group of cases, this case law requires that same-sex couples and life partners, as well as persons who have undergone gender reassignment, can also use the subsidies and benefits specified by the Member State's legislature. In my view, in this second group of cases, the examined case law of the CJEU does not hinder the introduction and maintenance of a family policy promoting incentives related to demography. However, the case law examined in the first group of cases may, in fact, be a major obstacle to such family policy.

It must be stressed that not only regulations similar to the national measures examined in the judgments of the CJEU may be hindered by the existing case law: if the objective to improve the demographic situation still fails to 'prevail' in the system of EU law, regulation derogating from the measures examined in the existing case law may also be 'filtered out' by the CJEU. EU law may likely preclude family policy measures promoting demographic incentives that derogate from those examined in the analysed judgments, based on the developed *ratio decidendi*. No arguments can be put forward as to why the EU provisions described above should not be applied to other areas falling within the competence of the Member States, although demography-related objectives are not even recognised as a public interest in the CJEU case law.

In that regard, we may consider programmes and subsidies aimed at promoting childbearing in the case of childless couples or at alleviating the financial obstacles of raising children, where the legislature typically introduces conditions based on age. Such conditions may easily be precluded by EU law provisions prohibiting discrimination on the grounds of age or by the case law based upon them. The fact that a national regulation similar to the above has been in force for decades without any conflict with EU law proves nothing but that the European Commission has not yet initiated infringement proceedings against the Member State regulation concerned, and that this regulation has not yet been 'examined' by the CJEU 'with the help' of the preliminary ruling procedure.

The case law of the CJEU in this area allows the Member States significantly more room for manoeuvre than in their internal market rules; however, given the very specific nature of this control mechanism, in the vast majority of cases, it is difficult for the legislature to follow,[101] which can be a source of considerable legal uncertainty.[102] As an illustrative example in this regard, let us look at a CJEU judgment in relation to the Federal Republic of Germany.[103] According to this judgment, the EU provisions prohibiting discrimination based on age precluded the examined national system of promotions and salary increases for judges and civil servants partly based on age. The complications that followed the CJEU's judgment point to the difficulties that arise in understanding and applying the case law developed in the field of discrimination on the grounds of age. The organs of the concerned Member State applied different interpretations as to which categories of civil servants are covered by the CJEU's judgment. A significant number of the concerned judges and civil servants could not assert their rights arising from EU law due to the various interpretations, which in some cases, led to the violation of EU law. These problems

101 Clearly, the CJEU has the monopoly on the authentic interpretation of the EU law; thus, both EU and national bodies must follow its interpretation.

102 Obviously, in that regard, it is not the principle of legal certainty established by the case law of the CJEU that is to be considered, but a practical reality – a significant reduction in the discretion for regulation conferred on Member States – that must be reckoned with.

103 Judgment of the CJEU, C-773/18

were only resolved after more than 10 years[104] with the 'help' of a new ruling of the CJEU.

I consider two possible solutions[105] to the problems described above.[106] According to the first proposal, the secondary,[107] and possibly primary, EU legal Acts cited in the case law should be amended in such a way that they do not affect the family allowances introduced by the Member States to promote incentives related to demography. In this regard, the conceivable solutions are the amendment of the primary law, on the one hand, and, possibly, of the secondary legal Acts, on the other. Art. 141(4) EC could be supplemented by an acknowledgement that the principle of equal treatment does not prevent Member States from maintaining or adopting measures that provide certain advantages for the underrepresented sex, aimed at preventing or compensating the disadvantages they face in their professional advancement in connection with child-rearing.

Article 7(1)(b) of Directive 79/7 states that this Directive is without prejudice to the Member States' right to exclude from its scope, *inter alia*, the advantages of old-age pension schemes granted to persons who have brought up children and the acquisition of benefit entitlement following periods of interruption of employment for child-rearing.[108] For demographic subsidies related to pensions to be in line with EU law, this provision should include only that Member States can provide benefits to persons who bring up children. The provision prescribing the requirement of the interruption of employment for child-rearing should be removed from the text of the Directive.

It should be stressed that this amendment would not mean a shift towards some kind of 'compulsory childbearing', or that there should be discrimination against the

104 As mentioned above, the CJEU has the monopoly on the authentic interpretation of the EU law, which is to be respected by all EU and Member State bodies and upon which the integration held together by law is based. However, the interpretation problems caused in practice cannot be overlooked.

105 Noteworthily, some of the proposals recommend the possible restriction of Union citizenship and the free movement of workers in the case of a health emergency.

106 According to Henri Oberdorf, EU law should be intelligent, that is, it must properly implement public interest. Oberdorf, 2013, pp. 32–33. It is hard to find rational arguments as to why a family policy properly promoting demographic incentives should not be considered as public interest.

107 According to Claude Blumann, in the development of the integration, the importance of the legislature's role kept increasing, although most of the legal literature sees the regulations and directives as Acts of the executive. Blumann, 2011, p. 31.
In the case law of recent years, secondary EU legal Acts are playing an increasingly important role in comparison to the provisions of primary legal Acts, an example of which is the CJEU's judgment in the KOB Sia case (C-206/19). This judgment clearly supports the process described by Blumann, that is, the increase in the importance of secondary EU legal Acts compared to primary legal provisions. This process can certainly facilitate the implementation of demography-related objectives in the framework of EU law.

108 In paragraphs 61–62 of its judgment, rendered in the Instituto Nacional de la Seguridad Social case, the CJEU pointed out that the national regulations in question did not make the awarding of the pension supplement dependent on periods of interruption of employment to raise children, but only on the fact that women recipients have had at least two biological or adopted children and receive a contributory retirement, widow's pension, or permanent incapacity pension.

childless. Rather, the proposed change would allow Member States to provide subsidies that could at least partially compensate for the costs of raising children[109] and would also give couples who would not be able to do so in the absence of such help the opportunity to have children.

If amending the EU rules is not possible, proposals could be made – especially taking the practice of the Central European Member States into account – to change the case law of the CJEU[110] and harmonise the EU objectives formulated in the CJEU judgments examined in this chapter with Member State objectives aimed at promoting demographic incentives. The proposal to amend the case law can basically be approached from two directions. On the one hand, in the scope of discrimination on the grounds of sex, Member State subsidies related to child-rearing should be accepted as a goal of public interest if they provide a certain level of financial compensation for a group disadvantaged in that regard. On the other hand, it should be examined what the consequences would be for the objectives pursued by the secondary EU legal Acts applied in the judgments analysed in this chapter if the case law were modified in such a way that demographic objectives could be included in its framework. In this regard, a broader interpretation of the special relationship between the mother and the child should be considered in the case law, which would enable mothers to be supported not only in the weeks before and after childbirth. Another aspect to consider is that the case law should take into account the statistical evidence provided by Member States, which supports that parents or mothers raising more children receive a lower pension that does not reach the poverty threshold. A solution is also needed to another problem that emerged in the analysed judgments, namely, that if the Member State legislature makes the regulation neutral in terms of sex, then it should not be considered indirectly discriminatory in the case law if a certain group of people use the subsidies in question more often. In the field of discrimination on the grounds of age, further research is required to determine how the demographic measures adopted by Member States could fit within its frameworks. It would also

109 This is not possible in the existing legal environment.

110 In this regard, a difficulty may be posed by the fact that the permanent staff working at the Court of Justice of the European Union submit draft judgments to the judge, in which the previous case law is indicated in each case. Clément-Wilz, 2019, pp. 49–50.
It is beyond dispute that the above may make it difficult to change the relevant case law of the CJEU. Nevertheless, this possibility does not seem completely 'hopeless' because there is an example – despite the above – of changing the case law of the CJEU that has been consistently applied for decades. The judgment in the KOB Sia (C-206/19) case can also be cited in that regard: instead of the primary provisions covering the free movement of capital, the provisions on the freedom of establishment and the service directive were applied in the case of the purchase of agricultural land.
At the same time, Chloé Bertrand's statement can help the realisation of the option I propose: according to her viewpoint, the advocate generals of the CJEU do not want to make moral issues part of the legal disputes in most cases, namely, in the field of abortions. Bertrand, 2015, pp. 86–87. The question of whether it is possible to recognise the social reality that women take on a greater role in child-rearing through some form of support introduced by the Member States can also be considered a moral issue, which should, therefore, be decided at the level of the Member States.

be apt to submit questions for written answer to the European Commission regarding how Member States' demographic objectives can be enforced, taking into account the current regulatory environment and the case law discussed herein. Depending on the Commission's answers to the submitted questions, a related interpretative communication could also be requested. Although such a communication does not have binding force – as the CJEU has the monopoly on authentic interpretation in this field – it could, however, help in solving the problems raised in this chapter. In this latter case, extensive academic cooperation, especially among the Central European Member States, as well as professional-level research will be necessary.

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Part III

FAMILY LAW INSTRUMENTS TO SUPPORT FAMILIES, PARENTS, AND CHILDREN

Chapter 11

Croatia: Demographic Policy and Family Law Combatting Demographic Decline

Aleksandra Korać Graovac

Abstract

This chapter focuses on family policy in Croatia, reviewing demographic data, the institutional framework for family policy, family support benefits (including the country's generous maternity and paternity leave), child allowances, and baby bonus for the third and fourth child. The chapter explains state allowances and local (self-government) supported family allowances. Generational policy, tax and contribution benefits, family and work allowances, family-friendly provisions in the pension system (an additional 6-month period for each child), and the social security institutions supporting families are also reviewed within the family policy framework. In addition, the chapter discusses the advantages and disadvantages of the real estate tax for housing in areas of special state concern and the subsidisation of housing loans for families. Criticism of the fact that expenditures for social policy in Croatia are among the lowest in the European Union is also presented.

Though it does not significantly or directly influence demography, family law is extremely important owing to the system of principles and the values that these principles reflect. In the context of family policy, this chapter describes the principles of family law, family law regulation concerning property rights between family members (the concept of the family home, rules for the division of family property, representation of the child in property matters, etc.). It also introduces the legal norms that regulate establishing the origin of the child, as well as the rights and duties related to maintenance among relatives that offer financial security to family members based on the principle of family solidarity. Given that every 20th child in Croatia is born through medically assisted reproduction, this procedure influences

Aleksandra Korać Graovac (2024) 'Croatia: Demographic Policy and Family Law Combatting Demographic Decline'. In: Tímea Barzó (ed.) *Demographic Challenges in Central Europe. Legal and Family Policy Response,* pp. 331–374. Miskolc–Budapest, Central European Academic Publishing.

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the fertility rate to some extent. Consequently, the Croatian state provides generous support for reproductive health.

Keywords: Family policy, family allowance, child allowance, matrimonial property, family law, medically assisted reproduction, assisted reproductive technology

1. Introduction

Europe is experiencing worrying demographic changes. Croatia is no exception to this issue, with a fertility rate of 1.4 births per woman in 2024. This is a critical topic in the pre-election programmes of each successive government, which are full of promises to address negative demographic trends. When concrete programmes must be drafted, there are often many delays, obstacles, and compromises, with 'more important' values and expenditures taking precedence. The political problem is that pro-natal policies are long-term; thus, the effects are delayed and visible only years after persistent implementation.

As a natural unit of society, the family is the cradle of future generations. By supporting families, states ensure stable development and the continuity of social values. Social values are the guarantee for the democratic social development of every country and allow the survival of the nation.

This chapter presents key demographic data, the institutional framework of family policy, the most important family support benefits and policies, and the family law instruments that support families, parents, and children in Croatia. Family law can provide families with a predictable and acceptable legal framework. It helps family members feel safer and more satisfied and encourages them to have more children. In this chapter, the role of family law is presented through these lenses.

Medically assisted reproduction (MAR) contributes to 5% of new births and is a significant help for infertile couples. However, the procedure raises ethical concerns and must be regulated to preserve human dignity from the beginning of a child's life.

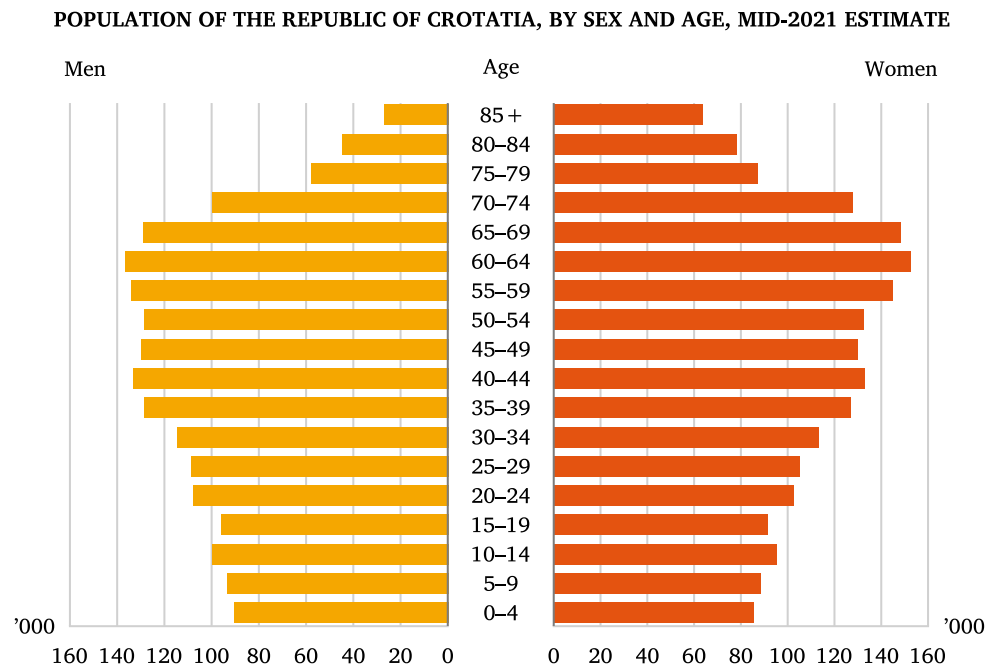
2. Demographic data and family policies

2.1. Demographic data

Croatia's population has declined by 9.64% since 2011. According to the latest census, the permanent population in Croatia reached 3.87 million inhabitants in 2021, including 1,865,129 (48.17%) men and 2,006,704 (51.83%) women. Among

them, 14.27% were aged 0–14, and 22.45% were aged 65 and over, as shown in the below chart.[1]

Table 1. Population of the Republic of Croatia[2]



The share of young people in Croatia's population increased in 2022. However, the country has one of the highest shares of people aged 65 or older in the European Union (EU). [3] According to UN population projections, by 2030, one-quarter of Croatians will be older than 64. If current demographic trends continue, the population of Croatia will have decreased to well below 4 million people by 2030. As such, the number of people above 65 years old is predicted to be around 1 million, representing a significant increase (around 250,000) from 2013. Within this group, more than 250,000 will be within the oldest-old category (aged 80+).[4] Currently, 99.24% of the population are citizens, and 0.74% are foreign citizens.[5]

1 Croatian Bureau of Statistics, 2021.
2 Source: Croatian Bureau of Statistics, 2022a.
3 Eurostat, date extracted in February 2024.
4 Vlada Republike Hrvatske, 2021, p. 10.
5 Croatian Bureau of Statistics, 2021.

In 2022, the live birth rate in the Republic of Croatia was 8.8 live births per 1,000 inhabitants. In the same year, *the natural increase rate* was negative at -6.0 (-23,096 persons). The vital index (live births per 100 deaths) also confirmed a negative natural increase, reaching 59.5. A negative natural increase rate was recorded in all counties. A positive natural increase was recorded in 24 towns/municipalities, a negative increase was recorded in 527 towns/municipalities and the City of Zagreb, and a zero natural increase was reported in four municipalities.[6] The contemporary demographic picture in Croatia is characterised by three processes: ageing, natural depopulation, and the spatial polarisation of the population.[7] The fertility rate is 1.4 children per woman.

2.2. Institutional framework for family policy

Family policy has traditionally been based on constitutional provisions, namely, Art. 57, para. 2, which states, 'Rights in connection with childbirth, maternity and childcare shall be regulated by law'; Art. 62, which reads, 'The family is under the special protection of the state'; and Art. 65, para. 1, which stipulates, 'The duty of all is to protect children and the infirm'.[8]

The last time explicit family policy was implemented was in 2003. Since April 2022, Croatia has been preparing the Strategy for Demographic Revitalisation of Croatia by 2031.[9] Further, one of the goals of the National Development Strategy 2030 is strengthening the family unit.[10]

Numerous laws and regulations regulate different aspects of family policy in Croatia, where family policy overlaps with social policy. Family policies are applied by the central government and self-government and local units. At the central level, the following ministries are the main institutions responsible for the implementation of social protection (including family policy): the Ministry of Social Policy and Youth, Ministry of Labour and Pension System, Ministry of Finance, Ministry of Health, and Ministry of Defence (the last two focus more on social protection). Some central government bodies dealing with social protection have several user groups (functions) within their scope. For example, the Ministry of Social Policy and

6 Croatian Bureau of Statistics, 2022b.

7 The birth rate has been falling consistently since the 1950s, whereas the death rate has been rising since the 1970s. On Croatian initiative, the question of demographic revitalisation was included in the EU's strategic agenda for 2019–2024. Croatian Dubravka Šuica, the European Commissioner for Democracy and Demography, began her five-year mandate as Vice-President of the European Commission for Democracy and Demography in 2019. Croatia.eu – Land and People: Demography.

8 The Constitution of the Republic of Croatia, Official Gazette, Nos. 56/90, 135/97, 8/98, 13/00, 124/00, 28/01, 41/01, 76/10, 85/10, 5/14.

9 See: https://demografijaimladi.gov.hr/UserDocsImages//Fotografije/Fotografije%202Novi%20direktorij//Odluka%20o%20pokretanju%20postupka%20izrade%20Strategije%20demografske%20revitalizacije%20Republike%20Hrvatske%20do%202031.%20godine.pdf (Accessed: 27 August 2023).

10 Croatia National Development Strategy 2030, pp. 88–94.

Youth implements policies relating to disability, family and children, housing, social exclusion, and education.[11]

Local and regional self-government are competent institutions for social care, and the planning and development of a social institution network is explicitly highlighted as a function of social security.[12] A problem is that there are huge differences in the economic development of different municipalities; therefore, the central government financially supports different projects.

Within their spheres of competence, municipalities and towns perform activities of local importance that directly address citizens' needs and which are not constitutionally or legally assigned to government bodies. In particular, these activities relate to childcare, social care, basic education, and other duties that are not relevant to this chapter.[13] The Central State Office for Demography and Youth publishes an overview of all the demographic measures and activities undertaken by local units in Croatia.[14]

2.3. Family support benefits

Croatia offers maternity and parental benefits, with the benefits system prescribing the rights of parents and persons of equal status to time off and monetary awards. These rights can be exercised only by individuals with valid mandatory health insurance, as regulated by the Croatian Health Insurance Fund.[15] The beneficiaries of maternal and parental benefits are employed and self-employed parents, unemployed parents, 'other income' earners and farmers, parents outside the labour system (i.e. retirees, beneficiaries of the right to occupational rehabilitation, beneficiaries of the right to a disability pension due to occupational inability to work, persons unable to work, regular students and pupils), and all other persons insured with the Croatian Health Insurance Fund who cannot exercise their right as employed or self-employed parents or unemployed parents.

Employed and self-employed parents are entitled to maternity leave; parental leave; part-time work; part-time work if the child requires additional care due to health reasons; breaks for breastfeeding; leave for employees who are pregnant, have given birth, or are breastfeeding; days off for prenatal check-ups; and leave or part-time work to care for a child with severe developmental disabilities. Employed parents are also entitled to the suspension of employment until the child turns three. Entitlement to maternity and parental assistance is the same for adoptive parents, caregivers of a minor child, and foster parents as it is for the parents (married or cohabitating) of a child. Foreign nationals with permanent residence in Croatia,

11 Family Policies, 2019, p. 18.
12 Ibid.
13 Art. 19, *Law on regional and local self-government* (Official Gazette, 144/20).
14 Ministarstvo demografije i useljeništva, n.d.
15 e-Citizens, n.d.

asylum grantees, and persons under subsidiary protection have the same rights as Croatian nationals.[16]

Maternity leave can be used until the child turns 6 months; parental leave can be used thereafter. Employed and self-employed pregnant women must take maternity leave 28 days before the expected date of birth and may take it no earlier than 45 days before this date. The mandatory part of maternity leave covers the period between 28 days before the expected birth date and 70 days after the birth (a total of 98 days without interruptions). Additional maternity leave covers the period after the expiry of the mandatory part of maternity leave (from the 71st day after the child's birth) until the baby turns 6 months old. While on maternity leave, the beneficiary is entitled to compensation equal to 100% of the salary compensation base determined pursuant to the regulations on mandatory health insurance (unlimited).

Employed and self-employed fathers may take paternity leave from the date of birth until the baby is 6 months old, with the length of this leave dependent on the number of children born (10 business days for one child and 15 business days for twins, triplets, or multiple births). Employed and self-employed fathers may use this right without interruptions if they are not exercising a right provided for in the maternity and parental benefits system for the same child. The father may exercise this right regardless of the mother's employment, legal status, and whether she is taking parental leave. However, this right is non-transferable and may only be exercised by the employed or self-employed father of the child. During the exercise of the right to paternity leave, the salary compensation is equal to 100% of the salary compensation base and is paid out from the state budget.

An employed or self-employed parent has the right to parental leave after the child is 6 months old up until the child turns eight. The right to parental leave is a personal right of both employed or self-employed parents, which they may exercise for 8 months (for the first and second child) or 30 months (for twins, a third child, and each subsequent child). Typically, both parents take parental leave, each for 4 or 15 months (depending on the number of children). However, if only one parent uses the right to parental leave on an agreed basis, this parent may take parental leave for 6 or 28 months (each parent reserves the right to 2 months of parental leave, which may not be transferred to the other parent).

Employed or self-employed parents may take parental leave in its entirety or separate parts no more than twice a year and with a duration of at least 30 days per period. The number of children born on which the duration of the right to parental leave is dependent includes stillborn and deceased children; adopted children; underage children placed in the care of a beneficiary of this right as their foster parent who provides these underage children with accommodation; and children placed in the day-to-day care of a beneficiary of this right by the competent authority.

Unemployed parents, other income earners, and farmers are entitled to maternity and parental exemption from work. The mother must use the maternity exemption

16 Ibid.

from work from birth until the child is 70 days old and may use it, without interruptions, until the child turns 6 months of age.

Once the right to maternity exemption from work expires, the beneficiary is entitled to parental exemption from work until the first year of the child's life for the first and second child, and until the third year of the child's life for twins, a third child, and each subsequent child. While exercising their right to maternity and parental exemption from work, beneficiaries are entitled to a cash benefit equal to 70% of the monthly budget base (around EUR 310).

Parents outside the labour system are also entitled to maternity and parental childcare. Maternity childcare comprises the period from birth until the child is 6 months old. Meanwhile, parental childcare covers the period from 6 months until the child turns 1 year of age for the first and second child, and until the third year of the child's life for twins, a third child, and each subsequent child. Mothers outside the labour system are entitled to a cash benefit equal to 70% of the budget base (approximately EUR 310) during maternity and parental childcare.

Employed or self-employed adoptive parents are entitled to take adoptive parent leave as of the day the adoption becomes legally valid. This leave may last for 6 months for children up to the age of 18. An additional 6 months of adoptive parent leave is granted for an adopted child under eight.[17]

Child allowance is a cash provision used by a parent or another person and is defined in the Child Allowance Act as support in raising and caring for children.[18] The right to child allowance may be granted to a parent, foster parent, guardian, stepparent, grandparent, or a person to whom a child is entrusted for custody and care based on the decision of a body competent for social welfare affairs.

Child allowance may also be granted to a parentless young adult child in regular schooling until they are 15 years of age (i.e. up to the end of the school year in which the child turns 15). Further, child allowance is granted to children up to the end of regular secondary education and no longer than the end of the school year in which the child turns 19. Exceptionally, child allowance may be granted for a child with a health disorder up to the completion of regular secondary education even after 19 years of age, but not later than 21 years of age. A child with severe disability, determined according to special regulations, is entitled to child allowance from the date of filing an application for the allowance, and this entitlement continues if such disability exists.

Child allowance is granted based on census, according to the average income per household member. There are three census groups upon which the amount of child allowance depends; however, there is a political promise to include more children by raising the census. As a child's right, universal child allowance is opposed by

17 e-Citizens, n.d.a.

18 *Zakon o doplatku za djecu* (Child Allowance Act, Official Gazette Nos. *94/01, 138/06, 107/07, 37/08, 61/11, 112/12, 82/15, 58/18).*

governmental policy and seen as a burden on the state, indicating that the state budget is considered more important than the rights of the child.

In addition to child allowance, the Croatian Pension Insurance Institute also grants beneficiaries a baby bonus of EUR 66.36 for the third and fourth child. This means that EUR 66.36 a month is added to the total amount of child allowance granted to the beneficiary, pursuant to a decision if the beneficiary is using child allowance for three children; that is, EUR 132.72 a month is added to the total amount if the beneficiary is using child allowance for three or more children.[19]

The Croatian Health Insurance Fund gives one-time allowances of EUR 310 for the birth of a child. All persons who have health insurance and meet the prescribed requirements are entitled to this bonus.[20] Many local and self-government units also offer allowances for the birth of a child. The highest amount provided for the birth of a third child is up to EUR 9,290, and for the birth of a fourth and fifth child is up to EUR 25,482, paid in instalments.[21]

2.4. Other tax and contribution benefits

Personal child tax allowance is a benefit provided in the Croatian income tax system whereby the tax base of a taxpayer with dependent children is lowered. All taxpayers who are resident in Croatia are entitled to a personal allowance; however taxpayers who support a spouse, children, and other family members, can, in addition to the basic personal allowance, also deduct the personal allowance for supported family members from their own taxable income.

The tax reduction for a dependent child is obtained by multiplying the coefficient for dependent children with the amount of the 'personal allowance base'. The amounts of the child tax allowance increase progressively with each subsequent child. The child's parents may divide the total amount of the child's tax allowance and, thereby, may both lower their tax base. In this case, the amount of savings will depend on both parents' income level. The child tax allowance may be used by taxpayers with dependent children who have income from employment (salaries and pensions), income from self-employment (artisans, free occupations), and certain forms of other income. These types of income are included in the annual tax calculation.[22]

The larger share of tax relief applies to children and family, followed by pensioners and older adults. If education is added to the family/children tax relief allowances, the share of expenditures on children and families, distributed through tax exemptions, amounts to approximately 63% of Croatia's total tax expenditures.[23]

19 e-Citizens, n.d.
20 e-Citizens, n.d.a.
21 Ministarstvo demografije i useljeništva, n.d.a.
22 Vlada Republike Hrvatske, 2021, pp. 6–7.
23 Ministry of Social Policy and Youth of the Republic of Croatia, 2016, p. 86.

2.5. Home creation

First houses and housing in areas of special state concern are exempt from real estate tax.[24] Housing loans are subsidised in a housing care programme through which the state contributes to the repayment of a portion of a housing loan for the purchase of an apartment or a house or for the construction of a house for up to five years. The subsidy period shall be extended by two additional years for each child born for the duration of the subsidy. The subsidy shall also be extended by an additional year for each child the loan applicant has at the time of application, and by one year if the applicant or a member of his or her household has an established disability exceeding 50%.

Housing loan subsidies aim to stimulate the demographic reconstruction of society and the urban regeneration of settlements, reduce the number of young people leaving the Republic of Croatia, support less developed towns and municipalities by providing them with larger subsidies, and subsidise births, juvenile children, and persons with disabilities. In this way, housing issues are addressed by creating loan conditions that are significantly more favourable than general conditions in the housing market.

The amount of the subsidy depends on the development index of the location where the real estate is purchased or built, ranging from 30 to 51% of the loan instalment. The highest subsidies are granted to those who intend to buy an apartment or house or build a house in the least developed areas, whereas 30% of the monthly loan instalment is granted to those who have decided to buy or build real estate in urban centres such as Zagreb.[25] Nevertheless, critics have claimed that such subsidisation has a negative influence as the sudden demand for housing properties disturbs the real estate market, pushing up its prices.

2.6. Family and work allowances

Local and self-government units finance day care services for preschool children, meaning that there is tremendous diversity in these provisions. Day care institutions (nursery and kindergarten) founded by local and regional governments charge parents for their services, in accordance with the criteria stipulated by the representative body of the government unit. The exception is the one-year school preparation programme, which is free of charge. However, Zagreb has an insufficient number of kindergartens, as 3,180 out of 12,260 children could not be enrolled in 2023. In addition, many self-government and local units sadly cannot finance a single kindergarten. In October 2022, it was announced that the state would increase kindergarten services for an additional 17,000 children, so that 90% of preschool children could be enrolled.[26]

24 Ministry of Social Policy and Youth of the Republic of Croatia, 2016, p. 84.
25 Ministry of Physical Planning, Construction and State Assets, n.d.
26 Government of the Republic of Croatia, 2022.

During the first 12 months after a child's birth, mothers who are employed full-time and are breastfeeding are entitled to a 2-hour absence from work (once a day for 2 hours or two times a day for 1 hour), paid at 100% of the calculation base, recalculated to the hourly rate. After parental leave, one employed/self-employed parent has the right to work shorter hours until their child turns three if the child requires more care due to its health and development, but only if parental leave was used in full. This is paid at 50% of the calculation base (recalculated to the hourly rate and only for the hours outside work). Employed or self-employed parents of a child with a serious developmental disorder, including physical disability, can take leave to care for the child or work shorter hours until the child is 8 years old. If an employed pregnant woman or a mother breastfeeding her child has a job that is harmful to her health or the health of the child she is breastfeeding, and if the employer has not provided another position for her within the company, she has the right to leave with full salary, paid by the employer. Nevertheless, NGOs that work to protect parents' rights constantly note that compensation for parents who care for children with disabilities is insufficient for their needs.[27]

2.7. Generational policy

Croatia's government provides income tax relief for specific age groups (people younger than 30 years). A small number of benefits are provided for older adults, although these benefits have the highest total amount. The highest is the old-age pension, which is provided in addition to a protective pension supplement, the minimum pension for war veterans and their family members, care for older adults and people with disabilities, and home care services for older adults. Family and intergenerational solidarity play an important role in Croatian society, although the modern lifestyle and everyday pressure have eroded the mutual daily companionship of different generations.

Since 2021, the National Benefit for the Elderly is granted to a Croatian citizen who, immediately before applying for the benefit, has reached the age of 65 and resided in the territory of the Republic of Croatia for 20 years without interruption. An applicant must, in principle, comply with the following conditions: a) he is not a pension beneficiary or an insured person covered by the mandatory pension insurance; b) his monthly income or the income earned by each of his or her household members in the previous calendar year does not exceed the determined amount of the National Benefit for the Elderly; c) he is not entitled to the Guaranteed Minimum Benefit according to the regulations on social welfare; d) he is not entitled to an accommodation service according to the regulations on social welfare, and e) he has not concluded a Contract of Support Until Death or a Lifelong Support Contract in the capacity of a supported person.

27 Hina, 2022.

Unfortunately, the National Benefit has not fulfilled its goal, as half of the eligible individuals are not using it because, for example, they are already in receipt of the Guaranteed Minimum Benefit, they are homeless, they do not have an insurance number or bank account, or they are not aware of the existence of this benefit. The conditions to use the National Benefit will weaken in 2024, and the National Benefit will be increased to EUR 150.[28]

2.8. Family-friendly provisions in the pension system

There is a credited period for parents in the Croatian pension system**.** For a mother or adoptive mother who acquires her pension right, the total qualifying period is calculated by crediting an additional 6-month period to the actual qualifying period for each child born or adopted (in order to determine the pension amount, rather than eligibility). For a mother or adoptive mother entitled to a basic pension from the mandatory pension insurance of generational solidarity, a 6-month period is credited for each child born or adopted. This 6-month period is credited to the part of the pension acquired under the qualifying period completed before or after the introduction of the mandatory pension insurance based on capitalised savings, depending on the period in which the predominant qualifying period was completed.

Exceptionally, if instead of the mother or adoptive mother, the father or adoptive father of the child uses the additional post-natal leave according to the regulations on maternity and parental benefits, he will be credited an additional 6-month period when exercising his pension right, provided the father was the parent who used the predominant part of the additional post-natal leave. A parent will not be entitled to the additional qualifying period if his or her right to parental care was terminated.[29]

Various types of compensation are also available for surviving dependents, including the family pension, one-time financial help, family disability support benefits, increased family disability support benefit, family disability support benefit compensation for family members of the detained and the missing, compensation to the amount of the family pension for families of the detained and the missing, and the family pension for family members of war veterans.

2.9. Social security institutions supporting families

Social security systems generally include social insurance (or social security), social assistance and categorical benefits, and a system of social services that are available to citizens and are often country-specific.[30] Comparing the level of spending on social protection in Croatia with that of other European countries, it is clear that

28 In June 2023, there were 6,786 beneficiaries of the National Benefit (65.54% female and 35.46% male). HZMO, 2023.

29 HZMO, n.d.

30 Ministry of Social Policy and Youth of the Republic of Croatia, 2016, p. 2.

at 21.1% of GDP, Croatia spends significantly less on social protection than the EU average.[31] Accordingly, the country's public investment in families remains low by European standards: Croatia is among the European countries that spend the least on family policies. Central government expenditure on social protection accounts for about 69% of all social expenditures in Croatia.[32]

Other types of compensation offered through social protection programmes for families, children, and youth in Croatia include compensation for transportation costs; free primary healthcare for all minor children; home care services for older adults; compensation for the social exclusion function (care for children without parental care, care for children, temporary child support right); compensation for elementary and high school pupils, such as the co-financing of transportation, accommodation, and textbooks; compensation for students in the form of co-financing the compensation for regular studies; and national subsidies for students' transportation, accommodation, meals, and textbooks. [33]

The Government of the Republic of Croatia works with the NGO sector. It launches an annual tender plan for public services and other programmes to finance the projects of civil society organisations in the field of social services and other fields from the state budget.[34]

3. Family law instruments to support families, parents, and children

3.1. The importance of family law principles

Family law principles are indicators of the value system upon which family law regulations of a country are based. These principles provide value guidelines for competent authorities and citizens. When family law values are further elaborated in family law provisions, they offer legal certainty to family members and, thereby, reduce uncertainty when there is a need to solve conflicts of interest during the existence of a family union or after its dissolution.

According to Art. 61, para. 1 of the Constitution of the Republic of Croatia, the family shall enjoy the special protection of the state. The effects of an informal extramarital union are equalised to those of marriage,[35] and same-sex partners

31 Ministry of Social Policy and Youth of the Republic of Croatia, 2016, p. 3.
32 Ministry of Social Policy and Youth of the Republic of Croatia, 2016, pp. 69–70.
33 Ministry of Social Policy and Youth of the Republic of Croatia, 2016, pp. 30–39.
34 Ibid., p. 104.
35 *Ustav Republike Hrvatske*, Constitution of the Republic of Croatia, Official Gazette Nos. 56/90, 135/97, 8/98, 13/00, 124/00, 28/01, 41/01, 76/10, 85/10, 5/14.

living in a registered or informal union also enjoy the legal recognition of their family life.[36] In any references to spouses in this chapter, all rights and duties belonging to them also belong to extramarital and same-sex partners, unless otherwise stated.

The principle of the equality of women and men (Art. 3 of the Family Act[37]) is consistently applied throughout the current regulations (e.g. both the mother and father of a child born out of wedlock have the right to maintenance for up to a year from the day the child was born if the child lives with either of them). In any family law agreement, there is a presumption that the parties are equal, although this may not always be true. In most cases, the court confirms the parents' agreement on parental care,[38] including a maintenance agreement; however, the agreement itself does not always reflect the will of equal partners. For instance, the man may be willing to pay higher alimony to be able to have frequent contact with the child, or a wife may agree to lower alimony payments for the child or to an unjust dissolution of matrimonial property if she is afraid of a violent ex-husband. This kind of inequality may easily remain concealed if the court does not receive direct evidence in the form of statements from the involved parties (sometimes, the parties choose to be represented by their counsellors during court proceedings and do not approach the court themselves). Data on domestic violence suggests that equality is not maintained in this area because women are more frequently victims of domestic violence.[39] On the other hand, there are no 'safe houses' for men, although older male adults are also often victims of domestic violence. There are frequent complaints about the inequality between parents following the termination of the family unit, and fathers often cite discrimination when it comes to exercising their right to parental care.

The primacy of the best interests of the child has been consistently implemented at the normative level in family law and in many other branches of law. However, there are still numerous violations because of inappropriate interpretations of the law or issues with the functioning of the system (e.g. disputes related to inappropriate

36 *Amplius* Korać Graovac, 2021.

37 Family Act (*Obiteljski zakon*), Official Gazette Nos. 103/15, 98/19, 47/20, 49/23.

38 Parental responsibility, comprising the rights and duties of parents, is called '*roditeljska skrb*' (parental care) in Croatian family law. As such, this terminology is used within this chapter. Korać Graovac, 2022.

39 In the City of Zagreb, the number of victims of the criminal offence of domestic violence increased by 12% in 2021 compared to 2020. In total, 79% of these victims were women. 'In 2021, a total of 30 persons were killed in the Republic of Croatia, and 14 of them were women.... Femicide, i.e. hate crime committed against women, motivated by the victim's gender, is particularly frequent and it reveals a very high rate of gender inequality in the Croatian society and inadequate response by the institutions'. The Zagreb strategy for combating domestic violence for the period from 2023 to 2025 (*Zagrebačka strategija zaštite od nasilja u obitelji za razdoblje od 2023. do 2025.*) [Online]. Available at: https://www1.zagreb.hr/sluzbeni-glasnik/#/app/akt?id=1ac0cdc1-%203983-4f04-bac1-db9675cae7d1 (Accessed: 24 April 2023).

content broadcast on public television,[40] selling tobacco products and alcohol to minors).

The principle of fairness is not expressly emphasised in family law (except in connection with maintenance). This is unfortunate because doing so would interpret the regulations in the spirit of fairness in sensitive family relations, particularly when it comes to the protection of the weaker party, depending on the circumstances of the case.

Finally, the principle of family solidarity is one of the keystones of family law in Croatia. This principle reflects the irreplaceable value of family for an individual and the community.

3.2. Civil law provisions protecting the family and children

The Family Act lays down the particularities in the property law relations of family members. If an issue is not provided for in the family regulations, general civil law provisions apply in a subsidiary manner.

The concept of a family home is included in the Family Act in alignment with Recommendation No. R (81) 15 of the Committee of Ministers to all EU Member States on the rights of spouses relating to the occupation of the family home and the use of the household contents. The word 'home' has not only legal and economic meanings but also a psychological meaning for every family.[41] By positioning this provision among spouses' personal rights and duties, the legislator has regulated the right of dwelling in a family home as 'a new personal right and the duty of spouses'.[42] It is clear from the subsequent provisions that, in this sense, it deals with the rights of the child and not only those of parents.

Spouses determine, in agreement, the location of dwelling and the family house or apartment where they will dwell with the children over which they exercise their parental care. This dwelling is considered the family home for both the spouses and their children (Art. 32, para. 1 of the Family Act. This agreement is of an informal nature and is clarified by spouses' registration of their permanent residence at the same address. A family home may be the spouse's own property or the matrimonial property of both spouses. Restrictions on the disposal of a family home apply only to an immovable, that is, the spouses' matrimonial, property. During marriage, a spouse may not alienate or encumber their family home (where the other spouse and the children over which they exercise their parental care also live) without the written consent of the other party, whose signature must be verified by a notary public.

40 One of the most recent cases was the broadcast of the French cartoon series *Culottées* (Brazen). One episode of this series is dedicated to surgical sex reassignment and was shown on state television programming five times in one day. The Media Council found nothing controversial about the cartoon not being classified for only adult viewers. Hrstić, 2023.

41 Graham, Gosling and Travis, 2015.

42 Šimović, 2015.

The prohibition of the alienation or encumbrance of the family home covers only the share of the family home that is regarded as the common property of each spouse (one-half by law). Upon a request to review whether the Family Act was in conformity with the Constitution, the Constitutional Court of the Republic of Croatia decided that this Act interfered in ownership rights and the limitation of the right of ownership. The Court held that 'a legitimate objective of the disputed Article was the protection of a family home so that by making it impossible for a spouse to alienate or encumber their family home or flat, being their matrimonial property in the course of the marriage, without the other spouse's written consent, either in their entirety or its indivisible part, was proportionate to that objective'.[43] The Constitutional Court also noted that such prevention is of limited duration because it ceases to exist upon the termination of marriage or lasts until the spouses decide, in agreement or through the court, to dissolve their co-ownership of that particular immovable property; therefore, the Court concluded that this solution is not unconstitutional.

A leased immovable may also be a family home and a place of residence. Under Art. 4, para. 1 of the Lease of Flats Act,[44] a lease contract is, as a rule, signed by only one person. This person's spouse, child, parent, or a person who, by the law, the lessee is obliged to support, or a person who provides necessary care and assistance, may always also reside in the leased immovable. In this way, the lessee's closest family is protected. The leased immovable may also have the status of a family home if the conditions are fulfilled.

Under the family regulations, if one spouse is the lessee of a flat where both spouses reside with the children under their parental care, he or she may not cancel the lease contract alone. In this case, the lessee must secure written consent signed by the other spouse and certified by a notary, unless it is a tied accommodation arrangement, which is governed by separate rules (e.g. for the lease of a flat for a Member of Parliament). If the court finds that a spouse has denied consent, without a justified reason, to dispose of a family home (being a matrimonial property) or denied consent to cancel the lease contract, the court may, on the proposal of the other spouse, replace that consent by a court ruling. When assessing whether the proposal is justified, the court must consider the housing needs of both spouses and the children residing with them, as well as all the other circumstances of the case.[45] At the same time, the court must consider the child's best interests and the protection of the constitutional right of ownership.

After the breakdown of a marital union, the court may assign the right of dwelling in a family home, being a matrimonial property, in favour of one parent and their common minor children in their parental care[46] but only until the dissolution of the

43 Constitutional Court decision, U-I-3941/2015, decision and ruling, 18/04/2023 [Online]. Available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2023_05_49_830.html (Accessed: 6 May 2023).

44 Lease of Flats Act (*Zakon o najmu stanova*), Official Gazette Nos. 91/96, 48/98, 66/98, 22/06, 68/18, 105/20.

45 Art. 32, para. 4 of the Family Act.

46 Art. 46 of the Family Act.

parents' co-ownership of the immovable considered as their family home. When rendering its decision, the court must consider the principle of proportionality, protect the children's right to reside in the family home, and act justly towards the parent who will bear the burden of exercising the housing right. The court may reject the request for dwelling in a family home if the total income of the spouses cannot cover the costs of separate housing for the spouses and their children. Considering the circumstances of the case, the court may also order that the parent who stays with the children in their family home must pay rent and utilities to the other parent.

Such a solution places the protection of the child's rights before the right of ownership, which is very limited when it comes to the right to housing. The right to housing may last until the dissolution of the co-ownership of an immovable constituting a family home, until the age of majority of the child or until any change in the circumstances upon which the decision was rendered.[47] The valid legislation has attracted much criticism because of its insufficiently elaborated concept, particularly the fact that the legal position of the parent, whose ownership rights are limited, is not completely clear.[48]

When a dissolution of the matrimonial property takes place, the movables mostly used by minor children remain in the children's possession or in the possession of the parent with whom the children live.[49] In Croatian family law, there are no provisions regarding the costs and expenses for the care and maintenance of a minor child in the parents' property contracts upon total separation of property.

It is also important to highlight here the protection measure referred to in the Protection of Domestic Violence Act[50] regarding the removal of a violent spouse from a common household (Art. 17). This measure may be imposed on the person who commits domestic violence against a member of the family with whom he or she lives in the same apartment, house, or any other housing space of their common household if there is a danger that this behaviour will be repeated. The measure is imposed for not longer than two years. It has a similar function to the right to reside in a family home; however, it stipulates that the spouses' common minor children also live in the same union.

Parents manage a child's property depending on the legal basis of its acquisition. The main criteria for distinction are to establish whether any income or principal is involved and whether the child's property is the result of his or her own work or is acquired through some other legal basis (e.g. through inheritance, bestowal, etc.). In principle, property that does not stem from the child's work may only be used for his or her maintenance. Exceptionally, proceeds from this property can be used for the medical treatment of the child's parents or siblings unless they are required

47 Korać Graovac, 2021a, pp. 469–470.

48 On the criticism of the existing regulation, see: Šimović, 2016.

49 Art. 46, para. 2 of the Family Act.

50 Protection of Domestic Violence Act (*Zakon o zaštiti od nasilja u obitelji*), Official Gazette Nos. 70/17, 126/19, 84/21, 114/22.

for maintenance, medical care, or the child's education. These facts must be established by the court in proceedings that may be initiated by the child, the owner of the property involved, or a parent. Although parents are the first to provide for the child's maintenance, because of the principle of family solidarity, the income generated from property may also be used for the medical treatment of the child's closest family members.[51] The limitation of this purpose solely to medical treatment indicates an exceptional use of the child's property. In the proceedings for rendering a decision on allowing the income to be used for siblings or parents, the court must first obtain the opinion of the child whose income is planned to be used.[52]

The child's property may be alienated only if the parents themselves do not have sufficient funds for the child's maintenance, medical treatment, or education and cannot provide the necessary funds from any other sources.[53] This is in line with the requirement that parents must manage the child's property in the manner of good hosts.

For any representation of the child in connection with more valuable property, the parent involved must have the other parent's written consent and the court's approval.[54] The main drawback of these legislative solutions is that they cannot easily be controlled, primarily because parents may freely dispose of the child's income of up to the amount of EUR 1,300, according to the instructions given to the banks by the ministry competent for social welfare issues. When contracts deal with property exceeding EUR 6,622, a notarial deed is necessary.[55]

A parent may not dispose of a minor child's possible future property and may not impose any obligations in the future ensuing from such contracts (sporting, art, or similar activities). Before the conclusion of such contracts, it is also necessary to obtain written consent from the other parent who exercises parental care, as well as the court's permission. Obligations arising from such contracts may last only until the child comes of age. Minors younger than 15 (actors and actresses, sport persons, models, and others) may not manage property they acquire through work and when entering into work contracts, and in all other property matters, they must be represented by their legal representatives in accordance with the law.

Since one of the rights of the child is the right to education[56] and working at the same time makes this impossible, children's work is controlled by the competent authorities. A legal representative may authorise a minor older than 15 to enter into

51 Art. 97, paras. 1, 3, and 4 of the Family Act.
52 Art. 86, para. 2 of the Family Act.
53 Art. 97, para. 3 of the Family Act.
54 Korać Graovac 2023, pp. 61–62.
55 Art. 53/1/ 2. i st. 2. Notary Act (*Zakon o javnom bilježništvu*), Official Gazette Nos. 78/93, 29/94, 162/98, 16/07, 75/09, 120/16, 57/22.
56 Cf. Art. 32, para. 1 of the United Nations Convention on the Rights of the Child: 'States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development'.

a work contract, except if the minor still attends primary school. A minor acquires a limited civil capacity for the conclusion and termination of work contracts and for undertaking any legal activities regarding fulfilling the rights and obligations arising from such contracts or being connected with them.[57] If there is a dispute over the child's employment between the parents exercising parental rights, they must gain permission from a social welfare office. The same is required from the child's guardian.

Legal representatives may, on behalf of minors or against their will, always cancel any work contract or restrict the assigned power. Although this is not expressly laid down, we are of the opinion that minors could nevertheless ask the social welfare office (*Hrvatski zavod za socijalni rad*) to appoint a guardian for a particular case, who would then enter into contracts on their behalf instead of their legal representatives.

According to Art. 85 of the Family Act, a child who has reached the age of 15 and is earning money may independently dispose of his or her earnings if his or her maintenance is not jeopardised by this disposal. However, if the disposal causes a substantial impact on his or her personal and property rights, the child must obtain the consent of his or her legal representative.

3.3. Family law issues relating to the establishment of family status

As parents are the first to have rights and duties towards their children, establishing family status helps children know who is responsible for them. According to Art. 7 of the United Nations Convention on the Rights of the Child, every child has the right to know and be cared for by his or her parents. This right is also fulfilled under the Croatian family law in the proceedings for the establishment of the maternity and paternity of a child and in the cases of adoption.[58]

Paternity may be established by presumption (*pater est quem nuptiae demonstrant,* if the child was born in wedlock, or within 300 days after the termination of marriage, Art. 61, para. 2 of the Family Act), by acknowledging paternity, or by a court decision.[59] The establishment of paternity allows the child to enjoy parental care by both parents and not only by the mother. In principle, both parents exercising parental care guarantees better protection of the child's welfare through joint care and maintenance.

In the case of a conflict regarding paternity, if within 300 days after the termination of marriage through the death of the child's mother who had entered into a subsequent marriage, the husband from the last marriage will be regarded as the child's father (Art. 61, para. 2 of the Family Act). This rule does not apply if a

57 Art. 18, para. 1 of the Labour Act (*Zakon o radu*), Official Gazette Nos. 149/09, 61/11, 82/12, 73/13, 93/14.

58 Lucić and Rešetar, 2021.

59 *Amplius,* Korać Graovac, 2021b, pp. 65–66.

marriage is terminated through divorce or annulment. As previously mentioned, paternity may also be established by acknowledgement or a court judgment.[60]

There is a typical family law rule that paternity may be acknowledged for a child whose father is not known. In the national family law system, the consent of the mother and/or the child or a social welfare office is required, depending on the circumstances of the case. A novelty in the Croatian family legislation since 2014 and 2015 has been that a man who considers himself to be the father may acknowledge a child whose paternity has been established by marital presumption (by either the first or the second husband of the mother) upon the consent of the mother and her husband.[61]

The legislator has, thus, made it possible that marital paternity can be replaced by the acknowledgment of paternity. A man who considers himself to be a child's father, the man registered as the father of the matrimonial child, and the mother may give a statement that the child originates from a man who considers himself to be the child's father. These provisions are classified under the Article entitled 'Presumption of Paternity'.

The Constitutional Court held that the provisions of Art. 61, paras. 3 and 4 of the Family Act were unconstitutional, noting that 'presumption' was a legal standard and a prerequisite that is refutable or irrefutable. In this concrete case, it is a refutable presumption (a presumption of the paternity of a child born out of wedlock), which means that it may be contested in court or in some other legal way.

The Constitutional Court also emphasised that by these exemptions, nothing is presumed. The case can be re-examined, and the child's paternity can be re-established 'in favour' of a third person – the man who considers himself to be the child's father, and the consent is given by the mother and her husband. Upon such acknowledgment, it is possible that following the registration of the husband's paternity, the acknowledgment of another man takes place, whereby the legal basis for the removal of the registered husband's paternity is questionable and, thus, so is the new registration of paternity. In addition, the substantive and procedural law prerequisites for determining or disputing paternity are different. In line with such argumentation, in point 49 of its decision, the Constitutional Court concluded, 'If the legislator holds that they [norms] are necessary for an overall regulation of acknowledgement or determination of paternity, their content must be much more elaborated to remove any

60 Ibid.

61 Art. 61 paras. 2,3 and 4 of the Family Act:
(2) If the child's mother, in the period of 300 days from the termination of marriage by death, entered into a subsequent marriage, the mother's husband from the last contracted marriage is regarded as the child's father.
(3) The man who is considered to be the father of the child born during marriage or in the course of the period of 300 days following the termination of marriage by divorce or annulment, may with the mother's and her husband's consent, acknowledge the child.
(4) In the case referred to in para. 2 of this Article, the man who considers himself to be the father may, with the consent of the mother and her husband from a later marriage, acknowledge the child.

doubts or potential manipulations which may appear in their implementation'. Unfortunately, the Court failed to provide any reference to the necessary legal security to prevent any manipulations by adults regarding the status of a child.

In addition to acknowledgement, paternity can also be established in court proceedings where various time limits are envisaged, depending on the party entitled to initiate the proceedings: the child, the mother, the man who considers himself to be the father, or the social welfare office. In practice, paternity is, as a rule, established by medical expertise. Following the case *Mikulić v. Croatia*,[62] in order to accelerate the proceedings to prevent attempts to avoid medical evaluation, the court must determine the deadline until which it will wait for the production of evidence (not longer than 3 months). Croatian family legislation does not recognise the compulsory taking of DNA samples as medical evidence. However, if one of the parties fails to appear for medical evaluation or refuses it, the court is authorised to assess the significance of these actions.[63] After the paternity has been established, the father acquires parental care *ex lege*.

The child's right to know his or her origin in court is made easier by an advance for the costs of a DNA test that is paid for by the court (Art. 391 of the Family Act). The court subsequently decides which party is bound to cover the costs of the DNA evaluation, depending on the circumstances of the case.

Under current legislation, maternity may be determined by presumption (*mater semper certa est*) or by a court decision. Maternity is currently determined by *praesumptio iuris* ('The woman who has given birth to a child is regarded to be his or her mother' – Art. 58 of the Family Act). Prior to 2014,[64] the family legislation defined the old Roman principle as a *presumptio iuris et de iure*. With no explanation, the legislator changed the wording into a refutable presumption, probably by considering the situations ensuing from MAR (*vide infra*).

The family legislation reforms of 2014 and 2015 abandoned the acknowledgement of maternity. Besides presumption, it is possible to establish maternity by a court decision, following the child's court action, by the mother who considers herself to be the mother of the child, or by the social welfare office.[65]

The Constitutional Court proclaimed this solution as being unconstitutional.[66] In its decision, the Court held that,

> The principle *mater semper certa est*, ever since Roman times, has been a self-explanatory and natural law category arising from, in the nature of things, a clear and obvious reason – carrying and giving birth to a child is an indisputable fact …. To

62 *Mikulic v. Croatia*, Appl. No. 53176/99, Judgment of 7 February 2022.

63 Art. 390 of the Family Act

64 Family Act (*Obiteljski zakon*), Official Gazette, Nos. 75/14, 5/15, 103/15. The Family Act of 2015 kept the same wording in most of its provisions.

65 Art. 59, para. 1 of the Family Act.

66 Constitutional Court decision, U-I-3941/2015, decision and ruling, 18 April 2023 [Online]. Available at: https://www.iusinfo.hr/sudska-praksa/USRH2015B3941AI (Accessed: 17 August 2023).

> date, the legal doctrine largely advocates the reasons in favour of the aforementioned principle, highlighting the convincing comparative reasons that the provisions regulating so-called reproductive technologies should be governed by separate medical and legal regulations, instead of the provisions challenging the coherence of the system of family law relations of parents and children. From the constitutional law aspect, the only obligation of the legislator, when laying down individual concepts, is to take into account the requirements imposed by the Constitution, and in particular those stemming from the principles of the rule of law, as well as those by which specific constitutional domains and values are protected. In other words, their stipulation must always ensure the fulfilment of the legitimate goals of individual proceedings; the legal security of the objective legal order; the certainty, accessibility, foreseeability, and legal predictability of norms; and the procedural equality of the parties in the proceedings, in line with the requirements ensuing from the rule of law as the highest value of the constitutional order of the Republic of Croatia as the basis for interpreting the Constitution.[67]

The Constitutional Court pointed out that the legislator, although authorised to change some specific rules, was also bound to also give reasons for such changes. In this case, 'the reasons were not clear for which the legislator, together with the aforementioned change regarding the presumption of maternity and the ways of determining maternity by the court, left out the concept of acknowledging maternity and, thus, made it impossible for the child to be able to easily and efficiently find out about his or her origin (as is the case with the acknowledgement of paternity)'. Consequently, the Constitutional Court held that the disputed Arts. 58 and 59 of the Family Act of 2015 were not in conformity with the Constitution.

Throughout the family legislation, the right of the child to know, if possible, his or her bloodline origin is consistently provided for[68] so that 'birth in secret' is not possible (*accouchement sous X*).[69] Infanticide happens occasionally but is a rare occurrence. Croatian legal rules for contesting maternity and paternity are similar to those in central European legislation.[70]

Adoption is 'a special form of family law childcare and the protection of children without appropriate parental care by which a permanent relationship between the parents and the child is created'.[71] Adoptive parents acquire the right to exercise parental care. Only a minor child who has not (eventually) acquired civil capacity by marriage may be adopted.

Since 2007, there has been a single form of adoption (*adoptio plena),* where all legal connections between the adoptee and his or her relatives cease completely. The

67 Art. 3 of the Constitution
68 Art. 7, the United Nations Convention on the Rights of the Child)
69 Villeneuve-Gokalp, 2011.
70 Korać Graovac, 2021b, pp. 64–66.
71 Art. 180, paras. 1 and 2 of the Family Act.

same relationship (kinship) is created between the adoptee, the adoptive parents, and all their relatives as if the child were the adoptive parents' biological child. The adoptive parents acquire the right to parental care, and the adoptee acquires all hereditary rights, as well as all other rights and obligations arising from the child's relationship with his or her adoptive parents and their relatives. Adoptive parents may not have to be entered as parents in the Register of Births.[72] It is not possible to terminate adoption; however, any of the child protective measures provided for by family law may be imposed on adopters, just like parents.

To adopt a child, all the prerequisites must be met on both the part of the child and that of his or her adopters. Adoptees must be younger than 18[73] and must not be related by blood in a straight-line relationship or be siblings of the potential adopter. Parents must, as a rule, give their consent to adoption.[74] A parent without civil capacity (a minor or a parent deprived of civil capacity regardless of the segment of deprivation) is entitled to give his or her consent to adoption if he or she is capable of understanding the nature of the consent.[75] The social welfare office is bound to appropriately inform parents about the legal and factual consequences of adoption.[76] A parent deprived of the right to parental care cannot give consent to adoption. If a child is a foundling (i.e. his or her parents are not known), 3 months must have elapsed since his or her birth or abandonment before adoption. A court may replace consent to adoption by decision if it finds facts regarding the parents similar to those that justify the deprivation of the right to parental care.[77]

As the main objective is to protect the right to respect the child's family life in his or her primary family, 3 months before the initiation of court proceedings for the replacement of a parent's consent to adoption, the social welfare office must notify the parent of the possibility of imposing a measure of intensive professional assistance (if the parents' address is known – Art. 189, para. 2. of the Family Act). This measure is considered to help parents gain competencies to appropriately perform their parental responsibilities and to protect the right to family life.

Parents give consent for adoption only by unknown adopters (*bianco* adoption) unless the child is adopted by a parent's spouse or a common-law partner. In such a way, the possibility of giving children up for adoption for financial or other gain is avoided.

72 Art. 215, paras. 1 and 2 of the Family Act.

73 Arts. 181–183 of the Family Act.

74 Jakovac-Lozić, 2021, pp. 308–313.

75 This solution was adopted following the judgment of the European Court for Human Rights, X. v. Croatia, Appl. No. 11223/04, Judgment 1 July 2008. *Amplius:* Čulo Margaletić, 2021.

76 Art. 188, para. 2 of the Family Act.

77 In its Decision of 2023, the Constitutional Court abolished a part of the provision of Art. 190, para. 1, point 1, which envisaged, as a precondition for the replacement of the parent's consent, that a parent 'for a longer period of time … has shown no interest for the child'. In the Court's opinion, the disputed part of point 1, para. 1 of Art. 190 of the Family Act 2015 opens space for unacceptable arbitrary acting and possible abuse (point 66 of the Decision).

Grandmothers or grandfathers are not entitled to give consent to the adoption of their grandchildren. However, in practice, foster care by relatives (including the grandmother and grandfather's family) takes precedence over adoption, protecting the right to the family life of the child and, thus, the right to respect of family life of close relatives.

A child may be adopted by spouses, common-law partners, a person who is married or lives in a non-marital union (with the consent of his or her spouse or common-law partner), and a person who is not married or does not live in a non-marital union.[78] Common-law partners prove their status by a declaratory court decision.[79]

Same-sex couples are not allowed to adopt a child, although there is some pressure to implement such a solution.

As a rule, an adopter may be a person of at least 21 years of age who is at least 18 years older than the adoptee. An assessment is made by the social welfare office, and if there are some particularly justified reasons, an adopter may also be a person younger than 21 and at least 18 years older than the adoptee.

As a rule, adopters must be Croatian citizens, firstly, so that the child stays in the country, where the situation in the new family can subsequently be supervised, and secondly, to prevent the loss of Croatian citizens given the country's current demographic situation. Additional advantages of domestic adoptions are the maintenance of the child's identity by being brought up in the social environment in which he or she was born and the intention to give Croatian citizens who want to adopt a child precedence over foreigners. A foreign citizen may adopt a child only when this is of a particular benefit to the child (for example, the adopter is the child's relative, the child cannot easily be adopted owing to specific health problems,[80] the child is older in age,[81] or the child belongs to a Roma minority). A foreign adopter must receive previous approval from the Ministry competent for social welfare.

A person deprived of the right to parental care, deprived of civil capacity, or whose past conduct and personal characteristics lead to the conclusion that it is not advisable to entrust a child to them may not adopt a child.

Since adoption is an official secret, the child's biological parents are not acquainted with the adopter's identity – the child gets a new basic entry into the Register of Births so that his or her biological parents and blood relatives do not know who has adopted the child or where he or she is. However, after reaching the

78 Art. 185 of the Family Act.

79 The rules on the elements regarding good standing and eligibility for adoption, the content of expert opinion on good standing and eligibility for adoption, the methods of establishing good standing and eligibility, the content of the report on the child, the maintenance of a register on potential adopters and a register of adoptions (Official Gazette Nos. 106/14, 5/15, 28/16, 103/15).

80 Only 26% of adopters in the Republic of Croatia are willing to adopt a child with even mild health problems, and 45% of adopters want to adopt only a healthy child. Matković, Modić and Topčić-Rosenberg, 2016, p. 46.

81 Jurić and Blažeka Kokorić, 2019, pp. 62–97.

age of majority, the adoptee may give his or her consent in the social welfare office to allow close relatives insight into the adoption file[82] and to reveal their new identity. Insight into adoption case files and the Register of Births for adopted children is allowed for an adoptee of full age, an adopter, and the parent who gave the consent to adoption.

After an adoption is established, the social welfare office must monitor the child's adjustment to the adopter's family. The office is then required to compose a report 6 months after the adoption (Art. 216, para. 2); sadly, this provision is rarely implemented in practice.

In addition to the Croatian state's social welfare system, certified NGOs also play an important role in preadoption procedures and the provision of support to existing and future adopters.[83] The process of preparations for an adoption is usually lengthy, and some adopters choose to go through this process in smaller nearby municipalities where they usually get their turn much quicker.

In reviewing adoption in Croatia, it is also necessary to highlight the problems regarding the adoption of children from other countries that are not party to the Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption.[84] Among these problems, the most important are that the Republic of Croatia does not have any register of adoptions for countries that are not signatories to this Convention[85]; there is no unified interpretation of the prerequisites required by the International Private Law Act[86] for the recognition of foreign adoption decisions (as a result, some courts do not ask for the legalisation of documents and do not check whether the adopters have been registered in the Register of Adopters in the Republic of Croatia prior to the adoption);[87] there is no examination of the conditions in the family following the adoption; and potential adopters are left alone and exposed to the danger of becoming victims of illegal adoption practices.[88] The danger of illegal adoptions, as a possible element of child-trafficking, is a European problem and one that must urgently be solved in the Republic of Croatia. A recent case of four Croatian couples arrested in Zambia due to possible illegal adoption,

82 Jakovac-Lozić, 1996.

83 The activities of these NGOs are laid down in a special Book of Rules. A social worker and a psychologist must be in the team. A rehabilitation worker responsible for education, a social pedagogue, and a speech pathologist may also participate.

84 Hague Conference on Private International Law: Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 29 May 1993, 32 I.L.M. 1134.

85 Any data can be obtained only indirectly. Indeed, it has only subsequently been established that in the past 10 years, 94 passports have been issued to children adopted from the Democratic Republic of Congo, although this is not the only state from which children have been adopted and which has not ratified the Hague Convention. From a demographic perspective, this figure does not represent a large number of children; however, it will likely rise in the future because the ratio of potential adopters to children adopted annually is five to one.

86 The International Private Law Act (*Zakon o međunarodnom privatnom pravu*), Official Gazette, No. 101/17.

87 Hrabar, 2023.

88 Cantwell, 2017.

who were cleared of the accusations after 6 months, resulted in legislative proposals that should offer more legal certainty for children and adoptive parents *in spe*.

3.4. Maintenance of relatives

The maintenance of relatives in Croatia is regulated by the Family Act. The security of enjoying the right to maintenance makes it possible for a child to exercise many rights. A parent whose child lives with him or her is, thus, able to plan the child's education and economic future in the case of the termination of the family union and can trust that their standard of living will not be significantly jeopardised.

Child maintenance reflects the principle of family solidarity. Parents are obliged to provide maintenance and are invited to do so first, followed by the grandmother and grandfather on the side of the parent who does not provide maintenance. A stepfather or a stepmother is obliged to provide maintenance for his or her stepchild if the child cannot obtain maintenance from his or her parent (stepfather's or stepchild's spouse) or their grandmother or grandfather. Grandparents' and stepparents' obligations are of a subsidiary nature, and the scope of maintenance is not the same for every obliged individual. If a minor child has a spouse, he or she is primarily responsible for maintenance, even before the child's parents.

The Same-Sex Partnership Act[89] establishes the obligation of maintenance between children and the parent's life partner through the application of the provisions of the Family Act that provide for the maintenance of a stepmother, stepfather, and stepchild (Art. 39, para. 4).

A parent capable of working, regardless of whether they are employed or unemployed, must maintain his or her child until the child reaches the age of majority. The legislator intends to encourage parents to make additional efforts to legally procure financial resources for their child's maintenance. The parent's duty is to maintain their minor child regardless of whether the child attends secondary school and has already completed previous compulsory schooling. A minor with his or her own income is obliged to contribute to his or her maintenance and education, but the norm is very general, and there are almost no examples from practice. This provision is based on the principle of fairness. The main rule when establishing maintenance is that it is determined in accordance with the needs of the recipient and the capabilities of the maintenance provider.

The overall material needs of the child include the costs of housing, food, clothing, hygiene, upbringing, education, healthcare, and similar expenses. These needs are determined so that the child has the same living standards as the parent paying for the child's maintenance.[90] The court will decide on the increased material needs

89 Same-Sex Partnership Act (*Zakon o životnom partnerstvu osoba istog spola*), Official Gazette Nos. 92/14, 126/19.

90 Art. 311 of the Family Act.

if the child requires permanent enhanced care because of his or her health conditions.[91] When establishing the level of maintenance for the child, possible family allowances (such as child allowance)[92] are not taken into account, and any tax relief for the maintained family member (even for a child) is divided into equal amounts between the employed parents, unless there is another agreement.

The maintenance of a minor is always paid in pecuniary amounts. In practice, there have been significant differences in the amounts decided upon by different courts when interpreting the same statutory provisions. There have been attempts to align such actions by laying down additional rules that determine the average and minimum needs of a child of a specific age.

By 1 April each year, the Ministry in charge of social welfare affairs publishes a minimum amount of maintenance and tables listing the average needs of a child. The minimum maintenance amount is determined as a percentage of the average salary in the Republic of Croatia. In 2023, the minimum amount was EUR 172.67 for a child aged 1 to 6 years, EUR 203.15 for a child aged 7 to 12 years, and EUR 223.46 for a child aged 13 to 18 years. Exceptionally, the court may also determine a lower amount than the established minimum if the parent has two or more children or if the child has his or her own income and contributes to his or her maintenance. However, this lower amount may not be less than half the minimum amount.

The tables listing the average needs of children also indicate the child's age and the parents' salary brackets (similar to the Düsseldorfer Tabelle in Germany[93]). The amounts of maintenance range from EUR 172.67 to EUR 876 per month.[94] On the proposal of the legal representative of a child under legal age, the court will render a decision on its maintenance in line with the amounts in the tables published by the Ministry in short proceedings. If the parent responsible for maintenance lodges a complaint, he or she is advised to bring an action seeking that the court determine another (lower) amount of maintenance. The tables offer predictability regarding the expected amount of maintenance that will be judged by a court and diminish conflict between parents, pushing them towards an agreement. The system is not perfect as the cost of living differs in different parts of the country, but it does help.

91 It is important to note that although parents have the duty of 'care of their child's many-sided, regular and, in accordance with their possibilities, continuous education and encourage the child's artistic, technical, and sporting interests' (Art. 94, para. 3), the legislator has failed to establish that the court is in the position to determine an increased amount of maintenance if, for instance, the child is very talented and needs additional resources to engage in the activities where his or her talent will be manifested. Art. 312 of the Family Act

92 Urban and Pezer, 2019.

93 ISUV, n.d.

94 Decision on the tables containing average needs of minor children (*Odluka o tablici o prosječnim potrebama maloljetnog djeteta*), Official Gazette No. 48/23.

When, according to their joint parental care plan, parents spend a more or less equal amount of time with their child and care for the child daily, the pecuniary maintenance may be established in agreement and in accordance with their family circumstances.[95] This provision expresses the autonomy of parents who have reached an agreement on their parental care, and the court is authorised to examine whether their agreement conforms with the best interest of the child. Very rarely, there are situations where a parents' life union is terminated (matrimonial union ceased to exist) and the parents continue to live together with their child and care for him or her on a daily basis. They can then reach an agreement, and the court may decide that they will satisfy the child's material needs in accordance with their individual incomes.[96]

When the child does not live with either of their parents and neither parent cares for the child on a daily basis, both parents are obliged to pay for the child's maintenance in accordance with each of their financial capabilities.[97] The court does not examine the financial capabilities of the parent with whom a child lives as there is a (mistaken) praesumption that care provided is equal to maintenance provided by the parent who does not reside with a child.[98]

The capabilities of the parent who supports the child are determined by analysing his or her income and overall financial situation. In civil proceedings, the parent must show his or her total net income, including all permanent and periodical financial receipts (such receipts may be, for example, from artistic performances, sales of author's works, and various fees for professional services). To ensure as large an amount of maintenance as possible, the court must consider any of the parent's other possibilities for income in line with his or her age, education, and work capacity. If the parent has financial obligations with third persons (e.g. a housing or vehicle loan, debts for personal needs or craft), the court will take them into account only in exceptional cases if they have lasted for a long period of time or are necessary to satisfy the basic necessities of life.[99]

A huge problem when determining the parent's actual income involves failures to disclose the real amount of salary earned as an employee and 'moonlighting'.[100] In her annual report, the Ombudswoman for Children points to the fact that a parent who owns a company often declares a minimum salary and, in such a way, falsely

95 Art. 310, para.1 of the Family Act.

96 Art. 315, para. 2 of the Family Act.

97 Art. 316 of the Family Act.

98 Art. 310 of the Family Act:
'(1) The parent who the child lives with fulfils his or her portion of the maintenance of the child by caring for the child on a daily basis, and the parent who does not live with the child fulfils his or her obligation by satisfying the child's material needs in the form of financial support.
(2) Everyday care of the child is considered to be equal to fulfilling his or her material needs in the form of financial maintenance'.

99 Art. 313 of the Family Act.

100 Croatia is trying to supress this phenomenon through inspections and the Act on Combating Illicit Work (*Zakon o suzbijanju neprijavljenog rada*), Official Gazette No.151/22.

presents his or her financial capacity so as to pay a smaller amount for his or her child's maintenance.[101]

The child's right to maintenance is achieved by various means, including the court's duty to render an *ex officio* decision on the maintenance in any proceedings where the court decides on parental care; the social welfare office's power to initiate maintenance proceedings when this is not done by the parent with whom the child lives: in simplified and short maintenance proceedings, by announcing the minimum and average needs of the child; using the primary right of a child under legal age (a minor) as opposed to the recipients of maintenance who are of legal age; by the grandmother and grandfather's, or stepmother or stepfather's, subsidiary duties to pay for maintenance, if it is not done by the parent; and by the child's privileged position in enforcement proceedings related to the parent's salary. The Croatian Bar Association is also willing to help children by providing free-of-charge legal representation in maintenance cases. Sometimes, parties take advantage of secondary, free legal aid as a means-tested benefit.[102]

It is worth mentioning the very useful concept of the temporary maintenance of a child, which was introduced in 2003.[103] Temporary maintenance was launched as a fund for maintenance, whereby the state pays a portion of the maintenance amount, and the parent subsequently settles the debt. Initially, children were entitled to temporary maintenance until they reached the age of majority; thereafter, this period was shortened to not more than 3 years, and the amount of temporary maintenance was also lowered.

After the social welfare office has received the final court decision or a decision on the judicial settlement regarding a child's maintenance, it is obliged to warn the parent with whom the child lives that they must be informed about the other parent's potential failure to fulfil the obligation. The social welfare office must also be fully informed about the conditions under which the child is entitled to temporary maintenance in conformity with a separate regulation that provides for this maintenance. The office will also warn the parent who is responsible for the child's maintenance that he or she is bound to pay and that if they do not, the office will bring a criminal charge against him or her within 15 days after the day it is discovered that the obligation has not been regularly and fully met. The social welfare office will also warn the parent that the Republic of Croatia is entitled to seek the repayment of the temporary maintenance amount.

Although the amount provided for temporary maintenance is very modest (50% of the minimum amount for the maintenance of the child of a particular age – Art.

101 Report of the Ombudswoman for Children (*Izvješće o radu pravobraniteljice za djecu)* for 2022 [Online]. Available at: https://dijete.hr/hr/izvjesca/izvjesca-o-radu-pravobranitelja-za-djecu/ (Accessed: 23 May 2023).

102 Free Legal Aid Act (*Zakon o besplatnoj pravnoj pomoći)*, Official Gazette, Nos 143/13, 98/19.

103 Rešetar, 2005. Temporary maintenance is provided for in the Temporary Maintenance Act (*Zakon o privremenom uzdržavanju)*, Official Gazette No. 92/14.

9, para. 1 of the Family Act),[104] when granting temporary maintenance, the social welfare office is obliged to initiate criminal proceedings against a parent who does not pay for their child's maintenance. This is a particularly effective measure because not paying for the maintenance of a child is a criminal offence in Croatia (Art. 172 of the Criminal Code).[105]

A grandmother and grandfather, or a stepmother and stepfather, pay for the maintenance of a child in accordance with their financial situation and only until the child reaches the age of majority. In practice, a warning that the grandmother and/or the grandfather will have to pay for the child's maintenance (or an independent claim for maintenance) has a positive effect and usually encourages the parent to start paying. Stepmothers and stepfathers are responsible for the maintenance of their stepchild even upon the death of the child's parent if, at the time of the parent's death, they lived with their stepchild.

Parents are responsible for the maintenance of their child during his or her regular schooling and after the completion of the child's regular education if the child cannot find employment for a period of 1 year and no longer than up to the age of 26. The state has, thus, transferred the burden of maintenance for an unemployed young person to the parents for a certain period. Parents are also responsible for maintaining a child who is incapable of working because of a severe and permanent illness or disability throughout the child's illness or disability.

The tables listing children's average needs do not apply to the maintenance of children after they reach the age of majority. As such, adult children cannot seek maintenance in simple, non-contentious proceedings.

Where adults and children at the age of majority are concerned, the same rule applies: they can exercise their right to maintenance only if the person who is supposed to provide it has sufficient means. When assessing that person's capability, the court will consider his or her financial situation, total income, the possibility of earning additional amounts of money, his or her own needs, and possibly other maintenance obligations.[106] In practice, there are examples of those responsible for

104 In 2021, temporary maintenance was awarded to approximately 1,300 children. Annual statistical report on social welfare, legal protection of children, youth, marriage, family, and persons deprived of civil capacity and the protection of physically and mentally disabled persons in the Republic of Croatia in 2021, Ministry of Labour, Pension System, Family and Social Policy, August 2022 [Online]. Available at: https://mrosp.gov.hr/UserDocsImages/dokumenti/Socijalna%20politika/Odluke/Godisnje%20statisti%C4%8Dko%20izvje%C5%A1%C4%87e%20za%202021.%20godinu.pdf (Accessed: 15 August 2023).

105 Criminal Code (*Kazneni zakon*), Official Gazette Nos. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22; Moslavac, 2021. According to data from the Ministry of the Interior, in 2022, 618 criminal offences of violating the duty of maintenance were reported, of which 425 were detrimental to children of up to 14 years and 193 to children aged between 14 and 18 years. For comparison, in 2021, 552 such criminal offences were reported; in 2020, 436 were reported; and in 2019, 569 were reported. Report of the Ombudswoman for Children for 2022 [Online]. Available at: https://dijete.hr/hr/izvjesca/izvjesca-o-radu-pravobranitelja-za-djecu/ (Accessed: 15 August 2023).

106 Art. 307, para. 1 of the Family Act.

maintenance concealing their capabilities, similar to those previously mentioned in this chapter in connection with the maintenance of minors.

When the court assesses the needs of persons of legal age and their maintenance, it will consider his or her income, overall financial situation, working capacity, possibility for employment, health status, and all other circumstances on which a court decision on maintenance depends.[107]

The maintenance of parents by their children is based on children's constitutional obligation to care for their old and weak parents.[108] A child of legal age must provide maintenance if his or her parent is incapable of working and does not have sufficient means of subsistence or property to derive it from. Nevertheless, a child may be freed from this obligation if the parent fails to provide for the same child's maintenance for unjustified reasons when it was the parent's statutory obligation.[109]

It is a stepchild's duty to provide maintenance for his or her stepmother or stepfather if they are not capable of working and do not have sufficient means of subsistence or cannot derive it from their property, and the stepmother or stepfather cared for him or her and provided the necessary maintenance for a longer time during childhood. The same requirements also exist when a grandchild must care for his or her grandmother and grandfather.[110]

It is unusual for parents, grandparents, or even more rarely, stepmothers or stepfathers to file the court to sue for maintenance from their children. This may be because of their weakened economic situations: economic means are often exhausted because they must care for their own children and their income is insufficient to begin legal proceedings. Sometimes, the reason is shame that they might have to sue their child or grandchild. If a parent, grandmother, or grandfather does not want to seek maintenance from those who bear a statutory responsibility to care for them, they are not allowed to seek assistance from the state, unless the social welfare office finds that the person obliged to provide maintenance cannot provide it (in which case, the principle of subsidiarity applies).[111]

Older people make up almost one-fourth (22.4%) of the population of the Republic of Croatia, and a third of them are at risk of poverty. Consequently, they are forced to enter into contracts for support until death or contracts of lifelong support, in which they are often cheated.[112]

The enforcement of maintenance follows the same pattern as the enforcement of the settlement of other monetary claims, which means that there are often major

107 Art. 307, para. 2 of the Family Act.
108 Art. 63, para. 4 of the Constitution of the Republic of Croatia.
109 Art. 292 of the Family Act.
110 Art. 293 of the Family Act.
111 Art. 4, Social Welfare Act (*Zakon o socijalnoj skrbi*), Official Gazette Nos. 18/22, 46/22, 119/22.
112 Report of the Ombudswoman for Children for 2022 [Online]. Available at: https://dijete.hr/hr/izvjesca/izvjesca-o-radu-pravobranitelja-za-djecu/, p. 5. and pp. 55–57. 'In 2022, about 7,500 old people entered into contracts for support until death or contracts of life maintenance and were, thereby, often exposed to a risk of abuse'.

obstacles because debtors may conceal their property. The statutes of limitation for the enforcement of maintenance do not apply before the child reaches legal age.

The minimum income that must remain for subsistence is laid down in the rules of the law of enforcement and is smaller if there is an obligation of maintenance for a child under legal age. The social welfare office is bound to seek enforcement if it represents a child in proceedings for maintenance. The right of the child to maintenance is also protected by the possibility of enforcement against the person's salary or other regular pecuniary income and against the person's account prior to enforcement to settle all other claims, regardless of the time of their accrual.[113]

In 2022, the Ombudswoman for Children recommended, 'By amended regulations, it is necessary to improve the position of children as enforcement creditors in enforcement cases for maintenance (and other claims in favour of children), in terms of time limits and the costs of the proceedings, determination of priorities in the settlement of maintenance and proportional settlement when more children are enforcement creditors. This recommendation clearly highlights current problems in enforcement proceedings that can be solved'.

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4. The importance of medically assisted reproduction

4.1. Terminology and significance of medically assisted reproduction in Croatia

MAR involves reproduction brought about through various interventions, procedures, surgeries, and technologies to treat different forms of fertility impairment and infertility. This includes ovulation induction, ovarian stimulation, ovulation triggering, all assisted reproduction technology (ART) procedures, uterine transplantation, and intrauterine, intracervical, and intravaginal insemination with the semen of a husband/partner or donor.[114]

Croatia has a long history of *in vitro* fertilisation (IVF). The first IVF baby in Croatia was born in Zagreb in 1983, only five years after the birth of Louisa Brown, the first ever IVF baby. Before the COVID-19 pandemic, around 1,800 children a year were born in Croatia through MAR (including intrauterine insemination and egg stimulation), representing approximately 5% of the total births in the country. In 2020, this percentage decreased by 20% because some MAR centres were shut down as a result of the pandemic.[115]

113 Art. 527 of the Family Act.

114 According to: International Committee for Monitoring Assisted Reproductive Technology, 2017a. Different definitions of MAR and ART exist, so it is important to point them out.

115 In 2020, 35,845 children were born in the Republic of Croatia. Out of 35,845 live births, 18,389 (51.3%) were boys, and 17,456 (48.7%) were girls. The live birth rate (live births per 1,000 inhabitants) was 8.9 in 2020. Croatian Bureau of Statistics, 2022b.

On average, women in Croatia bear their first child at the age of 28.9 (2019).[116] This age results in a decrease in the possibility of conceiving. Professor Šimunić, a doctor of medicine and a leading specialist in human reproduction, notes that in Croatia, 'around 80,000 couples are infertile. Fertility starts decreasing at the age of 32 by 5% annually; after age 38, the annual decrease is 15–20%. In the fourth decade of a woman's life, various diseases damaging reproductive organs are more and more frequent. For a couple older than 41, it is five times more difficult and less probable to achieve pregnancy'. Discussing the causes of increased infertility, Dr Šimunić mentions, 'changed views of the world regarding reproductive infertility of some women and the fact that … reliable contraception made it possible to separate sexuality from reproduction … and today, the infertility of men is a more frequent phenomenon. Spermatogenesis is … very sensitive to so-called epigenetic factors, so environmental pollutants are harmful to creating sperms'.[117] We can, thus, expect a rise in the number of infertile couples, meaning that a cure is becoming an increasingly important problem.

ART[118] challenges the traditional concept of family as it enables single women and men, LGBTQ couples, and LGBTQ individuals to establish family law relationships with a conceived child if acknowledged by law. The child does not have to be genetically related to the legally acknowledged parents because she or he was conceived using donated gametes or embryos.

MAR, and in particular ART, raises many legal and ethical issues, especially regarding heterologous fertilisation, that is, when gametes from a donor are used. These procedures also provoke further issues regarding the rights of the persons involved and the destiny of the embryo. Especially intriguing is surrogate motherhood in terms of the aspects of the (non-existent) right to become a parent and the child's individual rights.[119]

4.2. Legal regulation of medically assisted reproduction

In Croatia, activities connected with MAR are laid down in the Medically Assisted Reproduction Act[120] and the corresponding bylaws. The relevant EU directives

116 Eurostat, 2021.

117 Šimunić, 2018.

118 According to: International Committee for Monitoring Assisted Reproductive Technology, 2017b. The International Glossary on Infertility and Fertility Care, ART are 'all interventions that include the in vitro handling of both human oocytes and sperm or of embryos for the purpose of reproduction. This includes, but is not limited to, IVF and embryo transfer ET, intracytoplasmic sperm injection ICSI, embryo biopsy, preimplantation genetic testing PGT, assisted hatching, gamete intrafallopian transfer GIFT, zygote intrafallopian transfer, gamete and embryo cryopreservation, semen, oocyte and embryo donation, and gestational carrier cycles. Thus, ART does not, and ART-only registries do not, include assisted insemination using sperm from either a woman's partner or a sperm donor'.

119 Hrabar, 2020, p. 2.

120 The Medically Assisted Reproduction Act (*Zakon o medicinski pomognutoj oplodnji*), Official Gazette No. 86/12.

define all the technical quality and safety requirements in the area covered by the Act.[121]

Any EU country may freely regulate any MAR procedure, and their citizens may also seek medical assistance in other EU countries. A problem might arise when there is a different regulation in an individual's homeland, for example, concerning establishing parentage.

Croatia's Medically Assisted Reproduction Act (2012) was welcomed as one of the most permissive laws in Europe.[122] The ultimate ratio principle of the Act holds that medical assistance may be provided only when the previous treatment of infertility[123] has been unsuccessful or hopeless and when it is necessary to avoid, in the cases of natural conception, the transmission of a serious disease to the child (Art. 4, para. 1).

The beneficiaries of MAR are defined in Article 10, paras 1–3 of the Act. These beneficiaries are women and men of legal age who have legal capacity,[124] are married or live in a non-marital union, and who, in terms of their age and their overall health condition, are capable of exercising parental responsibility. The existence of a

121 Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells.
This Directive is primary legislation and sets the standards of quality and safety for the donation, processing, preservation, storage, and distribution of human tissues and cells. This Directive should be replaced by the Proposal for a Regulation of the European Parliament and of the Council on setting standards of quality and safety for the substances of human origin intended for human application and repealing Directives 2002/98/EC and 2004/23/EC (Proposal of 14 July 2022).
Further Directives include the Commission Directive 2006/86/EC of 24 October 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards traceability requirements, notification of serious adverse reactions and events and certain technical requirements for the coding, processing, preservation, storage and distribution of human tissues and cells; Commission Directive 2012/39/EU of 26 November 2012 amending Directive 2006/17/EC as regards certain technical requirements for the testing of human tissues and cells, Text with EEA relevance; Commission Directive (EU) 2015/565 of 8 April 2015 amending Directive 2006/86/EC as regards certain technical requirements for the coding of human tissues and cells; and Text with EEA relevance and Commission Directive (EU) 2015/566 of 8 April 2015 implementing Directive 2004/23/EC as regards the procedures for verifying the equivalent standards of quality and safety of imported tissues and cells. All these Directives set forth the minimum standards of quality and safety for the procedures for the donation, processing, preservation, storage, and distribution of human reproductive cells.

122 Čartolovni, Casini, and Spagnolo, 2014.

123 The World Health Organization defines infertility as a disease of the male or female reproductive system, characterised by the failure to achieve a pregnancy after 12 months or more of regular unprotected sexual intercourse. WHO, 2024.

124 Under Art. 23 of the Convention on the Rights of Persons with Disabilities, a person with disabilities has the right to decide freely and responsibly on the number and spacing of their children. According to this requirement, a person who is not deprived of legal capacity in the field of giving statements regarding his or her personal condition is also entitled to the right to MAR (Art. 10 par. 3 of the Medically Assisted Reproduction Act).

non-marital union must be endorsed in a statement certified by a notary public (Art. 11, para. 3 of the Act).

The right to MAR may also be exercised by a woman of legal age who has legal capacity and does not live in a marital, extramarital, or same-sex union (i.e. a single woman), whose previous treatment for infertility has ended unsuccessfully or hopelessly, and who, because of her age and overall health condition, is capable of caring for the child. It is essential that a doctor of medicine establishes the woman's health problem and confirms that the reason for her infertility is medical, not social.

Recently, the National Commission for Medically Assisted Reproduction has also received requests for the storage of gametes by persons who claim confidentially to his or her physician that they plan to undergo gender transition. These requests have been approved as there were no legal reasons to refuse them. Thus far, there have been no requests for transfers of gametes to another country or their use by transgender persons.

The Medically Assisted Reproduction Act recognises homologous and heterologous procedures, covering intrauterine insemination, *in vitro* insemination, intracytoplasmic sperm injection, the cryopreservation of gametes or embryos, *in vitro* fertilisation-embryo transfer, gamete intra-fallopian transfer, zygote intra-fallopian transfer, frozen embryo transfer, and preimplantation genetic diagnostics (Article 9). Of the total number of MAR procedures carried out in 2020, most involved intracytoplasmic sperm injection (37%). Frozen embryo transfer ranked second (27%), IVF ranked third (21%), and intrauterine insemination ranked fourth (16%).[125]

According to Art. 10, para. 5 of the Act on Medically Assisted Reproduction, the Croatian Health Insurance Fund covers four intrauterine inseminations and six *in vitro* fertilisation attempts, with an obligation that two attempts must be in a natural cycle. Generally, a woman must not be older than 42, unless there are particularly justified health reasons. Aiming to increase the birth rate, several Croatian cities (e.g. Osijek, Makarska, Split, Sisak, Umag) co-finance more attempts of MAR up to the amount of 40–80% of the costs of the procedure.

4.3. Family law provisions on establishing the origin of the child

A separate part of the Family Act covers the maternity and paternity of children conceived through MAR techniques. The *Mater semper certa est* rule applies: the mother of a child conceived by a donated gamete or embryo is the woman who gave birth to the child (formulated as *praesumptio iuris et de iure*.[126] The mother's husband is held to be the child's father. If the beneficiary of MAR is a common-law couple, the common-law partner must have given a previous statement, certified by a notary, acknowledging paternity. Consent certified by a notary, particularly regarding the type of procedure and the origin of the reproductive cells or embryos

125 Ministry of Health of the Republic of Croatia, 2020.
126 Art. 82, para 1 of the Family Act.

(Article 14, para. 2 of the Act), must be given for every MAR procedure. Although associations that are engaged in defending patients' rights object to such stipulations, stating that they complicate the procedure, we believe that a request for a certified statement contributes to legal certainty. The maternity or paternity of a child conceived by MAR, with the donor's consent, may not be established or contested in court proceedings.[127]

If the child is conceived with the help of a homologous technique, it is not disputable whether it originates from persons who need medical assistance. If the child is conceived with the help of a heterologous technique, the persons who receive the infertility treatment accept in advance the fact that the child genetically originates from a donor and accept parental responsibilities.

Nevertheless, a woman registered as a child's mother or the woman who considers herself to be the child's mother is entitled to challenge maternity if they have not given the necessary consent to assisted reproduction by a donated ovum.[128] The mother's husband is held to be the father of a child conceived with donated semen or a donated embryo in a MAR procedure if the child was born during marriage or within 300 days of the termination of marriage and if the husband gave his consent for the appropriate MAR procedure, in accordance with the provisions governing the procedure.[129]

When a child is conceived by a heterologous method and the parents live in a non-marital union, the mother's partner, who must have previously given his consent for the specific MAR procedure and a statement acknowledging paternity (both statements certified by a notary public), shall be entered as the child's father upon the birth of the child.[130] If a child is conceived through a MAR procedure without the required consent, the man registered as the child's father or the man who considers himself the child's father may challenge paternity. At the same time, the man who considers himself the child's father must seek to establish his paternity[131]. The time limits are the same as in the case of establishing or challenging a child's biological origin when conception took place naturally.[132]

For both maternity and paternity, it is possible to initiate court proceedings to establish or challenge the genetic origin of a child conceived through MAR and the use of a donated gamete or embryo only if all the necessary consents have not

127 Art. 82, para 2 of the Family Act.

128 Art. 82 para. 3 of the Family Act. In 2009, several medical doctors, who were specialists in human reproduction, were cleared of the accusation that between 2000 and 2002, they illicitly transplanted the egg cells of other women into their female patients. In the court proceedings, the prosecution's allegations that egg cells were a part of a human body and that they had been taken out of women to be transplanted into other women's bodies for illegal material gain were disproven (felony: Illicit Transplantation of Parts of the Human Body).

129 Art. 83, para. 1 of the Family Act.

130 Art. 83, para. 2 of the Family Act.

131 Arts. 83 and 401–403 of the Family Act

132 Art. 75, Arts. 393–396, and Art. 82, para. 3 for the contestation of motherhood; and Arts. 79–81, 83, and 400–405 of the Family Act for the contestation of fatherhood.

been obtained. There are no data in the Register of Births on how a child is conceived (unless a previous acknowledgment of paternity has been obtained from the mother's common-law husband pursuant to Art. 83, para. 2 of the Family Act). As such, it is possible to imagine a situation where the prohibition of a challenge can be avoided if, in the court proceedings, no one draws the court's attention to the fact that the child has been conceived through MAR. Only the child (if conceived through MAR) cannot challenge its genetic origin from the mother or father, even when the necessary consents of the beneficiaries of the procedure have not been obtained.

Though allowed and regulated, heterologous techniques (donating gametes or embryos) are not performed in practice. In addition, there is no bank of sex cells intended for heterologous fertilisation, although there are statutory regulations for its foundation. Even if such a bank did exist, the right of a child of legal age to discover the donor's identity or the identity of the person from whom he or she derives his or her genetic origin would dissuade any donors. Consequently, serious consideration is being given to possible imports of genetic material from licensed EU institutions, allowing knowledge of the donor's identity. Currently, patients use heterologous procedures paid for by the Croatian Institute for Public Health, usually in the Czech Republic and the Northern Republic of Macedonia.

4.4. Surrogacy, postmortem conception, and frozen embryos – the hot potatoes of medically assisted reproduction

Surrogate motherhood is prohibited in the Republic of Croatia[133]. According to Art. 31, para. 3 of the Medically Assisted Reproduction Act, 'contracts, agreements and other legal transactions of bearing children for another (surrogate gestational motherhood) and handing over a child after a fertility treatment, with or without a pecuniary remuneration, are null and void'. Nevertheless, some couples travel abroad and return with a child born through surrogate motherhood. Although rare, reports of parents who made surrogacy arrangements abroad sometimes appear in the media. The competent authorities have never checked how these children's origin is established, and the children have not been entered into the Register of Births in the relevant consulate. The problem of the non-recognition of the right to maternity leave has once been reported publicly: one woman who returned from abroad with a child and registered as its mother could not prove that her pregnancy had been medically monitored. The Croatian Health Insurance Institute initially refused, although later agreed, to grant her maternity leave. No family law action was taken, and removing the child was not an option, as was the case in *Paradiso and Campanelli v. Italy*.[134,135]

133 Art. 31 of the Medically Assisted Reproduction Act.
134 ECHR, *Paradiso and Campanelli v. Italy*, Grand Chamber Judgment of 24 January 2017.
135 Korać Graovac, 2022, pp. 48–49.

Today, the National Committee on Medically Assisted Reproduction requires that patients in Croatia requesting the transfer of gametes and embryos to clinics where surrogacy is available must provide a statement that they will not be used for any surrogate arrangements.[136] Some transfers are disputable when the legislation of the state to which they are transferred does not secure the child's right to know his or her origin (i.e. the identity of his/her genetic parents).

Legal theory warns that from the biological and medical perspectives, surrogate motherhood is considered 'the most controversial form of medicinal reproduction'. In the cases of surrogate motherhood, the genetic and social parenthood may be completely separated. For example, the child's genetic origin could come from one woman, while another woman bears the child, and a third woman (the commissioner) is registered in the Register of Births as the child's mother. At the same time, the man registered as the child's father may or may not be his or her genetic father. 'According to the J. Griffin theory of rights, priority needs to be given to the right with intrinsic value that is more important to the personhood. Thus, in the case of surrogacy, the value of [the] procreator's self-fulfilment may confront with values of self-identity and dignity. That leads us to the conclusion that in procreation arrangements such as surrogacy, children are at the mercy of adult decision-making that only aims to pursue adult happiness and personal fulfilment by manufacturing a child into existence through procreation technologies. We should not forget that the children are not the commodity, and they should not exist for the fulfilment of adults'.[137]

Cross-border surrogacy arrangements, which are popular today and are untraceable, make it possible to bypass domestic legislation. The absence of any formal consensus within the EU on how to address the problem of cross-border surrogacy represents a serious threat to protecting children's rights.[138]

Yet another outcome of surrogate motherhood is that it can provide the possibility for homosexual male partners or couples where one person is transgender to become parents.

The EU Parliament has adopted a resolution that 'condemns the practice of surrogacy, which undermines the human dignity of the woman since her body and its reproductive functions are treated as a commodity [and] considers that the practice of gestational surrogacy which involves reproductive exploitation and use of the human body for financial or other gains, in particular in the case of vulnerable women in developing countries, shall be prohibited and treated as a matter of urgency in human rights instruments'.[139] In 2021, the European Parliament 'acknowledged that

136 Observation by the author, who is a member of the National Commission for Medically Assisted Reproduction.

137 Preložnjak, 2020, p. 97.

138 Čulo Margaletić, Preložnjak, and Šimović, 2019.

139 Para. 114. of the European Parliament (2015) Annual Report on Human Rights and Democracy in the World 2014 and the EU Policy on the Matter: Committee on Foreign Affairs. PE567.654 European Parliament Resolution of 17 December 2015 on the Annual Report on Human Rights and Democracy in the World 2014 and the EU's policy on the matter (2015/2229(INI)) 2017/C399/19.

sexual exploitation for surrogacy and reproductive purposes … is unacceptable and a violation of human dignity and human rights'.[140] The highly disputed issue of cross-border arrangements is reflected in a project on parentage and surrogacy by the Hague Conference on Private International Law.[141] The EU is also active in this field and has prepared a new directive concerning parentage.[142]

In Croatia, posthumous fertilisation is not allowed because 'marriage or an extramarital union must exist at the time of placing sexual cells or embryos into a woman's body'.[143] In the case of the death of the person from whom the stored sex cells or tissues originate, the health institution must destroy them within 30 days following news of the death.[144]

Indeed, the child's interest to enjoy the parental care of both parents prevails over the surviving spouse's or partner's (a woman) desire to give birth to the child. Hence, in the case of the death of one or both persons from whom the embryos originate, they may be donated to another beneficiary of the right to medically assisted fertilisation and childbearing (Art. 33, para. 4). A wife is not allowed to use embryos *postmortem* as this would lead to the birth of a child who would never be in a position to enjoy parental care by both parents.

Among the state-owned and private Croatian institutions dealing with medically assisted fertilisation, it is reported that between 9,000 and 10,000 embryos are stored that have, thus far, not been used in MAR procedures. Most embryos are stored in one of the state's hospitals. This is because over 10 years ago, embryos were unselectively frozen, and many of them are no longer suitable for the further division of cells and development into embryo.

The number of embryos in storage is large because, despite the fact that the related regulation is clear, it is in the spirit of the law to protect embryos (*pro-life*). As such, health institutions refuse to destroy them after the deadline, even upon request from persons from whom the stored embryos originate who no longer intend to use them.

Here, we are dealing here with an unresolved legal issue that will have to be explicitly addressed, most likely by applying the advanced directives of persons seeking medical help.[145]

To avoid the unnecessary freezing of too many embryos, the Medically Assisted Reproduction Act sets out that up to 12 egg cells can be fertilised in one procedure.

140 Para. 32 of the European Parliament (2019) EU Strategy for Gender Equality:
Committee on Women's Rights and Gender Equality
PE650.408
European Parliament Resolution of 21 January 2021 on the EU Strategy for Gender Equality (2019/2169(INI)) 2021/C456/19.

141 HCCH, n.d.

142 Proposal for a council regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood, COM/2022/695 final.

143 Art. 11, para. 1 of the Medically Assisted Reproduction Act.

144 Art. 33, para. 3 of the Medically Assisted Reproduction Act.

145 Pennings, 2020.

Couples must make written statements before starting the procedure of medically assisted fertilisation on the number of egg cells they want to be fertilised, from two up to 12. If they choose to fertilise two egg cells, these cells are inserted into the woman's womb.

Any remaining egg cells and/or embryos are frozen and stored by the Croatian Health Institute for up to 5 years. After 5 years and upon the genetic parents' consent, the cells and/or embryos are donated for pregnancy and childbearing to a beneficiary of the right to MAR who agrees to such a procedure. If spouses or common-law partners want to prolong the storage of embryos for an additional 5 years, they must bear the costs of this storage.[146] The purpose of this regulation is to donate embryos for 'adoption'; however, this is not possible for those embryos that have been frozen to date because the persons they originate from have not undergone the health and medical verification procedure for possible donors (as is required by the ESHRE).[147]

5. Concluding remarks

This chapter offered a review of the most important aspects of family policy in Croatia. Family policies are complex and overlap with demographic policies, meaning there are different approaches to drafting them.

Croatian demographers have long warned of a demographic catastrophe, but these warnings are not taken seriously enough. In 2022, Croatia recorded the fewest births in the last 30 years, with fewer and fewer children seeming likely in the future. This presents enormous consequences at both the societal and individual levels.

Croatia has a complex system of social security benefits. Nevertheless, measures to address demographics in the country are ineffective and insufficient, and there is no strong family policy that supports families that have more children. Demographer Jurić adds that the smaller number of births is (also) are result of neoliberalism: "Measures alone cannot change the atmosphere of the neoliberal spirit that says, *if you have children, you will not be happy*".[148]

Economic obstacles and a lack of optimism regarding the future force young people to migrate to more developed EU countries and to start a family abroad or postpone starting a family. The state seeks to attract young couples to stay or return to their homeland by offering benefits; however, they are not enough. Often, young couples who stay in the country do not have sufficient economic support to fulfil their desires for children.

146 Art. 7, paras. 2–5 of the Medically Assisted Reproduction Act.
147 European Society of Human Reproduction and Embryology, n.d.
148 Pranić, 2023.

The situation is complex. Without serious political efforts and the engagement of all available sources, we will slowly disappear as a nation. Despite politicians' promises, change rarely happens. In the Demographic Yearbook 2022, the Central State Office for Demography and Youth set a target fertility rate for Croatia of 1.8 children per woman by 2030. However, this rate currently seems like wishful thinking.

Family law indirectly helps families. It provides a safe, legal frame that establishes the clear rights and duties of family members, and additionally, family law principles offer insights into common values. The later elaboration of these principles into particular norms built a family law system that supports family members, whether family relations are harmonious or turbulent.

The protection of the family home, maintenance of children, and the state-subsidised maintenance of children and intergenerational family solidarity, which are especially vivid in Croatian society, are important for building an economically safer environment in which to bring up children. The enforcement of maintenance obligations remains a problem that needs to be addressed more efficiently.

In the Republic of Croatia, MAR is provided for by modern regulation. The main characteristics of this regulation are the principle of *ultima ratio,* the primacy given to homologous techniques, the right of the child to know its genetic origin if conceived by a heterologous method, the prohibition of *post mortem* conception, and the prohibition of surrogate motherhood.

Some beneficiaries seek health services abroad, which may result in new proceedings in the future (e.g. the issue of the right of the child to know his or her origin). There have been many requests to liberalise legislation regarding the access of single women and same-sex couples to MAR, solutions for cryopreserved embryos, and the import of gametes. Legislative changes must acknowledge social realities while also protecting different individual and public interests, especially the best interests of the child.

The future of changes in population growth does not seem to be bright, and Croatia will have to work hard to improve its demography and family policy.

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Chapter 12

Czechia: Demography, Family Policy, and Law Instruments to Protect and Support Families

Zdeňka Králíčková

Abstract

The portrait of the family and family life has been changing in the Czech Republic, particularly over the last five decades, as is reflected in the country's legal system. Many legislative changes occurred in the Czech Republic after the fall of the Iron Curtain, followed later by others. In this context, the Czech Republic's accession to several international human rights conventions and the passing of the new Civil Code are relevant. Considering demographic challenges, this chapter focuses on the current Czech family law, in particular, its principles and the instruments aimed at protecting and supporting families, parents, children, and vulnerable family members.

Keywords: demography, family law, change, marriage, registered partnership, *de facto* cohabitation, motherhood, fatherhood, parental responsibility, family solidarity, protection, support, family policy

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1. Introduction

The portrait of the family in Czechia underwent a significant transformation as a result of the political, social, and economic changes in 1989. Similar changes occurred in other countries of the former Soviet bloc and the Soviet Union.[1] Fundamental demographic changes have been reflected in legislation; therefore, it is unsurprising that the legal regulation of family life has also undergone significant development. Many amendments have been made to family codes from the previous period and, consequently, new laws have been passed.

At the individual level, one does not need to be a demographer or sociologist to characterise this period as a 'deviation' from 'traditional values' in favour of an alternative way of life. For example, individuals are postponing marriage until 'later' or completely rejecting it; unmarried de facto cohabitation and registered same-sex partnerships have been established, and there has been a sharp decline in the birth rate, as well as, paradoxically, an increase in the proportion of children born out of wedlock. This behaviour has been accompanied by a high divorce rate, including an increase in the number of divorces of long-term marriages, the emergence of so-called 'incomplete' and 'reconstructed' families, and children at risk.[2]

Similar changes in family life have been negotiated not only in countries of former Soviet influence but also in many other European countries with violently uninterrupted political development. Unsurprisingly, it has been suggested in the literature that 'the family laws in Europe face the emerging pluralities of relationships and family life' and that 'traditionally marriage-centric family law with fixed perceptions of gender roles and indeed gender will have to adapt to the new social realities, with a functional and child-centered family law being the most likely result'.[3]

The current structure of an average family in Czechia is indicated by the statistical data provided by the Czech Statistical Office[4] and those collected for Eurostat and the Council of the European Union by the Czech Ministry of Labour and Social Affairs.[5] Nothing is immutable, not even population behaviour or forms of family and family life.[6] The Populations and Housing Census conducted in 2021[7] provided a whole range of new, and in many cases, surprising, data, which help draw a topical

1 Khazova, 2007, p. 97.
2 Králíčková, Kornel and Zavadilová, 2019, pp. 122–159; Králíčková, 2021a, pp. 77–109.
3 Scherpe, 2016, p. 133.
4 The statistical data and charts by the Czech Statistical Office are available at: https://www.czso.cz/csu/czso/population. Some charts are in English.
5 See: https://www.mpsv.cz/documents/625317/625839/information_family_policy.pdf/fd2be9f9-7f98-6b74-7d7e-4e97eefab980 (Accessed: 20 May 2023)
6 Možný, 2011.
7 For the Census results see: https://www.czso.cz/csu/scitani2021/home (Accessed: 20 May 2023.) and: https://www.czso.cz/csu/scitani2021/results-first (Accessed: 26 April 2023).

portrait of family and family life in the Czech Republic. It can be assumed that the Czech Ministry of Labour and Social Affairs relied on the results of this Census when creating the Family Policy Strategy for 2023–2030.[8]

As mentioned above, many legislative changes have already occurred in Czechia.[9] Some took place soon after the fall of the Iron Curtain, others later.[10] In this context, it is worth mentioning, in particular, the Czech Republic's accession to several international conventions on human rights, the passing of the law on registered same-sex partnerships and, most importantly, the adoption of the new Civil Code in 2012. This Civil Code reinstated the subject of family law in the Czech Republic and, thus, returned to European standards and the tradition represented by the General Civil Code (1811, or 1918) pre-1949 in the former Czechoslovakia.[11] In particular, the recodification of the basic pillar of the legal order – private law – by the Civil Code was preceded by many expectations. However, taking into account the development in nearby European countries, it is questionable whether the 'return to traditions' represented by the General Civil Code represents sufficient legal protection for Czech families. The main question is whether the new family law legislation reflected, and still reflects, the changing nature of families, adult relationships, and the parent-child relationship.[12]

The task of family law academics is not to assess demographic developments and changes in family life[13] but to analyse the existing legal regulation of family law and suggest appropriate legislative changes concerning European standards or values for the protection of human rights, especially those of minor children and other vulnerable persons. As such, this chapter is devoted to an exploration of current family law, in particular, to the principles of Czech family law and the instruments aimed at protecting and supporting families, parents, children, and vulnerable family members. However, below is included at least basic information on demography, social reality, family policy and family support benefits.

8 See: Information about Family Policy System in the Czech Republic. Available at: https://www.mpsv.cz/web/cz/-/nova-strategie-rodinne-politiky-pocita-s-lepsi-podporou-pece-o-nejmensi-i-nemohouci (Accessed: 22 April 2023) [in Czech]. The press release reports that this conceptual document updates the earlier Family Policy Concept from 2017. Supporting families has long been one of the main priorities for the Ministry of Labour and Social Affairs. The strategy deals with several aspects, the aim of which is to create favourable and stable conditions for families, raising children, and caring for loved ones. Roughly 40 different entities, from ministries to non-profit professional organisations and academia, participated in the formulation of the strategy.

9 Haderka, 1996, pp. 181–197; Haderka, 2000, pp. 119–130.

10 Králíčková, 2009, pp. 157–173.

11 Králíčková, 2014, pp. 71–95.

12 Králíčková, 2021a, pp. 77–109.

13 Němečková, Kurkin, and Štyglerová, 2015.

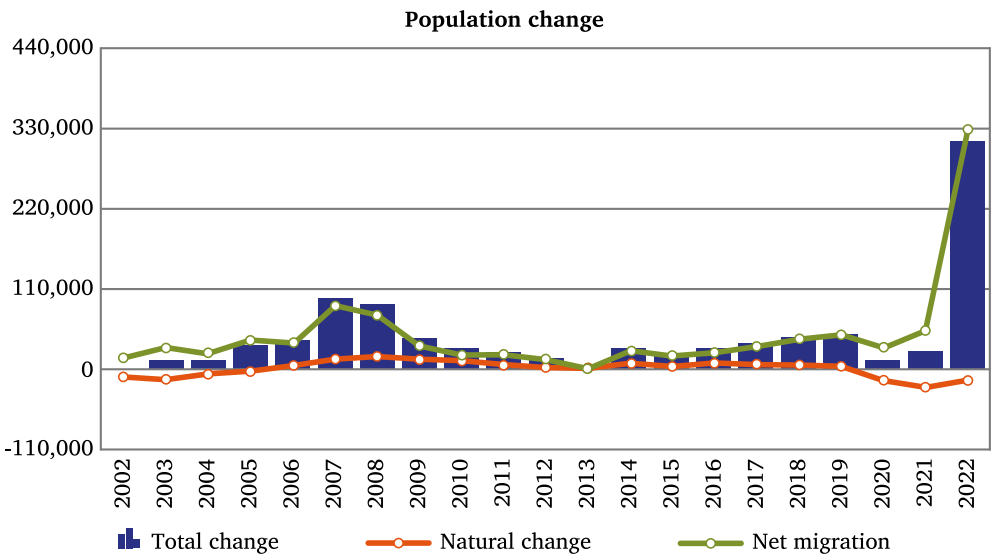
2. Families and family policy in Czechia

2.1. Demographic development and social reality

The picture of Czech society and family would be incomplete without general statistical data provided by the Czech Statistical Office. According to its website, the figures regarding the size and structure of the population are derived from decennial population censuses and data of demographic balances and changes. The latter are obtained by processing statistical reports on marriages, divorces, births, deaths, and migration, among other demographic factors, provided by the Population Register. All state indicators reflect the final results of the Population and Housing Censuses.[14]

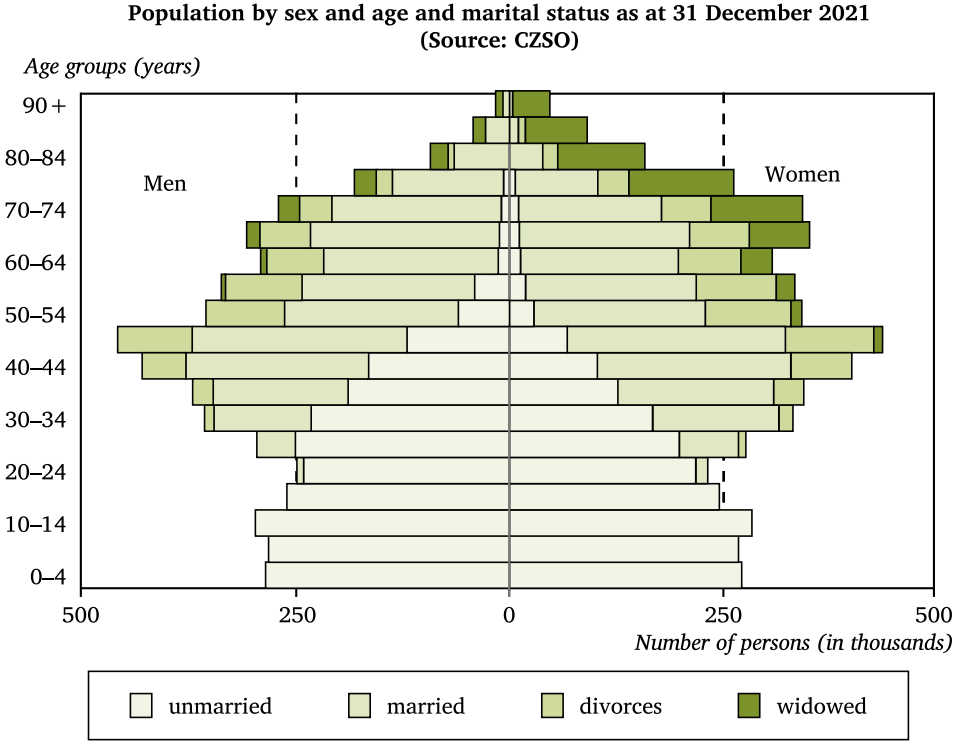
According to the website, the population of the Czech Republic was 10,873,553 as of 30 June 2023. The following charts illustrate the change in population and population structure by sex, age, and marital status.

Figure 1. The change in population[15]



14 See: https://www.czso.cz/csu/gender/3-gender_obyvatelstvo (Accessed: 10 October 2023).
15 See: https://www.czso.cz/csu/czso/population (Accessed: 13 October 2023).

Figure 2. Population by sex, age and marital status[16]



As noted, due to political, social, and economic changes in 1989, the portrait of the family in Czechia has completely changed. Exploring the country's history can elucidate the demographic developments in Czech society, the family, and family policy.[17]

The Communist takeover of 1948 was followed by many changes. These changes undoubtedly influenced both the character of the family and family law. Communist family policy defined the family as a small unit consisting of a husband and a wife, who were equal. The emancipation of women was realised through their full employment, including mothers with young children. That said, the role of maintenance duty between spouses and ex-spouses was underestimated. In any case, the standardisation of the so-called 'consumption' way of life gave rise to the need for 'two family incomes'. Consequently, the man stopped being the head of the family and its primary source of support. Meanwhile, due to nationalisation and expropriation, the family existed without property, real estate, and so on. Family

16 See: https://www.czso.cz/csu/czso/population (Accessed: 13 October 2023).

17 Previously Králíčková, Kornel and Zavadilová, 2019, pp. 122–132, and data and literature cited therein.

members were generally only allowed to own things for their personal use. Regarding housing, in most cases, families were meant to have flats in 'personal use' instead of 'personal ownership'. In this respect, relevant family policy 'placed' families in small state or co-operative flats, limiting the family to the so-called nuclear form: a married couple with one or two children. Parents were obliged to raise and teach their children according to the communist ideology. The social function of the family was transferred to state institutions. To this end, institutional facilities were responsible for the care, upbringing, and leisure time activities of children, while care for grandparents was assigned to institutional houses. The paternalistic state provided help to families through various kinds of support and allowances, the bulk of which were available to newly established young families. Preference for marriage at a young age to any other form of cohabitation led to a phenomenal marriage rate and remarkably low average age of new spouses. Statistically, almost everyone got married at least once in their lifetime, sometimes twice. Getting married 'early' offered several benefits. New young families were granted small loans with almost no interest, small flats for 'personal use', and some degree of financial support from the state after the birth of a child. Essentially, the only way a young couple would be allocated a flat was if they were married and had a child, a powerful inducement for early marriage and having children. Consequently, 'underage' brides were not uncommon. From the 1970s onwards, a pregnant bride was no longer considered a violation of social standards, with such a state often included in the life plans of single women.[18]

However, the family has undergone significant changes since 1989. As a result of better education and labour market opportunities, women have postponed having children—sometimes until it was too late to have them at all—or opted out of motherhood entirely. New possibilities—including a changing labour market, better professional and career opportunities, and travelling—provided young people with tantalising alternatives to starting a family. In 1999, birth rates declined to the lowest in the country's history, with just 1.13 births per woman. Naturally, the age of first-time mothers also increased. When the low birth rate became a political issue, the Parliament of the Czech Republic sought to encourage new births by extending the length of maternity leave, giving the mothers of newborn children more options on how to use their maternity leave, and increasing financial support. The Czech Statistics Office subsequently announced a gradual increase in childbirths. Specialists attributed the increased birth rate to the pro-family behaviour of the strong population born during the baby boom of the mid-1970s. According to the Czech Statistical Office, the fertility rate was 1.63 children per woman in 2016, and almost 1.7 in 2018. As a result of this increase in fertility intensity, in 2021, the Czech Republic ranked among the countries with the highest level of total fertility in Europe, with an average of 1.83 children per woman—the highest since 1992. The average age of mothers at childbirth increased to 30.4 years. For women aged

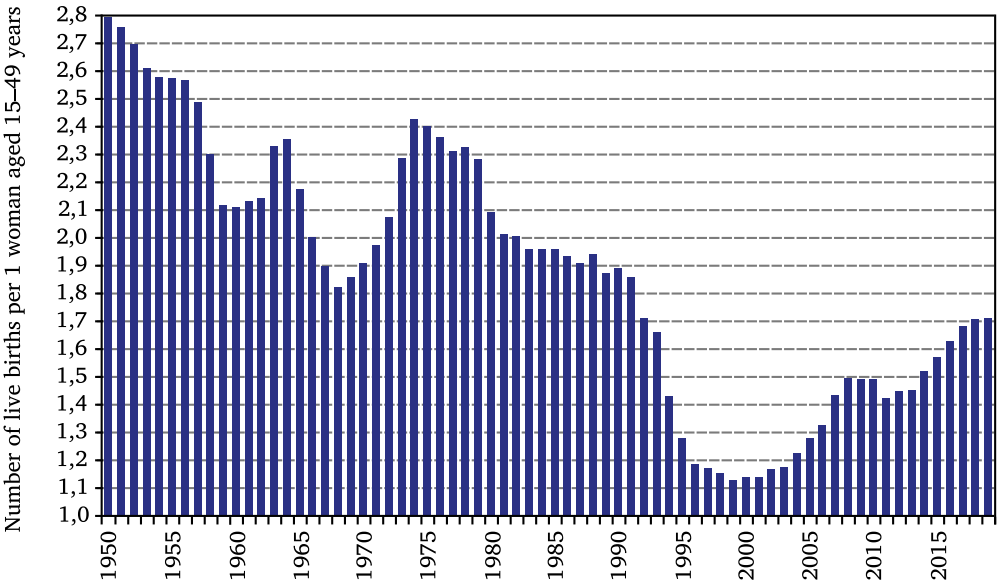
18 Hrušáková, 2002, pp. 24–25.

36 years and older, the increase in fertility was more than half as large. This uneven increase in fertility with age is reflected in the change in the average age of mothers at childbirth.[19]

It is worth examining fertility data collected during the 2021 Census in greater detail. According to the data, women with two children are represented in the population most frequently, with an average number of 1.57 children per woman. The Czech Statistical Office supplemented the data on the number of children born alive with a classification by the mother's age, educational attainment, and marital status.[20]

All of the aforementioned statistical data should be considered in light of the total fertility rate, as presented in the following Czech Statistical Office chart.

Figure 3. Total fertility rate, 1950-2019[21]



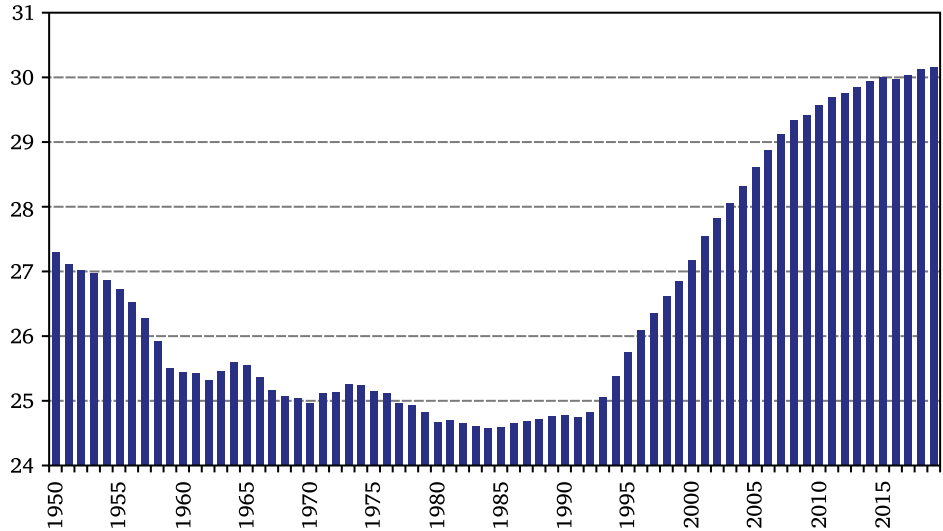
Provided by the Czech Statistical Office, the following graph illustrates the increase in the mean age of women at childbirth.

19 See https://www.czso.cz/csu/czso/uroven-plodnosti-v-cesku-patrila-loni-k-nejvyssim-v-eu (Accessed: 20 August 2023).

20 See: https://www.czso.cz/csu/czso/the-czso-published-detailed-data-on-fertility-from-the-census-2021 (Accessed: 13 October 2023).

21 See: https://www.czso.cz/csu/czso/total-fertility-rate-1950-2019 (Accessed: 13 October 2023).

Figure 4. Mean age of women at birth, 1950-2019[22]



Meanwhile, the divorce rate increased rapidly after 1948, with almost linear growth by the early 1990s. Divorce became a fully acceptable means of solving matrimonial problems. Holding a strong position in society, women could initiate divorce proceedings. The presence of minor children had no bearing on divorce whatsoever. As a rule, divorce settlements saw minor children placed in the sole custody of mothers, who were entitled to use the former family flat as an individual 'personal user', or tenant.[23]

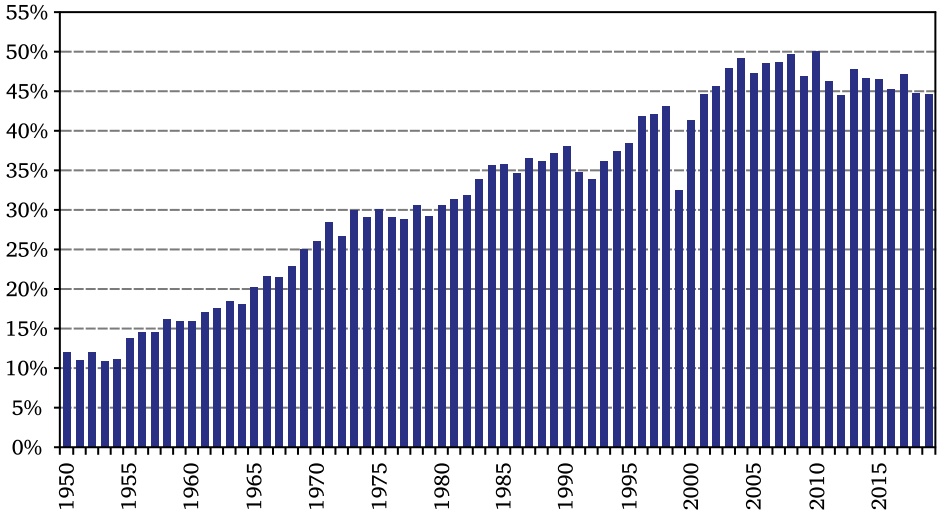
The divorce rate, however, stopped growing in 1990. According to experts, the decrease in the divorce rate in the early 1990s may have been the result of feelings of uncertainty related to fundamental social changes. Another factor was the growing numbers of lawsuits during this period, which resulted in court cases taking considerably longer than they previously had. Subsequently, the number of divorces increased only slightly. Nevertheless, the divorce rate spiked again in 2004, with 33,060 divorces. According to the website of the Czech Statistical Office, there were 19,300 divorces in 2022.[24] Prepared by the Czech Statistical Office, the following chart provides a comprehensive picture of trends in divorce rate in the country.

22 See: https://www.czso.cz/csu/czso/mean-age-of-women-at-birth-1950-2019 (Accessed: 13 October 2023).

23 Hrušáková, 2002, p. 25, 87 ff.

24 See: https://www.czso.cz/documents/10180/209040860/csu_tk_obyvatelstvo_prezentace.pdf/41dcb862-c251-4e5f-bca5-59d3f3a2775d?version=1.1 (Accessed: 19 October 2023).

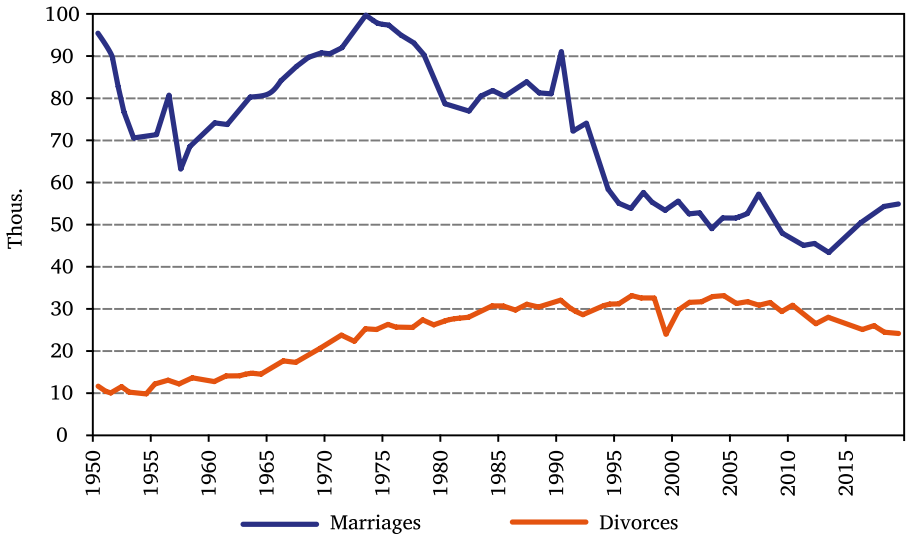
Figure 5. Total divorce rate, 1950-2019[25]



* Proportion of marriages terminated by divorce provided that divorce rates by duration of marriages of given year remain unchanged.

The following Czech Statistical Office chart provides further data on the proportion of marriages and divorces between 1950 and 2019.

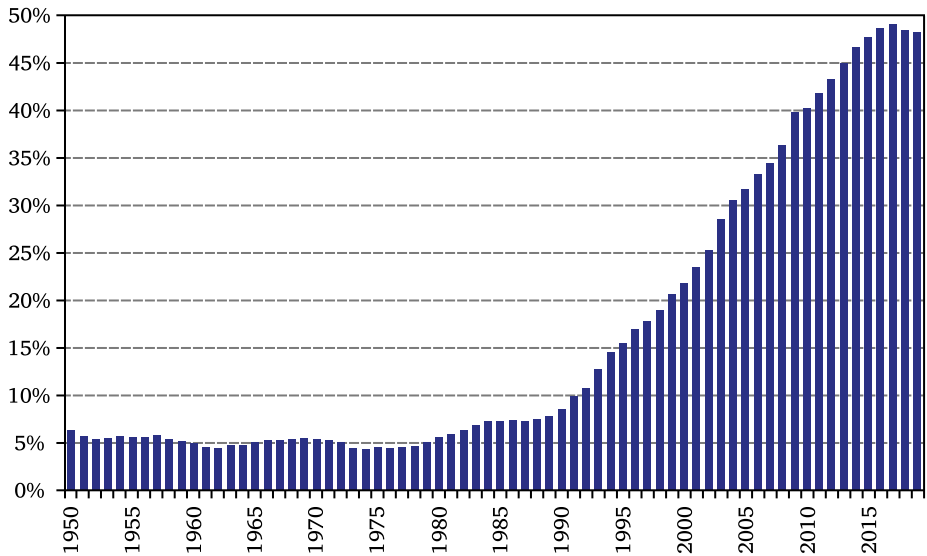
Figure 6. Marriages and divorces, 1950-2019[26]



25 See: https://www.czso.cz/csu/czso/total-divorce-rate-1950-2019 (Accessed: 13 October 2023).
26 See: https://www.czso.cz/csu/czso/marriages-and-divorces-1950-2019 (Accessed: 13 October 2023).

Given the relatively high marriage rate mentioned above, the period after 1948 was characterised by a relatively low number of children born out of wedlock. Interestingly, the number of children born out of wedlock has grown rapidly since 1989. Indeed, where only 8% of children were born out of wedlock in 1989, this proportion had increased to over 15% in 1996, creating a situation similar to that between 1918 and 1939. There are several reasons for this development. The mothers of such children often live with the child's father. According to polling data, many cohabiting couples in the Czech Republic do not want to get married, with some simply 'rejecting' marriage as 'an old institution', and others preferring to take advantage of state benefits designed to support 'single' mothers. This relates to all the issues mentioned above, as well as the diversity of incomes and increase in costs in general. At present, almost 50% of children are born out of wedlock. According to the Czech Statistical Office, this figure stood at 49.2% in 2023.[27] The following Czech Statistical Office chart illustrates the increasing proportion of children born out of wedlock, especially after 1989.

Figure 7. proportion of live births outside marriage, 1950-2019[28]



It is worth noting that cohabitation without marriage was quite rare among young people after 1948, especially in view of the difficulty obtaining flats, with young married couples always preferred in the state's allocation of flats for 'personal

27 See: https://www.czso.cz/csu/czso/cri/pohyb-obyvatelstva-1-ctvrtleti-2023 (Accessed: 13 October 2023).

28 See: https://www.czso.cz/csu/czso/proportion-of-live-births-outside-marriage-1950-2019 (Accessed: 13 October 2023).

use'. Informal relationships were primarily considered as 'preparation for marriage' or 'a stage before' marriage. The cohabitation of unmarried couples was almost exclusively limited to older couples or surviving spouses taking into consideration adult children and the need to retain the right to widow pensions. Individuals who had already had several marriages also tended to cohabit without marriage.[29]

Although cohabitation without marriage has clearly increased significantly since 1989, the number of nonformal unions has yet to be measured statistically. The growth of cohabitation without marriage is corroborated by the increasing number of children born out of wedlock and rising average marriage age. The 2001 Population and Housing Census furnished more detailed information on this matter. According to census data, over 5.7% of the adult population in their twenties (approximately 473,420 people) were cohabiting with their partner. Of those aged 50 and older, only 2.8% were cohabiting without marriage. As such, cohabitation was more common in younger age groups, with almost two-thirds of people aged 20–24 cohabiting. In the 2011 and 2021 Population and Housing Censuses, the number of *de facto* unions was even higher.[30]

In contrast to marriage, the Czech Statistical Office does not provide official data on the registered partnership of same-sex couples. In this respect, the greatest interest in registered partnership occurred immediately after it was enacted into Czech law in 2006. After an initial slump, the number of registered partnerships gradually increased over the years. According to non-official sources, a total of 2,174 couples entered registered partnership by the end of the 2015. Gay men appear to be relatively more interested in registered partnerships compared to lesbians, with registered partnership entered into by 1,439 male couples and 735 female couples. Nonetheless, interest has been on the rise in the recent years. Meanwhile, some 300 couples have terminated their registered partnerships.[31]

In conclusion, information reflecting the latest statistical data released by the Czech Statistical Office must be included. The year-on-year decline in the birth rate since early 2022, continued in 2023. Between January and March 2023, 22,000 babies were born alive, a year-on-year decrease of approximately 2,700 (11%). In terms of the order of the child, the number of first births decreased the least at 8%, whereas the number of children in the third or higher order decreased the most at 18%. The Czech Statistical Office also reported that, between January and March, 49.2% of children were born out of wedlock and that 3,500 thousand couples entered marriage, which is 1,000 fewer than the year before. That said, it is worth noting that last year's total for the first quarter was boosted by attractive February dates (e.g. 22 February 2022).[32]

29 Hrušáková, 2002, pp. 95–96.

30 For further detail, see: https://www.scitani.cz/results (Accessed: 17 October 2023).

31 See: http://www.praguemonitor.com/2016/02/05/thousands-czechs-enter-registered-partnership (Accessed: 14 February 2019).

32 See: https://www.czso.cz/csu/czso/cri/pohyb-obyvatelstva-1-ctvrtleti-2023 (Accessed: 10 October 2023).

2.2. Family policy and family support benefits

The Ministry of Labour and Social Affairs of the Czech Republic (hereinafter, the Ministry) announced that "A New Approach to Family Policy" was being prepared in co-operation with the Expert Committee for Family Policy. The policymakers intended to implement over 24 reform measures across five key areas.[33] In 2017, the Ministry presented "The New Family Policy Strategy 2023–2030" (hereinafter, the Strategy).[34] Approximately 40 different actors, ranging from ministries to nonprofit professional organisations and academia, were involved in the formulation of the conceptual document, which updated the previous draft.

The Strategy was predicated on the realisation that Czech society is undergoing significant social, demographic, and economic development. Among the most significant long-term changes in this respect is the increasing diversity of forms of family cohabitation and life paths. Life expectancy, divorce rates, and the number of children born out of wedlock have increased, relationships within the extended family have loosened, and the division and sharing of responsibilities between parents have changed. These developments are reflected in the varying degrees of fulfilment of family functions, the quality of life of individuals, and the increasing diversity of demands for inclusive family policies. The Strategy was, therefore, based on the premise that the family remains a highly preferred value today. In terms of its unique function, the family is a space for the creation of human capital, in which individual personalities are formed and future generations are nurtured and grown. As such, the family is undoubtedly the most important unit of society. The Strategy emphasised that only stable and prosperous families can guarantee a good environment for the upbringing of children, the sustainable development of society, and the functionality and cohesion of society. The role of the family in society is irreplaceable and deserves the utmost appreciation and support. To this end, the Strategy highlighted a perspective focused on the needs of families at different life stages and specific situations. Great importance was attached to the valuation and stability of the family, the primary prevention of negative phenomena, and the promotion of marriage as a tool for the legal, social, and economic protection of the family. At the same time, it respected the range of life paths and the actual diversity of forms of family cohabitation.[35]

The Strategy was based on an analysis of the situation of families in the context of declining fertility rates, an aging population, changing family structure, women achieving higher education, differential employment by gender and age, and the relative and absolute poverty of families with children.[36] It asserted that family

33 Jahoda, 2016.

34 See: https://www.mpsv.cz/documents/20142/4552532/Cile_strategie_grafika.pdf/98027e7f-d6ef-11d9-2c61-196fb3fb3c3a (Accessed: 12 October 2023), p. 1.

35 See: https://www.mpsv.cz/documents/20142/4552532/Cile_strategie_grafika.pdf/98027e7f-d6ef-11d9-2c61-196fb3fb3c3a (Accessed: 12 October 2023), pp. 1–2.

36 See: https://www.mpsv.cz/documents/20142/225508/Koncepce_rodinne_politiky.pdf/5d1efd93-3932-e2df-2da3-da30d5fa8253 (Accessed: 15 October 2023), pp. 10–19.

policy is by nature a cross-cutting policy, which means that it affects various domains, including taxation, pensions and social security, health and social services, employment, education and training, housing policy, and related policies in the areas of transport services and spatial development, as well as respect for human rights. Therefore, tax instruments and a simplified welfare system were recommended to ensure that the work and costs of raising children and caring for loved ones do not result in a fall in living standards compared with households without children in the same income bracket. These reforms include part-time and more flexible work, an expanded range of services for children, and improved quality and accessibility. The aim of the Strategy was to offer greater opportunities to achieve a balance between family and work life so that families can afford to spend more time with their children and give more care for loved ones.

In terms of its vision, the Strategy sought to create *"A favourable social environment and stable conditions respecting freedom of choice to support families in their functions and provide space and opportunities for families to fulfil their individual needs and aspirations."* The vision was summated into the following three points: (a) valuing the family and promoting its stability and relationships, (b) providing a supportive and stable socio-economic environment for families, and (c) achieving demographic stability and reducing demographic debt in view of the extremely low birth rates in the 1990s and at the turn of the millennium. Accordingly, the Strategy addressed several aspects aimed at creating favourable and stable conditions for families at all stages of life, rearing of the child, and caring for loved ones.

Based on "A New Approach to Family Policy" and the purpose and vision of family policy, the Strategy was elaborated and concretised into five primary objectives: (a) support the importance of family values, increase social prestige and appreciation of the family, and strengthen the institutional anchor of family policy in the Czech Republic; (b) develop an environment able to support stable family relationships and strengthen prevention risk phenomena in the family; (c) promote the reconciliation between family and work life; (d) create a favourable environment for the material and financial stability of families; and (e) support families at all stages of life and in specific situations.[37]

Although legislative work is currently underway to reform or amend key public law provisions related to this issue, it is difficult to predict whether the objectives of the Strategy will be achieved. At present, we can only provide a brief overview of the current legislative pillars of pro-family policy. This area of law is relatively unstable, with key regulations frequently amended in relation to rising inflation, cost of living, and other current issues.

First, let us consider the concept of maternity, paternity, and parental leave (Act No. 262/2006 Sb., Labour Code, as amended; hereinafter, LC). It is provided that in connection with the birth and care of a newborn child, a female employee shall

37 See: https://www.mpsv.cz/documents/20142/225508/Koncepce_rodinne_politiky.pdf/5d1efd93-3932-e2df-2da3-da30d5fa8253 (Accessed: 15 October 2023), pp. 3–4.

be entitled to maternity leave for 28 weeks; if she has given birth to two or more children at the same time, she shall be entitled to maternity leave for 37 weeks[38]. In connection with the birth and care of a child, the employer is obliged to grant paternity leave to the male employee. The employee shall be entitled to paternity leave for the duration of the paternity benefit under special conditions[39]. The law also regulates parental leave, which is available for each parent as follows. It is provided that an employer shall, at the written request of an employee, grant parental leave to enhance the care of a child. Parental leave shall be granted to the mother of the child after the end of maternity leave and to the father from the birth of the child to the extent requested by them, but no longer than until the child reaches the age of 3 years[40]. There are also special provisions for substitute family care. Specifically, a female or male employee who has taken a child into care replacing parental care because of a decision by the competent authority or a child whose mother has died shall also be entitled to maternity and parental leave. Maternity leave shall accrue to the employee from the date of taking charge of the child for a period of 22 weeks and, if the employee has taken charge of two or more children, for a period of 31 weeks, but not longer than until the date on which the child reaches the age of one year[41].

Maternity allowance is one of the six benefits of the Czech sickness insurance system, alongside the sickness benefit, nursing allowance, long-term nursing allowance, paternity postnatal care, and compensatory allowance for pregnancy and maternity. Details are regulated by a special act (namely, Act No. 187/2006 Sb., Sickness Insurance Act, as amended, hereinafter, SIA). In principle, maternity allowance is payable in connection with the care of a newborn child to the mother or father of the child or to the insured person (male or female) who has taken the child into care in lieu of parental care based on the decision of the competent authority. Entitlement to maternity allowance is only granted if two conditions are met[42]: the applicant for maternity benefit must be insured for sickness at the time of claiming the benefit (i.e. social security contributions are paid on the income from employment), or the protection period from the terminated sickness insurance must be in force. To do this, she or he must meet a second specific condition: she or he must have been insured for sickness for at least 270 days in the two years preceding the start of the benefit (i.e. approximately 9 months of sickness insurance spread over two years). This condition does not have to be met under the same employer. Periods from different insurances (i.e. jobs) can be added over a two-year period. Self-employed workers are only entitled to maternity allowance if they voluntarily pay for sickness insurance for a certain period. Specifically, self-employed workers must have been insured as

38 Art. 195, LC.
39 Art. 195a, LC.
40 Art.196, LC.
41 Art. 197, LC.
42 Art. 32 ff, SIA.

self-employed for at least 180 days in the year preceding the date of entitlement to maternity allowance. At the same time, participation in sickness insurance (from employment or business) must have lasted for at least 270 calendar days in the two years preceding the date of entitlement to the benefit.[43] The amount of maternity allowance per calendar day shall be 70 % of the daily assessment base[44]. The subsistence period for maternity allowance is (a) 28 weeks for an insured woman who has given birth to a child and (b) 37 weeks in the case of an insured woman who has given birth to two or more children at the same time; after the expiry of the 28-week sub-replacement period, maternity benefits shall be payable only if the insured woman continues to care for at least two of those children[45].

Regarding other financial support for families, especially those with newborn infants or children, the legal regulation of social benefits can be found in several legal acts.

According to another special act (Act No. 117/1995 Sb., Act on State Social Support, as amended, hereinafter, ASSS), state social assistance is provided by the State to cover the cost of food and other basic personal needs of children and families and is also provided in certain other social situations. State social assistance is provided in specified cases depending on the amount of income and the costs of State social assistance shall be borne by the State[46]. State social assistance benefits comprise: (a) income-related benefits, which include 1) child benefit, 2) housing benefit, and 3) childbirth allowance; and (b) other benefits, which include 1) parental allowance and 2) funeral allowance[47].

When a child is born, the parents are entitled to a childbirth allowance. It is provided that a woman who has given birth to her first or second living child is entitled to a childbirth allowance if the family's qualifying income does not exceed the product of the family's subsistence minimum and a coefficient of 2.70. The father of the first or second live-born child shall also be entitled to a birth grant if the woman who gave birth to the child or children has died and on the date of birth fulfilled the necessary conditions[48]. Moreover, a person who has taken into permanent substitute care a child under the age of one year and for whom that child was the first or second child, regardless of whether the first child was born or taken into permanent substitute care, is also entitled to a birth grant[49]. The grant amount is CZK 13,000 for the first child and CZK 10,000 for the second child and shall be paid in one lump sum[50].

Child benefit is a regular support for lower-income families who need help with the costs of raising and supporting their children. It is a basic benefit for a child who

43 See: https://www.cssz.cz/penezita-pomoc-v-materstvi (Accessed: 15 October 2023).
44 Art. 37, SIA.
45 Art. 33, SIA.
46 Art. 1, ASSS.
47 Art. 2, ASSS.
48 Art. 44, ASSS.
49 Art. 45, ASSS.
50 Art. 46, ASSS.

is a dependent and lives in a lower-income family. A dependent child is entitled to child benefit if the family's qualifying income does not exceed the product of the family's subsistence minimum and a coefficient of 3.40[51]. Child benefit is provided in three amounts depending on the age of the dependent child. The conditions for entitlement to child benefit are as follows. The amount of child benefit shall be the following per calendar month in the case of a dependent child: (a) up to 6 years of age CZK 830, (b) from 6 to 15 years, CZK 970, and (c) from 15 to 26 years of age, CZK 1,080[52]. According to the Ministry, if at least one parent works or has other income (e.g. sick leave or pension), the allowance is increased by CZK 500. Therefore, the amount of the allowance ranges from CZK 830 to CZK 1,580 per child per month.[53]

Parental allowance is for all parents of children under 4 years of age irrespective of household income or whether the child's mother or father is the recipient. The monthly amount depends on the parents' choice and the maximum amount depends on their previous income. The act provides that a parent who personally cares for the youngest child in the family on a full-time and proper basis for a whole calendar month is entitled to parental allowance up to the age of 4 years of that child, and no longer than until the total amount of CZK 300,000 has been paid in parental allowance for the care of the same youngest child in the family, unless otherwise specified. If the youngest child in the family is 2 years or more children are born at the same time ("multiple children"), that parent is entitled to 1.5 times the amount of CZK 300,000.[54]

The housing allowance is similarly complex and depends on many variables, including the number of people in the household, their age, and the type of ownership of the family flat or house[55].

Regarding the conditions for entitlement to funeral benefits, a person who has arranged a funeral is entitled to a funeral allowance according to specified conditions. The amount of the funeral allowance shall be CZK 5,000 and shall be paid in one lump sum (§ 47, § 48, ASSS).

Foster care benefits are comprehensively regulated. Foster care benefits comprise (a) an allowance to cover the child's needs, (b) the foster parent's remuneration, (c) an allowance on receipt of the child, (d) an allowance for the purchase of a personal motor vehicle, and (e) the foster care allowance (Act No. 359/1999 Sb., Act on Social and Legal Protection of Children, as amended; also known as the Children Act; hereinafter, ChA). The amount of allowance to cover a child's needs depends on the age of the child and the degree of disability, if any, and is determined by fixed amounts. The remuneration of the foster parent and the foster care allowance are linked to the

51 Art. 17, ASSS.
52 Art. 18, ASSS.
53 See: https://www.mpsv.cz/web/cz/statni-socialni-podpora (Accessed: 15 October 2023).
54 Art. 30, ASSS.
55 Art. 24 ff, ASSS.

minimum subsistence wage or minimum wage set by special laws. The allowance on receipt of the child and the allowance for the purchase of a personal motor vehicle are designated as lump sums[56].

Significantly, new legislation on the property protection of children was passed recently after many vicissitudes (Act No. 588/2020 Sb., on Substitute Maintenance, as amended). The new law regulates substitute maintenance for dependent children (both under and over age) and is conceived as a social benefit. This law is detailed in the section on the protection of minors (see 5.6. below).

Pension security and the rules governing the provision thereof are laid down in a special law regulating pension insurance in the event of old age, invalidity, and the death of the breadwinner (Act No. 155/1995 Sb., on Pension Insurance, as amended; hereinafter, PI). The following pensions are covered by the insurance system: old-age pension[57], disability pension[58], widow's and widower's pension[59], and orphan's pension[60]. This special act defines the various terms and general rules for participation in insurance and establishes the rules for determining the entitlement to, or calculation of, the various pensions. It also lays down the rules governing the possible overlapping of individual pensions and the conversion or increase of pensions.

The tax relations of natural persons or these persons as family members are also regulated by a special regulation (Act No 586/1992 Sb., on Income Tax, as amended; hereinafter, IT). This Act defines various key terms, including 'taxpayer', 'subject of tax', 'income from dependent and independent activities', 'income from rent', 'tax base', 'tax lump sum', and 'tax exemption'. Special attention is paid to the taxpayer's housing needs in relation to the exemption of income, which is conditional on the expenditure of the funds obtained from that income to provide for the individual's housing needs[61]. The existence of marriage, or of a spouse and children or (grand) parents, is particularly relevant to the assessment of income and expenses of co-operating persons[62], or the exemption from income tax for gratuitous income from inheritance or legacy, gift or loan, and so on (§ 4a, IT). In respect to family members, emphasis is placed on the tax-free parts of the tax base (§ 15, IT) and tax rebates for taxpayers (§ 35ba, IT), as well as the spouse discount/tax rebate/tax credit (§ 35bb, IT) and other tax benefits (§ 35c, IT). This rather complicated legislation is often subject to amendments.

To summarise, frequent changes in tax, social security, and pension law make this area of public law fairly opaque, causing considerable problems for families, especially those with many children or at risk of poverty.

56 Art. 47e ff, ChA.
57 Art. 28 ff, PI.
58 Art. 38 ff, PI.
59 Art. 49 ff, PI.
60 Art. 52-53, PI.
61 Art. 4b, para 2, IT.
62 Art. 13, IT.

3.On the principles of Czech family law and European family law values

The principles of Czech family law stem from human rights conventions and universally shared European values and standards. Art. 8 of the Convention for the Protection of Human Rights and Freedoms protects every person's right to private and family life (in the Czech Republic published under No 209/1992 Sb.; hereinafter, the 'Convention'). The case law of the European Court of Human Rights describes the Convention as a 'living' instrument that provides protection to all forms of families and all models of family life.

The inner Charter of Fundamental Rights and Freedoms is fully in harmony with the above-mentioned broad concept of family life guaranteed by international instruments (Act No 2/1993 Sb.; hereinafter, the 'Charter'). The Charter also contains general rules, stating, 'Parenthood and the family are under the protection of the law' (Art. 32, sec. 2, Charter), although family based only on marriage is not mentioned. It must be stressed that owing to the many human rights covenants and the case law of both the Constitutional Court of the Czech Republic and the European Court of Human Rights, family law began to be amended, interpreted, and applied in harmony with its human rights dimension. The principle of every person's right to private and family life should, thus, be considered a fundamental principle of Czech family law.

Although the Civil Code guarantees all persons the right to freely choose their own way of life and to take charge of their own and their family's happiness, it provides increased protection for families established by marriage (Act No 89/2012 Sb., as amended; hereinafter, the 'Civil Code' or 'CC'). The protection of marriage is systematically enshrined at the beginning of Book Two of the Civil Code, entitled 'Family Law'. Specifically, the legislative goal of supporting families based on marriage is manifested in the form of several provisions that protect the weaker party and underage children. These provisions include the concept of the things that form the usual equipment of the family household; matrimonial property law, especially that regulating community property and mutual maintenance duty; and the protection of family housing. It should also be noted that Civil Code allows marriage to be solemnised only between a man and a woman (§ 655, CC):[63] so-called 'gender-neutral marriage' was not discussed at all during the preparation of the Civil Code, despite recent developments in many European countries.[64] Nevertheless, a pending draft in favour of gender-neutral marriage was lodged by a group of deputies in the Parliament of the Czech Republic in the last parliamentary term.[65] This draft

63 Králíčková, Hrušáková and Westphalová, 2020, p. 1 ff.
64 Scherpe, 2016, p. 40 ff; Sörgjerd, p. 167 ff.
65 Parliament of the Czech Republic, Chamber of Deputies, Parliamentary term No. VIII., Draft No. 201/0.

could be viewed by some as progressive and modern, whereas others may see it as undermining traditional family values or the above-mentioned 'traditionally marriage-centric family laws with fixed perceptions of gender roles'. As this legislative proposal was not approved in the last legislature, a new legislative proposal submitted to the Parliament of the Czech Republic in the current legislature has built on its theses.[66] The question is whether it will be turned into law.[67]

Alongside the principles of the protection of the weaker party or vulnerable person and the autonomy of will, the principle of family solidarity can be considered a fundamental principle of Czech family law and Czech civil law. [68] The concept of the autonomy of the individual is at the heart of the protection of human rights and is a pillar of private law. Consequently, the Civil Code rightly emphasises the autonomy of the individual's will in the broadest sense as a right to self-determination. The Civil Code regulates for the principle that, unless expressly prohibited by the law, persons may agree upon their rights and duties differently from the law. Only agreements contravening 'good manners, public order, or rights relating to the status of persons including right to protection of personality are prohibited'[69]. However, for the principle of the autonomy of individual will to be fully realised, all persons must be equal, both legally and *de facto.* The Civil Code develops this constitutional idea and provides that no one may suffer unjustifiable harm because of his or her lack of age, intellect, or dependence on his or her position, nor may any person take unjustified advantage of his or her own incapacity to the detriment of others[70]. One can fully agree with the opinion that 'one cannot merely take the general private law concept(s) of "autonomy" and transpose them into family law. Autonomy in family law must, because of the subject matter, be seen in a different light and thus judged differently'.[71]

The principle of the protection of the weaker party or vulnerable person follows from the above. This principle is reflected in several concepts in both contract law and the emphasis on the general categories of good morals and public order. Any person can become the weaker party or vulnerable person,[72] and everyone has been a minor child at some time. In addition, any person can be injured or become ill. The principle of the protection of the weaker party and the principle of solidarity permeates the whole of family law. If a person is legally (or *de facto*) attached to someone else, it is perfectly legitimate for them to endure various legal restrictions,

66 Parliament of the Czech Republic, Chamber of Deputies, Parliamentary term No. IX., Draft No. 241/0.

67 However, it must be added that there have currently been changes in this area which will come into force on 1 January 2025 (see amendment to the Civil Code by the Act No 123/2024 Sb.; for details see part 4.3. below).

68 Králíčková, Hrušáková and Westphalová, 2022, p. 26.

69 Art. 1, para. 2, CC.

70 Art. 1, para. 2, CC.

71 Scherpe, 2016, p. 132.

72 Králíčková, 2024.

for example, sharing, especially in the property sphere. The purpose of many family law provisions is, thus, to limit the autonomy of will and the right of ownership (use or disposition) in favour of a third party, usually referred to as the weaker party. This may be a child who is dependent on adults for personal care and maintenance, a spouse unable to support himself or herself due to years of providing all-day care for a common dependent child, a close adult relative who has developed a state of dependency owing to old age or mental illness, or anyone at risk of domestic violence.[73]

As explained in the introduction, the Civil Code respects the general principle of family solidarity. Many sections of 'Book Two – Family Law' lay down provisions that protect weaker parties. Special attention is paid to maintenance duty between family members, which is regulated between spouses[74] and ex-spouses[75], for unmarried mothers of children[76], and between relatives in a direct line. The most detailed regulation is devoted to the maintenance duty of parents and grandparents toward children[77]. The Act on Registered Partnership (Act No 115/2006 Sb., as amended; hereinafter, 'ARP') establishes similar rules for maintenance between registered and formerly registered same-sex partners to those in the Civil Code regarding spouses and ex-spouses[78], although the regulation on same-sex partnerships is generally insufficient.[79]

Minor children, in particular, are considered vulnerable;[80] thus, the Czech legal order pays due attention to the child's rights, and the principle of the best interests of the child is understood as a key principle of Czech family law. The United Nations Convention on the Rights of the Child – a Magna Charta of the rights of the child – has been a part of the legal order of the Czech Republic since 1991[81]. Thanks to this significant achievement, it was necessary to significantly adapt the philosophy, ideas, and principles of the Czech legal order from the early 1990s onwards, namely, by passing amendments to the old law from the 1960s and adopting the Children Act (Act No 359/1999 Sb., as amended, on Socio-Legal Protection of Children) into public law.[82] However, substantial changes in this field occurred in connection with the passing of the new Civil Code in 2012. The incorporation of family law matters into the main source of private law, 'Book Two – Family Law', was not the only significant development:[83] the admission

73 Králíčková et al., 2011.
74 Art. 697 ff, CC.
75 Art. 760 ff, CC.
76 Art. 920, CC.
77 Art. 910 ff, CC.
78 Arts. 10, 11, and 12, ARP.
79 Holub, 2006, pp. 313–317.
80 Van Bueren, 2007; Radvanová, 2015.
81 Published under No 104/1991 Sb., hereinafter, 'CRC'.
82 Hrušáková and Westphalová, 2011.
83 Králíčková, 2014, pp. 71–95; 2021a, pp. 77–109.

of the new concept of parental responsibility,[84] conceived according to the international conventions and in harmony with the Principles of European Family Law regarding parental responsibilities[85] by the Commission on European Family Law[86] must also be underlined.[87] In this concept, the child is no longer conceived as a passive object of his or her parents' activities but as an active subject with legally guaranteed rights. This approach also fulfils the main aim and purpose of the Convention on the Rights of the Child as expressed in the Preamble and its key provision, which states, 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration' [88]. Following long-standing criticism of bad practice, the Czech legislator has attempted further remedies, in particular, by trying to reduce the number of children in institutional care in favour of foster family care, for example, by requiring financial support for foster care from the child's grandparents. However, the main goal of the state's pro-family policy is to gradually eliminate care for young children in nurseries and similar institutions.[89] Finally, the new regulation on the protection of children's property, which was passed after many vicissitudes[90], should be highlighted. Further, a new law regulates substitute maintenance for dependent children and builds on the compensatory mechanism previously enshrined in other Acts.

With regard to protecting and supporting adult vulnerable persons, it is also necessary to mention several other provisions in the Civil Code arising from Czechia's international obligations. Two international conventions primarily led the main drafters of the Civil Code to create a new concept of the limitation of legal capacity owing to mental disorders and to enshrine a number of supportive measures. These conventions are the Convention on the Rights of Persons with Disabilities[91] and the International Protection of Adults (published under No 68/2012 Sb. m. s.; hereinafter, 'The Hague Convention'). Finally, Recommendation CM/Rec (2009)11 on principles concerning continuing powers of attorney and advance directives for incapacity of the Council of Europe was taken into account in relation to the above-mentioned international conventions in the preparation of the Civil Code.

84 Králíčková, 2022a, pp. 73–102.
85 Boele-Woelki et al., 2007.
86 For details see: www.ceflonline.net (Accessed: 21 July 2022).
87 Králíčková, 2021b, pp. 85 – 98.
88 Art. 3, para. 1, CRC.
89 Kuchařová et al., 2020 [Online]. Available at: https://www.mpsv.cz/documents/20142/225508/Zpr%C3%A1va+o+rodin%C4%9B+2020.pdf/c3bdc63d-9c95-497d-bded-6a15e9890abd (Accessed: 20 July 2023) [in Czech].
90 Act No 588/2020 Sb., on Substitute Maintenance
91 Published under No 10/2010 Sb. m. s.; hereinafter, 'CRPD'.

4. Horizontal civil law provisions protecting relationships between adults

4.1. Family based on marriage and its legal protection and support

There are many concepts protecting families in the Czech Republic, especially those with minor children. In addition to the constitutional rules mentioned above, other provisions incorporated into the Civil Code follow the principle of family solidarity. As already discussed, the Civil Code provides for special protection for families based on marriage intended for persons of the opposite sex.

First, the Civil Code states that each spouse should contribute to the needs of the family and the family household according to their personal and property conditions, abilities, and possibilities so that the standard of living of all members of the family is the same. As such, it is provided for that property has the same importance as the personal care of the family and its members[92].

In addition to the duty to contribute to the needs of the family, the law also establishes the mutual maintenance duty of the spouses, to the extent of a right to the same living standard[93].

Further, the Civil Code regulates the concept of the things forming the usual equipment of the family household[94]. It is established that, regardless of the ownership of things that fulfil the family's necessary life needs, one spouse needs the consent of the other when dealing with them (although this rule does not apply if the item is of negligible value). A spouse may claim the invalidity of a legal act by which the other spouse dealt, without his or her consent, with an item belonging to the usual equipment of the family household.

Community property is also a key concept of marital property law, or rather, family property law.[95] The legal regime of community property is regulated in the first place. Its scope is very broad[96] and includes what one or both spouses have gained in the course of their marriage except for (a) what serves the personal needs of one of the spouses;[97] (b) what only one of the spouses has gained by gift, succession, or bequest, unless the donor or the testator expressed a different intention in their will; (c) what one of the spouses has gained as compensation for a non-proprietary infringement of his or her natural rights; (d) what one of the spouses has gained by legal dealings relating to his or her separate property; and (e) what one of the spouses has

92 Art. 680, CC.
93 Art. 697, CC.
94 Art. 698, CC.
95 Psutka, 2015.
96 Arts.709 and 710, CC.
97 Since 1998, the things an individual uses to perform his or her job have not been excluded from the scope of the legal regime of community property. For a different perspective, see: Boele-Woelki, et al., 2013.

gained as compensation for damage to or loss of separate property. The community property includes any profit from what is the separate property of one of the spouses; however, it does not include an interest of a spouse in a company or a cooperative if that spouse became a member of the company or the cooperative during the marriage, with the exception of housing cooperatives. Community property also includes debts assumed in the course of the marriage unless (a) the debts concern the separate property of one of the spouses, to the extent of the profit from that property, or (b) only one of the spouses has assumed the debts without the other spouse's consent and taking on the debts was not to fulfil the everyday or common needs of the family.

The Civil Code enables not only modifications of the legal regime of community property but also the creation of the agreed regime[98] and the establishment of the regime of separated property[99]. As an innovation, it is possible to conclude arrangements for the case of a termination of marriage due to divorce or death by making a contract of succession[100]. Both would-be spouses and spouses may do so at any time, either before entering into the marriage or during the marriage. In this way, the lawmaker fully respects the principle of the autonomy of will to create a wedding contract, which was completely curbed in the 1960s legal regulation. The parties to the contract are required to maintain the formality of a public deed. A record in the public list is optional[101].

The protection of the weaker spouse and third persons is expressly established in the Civil Code in a separate provision. It is regulated that a wedding contract of a marital property regime may not, due to its consequences, exclude the spouse's ability to maintain the family and may not affect, by its content or purpose, the rights of a third person unless the third person agrees to it. A contract made without the third party's consent has no legal effects for such a party[102]. The law further establishes that, if during the existence of community property, a debt has arisen for only one of the spouses, the creditor may also recover the debt from the community property in the execution of the judgement[103]. If a debt has arisen only for one of the spouses against the will of the other spouse, who has communicated his or her disagreement to the creditor without unnecessary delay after coming to know about the debt, the community property may be affected only up to the amount that represents the debtor's share if the community property were to be cancelled and divided[104]. This also applies in the case of the spouse's duty to pay maintenance, if the debt comes from an illegal act committed by one of the spouses, or if the debt of one of the spouses arose before they entered into the marriage.[105].

98 Art. 716, CC.
99 Art. 729, CC.
100 Art. 718, para. 2, CC.
101 Art. 721, CC.
102 Art. 719, CC.
103 Art. 731, CC.
104 Art. 742, CC.
105 Art. 732, CC.

It must be added that the Civil Code regulates special protection provisions on regimes established by a court decision. It is provided that if there is a serious reason, a court can, upon the application of a spouse, cancel the community property or reduce its existing scope. A serious reason must always mean that a spouse's creditor requires his or her claim to be secured to an extent exceeding the value of what belongs exclusively to that spouse, that a spouse may be considered prodigal, or that the spouse constantly or repeatedly takes unreasonable risks. The fact that a spouse has started pursuing business activities or become a partner of a legal person with unlimited liability may also be considered a serious reason[106]. Finally, a court decision may not exclude or amend provisions governing the concept of the things forming the usual equipment of the family household. The consequences of a court decision on the change, cancellation, or renewal of community property must not exclude the ability of a spouse to provide for the family, and its content or purpose may not affect the rights of a third person, unless the third person has consented to the decision[107].

There are also special rules concerning the family dwelling. If the family house or apartment is part of the spouses' community property, their rights and duties are equal, and protection is provided by the regulation analysed above. If not, the situation of the economically weaker spouse is dealt with in the Civil Code by defining the so-called derived legal reason for housing or family dwelling. The law establishes that if the spouses' dwelling is a house or apartment in which one of the spouses has an exclusive right to live, and if it is a different right from the contractual one, the other spouse obtains the right to housing by entering into the marriage[108]. If one of the spouses has an exclusive contractual right to the house or apartment, especially the lease right, both spouses jointly obtain the lease right ensuring the equality of rights and duties by entering into the marriage[109]. Nevertheless, this situation may be contractually agreed in a different way[110], which is fully in harmony with the principle of the autonomy of will, for example, within the scope of a pre-wedding contract, as mentioned above. In addition, the Civil Code regulates the prohibition of the disposal of the family dwelling in a similar way to the rules relating to the concept of the things forming the usual equipment of the family household[111]. If at least one of the spouses has the right to dispose of the house or apartment in which the family household lives and this house or apartment is necessary for the dwelling of the spouses and the family, that spouse must refrain from endangering the dwelling and prevent anything that may make it impossible to live there. A spouse cannot, without consent of the other spouse, misappropriate such a house or apartment, or create a right to the house or to part or the whole of an apartment, the exercise of

106 Art. 742, CC.
107 Art. 727, CC.
108 Art. 744, CC.
109 Art. 745, CC.
110 Art. 745, para 2, CC.
111 Art. 698, CC.

which is incompatible with the dwelling of the spouses or the family, unless he or she arranges a similar dwelling of the same standard for the other spouse or the family. Further, if a spouse acts without the consent of the other spouse contrary to this rule, the other spouse may claim the invalidity of such legal conduct [112]. If the spouses have a joint right to a house or apartment in which the family household of the spouses or of the family lives, the above-mentioned prohibition similarly applies (Art. 748, CC).[113]

As for divorce, the legal regulation is based on the irretrievable breakdown of the marriage, which has been the only permitted reason for divorce since 1963. The Civil Code sets forth that a marriage may be dissolved if the joint life of the spouses is deeply, permanently, and irretrievably broken and its recovery cannot be expected (Art. 755, para. 1, CC).[114] Unfortunately, the concept of divorce suggested by the Principles of European Family Law regarding Divorce and Maintenance between Former Spouses,[115] created by the Commission on European Family Law, was not taken into account when preparing the draft Civil Code.[116]

If both spouses have agreed to the divorce, or the other spouse has joined the petition for divorce, the court does not examine the reasons for the breakdown of the marriage, concluding that the spouses' identical statements about this breakdown and their intent to divorce are true (Art. 757, CC).[117] The following requirements must be met for an uncontested (agreed) divorce: (a) on the day of the commencement of the divorce proceedings, the marriage must have lasted for at least 1 year, and the spouses must not have lived together for more than 6 months; (b) spouses who are parents of a minor child without full legal capacity must have agreed on arrangements for the child for the period after the divorce, and the court must have approved their agreement;[118] and (c) the spouses must have 'agreed on the arrangement of their property, their housing and, if the case may be, the maintenance for the period after the divorce'. The pre-divorce property agreement must be in writing, with officially authenticated signatures, and must comply with the general requirements for a contract and respect the special provisions on the division of matrimonial property, which are particularly aimed at protecting third parties. The key point is that a settlement of assets and liabilities must not affect any of the rights of a third person. If a right of a third person has been affected by a settlement, the third person may request that a court declares the settlement ineffective with respect to themselves. As such, the settlement of debts is effective only between spouses[119]. As

112 Art. 747, CC
113 Králíčková, Hrušáková and Westphalová, 2022, p. 107 ff.
114 Králíčková, Hrušáková and Westphalová, 2020, p. 426 ff.
115 Boele-Woelki et al., 2004.
116 Králíčková, 2021b, pp. 85–98.
117 The new legal regulation does not acknowledge divorce on the basis of agreement (i.e. consensual divorce). For more, see: Boele-Woelki, et al., 2004.
118 Changes are expected; see: Králíčková, 2022b, pp. 83–100.
119 Art. 737, CC.

the autonomy of the will of the divorcing spouses is paramount, the court deciding on the divorce reviews the contract but does not approve it. To be enforceable, the contract must be made by a notarial deed with a clause of direct enforceability.

In cases where one of the spouses does not agree to the divorce or property settlement, the court must examine both the reality of whether the marriage has broken down irretrievably and the reasons leading to this breakdown.[120] In these cases, the divorce 'option' is only a 'status solution': the spouses will be divorced by the court, but there will be no division and settlement of their joint property and housing, and no determination of any post-divorce alimony. This concept is particularly disadvantageous for the weaker party; that is, the economically dependent spouse.

Notably, since 1998, there have been so-called '*clauses against harshness*', which are used infrequently in praxis.[121] The first of these clauses protects the weaker party among the spouses. The law sets forth that despite an irretrievable breakdown, the marriage cannot be dissolved if this dissolution would be contrary to the interests of a spouse who was not predominantly involved in the breach of marital duties and who would suffer especially serious harm as a result of the divorce and if there are extraordinary circumstances supporting the existence of the marriage, unless the spouses have not lived together for at least 3 years (Art. 755, para. 2, CC).[122] The principle of family solidarity applies especially in these cases. Nevertheless, this 'divorce ban' is not absolute: after 3 years of *de facto* separation, the court must pronounce the divorce judgement.

Unless an agreement is reached soon after a divorce judgement becomes final, it will be up to the spouses to bring an action before the court in separate proceedings for the settlement of the community property, the regulation and adjustment of the use of the former family home, and, where appropriate, maintenance for the period after the divorce.

120 Art. 756, CC.

121 Haderka, 2000, pp. 119–130; Králíčková, 2008a, p. 173 ff.

122 Another so-called '*clause against harshness*' provides that a divorce cannot be granted owing to the interests of a minor child of the spouses and so requires special reasons. The court examines the child's interests within the existence of the marriage by inquiring of the custodian who is appointed by the court for the proceedings about the arrangement of the child's custody for the period of the divorce (§ 755, para. 2, CC). This formal protection of children is not used in practice. If the spouses have a minor child, the court will not grant a divorce until the 'special' court dealing with the agenda on minors decides on the 'personal' custody of the child and maintenance for the child for the period after the divorce (§ 755, sub-sec. 3, CC). The court dealing with the custody of the minor child may decide on or approve the agreement of the spouses in the matter of entrusting the minor child into the individual (sole) custody of one parent, alternating (serial) custody, or joint custody (§ 907, CC). It is necessary to emphasise that both parents of the child are principally holders of rights and duties resulting from parental responsibility (§ 865 et seq., CC). The decision on custody following the divorce only determines who the minor child will live with in the common household (in addition to the maintenance duty toward the child and visiting rights). As mentioned above, changes are expected in the pending drafts that should make divorce law simpler and more favourable for those spouses who are able to reach an agreement in harmony with the best interests of the child. For more, see: Králíčková, 2022b, pp. 83–100.

Regarding the community property, if an agreement is not achieved, the court will make a decision based on both quantitative and qualitative criteria, such as the interests of unsupported children or the extent to which a spouse was involved in obtaining and maintaining the property that falls under the community property of the spouses[123]. If no agreement is made and a petition is filed within 3 years of the divorce, the following legal presumption will be applied[124]:

> If, within 3 years from the reduction, cancellation, or extinction of community property, no settlement of what was formerly part of the community property takes place, even by agreement, and no application for settlement by a court decision is filed, the spouses or former spouses are conclusively presumed to have settled as follows: a) corporeal movable things are owned by the spouse who uses them exclusively as an owner for his or her own needs or the needs of his or her family or family household, b) other corporeal movable things and immovable things are under undivided co-ownership of both spouses; their shares are equal, c) other property rights, claims, and debts belong to both spouses jointly; their shares are equal.

The spouses' dwelling after the divorce depends on the legal basis of the marital housing. If the house or apartment used for the family dwelling was in the community property of the spouses, the considerations described above will be applied in connection with its settlement and adjustment. If an apartment was jointly leased by the spouses, they may cancel this property by rescinding the contract or having recourse to the court, which will determine, when deciding on the cancellation of the joint lease, the manner of compensation for the loss of the right, taking into account the situation of any unsupported children and the opinion of the lessor, among other considerations[125]. If one of the spouses was an exclusive owner of the house or apartment used for the family dwelling, through divorce, the other spouse loses the so-called derived legal reason for housing, and the court may make a decision about his or her moving out of the property[126].

The maintenance duty between divorced spouses is regulated in the Civil Code in a different manner from the previous law.[127] The basic condition is dependence on maintenance, or an individual's incapacity to maintain himself or herself independently; however, the law now establishes that such incapacity to maintain oneself independently must have its origin in the marriage or in connection with the marriage[128]. Another innovation is the list of factors that should be taken into

123 Art. 742, CC.
124 Art. 741, CC.
125 Art. 768, para. 1, CC.
126 Art. 769, CC.
127 Králíčková, 2009, pp. 281–291.
128 Art. 760, para. 1, CC.

consideration when deciding on maintenance[129]. Unless an agreement is reached soon after the divorce judgement becomes final, the court will consider how long the marriage lasted, how long it has been dissolved, and whether (a) the divorced spouse has remained without a job even though he or she is not prevented from finding one for serious reasons, (b) the divorced spouse could have ensured maintenance by properly managing his or her property, (c) the divorced spouse participated in care of the family household during the marriage, (d) the divorced spouse has not committed a criminal act toward the ex-spouse or a close person of the ex-spouse, or (e) whether there is another, similarly serious reason. The scope of maintenance is determined according to the level that would be adequate. The right to maintenance for the period after a divorce terminates only when the beneficiary enters into a new marriage or upon the death of the obligor or beneficiary. If a substantial change in the situation occurs, the court may decide to decrease, increase, or abolish the mutual duty of maintenance between the divorced spouses. The Civil Code also establishes an exceptional right to 'sanctioning maintenance' to the extent of ensuring the same living standard. The spouse who did not cause the divorce or did not agree to the divorce and who suffered serious harm owing to the divorce may file a motion to the court to determine a maintenance duty for the former spouse to the extent that the ex-spouses can have the same living standard. The divorced spouse's right to maintenance may be considered justified only for a period appropriate to the situation, but for 3 years after the divorce at the most[130].

Finally, to protect the family or family property in the broader sense, the Civil Code also regulates family enterprises [131]. Family enterprises are defined as those where the spouses work together, or where at least one of the spouses works with their relatives to the third degree or persons related to the spouses by marriage up to the second degree, and the enterprise is owned by one of these persons. Those individuals who permanently work for the family or family enterprise are considered members of the family participating in the operation of the family enterprise. Members of the family participating in the operation of the family enterprise also participate in its profits and in things gained from those profits, as well as in the growth of the enterprise to the extent corresponding to the amount and kind of their work. This right may only be waived by a person with full legal capacity making a personal declaration[132]. If the family enterprise is to be divided, a member participating in its operation has a pre-emptive right to it[133].

129 Art. 760, para. 2, CC.
130 Art. 762, CC.
131 Art. 700, CC.
132 Art. 701, CC.
133 Art. 704, para. 1, CC.

4.2. Family based on the de facto relationship of persons of different sexes and its weak legal protection and limited support

There is no special regulation in the Czech legal order and no relevant statistical data as regards the protection of families that are not based on marriage (i.e. *de facto* unions). The 2011 Census indicated a relatively small number of people living in *de facto* cohabitation.[134] Another Census in 2021 brought to light some new and highly relevant data,[135] which showed that living in *de facto* cohabitation has become more popular than marriage among young couples today. It is common knowledge that children are born into unmarried cohabitation. It should be stressed that whether or not a child is born into marriage, his or her legally established parents have equal rights and obligations related not only to parental responsibility.[136] No child is in any way discriminated against in the legal system because of his or her origin. However, the parents of these children do not always live together in a family household, making it difficult to rely on statistical data showing the proportions of children born out of marriage. Many such children have been born in the Czech Republic in the last decade (almost 50%), as illustrated in the chart from the Czech Statistical Office.[137],[138]

It should be noted that during 'Communist times', former Czechoslovakia had a relatively low rate of children born out of wedlock at only 5–8%, and there were a lot of marriages. These demographics were (in addition to other impacts) a result of the marriage-centric family law mentioned in the introduction and its fixed perceptions of gender roles. Cohabitation without marriage was adopted as a family model mainly by divorced or widowed people.[139]

As there is almost no regulation of the rights and duties of cohabitees and there are seldom contracts between them, the protection of the weaker party becomes difficult.[140] There are no legal rules that would establish mutual rights and duties between cohabitees; for example, there is no duty to help each other, no community property, no protection of the family dwelling or the things forming the usual equipment of the family household, and no mutual maintenance duty by operation of the law. Unfortunately, there are often no property contracts between cohabitees, which causes extensive problems for the weaker party upon the dissolution of a *de facto* relationship. There is, thus, a lack of legal certainty, especially in families with minor children, when the unit breaks down. It must be stressed again that, as there

134 See: https://www.czso.cz/csu/czso/otevrena_data_pro_vysledky_scitani_lidu_domu_a_bytu_2011_sldb_2011 (Accessed: 20 March 2023).
135 For more, see: https://www.scitani.cz/csu/scitani2021/recent-news (Accessed: 26 May 2023).
136 Králíčková, 2022a, pp. 73–102.
137 See: https://www.czso.cz/csu/czso/proportion-of-live-births-outside-marriage-1950-2019 (Accessed: 28 March 2021).
138 See Part 2 above.
139 Hrušáková, 2002.
140 Králíčková, 2021c, pp. 53–66.

is no discrimination against children born out of wedlock, the rights and duties of the parents of all children are equal. If an unmarried man and an unmarried woman have a child together, they are both principally holders of parental responsibility by operation of the law, without being discriminated against in comparison with married parents of a minor child. However, parenthood must be legally established. There are no differences between the children at all in the Czech legal order, neither in the personal nor property sphere.

Finally, the law traditionally protects the property claims of unmarried mothers of children. The Civil Code regulates 'maintenance and support, and provision for the payment of certain costs for an unmarried mother' as follows: 'If the child's mother is not married to the child's father, the child's father shall provide her with maintenance for 2 years from the birth of the child and provide her with a reasonable contribution to cover the costs associated with pregnancy and childbirth'[141]. Regarding the property rights of a pregnant woman, it is provided that:

> A court may, on the application of a pregnant woman, order the man whose paternity is probable to provide an amount needed for maintenance and a contribution to cover the costs associated with pregnancy and childbirth in advance. A court may, on the application of a pregnant woman, also order the man whose paternity is probable to provide in advance an amount needed to provide for the maintenance of the child for a period for which the woman would be entitled to maternity leave as an employee under another legal regulation.[142] (Art. 920, paras. 2 and 3, CC).

To sum up this issue, it is difficult to strike a fair balance between the private autonomy of those who form a *de facto* union (and those who do not want to conclude marriage) and the protection of the weaker party and the welfare of families not based on marriage. The legal orders of European states are very different; thus, only optimists may speak about European standards in this field. However, the first steps toward the spontaneous harmonisation of rules regulating the situation of couples living in *de facto* unions can be observed. This has been achieved mainly thanks to the case law of the European Court of Human Rights and the Principles of European Family Law regarding the Property, Maintenance, and Succession Rights and Duties of Couples in *De Facto* Unions[143] by academics concentrated within a project of the Commission on European Family Law.[144] The Czech legislator should rethink the concept of the protection of families not based on marriage and, at the least, 'improve' the provisions regarding family dwellings, especially the right of the surviving cohabitee as 'a member of the lessee's household' to make transferring a lease more favourable.[145]

141 Art. 920, para. 1, CC.

142 This period totals 28 weeks, or 37 weeks in the case of siblings or more children. For details, see: Act No. 262/2006 Coll., as amended, the Labour Code (Section 195, Sub-Section 1).

143 Boele-Woelki et al., 2019.

144 For more information, see: http://ceflonline.net/ (Accessed: 12 May 2023).

145 Králíčková, 2022c, pp. 109–120.

4.3 Family based on a registered same-sex partnership: Still a controversial topic

As mentioned above, the protection of all family life is guaranteed by international treaties and the inner Charter of Fundamental Rights and Freedoms. The Czech legal system regulates same-sex relationships, but as registered partnerships rather than marriages (ARP). Neither this source of law nor the Civil Code sufficiently regulates the mutual rights and duties of same-sex partners.[146] However, perhaps surprisingly, the Act on Registered Partnership regulates the mutual maintenance obligation between partners or former partners[147]. In general, however, if there is no contract between the partners, protecting the position of the weaker partner becomes difficult. There is no community property, no common lease of apartments by operation of the law, and no protection of a family dwelling or the things forming the usual equipment of the family household between registered partners. Further, registered partners are also not allowed to jointly adopt a minor child[148] or become joint foster parents of a minor child as only married couples are allowed to do this[149]. Nevertheless, there were some changes in this field in 2016. The discriminative provision that prohibited a single adoption by one of the partners in a registered partnership[150] was cancelled by the decision of the Constitutional Court of the Czech Republic.[151] As mentioned above, there is a pending draft that supports 'gender-neutral marriage'. It should also be noted that there are same-sex families in Czechia where minor children live with their fathers and mothers and their partners in *de facto* unions or registered partnerships, although there are no relevant statistical data on these families.

As indicated above, there have currently been changes in this area which will come into force on 1 January 2025. Same-sex partnerships will be regulated in the Civil Code, like marriage for opposite-sex couples, and a separate law will be partially repealed. The Civil Code, as amended, will provide that a partnership is a permanent union of two people of the same sex, which is concluded in the same way as marriage. Unless the law or another legal regulation provides otherwise, the provisions on marriage, rights and obligations of spouses, widows and widowers apply mutatis mutandis to the partnership and the rights and obligations of the partners.[152]

146 Holub, 2006, pp. 313–317.
147 Arts. 10, 11, 12, ARP.
148 Art. 800, CC.
149 Art. 964, CC.
150 Art. 13, para. 2, ARP.
151 See: Ruling of the Constitutional Court of the Czech Republic No. Pl. ÚS 7/15 of 14 June 2016, available at: http://nalus.usoud.cz/Search/Search.aspx (Accessed: 12 May 2023) [in Czech]. The Constitutional Court found the provision discriminative as it provided that registration itself is an obstacle to the adoption of a minor child by one of the registered partners. There were dissenting opinions.
152 See new paragraph 2 of Article 655, CC, amended by the Act No 123/2024 Sbt.

5. Vertical civil law provisions protecting relationships between adults and children

5.1. Legal concept of kinship

In addition to marital status, the Civil Code regulates the establishment of other structures, stating, 'Kinship is a relationship based on a blood tie or originated by adoption'[153]. The legal regulation of parenthood can be characterised as traditional. The Civil Code regulates the establishment of parenthood and who is the child's parent through mandatory rules. According to the Czech legal order, a child can 'legally' have only two parents: the mother and the father. It is irrelevant how the parentage was established, whether by consanguinity or adoption. As described below, the adoption of both minors and adults is constructed as a status change[154]. It must be added that only a man and a woman who are married can become joint adoptive parents of a child. Here, we leave aside the recognition of foreign decisions on same-sex parentage in Czechia. In the case of so-called 'multi-parentage', only foster care is allowed, where the child remains legally united with his or her parents and is cared for by another person for the duration of his or minority.

5.2. On motherhood

The Civil Code provides that 'the child's mother is the woman who gives birth to the child'[155], regardless of the identity of the donor of the egg. Legal motherhood is, thus, identical to biological motherhood, and, in the case of egg donation, genetic motherhood is irrelevant. The regulation of artificial insemination, or assisted reproduction, can be found in a special Act (Act No 373/2011 Sb., as amended, on Specific Health Services). This Act defines basic concepts such as assisted reproduction, infertile couples, anonymous donors, and the mutual anonymity of the donor, the infertile couple, and the child. The Act also defines the conditions for the realisation of these procedures (i.e. informed consent) and various restrictions concerning age and kinship. Surrogate motherhood is not regulated in the Czech legal order except for one 'note' in connection with adoption among close relatives[156]. For details, see below.

Despite the above-mentioned rules on status, there is a legal possibility of hidden childbirth according to a special Act passed in 2004 at the request of some MPs (Act No 422/2004 Sb., Act on Hidden Childbirth).[157] This concept was later followed up

153 Art. 771, CC.
154 Art. 794 ff, CC.
155 Art. 775, CC.
156 Art. 804, CC.
157 Regarding critical comments, see: Hrušáková and Králíčková, 2005, p. 53 ff.

by new regulation (Art. 37, Act No 372/2011 Sb., as amended, on Health Services). According to the law, a woman with permanent residency in the territory of the Czech Republic, if she is not a woman for whose husband there is a presumption of fatherhood, has a right to have her identity hidden in connection with a birth. If she wants to hide her identity in connection with the birth, this woman submits to the health service provider a written application to hide her identity, in which she must also state that she does not intend to care for the child. The result of this legal concept is that a child may have a mother whose identity he or she does not know because it is hidden from him or her in the Register of Births. The rights of the child and the child's biological father are more or less omitted in this case.

In addition, another new social phenomenon has emerged in the Czech Republic since 2005. As a result of a private fund,[158] we face the reality of 'baby boxes' for unregistered and unwanted children spread across the country, which enable mothers to abandon newborn babies there.[159] If the identity of a mother whose child was abandoned and placed in a baby box cannot be determined, the child is given the status of a legal foundling. Such children cannot be 'properly' registered in accordance with the Convention on the Rights of the Child, thereby creating *de facto* obstacles to tracing their origins in adulthood. Another problem is that not every baby-box child is lucky enough to be adopted. Statistics and research on this issue are lacking. However, police statistics show that murders of newborn babies still occur in the country.

5.3. On fatherhood

The Civil Code provides that a child's father is the man whose fatherhood is based on one of three legal presumptions of paternity[160]. The first presumption favours the mother's husband, if the child is born in wedlock or within 300 days of the termination of the marriage[161]. The second presumption respects the autonomy of the will of the child's parents and provides that a man who states, together with the child's mother, that he is the father of her child is, in fact, the father[162]. The third presumption is based on sexual intercourse during the critical period: the father of an unmarried woman's child is considered to be the man who had sex with her within the period between 160 days and 300 days before the birth, unless his fatherhood is excluded for serious reasons[163]. In addition to legal parenthood (*de jure)*, biological or genetic parenthood and social parenthood (*de facto*) are also of great importance. Generally, it is necessary to respect the balance between legal, biological, and social parenthood; therefore, the law also protects so-called 'putative fathers' (Art. 783,

158 For more, see: https://www.babybox.cz/ (Accessed: 13 May 2023).
159 Zuklínová, 2005, pp. 250–253.
160 Art. 776 ff, CC.
161 Art. 776, CC.
162 Art. 779, CC.
163 Art. 783, CC.

CC).[164] Following the case of *Keegan v. Ireland*,[165] in 1998, the lawmaker introduced provisions aimed at strengthening the status of a man who believes himself to be a child's father even against the will of the child's mother who has given consent to the adoption of the child. The active legitimacy of the putative father to bring an action to determine paternity was introduced. In addition, the law set forth that a child must not be adopted until the proceedings on determining paternity initiated by the putative father have been completed.[166]

Despite being planned, the child's right to denial is not expressly regulated in the Civil Code, even if it has never been put into question by expert committees. The right of putative fathers to denial was completely omitted by the lawmakers. The legitimation of persons who can deny fatherhood is traditional, with only the child's legal parents, as recorded in the Register of Births, being able to do so.

Finally, another new development was influenced by the case law of the European Court of Human Rights, namely, the cases of *Paulík v. Slovakia*[167] and *Novotný v. the Czech Republic*.[168] The Czech lawmaker allowed men designated by the court to be named as legal fathers under the third presumption of paternity at a time when DNA tests did not exist in order to bring an action to reopen proceedings and reverse the effects of *res iudicatae*.[169]

5.4. The importance of human reproductive technologies for family law

Concerning the rapid increase in the number of infertile people and couples in Europe, for many years, Czech law has regulated assisted reproduction relatively broadly and liberally. It should be noted that as the basic method of assisted reproduction, artificial insemination was previously performed in the former Czechoslovakia only for married couples, according to contemporary legal sources. Gradually, the legislator began to expand both the circle of 'recipients' of assisted reproduction and the range of reproductive techniques allowed, including the possibility of germ cell donation. Interestingly, the first 'test-tube baby' (i.e. a child conceived through *in vitro* fertilisation and embryo transfer) was born thanks to a more advanced method of assisted reproduction in Brno in former Czechoslovakia in 1982.[170]

The broader framework regarding this issue is covered by the Convention for the Protection of Human Rights and Dignity of the Human Being concerning the Application of Biology and Medicine (published under 96/2001 Sb. m. s.; hereinafter,

164 See: Králíčková, 2008b, pp. 275–282.
165 Application No. 16969/90.
166 Art. 830, CC.
167 Application No. 10699/05.
168 Application No. 16314/13.
169 See: Act No. 296/2017 Sb., an amendment to the Act No 292/2013 Sb., Act on Specific Civil Law Proceedings, that introduced the new § 425a.
170 For more, see: https://www.fnbrno.cz/pred-40-lety-se-ve-fn-brno-narodilo-prvni-dite-ze-zkumavky/t7607 (Accessed: 29 July 2023) [in Czech].

'CBioMed'). This Convention enshrines, in particular, the requirement to respect professional standards[171], the prohibition of sex selection[172], and the prohibition of financial benefit from the human body or any part thereof[173].

The key regulation for assisted reproduction, or artificial insemination, is the Act on Specific Health Services (Act No 373/2011 Sb., as amended; hereinafter, 'ASHS'). This Act defines the basic concepts of assisted reproduction, infertile couples, anonymous donors, the mutual anonymity of the donor and the infertile couple, and the conditions and limits for the implementation of these assisted reproduction procedures, as follows. According to the law, assisted reproduction[174] comprises methods and procedures involving the collection and manipulation of germ cells, the creation of a human embryo through the fertilisation of an egg with sperm outside the woman's body, and the manipulation and storage of human embryos for artificial insemination of the woman (a) for medical reasons to treat the infertility of a woman or man if it is unlikely or impossible for the woman to become pregnant naturally or to bear a viable foetus and other treatments have not led or are highly unlikely to lead to the woman becoming pregnant; or (b) as regards the need for early genetic testing of the human embryo, if the health of the future child is endangered because of a demonstrable risk of transmission of genetic diseases or defects carried by the woman or man.

Regarding the specific details of assisted reproduction, germ cells here refer to eggs and sperm. The assisted reproduction of a woman involves either (a) the introduction of sperm into the woman's reproductive organs, or (b) the transfer of a human embryo resulting from the fertilisation of an egg by sperm outside the woman's body into the woman's reproductive organs (i.e. *in vitro* fertilisation and embryo transfer). The Act stipulates in more detail what can be used for the assisted reproduction of a woman: (a) eggs obtained from the woman; (b) sperm obtained from a man who is undergoing fertility treatment together with the woman; or (c) germ cells donated by another person (i.e. a donor), who must remain anonymous. The Act states that anonymous donors must be (a) women aged between 18 and 35, and (b) men aged between 18 and 40.

It must be stressed that surrogate motherhood has never been regulated by medical law.[175] However, the Civil Code expressly mentions the word 'surrogacy' in the context of regulating the conditions of adoption: the law provides that adoption is excluded among persons who are relatives in a direct line and siblings, 'except for kinship based on surrogate motherhood'[176]. It should be noted that this 'supplement' to the traditional concept of adoption was included in the draft Civil Code as a result of a last-minute proposal.

171 Art. 4, CBioMed.
172 Art. 14, CBioMed.
173 Art. 21, CBioMed.
174 Art. 3, ASHS.
175 See: Haderka, 1986, pp. 917–934.
176 Art. 804, CC.

As regards age, assisted reproduction may be performed on a woman of childbearing age, provided that she is under 49 years, based on a written request from a woman and a man who intend to undergo this medical service together (i.e. an informed infertile couple). If the request or consent is withdrawn, artificial insemination cannot be carried out, in line with the case law of the European Court of Human Rights on Art. 8 ECHR in *Evans v. the UK*.[177] The right to become a parent includes the right not to become a parent.

It follows from the concept analysed above that assisted reproduction can be performed only on an infertile couple that is married or in a *de facto* relationship (not on a single woman). Repeated informed consent can only be given during the lifetime of the male partner of the infertile couple (and not after his death), although the law does not expressly prohibit assisted reproduction after the death of a husband or partner. The costs of assisted reproduction are covered by the general health insurance system.

The Civil Code regulates the legal status of children conceived through assisted reproduction within the provisions of affiliation. In general, according to the Convention on the Rights of the Child, every child has the right to be registered immediately after birth. This means that the book of births and the birth certificate must, as a matter of principle, indicate who the child's mother and father are, in addition to the date of birth, name, surname, sex, etc. The child has the right to know his or her parents and be in their care, as far as possible[178]. Further, the state must not create or blindly tolerate any obstacles that would enable the separation of the child from his or her parents or relatives[179]. The principle of the best interests of the child should be applied when taking any measures and must be a primary consideration[180]. However, according to the Czech legislation, if the gamete donation is considered anonymous by the law, it must be concluded that the child has no right to request information about the assisted reproduction or, possibly, the donor or donors. There is no case law on this matter.

5.5. The concept of the adoption of a minor child – full adoption

As mentioned above, the Civil Code provides that '[k]inship is a relationship based on a blood tie or originated by adoption'.[181] People may have different reasons for adopting 'someone else's' child: adoption can be a solution to failed attempts at parenthood through natural means or through assisted reproduction. The process may involve adopting a completely 'strange' child into the family from an institution, or comprise a situation where the child is adopted by a relative or the spouse of the child's parent or the child's surviving spouse.

177 Application No. 6339/05.
178 Art. 7, sub-sec. 1, CRC.
179 Art. 9, CRC.
180 Preamble, Art. 3, sub-sec. 1, CRC.
181 Art. 771, CC.

The legal regulation of the adoption of a minor in the Czech Republic is in harmony with the standards established mainly by international covenants and the case law of the European Court of Human Rights.[182] According to the Czech legislation, adoption always represents a 'status' change; therefore, the rules and substantive law conditions are regulated in a very strict and mandatory manner. The whole adoption process can only be carried out by state authorities.

The adoption of a minor is seen as an emergency, subsidiary solution to a crisis of the child's family of origin.[183] If close relatives of the child are willing and able to provide care for the child personally, preserving family ties will always take precedence over adoption by a non-relative[184].

First, the law regulates the 'adoptability' of a child. As a child is primarily part of his or her family of origin, the rules on the adoption of a minor that are anchored into the Civil Code[185] stipulate the requirements of parental consent[186] and the option of consent withdrawal[187] or expiry[188]. The child's mother may give consent to the adoption after the expiry of 6 weeks from the delivery of the child[189]. The child's father is allowed to give consent any time after the child's birth. Parents of a child who are aged under 16 are not allowed to consent to adoption at all[190] as any consent would be completely irrelevant. As a novelty established by the Civil Code, the law introduces the rule that the court may, while depriving the parents of their parental responsibility, also decide to deprive parents of the parental right to give consent to adoption[191]. As regards parents' non-interest, the law provides for a variety of situations, such as those where a parent stays in an undisclosed location[192] or clearly shows no interest in the child, thereby permanently and culpably breaching his or her parental duties[193]. The law establishes a presumption of apparent non-interest when non-interest lasts at least 3 months after any instruction, advice, and assistance received from the state authority[194]. It should be added that only the court accepts parents' consent to the adoption of their child. The court also decides on parents' lack of interest in a child in a special procedure. The mediation of adoption, that is, the search for suitable adoptive parents for the child to be adopted, and adoption matching are matters overseen by the state and its authorities.

182 Králíčková, 2003.
183 Králíčková, 2022b, pp. 83–100.
184 Art. 822, CC.
185 Art. 794 et seq., CC.
186 Art. 809 ff, CC.
187 Art. 817, CC.
188 Art. 816, CC.
189 i.e. after the puerperium; § 813, CC.
190 Art. 811, para. 1, CC.
191 Art. 873, CC.
192 Art. 818, para. 1c, CC.
193 Art. 819, CC.
194 Art. 820, CC.

Regarding the adoptee, the participation rights of the child, which are guaranteed by international conventions, have been strengthened. The law explicitly states that a child over 12 years of age must always give consent to his or her adoption[195] and that he or she may revoke this consent[196] . If, at the time of the adoption process, the child was very young, the adoptive parents have a duty to inform them about the adoption as soon as it is appropriate and no later than when the adoptee begins compulsory school attendance[197].

A new provision introduced by the Civil Code lifts a ban on adoption among close relatives. Close family ties were traditionally a disincentive for adoption; however, under strong pressure, the lawmaker relinquished this natural, social, and legal ban. The law currently provides that adoption is excluded among persons who are relatives in the direct line and siblings except for kinship based on surrogate motherhood[198]. It should be noted that medical law has never regulated surrogate motherhood in Czechia, or former Czechoslovakia.[199] However, surrogacy is a reality today. Private clinics, in particular, provide surrogacy procedures without any legal regulation. As mentioned above, a child's mother is considered to be the woman who delivered the child[200]; thus, adoption is the only 'legal way' that non-biological parents can legally become the parents of a child. Of course, if the intended father is also the biological father of the child, he can become the legal father via the second presumption of paternity, based on an agreement with the child's mother, as described above[201].

As another novelty, the Civil Code also establishes the option for an adoption and its circumstances to be kept secret from the child's family of origin. The option of secrecy also applies to the child's parents and their consent to adoption[202]. However, once the child reaches the age of majority and legal capacity, he or she is entitled to access the details of the adoption file[203]. Regardless of this new rule, the traditional regulation on vital registers still allows adoptees over 18 years old to inspect the registry books and collections of documents.[204] This regulation provides evidence that adoption has been never explicitly based on the principle of anonymity.

The Civil Code also implemented a key change regarding the consequences of adoption, establishing the possibility of converting a revocable adoption into an irrevocable adoption by operation of the law within 3 years of the adoption order becoming effective. No petition for the revocation of adoption is possible[205]. An exception applies to situations where the adoption was in conflict with the law.

195 Art. 806, CC.
196 Art. 808, CC.
197 Art. 836, CC.
198 Art. 804, CC.
199 See: Haderka, 1986, pp. 917–934.
200 Art. 775, CC.
201 Art. 779, CC.
202 Art. 837, CC.
203 Art. 838, CC.
204 See: Act No. 301/2000 Sb., as amended, on Registers, Names and Surnames.
205 Art. 840, para. 2, CC.

However, the court may decide upon the irrevocability of the adoption even before the expiry of a 3-year period from the adoption order.

Finally, in order to give a complete picture of the adoption legislation, it is necessary to briefly mention the adoption of adults, which was abandoned as a 'bourgeois anachronism' for political reasons after the communist takeover in 1948 and re-introduced by the Civil Code in 2012. As mentioned above, the adoption of an adult always represents a 'status change', although not a full status change, unlike in the case of the adoption of a minor. The law distinguishes between two types of adoption of an adult: (a) an adoption that is analogical to the full adoption of minors[206], and (b) an adoption that is not analogical to the full adoption of minors[207], where the adoptee remains, especially with regard to property, – connected to his or her family of origin[208].

5.6. Parental responsibility and protection of the minor child

The protection of the minor child is mainly guaranteed through the concept of parental responsibility. The term 'parental responsibility' was introduced into the Czech legal order in 1998 as a result of the international human rights conventions signed in the early 1990s.[209] Here, the cleansing of ideological sediment, the different attitude toward the mutual duties and rights of parents, and the emphasis on the rights of the child should be underlined. Thanks to the case law of both the European Court of Human Rights and the Czech Constitutional Court,[210] the human rights dimension of family law was also taken into consideration when preparing the draft Civil Code after 2000 and, later, within the general discussion prior to the passing the final version of this Code.[211] The authors of the Civil Code reflected academic initiatives and their achievements, namely, the Principles of European Family Law regarding Parental Responsibilities[212] by the Commission on European Family Law,[213] which were created and published during the time the Civil Code was gradually being prepared. Consequently, in its final version released in 2012, the Civil Code not only followed up on its predecessor, which was extensively amended in 1998, but also took into account many necessary and relevant innovations in this matter.[214] As such, the Civil Code distinguishes between the 'holding' and 'exercise' of the duties and rights of parental responsibility. The concept and scope of parental responsibility in the current Civil Code are much broader than in the previous legal regulation, bringing

206 Art. 847, CC.
207 Art. 848, CC.
208 Art. 849, CC.
209 See: Hrušáková, 2002.
210 Králíčková, 2010.
211 See: Eliáš and Zuklínová, 2001, 2005.
212 Boele-Woelki et al., 2007.
213 For more, see: http://ceflonline.net/ (Accessed: 25 April 2023).
214 For more, see: Králíčková, 2009, pp. 157–173; Králíčková, 2014, pp. 71–95.

more balance, protection, and security to family ties. It is critical that parental responsibility arises from, and belongs (only) to, both the legally established parents of a minor child, without any discrimination based on gender, sexual orientation, being under the age of majority, or disabilities. The duties and rights of a child's parents are equal, regardless of whether they are married, divorced, or separated. Parents must exercise the duties and rights of parental responsibility jointly and in harmony with the best interests of the child and his or her welfare, well-being, and participation rights. If a child is at risk, for instance, if the child's parents are not able to exercise their duties and rights properly because of objective reasons (e.g. they are minors, do not have full legal capacity, or are in a coma) or subjective reasons (e.g. they are socially immature or inadaptable, suffer from drug addiction, or are violent), the Civil Code also provides special rules for addressing difficult life situations.[215] Many provisions are applied by the operation of the law (*ex lege*), and many articles give the state administrative authorities and the courts both rights and duties to intervene in family ties with a wide range of measures, remedies, or sanctions.[216]

At this point, it is necessary to present in more detail the legal aim, concept, and content of parental responsibility. Parental responsibility should be understood as the collection of duties and rights aimed at 'promoting and safeguarding the welfare of the child'. As such, the content of parental responsibility is broad and complex. The Civil Code provides that parental responsibility includes parents' duties and rights, comprising (a) caring for the child, mainly including care for his or her health and his or her physical, emotional, intellectual, and moral development; (b) protecting the child; (c) maintaining personal contact with the child; (d) ensuring the child's upbringing and education; (e) determining the child's place of residence; (f) representing the child; and (g) administering the child's assets and liabilities or property[217]. In addition, the Civil Code defines the key issues for which the consent of both of the child's parents is necessary. The list of significant matters related to the child is demonstrative and includes (a) non-routine medical and similar interventions, (b) the determination of the child's place of residence, and (c) the choice of child's education and employment[218]. It can be said that the duty and right to decide on these matters comprise, *de facto*, the content of parental responsibility.

In summary, the legal provisions regarding parental responsibility that are anchored to the Civil Code protect not only minor children but their parents as well. Any person can be in the position of the weaker party, especially minors or parents who are not fully capable, single mothers, putative fathers, or parents left behind in the case of international child abduction or the unlawful inter-country relocation of a child. Consequently, vulnerability is reflected in the broadest sense in the Civil Code. The general protection of the family and family life according to the wishes,

215 Králíčková, 2022a, pp. 73–102; Králíčková, 2022b, pp. 83–100.
216 Krausová and Novotná, 2006.
217 Art. 858, CC.
218 Art. 877 para. 2, CC.

choices, preferences, and special needs of family members is guaranteed through the constitutional law and human rights conventions.

In the context of the social and economic changes that have taken place since 1989, the protection of children's assets has become increasingly important.[219] According to the Civil Code, the protection and administration of a child's property forms part of parental responsibility. The law in this matter contains many general and special provisions,[220] which must always be interpreted and applied in accordance with the principle of the best interests of the child and his or her well-being. The management of children's assets should be rather conservative, and parents should strive primarily to preserve the child's property, not to 'make a profit at all costs'. The basic principle set out in the regulation on parental responsibility is that parents have the duty and right to take care of their child's property primarily as ordinary managers[221]. They must dispose of funds that are not expected to be necessary to cover the expenses related to the child's property. This provision also applies to the child's savings, whether generated on the basis of the parents' agreement within a functioning relationship or on the basis of a court decision[222].

When it comes to the relationship between the parents, the law emphasises the agreement of both parents: if the parents do not agree on essential matters regarding the care of their child's property, the court will decide on each parent's proposal[223]. In addition, the Civil Code contains provisions regulating the need for a court to approve legal actions by parents[224]. In particular, the law stipulates that parents need the consent of the court to take legal action that concerns their child's existing and future assets or individual components of these assets, unless these are ordinary matters or matters of exceptional but negligible property value. It is further stipulated that the court's consent is always required for legal proceedings by which a child, for instance, acquires, alienates, or encumbers an immovable property or a share in it; concludes an agreement between the heirs on the amount of inheritance shares or the division of the estate; or rejects an inheritance or declares that he or she does not want a reference. Sanctions for non-compliance with the law are no longer apparently carried out, as the law newly stipulates that if a parent acts on behalf of a child without the consent of the court, legal action can be declared invalid only if it harms the child[225].

Other provisions regulate the issue of income or profit (returns of assets) from a child's property[226]. The rule is that whatever the parents gain by using the child's property is acquired by the child. It is further stated that any income from a child's

219 Haderka, 1996, pp. 181–197; Hrušáková, 2002.
220 Art. 896 to 905, CC.
221 Art. 896, CC.
222 Art. 917, CC.
223 Art. 897, CC.
224 Art. 898, CC.
225 Art. 898 para. 4, CC.
226 Art. 899 to 900, CC.

property that the parents do not use for the proper administration of this property (profit) will first be used for the child's maintenance (even without the consent of the court). If necessary, the parents can then use the remaining profit from the child's property as a contribution to their own maintenance and that of the child's minor sibling(s) if they live in the family household, unless it is necessary for important reasons to keep this profit for the child's use after he or she reaches the age of majority.[227]

A different regime is laid out for property use. The law stipulates that a child's parents may, with the consent of the court, use it for the child's own needs and those of the child's sibling(s) only if, without the fault of the persons who have a maintenance duty toward the child (parents or other direct relatives), a significant disparity arises between the child and the parents.

The child's property also includes alimony that is paid for him or her. Regarding the administration of individual maintenance amounts, the general rules on the management of the child's property apply. The parent who will receive the maintenance payment has the right to dispose of this maintenance in ordinary or exceptional, but negligible, property values. As a child's property can also include savings that are saved from paid maintenance, both parents have the duty and the right to manage these savings.

In legal proceedings concerning an individual part of a child's property, the parents act as the child's representatives. Legal representation of a child by his or her parents is deemed to be both a traditional right and a duty of the child's parents. It follows from other provisions that parents have the duty and right to represent their child in legal actions for which the child lacks legal capacity[228]. If the child is competent, he or she acts alone, and the legal representation by his or her parents does not apply.

Regarding children who do not have full legal capacity or who have partial legal capacity and 'fall under parental responsibility', the law distinguishes between (a) a child who acts independently in relation to his or her intellectual and voluntary maturity[229] and capacity to work[230]; (b) a child who is capable of acting independently, but the consequences of his or her legal acts may be made conditional on the consent of his or her legal representatives, that is, his or her parents[231]; (c) a child who acts with the consent of his or her legal representatives, that is, his or her parents[232]; (d) a child who acts with the consent of his or her legal representatives, that is, his or her parents, and of the court in the case of the operation of a commercial establishment[233]; and (e) a child for who the legal representatives, that is, his or her parents, act exclusively within the exercise of parental responsibility.

227 Psutka, 2021.
228 Arts. 31, § 892 to 895, CC.
229 Arts. 31 and 32, CC.
230 Arts. 34 and 35, CC.
231 Art. 36 para. 2, CC.
232 Art. 32, CC.
233 Art. 33, CC.

If the child has both parents, they represent him or her jointly as legal representatives; however, either of them may act separately (§ 892, para. 2, CC).[234] Thus, it applies that if one parent acts alone in the child's affairs *vis-à-vis* a third party who is acting in good faith, he or she shall be deemed to act with the consent of the other parent. The law emphasises parental consent; however, it stipulates that if the parents do not agree which parent will represent the child, the court shall decide, on the parent's motion, which parent will act for the child and how.

A special provision takes into account the threat of a conflict of interest[235], stipulating that a parent may not represent a child if there could be a conflict of interest between him or her and the child or between children of the same parents. In practice, this provision is particularly applied in proceedings to regulate the relationship of parents to a child for the period after a *de facto* separation or divorce[236] and in proceedings concerning the child's property. A guardian *ad litem* must, therefore, be appointed for the child or for each of the children.

It should be added that if parents violate their obligation to take care of a child's property as regular stewards, they must compensate the child for the damage caused jointly and severally. Other duties and rights are connected with parents' obligation to hand over the child's property after completing his or her full legal capacity[237]: parents hand over parts of the child's property or transfer their administration to the child and submit to the child, at his or her request, a statement regarding the administration of the property without undue delay, but no later than 6 months from the day when the child became fully capable.

A significant change to the Civil Code in 2021, which sought to protect 'child debtors' and 'correct bad practice', should be highlighted. This amendment enshrined several new provisions[238]. Of particular note is the section that regulates a parent's liability for their child's monetary debt[239]. This section stipulates that the parent who acted on behalf of a child or gave his or her consent to the legal action is liable for a debt of this child that arose from legal action taken before the child acquired full autonomy. The Civil Code also establishes a new age limit of 13 years within the tort law and lays down special rules for compensation for damage for children both under and over the age of 13, together with the persons who had a duty to supervise the child.[240]

The maintenance duty of parents toward children has not traditionally been part of parental responsibility as both parents have a duty to maintain and support their

234 Šínová, Westphalová and Králíčková, 2016, p. 24 ff.
235 Art. 892, para. 3, CC.
236 Regarding the divorce law concerning minor children, including the pending drafts, see: Králíčková, 2022b, pp. 83–100.
237 Art. 902, CC.
238 Act No 192/2021 Sb.
239 Art. 899a, para. 2, CC.
240 For details, see: Psutka, 2021.

child until he or she is able to make a living[241]. The scope of maintenance is supposed to be within the extent of providing the same standard of living[242], including the option to accrue savings from the maintenance payment[243]. Thus, the Civil Code fully respects the principle of solidarity and the non-consumption aspect of maintenance. To render the legal regulation more effective, the lawmaker adopted many elements responding to two key problems that are confronted in practice: how to detect the income and property of the parents, especially when they receive cash-in-hand payments for unreported work or are self-employed, and how to enforce judgements ordering the maintenance duty.[244]

Firstly, to make the detection of income easier, the lawmaker introduced the legal presumption of the income of the liable parent or grandparent in order to improve the position of both underage and legal age children. The law provides that a parent must prove his or her income in court by submitting documents necessary for the evaluation of his or her property situation. The law also makes the data protected by special Acts accessible and lays down that a parent must also enable the court to determine other facts that are necessary to make a decision. If a parent fails to fulfil this duty, his or her average monthly earning shall be presumed to amount to 25 times the minimum required for ensuring his or her maintenance and other fundamental personal needs throughout his or her lifetime, pursuant to a special Act[245] (§ 916, CC).

Regarding the enforcement of judgements, a novel provision is that if a debtor fails to maintain and support a child, an executor shall issue a writ of execution to suspend his or her driving licence. The executor will serve the writ on the driver and will deliver it to the registry of drivers. The debtor (i.e. the driver) is then not allowed to drive until he or she pays the overdue maintenance.[246] In addition, the criminal law traditionally considers failure to pay mandatory maintenance a criminal offence, which may be punished in various ways, including imprisonment[247]. Recently, a new remedy has been introduced, where a person is prevented from driving for a certain period (§ 196a, Criminal Code).[248]

Finally, there is also a new regulation on protecting the property of children, which was passed only recently after many vicissitudes (Act No 588/2020 Sb., on Substitute Maintenance).[249] The new law regulates substitute maintenance for dependent children (both underage and legal age children) and builds on the compensatory mechanism that was previously enshrined in other Acts. Substitute

241 Art. 911, CC.
242 Art. 915, CC.
243 Art. 917, CC.
244 Králíčková, 2012, pp. 81–94; Králíčková, 2022b, pp. 83–100.
245 Act No. 110/2006 Sb., as amended, on Living and Subsistence Level.
246 Act No. 120/2001 Sb., on Enforcement Officials and their Activities, § 71a.
247 Art. 196, Criminal Code.
248 See Act No. 40/2009 Sb., as amended, Criminal Code.
249 Janková and Obermannová, 2021.

maintenance is conceived as a social benefit as its primary purpose is to effectively protect children whose parents or grandparents avoid their maintenance obligations and who, thus, find themselves in material need. Consequently, the law provides that the beneficiaries may apply to the state authority to pay a limited amount of maintenance on behalf of the obligors for the necessary period of time and, subsequently, to recover the funds corresponding to the replacement maintenance from the obligors on their behalf. The purpose of the law regulating maintenance compensation is to encourage the establishment of maintenance for obligors and to lawfully enforce it. As such, it is always necessary for the child to take his or her right to maintenance to court and seek a determination of the maintenance obligation. Once maintenance has been established, it is necessary to make use of all the incentives and sanctions available to enforce maintenance, as set out above.

To avoid the misuse of public resources and ensure that child support is paid by those who have a legal obligation to support children (parents and other relatives in the direct line of descent, especially grandparents), the new law establishes several conditions, limits, and procedural rules in relation to its purpose, which must be pursued first and foremost. First, the law stipulates that only the entitled person (i.e. the dependent child) under the special law is entitled to receive substitute maintenance[250]. In particular, whether a minor or an adult, a child is an eligible person until the end of compulsory schooling and thereafter, but not later than the age of 26, if (a) he or she is in continuous training for a future profession; (b) he or she is unable to prepare himself or herself systematically for a future occupation or gainful employment because of illness or accident; or (c) he or she is unable to engage in continuous gainful activity because of a long-term adverse health condition.

In general terms, it is also stipulated that the child, as a beneficiary, must have permanent residence and domicile in the territory of the Czech Republic, although, there are statutory exceptions to this rule. If the recovery of maintenance is unsuccessful, a child who has an enforcement title, that is, an enforceable decision on the basis of which the obligor (i.e. a parent, grandparent, or other relative in the direct line) is ordered to pay a specific amount of maintenance, may turn to the state. The application for substitute maintenance is filed with the Labour Office, which decides whether to approve the application. The law sets strict limits on the amount of substitute maintenance and the period of its payment in relation to its purpose, in other words, it lays out that this benefit should be provided 'in lieu of' child maintenance in the true sense of the word. It is stipulated that the maximum amount of substitute maintenance is, in principle, CZK 3,000 and that this maintenance should be provided for a period of 4 months. The relevant amount is paid monthly in arrears, at the earliest for the month of application. However, an application for substitute maintenance may be resubmitted. If the application for substitute maintenance is granted, the substitute maintenance shall be paid into a bank account or by postal order. The right to substitute maintenance shall cease at the latest after 24 payments.

250 Act No. 117/1995 Sb., as amended, on State Social Support Act.

The provision of substitute maintenance by the state does not transfer the child's right to maintenance to the state *ex lege*, as is the case with state foster care benefits, but must be decided by the Labour Office. This is followed by a request for the state to enter into execution.

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6. On the respect, assistance, support, and protection of vulnerable adults as family members

The ageing of the population, which has brought with it an increase in the number of vulnerable family members, is a Europe-wide phenomenon. The rise in the prevalence of Alzheimer's disease places great demands on the families of vulnerable people. As noted in the literature, 'the problem is not limited to the protection of those suffering from lifelong or other learning disabilities …; it concerns us all, in the medium or short term'.[251] The internationalisation of the problem has resulted in the adoption of the international treaties and other sources described above in more detail, including the Convention on the Rights of Persons with Disabilities, the Convention on the International Protection of Adults, and the Recommendation CM/Rec (2009)11 on Principles concerning continuing powers of attorney and advance directives for incapacity of the Council of Europe.

Concerning international obligations, the Czech legislator has enshrined several provisions in relation to the new concept of shifting 'from protection to support and respect to the autonomy of will' and to the principle of family solidarity. When drafting the Civil Code, the aim of the new concept was to provide the individual with complex protection in all aspects of private life. The introductory provisions embedded in 'Book One – General Part' of the Civil Code provide that 'private law protects the dignity and freedom of an individual and one's natural right to pursue happiness for oneself and one's family or people close to the individual in a manner that does not cause unjustified harm to others'[252]. It further provides that 'everyone has a right to the protection of their life and health, as well as freedom, honour, dignity, and privacy' and that 'no person may suffer unjustified harm due to insufficient age, mental state, or dependence'[253]. In an effort to create a comprehensive legal regulation, the Civil Code also fairly extensively regulates the protection of personal rights, including the right to mental and physical integrity, special provisions regulating the rights of persons admitted to a healthcare facility without their consent, and rules on the disposal of parts of a human body[254]. The

251 Frimstone, 2015, p. xi.
252 Art. 3, para. 2, CC.
253 Art. 3, para. 2, CC.
254 Art. 81 to § 114, CC.

most relevant provisions are included under the heading 'Supportive measures for cases where the ability of an adult to make legal acts is impaired'[255], followed by those governing the 'Limitation of Legal Capacity'[256] and '*Ex Lege* Representation and Guardianship'[257].

As discussed above in the section devoted to the principles of Czech family law, the Civil Code is based on the principles that every individual should be protected and that it is necessary to protect the uniqueness, needs, and wishes of the individual. The key underlying principles in this specific area are the autonomy of the will of individuals who anticipate their own incapacity to legally act[258], the freedom of contract of individuals who have difficulties due to mental disorders[259], and family solidarity[260]. The legal regulation emphasises assisted decision-making that involves the vulnerable person. As a result, 'supportive measures for cases where the ability of an adult to make legal acts is impaired' must, as a rule, take precedence over the provisions on guardianship or even the limitation of legal capacity. Furthermore, these 'supportive measures for cases where the ability of an adult to make legal acts is impaired' must be preferred, in particular, over the limitation of legal capacity as a rather radical judicial decision that may be made – *inter alia* – only where less invasive and less restrictive measures would not suffice with respect to the interests of the vulnerable person, who would otherwise be at risk of suffering significant harm. The legal capacity of a vulnerable person may be limited only where such a measure is in the interest of the person and where the person suffers from a mental disorder of an ongoing nature, after said person has been seen by the court, and always only for a fixed period of time.[261] It must be emphasised that, in praxis, it is the family members, relatives, or close relatives of the vulnerable person who are appointed as supporters, assistants, representatives, or guardians.

Protective measures related to vulnerable persons are included in 'Book Two – Family Law' of the Civil Code. Most importantly, a man and a woman have the right to marry unless they have been deprived of this right, that is, their legal capacity in this matter has been expressly limited by a judicial decision[262]. The provisions on marriage law regulate, in particular, the right of the spouses to represent each other in ordinary matters[263], the protection of the things forming the usual equipment of the family household[264] and family dwelling[265], and the community property of the

255 Art. 38 ff, CC.
256 Art. 55 ff, CC.
257 Art. 457 ff, CC.
258 Art. 38 ff, CC, continuing power of attorney.
259 Art. 45 ff CC, assisted decision-making.
260 Art. 49 ff, CC, representation by a member of the household.
261 Králíčková et al., 2023.
262 Art. 673, CC.
263 Art. 696, CC.
264 Art. 698, CC.
265 Art. 743 ff, CC.

spouses[266], and also include a 'hardship clause' to protect a spouse who does not want to divorce[267].

As for the relationship between parents and children, a woman becomes a parent upon birth, regardless of any mental disorder[268], and a man becomes a father according to the law regulating the three presumptions of paternity. Under the first of these presumptions, the husband of the mother is presumed to be the father[269]. This *ex lege* status may be denied either by the husband or his guardian where the legal capacity of the husband of the child's mother has been limited before the expiry of the period for the denial of paternity[270]. The second presumption is based on a consenting declaration made by the child's mother and the presumed father.[271] It is not possible to apply this presumption in cases where the mother is unable to assess the meaning of her declaration[272]. For persons with limited legal capacity – whether the child's mother or the child's presumed father – the declaration on paternity must be made before the court, which considers the circumstances of the case and examines whether these persons may establish paternity on their own, or whether a guardian will act for them[273]. However, in both the doctrine and practice, this concept is widely criticised.[274] The procedure for denying the second presumption is similar to that of denying the first presumption. When the paternity of a child is undetermined or denied under the first or second presumption, the court decides the paternity of the child based on sexual intercourse in the relevant period (no fewer than 160 days and no more than 300 days before the birth of the child) and, as a rule, based on a DNA test[275]. I believe that it should be the court that determines fatherhood in cases where the child's parents are persons with limited legal capacity, have mental disorders, or are vulnerable people in general.

The key institution of law through which parents realise parenthood, and, at the same time, protect their minor child, is called 'parental responsibility'[276]. Under the new legal regulation, any parent of a minor child has parental responsibility, regardless of any mental disorder or limitation of legal capacity. The exercise of the duties and rights included in parental responsibility, however, is a different matter. The Civil Code provides that the exercise of parental responsibility by a parent whose legal capacity has been limited in this matter is suspended *ex lege*, unless the court decides that the parent, with regard to his or her personality, retains the care of the

266 Art. 708 ff, CC.
267 Art. 755, para. 2, CC.
268 Art. 775, CC.
269 Art. 776, CC.
270 Art. 785, CC.
271 Art. 779, CC.
272 Art. 781, CC.
273 Art. 780, CC.
274 For more, see: Králíčková, Hrušáková and Westphalová, 2020, pp. 520–521.
275 Art. 783, CC.
276 Art. 865 ff, CC.

child and the right of personal contact with the child[277]. A tutor must be appointed for the child[278].

Finally, in addition to the protections included in 'Book One – General Part' and 'Book Two – Family Law', other parts of the Civil Code include special rules devoted to vulnerable people, especially regarding the concept of things of sentimental value, wills, and donations.[279]

7. Conclusion

As discussed above, the shape of family life is changing in Czechia. There is no doubt that, in the future, legislators will face many challenges, including those presented by research studies by demographers and sociologists, the opinions of various influence groups and individual MPs, and the views of the professional or lay public. All persons have the right to 'their own way'. Every human being has the right to live their family life, which is also related to their idea of family law legislation. The question is whether there is an 'ideal' form of family law. Respect for the freedom of the individual and the autonomy of will may be a certain approximation of the desired ideal. However, if one person is bound to another, whether by marriage, civil partnership, or a *de facto* relationship, family solidarity and 'some restrictions' must come into play. Finally, support and protection from the state must be guaranteed. The question is how the state, or national legislators, should reflect these seemingly contradictory values. An attempt at harmony and balancing in relation to European standards laid down by international human rights covenants and the case law of the European Court of Human Rights is undoubtedly entirely appropriate.

Family law in Czechia was relatively recently recodified into the Civil Code. We can agree with the general view that civil codes are the pillars of private law and the basis of the entire legal system. Consequently, they should not be amended too often. Stability in the regulation of matters related to status is an unquestionable value. It is, therefore, open to doubt whether the recent legislative proposals for completely conceptual changes to family law, which is enshrined in the Civil Code, are on the agenda. On the one hand, the public is calling for 'marriage for all' or so-called 'gender-neutral marriage'. On the other hand, persons of different sexes, who can marry, do not do so and live in *de facto* unions. It is no secret that the high divorce rate and the 'fragility' of families not founded by marriage trickle down to the weakest and most vulnerable – minor children.

277 Art. 868 para. 2, CC.
278 Art. 928 ff, CC.
279 For more, see: Králíčková, et al., 2023.

Whether or not the legislative process in the Czech Republic will be completed by enshrining 'marriage for everyone', I believe that this political decision will not have a significant impact on Czech society or its demographic development. This issue cannot be ignored or downplayed, but neither can it be given too much importance. I believe that the Czech legislator should primarily focus on strengthening the concept of strong and continuous parenthood after the breakdown of a relationship or cohabitation between parents of minor children, whether they be spouses, unmarried *de facto* partners, or parents who have never lived together with the child.[280] As mentioned in the introduction, the deviation from the concept of marriage-centric family law toward fully functional and child-centred family law is a reality and is, ultimately, a desirable state for many.

Finally, in addition to strengthening children's rights, especially their participation rights, attention must be paid to the protection of the family and family ties in the broadest sense. It is close relatives who take charge of minor children when their parents are in trouble. It is also relatives who become guardians and supporters of their loved ones when they develop a state of dependency owing to old age or mental illness and are in need of respect, support, and protection.

280 Sörgjerd, 2012, p. 167 ff.

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Chapter 13

Hungary: Hungaricums of the Family Law Policy

Edit Sápi

Abstract

It is now considered a fact that Europe, including Central Europe, is facing an ageing society. One of the main indicators of this issue is the decrease in the number of births and the increase in the number of older adults. Several countries are attempting to implement related measures to encourage an increase in the number of births. This chapter reviews and summarises these comprehensive family policy measures. In addition, it presents the specific legal institutions and legal provisions in the Family Law Book of Hungary's Civil Code that may affect the safety of family life.

Keywords: Hungarian family policy, ageing society, Central Europe, birth rate, demographic challenge, legal response

1. Introduction

'Declining fertility is a general problem in the developed world'.[1] In the last few years, studies have been published on certain elements of Hungarian family policy and their demographic correlations and effects.[2] The so-called 'demographic

1 Lentner and Hürbülák, 2022, p. 43.

2 See, for example: Barzó, 2023, pp. 23–41; Sági, 2023, pp. 113–130. Bördős and Szabó-Morvai, 2021, pp. 33–66; Kapitány and Murinkó, 2020, pp. 146–170; Pátkainé Bende, 2022, pp. 235–249; Demény, 2016.

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winter', which we are currently witnessing in Europe in particular, has attracted the attention of demographers, economists, sociologists, and lawyers. Demographic indicators, including the age composition of the population, have a major impact on the economy, working capacity, and, ultimately, competitiveness of a country, region, or continent. An important adverse effect of population decline is, therefore, a reduction in economic performance as the European Union is now playing an ever smaller role in an increasingly competitive global economy.[3] Population decline also brings forth issues for the sustainability of national social security[4] and pension systems.[5] Studies suggest that the demographic outlook for Europe as a whole is largely negative[6] as the decline in the number of Europeans is expected to accelerate after 2030, in line with the ageing of the continent.[7]

Given that Europe's age structure fits the description of an ageing society, the question arises as to whether an increase in the number of births can be influenced by the family policy and family protection measures of each state or by the substantive legal rules that seek to protect the institution of the family and the child through civil and family law. The 'popularity' of this subject is unsurprising given the statistics and figures we have seen in Europe over the last half-century or so. The global proportion of Europeans is falling: while in 1960, 20% of the world's population was European, today it is barely 10%, and by 2070 it is expected to be just 6%.[8] The age composition of an ageing society is, of course, affected by the development of childbearing and birth rates.[9] It is also true that fertility in the European Union is overwhelmingly below the level needed for simple population survival.[10]

However, the causes of the demographic crisis are complex. Barzó points out that the transformation and development of traditional societies in themselves contribute to the phenomena of a demographic crisis. In the traditional societies typical of the preindustrial era, childbearing was a necessity: owing to the higher infant mortality rate, the new generation ensured the future of the family. The extended family was also a prerequisite for the functioning of family farms at that time and ensured the livelihood and, if necessary, care of older or incapacitated parents and grandparents. In modern societies, the situation has been reversed: having children and caring for older parents and grandparents has become more of an obstacle to a successful career and a solid lifestyle, creating the false impression that both starting a family

3 Fűrész and Molnár, 2020, pp. 3–4.
4 Molnár, Szarvas, and Gellérné, 2022, p. 84.
5 Banyár and Németh, 2020.
6 Pári, Rövid, and Fűrész, 2023, pp. 5–9.
7 KSH, 2020.
8 Barzó, 2023, p. 23.
9 On the complex issues of fertility rates and childbearing, see, for example: Verebes, 2021, pp. 199–220; Kapitány and Murinkó, 2020, pp. 28–38.
10 Pári, Rövid, and Fűrész, 2023, pp. 11–13.

and having children are a threat not only to individuals' careers and well-being but also to the success of the community.[11]

In the context of demographic objectives and family policy development in Hungary, the Mária Kopp Institute for Demography and Families (KINCS) should be mentioned. Population policy aims to create the legal, economic, and social environment to influence population processes and structures. According to the objective to be achieved, a distinction is made between expansionary and restrictive population policies, with restrictive objectives being more desirable in the case of overpopulation and expansionary objectives being more desirable in the case of depopulation. However, one objective is common to both approaches: to establish and maintain a stable population, both in terms of numbers and age composition. This would require coordinating birth and death rates, to which population policy can contribute through a variety of direct and indirect instruments. A direct instrument could be the tightening of legislation legalising abortion, whereas an indirect instrument could be family policy to encourage childbearing.[12] The extent to which the rules of civil law, including family law, protect property, personal relationships, and the existence and security of families, couples, children, and large families also has an indirect impact on population trends. In the following, an attempt is made to present these issues.

2. Family law instruments to support families, parents, and children in Central Europe

2.1. The importance of family law principles

Principles are generally understood to be the guiding ideas of a field of law, which not only characterise the content of the legislation covered by that field (branch of law) but also define its basic features. According to Pap, principles 'create the atmosphere in which the law is to be interpreted [and] the spirit in which the law is to be applied'.[13] Thus, given that they are rooted in changing social conditions, principles determine the institutions of the branch of law in question, as well as the content of these institutions, according to society's stage of development.[14] The incorporation of the rules of family law into Act V of 2013 of Hungary's Civil Code (hereinafter, the 'Civil Code') made it necessary to formulate certain principles at the beginning

11 Barzó, 2023, p. 24. Similarly, see: Gyorgyovich and Pári, 2023, pp. 15–19.
12 Cseporán et al., 2014, p. 141; Milténvi, 2014, p. 243.
13 Pap, 1982, pp. 22–24.
14 For a detailed discussion, see: Barzó, 2017a, pp. 49–50; Kriston, 2020, pp. 358–374.

of the Family Law Book of the Civil Code that express the characteristics of family relationships and their differences from business relationships.[15] The Hungarian legislator lays down four basic principles in family law: the principle of the protection of marriage and the family, the principle of the protection of the best interests of the child, the principle of equal rights of spouses, and the principle of fairness and the protection of the weaker party. The main features of each of these principles are highlighted below.

2.1.1. The principle of the protection of marriage and the family

The *Fundamental Law* of Hungary protects the institution of marriage as the union of one man and one woman established by voluntary decision and that of the family, as the basis of the survival of the nation.[16] According to the Fundamental Law, *marriage* and the parent-child relationship are the foundation of the family. Consequently, in line with the provisions of the Fundamental Law, *marriage enjoys special protection* compared to other forms of cohabitation. As the institution of marriage is specifically protected by the Fundamental Law and, according to its generally recognised legal concept, is the union of a man and a woman, it *does not include the legal possibility of same-sex marriage*.[17] *Act CCXI of 2011 on the Protection of Families (Family Protection Act)* also establishes at a fundamental level that the state protects the institution of family and marriage.[18]

It follows from the principle of the protection of marriage that the *legislator favours marriage,* conferring upon it rights and obligations that are not created by registered partnerships, *de facto* partnerships, or other forms of cohabitation. However, registered partnerships are governed by a separate piece of legislation, *Act XXIX of 2009 (Registered Partnerships Act).* Nevertheless, it should be noted that there is no provision on registered partners in the Civil Code, including the Family Law Book, so much so that the law does not mention registered partners as 'relatives'[19] or as obstacles to marriage. Such partners are only mentioned among the circumstances that exclude the existence of a *de facto* partnership if one partner has already a registered partnership with another person.[20] The legal institution of registered partnerships is created in the same way as marriage and has the same property and succession effects,[21] with the *Civil Code* acting *as the underlying law of the rules governing registered partnerships*.[22] It is also true, however, that registered partners do not have

15 Szeibert, 2024.
16 Fundamental Law of Hungary, *Article L.*
17 Decision No 14/1995 (III.13.) AB of the Constitutional Court.
18 Family Protection Act, Art. 1(1).
19 Art. 8:1, paragraph 1(2) of the Civil Code.
20 Art. 6:514(1) of the Civil Code.
21 Art. 3(1) of the Registered Partnerships Act.
22 Kőrös, 2013a, p. 7.

the same rights as spouses in all areas.[23] The concept of *de facto partnership* is not included in the Family Law Book either but is placed in 'Book Six – Law of Obligations of the Civil Code',[24] which weakens the family law character of this legal institution. Inexplicably, partnership is listed after the various types of contract, which suggests it is a 'contractual obligation', the effects of which in family law are only valid in two areas and only if the partners' community of life has lasted for *at least one year* and they have *a child*. These two-family law effects represent the special provisions on *maintenance* and *residence for* cohabiting partners, which are, in turn, contained in the Family Law Book. A contractual relationship, therefore, has effects in family law; however, it is not the parties' intention or the way they live together that makes their partnership a family law relationship, rather it is whether *or not* they *have children*. In addition to the privileged status of marriage, the *legal status of de facto partners* is, in many respects, more disadvantageous than that of registered partners.[25] The Supreme Court's ruling that one of the parties living in a community of life and property as husband and wife excludes the possibility of a partnership is of precedent.[26]

By regulating the protection of the family at the level of principles, the *Family Law Book of* the Civil Code expresses that family law rules primarily *protect* the *family as a community* (the relationships between individual family members). This includes both *family relationships established by law* (e.g. marriage, filiation, adoption, guardianship) and *other forms of cohabitation* governed by law, in line with the case law of the European Court of Human Rights.[27]

2.1.2. Protecting the best interests of the child

The *Fundamental Law* itself states that every child shall have the right to the protection and care necessary for his or her proper physical, mental, and moral development. Parents have the right to choose the upbringing their children will receive. Parents are obliged to care for their minor children; this obligation includes the provision of schooling (Art. XVI). The Fourth Amendment to the Fundamental Law carries a significant legal policy message in terms of children's rights and interests. This amendment supplemented the original Article L of the Fundamental Law, which declared the protection of marriage and the family, by expressing that marriage and

23 For example, registered partners cannot adopt a child together, nor can one of them adopt their partner's child. Registered partners are also not subject to the same rules on naming that apply to spouses. Registered partnerships do not give rise to a presumption of paternity, nor is it possible for registered partners to have a child together through a reproductive procedure. Finally, unlike marriage, a registered partnership can be dissolved by a notary public in certain cases provided for by law. Art. 3(2)–(5) of the Registered Partnerships Act.

24 Art. 6:514 of the Civil Code.

25 For more, see: Barzó, 2017b; Sápi, 2021, pp, 113–118; Kriston, 2023, pp. 13–19.

26 Court Decision BH2004. 504.

27 For more on this, see: Barzó, 2017b, pp. 34–38; Hegedűs, 2014, p. 28.

the parent-child relationship *are the basis of the family relationship*. Thereby, the Fundamental Law also took a stand on the issue that a *de facto* partnership is not recognised as a family even if it results in the birth of a child. However, it should be remembered that it is also a requirement of the Fundamental Law that the *obligation to protect the institutions of marriage and the family must not result in any direct or indirect discrimination against children* on the grounds that their parents are bringing them up in a marriage or other type of community of life.[28]

As a response to the New York Convention on the Rights of the Child, the Hungarian Parliament passed the *Child Protection Act* (Act XXXI of 1997) in August 1997. *Chapter II* of this Act sets out the rights and obligations of the child and the parent. Under the *Family Protection Act*, which came into force on 1 January 2012, *growing up in a family* is safer than any other option. An important part of the law is the declaration of the rights and obligations of parents and children.[29]

Art. 3 of the UN Convention on the Rights of the Child sets out the fundamental approach to what is in the *child's best interests* that underpins the whole document. Of course, the best interests of the child are often not the only overriding factor as there may be competing or conflicting human rights interests, whether between individual children or groups of children, or between children and adults.[30] However, the child's best interests must always be a real consideration: it must be shown that the child's best interests have been examined and taken into account as a primary consideration. The principle of family law enshrined in Hungarian family law *does not*, therefore, formulate the '*best interests of the child*', but rather provides for increased protection of the child's interests and rights.[31]

The principle of the protection of the child also includes the requirement for *equal rights for children born out of wedlock*. This internationally valid principle was first introduced in Hungarian law in *Act XXIX of 1946*, which included the possibility of enforcing unwanted paternity by judicial means. This date is also important because the Universal Declaration of Human Rights only adopted the right to equal social protection for children born in and out of wedlock on 10 December 1948. The principle of the protection of the child may also be applied directly where a decision based on the sole application of a detailed rule for the resolution of a dispute would lead to a result contrary to the best interests of the child.[32] An important part of the principle emphasising the protection of the best interests of the child is the *right of the child to be brought up in his or her own family,* which is reflected in the provisions of both the Family Protection Act and the Child Protection Act. However, these rules are (also) matters of principle in private law. Therefore, the law considers it necessary to lay down at the beginning of the Family Law Book the right of the child to

28 Decision 43/2012 (XII. 20.) AB of the Constitutional Court.
29 Barzó, 2017b, pp. 42–44.
30 Somfai, 2010, p. 358.
31 Kőrös, 2013b, p. 28.
32 Court Decision BH2013. 17.

be brought up in his or her own family or, if this is not possible, to grow up in a *family environment*, and, in this case, *to maintain his or her previous relations*. In addition, to ensure that this principle is fully respected, the guardianship authorities may only remove a child from the family and take him or her into care if very strict conditions are met.[33] The rules of Hungarian family law also lay down as a fundamental principle *the right* of the child *to maintain his or her previous family relationships*, which may be restricted only in cases specified by law, in the best interests of the child and exceptionally.[34]

2.1.3. The principle of equal rights for spouses

The principle of equal rights for spouses is closely in line with Article XV(3) of *the Fundamental Law*, which expresses the principle of equality between women and men. The *Family Protection Act* emphasises the equal rights of parents by stating that the *mother and the father have the same obligations and rights* in the family on the basis of parental responsibility, barring a special statutory exception.[35] Judicial practice has formulated that the equality of rights that ensures the coexistence of spouses is *guaranteed in two directions*: in the conjugal relationship, on the one hand, and in family life, on the other. The basic content is that *neither spouse has any power* over the person or property of the other, and neither *spouse may enjoy any prerogatives* of parental custody over the other, either during the marriage or at the time of its dissolution.[36] *In the personal relations between* spouses, *two requirements* must be present at the same time: first, the autonomy of the spouses and, second, mutual accommodation and support.[37]

2.1.4. The principles of fairness and the protection of the weaker party

The principles of fairness and the protection of the weaker party, which are closely linked, are intended to express the fact that the legal practitioner should seek to resolve family law disputes in a civilised manner, preferably in a way that is conciliatory to all parties concerned.[38] Prominent representatives of Hungarian legal literature have also repeatedly pointed out that legal regulation is often unable to cope with the diversity of concrete life situations and that, in such cases, it is necessary to adapt to the fundamental principle of fairness, the balancing of interests, and individualisation.[39]

33 Art. 78(1) of the Child Protection Act.
34 Barzó, 2017, pp. 47–48.
35 Art. 9(1) of the Family Protection Act; Barzó, 2017b, pp. 48–50.
36 Court Decision BH 2012. 39.
37 Art. 4:24 and Art. 4:25 of the Civil Code; for more, see: Barzó, 2017b, p. 50.
38 Barzó, 2017b, pp. 50–53.
39 Szladits, 1937. pp. 42–44; Lábady, 2014, Art. 4:4 of the Civil Code; Barzó, 2017b, pp. 50–55.

Looking at the Hungarian Civil Code as a whole – not only with regard to family law – there are several points where it is possible to apply fairness. However, as the legal literature indicates, the application of fairness in family law has its limits[40] as it can only ever be an exception to the application of 'strict' specific legal provisions, and only on the basis of a specific authorisation by the law. In addition, the application of fairness requires an assessment of *all the individual circumstances of the case* so that both parties benefit equally from fairness. Moreover, where there is a contractual relationship between the parties, the fairness aspects must also serve the performance of the contract.[41] However, the principle of fair settlement must apply *to all family law relationships* under the Family Law Book because it is in the settlement of family relationships that strict adherence to the letter of the law can most often lead to unfairness.[42]

Closely related to fairness is the *protection of the weaker party*, which serves to correct social inequalities, even though private law has relatively few instruments to do so. Another difficulty is the imprecise and highly relative legal definition of the weaker party; thus, case law must be even more careful in this respect.[43] In family law, this expectation means taking due account of the situation of the vulnerable party who needs help because of his or her age, health, or means.[44]

2.2. Management of children's property

Under Hungarian family law, one of the most important aspects of parental custody is the management of the property of minor children. In recent decades, the focus on the responsibilities of parents in this regard has become even more pronounced as family wealth has become more complex and sophisticated.[45]

2.2.1. Object of property management

Hungarian family law rules give parents exercising joint parental custody full autonomy over the management of their child's property. Thus, the parents' fiduciary rights and duties extend to all the child's property that is not excluded from their custody under the Family Law Book. The *following are not covered by parental property management*:

(a) Income that the child has earned through work. In Hungary, a minor of limited capacity over the age of 16 may also establish an employment relationship. In addition, during school holidays, children as young as 15 years old who are studying full-time can work with the consent of their statutory representative. Persons under

40 Kőrös, 1999, pp. 13–14.
41 Kőrös, 1999, pp. 16–17.
42 Sebestény, 2003, pp. 30–31.
43 Vékás, 2007.
44 Barzó, 2017b, p. 54–55.
45 Barzó, 2022, p. 119.

the age of 16 may be employed in the framework of cultural, artistic, sporting, or advertising activities as defined by law, provided that they have notified the guardianship authority at least 15 days prior to the employment.[46]

Earned income can also be the child's *wages, salary, bonus*, or *royalties*. However, the income earned by a minor through work is not considered to include the earnings distributed by a business company in which he or she is a member if the child does not personally participate in the company. Disposing of the income, which can be free or in return for a contribution, does not require the consent or subsequent approval of the parent. In fact, a minor of limited capacity who has reached the age of 14 *may even undertake obligations up to the amount of his or her earned income*.[47] For example, he or she can make gifts, go shopping, or be a surety. Nevertheless, limited liability means that the commitment cannot exceed the limit set by law, that is, the amount of the minor's earnings.

If the child lives in the household of his or her parents, he or she *must* also contribute to the *household expenses* from his or her own disposable earnings.[48] A child who is able to work is expected to share, even if only partially, in the household expenses if he or she is self-sufficient but not yet self-supporting. This provision can be enforced if necessary, but such cases are, of course, rarely brought before the courts. Income from non-personal employment (e.g. interest on a deposit of money that is due to the minor, or the net benefit from the use of property owned by the minor) is not subject to the child's disposition, and the provisions described above do not apply *to children under the age of 14*.

(b) Property that the child has received with the proviso that his or her parents may not manage it. There may be cases where a child's assets need to be saved from the parent who is holding them. Grandparents may designate their grandchildren as heirs or donees, for example, if their child or son-in-law/daughter-in-law is suffering from an addiction and cannot fulfil their parental responsibility. The title of acquisition is irrelevant in this respect. If such property is later replaced by other property, the parents' property management right does not extend to it either. Since the parents cannot act in respect of such property given to a minor child, the *guardianship authority* must appoint *a guardian for managing property* to administer the property. If only one parent is excluded from the management of the property by the third party who has transferred the property, the property is managed by the other parent who would otherwise be entitled to administer the property. Therefore, if the parent with parental custody is excluded from the management of the property, the appointment of a guardian for managing property is subject to the condition that the *other parent is also not entitled to manage the property for whatever reason* or that the

46 Section 34(2)–(3) of the Labour Code.
47 Art. 2:12(2)(c) of the Civil Code.
48 Art. 4:157(3) of the Civil Code.

other parent's management of the property is contrary to the best interests of the child.[49]

(c) Property in respect of which the guardianship authority has imposed a penal restriction on the parents' right to manage the property.[50]

2.2.2. Use of the child's property and income

Income here does not refer to the minor's earnings – as these are taken out of the parent's management – but to *the return on his or her assets* (e.g. the rent on a property, the annuity on a bond, interest on cash). However, the law only provides for the child's income that *remains net* after the payment of the charges on his or her property (object). For example, the rent of a property owned by the child should be reduced by the tax and any other contributions on the rent and the costs of maintaining the property, keeping it in good condition, etc. It is also important to stress that the child's net income can only be used *for the child's reasonable needs*.[51] Of course, the use of the net income is not under the direct and regular supervision of the guardianship authority.

Although the law requires a parent to maintain a minor child by limiting his or her own necessary maintenance, this provision does not apply if the child's reasonable needs are *covered by his or her earned income* or *property income*.[52] Therefore, if the parent can provide for the child without endangering his or her own support, he or she cannot use the net income from the child's assets.[53] Unfortunately, however, there may be cases where the child's maintenance cannot be secured even through the use of his or her net income. In such cases, the parents can*, with the permission of* the *guardianship authorities,* use the *child's assets* in specified instalments to cover the cost of maintenance. However, even in that case, an important condition is that the parents are not able to care for the child without endangering their own support.[54]

2.2.3. Parents with property management rights and their responsibilities

2.2.3.1. Parents entitled to manage the child's property

In the case of *parents exercising joint parental custody*, the rights and duties of property management *must be exercised jointly by both parents*. However, it may be difficult to implement a continuous joint procedure. In such cases, the parents can

49 Art. 26/A of Government Decree 149/1997 (IX. 10.) on guardianship authorities and child protection and guardianship procedure (Guardianship Decree).

50 Art. 4:159 of the Civil Code.

51 This includes, reasonably, costs for subsistence, food, adequate clothing, utility bills, and attending educational institutions.

52 Art. 4:215(1)–(2) of the Civil Code.

53 For a detailed discussion, see: Barzó, 2022, pp. 119–121.

54 Art. 4:215(2) of the Civil Code.

give each other a power of attorney, either mutually or separately, in a notarial deed or a private document with full probative value. The power of attorney can cover the management of all the child's assets, but it can also be granted only for a specific part of the child's assets, such as company shares, securities, or various investments. However, the power of attorney can *only be used in matters concerning the child's property*; in matters concerning the child's person, the parents must act jointly.[55] In matters that occur frequently in everyday life, a parent acting on behalf of a child may be rightly regarded by *bona fide* third parties as acting also as an agent of the other parent. This could be, for example, when a parent buys sports equipment or medical aids with the child's assets.

In the case of parents who are separated and do not have joint parental custody, the rights and duties of property management are, as a rule, *exercised by the parent who has sole parental custody.* However, the Family Law Book allows *the court* to exceptionally *authorise* the parent who is separated from the child to exercise full or partial statutory representation in the *management* of the child's *property* and assets.[56] In particular, such a decision may be justified if the management of the child's property or certain assets requires special expertise.

For the same reason – in the best interests of the child – *the guardianship authority* may *appoint only one parent to manage the child's property during joint parental custody.* In this case, the other parent's property management rights are suspended, for example, if one parent is unavailable, is permanently ill, or works abroad.

2.2.3.2 Parents' responsibility for the management of their children's property

As a rule, parents manage their children's assets without any obligation to provide security, surrender them, or account for them. These limits can only be applied on a punitive basis and only if the parents exercising parental custody fail to discharge their obligation in terms of managing their child's property, seriously violating the child's interests. Parents are *required to act* in their fiduciary capacity in *accordance with the rules of ordinary fiduciary* duty, exercising the same degree of care as they exercise in their own affairs. This degree of care must be judged according to the circumstances of the case, so that a parent is not expected to take a more demanding approach to property matters that, in view of his or her personal capacities and circumstances, he or she is not even taking in his or her own property matters. This standard of care does not, however, exempt a parent *from liability for damage caused to his or her child intentionally or through gross negligence*. In the latter case, the parent will be liable for damages under the rules on liability for extra-contractual damages.[57]

If the parents exercising parental custody *fail to discharge* their obligation in terms of managing their child's property, *seriously violating the child's interests,* the

55 Art. 4:156 of the Civil Code.
56 Art. 4:168(2) of the Civil Code.
57 Art. 6:519 of the Civil Code.

guardianship authority may, in justified cases, *restrict* or, in the last resort, even *withdraw* the parents' right to manage the child's property by applying the means provided for by law.[58]

2.2.4 Limitation of parents' property management rights

2.2.4.2. Limitation of parents' property management rights by the guardianship authority[59]

The guardianship office may, *on application* or *ex officio* in the interests of the child, restrict the parents' rights of property management and may restrict or withdraw the right of representation in property matters in respect of certain property matters or a specified class of matters.[60] In practice, it is usually the Family and Child Welfare Service, the Family and Child Welfare Centre, or a relative or other person who reports to the guardianship authority that parents exercising parental authority are failing to fulfil their obligations to manage their child's property in a way that seriously violates the child's interests. In these cases, the guardianship authority will, *from the following measures,*[61] take the one that offers the most secure way to protect the child's assets:[62] (a) It may order the transfer of the child's funds and valuables to the guardianship authority. A more serious case of this is when the guardianship authority places the entire management of the child's property under its supervision. (b) It may order the parents to provide security. In doing so, it accepts the property or asset as security based on a valuation. (c) It may order the parents to give an account of the property management like a guardian. (d) It may restrict or withdraw the parents' right of property management and their right of representation in property matters with respect to certain property matters or a certain group of matters. At the same time, a guardian that manages the property is appointed for the child.

The guardianship authority may apply more than one of these measures at the same time.

2.2.4.2 Statutory restrictions on parents' property management rights

While the guardianship authority may only restrict the right of the parent as a statutory representative to act as a property manager in the event of serious misconduct on the parent's part, the provisions of the Civil Code *provide for stricter rules* to protect the child's property *in the event of the exercise of the parent's general property management rights*. A minor who is incapacitated (under 14) is represented

58 Art 4:159 of the Civil Code.
59 Art. 26/A (4)–(6) of Guardianship Decree.
60 Art. 4:159 of the Civil Code.
61 Barzó, 2022, p. 120.
62 Art. 4:159(a)–(e) of the Civil Code; Art. 26/A (6) of the Guardianship Decree.

by his or her statutory representative, whereas a minor over 14 with limited capacity can make legal declarations on his or her own, but, as a rule, only with the consent of his or her statutory representative. There are, however, cases where the law requires the *minor with limited capacity to make a personal declaration* (e.g. a public will); the statutory representative may also not dispose of the earnings of a minor with limited capacity to act that have been earned through work. In addition, as the statutory representative, the parent must consider the opinion of the minor, if he or she is of sound mind, when making a legal statement concerning the minor's person and property.[63]

In addition to the above, the Civil Code also mentions several cases where the declaration of the parent as the statutory representative of a minor (under 18 years of age) requires the approval of the guardianship authority:[64]

Waiver of child maintenance to which a minor is entitled. In this case, the parent who is liable for maintenance and the parent who is the actual carer of the child agree that the debtor *will give the creditor an appropriate amount of property (money)* in settlement of the maintenance obligation.[65] Such an agreement can be made in a court settlement, or it can be made out of court. If the agreement is concluded out of court, it must be approved by the guardianship authority to be valid.

If the declaration *concerns the rights or obligations acquired by a minor through an inheritance relationship.*[66] For example, the validity of an inheritance contract concluded by a minor with limited capacity to act as heir also requires the approval of the guardianship authority.

A minor's acquisition of not unencumbered real estate or the transfer of ownership or encumbrance of his or her own real estate.[67] This includes any declaration whereby the minor's property becomes the property of another person, either in whole or in part, or where any restriction is placed on any of the rights arising from the minor's ownership, for example, a pledge of the property or a right of usufruct. However, in the latter case, the approval of the guardianship authority shall not be required if the minor's real estate is, at the time of its free-of-charge acquisition, encumbered with the right of usufruct being granted to the person giving the benefit free of charge.[68]

Disposal of a minor's property transferred to the guardianship authority.[69] The Family Law Book removes the general obligation to transfer a child's property, intending to recognise that parents should, as a general rule, manage their children's property to the best of their ability and with due care and diligence. As such, the law *only* provides for the surrender of the child's money and valuables ordered by

63 Art. 2:12(1)–(4); Section 2:14(1) and (3) of the Civil Code.
64 Art. 2:15(1) of the Civil Code.
65 Art. 4:217(2) of the Civil Code.
66 Art. 2:15(1)(b) of the Civil Code.
67 Art. 2:15(1)(c) of the Civil Code.
68 Art. 2:15(2) of the Civil Code.
69 Art. 2:15(1)(d) of the Civil Code.

the guardianship authority as *a sanction*. The law requires the consent of the guardianship authority for the disposition of the transferred property.

Disposal of a minor's assets that have a value exceeding an amount specified by law.[70] A parental legal declaration concerning the disposition of a minor's property that is not transferred to the guardianship authority requires the guardianship authority's approval if the value of the property concerned by the parental disposition exceeds 45 times the social projection base (the minimum old age pension, which is HUF 28,500), which currently amounts to HUF 1,282,500.[71] This includes transactions involving the child's personal property, movable property, cash, or rights of pecuniary value (e.g. securities, shares, stocks, etc.) that exceed the above-mentioned threshold.[72]

Upon request, the guardianship authority decides whether to approve the above legal declarations of the parent, provided that it is in the *best interests of the* child to make a declaration about the child's property.[73]

Finally, there are also some parental legal declarations that *will not be valid even if they have been approved by the guardianship authorities*:[74]

A minor child may not make gifts, in other words, he or she may not give a free pecuniary benefit to someone else at the expense of his or her own property. However, *gifts of modest value* are *exceptions* to this rule. In assessing modest value, the value of the gift, the object of the gift, the financial situation of the gifter, the purpose of the gift, and, in the case of gifts between relatives, the prevailing perception in the family must be taken into account.[75]

A *minor child should not assume responsibility for a third-party obligation without appropriate consideration.* Such an agreement is also a free contract and is, therefore, not valid even with the approval of the guardianship authority. However, an exception is when a minor with limited capacity to act is has an obligation to the extent of his or her earnings from work because the law allows it.

A minor child may not waive a right without consideration. The provision of Section 6:8(3) of the Civil Code applies to the assessment of the waiver or release of rights without consideration. Accordingly, the legal declaration cannot be interpreted in an expansive manner, and the waiver or release of rights without consideration must be definite and express. If the waiver was made for consideration, the extent to which the statutory representative's waiver requires the guardianship authority's approval depends on the content of the waiver.[76]

70 Art. 2:15(1)(e) of the Civil Code.
71 Art. 26/B (3) of the Guardianship Decree.
72 Court Decision BH2000. 22.
73 For more detail, see Section 26/B of the Guardianship Decree.
74 Art. 2:16 of the Civil Code.
75 Court Decision BH2011. 230.
76 Barzó, 2022, pp. 119–122.

2.3. Privileged status of the family home property in the family (matrimonial) property law

The family is the smallest basic unit of society and its constituent element. Consequently, for a country to build a strong and healthy nation and society, it is necessary to protect and strengthen families in all areas of law, in addition to family and child-friendly family policies. One of the most important pillars of encouraging family formation and childbearing is family property law that also focuses on preserving the family's existential security, both during the couple's life and after separation. In addition to establishing the security of the family home, it is also important to ensure that a minor or adult child in further education can use the family home, regardless of whether his or her parents live together or not. The development of family law legislation in this area should be continuous, as indicated by judicial practice.[77]

2.3.1. Protection of the family home in matrimonial property law

One of the most important features of Hungarian matrimonial property law is the matrimonial community of property, which is a statutory property regime.[78] This means that assets acquired jointly or separately by the spouses while the community of property applies shall belong to the matrimonial common property. The burdens of the shared assets belong to the matrimonial common property, and, as a rule, the spouses shall jointly bear the debts arising from obligations undertaken by either of them while the community of property applies. The spouses shall be entitled to the matrimonial common property undivided and in equal shares. Assets, burdens, and debts qualifying as separate property do not belong to the common property.[79] A reciprocal contract regarding common property concluded by a spouse while the community of property applies is considered a contract concluded with the consent of the other spouse, unless the third party concluding the contract, typically a creditor, knew or should have known of the absence of the other spouse's consent to that contract. The security of commercial transactions, the safety of trade, and confidence in contracts also require that a person who concludes a contract with a natural person should not have to check whether the person is married or whether the contract has the consent of the contracting party's spouse.

As such, the Family Law Book provides for the *presumption of consent*[80] in relation to contracts for pecuniary interest concluded during the period of the community of property.[81] Of course, a spouse who did not take part in the conclusion of the contract can rebut the presumption of consent, but this requires double proof: he

77 Barzó, 2017b, pp. 144–146, 219–222.
78 Art. 4:34(2) of the Civil Code.
79 Art. 4:37(1)–(4) of the Civil Code.
80 Barzó, 2017b, pp. 142–144.
81 Art. 4:46 of the Civil Code.

or she must prove beyond reasonable doubt not only that he or she did not consent to the contract concluded by his or her spouse but also that the third party who concluded the contract knew or should have known of his or her lack of consent.[82] However, the Family Law Book completely excludes the applicability of the presumption in two cases. One of these is a contract for *real estate property co-owned by the spouses containing their matrimonial home,* and the other is the use of *common property*, forming part of the spouses' matrimonial community of property, *as an in-kind contribution* made available to individual firms, companies, and cooperatives.[83] In both cases, the transaction can only be concluded with the participation or express consent of both spouses, in other words, there is no presumption of consent in these cases.[84]

The restriction was justified, on the one hand, to *protect* the *family home* and, on the other, to prevent the 'extraction' or 'hiding away' of the matrimonial property in business entities, in particular in companies. This is because if the common property becomes part of the assets of a business company or enterprise as a result of a unilateral decision by one of the spouses, it can only be removed from the company or enterprise and disposed of on the basis of the law applicable to the business company in question – within the framework of the exercise of membership rights – in which the non-member spouse no longer has any say.[85] There have been cases where one spouse has diverted the basis of the other's claim to common property by making a non-monetary contribution (contribution in kind) to a business company of a major asset belonging to the common property (e.g. the common dwelling itself) after the dissolution of the community of life. The rules contained in this Section are designed to prevent such and similar cases.[86]

Due to the different legal property regime for *de facto* relationships, there is no legal provision protecting the family home of *de facto* partners.

2.3.2. Right of a minor child to use the home

The need for specific rules on the use and disposal of the matrimonial home and on the regulation of the use of the home has been made necessary by the fact that the matrimonial home is, in *most cases*, *the family home,* which is also the place where family life and the upbringing of children take place. Similar to international examples, the law, thus, protects the right of spouses and their children to use the dwelling regardless of who owns, has usufruct for, or rents the dwelling as 'property'. In the context of the rights to use the residential premises, the Family Law Book provides for a number of settlement options to ensure that divorcing spouses are

82 Court Decision BH1996. 98.
83 Barzó, 2017b, p. 144.
84 Art. 4:48 of the Civil Code.
85 Csűri, 2016, pp. 163–167.
86 Kőrös, 2005, p. 9.

not forced to live together after their divorce and to encourage spouses to settle the issue of using the dwelling together with the division of the matrimonial common property, where possible.[87] However, it should also be noted that the settlement of the use of the dwelling is closely linked to the right of the common child to have his or her own independent right to use the home.

The Family Law Book defines the *concept of the matrimonial home* in accordance with the case law, taking for granted that it can only be a matter of settling the use of a home that the spouses do not use in connection with the title of another person, as an ancillary use (as a favour, as subtenants, or as family members) but in their own right, independently of the right of use of another person. There is no possibility of court settlement of the use of so-called 'ancillary' dwellings based on the rules of the Family Law Book.[88]

The Family Law Book sets out three conjunctive conditions for *the concept of a matrimonial home*: (a) the existence of a valid (or invalid between *bona fide* parties) *matrimonial bond*; (b) *cohabitation*, which means that the spouses have moved, either jointly or separately, into the dwelling for the purpose of living there. The existence of a marital community of life is, therefore, not a prerequisite for the existence of a common home; and (c) the home is used on the basis of the *ownership*, *usufruct (use)*, or *tenancy of* one or both spouses.[89]

In addition to property relations, the primary way to settle both spousal and *de facto* cohabitation is by agreement between the parties. Couples planning to marry, spouses, or *de facto* partners *can arrange* the use of the common home by means of a *prior contract* in the event of the dissolution of marriage or termination of their community of life. In the context of a preliminary agreement on using the home, in order to protect the right of the minor child to use the home, parents have the possibility to decide between themselves how to ensure the child's accommodation in the event of the termination of their community of life or divorce, which is their obligation in any case, in accordance with the way in which parental custody is to be arranged. If, however, the spouses (or *de facto* partners) have a new child after the conclusion of the contract, the preliminary agreement on the use of the home will, by operation of the law, also apply to the new child, unless the content of the contract is amended. There are two cases in which the Family Law Book gives the court the power to determine, *in* the best *interests of the child*, a *use of the matrimonial home that differs from the contract* upon the dissolution of marriage or termination of the community of life. One of these cases is where the *contract does not contain any provision* on the right of a minor child to occupy the home, either because the parties did not have a child when the contract was concluded (and may not have planned to) or simply because they did not think about it. The other is where the parties have entered into a contract for the prior arrangement of the use

87 Explanation of Chapter VIII of Title VI of Part Two of Book Four of Act V of 2013 on the Civil Code.
88 Barzó, 2017b, p. 220.
89 Barzó, 2017b, pp. 219–222.

of the dwelling but the terms of the contract *seriously infringe the right of the minor child to adequate housing.*[90]

The common minor child of a spouse or *de facto* partner *must be provided with accommodation in the common home of the spouses (partners)*. This is closely related to the provisions of Section 4:152(1)–(2) of the Family Law Book, which states that parents have the right and duty to care for the child and to provide the conditions necessary for the child's subsistence and upbringing. Parents are obliged to provide accommodation for their children in their own household. Unless otherwise ordered by the court or the guardianship authority, the *child's place of residence* is the *parents' home*, even if the child is temporarily staying elsewhere. This means that the *child has a substantive right* vis-à-vis his or her parents to *be accommodated* in their shared home, or in one of their homes after the community of life has ended. On the other hand, the minor child's right to use the home as a family member *is ancillary*: it is linked to the right to use the home of his or her parents or the parent who has been granted sole parental custody over the minor child by the court. It also follows that, *from the perspective of the settlement of the use of the home, it is decisive* whether the court grants parental custody of the common minor child to one or both parents because the court does not grant exclusive use of the common home to a parent who does not exercise any parental custody over the common minor child following a divorce.[91] It is also a legal requirement that a spouse that exercises parental custody over a child and who has voluntarily moved out of a formerly shared home without the intention of returning must ensure the minor child's right to use the home in an appropriate manner. The court must examine this issue in the proceedings for the settlement of the use of the home.[92]

It is noteworthy that the Hungarian legislation also allows – although only in exceptionally justified cases – for the court to entitle the other spouse or partner to the exclusive use of the dwelling occupied by *a spouse or de facto partner* on the basis of *exclusive title* (e.g. separate property, sole beneficial interest), if the exercise of *parental custody over the minor child* entitled to use the dwelling is vested in the spouse or partner and the *minor child's residence cannot be ensured otherwise*. In the case of *de facto* partners, another condition, in addition to the common minor child, is that there has been a community of life between the *de facto* partners for at least 1 year.[93] Apart from the interests of the minor child, there are no other grounds on which the court may terminate the right of a spouse or partner who has exclusive title to the dwelling, even if the spouse or partner is guilty of grossly imputable (rude, abusive, aggressive) behaviour toward the other spouse or partner.[94]

90 Court Decision BH1997. 291.
91 Art. 4:83(2)–(3) and Section 4:94(3) of the Civil Code.
92 Art. 4:81(3)(b) of the Civil Code; Court Decision BH2016. 175.
93 Art. 4:94(1) of the Civil Code.
94 Barzó, 2017b, p. 235.

The principle of the primacy of the best interests of the child is, therefore, of particular importance in the settlement of the question of the use of the home, in the case of both spouses and *de facto* partners,[95] as all settlement methods must take into account *the independent right* of the common minor *children* of the parties concerned to *use the home*.[96] For the purposes of applying the rules on the settlement of the use of the dwelling, the *common minor child* has an individual right of use.[97]

The right to use a dwelling has a pecuniary value; therefore, the recognition of a claim for the consideration for the right to use a dwelling aims to reduce the pecuniary disadvantage of the spouse who leaves the dwelling, as well as the pecuniary disproportion between the spouses in terms of their housing situations. In terms of calculating the leaving spouse's right to use the dwelling, the Family Law Book stipulates only that the spouse who is obliged to leave the home may claim reimbursement corresponding to the financial value of the former right to use. However, when determining the amount of reimbursement, the *value of the child's right to use the home* shall be taken into account to the benefit of the spouse who, upon exercising parental custody right, ensures the use of the residential premises for the child. While this reduces the payment obligation of the spouse who stays in the dwelling, although, it may increase the amount of the reimbursement in favour of the spouse who leaves the former matrimonial home, taking the child with him or her.[98]

A *child who has reached the age of 16* may leave his or her parents' place of residence or another place of residence designated by the parents without the parents' consent, subject to the approval of the guardianship authority, provided that this is not contrary to the child's best interests. Leaving the parents' place of residence or another place of residence designated by the parents does not, in itself, affect parental custody, except for personal care and education.[99]

It should be stressed that, although the provisions of the Family Law Book primarily regulate the use of the home by the spouses' minor child, this does not mean that *reaching the age of majority* automatically results in the termination of the right to use the home. For the most part, parents are still obliged to provide *for an adult child* who is dependent or continues to study in a way that establishes dependency,[100]

95 BH2021. 11. I-II.

96 Unlike the concept of *de facto* partnership and its property consequences, the rules on the judicial settlement of the partners' use of the home have been placed among the family law effects of partnership. Szeibert, 2013a, pp. 147–158.

97 A child has the right to be accommodated in the shared home in accordance with his or her living conditions only in relation to his or her own parents. This entitlement cannot be extended to a non-parent spouse who has made the child's residence possible only incidentally through marriage to the other parent, not even if it is in the best interests of the child. Family protection considerations can, therefore, only be considered in the relationship between the parents responsible for the care of the child. Court Decision BH1992. 764. For more, see: Barzó, 2017b, pp. 224–225.

98 Art. 4:84(3) of the Civil Code.

99 Art, 4:152(4) of the Civil Code.

100 Art. 4:220 of the Civil Code.

primarily through in-kind care in the home.[101] Even if a child who has reached the age of majority does not continue to study, his or her right to use the property does not automatically end until his or her parents withdraw it.

2.3.3. Additional provisions protecting the family and the child in family property law

As already mentioned, one of the most important features of Hungarian matrimonial property law is the matrimonial community of property, which functions as a statutory property regime.[102] *De facto* partners are independent acquirers of property during cohabitation, although either partner can claim from the other the division of the property gains made during cohabitation in the event of the termination of their community of life.[103] The settling principle in the division of property is the *parties' contribution to the acquisition*. However, the principle of fair property settlement and the protection of the interests of the weaker party can be seen in the legal provision stipulating that *work in the household, child-rearing*, and *work in the other partner's business* are considered contributions to the acquisition of property. If it is not possible to determine the proportion of contribution between the parties, this proportion is deemed to be *equal* unless equality would be to the unfair pecuniary prejudice of either party.

However, both spouses and partners can deviate from the statutory property regime *by means of a marriage or partnership contract* and agree on *a full separation of property*. The essence of separate property regimes is that the spouses retain their property independence with regard to the property they acquired both before and during the marital community of life, that each of them remains the independent owner of the property they have acquired, and that each of them has the right to dispose of and manage his or her own property and is not liable for the debts of the other. Expenses closely related to the common way of life, in other words, the *costs* of the common *household* and the necessary expenses for the maintenance, upbringing, and education of *the spouses' child* or, with the consent of one spouse, the child of the other spouse *in the common household*, *are borne jointly* by the spouses, even if they opt for a full property separation regime, and cannot be derogated from by contract. Any clause that exempts either spouse from bearing all or most of these costs and expenses is void. Work done in the common household and child-rearing for the benefit of the family can be counted as participation in the cost-bearing.

The *division of the common property* acquired during the community of life is a relevant issue arising after the dissolution of a marriage or the termination of a *de facto* partnership. However, when drawing up the balance of assets and determining the value per person, as well as when distributing assets, family protection must be considered in order to strengthen the financial position of parents raising children

101 Art. 4:216(1) of the Civil Code.
102 Art. 4:34(2) of the Civil Code.
103 Art. 6:516(1) of the Civil Code.

or, at least, prevent possible injustices to the children. The *direct or indirect taking into account of the best interests of a minor child* in such a judgement is a particularly important fairness consideration. This includes the possibility that objects and furniture purchased for the child or for the child's personal use should be excluded or disregarded from the property inventory when dividing the property. With regard to other assets that are necessary for the proper upbringing and maintenance of the child, the application of fairness is particularly necessary.[104] It is also appropriate that in the event of the termination of the common ownership of a former common dwelling, when determining the redemption price, the effect of a reduction in the dwelling's market value due to the occupation of the dwelling should not be exclusively assessed to the detriment of the former spouse who remains in the dwelling with a common minor child.[105]

2.4. Family law issues relating to the establishment of family status

In addition to the need for nations to create the social, legal, and economic conditions that enable young people to have the children they plan and desire, it is also important to ensure that the children born and their parents have *the right to an orderly family life*.[106] To make this possible, the child's family status must be regularised, that is, the child must live in a legally recognised family relationship. This regularisation is *legally complete* if both the paternal and maternal status in the child-parent relationship is fulfilled. Nevertheless, the regularisation is only complete from a social perspective if the persons from whom the child is actually descended are established as the father and mother of the child and are registered in the birth register.[107] However, as we know, this is not always the case.

2.4.1. The origin of paternity

The Civil Code specifically lists the legal facts giving rise to paternity in the order in which they apply: a) the mother's matrimonial bond, b) a special procedure for human reproduction in the case of *de facto* partners, d) declaration of paternity, and e) the establishment of paternity by court order.

If paternity can be established on the basis of a presumption of paternity that comes first in the order, a presumption of paternity that comes later in the order

104 The court must disregard items for the personal use of the spouses' minor child when dividing the common property of the spouses and must apply a broad equitable test when valuing assets of greater value for the child. Courts will consider the fact that these assets are deteriorating in the child's best interests as a result of their use by the child, and, therefore, the parent caring for the child would be unfairly burdened if such assets were to be accounted for at their value at the time of the termination of the community of life. Court Decision BH1982. 290.

105 Kőrös, 2007, pp. 303–307.

106 Barzó, 2017b, p. 283.

107 Csiky, 1973, p. 13.

cannot be applied.[108] An exception to this order of precedence is where the presumed period of conception (i.e. 300 days) has not yet elapsed between the termination of the mother's previous marriage and the birth of a child born during the reproductive procedure between the partners. In this case, the *de facto* partner of the mother is considered to be the father of the child, rather than the spouse who is first in the order. This is also the case if, after a successful reproductive procedure between the mother and her partner, the mother and her partner separate and the mother marries another man before the child is born. This marriage also does not create a presumption of paternity for the husband.[109] The system of presumptions of paternity is *uniform*, in other words, *they have the same legal consequences* regardless of whether the child is born in or out of wedlock.

2.4.1.1. Presumption of paternity based on matrimonial bond

The presumption of paternity is *automatically* created on the basis of marriage. The man who lived in matrimonial bond with the mother during the whole or a part of the period between the child's conception and birth (i.e. 300 days counted backward from the birth) shall be considered the child's father.[110] For the purposes of the presumption of paternity based on marriage, the law gives legal effect to the *conclusion of the marriage* and *does not attach any importance* to whether or not the spouses actually cohabited or whether or not the mother had sexual relations only with the husband. Thus, the mother's husband should be considered the father of the child even if the mother is already living with another man, without the dissolution of marriage, and the child is in fact the result of a sexual relationship with this other man. The *ipso iure* establishment of paternity of the already 'abandoned' husband puts the biological father in a difficult position as his acknowledgement of paternity is legally precluded by the existence of paternity. The Civil Code, however, already allows the court, on the joint application of the putative father, the mother, and the man who wishes to acknowledge the child by a declaration of paternity with full effect, to establish in a non-contentious procedure that the child's father is not the mother's husband or former husband.[111] However, the question of paternity must be settled in the same procedure by a declaration of paternity with full effect.[112]

The law also provides a solution to *conflicting presumptions of paternity based on two marriages* between the presumed time of conception and the birth of the child. The presumption of paternity attaches to the conclusion of a new marriage, and only an *underlying presumption of paternity* can arise on the basis of a previous

108 Szeibert, 2013b, p. 30.
109 Art. 4:100(2)–(3) of the Civil Code.
110 Art. 4:99 of the Civil Code.
111 Kun, 2018, pp. 38–40.
112 Art. 4:114 of the Civil Code.

valid or invalid marriage. If the presumption of paternity against the new husband is rebutted, the presumption of paternity against the previous husband is revived.

2.4.1.2. Presumption of paternity arising from a special procedure for human reproduction

A special procedure for human reproduction may be carried out for persons in a *spousal relationship* or *de facto partnership between persons of different sexes* if, due to a health condition (infertility) of either party, the relationship is unlikely to result in a healthy child by natural means. Given that, under the law, the reproductive procedure can be carried out at the joint request of the partners in a private document with full probative value, the applicants accept that the family status of a child born in this way is identical to that of a biological child.[113] However, in the case of partners, a reproductive procedure can only be carried out if *neither of the partners is in a spousal relationship*. The reason for this is that the paternity of a child born in a reproductive procedure between spouses is based on the mother's marriage; thus, the reproductive procedure in itself only creates paternity in the case of partners. This is why *Act CLIV of 1997 on Healthcare (Healthcare Act)* emphasises that no partner in a reproductive procedure may be in a spousal relationship.[114] However, there may be cases where the *marriage of the parties is terminated during the reproductive procedure after the fertilisation of the female gametes*, for example, by the death of the husband. An embryo created outside the body has the status of a foetus from the day of implantation.[115] Taking all this into account, the determination of paternity is not always clear. *In the case of a single woman*, a reproductive procedure can be carried out if the woman's age or health condition (infertility) means that she is unlikely to have a child naturally.[116]

2.4.1.3. Presumption of paternity based on a declaration of paternity

If a mother neither lived in a matrimonial bond during the whole period or part of the period between the conception and birth of a child nor took part in a reproductive procedure giving rise to the presumption of paternity, or if the presumption of paternity was rebutted, the man *who acknowledges the child as his own in a declaration of paternity with full effect* is considered the father of the child. A declaration of paternity can be made by a man at least 16 years older than the child from the time of the child's conception. For a declaration of paternity to be of full effect, the consent of the mother, the statutory representative of the minor child and, if they are aged 14 years or older, the child themselves is required. The declarations

113 Somfai, 2006, p. 11.
114 Art. 167(1) of the Healthcare Act.
115 Art. 179(3) of the Healthcare Act.
116 Art. 167(4) of the Healthcare Act.

and consents shall be recorded at the civil registrar, the court, the guardianship authority, or the career consular officer, or they shall be drawn up in a notarial deed.[117] The declaration of paternity may not be revoked after the record or deed is signed.[118]

2.4.1.4. Presumption of paternity based on a court decision

The law treats a judicial finding of paternity as an irrebuttable presumption. It even *rejects* the possibility that, after the court has 'upon the thorough consideration of all circumstances' reasonably concluded paternity, a new trial should be launched to prove that it is 'impossible' that the child is descended from the putative father. An action to establish paternity can only be brought if the father of the child cannot be established on the basis of the mother's marriage, a reproductive procedure, or a declaration of paternity with full effect. No judicial determination of paternity is given to the so-called '*donor man*' who donated gametes or embryos if the mother became pregnant through a reproductive procedure.

In practice, paternity is typically established by a court when it is necessary to establish the paternity of a man who has fathered a child but does not wish to become the father, or when the mother for some reason objects to the settlement of paternity and does not consent to the father's declaration with full effect. In addition, paternity can be established only by a court if there is no age difference of at least 16 years between the child and the man who is the father, which is required for a declaration of paternity.

A judicial finding of paternity requires *double proof*: first, proof that there was sexual intercourse between the man designated as the father and the mother at the presumed time of conception and, second, if this is the case, other evidence, in particular physiological tests, to show that the origin of the child can be reasonably inferred from that relationship.[119]

The law still allows the man who is a party to a paternity *suit* to acknowledge the child as his *own by a declaration of paternity with full effect*.[120] He must be advised of this at the first hearing and after the evidentiary procedure. In paternity and other parentage proceedings, there is a significant individual and social interest in the child having a legal parent-child relationship with the biological father. Accordingly, the case law attaches great importance to the fact that the establishment of parentage (paternity) must be based on duly proven facts, not least on the results of *natural scientific investigations*.[121]

117 Varga, 2020, p. 29.
118 Art. 4:101–4:102 of the Civil Code.
119 Art. 4:103 of the Civil Code.
120 Art. 468 of the Code of Civil Procedure.
121 Mécsné Bujdosó, 2000, pp. 425–429.

2.4.2. The fact of motherhood

For a long time, the status of motherhood was not a matter of dispute: going back to Roman times (‘*mater semper certa est*’), the law treated motherhood as a fact and not a presumption. The reassessment of parental status and the bloodline of the child means that genetic and adoptive (parental) parenthood are separated in many cases during reproductive procedures, such as the use of donor gametes or embryo donation.[122] In accordance with international practice, the Civil Code decides the choice between the birth mother and genetic mother by *considering the woman who gave birth to the child as the mother.* This new rule is not only important for the reproductive procedures that are allowed under current law but is also decisive for *so-called* ‘*surrogacy*’ because it means that a woman who has asked another woman to carry an embryo from her egg cannot be considered a mother.[123] In Hungary, surrogacy is not allowed, whether in exchange for payment or as a favour.[124]

2.4.3. The relationship of descendants by adoption

Adoption and adoption-related procedures in Hungary are governed by several laws.[125] However, given that adoption has no real impact on childbearing or, therefore, on demographic targets, only the most basic and fundamental rules are described here.

Looking back at the history of humanity, we can see that adoption has taken many different forms, purposes, and conditions. If we trace its legal history, we can see that the various purposes of adoption have been characteristic of the particular period.[126] For example, adoption was a special form of slave emancipation in Roman law, and at that time, only adults could be adopted, mainly because of inheritance rights. Feudal society was based on blood relations, meaning that adoption lost its importance in the Middle Ages. In the modern era, the adoption of minors and adults became accepted and could serve to legalise children born out of wedlock.[127]

The current purpose of adoption is two-fold: first, to establish a *family relationship* between the adopter(s) and their relatives, and between the adoptee and his or her descendants;[128] and second, to ensure that the *minor* is *brought up in a family* where

122 Herczog, 2020, p. 46.
123 Navratyil, 2012, pp. 142–145; Szabó-Tasi, 2012, p. 14.
124 Barzó, 2017b. pp. 318–321.
125 In addition to the Civil Code, see the Child Protection Act (Act XXXI of 1997), Guardianship Decree (Government Decree 149/1997 (IX. 10.)), Government Decree No. 72/2014 (III. 13.) on the activities and licencing of public benefit organisations promoting adoption and conducting post-adoption activities, and ESZCSM Decree No. 29/2003 (V. 20.) on pre-adoption counselling and preparation courses.
126 Sápi, 2022, pp. 178–179.
127 Hegedűs, 2020, p. 288.
128 Section 4:97(1) and (2).

his or her proper physical, moral, and intellectual development is guaranteed.[129] Of course, the purpose of adoption in the case of adoption by spouses and relatives differs from that of other forms of adoption, where the child is adopted by a person who is not a family member.[130] The Civil Code states that a lineal kin relationship between parent and child shall arise from *bloodline* or *adoption*.[131]

Adoption requires a unanimous application by the person intending to adopt and the child's statutory representative, as well as the consent of the child's parents and the spouse of the adoptive spouse. A minor of limited capacity who has reached the age of 14 may be adopted with his or her consent. The opinion of a minor under the age of 14 who is of sound mind shall be given due weight in the adoption decision. Adoption should aim to ensure continuity in the child's upbringing, with particular attention to the child's family *ties, nationality, religion, mother tongue, and cultural roots*. In Hungary, adoption is allowed by the guardianship authority if, in addition to the legal requirements, it can be established that it is in the best interests of the minor child.[132]

As a general rule, *only spouses can adopt* a child, except for adoption by relatives and a parent's spouse. Registered partners and *de facto* partners are not eligible. It follows that same-sex couples are not allowed to jointly adopt a child. This provision fundamentally changed the range of possible adoptive parents with effect from 1 March 2021. Previously, only spouses could jointly adopt a child, although the adoption route was essentially the same for spouse adopters and single or sole adopters. The latter can only adopt a child with the permission of the Minister for Family Policy.[133]

In addition, an adopter must be a person with the capacity to act who is at least 25 years old, is at *least 16 years* but *not more than 45 years older than* the child, and is considered *suitable* for adopting the child based on his or her personality and circumstances.[134] In the case of an application for the adoption of a child over 3 years old, the adoption may also be authorised in the best interests of the child if the age difference between the adoptive parent and the child is no more than 50 years. In the case of adoption by a relative or spouse, the age difference may be waived. Further, in the case of adoption as a common child, the legal age and age difference must apply to one of the adopters. If siblings are adopted, the age of the older child should be taken as the basis of the authorisation. Persons subject to a final and binding court judgement that withdraws parental custody or excludes them from participating in public affairs and persons whose child has been taken into care are not allowed to adopt. Exceptionally, in an event specified by an Act and deserving special consideration, and in accordance with a procedure laid down in a government decree, the

129 Kőrös, 2008, pp. 2–3.
130 Katonáné Pehr, 2007, pp. 447–450.
131 Barzó, 2017b, p. 279.
132 Art. 4:120(1)–(5) of the Civil Code.
133 Sápi, 2021, pp. 138–139.
134 Katonáné Pehr, 2020, pp. 1–8.

suitability for adoption of a *person who wishes to solely adopt* as determined therein may also be established.[135]

2.5. Maintenance of relatives

The Family Law Book has developed *common rules on the maintenance of blood relatives* by placing *several generalisable provisions on child maintenance* (dependency, fault, capacity, unworthiness) among the general rules and by adding *specific cases of maintenance*, including the maintenance of a minor, the maintenance of an adult child, spousal maintenance, and the maintenance of a partner.

2.5.1. Conditions for blood relatives' entitlement to maintenance

According to the Family Law Book, a relative's maintenance obligation *can be established if the following conditions are met*: (a) the indigence of the maintenance creditor; (b) the absence of fault on the part of the maintenance creditor; (c) the absence of a spouse, former spouse, or former partner who is liable for maintenance; (d) the maintenance creditor, who is an adult, is not unworthy of maintenance; and (e) the maintenance debtor has the capacity to pay.

(a) The *concept of indigence* has been developed by the case law.[136] The conditions for a minor child's entitlement to maintenance are substantially different from the general rules. The age of a minor child usually means that he or she is not able to support him or herself and usually does not have the means to do so; therefore, in most cases, minor children need their parents to provide for them. Consequently, the Family Law Book establishes a rebuttable *presumption* in *favour of the minor child's indigence for maintenance*. The possibility of applying the presumption of indigence *extends beyond the age of majority.* A significant proportion of children today do not finish secondary education when they reach the age of majority, partly because they start school at the age of seven, and partly because of possible illness or repeating a school year. It is, therefore, justified that they should be entitled to maintenance under the rules governing the maintenance of minor children. The law solves this issue by stating that the presumption of indigence continues to apply after the child reaches the age of majority until *his or her 20th birthday* if he or she is in secondary education.

An adult child of working age in further education who is capable of working is also entitled to maintenance outside the presumption of indigence if *he or she needs it to continue his or her studies within a reasonable period of time*. The child must inform the parent of his or her intention to continue his or her education without delay. Training or courses required to gain a professional qualification for a specific career path, bachelor- and master-level studies that culminate in a tertiary qualification,

135 Art. 4:121(1)–(4) of the Civil Code; Barzó, 2017b, p. 329.
136 Barzó, 2017b, p. 498.

and studies in tertiary vocational training, if pursued continuously, qualify as necessary studies. The continuity of studies is not affected by interruptions for which the entitled person is not at fault. The parent is not required to provide maintenance to an adult child who is engaged in further studies if the child is unworthy of maintenance, if the child fails to discharge his or her study and examination obligations through his or her own fault, or if the parent would thereby jeopardise his or her own necessary maintenance or the maintenance of his or her minor child(ren). A parent may be obliged to provide maintenance for a child over the age of 25 who is in further education in particularly justified cases.[137]

A beneficiary who is an adult is considered to be indigent if he or she has no income, earnings, or other means of subsistence that would enable him or her to support himself or herself in whole or in part.[138] The most common cause of indigence is *sickness* resulting in total or partial incapacity for work. The case law is unanimous that *reaching retirement age alone does not establish entitlement to maintenance*. In any case, the right decision requires careful consideration of the health, family, and living conditions of the person who requires maintenance. *Unemployment* can also be a basis for indigence. The *test of fault* becomes more relevant here if the claimant does not establish an employment relationship when he or she is able to do so. The lawsuit must provide details of the claimant's income and assets.

(b) *Absence of fault.* The normative text of the Family Law Book stipulates as a clear condition that indigence must exist without the fault of the person claiming maintenance; therefore, self-inflicted fault must be examined as a *subjective factor* in the context of indigence. Fault is a degree of liability below the level of imputability: it lies between lawful and unlawful conduct. In the case of fault, the law takes the passive position that the person who has committed the fault bears the burden of the harm thus caused.[139]

(c) *Absence of a spouse/former spouse, registered partner/ former registered partner, or partner/former partner who is liable for maintenance.*[140] The maintenance obligation applies if the claimant has no spouse/former spouse, registered partner/former registered partner, or partner/former partner, or if he or she does, is unable to support the claimant because this would jeopardise his or her own maintenance and that of the person who precedes the claimant in the order of maintenance. If the maintenance creditor becomes entitled to maintenance only 5 years after the dissolution of the marriage or registered partnership, or 1 year after the termination of the partnership in the case of a *de facto* partnership, he or she may apply for maintenance only if he or she can prove special and fair circumstances.

(d) Unworthiness for maintenance. The definition of the uniform concept of unworthiness is a framework definition, as follows: conduct toward *the maintenance*

137 Art. 4:220(1)–(3) and (5) of the Civil Code.
138 Barzó, 2017b, 498–501, Bencze, 2007, p. 94.
139 Bencze, 2007, p. 104., Barzó, 2017b, p. 500.
140 Barzó, 2017b, pp. 500–502.

debtor or *a relative living* of the debtor, which may be specific *reprehensible conduct* (such as assault) or the *maintenance creditor's lifestyle* (e.g. they are an alcoholic or gambling addict), which gives grounds for *not expecting* the creditor to be dependent, even partially, *according to the common social understanding*. However, a child who has reached the age of majority is also unworthy of maintenance if he or she does not have contact with the maintenance debtor without due reason.[141] A child of full age may be expected to behave not only in a way that is demanding from the parent who pays maintenance but also in a way that is consistent with the family and family relationship upon which the maintenance is based because a person of full age already has the discernment to assess the rightness or wrongness of his or her conduct and its consequences.[142] The child cannot rely on the parent's unworthiness if the parent has fulfilled his or her maintenance, care, and education obligations. This will not be enough, of course, if the parent's behaviour toward the child is *so flagrantly serious* that he or she alone is unworthy of support, despite having otherwise maintained the child in his or her own household for a long period of time.[143]

(e) *Capacity to provide maintenance (perform)*. Those who, by providing maintenance, would jeopardise their own necessary maintenance or that of an individual preceding the maintenance creditor concerned in the order of maintenance shall not be required to maintain other people. The debtor's *capacity to perform* is an essential condition for the maintenance of a relative.[144]

2.5.2. Order of the maintenance obligation

The Family Law Book sets out a different order for the maintenance obligation and the entitlement to maintenance.[145] The maintenance creditor can claim maintenance primarily *from his or her lineal relatives*. An exception to this is the different provision of the law regarding the maintenance of a stepchild[146] and the maintenance of a stepparent and foster parent.[147] The most common types of maintenance of relatives are maintenance owed by a parent to a child *(child maintenance)* or by a child to his or her parent *(parental maintenance)*.

Among the lineal relatives, the maintenance obligation is mainly imposed on *descendants* (children, grandchildren, great-grandchildren, etc.). However, *grandchildren's* maintenance obligation only arises if there are no children who can be required to provide maintenance; for example, if both children of the parent have such low incomes that they cannot support their parent without risking their own or their minor children's support. If there are no descendants who are liable for

141 Art. 4:220(4) of the Civil Code.
142 Barzó, 2017b, pp. 501–503.
143 Bencze, 2007, p. 570.
144 Barzó, 2017b, pp. 502–503.
145 Art. 4:196 of the Civil Code.
146 Art. 4:198 of the Civil Code.
147 Art. 4:199 of the Civil Code.

maintenance, maintenance can be claimed *from ascendants* (parents, grandparents, great-grandparents, etc.). The ascending relative who is nearer in the order of descent to the individual entitled to maintenance precedes the more distant individual in the maintenance obligation.[148]

In the case law, *parental maintenance* is of particular importance in the context of a descendant's maintenance obligation toward an ascendant. The maintenance obligation of adult children toward their parents is constitutional[149] and takes precedence over other family maintenance obligations. However, the law also introduces a new possibility to claim reimbursement if the needs of a parent who is indigent and requires maintenance through no fault of his or her own are provided for by a person who would not be obliged to do so by law or contract, instead of the child who is obliged to provide maintenance. The person providing such *reasonable care* may claim *reimbursement* from the child subject to maintenance within a limitation period of 1 year from the date on which the care was provided. Thus, according to the law, in the case of older adults whose social care is provided by state or church-run institutions that are not free of charge and who cannot or can only partially finance the cost of this care, the unpaid fee can be claimed from the adult child who can be required to provide maintenance to the parent.[150]

2.5.3. Order of maintenance entitlement

If someone is required to provide maintenance to more than one maintenance creditor and is unable to provide to all, in the order of entitlement, (a) the *minor* child shall prevail over the adult child; (b) the *child* shall prevail over the spouse, the former spouse, and the former partner or former registered partner; (c) the *spouse, the former spouse, the former registered partner and the former partner*, all four with the same rank, shall prevail over the parent; (d) the *parents*, both with the same rank, shall prevail over other blood relatives; and regarding other blood relatives, (e) the descendant shall prevail over the ascendant; and (f) the blood relative closer in the order of lineage shall prevail over the more remote one.[151] In this way, the Family Law Book sets out the order in which a person who has a maintenance obligation toward more than one creditor must fulfil it. The idea behind the *order* is that those further down will only receive maintenance if those ahead of them do not use up the debtor's available income or assets (i.e. their ability to pay).

Parents are required to provide maintenance to their minor children *even if it results in the restriction of their own necessary maintenance.* This provision does not

148 Barzó, 2017b, pp. 503–510.
149 Art. XVI (4) of the Fundamental Law.
150 Art. 4:208(1a) of the Civil Code.
151 Art. 4:202 of the Civil Code.

apply if the justified needs of the child are covered by his or her earnings from work or income from his or her property, or if the child has another lineal relative who can be required to provide maintenance.[152]

A biological child and a *child* who is not a biological child but has a real family relationship *are entitled to maintenance in the same line*.[153] An adopted child is, of course, entitled to the same status as a biological child. However, it should be stressed that the maintenance obligation of a stepparent is preceded by that of a natural parent; thus, a minor's maintenance claim against a stepparent *is only secondary* and is limited to maintenance in kind.

The rigid application of the order set out in the Family Law Book can lead to unfair results in some cases. Consequently, the law allows the *court* to *derogate from the order of entitlement to or obligation of maintenance* in justified cases and at the request of the creditor.[154] In examining the justification of the case, the principles of fairness and the protection of the weaker party in family law may come to the fore, according to which family legal relationships shall be settled in an equitable manner and by taking in account the protection of the party that is weaker in terms of asserting interests.[155]

3. The importance of assisted reproductive technologies in solving demographic problems

The exact causes of infertility can be traced back to a variety of diseases and disorders. Studies note that infertility can occur in both men and women and that the number of infertile individuals and couples may increase in the future.[156] The reasons for and approaches to infertility are also significant. On the one hand, there is somatic infertility, which can be detected by organ examination; on the other hand, there is also the notion of idiopathic infertility, which is of unknown origin and cannot be detected by diagnostic means. Infertility is compounded by trends resulting from changes in modern lifestyles and family planning,[157] with marriages taking place later and people seeking to take advantage of their independence and achieve financial security before having children.[158]

152 Art. 4:215(1) of the Civil Code.
153 The term 'stepchild' is defined in Section 4:198(1) of the Civil Code as a minor child of a spouse by blood whom the spouses raise in the common household by common agreement.
154 Art. 4:203 of the Civil Code.
155 Art. 4:4 of the Civil Code.
156 Navratyil, 2011b, p. 110.
157 Lenkovics, 2022, pp. 16–28.
158 Navratyil, 2005b.

3.1. Types of assisted reproduction techniques acknowledged in the Hungarian legal system

The assisted reproduction procedures that are acknowledged and authorised in Hungary are mainly regulated by the Healthcare Act.[159] As a general condition, assisted reproduction procedures may only be performed by a healthcare service provider, which means that such healthcare activities are conducted by providers in possession of an operating licence issued by the government healthcare administration body or upon registration with the government healthcare administration body.[160] The Act also adds, as a professional and institutional requirement, that assisted reproduction may only be performed by duly licenced state-maintained healthcare service providers and clinical centres provided for in the Act on Public-benefit Trusts Carrying Out Public Service Functions, which comprise a part of the integrated public healthcare system.[161] If a doctor conducts an assisted reproduction intervention without a licence, it can lead to serious sanctions, including criminal proceedings. Assisted reproduction may be performed on a couple of the opposite sex in a marital relationship or a *de facto* cohabitation relationship if their relationship is unlikely to produce a healthy child naturally owing to the health issues (infertility) of either party.[162] In the case of unmarried couples, assisted reproduction procedures may only be performed if neither of them is married.[163]

The Hungarian legal system permits the following assisted reproduction procedures: a) artificial insemination with the gametes of the spouse or partner or with donated gametes, b) *in vitro* fertilisation and embryo implantation, c) *in vitro* fertilisation and embryo implantation with donated gametes, d) embryo implantation using donated embryos, e) other methods promoting the fertilisation and fecundability of the female gamete, as well as the binding and development of the fertilised gamete.

This list is an exclusive specification and, consequently, other types of assisted reproduction procedures cannot be performed. The legal literature emphasises that this exhaustive classification can be rooted in the ethical and moral aspects of reproduction itself. As the technological development in this field is extremely rapid, new procedures could be introduced in practice; however, such new procedures – in addition to the existing ones – may raise moral and ethical inconsistencies and issues. As such, a new procedure can only be accepted if it is morally acceptable and explicitly declared by the legislator.[164] The last category in the above list (point (e)) encompasses, for example, hormonal preparation prior to an assisted reproduction procedure and genetic testing, which comprise the preparatory phase for the listed procedures.

159 Healthcare Act. For a detailed introduction to the assisted reproduction procedures that are authorised in Hungary, see: Fráter-Bihari, 2023.
160 Healthcare Act, Art. 3. § (e).
161 Healthcare Act, Art. 169. § (2).
162 For details, see: Barzó, 2017b, pp. 286–289.
163 Healthcare Act, Art. 167. § (1).
164 Dósa, 2023.

3.2. Sectoral legislation of specific issues

As for sectoral legislation, the following legal sources are of importance: a) Government Decree No 96/2003 (VII. 15.) on the general conditions for the provision of health services and the procedure for the granting of operating licences; b) ESzCsM Decree No 60/2003 (X. 20.) on the minimum professional requirements for the provision of health services; c) NM Decree No 30/1998 (VI. 24.) on the detailed rules for the performance of specific procedures for human reproduction and for the disposal and frozen storage of gametes and embryos; d) NM Decree 49/1997 (XII. 17.) on infertility treatment procedures available under compulsory health insurance; e) Government Decree No. 339/2008 (XII. 30.) on the scope, manner, and place of publication, and the monitoring of the mandatory publication of performance data and statistics on human reproductive procedures; f) Government Decision No 1729/2019 (XII. 19.) on the National Human Reproduction Programme.

3.3. Institutional and financial framework

In 2019, the Hungarian government enacted the 1729/2019 (XII. 19.) Government Decision on the National Human Reproduction Programme, under which the deadline for establishing the framework for the National Human Reproduction Programme was July 2020. In the next year, the 1011/2020. (I. 31.) Government Decision on the Execution of the National Human Reproduction Programme was enacted. According to the objects of both of these Government Decisions, the legislator set achieving demographic stability in Hungary and equal access to human reproductive procedures as priority goals, which has led to the enactment of the related laws.

As for the institutional background, the *National Laboratory for Human Reproduction*, located in Pécs, is a key research centre for assisted reproduction in Hungary. In 2020, when the National Laboratory for Human Reproduction was established, it was reported that approximately 100,000 to 150,000 couples in the country were infertile, which would represent a lack of 300,000 children considering the average family size.[165] The Directorate of Human Reproduction was established on 1 January 2022 with the objective to develop treatment systems for fertility and reproductive disorders.[166] As of 1 July 2022, couples who could not have a child naturally were no longer able to register privately in hospitals: in a Government Decree in 2022, the government nationalised all private hospitals for reproductive procedures. The previously privately run providers were bought out by the state, which cited the need to effectively halt population decline and make infertility treatment widely available as the aims of this measure.

Artificial reproduction techniques are expensive procedures. The associated hormone treatments and medicines are also costly. Infertility centres in Hungary

165 Kovács, 2020.
166 See: https://vagyottgyermekekert.hu/bemutatkozunk (Accessed: 05 November 2023).

offer the treatment methods considered medically necessary or compulsory, from the simplest to the most specialised. The interventions are financed by the Health Insurance Fund. In parallel with the nationalisation of infertility clinics, full treatment and care are free of charge; thus, under the current regulation, only state-run centres provide assisted reproduction procedures, but these procedures are free of charge.

In 2023, the BM Decree 34/2023 (VIII. 24.) on the amendment of certain ministerial decrees on health insurance amended Decree No 30/1998 (VI. 24.) and the NM Decree 49/1997 (XII. 17.) on the infertility treatment procedures available under compulsory health insurance. As a consequence, the currently effective text of the NM Decree 49/1997 declares that special procedures for human reproduction may be provided free of charge only on medical indication by a healthcare provider financed for that purpose by the Health Insurance Fund. In practice, this means that, according to the 2. § of the NM Decree, the medicine stimulation for egg retrieval may be carried out in up to five procedures and insemination may be conducted in up to six procedures. Within the framework of public care, up to the age of 45, five implantations are free of charge. If at least one child is born, a further four implantations are funded by social security. Another element of the new regulation is the plan to establish a National Registry of Obstetric, Perinatal, and Human Reproduction, which will include real-time data on stimulation, implantation, live births, and, later, the health of children born from *in vitro* fertilisation.[167] This registry will be essential for ensuring transparency in the field given that there has been almost no real data available on the number and success rate of assisted reproductive procedures in the last few years.

4. Family policy response to demographic challenges in Hungary

As previously mentioned, most countries in Europe face the same demographic challenges as Hungary, including the transformation of the family institution, a declining birth rate, and an ageing population. Hungary is making attempts to improve the demographic situation through family policy incentives. As a legal background, it is worth pointing out that Hungary's Fundamental Law specifically states that the country supports childbearing and that families are entitled to protection and support, which are regulated by a cardinal Act.[168] The wording of the Fundamental Law expresses that the child and the family comprise the resource that, although private, is the most important public matter.[169]

167 16. § of the BM Decree No 70/2023. (XII. 23.) on the amendment of certain ministerial decrees on healthcare and health insurance relating to human reproduction procedures.
168 Art. L (2) and (3) of the Fundamental Law.
169 Barzó, 2023, p. 28.

'Family-friendly measures' were launched in Hungary in 2010. In the more than 10 years since, these measures have changed considerably and have been modified in several ways. Family-friendly measures and family policy incentives[170] are basically motivated by the fight against low birth rates as the trend has long been that fewer children are actually born than their parents plan for.[171] To bridge the gap between the number of children desired and the number of children parents commit to have, a system had to be created that could strengthen the desire to have children and the financial background to facilitate it. The average planned age for childbearing in Hungary is 32.3 years.[172] Nevertheless, despite the lower birth rates, research[173] shows that young Hungarians prefer the two-child family model and see having children as an incremental factor in individual happiness.

To place family policy since 2010 in a historical context, it must be considered holistically. Since the change of regime, each successive government has introduced social policy provisions, including support for families, which typically offer a wide range of financial benefits, and changes have generally been ad hoc.[174] Therefore, in many cases, there has been little discernible link between the theoretical purpose of some benefits and the real social impact they have had.[175] Several studies outline a development curve, pointing out that in 2010, Hungary's economic situation was unstable, with high unemployment and a correspondingly low propensity to have children.[176] However, since 2010, a new process in family policy has started: there is a separation between social policy, which is based on means-testing and benefit-based policies, and family policy, which supports the internal stability of families, protects their autonomy and security, and encourages childbearing and intergenerational cooperation.[177]

The below list presents a selection of specific family policy measures. As noted in an analysis by KINCS, seven targeted measures have been introduced, and the results have already had a positive impact on demographic indicators in the first period.[178] These measures, which, together with the 2019 Family Protection Action Plan,[179] can

170 Pátkainé Bende, 2022.
171 Pári and Rövid, 2023, pp. 24–25.
172 Barzó, 2023, p. 27.
173 Engler and Pári, 2021, pp. 87–112; Engler, Markos, and Major, 2022, pp. 51–68.
174 Barzó, 2023, p. 28.
175 Ignits and Kapitány, 2006, p. 398.
176 Molnár, Szarvas, and Gellérné, 2022, p. 89; Barzó, 2023, p. 27.
177 Barzó, 2023, p. 27.
178 Pári, Varga, and Balogh, 2019, pp. 17–18.
179 Elements: 1. The public financing of part of the burden of raising children through family benefits and child welfare measures; 2. More flexible childcare benefits; 3. Reconciling work and family life; 4. The family should not be at risk of poverty; 5. Supporting family housing, helping families in settling down; 6. Since 2010, Hungarian national politics has been thinking in terms of world 'Hungarianness'; 7. Rather than focusing on the family in the narrow sense, it thinks across generations; 8. Restoring family taxation; 9. Despite the subsidies, parents are not exempt from basic parenting responsibilities; 10. Preventing childbearing from being postponed or delayed. For a detailed analysis and presentation, see Barzó, 2023, pp. 28–40.

now be considered 'Hungaricum',[180] include: a) Family support benefits (family allowance, maternity benefits, childcare benefits, childcare allowances, etc.); b) Other tax and contribution benefits (child tax credits or other allowances); c) Home creation; d) Family and work allowances (maternity leave, childcare leave, paternity leave, daycare services, etc.); e) Generational policy (youth policy, support for older adults and pensioners)

4.1. Family support benefits

Reducing child poverty is an important objective of family policy in Hungary. To this end, *free textbooks* were introduced in an ascending system starting from the 2013/2014 school year. From the 2020/2021 school year, unlike in previous years, all students in full-time primary and secondary education and vocational training received free textbooks, not just children of families and large families that are in need due to social or other circumstances.[181] In addition, healthy and, for many families, *free meals* are available *for children*.[182] From a financial point of view, the so-called *'baby bond'* is also worth mentioning, which offered a fixed amount (HUF 42,000 in 2023) as a start-up allowance for young people of full age. The state deposits this fixed amount for the benefit of the child, and parents, grandparents, relatives, and friends can supplement it with additional payments. The grant is compounded at a rate of 3% above inflation and a state support of 10% (max. HUF 6,000 per year; from 2022, HUF 12,000 per year[183]). The earliest the child can withdraw the amount is when they reach 18 years.[184]

The following childcare benefits should be noted[185]*:* a) *Maternity allowance*: a one-off benefit if the mother has had at least four antenatal visits during her pregnancy, or at least one in the case of premature birth. This benefit amounted to HUF 64,125 (HUF 85,500 for twins) in 2023.[186] b) *Infant care allowance*: an insurance-linked benefit (i.e. not by individual right) for maternity leave (168 days), amounting to 100% of the mother's salary from the previous year. This allowance aims to ensure that new mothers are not financially disadvantaged compared to other workers. c) *Childcare allowance*: after the expiry of the infant care allowance, this benefit is paid until the child reaches the age of two and is linked to insurance. It is important to note that the ceiling for this allowance in 2023 was HUF 324,800 gross per month.[187]

180 Barzó, 2023, p. 29.
181 Novák and Fűrész, 2021, p. 145.
182 Barzó, 2023, p. 29.
183 See: Hungarian State Treasury (MÁK), available at: https://www.allamkincstar.gov.hu/csaladoktamogatasa/gyermekvallalas-tamogatasa/eletkezdesi-tamogatas-es-start-szamla-babakotveny (Accessed: 13 December 2023).
184 For more details, see Act CLXXIV of 2005 on support for young people starting their lives. Novák and Fűrész, 2022, p. 123.
185 For details, see: Barzó, 2023, pp. 30–31.
186 Art. 29 of Act LXXXIV of 1998 on Family Support (hereinafter, the 'Family Support Act').
187 Art. 42/A–42/G of the Health Insurance Act.

d) *Additional childcare allowance*: a benefit payable by individual right up to the age of 3 years, regardless of whether the parent stays at home with the child or is already working. The amount is, therefore, much lower than the childcare allowance (HUF 25,650 per child per month in 2023). e) *Child-raising allowance*: a benefit for large families, available to working parents or guardians who have three or more minor children in their household. Child-raising allowance is paid from when the youngest child turns 3 years old until they reach the age of eight. A person in receipt of the child-raising allowance may engage in gainful activity for a period not exceeding 30 hours a week, or without any time limit if the work is done exclusively in the home.[188]

However, the general principle holds that 'the fact that a benefit is payable by individual right does *not exempt parents from their basic parental responsibilities*'. To ensure parents meet these responsibilities, from 2010, payment of the family allowance, which is an entitlement by individual right, has been conditional on the child's schooling and, over the age of three, on compulsory kindergarten attendance. If a child has missed the statutory number of days of schooling without an excuse, payment of the family allowance is suspended until the child resumes attending kindergarten or school regularly. This measure has significantly reduced the number of children who are regularly absent from kindergarten or school.[189]

The Family Protection Action Plan stipulates that families should not be at risk of poverty. In this context, a car purchase subsidy of up to HUF 2.5 million was established in 2019 for large families (with at least three children). This subsidy can be used to purchase vehicles with at least seven seats.[190]

The HUF 10 million *Baby Grant,* launched in 2019, which is an interest-free, untied loan to support young married couples to have children, is also worth mentioning. Loan repayments are suspended for 3 years, and the loan becomes interest-free when the first child is born. In addition, a third of the principal is waived upon the birth of a second child. In the event of the birth of a third child, the outstanding part of the loan is waived.[191] From 1 January 2024, the amount of the *Baby Grant* rose from HUF 10 million to HUF 11 million, but as a rule, only women under 30 and their partners can now claim it.

Since 2010, other measures include the cross-border 'Umbilical Cord' programme, *which supports Hungarian families living beyond the national border* and enables the Hungarian state to pay maternity allowance for every baby with a Hungarian birth certificate or Hungarian identity card. The Baby Bond is also available for Hungarian families living beyond the country's borders.[192]

188 Art. 23–24 of the Family Support Act.
189 Novák and Fűrész, 2021, p. 107; Barzó, 2023, p. 37.
190 For more detail, see: Government Decree 45/2019 (III. 12.) on the car purchase subsidy for large families.
191 Government Decree No 44/2019 (III.12.) on the Baby Grant.
192 Barzó, 2023, pp. 35–36.

Finally, measures to prevent the postponement of childbearing are manifested as part of family benefits. For example, the *graduate GYED* is awarded to mothers (or, exceptionally, fathers) who have been active students for at least two semesters in full-time education at a state-recognised higher education institution within the 2 years before the birth of their child.[193]

4.2. Other tax and contribution benefits – child tax credits and other allowances

An important step in family-friendly reform measures was the *reintroduction of family taxation* in 2010, based on French family and tax policy, which had remained fundamentally unchanged since World War II. One of the aims of family-friendly taxation is to ensure that families of different compositions but similar incomes do not have different living standards after taxation; in other words, families with more children (large families) are taxed less on the same income than families with fewer children or no children. Another important aim of family-friendly taxation is to encourage young people to have at least three children as this is when the tax relief is the greatest.[194] Since 2014, lower-income earners have benefited from an amendment that allows them to claim tax relief on pension and health insurance contributions if their personal income tax is less than the tax relief.[195] Mention should also be made of the tax credit for first-time married couples, to which newlyweds have been entitled since 2017. The net monthly benefit of HUF 5,000 can be claimed by the husband or wife for 2 years. The benefit reduces the consolidated tax base, can be claimed concurrently in the case of childbearing, and reduces the amount of tax payable by HUF 5,000 per month.[196] Crucially, under the Family Protection Action Plan introduced in 2019, mothers with four or more children have benefited from a full personal income tax exemption since 1 January 2020.[197]

4.3. Home creation

Given that a stable relationship, a secure job, and adequate property ownership are key to having children, the state launched a major *home creation programme* in 2015. To this end, foreign currency mortgages have been phased out. The *family home creation allowance* (CSOK) was launched in 2014 with two main objectives: to increase the propensity to have children by supporting families in creating a home (demographic objective) and to boost the economy by strengthening the construction industry and the real estate market (national economic objective). The CSOK is a

193 Art. 42/E of the Health Insurance Act.
194 Molnár, Szarvas, and Gellérné, 2022, pp. 91–92.
195 In total, 46% of family tax credit claimants are parents of one child, 35% are parents of two children, and 19% are parents of three or more children. Novák and Fűrész, 2021, p. 105.
196 Art. 29/C of the PIT Act. For more detail, see: Barzó, 2023, pp. 36–37.
197 Barzó, 2023, p. 31.

complex housing support scheme with four main components: a subsidy scheme for new housing, subsidies for second-hand housing, village CSOK, and interest on loans, the amount of which depends on the number of existing and planned children. The CSOK was made available from 1 July 2015. The benefit was later extended to families with one child and became available for the purchase of second-hand housing and extensions to existing housing, in addition to housing construction and the purchase of new housing. Since 2016, the support scheme has been significantly expanded and its administration has been simplified. The subsidy amount for building or buying a new home is up to HUF 10 million if a couple already has or has committed to having three or more children. Barzó[198] provides an overview table of the amount and evolution of this benefit, as follows.

Table 1. CSOK amounts in 2023[199]

Number of dependent children	Building/purchasing a new home		Purchase/expansion of a second-hand dwelling	
	Minimum useful floor area of the dwelling (apartment/ family house)	Grant amount	Minimum useful floor area of the dwelling	Grant amount
1	40/70 m^2	HUF 600,000	40 m^2	HUF 600,000
2	50/80 m^2	HUF 2,600,000	50 m^2	HUF 1,430,000
3	60/90 m^2	HUF 10,000,000	60 m^2	HUF 2,200,000
4+	60/90 m^2	HUF 10,000,000	70 m^2	HUF 2,750,000

The extension of the home creation programme also allows couples with a child to take out a CSOK *loan* in addition to the CSOK grant. The CSOK housing loan, which has an interest rate of up to 3%, can be used to purchase both new and second-hand apartments and houses of up to HUF 10 million for families with two children and HUF 15 million for large families. The previous threshold of HUF 35 million for second-hand properties has been abolished.[200] In addition, the *village CSOK* was introduced on 1 July 2019 and provides favourable conditions for the purchase and renovation of housing in disadvantaged settlements with a population of less than 5,000.[201] Given that the village CSOK also contributes to

198 Barzó, 2023.

199 Source: Barzó, 2023, p. 33.

200 For more detail, see: Government Decree 17/2016 (II. 10.) on the family home creation allowance for the purchase and extension of second-hand dwellings.

201 For more detail, see: Sections 19/A-19/I of Government Decree 17/2016 (II. 10.) on the family home creation allowance for the purchase and extension of second-hand dwellings.

the realisation of families' housing plans, the amount increased by 50% from 1 January 2024.[202]

On 1 January 2024, the new legislation on CSOK Plus loans also entered into force. This means that only married couples who are planning to have another child/children and where the mother is under 41 years of age can now apply for the *CSOK Plus loan*. The loan amount can be HUF 15, 30, or 50 million, depending on the number of existing and planned children, as shown in the table below.

Table 2. CSOK Plus loan[203]

Number of existing children	One planned/existing child	Two planned/existing children	Three planned/existing children
0	HUF 15 million loan and a one-year moratorium on the arrival of the child	HUF 30 million loan and a one-year moratorium for the first child, and HUF 10 million credit from the capital part for the arrival of the second child	HUF 50 million loan and a one-year moratorium for the first child, and HUF 20 million credit from the capital part for the arrival of additional children
1	HUF 30 million loan and a one-year moratorium on the arrival of the child	HUF 50 million loan and a one-year moratorium for the first child, and HUF 10 million credit from the capital part for the arrival of the second child	HUF 50 million loan and a one-year moratorium for the first child, and HUF 20 million credit from the capital part for the arrival of additional children
2	HUF 50 million loan and a one-year moratorium on the arrival of the child	HUF 50 million loan and a one-year moratorium for the first child, and HUF 10 million credit from the capital part for the arrival of the second child	HUF 50 million loan and a one-year moratorium for the first child, and HUF 20 million credit from the capital part for the arrival of additional children
3 or more	HUF 50 million loan and a one-year moratorium on the arrival of the child	HUF 50 million loan and a one-year moratorium for the first child, and HUF 10 million credit from the capital part for the arrival of the second child	

202 Uhljár, Pári, and Papházi, 2023, p. 42.
203 Source: Barzó, 2023, pp. 34–35.

With the birth of the first child, loan repayments are suspended for up to 1 year, while the birth of a second child and subsequent children reduces the principal of the loan by HUF 10 million for each child. An important change is that the loan is now only available for children the couple commits to have (not for existing children). Although existing children are also counted when determining the loan amount, only newborn children reduce the principal amount of the loan by HUF 10 million per child. Couples can use CSOK Plus loans to buy their first home in common; move from their existing home to a more valuable, comfortable home; or extend their home.[204] A new support scheme is expected to replace the CSOK in 2024.

4.4. Family and work allowances — maternity leave, childcare leave, paternity leave, and daycare services

One of the key objectives of the new family policy launched in 2010 was to reconcile work and family life. Consequently, family policy measures have sought solutions that encourage people to work, be active, and thus, contribute to public spending. This has been accompanied by job creation.[205] *GYED Extra*, which allows mothers to work full-time from when their child is 6 months onwards, was introduced in 2014, aiming to make it easier for mothers to start work after giving birth. The allowances also include family-type taxation, additional leave, sick pay that is extended to both parents, and changes to labour law that ensure workplace protection for parents with young children, thus creating opportunities to reconcile work and family life. Tax benefits for employers and the development of childcare and nursery provisions also aim to encourage both childbearing and work.[206]

Importantly, from 2012 onwards, additional leave for children under 16 (2 days per child, up to a maximum of 7 days per year) can now be taken by both parents, not just one. After the birth of a child, fathers are entitled to 10 extra days of paid leave, which the state reimburses to the employer. As regards sick pay, from 2016, both parents have been able to claim childcare sick pay for children over 3 years old, so the number of sick days in a family can double. This type of sickness benefit is paid if the parent is otherwise gainfully employed and needs to replace the income lost due to the illness of a child under 12. Further, a nursery must be maintained in each municipality where there are more than 40 children under 3 years of age, according to Sections 34–35 of NM Decree No. 15/1998 (IV. 30.) on the professional tasks and conditions of operation of child welfare and child protection institutions and persons providing personal care. The number of places in nurseries has increased significantly due to the restructuring.

204 Applications for CSOK Plus support of up to HUF 80 million can made for the acquisition of the first home in common, and up to HUF 150 million for moving to another property or expansion. For more details, see the provisions of Government Decree No. 518/2023 (XI. 30.) on the preferential CSOK Plus loan programme to support families in creating a home.

205 Molnár, Szarvas and Gellérné, 2022, p. 90.

206 Barzó, 2023, pp. 31–32.

4.5. Generational policy — youth policy and support for older adults and pensioners

The *aim of family policy is not just to focus on the nuclear family but to think in a multi-generational* way, thereby strengthening intergenerational cooperation. For example, the introduction of the grandmother's pension, known as WOMEN 40, in 2011 has made it possible for women to retire with a full pension, without any deduction, after 40 years of eligibility (minimum 32 years of employment plus a maximum of 8 years of childcare), regardless of their actual age.[207] Since 2020, it has also been possible for grandmothers to engage in unlimited gainful employment in addition to drawing a pension. This has allowed women aged 60 and over to be actively involved in caring for their grandchildren or older relatives in need of care.[208] Another important measure of domestic family policy has been the introduction of the *grandparent childcare allowance* (GYED). To be eligible, the grandparent must have been insured for at least 1 year before the grandchild's birth, both parents must be gainfully employed, and the child must be cared for in the parents' household. The allowance amount is 70% of the grandparent's income, and it lasts until the child reaches the age of two.[209]

5. Concluding thoughts

Hungary has taken decisive action to halt population decline over the past 10 years. Some of these measures were intended to serve demographic objectives directly, others indirectly. Among these, it should be emphasised that with the creation of the new Civil Code, family law has been placed in its rightful position in a completely separate book – in the most important code of private law relations. The new family law legislation introduced in the Civil Code has further strengthened the legal framework for families based on marriage and lineal relationships, as well as for regulated partnerships (marriage, registered partnerships, and *de facto* partnerships). The following aspects of this framework are worth highlighting.

Family law principles focus on the protection of families, the equality of spouses, and the interests of the weaker party. The primacy of children's interests is reflected not only in principle but also in the fact that Hungarian family property law pays special attention to the child's property and property relations, security, housing, and maintenance. Meanwhile, the Civil Code also contains clear provisions on the family status, care, and custody of children. From a family law perspective, it can,

207 Art. 18(2a)–(2d) of Act LXXXI of 1997 on Social Security Pension Benefits.
208 Novák and Fűrész, 2021, p. 123.
209 Barzó, 2023, p. 36.

therefore, be concluded that there is a secure private legal framework for families to have children.

In view of the rapidly increasing infertility rates in recent decades, the number of people using human reproductive techniques in Hungary is also on the rise. Many of these techniques are legally available, the only exceptions being surrogacy (either as a favour or for compensation). The related provisions were aimed at raising the number of babies born through infertility treatment procedures, which increased the number of publicly funded health interventions and the public funding for infertility treatment drugs compared to the previous legislation. Consequently, the number of state-funded human reproductive interventions and the number of children born as a result have both increased in Hungary in recent years.

Over the past 10 years, Hungarian family policy has already produced some significant results. Hungary has seen the highest increase in childbearing and relationship stability in Europe (Figure 3): the fertility rate, which is an indicator of the desire to have children, has increased by 27%; the number of marriages has doubled; and the number of divorces and abortions have fallen by 40% in more than a decade. The number of children born in wedlock in Hungary has been increasing since 2015,[210] with an average of 7 out of 10 children now being born in wedlock.[211]

All these data confirm the effectiveness of, and justification for, comprehensive family-friendly measures. Based on the above, it can be concluded that through the gradual, systemic, and conscious application of family policy measures and targeted support, the propensity to have children can be significantly improved.[212] Moreover, at the societal level, it is critical to encourage family-oriented values and support family-friendly workplaces.

The data also indicate that young adults are committed to family life. The main barriers to having children are the lack of adequate housing and material assets, which the continuously renewed and targeted domestic family support system has, and will continue to, play a major role in addressing.

210 KSH, n.d.
211 Molnár, Szarvas and Gellérné, 2022, p. 85.
212 Novák and Fűrész, 2021, pp. 240–245.

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Chapter 14

Poland: Ineffectiveness of Legislation in Defeating the Demographic Crisis

Marek Andrzejewski

Abstract

The author presents the regulations of Polish law and considers whether they can affect the procreative decisions of both Polish men and women. For the past almost thirty years, the reproductive rate in Poland has not exceeded1.5, while replacement of generations can be achieved at a rate of 2.1 children per woman of childbearing age. The demographic crisis is the biggest social policy problem in Poland today. Analysing the current law, the author reflects on possible solutions in the future, also referring to solutions that have been abandoned but were in force earlier. He supports all considerations with data drawn from the Population Census conducted in Poland in 2021, the Demographic Yearbook of the Central Statistical Office for 2022, and demographic literature. He places the greatest emphasis on the analysis of family laws, especially marriage and divorce regulations since demographers see a correlation between these regulations and procreation decisions. However, the correlation seems to be small. The conclusions drawn are disappointing; the disappointment applies both to the assessment of the lack of influence of family law regulations on procreation decisions and social law. The latter has recently undergone significant changes in Poland and they were aimed at ensuring economic stability for the family after the birth of a child. Moreover, no connection between the abortion ban and the increase in births has been found. In fact, a sharp decline in births occurred when the abortion ban was introduced. Besides, the introduction in 2015 of the law allowing in vitro procedures did not improve the poor demographic situation either.

Keywords: Demography, family law, marriage, divorce, abortion, artificial procreation, social law, social policy.

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1. Context on the law as an instrument of demographic policy

At a time when the world's population is growing rapidly, Europe is experiencing a demographic crisis, if not a demographic disaster. This crisis is a result of multiple, profound processes that gained momentum in the second half of the 20th century. In the last three decades, these processes have significantly intensified and have been further reinforced by new destructive phenomena.

In the 1970s, the Federal Republic of Germany experienced what is now known as a negative growth rate, meaning that more people were dying than were being born. As this issue had been predicted two decades earlier, in 1961, the country had made an agreement with Turkey to take in between 1.5 and 3 million Turkish citizens. The course of this planned measure was controlled, and the newly arrived Turkish citizens assimilated by taking vacant jobs, often in public institutions such as post offices and local administrations.

From the 1950s to the late 1980s, approximately 500,000 to 620,000 children were born each year in Poland. The fertility rate was above 2.15 (2.98 in 1960, 2.27 in 1975, and 2.42 in 1983), ensuring population growth and, thus, a simple replacement of generations. However, since the mid-1990s, only around 350,000 to 400,000 children have been born each year, and in 2022, the number of births hit an all-time low at only 305,000. The fertility rate in that period oscillated between 1.3 and 1.4, which has placed Poland almost at the bottom of the world fertility list for several years now.[1]

As a consequence of the ageing of the population due to declining birth rates and increasing life expectancy in the 21st century, a policy is being pursued in the European Union to support the admission of citizens from African, especially Arab, and Asian countries.[2]In the wake of the war in the Balkans in the 1990s, people from this region also emigrated to the rich countries of Northern and Western Europe.

Particularly notable were the events that took place in 2015, when, at the initiative of the German government, hundreds of thousands of citizens of mainly Arab countries residing in displacement camps in Turkey set off through the Balkans toward rich European countries. The scale of the policy initiated by the German then-government exceeded the capacity to absorb such a large exodus. EU authorities forced Member States to accept economic migrants (referred to as 'refugees'). This order met with resistance from Poland, among other states. The resistance stemmed from the cultural dissimilarity of the incoming population and the lack of respect for European culture in the countries where they arrived,[3]which has been experienced especially by countries such as Italy, France, Sweden, and Belgium.

1 Wikipedia, The World Factbook 2022.
2 European Commission, 2023.
3 Roszkowski, 2019, pp. 538–542; Fallaci, 2003.

A separate argument is the issue of the violation of the sovereignty of Member States by the EU.

In the short term, the introduction of the idea of a multicultural society brought negative consequences, such as, but not limited to, poor assimilation of the immigrant population into local communities, and even the formation of Arab ghettos in large cities that are not accessible to local authorities; an increase in crime with an overrepresentation of perpetrators with African and Asian backgrounds; and, consequently, racial riots and the emergence of strong political parties rejecting previous immigration policy (e.g. in Germany, France, Sweden, Italy, and Spain). From a demographic perspective, it is significant to note that the newcomers did not intend to take jobs to build their economic livelihoods but instead focused their attention on a range of attractive social benefits and applications for permission for their family members to join them. In addition, the newcomers' reproductive decisions, which stem from their culture, including their religion, motivate them to give birth to disproportionately more offspring in comparison with individuals from the rich countries in which they reside. The influx of immigrants will intensify due to famine in Africa, which may be exacerbated by restrictions on grain exports from war-stricken Ukraine.

Since the first decade of the 21st century, about one million citizens who came mainly from Ukraine and Belarus, in other words, countries that are culturally similar to Poland, have worked and continue to work in Poland (before World War II, part of these lands was territory of the Republic of Poland, and many Poles have their roots there).[4] Their stay in Poland does not result in the emergence of the social problems or antagonisms that have been generated by the introduction of the ideology of a multicultural society in many European countries. The influx of people from Ukraine grew enormously after Russia's aggression on 24 February 2022. Of the approximately 6 million refugees who arrived immediately after the outbreak of the war, who were almost exclusively women and children, about 1.5 million have remained in Poland.[5]

The demographic transition in Europe is also affected by phenomena that are much more extended in time, more complex, and less rapid. Arising from civilisational transformations, these phenomena are more difficult (or rather, impossible) to correct, not to mention to resist or avoid. In addition to urbanisation and industrialisation, which have changed the functioning of families[6], another important phenomenon is the change in the social roles assigned to men and women. Of particular importance is the emancipation of women and, therefore, their education and professional activity, which are difficult or impossible to reconcile with the fulfilment of traditional family roles.[7] Another consequence of these changes is the decline in the

4 Konieczna-Sałamatin, 2017, pp. 78–91.
5 Urzędy centralne, 2023.
6 Adamski, 2002, pp. 141–151.
7 Adamski, 2002, pp. 205–208; Szukalski, 2004, pp.145–146; Drobny, 2007, pp. 69–87.

prestige of the man, who is no longer solely responsible for the economic function of the family. This inevitable process is founded on the principle of equality between men and women.

The processes of industrialisation and the subsequent urbanisation have changed the proportions of rural and urban residents. The movement of the rural population to cities and the mingling of newcomers in new spaces have weakened social ties, increased the atomisation of communities, and, in turn, lessened the impact of social, religious, moral, and legal norms. The impact of the rules that traditionally bound rural communities on the new urban residents decreased, giving way to views and behaviours that are 'liberated' from restrictions and prohibitions, primarily with regard to the family, marriage, and parenthood, including childbearing. A notable manifestation of this process was a social phenomenon called the 'sexual revolution'[8]:while not so long ago, the sexual function in a marriage was not separated from the procreative function (every intercourse aims to lead to the conception of a child), now sexuality can be completely decoupled from parenthood, from ethical rules, and even from an emotional bond. Further, a lack of adult role models and growing up in a culture that does not endorse responsibility for others have resulted in the phenomenon of the mass sexual initiation of children.[9]

Given the profound transformations in Western civilisation that have led to a drastic decline in births in Europe, the question arises as to whether it is possible to reverse these unfavourable trends with the help of law. Is it possible, with the help of family law, to effectively create demographic policy, in particular, to influence childbearing decisions or encourage people to enter into marriages, to decrease the divorce rate, as well as motivate people to develop responsible parental interaction with children? Is it possible to do this by introducing regulations in all departments and branches of law that are concerned with the functioning of the family, such as tax law, social law, and labour law? Are we overestimating the role of law in influencing how societies function? Scientific reflection on the possibility of shaping social reality through law is referred to as the politics of law.[10] The essence of this reflection is similar to the dilemma of an educator or pedagogue who wants to achieve an educational goal. Thinking about law in pedagogical terms is called the 'pedagogy of law',[11]which refers to the work of Leon Petrażycki. This approach boils down to searching for an answer to the question, 'How can the addressees of norms be induced to accept the desired behaviour, and how can law stimulate their life choices in the desired direction or at least make them reject behaviour contrary to the goal that the legislator wants to achieve?'

8 Roszkowski, 2019, pp. 213–235.
9 Rojewska, 2018, pp. 123–137.
10 Pałecki, 2009, pp. 179–191.
11 Cf. Stadniczeńko and Zamelski, 2016; Andrzejewski, 2017, pp. 107–121.

2. On the (low) importance of family law for shaping childbearing attitudes

2.1. Family law and demography in view of the doctrine

Among the Polish legal literature, no studies have analysed the impact of the Family and Guardianship Code[12](FGC) on the country's demographic situation and, therefore, on its residents' procreative behaviour or attitudes. These issues have been marginally touched upon in studies investigating how demography has been affected indirectly by the provisions regulating the conditions for the validity of marriage and marriage annulment, and especially the conditions and legal consequences of divorce. It is significant to note that the demographic aspect was not highlighted in the passage of the Law of 25 June 2015 on Infertility Treatment[13], which introduced regulations on the *in vitro* procedure and modified the provisions of the FGC.

It should also be noted that recent years have witnessed organisational initiatives aimed at the scientific study of demographic phenomena by teams from many European countries, including Poland. The European Association for Population Studies was established to examine demographic phenomena in a broad context. The effects of these studies are promising.[14] However, contrary to the project title 'Family Demography and Family Law', the reports presented thus far say little about the law as an instrument for causal interference in demography[15] and more about statistical, sociological, political, economic, and other aspects.

Similarly in Poland, the issue of the relationship between law and demography is taken up less often by lawyers than by sociologists, philosophers, demographers[16], and pedagogues.[17] This is probably due to the fact that these groups have more confidence in the causal power of legal norms than lawyers. Interesting analyses of the processes taking place are often authored by those in the political science field.[18]Meanwhile, social politicians try to predict the impact of the law on reproductive behaviour, especially through the regulations of social law (e.g. in Poland, through the Family 500+[19] programme implemented in 2016), tax law (benefits related to family fertility),or labour law (flexible working hours, especially for women). In the Polish scientific literature, a special mention should be given to

12 Act of 25 February 1964 – Family and Guardianship Code, Consolidated text (hereinafter, 'ct.'), Journal of Laws of 2020, item 1359.
13 Ct., Journal of Laws of 2020, sec. 442.
14 European Association for Population Studies, 2024.
15 European Association for Population Studies, n.d.
16 Cf. Slany and Szczepaniak-Wiecha, 2003.
17 Włodarczyk, 2011, pp. 153–178.
18 Gierycz, 2015, pp. 69–83.
19 Act of 11 February 2016, on state assistance in the upbringing of the children, ct. Journal of Laws 2023, sec. 810; Prokopowicz, 2018, pp. 57–76; Borówka, 2016, pp.18–32.

an extensive study authored by the outstanding Polish demographer Edward Rosset (1897–1989).[20]At the end of his life, Rosset wrote a book entitled *Divorces*, which was extremely critical of the legal institution it was investigating.

It is also worth mentioning that Polish legal literature has mostly been devoted to the provisions of social law that indirectly affect procreation by destroying the stability of families. A case in point is the legislation that gives informal unions (cohabitation) privileges over married couples in terms of access to various benefits, which encourages divorces and postpones decisions to marry. Frequently, the addressees of such benefits are single parents; however, parents are not required to verify the authenticity of their declarations of single parenthood. As a result, benefits are received by people who are formally single but who are, in reality, cohabiting. The Constitutional Tribunal challenged relevant provisions of the Act of 23 November 2003 on family benefits[21] as incompatible with Art. 18 of the Constitution of the Republic of Poland[22] (hereinafter, 'the Constitution RP'), which mandates the protection of marriage. Nevertheless, such practices are still common, for example, in the preferential enrolment of children of such persons in nursery and kindergarten.

2.2. Family relationships in the Family and Guardianship Code regulations

Family law provisions are formulated in a way that gives high priority to marriage, parenthood, and other family-legal relationships. This is due to the axiological assumptions of the provisions of the FGC,[23]which are strongly intertwined with constitutional axiology. The assumptions foreground the imperative of a responsible (in the moral sense) approach to the formation of marriage and the realisation of the ensuing tasks; the pedagogical, psychological, economic, and social fulfilment of parental roles, including the creation of conditions conducive to the development of the child; and the mutual support of family members (the principle of the solidarity of the family group).

Some special features of legal relationships established in family law against the background of classical civil-law constructions include: a) these relationships unite subjects defined by law, and it is not permissible to swap their roles; b) the goal of these relationships is the permanence and maximum stability of the family group (while respecting its autonomy from the state); c) the content of the family-legal relationship is often determined by general clauses (indefinite phrases that refer to the value system attributed to the legislator,[24] such as the good of the child, the good of the family, and the principles of social interactions) and *leges imperfecta*.[25]

20 Cf. Rossett, 1986.
21 Ct. Journal of Laws of 2023, item 390.
22 Judgment of the Constitutional Tribunal of 18 May 2005. Sign. 16/04, Judgment of Laws of 2005, No.806.
23 Radwański, 1980, pp. 89–93; Ziembiński, 1980, pp.73–86.
24 Zieliński, 2017, p. 223.
25 Andrzejewski, 2014, pp. 3–4; Smyczyński, 2009, pp. 41–46.

Legal relationships binding spouses, parents with children, and persons remaining in other family relationships are established as permanent, although not indissoluble (after all, there is divorce, the deprivation of parental authority, the prohibition of contact, and the termination of adoption). It is implied by the regulations that the persons who establish such relationships must possess specific characteristics (e.g. conditions for marriage and marriage annulment, subjective conditions authorising the adoption of a child, legal capacity). Consequently, in light of the FGC, not everyone can enter into marriage unless they fulfil certain requirements, such as age, degree of social consciousness, and appropriate mental condition[26], all of which are necessary to cope with the obligation to build an emotional, economic, and sexual bond and to be faithful or support each other.[27] Owing to the legal status of divorce, to dissolve a marriage, it is necessary to prove the existence of legally defined grounds, which rules out the possibility of getting a divorce only at the request of one spouse or the other. In the parent-child relationship, in contrast, the former must exercise parental authority with due diligence and with respect for the good of the child and his or her dignity.[28]

All the regulations oblige adults to exercise prudence when making important family decisions. Meanwhile, in the name of the principle of the good of the child, children are obliged to obey their parents, share their earnings, help with family work, and remain in dialogue with their parents. They are seen as members of the family, which is the best approach to ensure the optimal protection of the child's rights.[29]

While treating family members as constituting a social group, family law regulations also respect them as individuals. To this end, the regulations give them rights and freedoms, for example, the rights to marry,[30] get divorced,[31] make some of the economic decisions within the framework of marital property arrangements,[32] enter into a prenuptial agreement,[33] and choose a path for their children's upbringing.[34] In these provisions, a reference to the personalist notion of responsibility – for oneself, one's actions, and one's loved ones – can clearly be found.[35]

The family is entitled to autonomy from the state, whose organs (family court, notary, prosecutor's office, Registry Office, administrative authorities) have the duty to support parents in their exercise of parental authority[36] and to protect marriage,

26 Judgment of the Constitutional Tribunal of 22 November 2016. Sign. K 13/15, 2016, Item 88/A/2016.
27 Art. 23, FGC.
28 Andrzejewski, 2019, pp. 23–27.
29 Preamble, Arts 5, 18, 9(3) United Nations Convention on the Rights of the Child; hereinafter, the 'UNCRC'.
30 Art. 1., FGC.
31 Art. 56., FGC.
32 Arts.34^1, 36, 36^1, 37,39, 40,41, FGC.
33 Art. 47., FGC.
34 Arts. 93§1, 97§2, FGC.
35 Ibid.
36 Art. 100., FGC

the family, parents, and especially mothers. This is because the state is supposed to support the family in carrying out its functions, particularly in its economic, rearing, and education functions, and now also in the reproductive function.[37] In exceptional cases, however, the state may interfere with family relations, specifically, by limiting or depriving parents of their parental authority.[38]

Before analysing some details of the solutions in Polish family law in the context of demography, it can already be highlighted at this point that the law was not created to stimulate reproductive behaviours, prolong life, influence the tendency to get married or reduce the scale of divorces and separations among the addressees of the norms. The regulations adopted in the FGC were rooted in fundamental beliefs, especially ethical beliefs, for example, the need to ensure the permanence of family relations, the solidarity of the family group, and marriage equality. Consequently, a proper legal framework was created for the functioning of the family, so that, with a sense of stability, mature people would make optimal decisions, including those about the birth of children and the proper rearing of these children until adulthood. It was assumed that, within such a legal framework, decisions about conceiving and having children would follow, as it were, by default. What was not foreseen was that fertility would become controllable and, therefore, subject to the will of people, and that without any connection to the law, a transformation would take place, leading from accepting what fate (God?) decided to a situation in which women and men (i.e. mothers and fathers) could conceive and accept a child if they so desired or not. In any case, it is hard to point out how the law could have been drafted if such an evolution had been envisaged.

2.3. Family law under pressure

Modern family law in many European countries, partly including Polish law, is exposed to pressure from groups drawing inspiration from feminism, gender philosophy, and neo-Marxism. This has led to the adoption of various regulations, which permit, for example, same-sex marriages, divorces at the request of the spouses (i.e. without court proceedings), and access to ethically controversial methods of assisted reproduction. Some regulations have weakened the legal position of parents in relation to children by allowing interference in this relationship by public institutions.[39]In this context, extremely liberal abortion laws cannot be overlooked, although they are situated outside family law. As a result, legal systems are becoming axiologically contradictory, and traditional concepts and regulations are being undermined. Whether this has an impact on demographic dynamism, is difficult to say. The ideological currents described above appeal to (or use as a pretext) gender philosophy, including the specifically defined concepts of human rights, especially

37 Adamski, 2002, pp. 36–44, 144–151; Szlendak, 2010, pp. 115–118.
38 Art. 48(1), Constitution RP.
39 Gierycz, 2015, pp. 75–78.

the so-called reproductive human rights. From the viewpoint of these ideologies, the reproductive motif is not an issue; however, the promotion of abortion, the concept of cultural gender, and the permissibility of gender reassignment procedures without a compelling health reason all shatter the established order in the sphere of anthropology, including human sexuality and procreation.[40] What is also promoted is the attitude of selfishness known as 'individualism' and the rejection of rules of conduct that were widely accepted until recently, for example, personal bonds and mutual responsibility for one another among family members.

2.4. Scientific problem

The above remarks constitute the background to formulate the main scientific problem that these considerations are intended to solve. This problem can be expressed in the following questions: Can the constitutional law with regard to the family and the family law, shaped in this way, encourage family formation and childbearing decisions? Is it possible to create a better law if it were evaluated from this point of view?

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3. Polish family law from a demographic perspective

3.1. Foundational principles of the family as a family safeguard

The rules of law are the highest-rank legal norms that determine the direction and framework of legislation and influence the interpretation of extant regulations. They are directly expressed in legal regulations or are derived from them through the interpretation of regulations controlling given legal institutions.[41] Rules of law are internal legal norms. They may be either constitutional rules of law, or they may affect only one branch of law. In legal analysis, it is confusing or inappropriate if the word 'rule' is used to signify a 'regulation' or a provision; for example, a rule is the good of a child, whereas a demand to contract a marriage in the presence of witnesses is a regulation.

Rules of law should be distinguished from regulations contained in international documents, which, once ratified, belong to the system of sources of law of a given state.[42] They set a universal or regional (European) standard of legal protection for a given good or value.[43] In Poland, international agreements have primacy over do-

40 Kocik, 2006, pp. 279–288.
41 Zieliński, 2017, pp. 34–35; Wronkowska, 1993, pp. 223–227.
42 Art. 87., Constitution RP.
43 Schulz, 2012, pp. 25–46.

mestic law regulations that cannot be reconciled with any said international agreement.[44] The existence of international standards of protection renders the solutions adopted in the countries that are signatories to a convention largely similar to each other. Comparative studies become justified with regard to those solutions that the standards do not cover or that are implemented to a higher degree than required by the standard.

3.2. Principles of marriage and family protection

3.2.1. Introductory remarks

The principles of the protection of the family, marriage, equality of spouses, parenthood, motherhood, the autonomy of the family in relation to the state, the primacy of parents in child-rearing, and the good of the child have the rank of constitutional principles. They are expressed in Arts. 18, 33, 47, 48, 71, and 72 of the Constitution RP and are realised in the provisions of the FGC and in all provisions on family issues located in the norms of the entire legal system (i.e. civil law, administrative law, including social law, education law, tax law, criminal law, procedural law).

The theme of the principles/rules of family law was discussed in a 2021paperbythe author,[45] to which it is necessary to refer at this point. Our attention should now be focused on the relationship between these principles and demography, that is, on the regulations addressed to married and cohabiting couples that directly or indirectly affect the performance of their reproductive function.

3.2.2. Family protection principle

Under Polish family law, the model of the family is one formed on the foundation of marriage. The regulations mainly refer to the so-called 'small family' (spouses-parents and children); however, they also apply to relations within a multigenerational family (maintenance, foster families related to the child) or a reconstructed family (maintenance between a stepfather/mother and stepdaughter/stepson).[46]

The principle of family protection also applies to families not based on marriage but on what is presumed to be enduring cohabitation between a man and a woman (cohabitation). They are mentioned indirectly in the FGC provisions: Art.107 regulates the exercise of parental authority and the realisation of contact with the child by parents who are not married and are not cohabiting and, thus, likely cohabited in the past. On the other hand, by containing provisions that protect formally single parents, social law, in fact, supports those forming *de facto* unions (i.e. cohabitation).

44 Art. 91(2), Constitution RP.
45 Andrzejewski, 2021, pp. 151–190.
46 Ignatowicz and Nazar, 2016, pp.29–34; Smyczyński and Andrzejewski, 2022, pp. 8–11.

In the Social Assistance Act[47], the recipients of benefits are family in the sense of persons forming a common household, which implies that these are also persons not bound by a family-legal bond.

A family also includes parents living apart, that is, those who have never been married or are divorced, and their child. The basis for regulating their parental relationship is Art. 107 or Art. 58 of the FGC. The most important criterion for establishing the life conditions of a child of such parents (i.e. place of residence, contact with the other parent, decision-making in connection to the child) is the principle of the good of the child. Both the above situations are sometimes classified as a single-parent family (single parenthood). However, this is justified only when a parent breaks ties with his or her child, and not in situations where the parents cooperate in raising and supporting the child while living separately. A single-parent family, which is to be given special support,[48] is a family composed of a parent and a child when the other parent has passed away, or, while still alive, grossly neglects his or her parental duties.[49]

Under Art. 71 of the Constitution RP, a single-parent family that requires greater support is not a single woman-mother with a child who has chosen this way of life, sometimes against the wishes of the child's father to fulfil his parental duties.[50] The feminist idea of the freedom to single motherhood resonates among women, for it gives them freedom from a man.[51] Single parenthood, if it is not a function of fate (death, abandonment by the child's father) but is the result of a free decision (i.e. choice), should not meet with approval. Rather, as behaviour that threatens the good of the child (making him or her a *de facto* half-orphan), it should be grounds for a court order to limit parental authority.[52]

Another type of family is a 'reconstructed family', which involves an arrangement when a parent, after remarrying, raises a child together with the child's stepfather/mother. If the other parent has parental authority, then the stepfather/mother is not entitled to any of the powers that are part of that authority, other than the power to exercise day-to-day custody of the child. From the perspective of protecting the good of the child, such a situation may raise the issue of loyalty to both parents, especially the one who does not live with the child. The relationship in question may be the basis for a maintenance obligation between the stepfather/mother and the stepchild.[53]

There is no doubt that a family can also be constituted by parents and children born with the use of medically assisted reproductive procedures. Artificial forms of procreation support are controversial, especially surrogacy, which is not permitted

47 Art. 6, item 14 of the Act of 12 March 2004 on social assistance, ct. Journal of Laws of 2023, item 901.
48 Art. 71., Constitution RP.
49 Art. 111§1, FGC.
50 Kocik, 2006, pp. 254–259.
51 Kocik, 2006, p. 259.
52 Art. 109§1, FGC.
53 Art. 144, FGC.

in Poland, and the *invitro* procedure, which is permitted. The legal status of children born as a result of this procedure, or their relationship with their parents, has never been questioned.

3.2.3. Some basic demographic information

In 2021, the total population of Poland was 37,907,700, falling below 38 million for the first time since 1989. A total of331,500 children were born, and 519,500 people died in 2021, although this was a unique year due to the COVID-19 pandemic.[54]In 2021, the pre-working age population was 6,992,600 people, or about 65% of the number in 2000 (9,333,000), that is, the number of children in the social structure decreased by 35%.In 2021, the working-age population was 22,385,4000 people, or about 96% of the number in 2000 (i.e. 23,261,000). In contrast, in 2021, the post-working-age population was 8,529,700 people, or about *150%* (!) of the 2000 figure, (i.e. 5,660,000).[55] These numbers allow us to conclude that the number of children is decreasing drastically, while the number of people of post-working age is increasing substantially. This is evidence of the ageing of the population and it foreshadows dramatic difficulties in the realisation of social security benefits, the problem of providing support for seniors, and much more.

About 60% of the adult population in Poland is legally married, while 3% of this population is in informal (cohabiting) unions. The number of such unions is consistently increasing. About 60% are formed by unmarried women and unmarried men, and this type of relationship dominates among those under 40. As age increases, divorced people are more represented (about 30% of cohabiting unions). Among the oldest cohabiting persons, a sizeable group is formed by widowed persons (especially women). Gradually, the number of married people is decreasing, and the percentage of divorced people and children of broken families is clearly increasing, as discussed in more detail in sections 3.3 and 3.4.

3.3. Entering into marriage

Under Polish law, marriage is a heterosexual and monogamous union (Arts. 1 and 13, FGC).[56] The law further states that individuals involved in the nuptials should be at least 18 years of age (with court permission, a woman may marry after the age of 16[57]), should not be totally incapacitated,[58] and should not be affected by serious mental illness or intellectual deficiency.[59] Further, they cannot be siblings, relatives in the direct line of descent, brothers and sisters, or kin in the direct line of

54 Central Statistical Office (GUS), 2022a, p. 25.
55 Central Statistical Office (GUS), 2022a, p. 54.
56 Łączkowska-Porawska, 2019, pp. 106–278.
57 Art. 10, FGC.
58 Art. 11, FGC.
59 Art. 12, FGC.

descent.[60] The law does not provide for same-sex couples to marry; nor is it possible to register same-sex partnerships or cohabitation.

3.3.1. Marriages in numbers

From 1980 until now, the number of married couples in Poland has ranged from 8.5 to 9 million (in 2021 – 8,658,400). During this time period, the number of married couples has been declining: in 1980,307,000 couples got married; in 1990, 255,000; in 2000, 229,000; in 2012, 203,000; and in 2021, there were 168,324 married couples[61](i.e. 52% of the number in 1980).

This trend adversely affects birth rates. Similarly unfavorable from this perspective is the increasing age of newlyweds: the average age of men getting married was 24.4 years in 1980, 24.7 years in 1990,25.6 years in 2000, 28.0 years in 2010, and 31.7 years in 2021, that is, 7.3 years older than in 1980 and 6.1years older than in 2000. As regards women, the average age upon entering into marriage was 22.8 years in 1980, 22.2 years in 1990, 23.6 years in 2000,26.0 years in 2010, and 28.8 years in 2021,[62]that is, over 5 years older than in 2000.

A higher age at the time of nuptials means that more marriages are now contracted by individuals with higher education than in the past. In 2021, 60,000 out of a total of 168,300 men (approximately 40%) had a college degree. Among women, 50,000 (30% of the total) had a higher education degree.[63]However, in 1990, only 5% of men and 4% of women had a college degree. These statistics reveal a preference that can be expressed as 'education comes first, marriage follows second'. It should be mentioned that nowadays a bachelor's degree is obtained after just 3 years of study. The increasing number of people studying is also associated with a lowering of the university entry requirements.

Late marriage also implies a delayed decision to have a child. In turn, this gives spouses less time to take action on this decision and make potential decisions about subsequent children. They also have less time for possible treatment should medical problems such as infertility arise.

3.4. Divorce

Embedded in the constitutional principle of family protection is the principle of the permanence of the marriage union. 'Permanence' does not mean the 'indissolubility' of the marriage union as the doctrine of the Catholic Church posits (Canon 1056 of the Code of Canon Law).[64] This distinction is significant in Poland because

60 Art. 14, FGC.
61 Central Statistical Office (GUS), 2022a, p. 181.
62 Central Statistical Office (GUS), 2022a, pp. 185–186.
63 Central Statistical Office (GUS), 2022a, p. 210.
64 Code of Canon Law, 1984.

of the way marriage is understood by some Catholics who enter into the union in a religious form with secular legal effects[65]; this group identifies the secular effects of entering into marriage with the canonical effects and treats marriage as an indissoluble union. In the course of the secularisation process, this mental barrier against divorce has been weakening.

Marriage permanence is particularly safeguarded by regulations concerning the essential conditions for the validity of marriage,[66] the grounds for marriage annulment,[67] and the grounds for granting a divorce.[68] Contrary to the dominant trend in the law in European countries, the granting of divorce is not permitted in Poland solely based on the spouses' request. Rather, spouses must demonstrate a complete and permanent marital breakdown and that divorce is not contrary to the good of their minor children or to other important ethical rules, such as the welfare of an adult child with disabilities or the good of a terminally ill spouse.

Divorce cases fall under the exclusive jurisdiction of district courts. Marriage permanence is also protected by procedural rules on, among other things, divorce mediation. These rules can address the functioning of the family after divorce but can also be used to raise the question of whether divorce in a particular case is justified at all. In addition, the court has the option to suspend divorce case proceedings if there are prospects for reconciliation between the spouses and discontinue the proceedings unless the spouses request a continuation of the process. The only regulation that facilitates the decision to get a divorce is the provisions regarding court costs, which are very low in divorce cases.[69]

Most of the public debate approves of the current solutions; however, some views favour the liberalisation of the divorce laws[70], whereas others demand that in addition to the current regulations, the possibility of entering into marriage without the possibility of dissolving it by divorce should be introduced (along the lines of adoption being not dissolvable).In the aforementioned book, Rosset forcefully argued that divorce should be opposed by formulating laws that would significantly hamstring its adjudication. At the same time, he advocated restrictive jurisprudence as he considered the attitude of the judges of his time to be far too liberal. Rosset believed that widely adjudicated divorces are a source of evil for spouses, their children, and the entire family. He held that they also have a direct negative impact on the reproductive decisions of divorcees, and, at a later time, on the decisions of their children, who when faced with their parents' divorce, learn that a marriage that requires commitment may not be sustainable. The experience of living in a broken family undermines children's self-confidence and confidence in success. It

65 Arts. 1–7, FGC.
66 Arts. 1–7, FGC,
67 Arts. 10–16, FGC.
68 Art. 56, FGC.
69 Art. 26 and Art. 79 point 3, letter b of the Act of 28 July 2005 on court costs in civil cases, Ct. Journal of Laws of 2023, item 1144.
70 Mazurkiewicz, 2012, pp. 451–468.

also undermines, in the children's perception, the value of the family as a stable group. When faced with a crisis, married couples now decide to divorce more easily than people a generation older. Rosset was right to consider divorce a demographic disadvantage, a fact also confirmed by modern demographers.[71] After his death, things only got worse, although the laws changed somewhat for the better as mediation was introduced and divorce adjudication was moved from district courts to county courts. Nevertheless, divorce lawsuits were filed in droves, and judges' attitudes became increasingly liberal. The number of divorces has increased significantly since Rosset's time.

3.4.1. Divorce in numbers

In the 21st century, the number of divorces in Poland has remained steady, with about 65,000 divorces declared annually. This is 20,000 more than the previous figure of just over 40,000, which was stable for several decades. Divorces account for about 30% of the total number of marriages terminated each year, with the rest ending as a result of death. This gives a total figure of about 1.5 million divorces in the 21st century alone, or about 3 million divorced people (10% of the total adult population).

On average, spouses divorce after 14 years of marriage. Men divorce at an average age of 41, and women at 39. The average age of divorce advances year on year.

Invariably, more than two-thirds of divorce cases are filed by women. In more than 3% of cases, the wife is found to be solely at fault for the divorce, while the husband's sole fault is adjudicated in 18% of divorces. In about 74% of divorces, the court does not pronounce fault.

According to spouses' declarations, about one in three divorces is blamed on character incompatibility (presumably, in many cases, this is an approach couples jointly agree upon to avoid making sensitive matters public). In one in four divorce cases, the cause is infidelity or an enduring emotional relationship with another person, and in one in five cases, the reason is alcoholism.[72]

The length of the marriage prior to divorces suggests that divorces also affect spouses' children. In 2021, out of 60,687 divorcing couples, as many as 25,415 were childless. Such a significant percentage of divorcing childless couples raises the possibility that, for at least some of them, the choice of life without children led to a rapid burnout of their relationship. The remaining 36,272 divorced couples had a total of 53,138 children. Among the married couples that filed for divorce in 2021, 20,207 had one child, 12,750 had two children, 1,939 had three children, and 376 had four or more children. In total, 5,305 children of divorcing parents were aged 0 to 2 years, 13,830 were aged 3 to 6 years, 30,924 were aged 7 to 15 years, and3,079

71 Szukalski, 2017.
72 Stańczak, Stelmach and Urbanowicz, 2015.

were aged 17 to 18 years.[73]An average of about 50,000 children of divorced couples per year yields about 1.2 million in the 21st century alone. The experience of parental divorce undermines the determination to overcome one's marital crises in the future.

3.5. The principle of family autonomy

This constitutional principle of family autonomy concerns the autonomy of the family in relation to the institutions of the state;[74] in other words, it regulates the family-state relationship, which should ensure that the family can function freely, and limits the possibility of interference by public institutions. In Poland, this relationship is determined by two tendencies: one is close to the concept of the welfare state, and the other– which is justified by the Constitution RP– is the principle of subsidiarity.

In Poland, the realisation of the idea of a welfare state (but not an overprotective one) is justified if it is intended to get some social groups out of poverty. This is done by expanding the range of benefits paid from the budget under the social security system (pensions, maintenance fund benefits, disability benefits, social assistance benefits, family benefits, benefits under the Family 500+ programme, and others). Such state interference in family autonomy garners support from those in power. However, the unintended effect of this support is that it absolves family members of some of their responsibility for each other and, as a result, weakens the solidarity of the family group. In the long run, the effects of reducing family responsibilities may be divorce and disregard for parental duties, among others. As such, the tools typical of the welfare state should be applied in moderation.

The constitutional principle of subsidiarity holds that support should be granted only to individuals and families who are unable to meet their needs on their own and whose relatives are unable to help them. Only then can the state intervene and support the family in fulfilling its functions.[75] An example of such support is foster care, which entails intervention in the functioning of the family, in accordance with the idea of 'help to self-help', by placing the child in a foster care facility or in a foster family, with the intention that the child should return to the family after it has overcome the crisis. If these measures prove ineffective, then the Polish Constitution[76] and the FGC provide the basis for tougher intervention in the life of the family, which includes the termination of parents' parental rights to the child[77] and the provisions of the Criminal Code.

73 Central Statistical Office (GUS), 2022a, pp. 244–245.
74 Art. 47, Constitution RP.
75 Act of 9 June 2011 on family support and foster care (Arts. 1–31), Ct. Journal of Laws of 2023, item 1426.
76 Arts. 48(2), 72.
77 Arts. 109, 111, 113^{2}–$113^{5,}$ FGC.

3.5.1. The erosion of family autonomy – the demographic context

The polar opposite to the principle of family autonomy is a phenomenon presently gaining momentum in some European countries that define themselves as liberal, where the state creates laws that allow public agencies, without parents' knowledge or consent, to help children have abortions, initiate gender reassignment procedures, and provide education on children's sexuality. Such laws have a direct impact on the formation of children's views on the role of parents and their understanding of sexuality, including procreation. In Poland, integral to this process is the ongoing dispute over the right of LGBTQ+ activists to enter schools to teach children about sexuality or not. Such classes, conducted without prior parental permission, violate parents' primacy in child-rearing[78] and strike at the principle of the autonomy of family life.

3.6. The principle of maternity protection

The protection of maternity is a constitutional obligation of the state (Art. 18 Constitution RP). This obligation also applies to paternity, which, although not mentioned explicitly in the provision, is included in the collective word for maternity and paternity, 'parenthood'. Such a legislative procedure is intended to emphasise the importance of the unique situation in which a woman finds herself during pregnancy. Art. 71(2) of the Constitution RP stipulates that the mother has a special right to assistance from public authorities during this period.

Under Art. 61^9 of the FGC, a mother is a woman who has given birth to a child. This regulation was adopted in 2008 to terminate disputes over who is the mother of a child between: a) a woman ordering a surrogate to give birth to a child conceived through artificial insemination; b) the donor of the reproductive cell (the genetic mother); c) the surrogate.

Under family law, the status of a parent involves the exercise of parental authority (if the parent has full legal capacity and the court has not deprived him or her of such authority), the right to have contact with the child (unless prohibited by the court), and the obligation to provide for the child's economic needs (the maintenance fee; Art. 128 et seq. FGC).

Among the family law regulations on prenatal maternity, it is important to point out the right of an unmarried woman to demand maintenance fees during pregnancy from a man whose paternity she establishes.[79] This is an exception to the rule that the family-legal bond is at the heart of the maintenance obligation. Maternity is also the only reason that can justify allowing a minor woman to marry after the age of 16.

Maternity, whether a woman is married, cohabiting, or single, is associated with social protection. The cash benefits include parental benefits, child-rearing benefits

78 Art. 48, Constitution RP.
79 Arts. 141–143, FGC.

paid under the Family 500+ programme[80], family allowance[81], one-time payment for the birth of a child, a one-time benefit under the law on support for women (the so-called 'Pro-Life law')[82] and the Good Start benefit. Non-monetary forms of support are postulated, as is greater access to nurseries and kindergartens.

Maternity protection issues concern the regulations of the 7 January 1993 Act on Family Planning, Human Embryo Protection, and Conditions for Legal Pregnancy Termination,[83]which obliged government administration institutions and local government to provide pregnant women with medical, social, and legal care. The Act also requires these institutions to 'provide citizens with free access to methods and means for conscious procreation' and 'prenatal information and examinations'. In turn, the school is obligated to 'provide pregnant students with leave and other assistance necessary for them to complete their education' (Art. 2) and offer classes covering the topics of 'human sexual life, the principles of conscious and responsible parenthood, the value of the family, life in the prenatal phase, and methods and means for conscious procreation' (Art. 3).

3.6.1. Motherhood in numbers

In 1983, 730,000 children were born in Poland. This number has declined nearly every year since then. Given a similar population then and now, the number of births in 2023 accounts for only about 43% of the 1980 figure. However, the percentage of children born to unmarried women soared, as shown in the table below.

Table 1. Percentage of children born to unmarried women[84]

Year	Number of births (thousands)	Percentage of children born to unmarried women
1980	701.5	4.8%
1990	552.5	6.2%
2000	380.5	12.1%
2010	415.0	20.6%
2020	256.5	26.4%
2021	332.7	26.7%

80 Act of 11 February 2016 on state assistance in the upbringing of the children, Ct. 2023, item 810.
81 Act of 28 November 2003 on family benefits, Ct. Journal of Laws of 2023, item 390.
82 Act of 4 November 2016 on the assistance of pregnant women and family support for life, Ct. Journal of Laws of 2020, item 1329.
83 Ct. Journal of Law 2022, item 1575.
84 Central Statistical Office (GUS), 2022a, p. 250.

Year	Number of births (thousands)	Percentage of children born to unmarried women
2022	305.0	No data available

The highest rate of female fertility has shifted from the 20–24 years age group. In 1980, 294,000 out of a total of 701,000 births (approximately 43%) were among this age group; in 2021, there were 38,100 mothers of this age (about 9% of the total).[85]

There has been a significant increase in fertility in the 30–34 and 35–44 years age groups, which reflects the trend for 'postponed' births. The average age of women giving birth to their first child has also risen from under 24 years in 2000 to more than 28 years in 2022. 'The observed changes are another outcome of the choice made by younger generations of Poles, who decide first to pursue a certain level of education and economic stability, and only later (around their thirties) to start a family and enlarge it'.[86]

As previously mentioned, since the mid-1990s, the childbearing rate in Poland has been around 1.3–1.4 children per woman of childbearing age, with the average rate across the European Union standing at 1.5. Generational replacement would be ensured by a birth rate of 2.1-2.15.

Demographic analyses of unmarried mothers of children, as well as those living in informal relationships, indicate that they 'differ unfavourably from their married counterparts in terms of their educational level, age, sources of income, and labour force participation'.[87]

A slump has been observed in the number of children born to mothers who have not reached the age of 19, which includes minor mothers. This group numbered 44,500 in 1980, 27,800 in 2000, 18,500 in 2010, 7,100 in 2020, and 6,000 in 2022.[88] Given the increasingly lower age of sexual initiation, this decline should be attributed to sexual education focused on preventing pregnancy. Some minor mothers have applied for permission to marry and, once married, have gained adult status, enabling them to exercise parental authority over their children. However, these marriages, usually enforced by the law requiring parents to have full legal capacity, are not enduring.

3.7. The principle of equality in marriage

Equality before the law regardless of gender, among other characteristics, has the rank of a constitutional principle[89] . In light of Art. 23 of the FGC, examples of the realisation of this principle of marriage are, in particular, the provisions on the name

85 Central Statistical Office (GUS), 2022a, p. 258.
86 Stańczak, Stelmach and Urbanowicz, 2015.
87 Szukalski, 2017.
88 Central Statistical Office (GUS), 2022a, p. 258.
89 Art. 33, Constitution RP.

of the spouses[90] , the management of joint property[91], property-marital agreements[92], and the settlement of family affairs[93].

3.7.1. Equality and demography

In Europe, the principle of equality between men and women is a civilisational achievement of the 20th century that has been gradually achieved by individual countries. This is an unquestionable principle for Europeans; however, it is not respected by many groups who came to Europe from Africa and Asia, especially those from regions influenced by the Islamic religion. A comparison of the way in which the procreative function is carried out by European and newcomer families unequivocally leads to the conclusion that the emancipation of women, resulting in marriage equality, has an inhibiting effect on the number of offspring. The modern European woman has more options for her life path than running a home and raising children and often chooses a professional or social activity without opting for motherhood or limiting the number of children to one or two. Drawing attention to this issue is not a vote for the rejection of gender equality in Europe. Ways out of the demographic crisis should be sought without surrendering European (or Western) civilisational heritage. The challenge is to ensure respect for gender equality but at the same time to encourage people to have children.

3.8. The principle of the good of the child (protecting the best interests of the child) in the context of demography

3.8.1. The principle of the good of the child

The principle of the good of the child is the most important principle of family law. Following the ratification of the UNCRC in 1991, it became a principle of the entire Polish legal system. The principle mandates that the best interests of the child must be taken into account in all proceedings that directly or indirectly affect the child (Art. 3). Its rank further rose once the protection of the rights of the human child (Art. 72 Constitution RP) was granted constitutional status. Given that actions respecting the rights of the child are consistent with the good of the child (or, at least, they do not clash with each other), and that behaviours contrary to this good are generally in conflict with one or another right of the child, the scopes of the meaning of the rights and the good of the child intersect and are largely the same.

The obligation to protect the rights of the child and to take action in accordance with the principle of the best interests of the child lies with every institution

90 Art. 25, FGC.
91 Arts. 36, 36[1], 37, 41, FGC.
92 Art. 47 et seq., FGC.
93 Arts. 24, 97, FGC.

(especially those dealing with cases concerning children) and every citizen. The protection of the best interests of the child involves an optimal configuration of all aspects concerning them.[94] In the search for optimal configuration, help from all scientific disciplines concerned with the problem (economics, psychology, pedagogy, medicine) should be sought. The generally shared verbal consensus on respecting this principle is misleading; therefore, in practice, efforts should be made to genuinely seek this optimal configuration in each specific case.

In accordance with the UNCRC, the child (the good of the child, the rights of the child) is protected from the moment of conception in Polish legislation. The catalogue of children's rights can be found in the UNCRC and other universal and regional documents, including The Convention on the Civil Aspects of International Child Abduction[95], drawn up in the Hague on 25 October 1980; the European Convention on the Exercise of the Rights of the Child, drawn up in Strasbourg on 25 January, 1996[96]and Council Regulation (EC) No. 2201/2003 of 7November 2003, concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No. 1347/2000.[97]

3.8.2. A child's right to life

Given the demographic nature of these considerations, the most essential element of the principle of the good of the child and the child's fundamental human right is the right to life[98]. Art. 38 of the Constitution RP and the decisions of the Constitutional Tribunal[99] pursuant to the Art. based on it stipulate that everyone has the right to life from conception to natural death. At the statutory level, this is confirmed by the content of Art. 2 of the Act of 6 January2000 on the Ombudsman for Children's Rights[100] and the 7 January 1993 Act on Family Planning.

On the basis of these Acts, abortion is prohibited in Poland, except when it is a consequence of a criminal act and when the pregnancy poses a threat to the health and life of the mother[101] The issue of abortion is contrary to what is good for the child; however, in studies of the relationship between law and demography, it is justified to discuss it.

94 Sokołowski, 2016, p. 3; Andrzejewski, 2021, pp. 29–51; cf. Hanas, 2021.
95 Journal of Laws of 1995, No. 108, item 528.
96 Journal of Laws of 2000. No. 107, item 1128.
97 Official Journal of the European Union L 338, 2312. 2003 (Polish Special Edition, Chapter 19, Volume 6, p. 243).
98 Art. 6, UNCRC.
99 Judgment of Constitutional Tribunal of 28 May 1997. K 26/96, Constitutional Tribunal Judgments 1997, No 2/19; Judgment of the Constitutional Tribunal of 22 October 2020. K 1/20, Journal of Laws 2021, item 175.
100 Ct. Journal of Laws of 2023, item 292.
101 Art. 4a (1).

The termination of pregnancy can take place with the consent of the pregnant woman only in a hospital. Performing abortion in violation of the law is a criminal act, and anyone who performs, aids, or abets an abortion is subject to punishment. However, a woman who undergoes an abortion is not subject to punishment[102]. Implied in this protection of the rights of the unborn child is also the right to implement medical procedures.[103]

The doctrine of human rights spells out the so-called 'reproductive rights', which are understood as the ability to freely decide whether or not to have children, which the state is supposed to provide to the person demanding protection of these alleged rights. The right of women and girls (the word 'girls' is included to emphasise that this right also applies to minors) to have an abortion is formulated. Such a thesis implies that the provisions of the Convention on the Rights of the Child need to be amended since they do not (and should not) take into account the right of women and girls to deprive their child of life.[104]

3.8.2.1. Abortion and demography

The most significant reproductive Acts in history concerned the prohibition, limited prohibition, or freedom to abort a pregnancy. Historically, the motive for the enactment and repeal of such Acts, or the search for intermediate solutions, has often been a country's demographic policy. For a long time, it was thought that banning abortion would increase the birth rate while the freedom to abort would reduce the birth rate. This simplistic approach is still pursued by the UN, which promotes abortion as a method of birth control in developing nations.[105]The European experience, especially today, does not uphold such a simplistic view of abortion as a demographic policy tool.

Nevertheless, it should be noted that in Poland, where the law consistently protects the life of the unborn, the current birth rate is the lowest in the country's history and one of the lowest among all Western countries (305,000 in 2022, which equates to 1.37 children per woman of childbearing age). Conversely, from 1956 to 1993, when the law allowing abortions on demand was in force, about 500,000–600,000 children were born in Poland each year. According to estimates, as many as 400,000–450,000 abortions were performed annually at that time (note that some data only refer to abortions performed in public health system hospitals, and the numbers of abortions performed in private practices were underestimated).[106]

In Europe, abortion laws no longer have a direct impact on the birth rate. Far more important for procreative decisions than the content of the abortion law is the

102 Art. 157a, para. 3, Criminal Code.
103 Haberko, 2010. pp. 183–256.
104 Ważyńska-Finck, 2023, pp. 59–76; Grygiel, 2023, pp. 77-104.
105 Ośrodek Informacji ONZ w Warszawie–UNIC warsaw, 2003; United Nations, 1995; Różyńska, 2013, pp. 233–235.
106 Dyczewski, 1988, pp. 99–128.

sexual freedom initiated en masse at a very young age and the equally wide use of contraception, which reduces the number of unplanned pregnancies.

The content of abortion regulation has become an issue in the fundamental dispute over the right to life, waged between those who believe that freedom allows one to take the life of a child conceived, and those who link the idea of freedom with responsibility for the life conceived. Among the many different conclusions drawn from the observation of the phenomenon of mass abortion, the one that comes to the fore indicates the triumph of eugenics in the thinking of modern, wealthy, Euro-American societies, which is manifested in the large-scale practice of aborting foetuses with almost any disability.

Studies of legal awareness in Poland conducted in 2016 show that during the period of restrictive anti-abortion law (since 1993), the numbers of opponents of abortion on demand (the will of the woman, not supported by other arguments) and opponents of abortion, in general, have increased.[107] No representative studies have been performed since 2000 when massive pro-abortion demonstrations took place.

The WHO estimates that22 million abortions are performed globally each year, with an upward trend. For a long time, the number of legal abortions performed in Poland totalled several hundred per year, occasionally exceeding a thousand. After a verdict of the Constitutional Tribunal in 2020, this number decreased to about 100–200. The actual number of abortions performed by Polish women is unknown. There is no doubt that illegal abortions are performed in Poland, and there is evidence that Polish women undergo abortions in Germany, Austria, Slovakia, the Czech Republic, and other countries. Pro-life organisations estimate that several thousand of these abortions are performed annually, whereas pro-choice organisations estimate this number at between 100,000 and 200,000. Such a significant disparity undermines the credibility of these figures.[108]

3.9. The principle of equity and the protection of the aggrieved party in family relations

The principle of equity and the protection of the aggrieved party in family relations, which therefore requires counteracting, draws attention to several institutions of family law and public law. Among them, the following are of particular concern: a) the protection of the child from violence inflicted by parents, which is manifested in the prohibition of corporal punishment by parents[109], the deprivation of parental authority, the limitation of parental authority, and the limitation or deprivation of the right to contact with the child[110]; b) the protection of the spouse from economic violence consisting of arbitrary, economically irresponsible acts in property-marital

107 Study report of Public Opinion Research Center (CBOS), 2016.
108 Ideologia, n.d.
109 Art. 96^1 FGC.
110 Arts. 109, 111, 113^2–113^5 FGC.

relations (obligation to inform the spouse about the intentions of economic acts, the need to obtain the spouse's consent to validify legal acts, specified in Art. 37 of the FGC); c) the protection of the family from domestic violence (2005 Law on Counteracting Domestic Violence)[111]; d) the enforcement of maintenance obligations under procedural law, as well as disciplining maintenance debtors by norms of administrative law, including the Act of 7 September 2007 on assistance for persons entitled to maintenance[112] and Art. 209 of the Criminal Code.

Following the cruel murder of a child by his stepfather in 2023, a law was passed in response to strong public pressure.[113]This law provides for the implementation of procedures that verify, in detail, the circumstances of incidents involving children. The idea is to identify any flaws or shortcomings in the operation of all the institutions, including the family court, social welfare authorities, health services, education system, the police, and others, that made it possible in the Kamilek case for violence to be committed against the child, to punish those guilty of negligence and prevent similar incidents in the future.

3.9.1. Counteracting violence (protecting the aggrieved party in the family) and demography

There is a distant and obscure relationship between the issues described above and demography. The regulations cited are a response to the evil done (economic, psychological, and physical, including sexual violence) in the form of aggression or indifference on the part of those formally close to the victim. A law that protects the vulnerable in the family, though necessary, is not an incentive to form a family. An individual does not create a family because legal guarantees of protection from violence are granted but, rather, to be happy in the family and create an emotionally safe, enriching environment. The regulations in question are lifesaving and do not inspire thoughts about starting a family or conceiving or adopting a child. If used effectively, these regulations can, at most, protect a family from breakup and divorce, although they can also lead a victim of violence to decide to break from the oppression of the aggressor and dissolve the marriage by divorce. The allocation of the Family 500+ benefit in 2016 had the swift and unexpected result of reducing domestic violence-related claims. Women received money that helped some of them separate from their aggressor-husbands and move out to live separately with their children.

The phenomena discussed above (economic violence in the form of unpaid maintenance payments, psychological and physical violence that is an abuse of parental authority) have a particularly destructive effect on children by discouraging those

111 Ct. Journal of Laws of 2023, item 289; Jarosz, 2011, pp. 109–128.

112 Ct. Journal of Laws of 2023, item 1300.

113 Act draft of 11 May 2023; Changes in the Family and Guardianship Code and other Acts passed by the Sejm (Lower Parliament Chamber), parliamentary paper, [Online] available at: https://orka.sejm.gov.pl/Druki9ka.nsf/Projekty/9-020-1224-2023/$file/9-020-1224-2023.pdf (Accessed: 28 July 2023).

who have experienced them from forming families in the future.[114]Living through these phenomena may also suggest to children that the violence they grew up in is a possible/acceptable option for solving problems in adulthood. This message is dangerous for their adult relationships.

3.10. Civil law regulations and family property regulations protecting children and families

Civil laws contain instruments that help build economic security for individuals and entire families.

3.10.1. Family law

The provisions of the FGC on marital property regimes[115] reflect the principle of the equality of spouses.[116] Spouses may jointly decide to function in a community system but may also enter into a marital property agreement.[117] Equality is also manifested in the fact that certain acts of community property management cannot be performed by one spouse alone as the other spouse's consent is necessary for the act to take effect.[118] These provisions have been adjusted to the fact that spouses operate within the framework of the free-market economy and, therefore, the regulations safe guard the freedom of action for self-employed spouses.[119]

If spouses live together in an apartment to which one of them is legally eligible, the other spouse may use the apartment to meet the needs of the family.[120]

Children have no legal capacity until they are 13; from 13 until they reach the age of majority, they have limited legal capacity. During this period, the management of their property is carried out by their parents. If both parents are deceased, deprived of parental authority, or incapacitated, then a legal guardianship is established for the children, and a guardian is appointed, who becomes the child's legal representative.[121]

Parents (or legal guardians) administer the property of minor children. However, without court authorisation, parents may not perform acts beyond the scope of ordinary administration or without the consent to such acts by the child.[122] The donor or heir may stipulate that 'the items that fall to the child by virtue of the donation or the will shall not be included in the management exercised by the parents',[123] and

114 Badura-Madej and Dobrzyńska-Masterhazy, 2000, pp. 87–96.
115 Arts. 31–54, FGC.
116 Art. 23, FGC.
117 Art. 47, FGC.
118 Art. 37, FGC.
119 Arts. 36, 36^1, 37, 47, FGC.
120 Art. 28^1 FGC.
121 Arts. 145–174, FGC.
122 Art. 101 para. 3, FGC.
123 Art. 103, FGC.

a probation officer shall exercise management over these items of property. Upon termination of administration, the parents must return to the child or their legal representative the child's property managed by them[124].If the child has been completely incapacitated, then the parents, in exercising parental authority, are subject to the control of the court, just like a guardian[125].

In divorce and separation cases, the court's role is to hand down a ruling on child maintenance. This obligation is fulfilled both by the assistance given to the child within the household framework and the provision of certain amounts of money each month[126]. The child is entitled to enjoy a life standard similar to that of their parents. An economic, and even more so, educational problem arises when the child's parents live apart and their economic situations are different. The legal family problems related to maintenance payments are discussed in detail in section 3.13.

3.10.2 Inheritance law and family protection

Inheritance law protects the family: in inheritance cases, this law considers the interests of the spouse, children, further descendants, parents, siblings, and their descendants, and, in some situations, direct or secondary kins (Arts. 931–940 Civil Code).[127] If the inheritance is based on a will in which the decedent did not include relatives, then the spouse, children, and further descendants, as well as the parents if they are unable to work, are protected by legal protection and can claim the inheritance in court.[128]

The rules of inheritance law contain a strong axiological justification, in particular, concerning the solidarity of the family group, the duty of loyalty, and mutual support. Sanctions for reprehensible behaviour toward the decedent may involve finding the heir unworthy of inheritance[129] or disinheriting him or her[130]. The formative role of the law may be seen in inducing people to treat their elders with respect, if not for the sake of high standards of upbringing, then at least for fear of legal consequences.

3.10.3. Maintenance function of contract law

Some contracts carry economic weight and ensure economic stability, especially for older adults. In addition to contracts under the Civil Code, which have a maintenance function[131], new contracts regulated by Acts other than the Civil Code have

124 Art. 105, FGC.
125 Art. 108, FGC.
126 Art. 13, para. 2, FGC.
127 Act of 23 April 1964 –the Civil Code, ct. The Journal of Laws of 2022, item 1288 as amended (hereinafter,'the Civil Code').
128 Art. 991, Civil Code.
129 Art. 928, Civil Code.
130 Art. 1008, Civil Code
131 life annuity: Arts. 908–916, Civil Code; pension: Arts.903–907, Civil Code.

emerged. One is the contract for the transfer of a farm to a successor.[132] On the basis of Art. 84 of the law on the social insurance of farmers, through a contract with a successor, a farmer who owns (or co-owns) a farm is obliged to transfer the ownership (or share in co-ownership) and possession of this farm to a person at least 15 years younger than him or her (a successor) once he or she becomes entitled to a pension or disability pension. The successor continues to work on this farm until that time.[133]

Another form of securing the livelihoods of older adults is the reverse mortgage contract[134] under which 'the bank undertakes to place at the disposal of the borrower for an indefinite period of time a certain amount of money, the repayment of which will take place after the death of the borrower, and the borrower undertakes to provide security for the repayment of this amount together with the interest due and other costs'. The function of this agreement is to provide economic security, especially to older adults who have property but cannot rely on the support and care of relatives, and for whom the benefits from the social security system (especially pensions and annuities) do not fully satisfy their needs.[135]

3.10.3.1. The demographic aspect

The assumptions of this chapter stem from a common-sense belief that people who are economically successful are more likely to make the decision to have a child. Economic stability and a good economic outlook can promote social optimism and encourage people to marry and decide to bear children. Meanwhile, it is easily observable that with economic affluence, many people desire to live in comfort, and this desire is perhaps the strongest obstacle to procreation, especially in the rich societies of Europe: it is not that economic security does not encourage the procreative function but rather that it is a mental barrier to it. This security favours satisfying various luxury needs and delaying the decision to have one child, let alone more children.

The subject of contracts pertinent to older adults relates to the topic of demography in such a way that it can contribute to prolonging their lives and ensuring decent living conditions for them.

3.11. Filiation law

It is the right of a child to have his or her birth certificate issued immediately after birth in order to realise the child's right to know his or her parents (i.e. to know his or her origins) and to remain under their parental authority.[136] The purpose of the

132 Act of 20 December 1990 on social insurance for farmers, ct. Journal of Laws of 2023, item 208.
133 Niedośpiał, 1989, pp. 259–283.
134 Ct. Journal of Laws of 2023, item 152. Art. 4, para. 1, Law of 23 October 2014 on reverse mortgage credit.
135 Willmann, 2016, pp. 152–168.
136 Art. 7(1), UNCRC.

FGC's provisions on filiation relations is to create stability for a person's civil status. Hence, these provisions are characterised by formalism and reluctance toward individuals' attempts or requests to change their civil status, which arise in exceptional situations.

Determination of a person's descent from specific persons of a specified sex (the father and mother) is questioned by those that reject a division into two sexes based on biology in favour of the so-called 'cultural gender', which a person can choose for themselves. In Poland, controversy has arisen as a result of attempts to register children by same-sex couples who obtained the status of parents abroad by undergoing a same-sex adoption process (which is not allowed in Poland) or through medically assisted reproductive procedures conducted in other countries. The public policy clause is the basis for defining this type of registration as being contrary to the fundamental principles of the political system of the state.

The determination of maternity was laid down in the FGC by a provision that was introduced in 2008and states that the mother is the woman who gave birth to the child.[137] In contrast, the determination of paternity depends on whether the mother is a married woman or not. For a married mother, her husband is presumed to be the father of the child.[138] In order not to undermine confidence in the woman-wife-mother, no tests are conducted to verify the compliance of this presumption with the biological reality. However, it is possible to apply to the court to deny the paternity of the mother's husband. The active standing to sue is vested in each spouse and the prosecutor. In a lawsuit, it must be proven that the husband cannot, in a given case, be the father of the child born by the wife. The husband's consent to his wife's insemination through medical procedures that promote procreation precludes the husband from seeking paternity denial.

The identification of the father of a non-marital child takes the form of an acknowledgement of paternity or a judicial determination of paternity. An acknowledgement occurs as a result of a declaration of acknowledgement of paternity by the biological father of the child. This must then be confirmed by the mother. Acknowledgement is intended to create a legal situation that is consistent with the biological reality so that, by means of such acknowledgement, there can be no circumvention of adoption laws. Recognition of paternity mainly serves cohabitating couples and has the value of stabilising the relationship.

From the perspective of the theme of this chapter, the possibility of recognising the paternity of an unborn child is important: it provides security for the pregnant mother, and in urgent cases, may encourage her to push away thoughts of abortion. In turn, the man's legal status as a father gives him (like the mother's husband) the competence to legally function in medical procedures concerning the unborn child (at the very least, he has the right to medical information).The stabilising value of the institution of the acknowledgement of paternity has been undermined by the

137 Art. 61^9 FGC; see section 3.14.
138 Art. 62, FGC.

possibility, introduced in 2015, of acknowledging a child who will be born in the future as a result of infertility treatment.

The paternity of anon-marital child can be legally established in a lawsuit brought by the mother, the child, the man who claims to be the father or the prosecutor. Today, these proceedings are settled on the basis of genetic evidence and do not stir emotions in the same way as when no such (certain) proof was available.

Parenthood in the 21st century is increasingly the result of a medically assisted procreation procedure, as described in section 3.14.

3.11.1. The origin of the child – the demographic aspect

In Poland, as in many other countries, more and more children are being born outside of marriage. This is a result of an increasing number of informal unions, the reluctance to marry, and the weakening of previously strong social, religious, and moral sanctions against sex and premarital parenting and cohabitation. The phenomenon of single parenthood by choice is also statistically relevant.[139]

Nevertheless, 73.6% of children in Poland are currently born to married women (this figure was 94% in 1990).[140]Along with Cyprus, Croatia, and Greece, Poland is among the European Union countries with the highest percentage of such births. 'In the remaining countries – apart from Romania, Lithuania and Switzerland – almost one-third of births are non-marital, while in France it is 61% of all births'.[141]

Until recently, pregnancy prompted marriage; this now occurs to a far lesser degree. Today, it is easy to challenge the notion that a legally stable and regulated marriage is the optimum way for a human couple to live and is conducive to procreative decisions by pointing to France and Sweden. In these countries, the fertility rate over the past few years has been around 1.8, one of the highest in Europe, and the percentages of children born to non-marital couples and single women were 61% and 55%, respectively.

3.12. The problem of adoption in the context of demography

In the 20th century, adoption has long been used for the good of the child, as evidenced by the content of the Convention on the Rights of the Child; the European Convention on Adoption, drawn up in Strasbourg on 24 April 1967[142]; and the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, drawn up in The Hague on 29 May 1993.[143] However, in the 1980s, a proposal was put forward to allow the adoption of children by same-sex couples, and

139 Kocik, 2006, pp. 254–260.
140 Kotowska, 2021.
141 Kotowska, 2021.
142 Journal of Laws of 1999, No. 99, item 1157.
143 Journal of Laws of 2000, No. 39, item 448.

work was launched on a new European Convention on Adoption that took this proposal into account.[144] Since then, the concept of adoption for the sake of the adopters, rather than for the good of the child, has gained significant support in many countries, which marks a departure from the ancient rule that adoption is an imitation of natural relations. The standard that the relevant institutions and courts should seek to create conditions within the adoptive family that are close to the model to meet the child's developmental needs is also not widely upheld.[145]

Under Polish law[146], children are adopted by adults wishing to experience parenthood; however, spouses with offspring of their own can also decide to take this step. Single persons can also adopt a child. Their motivations and ability to provide the child with proper care are verified by the Adoption Centre. The adopted child's parents must be deceased, must not exercise parental authority (due to deprivation or incapacitation), or must have consented to the adoption of their children. The question of informing the child about the adoption is left by law to the adopters, who are trained in such a way as to respect the child's right to know their roots. Until almost the end of the 20th century, fear of revealing this information to the child prevailed. Adoption is not monitored in Poland: on ceit is decided, the adopters are not obliged to inform any institutions about the child's situation.

3.12.1. Demographic aspect

The absolute number of adoptions in Poland has declined by almost half over the last two decades, although it remains at a similar level in relation to the number of live births. For a long time, about 4,000 adoptions per year were adjudicated, with the number of births exceeding 500,000; today, approximately 300,000–400,000 children are born annually, and there are about 2,000 adoptions. The decline in the absolute number of adoptions is paralleled by a growing number of infertile couples. Today, if these couples wish to experience parenthood, they can now choose between adoption and medically assisted procreation procedures. The issue is dynamic, and it is currently difficult to predict whether the *in vitro* method will supplant adoptions or whether they will coexist.[147]

The number of adoptions in Poland will likely be affected by the approach based on the child's right to know his or her roots, which has been dominant for some time, at least with regard to the child (the risk of finding the family and the uncertainty about the impact of this event on the child).

The demographic factor related to adoption concerns those women who, if it were not for the possibility of placing a child for adoption, would have made the decision to have an abortion. The idea of fighting abortion through adoption ('adoption

144 Schulz, 2008, pp.101–118.
145 Gajda, 2013, pp. 117–126; Sokołowski, 2013, pp.103–116.
146 Arts. 114–127, FGC.
147 Haberko, 2014, pp. 3–15; Andrzejewski, 2019, pp. 9–36

instead of abortion!') was formulated by the first prominent Polish legal theorist Zygmunt Ziembiński.[148]In addition, it is thanks to adoption that children who already exist, not those who would possibly be conceived, have the right to a family.

3.13. The principle of solidarity in a family group

The principle of the solidarity of the family group is manifested primarily in the obligations of family members to provide means of subsistence (and, if a child is eligible, means of upbringing), in other words, maintenance costs. Maintenance obligations are designed to meet the current needs of those entitled to it. The obligation may be imposed on family members, including spouses, relatives in the direct line, siblings, and, if it is in accordance with the rules of social relations, relatives in the relationships of stepfather or stepmother and stepson, stepdaughter, or grandchild. Over 90% of cases involve parents' obligations to their children. The remainder mainly relates to maintenance for a former spouse after divorce.

The amount of maintenance payment depends on the justified needs of the entitled person and the earning capacity and assets of the person obliged to pay. If maintenance is demanded by a child from his or her parents, or by a spouse not guilty of divorce from the spouse solely responsible for the disintegration of their marriage, and if the obligation is to meet the needs of the family (but the spouse or father does not fulfil this obligation), the entitled person can request an amount that will ensure him or her the same standard of living as that of the obliged person. Thus, the entitled person can obtain maintenance even though he or she is not impoverished. In other relationships, the entitled person can obtain maintenance if he or she falls into poverty.

In addition to maintenance payments, the principle of family solidarity is also manifested in spouses' obligation to jointly meet the needs of the family[149] and in the obligation of a child who has income and assets to meet the needs of their siblings from the income derived from those assets[150]. Such a child should contribute part of the income to the needs of the family.[151]

A demand for maintenance payment by an adult may be dismissed if it is contrary to the principles of community life, for example, if the defendant shows that their adult child is not studying to become economically independent or if a parent demands maintenance payments from an adult child whom he or she has never supported or raised.[152] A parent may also be exempted from performing his or her obligations to an adult child if he or she demonstrates that doing so would entail undue hardship for him or her.[153] In addition to the needs of the entitled person, the

148 Ziembiński, 1956, pp. 197–198; Mazurkiewicz, 2022, pp. 176–177.
149 Art. 27, FGC.
150 Art. 105, FGC.
151 Art. 91, FGC.
152 Art. 144^1 FGC.
153 Art.133 §3 FGC.

amount of maintenance payment also depends on the earning capacity and assets of the person obliged to pay the maintenance cost.

According to Article 135 §3 of the FGC, in determining the amount of maintenance payments, the court should not take into account benefits from the Family 500+ programme, maintenance funds, or social assistance. However, in practice, it does. Some women do not even apply for maintenance payments to the court, instead meeting their child's needs through social benefits and accepting any amount of money the man will contribute. Sometimes, it is easier to take advantage of the welfare system if a child is raised by a single person (in a formal sense), especially to get access to nurseries, kindergartens, and schools. This scenario favours cohabitation– couples continue to cohabit but are recorded in documents as single.

In Poland, the ineffectiveness of the enforcement of ordered maintenance payments is a huge problem. This problem continues despite the fact that asserting claims in court and enforcement proceedings have been simplified, and special laws have been put in place to force a debtor to take a job or revoke the debtor's driving licence. The latter measure, which damages men's prestige, has proved effective in disciplining debtors and has remained in place despite challenges to its constitutionality.[154]

If ordered maintenance payments cannot be enforced and the household of an entitled person has a low income per person, this person is eligible for benefits from the maintenance fund in the amount of maintenance ordered, but not more than the statutory amount. The amount of public fund benefits paid to the maintenance creditor becomes the creditor's debt to the fund administrator. The number of maintenance debtors who, as a result of evading their obligations, have become debtors to the maintenance fund stands at 300,000, and their average debt exceeds 40,000 zlotys (10 times the amount of the lowest salary). Persistent evasion of alimony is a crime in Poland.[155]

Maintenance payments to seniors residing in social welfare homes are often equal to payments for their stay in the facility (Art. 61(1) 12 March 2004 Social Assistance Act).[156]

3.13.1. Maintenance and demography

Maintenance creditors who are forced to pursue enforcement proceedings to obtain ordered maintenance payments are generally people living at a low economic level. In addition to facing poverty, they may also feel humiliated that their present condition is the result of the actions of the person closest to them, usually the father.

154 Judgment of the Constitutional Tribunal from 12 February 2014. K 23/10, available at: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20140000236/T/D20140236TK.pdf (Accessed: 25 July 2023).

155 Art. 209, Criminal Code.

156 Ct. Journal of Laws of 2023, item 901.

An adult raised by people who did not properly carry out the economic function of the family, or the rearing and education functions (socialisation), as the parents had to use social benefits, may have less determination to raise their own children in the future. With the message inculcated in their mind that, in the hierarchy of values, children are not a highly ranked good, they may decide on not having children of their own.

3.14. The role of assisted reproductive methods in solving demographic problems

Assisted reproductive methods are the result of several factors, beginning with the development of biological and engineering sciences, which created technological possibilities for their realisation. These methods are a response to a social need to become a parent, given that infertility affects couples who wish to experience parenthood. The exact scale of this problem is unknown as published data raises doubts – after all, little is explained by the statistics reporting that infertility affects between 60 and 168 million couples worldwide.[157]Sources frequently indicate that between 15 and 20% of couples are affected.[158] The causes of infertility are varied: in addition to medical issues, these causes are also related to changes in civilisation.

In the second half of the 20th century, medically assisted procreation provoked heated ethical disputes over its moral permissibility. For example, the Catholic Church pointed to its excessive interference in the creation of human beings. With regard to the *invitro* method, it was argued that it leads to the creation of surplus embryos, which are entitled to the dignity of a human person.[159]In the wake of this criticism in many countries, unused embryos are not destroyed but frozen. It was also argued that in contracting surrogacy, the child becomes an object of a transaction; similarly, objectification also applies to so-called 'surrogate mothers'(i.e. surrogates). This argumentation lost its strength with the process of secularisation, social transformations, and the evolution of ethical beliefs toward a weakening of the moral resistance to ethically controversial procedures. The impact of the dilemma of whether everything that is technically possible is also ethically permissible has weakened: in the case of artificially assisted procreation, technology has won over ethics. Attitudes have changed to the point that for a part of society, *in vitro* fertilisation (IVF)and surrogacy procedures have ceased to be a form of infertility treatment and have become a commodity for obtaining a child without the need to experience pregnancy and postpartum (e.g. for the sake of a woman's looks or career).[160]

157 Bidzan, 2010, p. 15.
158 Bidzan, 2010, p. 15; Jędrzejczak and Jósiak, 2005, p. 7.
159 Congregation for the Doctrine for the Faith, 2008; Kumór, 2016, pp. 137–150; Malina, 2020, pp. 142–163.
160 Haberko, 2018, p. 187.

The ethical dilemmas associated with medically assisted procreation are thoroughly described in the literature.[161] In legislation, these dilemmas have mostly been resolved in favour of a particular formula for their application. 'The scope of permissibility … depends on establishing the limits to which a person can dispose of his or another's procreative possibilities …'.[162]Very broadly defined, permissibility is claimed to be justified by autonomy, procreative freedom, and the right to manage procreative health.[163] This line of reasoning has been supported by the ideology of human rights, within the framework of which the so-called 'reproductive rights' have been promoted for three decades, among them the right to have a child[164] (in addition to other manifestations of the erosion of human rights, such as the alleged rights of same-sex couples to adopt a child, the right to abortion, etc.).[165]

The 25 June 2015 Law on Infertility Treatment allows married and heterosexual cohabitating persons to use the IVF procedure, confirmed by their consensual declarations. These declarations are not verified, and there are no sanctions if they are shown to be falsified. This opens up the possibility for single people or same-sex couples to benefit from the IVF procedure.[166]

Infertility treatment must be performed with respect for human dignity and the right to a private and family life, and with particular regard to the legal protection of the life, health, good, and rights of the child[167]. Such treatment comprises, among other methods, medically assisted procreation procedures, including IVF conducted in a medically assisted procreation centre.[168] It may be initiated after other treatments conducted for no less than 12 months have been exhausted. The time limit does not apply if, according to medical knowledge, these treatments do not make it possible to obtain a pregnancy.[169]

Preimplantation genetic diagnosis for the purpose of selecting phenotypic characteristics, including the sex of the child, is prohibited. Exempted from this prohibition are cases when such selection prevents a severe, incurable hereditary disease.[170]

It is illegal to create human embryos for purposes other than a medically assisted procreation procedure.[171] The legal protection of embryos is grounded in the fact that they are entitled to the attribute of human dignity and that none can be treated like objects.[172]

161 Cf. Syniewiecka, 2018; Syniewiecka, 2010, pp. 82–112; Oszkinis, 2019, pp. 112–225; Smyczyński, 2005, pp. 92–109; Ślipko, 2009, pp. 192–197; Kowalski, 2009, pp. 115–180.
162 Gałązka, 2018, p. 138.
163 Gałązka, 2018, pp. 139–142, 154–155.
164 Witczak-Bruś, 2021, p. 31.
165 Kołakowski, 2003; Andrzejewski, 2012, pp. 41–58.
166 Gałązka, 2018, p. 163.
167 Art. 4, Law on Infertility Treatment.
168 Art. 5(1), Law on Infertility Treatment.
169 Art. 5(2), Law on Infertility Treatment.
170 Art. 26(2), Law on Infertility Treatment.
171 Art. 25(1), Law on Infertility Treatment.
172 Gałązka, 2018, p. 145; Judgment of 15 October 2002. SK 6/02, OTK-A No. 5, para. 65, item 6.1.

It is authorised to fertilise no more than six female reproductive cells unless the recipient is over 35 years of age or medical indications justify fertilising more.[173] Unused embryos formed from reproductive cells that are capable of normal development shall be stored under conditions that ensure their due protection until they are transferred to the recipient. It is forbidden to destroy embryos capable of normal development.[174] At the end of 2020, 122,000 embryos were stored in Poland (20,000 more than a year earlier). Destruction of embryos capable of normal development incurs a punishment of 6months to 5yearsin prison. If a couple does not use all their embryos, then after 20 years they will be given for anonymous donation.

The death of the donor of reproductive cells taken for partner donation (the recipient is the wife or partner) prevents their use in a medically assisted procreation procedure.[175] However, based on the written consent of a donor who was not the recipient's husband or partner, embryos resulting from such donation may be transferred to the recipient after the death of the donor of the reproductive cells from which the embryo was created.[176] This is justified by the protection of the embryo's life.[177]

The law does not comment on so-called 'surrogate motherhood', a situation in which 'assisted procreation techniques are used, after the use of which one woman remains pregnant and gives birth to a child with the intention of giving it up after delivery to another woman or couple'.[178] This matter is addressed by Art. 61^9 of the FGC, which stipulates that the mother of the child is the woman who gave birth to it. This article is an expression of the legislator's negative attitude to surrogacy, which, apart from the adoption of a child, does not allow a change in a child's marital status (here, in relation to the mother).[179] Under Polish law, a surrogacy contract is invalid as it goes beyond the framework set by the principle of freedom of contract[180] owing to its contradiction with the law and the principles of social coexistence and good morals.[181]

3.14.1. Demographic aspect

Medically assisted reproductive procedures are seen by some governments, for example, in Israel, as a tool of demographic policy.[182] Individual countries' approval of such procedures is manifested not only in their statutory authorisation but also

173 Art. 9(2), Law on Infertility Treatment.
174 Art. 23, Law on Infertility Treatment.
175 Art. 18, Law on Infertility Treatment.
176 Art. 33, Law on Infertility Treatment.
177 Gałązka, 2018, p. 164; Lis, 2022, pp.189–226.
178 Haberko, 2018, p. 187.
179 Haberko, 2018, p. 170; see: Mostowik, 2019, p. 853.
180 Art. 58 §1, §2 Civil Code.
181 Haberko, 2018, pp.192–193. Arts. 58 §1, §2 Civil Code.
182 Bagan-Kurluta, 2022, pp. 49–71.

in their full or partial funding. In Poland, the implementation of the IVF procedure is not combined with demographic policy but is aimed at helping couples who are infertile.[183]

4. Programmes and activities to support having children and starting a family

In 2021, the Government Plenipotentiary for Demographic Policy prepared a document entitled '2040 Demographic Strategy',[184] which was intended as the basis for undertaking intensive efforts to reverse demographic trends. This strategy is a multifaceted document, which content-wise matches the importance of the issues it is designed to address.

From the perspective of the topic of this chapter, it is important to note that the 2040 Demographic Strategy does not address the relationship between family law and demography at all. In the section dedicated to measures aimed at sustaining the permanence of marriage, which is a legal and demographic category, attention was focused on counselling, family mediation, education on conflict resolution and conflict resolution skills, and other similar pedagogical and psychological aspects.[185]

In view of the limited possibilities that the norms of family law have to influence procreation, a question arises whether the norms of other branches of law, as well as economic or social projects, etc., can solve the problem of low procreation. The state is the main subject of social policy and has the tools to implement demographic strategies. Such attempts are being undertaken in Europe and Poland; however, their results so far have been disappointing.

4.1. Law on the eligibility for abortion

The 2040 Demographic Strategy omits the subject of abortion law, thus presumably acknowledging the lack of a positive correlation between the social respect for and legal protection of the life of the unborn and the number of births. Moreover, the demographic slump began around the same time that the law banning abortion, upheld in a 1997 Constitutional Tribunal ruling, was passed. During the period this law has been in effect, fewer and fewer children have been born in Poland (from 730,000 in 1983 to 305,000 in 2022). Many factors may have negatively affected

183 Urząd Marszałkowski Województwa Wielkopolskiego, Departament Zdrowia, 2020.
184 Pełnomocnik Rządu do spraw Polityki Demograficznej (The Government Plenipotentiary for Demographic Policy), 2021.
185 Urząd Marszałkowski Województwa Wielkopolskiego, Departament Zdrowia, 2020, pp. 54–55.

the procreative decisions of Poles[186], and despite the time coincidence, the lower birth rate should not be attributed to the anti-abortion law. Nevertheless, this law has undoubtedly not helped procreation either. It has, however, the assumed goal of minimising the number of abortions performed in Poland.

It is argued in the left-wing media that the anti-abortion law generates fear of having to give birth to a child with a disability, which discourages some women from making procreative decisions in general. The available empirical results do not identify this to be the cause of childlessness, although the idea that it is tenable is suggested by the fact that the reproductive rate among Polish women living in Great Britain, where abortion laws are liberal, is as high as 3.1[187] (compared with 1.3–1.4 in Poland). In addition, the elimination of this fear by France's extremely pro-eugenics legislation has been attributed to an increase in births (to 1.83 in 2021).

4.2. Employment – labour law

Between 1990 and 2015, unemployment was structural, with the unemployment rate reaching as high as around 40% in many regions of Poland (for the country as a whole, it was between 10 and 15%during this period). High unemployment overlapped with areas suffering from equally structural poverty. For several years, unemployment in Poland has been low; in 2023, the country had the lowest unemployment in Europe, and the third lowest in the world after Japan and Korea). This indicator is too short-term to stabilise the economic situation of families in disadvantaged areas of the country and, thereby, impact the sphere of reproductive behaviour.

It follows from the experience of some countries, for example, France, that it might be worthwhile to adopt measures to facilitate flexible employment for women, such as remote work options and the provision of childcare. Otherwise, striving to keep a job may push thinking about children to the back burner. The Demographic Strategy 2040 points to the need for changes in labour law related to flexibility in working hours, the organisation of work, and remote work, etc., for pregnant mothers and parents. The strategy also highlights the necessity of increasing the stability of parental employment and support for parents who want to have another child shortly after a previous child. It is also planned to support employers who hire women after a career break for childbirth and foster the combination of work and childcare.[188]

4.3. Social law

Since 2015, the system of social benefits for families with children in Poland has been constantly expanded. In addition to the old benefits, new ones have appeared, in particular, those paid for each child under the Family 500+ programme.

186 Kotowska, 2014, p. 126.
187 Rymsza, 2017, p. 12.
188 Strategia Demograficzna 2040, pp. 56–59.

Families are also recipients of allowances, family allowance supplements (e.g. for raising a child in a large family, raising a child with a disability, childbirth, the beginning of the school year, single parenting), the Good Start programme benefits, the Large Family Card, maintenance fund benefits, care allowance, a one-time maternity grant, and social and health insurance premiums.[189]

The inauguration of the Family 500+ programme in 2016, which offers a payment of PLN 500 for each child every month, raised hopes that it would have a positive demographic effect.[190] The programme succeeded in lifting many families out of deep poverty, which indicates the effects these benefits have on the dignity aspect. However, the programme did not contribute to an increase in the number of births as only 305,000 children were born in 2022. In particular, it did not result in an increase in decisions to have a first child. Only some progress can be seen among those people who decided to have another child. In addition, despite the expansion of social support, the high cost of raising children[191] is still emphasised, indicating that this is a major hindrance to the decision to have children.

Low birth rates and increasingly longer lifespans are resulting in an ageing population. The forecasts in this regard are very unfavourable. By 2050, Poland's population is predicted to be 33.1 million, decreasing by 4.8 million people relative to 2023. The number of older adults will increase by approximately 4.5 to 11.9 million. The number of people of pre-working age, meanwhile, will decrease from 7.0 million to 5.3 million, that is, a decrease of 1.7 million people).[192]'The direction of change is irreversible …. The development challenge facing Poland, therefore, lies in pursuing efforts to limit negative changes in the population structure, rather than attempting to reverse the trend'.[193]

In this context, demands to raise the retirement age have been put forward as a response to the ageing of the population and the threat of a lack of funds for retirement benefits. The manner in which this operation was carried out in Poland at the beginning of the second decade of the 21st century essentially rules out its implementation in the foreseeable future for political reasons. The ageing of the population undermines the prospects of families providing care to older-adult members[194], which has been the prevailing form of care so far.[195]

4.4. Housing law

A persistent problem throughout the post-World War II period that is relevant to procreation decisions is the shortage of apartments in Poland. This issue has become

189 GUS, 2022b.; Witkowska, 2017, pp. 24–31.
190 Szukalski, 2016, pp. 1–5; Rymsza, 2017, p. 12.
191 Bałdyga, 2023.
192 Kolek and Sobolewski, 2021, p. 5.
193 Kotowska, 2021, p. 1.
194 Thel, 2011, pp. 203–211.
195 Górecki, 2019, p. 95.

particularly acute in recent years due to inflation and high-interest mortgages. The Demographic Strategy 2040 includes many points on this issue, a discussion of which is beyond the scope of this chapter. In 2023, the government cooperated with the banking sector to launch a programme to support individuals and families to purchase housing in the form of loans at a fixed low-interest rate of 2%.

4.5. Medical law – infertility treatment

The 25 June 2015 Law on Infertility Treatment contains a legal basis for infertility procedures. The state does not finance IVF treatments, although some liberally oriented local governments of larger cities do. In this context, it is important to note that in 2020, 32,878 embryos were used in IVF procedures in Poland (22,000 were frozen embryos). The Health Ministry does not collect data on how many pregnancies have been successfully confirmed as a result of this method. Scientific studies suggest that the pregnancy success rate is around 30%, which is the same as the European average.[196]Actual births, in contrast, are estimated to represent around 20% of the procedures implemented. This amounts to approximately 6,500 children per year, or about 2% of the total number of births.

The Demographic Strategy 2040 contains an extensive section on healthcare,[197] which covers the issue comprehensively, framing procreation through various ideas of an organisational, preventive, psychological, and therapeutic nature. The theme of infertility treatment is taken up in the section '9.10 – Dissemination of highly specialised medical care for infertile couples, including the establishment of a model infertility treatment centre'. The document does not explicitly reference any methods of artificially assisted procreation; rather, it discusses only in general terms an action plan for infertility treatment.[198]

4.6. Against the postmodern cult of childlessness

Poland's Demographic Strategy 2040[199] emphasises the need to popularise a family-friendly culture, given that contemporary culture tends to generate distance from, or even aversion to, having children. The issue seems urgent in light of the phenomenon described as the postmodern *cult of childlessness (anti-nativism)*, which encompasses voluntary childlessness as an attitude.[200]This trend has been statistically significant since the late 20th century and has long generated alarm in the face of its easily predictable social and demographic consequences.[201]

196 Gałązka, 2018, pp. 135–136.
197 Strategia Demograficzna 2040, pp. 61–62.
198 Ibid.
199 StrategiaDemograficzna 2040, pp. 55–56.
200 Muszyński, 2010, pp. 438–463; Mikołajczyk-Lerman, 2004, pp. 212–213; Slany and Szczepaniak, 2003.
201 Kocik, 2006, pp. 267–270; Szukalski, 2014, pp. 83–110.

Both casual observations and sociological studies indicate that an increasing number of people are adopting a selfish, individualistic attitude to life, valuing freedom from obligation. For them, building in-depth relationships creates needless constraints on themselves. These individuals shy away from permanent cohabitation relationships, let alone marriage, and, consequently, resent the prospect of parenthood. They do not feel sufficiently mature to take responsibility and make decisions. For these people, the responsibilities, even the elementary ones set out in family law, are too difficult, beyond their mental horizon, and for some, absurd. Their opposition to having children is rooted in selfishness (convenience) that is termed, to soften the overtones, as 'individualism'. This is sometimes ideologically bolstered by slogans about saving the planet from overpopulation and the alarmist claims of environmentalists about the carbon footprint that humans produce. From these positions, such individuals voice criticisms of those who choose to have children. The arguments that children are social capital, which nothing can replace, do not carry weight.

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Chapter 15

Romania: Positive Law and Top-Down Social Engineering of Families Through Legal Means

Emese Florian and Marius Floare

Abstract

Like most of Central Europe, Romania has observed a steady demographic decline since the 1990s due to extensive emigration and a decrease in the total fertility rate. Attempts have been made, particularly since 2010, to reverse this decline and increase the total birth rate. A very generous child-rearing leave and corresponding child-rearing allowance contributed to a slight increase in the number of live births per woman, which became one of the highest in the European Union (EU) in the late 2010s. Although the improved economic outlook since joining the EU was also a factor, this chapter aims to identify all the domestic legal norms that promote family growth. The chapter looks at the broad picture of governmental family policy in Romania, taking into account the differences between its relatively conservative family law and its more progressive social law, the latter of which offers a wide array of benefits and maintains a broad definition of families. Non-traditional methods of increasing childbirths, such as surrogacy and fertility treatments, are also considered, and the normative deficiencies in this regard are exposed. The chapter focuses on the positive law, with very brief incursions into prior legal norms insofar as they are relevant to show the durable trends in public policy.

Keywords: family, spouse, children, allowance, accommodation, fertility

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1. Family policy in Romania

1.1. Demographic data

1.1.1. Population pyramid in the after-war period and since the 1990s

Since 2011, the population pyramid in Romania has seen a substantial increase in the percentage of the population aged 65 and over, from 15.97% in 2012 to 18.64% in 2022. There has also been a corresponding decrease in the percentage of the adult population aged 15–64 years, from 68.18% in 2012 to 65.44% in 2022, and a very slight increase in the proportion of children below 15 years from 15.85% in 2012 to 15.923% in 2022.[1]

1.2.1. Fertility in Romania in the after-war period and since the 1990s

The highest fertility rate in Romania in the after-war period was during the 'little baby boom' of 1948–1955, when the average rate was 3.23 births per woman. This fertility rate began to fall quickly to below 3.0 in 1955 and, thereafter, to below the replacement level of 2.1 (2.0 in 1962, 1.9 in 1966). The 1966 ban on abortions led to a short-term doubling of the fertility rate (3.7 in 1966, 3.6 in 1968). Nevertheless, despite the repressive abortion policies, the fertility rate fell slowly to 2.2 in 1989. In the 1990s, the lifting of the ban on abortions and the socioeconomic upheaval of the time led to a dramatic decrease in the total fertility rate from 1.8 live births per woman in 1990, to 1.5 in 1992, and 1.3 in 1995, a level that remained basically unchanged until 2010. [2]

In 2022, the total fertility rate in Romania was 1.74, which was among the highest in Europe and the third highest in the European Union (EU), slightly below that of France (1.79) and Ireland (1.76).[3] The total number of births in 2021 was 178,496, representing the seventh largest number in the EU.[4] The total fertility rate has been steadily increasing since 2011, with the average live births per woman rising from 1.47 in 2011, to 1.62 in 2015, and over 1.71 from 2017 onwards, plateauing at around 1.8 in the 2020s.[5]

Nevertheless, the crude rate of birth in Romania (birth rate per thousand population) has been decreasing since the 1970s. This rate was 19.1% in 1960, 21.1% in 1970, 18% in 1980, and around 10% (intervals between 9.4% and 10.5%) since 2000.[6] Historically, the highest birthrate post-war was observed in the 1950s (25.6‰

1 Statista, 2024.
2 Romanian National Institute of Statistics, 2012, p. 23.
3 Statista, 2022.
4 Ibid., p. 16.
5 Statista, Countries and Regions – Romania, p. 6.
6 Ibid., p. 7.

in 1955), although this had rapidly decreased from 1956 (24.2‰) to 1965 (14.3‰).[7] The extensive ban on abortions at the end of 1966 led to a rise in the rate of births to 27.4‰ in 1967 and 26.8‰ in 1968; however, this boost was short-lived, and the crude birthrate levelled off in the 1980s to between 14‰ and 18‰.[8]

1.2. Institutional framework for family policy

1.2.1. Family courts

The 2009 Civil Code, which came into force on 1 October 2011, and its implementing statute Law no. 71/2011 ruled that all judicial matters regarding family litigation and the protection of natural persons would be tried before the guardianship courts (*instanța de tutelă*). Until these guardianship courts are organised by special statute, their judicial tasks are still carried out by the pre-existing courts, court divisions, or specialised judicial panels for underage children and families (Art. 229, para. 2 L. 71/2011). At present, most family trials are litigated in front of the lowest-level courts (*Judecătorie*), with only the largest such courts having specialised panels. Appeals on family matters and first instance trials regarding adoption and child protection measures are decided by the second-level county courts (*Tribunal*), which often have specialised panels in their civil divisions. Third-level courts (*Curte de apel*) and the Romanian Supreme Court rarely hear matters regarding family law issues.

1.2.2. Central executive authorities with family policy prerogatives

Family policy prerogatives in the Romanian government are unevenly split between several departments: the recently established Ministry of Families, Youth and Equal Opportunities, and the Ministry of Work and Social Solidarity, Ministry of Justice, Ministry of Education, and Ministry of Health. The Ministry of Families, Youth and Equal Opportunities was only established in late 2021 and ensures the coordination of the implementation of the government's strategy and policies in relation to families, youth, the protection of children's rights, adoption, domestic violence, and equal opportunities for women and men.[9] The Ministry of Labour and Social Solidarity has prerogatives that relate to families because it designs policies on work and social protection.[10] The Ministry of Justice drafts all regulations in regard to the justice system, including family courts, and gives its advisory opinion on any draft statute or lower-level government regulation initiated by other ministries.[11]

7 Romanian National Institute of Statistics, 2012, p. 11.
8 Ibid.
9 Art. 1, para. 2, Government Order No. 22/2022.
10 Art. 3, para. 1, G.D. No. 23/2022.
11 Art. 5, G.D. No. 652/2009.

The Ministry of Education can influence family policy by the way in which it organises the education system, from early education to university education and professional training.[12] Finally, the Ministry of Health has prerogatives on public health policy[13], including relevant regulations on medical care for pregnancies, newborns, and infertility treatment issues.

1.2.3. Family support benefits

1.2.3.1. Universal child allowance (Law no. 61/1993)

For more than three decades, Romania has had a universal child allowance for all children below 18 years of age, and for children between 18 and 26 years who are still in high school, trade schools, or other forms of secondary (non-university) education (Art. 1 L. 61/1993). This allowance is available even for children who are foreign citizens if they reside together with their parents in Romania (Art. 2 L. 61/1993).

The amount of universal child allowance differs for children between 2 and 18 years of age, while a higher amount is provided for children under 2 and children with disabilities (Art. 3 L. 61/1993). Up until 2019, the allowance for children aged between two and 18 was relatively symbolic, being 84 lei (20 Euros) in 2015, 150 lei (32 Euros) in 2019, and 256 lei (52 Euros) in 2023. For children below the age of two and children with disabilities, the universal child allowance rose from 200 lei (55 Euros) in 2008 to 300 lei (63 Euros) in 2019 and 631 lei (127 Euros) in 2023.

1.2.3.2. Allowance for child-rearing and work return allowance (Government Emergency Ordinance no. 111/2010)

One of the most generous family benefits in Romanian law is the allowance for child-rearing, paid during the corresponding leave. These provisions date back to 2010, and any changes in the intervening years have been insubstantial.

The allowance for child-rearing can be paid to either the biological mother or biological father of the child, either adoptive parent, legal guardians, or non-professional foster parents if they fulfil the taxable income requirements.[14] The person demanding this allowance can be either a Romanian or foreign citizen, although they must reside in Romania together with the child and effectively care for the child directly.[15]

The allowance is paid if the person claiming it had taxable income (salary, independent contractor or freelance revenues, intellectual property royalties, agricultural

12 Art. 3, G.D. No. 369/2021.
13 Art. 4, G.D. No. 144/2010.
14 Art. 8, G.E.O. No. 111/2010.
15 Art. 12, para. 1 G.E.O. No. 111/2010.

revenues) for at least 12 months in the 2 years before the child's birth.[16] However, this income requirement has several broad exceptions, which renders the allowance almost universal (for example, the 12 months of taxable income also include the duration of unemployment benefits, paid medical leave, childcare leave, and studies from high school up to doctoral level).[17]

The allowance for child-rearing is 85% of the average after-tax income gained in the last 12 months before the child's birth[18] not exceeding 8,500 lei (1,700 Euros) per month. There is also a guaranteed minimum allowance threshold of 2.5 times the Social Reference Indicator (SRI; 598 lei/120 Euros in 2023), meaning the allowance totals between 300 and 1,700 Euros at 2023 levels. If the event of twins or other forms of multiple pregnancy, the standard allowance of 85% of the previous 12 months' income is supplemented with 300 Euros (2.5 times the SRI) for each additional child.[19] A 2022 change to this provision states that the supplemental allowance will be 50% of the standard allowance, without falling below 2.5 times the SRI.

The allowance for child-rearing is paid from the end of the maternal childbirth leave, which is a minimum of 42 days after birth, up until the child is 2 years old, or 3 years old for children with disabilities.[20] If both parents fulfil the conditions for receiving the child-rearing allowance, the second parent must take at least 2 months off to receive this allowance, otherwise, those 2 months are lost and not transferable to the other parent.[21]

For parents who choose not to take leave for child-rearing and instead earn taxable income, there is a monthly bonus of 1,500 lei (300 Euros) until the child is 6 months old, or 1 year old for a child with disabilities.[22] This bonus is later reduced to 650 lei (130 Euros), paid from when the child is 6 months to 2 years old, or from 1 year to 3 years old for a child with disabilities.[23]

Parents who have finished their child-rearing leave and returned to earning taxable income can also receive a work return allowance of 650 lei (130 Euros) for 1 year, between either the child's second and third birthday or the third and fourth birthday for a child with disabilities.[24]

1.2.3.3. Allowance for limited-income families with underage children

To support families with a limited income and underage children, since 2010, Romania has established a special allowance designed to supplement the family's

16 Art. 2, para. 1 G.E.O. No. 111/2010.
17 Art. 2, para. 5 G.E.O. No. 111/2010.
18 Art. 2, para. 1 G.E.O. No. 111/2010.
19 Art. 5, G.E.O. No. 111/2010).
20 Art. 16, G.E.O. No. 111/2010.
21 Art. 11, para. 1, G.E.O. No. 111/2010.
22 Art. 7, para. 1a, G.E.O. No. 111/2010.
23 Art. 7, para. 1b, G.E.O. No. 111/2010.
24 Art. 7, para. 2, G.E.O. No. 111/2010.

income, ensure better living conditions for the children, and promote their school attendance.[25] This law defines recipient families as either composed of a husband, a wife, and their dependent children living together;[26] single-parent families comprising a single adult and their dependent children living together (Art. 2, para. 1b L. 277/2010); or an unmarried man and woman living together with either of their children.[27] Families also include soon-to-be adopted children placed with the future adopting parents by the court, foster children placed with unpaid foster parents, and children under guardianship.[28]

The family's income and the corresponding allowance are appraised according to the variable SRI, which was 598 lei (120 Euros) in 2023. Two-parent families with an average after-tax monthly income per person that is less than 40% of the SRI (less than 48 Euros/month/person) receive an allowance of between 16.4% of the SRI (20 Euros/month) for one child and 65.6% of the SRI (80 Euros/month) for four or more children.[29] Families with a mean after-tax monthly income per person that is between 40% and 106% of the SRI (between 48 and 126 Euros/month/person) receive an allowance of between 15% of the SRI (18 Euros/month) for one child and 60% of the SRI (72 Euros/month) for four or more children.[30]

Single-parent families with a mean after-tax monthly income per person that is less than 40% of the SRI (less than 48 Euros/month/person) receive an allowance of between 21.4% of the SRI (26 Euros/month) for one child and 85.6% of the SRI (104 Euros/month) for four or more children.[31] Single-parent families with a mean after-tax monthly income per person that is between 40% and 106% of the SRI (between 48 and 126 Euros/month/person) receive an allowance of between 20.4% of the SRI (24.5 Euros/month) for one child and 81.6% of the SRI (98 Euros/month) for four or more children.[32]

This family allowance is provided for Romanian legal residents, without regard to citizenship. It is also provided for homeless people if they have not received this allowance from other local authorities.[33] The family support allowance is conditional upon school attendance for school-age children, with accommodations being made for medical reasons or for children with disabilities.[34]

25 Art. 1, L. 277/2010.
26 Art. 2, para. 1a L. 277/2010.
27 Art. 2, para. 1c, L. 277/2010.
28 Art. 4, para. 1, L. 277/2010.
29 Art. 5, para. 1, L. 277/2010.
30 Art. 5, para. 2, L. 277/2010.
31 Art. 6, para. 1 L. 277/2010).
32 Art. 6, para. 2, L. 277/2010.
33 Art. 7, L. 277/2010.
34 Art. 8, L. 277/2010.

1.2.3.4. Guaranteed social minimum income

The social minimum income has been provided since 2001 for families and single individuals who either have Romanian citizenship,[35] domicile, or legal residence in Romania.[36] The definition of families for this minimum income is the broad one specific to Romanian social law and includes married different-sex spouses, with or without dependent children; single parents with children; adult childless siblings living together separately from their parents; and cohabiting different-sex couples with dependent children.[37]

The level of the guaranteed social minimum income is adjusted to the SRI (which was 598 lei/120 Euros in 2023) and also depends on the number of cohabiting family members. It varies between 28.3% of the SRI (62 Euros) for a single-person household and 105.4% of the SRI (127 Euros) for a five-person household, with an extra 7.3% of the SRI (9 Euros) for each additional family member.[38]

1.2.3.5. Minimum income for social inclusion

Since 2016, Romania also has a so-called 'minimum income for inclusion'. This is a selective social benefit for families and single persons who find themselves in dire situations during their lifetime for socioeconomic, health, or social environment reasons and who have lost or have a diminished capacity to be socially integrated.[39] The financial support is provided by the state to prevent social exclusion and poverty and enhance the affected children's participation in the education system.

In this case, families are broadly defined by the law as including both traditional families with married spouses, either childless or with underage or dependent children; single-parent families; and informal cohabiting different-sex partners, with or without underage or dependent children.[40] The benefits for social inclusion are means-tested and, in order to qualify, the beneficiary's monthly after-tax income must be less than 700 lei (140 Euros) for a single person, with 350 lei (70 Euros) added for each additional family member.[41] The minimum income for social inclusion is actually a broad array of social benefits, comprising financial aids, including the aid for social inclusion and the aid for families with children, and other complementary measures such as in-work stimulus and contribution exemptions.[42] The aid for families with children is two-tiered.[43] The first tier is available for families earning

35 Art. 1, para. 1, L. 416/2001.
36 Art. 2, para. 7, L. 416/2001.
37 Art. 2, L. 416/2001.
38 Art. 4, L. 416/2001.
39 Art. 1, Law 196/2016.
40 Art. 6, L. 196/2016.
41 Art. 9, L. 196/2016.
42 Art. 3, L. 196/2016.
43 Art. 18, L. 196/2016.

less than 275 lei/month (55 Euros) for the first person and 50% of that figure for each subsequent person; the aid for two-parent families is between 107 lei (22 Euros) for one child and 428 lei (88 Euros) for four or more children, whereas the aid for single-parent families is slightly larger at between 120 lei (24 Euros) and 480 lei (96 Euros). The second tier is for families earning a monthly income of between 276 lei (55 Euros) and 700 lei (140 Euro) for the first person and 50% of that for each subsequent person; the aid for two-parent families is between 85 lei (17 Euros) for one child and 340 lei (68 Euros) for four or more children, whereas the aid for single-parent households is between 110 lei (22 Euros) and 430 lei (86 Euros).

The aid for families with children is contingent on regular school attendance, with the exception of absence for medical reasons.[44] Unjustified truancy leads to financial penalties that go upwards from 50% of the monthly aid for each child who misses more than 15 classes per month.[45]

1.3. Other tax and contribution benefits

1.3.1. Tax and contribution benefits

The Romanian Tax Code allows employers to give away cash gifts or gift certificates for their employees' children, with the incurred 'social' expenses being tax-deductible for profit-tax purposes for the employer, up to the limit of 5% of the employer's entire payroll expenses.[46]

A 2020 Tax Code modification was supposed to allow employers to make deductible expenses for early education of up to 1,500 lei per child per month (300 Euros/child/month), with the deduction being possible first directly from profit taxes and, if the payable profit-tax level is surpassed, the expenses could subsequently have been deducted from the payroll taxes, value-added taxes, and excise duties.[47] Unfortunately, this generous family support benefit, adopted in 2020 and which should have come into force on 1 April 2021, has yet to be implemented and has been repeatedly delayed (the latest announced delay being until the end of 2023). While the early education tax deduction continues to be postponed, the Tax Code allows, as a partial replacement, for employers to deduct (for profit-tax purposes) the expenses for running their own day-cares and kindergartens, with these 'social' deductible expenses capped at 5% of total payroll expenses.

The allowances for pregnancy risk, maternity leave, child-rearing, and caring for a sick child are all exempted from income tax[48] and social security contributions.[49] Other allowances and material benefits related to children and families are

44 Art. 19, para. 1, L. 196/2016.
45 Art. 19, para. 2, L. 196/2016.
46 Art. 25, para. 3b sec. 3 Tax Code, hereinafter, 'TC'.
47 Art. 25, para. 4i[2] TC.
48 Art. 62c, TC.
49 Art. 142b, TC.

also exempted from income tax and social security contributions, including birth or adoption bonuses, and cash gifts or gift certificates for employees' underage children if they do not exceed 300 lei (60 Euros) per person per event such as Christmas, Easter, or other equivalent major religious holidays, 1 June.[50] Payments made by an employer for the early education of its employees' children do not give rise to income tax or social security contribution liability for the receiving employee.[51]

Employees can receive a 'personal tax deduction', taking into account each of their dependent family members, including their spouses, children, close relatives, or in-laws, whose monthly income does not exceed 20% of the national minimum wage.[52] This tax deduction is available only for one of the parents or caregivers of other family members and only in regard to salary income taxes.[53] The basic personal tax deduction is available only for caregiving employees whose monthly income exceeds the gross national minimum monthly wage (which was 3,000 lei/600 Euros in 2023) with up to 2,000 lei (400 Euros), according to Art. 77, para. 3 of the Tax Code. This is a regressive benefit, deducted from employees' pre-tax wages, depending on the level and number of their dependants, which oscillates between 45% of the gross national minimum monthly wage (for a person earning the minimum monthly wage with four or more dependents) and 0% for a person earning slightly below 5,000 lei per month (1,000 Euros) but with no dependents.[54]

There is another, more limited 'supplemental personal tax deduction' available for all parents with underage children attending school, but it is only 100 lei per child per month (20 Euros), which are deducted from the parents' pre-tax gross wages.[55] Young employees below 26 years of age receive a supplemental tax deduction for themselves, which is 15% of the gross national minimum monthly wage (450 lei/90 Euros in 2023), but only if their pre-tax income is less than 5,000 lei (1,000 Euros) per month.[56]

One of the most universal family support benefits is the exemption from health insurance contributions for a wide array of individuals, including all children below the age of 18 and young people aged between 18 and 26 years if they are studying, undertaking an apprenticeship, or are soldiers-in-training.[57] Those aged between 18 and 26 years who are coming out of the child protection system are exempt from health insurance contributions even if they do not qualify as studying or following professional instruction, but only if they are not employed, independent contractors, or agricultural workers.[58] Dependent spouses or parents with no income are also

50 Art. 76, para. 4a, and Art. 142b, TC.
51 Art. 76, par 4x, Art. 142z, TC.
52 Art. 77 par. 5, TC.
53 Art. 77 par. 6, TC.
54 Art. 77, para. 4, TC.
55 Art. 77, para. 10b, TC.
56 Art. 77, para. 10a, TC.
57 Art. 154, para. 1a, TC.
58 Art. 154, para. 1b, TC.

exempt from health insurance contributions.[59] A distinct category of exemptions from health insurance contributions is reserved for those on post-adoption leave or child-rearing leave.[60]

1.3.2. Social and merit-based public scholarships

Romania has several types of public scholarships for primary school, middle school, high school, trade school (Education Minister's Order no. 5379/2022), and university students. These scholarships are either merit-based or awarded for social reasons, including health. Merit-based scholarships are awarded for results in school competitions or for very good results in everyday learning.

In the 2022–2023 school year, the merit-based scholarship for non-university students was either 200 lei (40 Euros) monthly for good results at the school- or county-level or 500 lei (125 Euros) monthly for achieving first place in a national school competition. The social scholarships were either 150 lei (30 Euros) monthly for decent school results and an average monthly income per family member lower than the national minimum wage, or 200 lei (40 Euros) monthly for those students who either had an average monthly income per family member lower than half the national minimum monthly wage, were orphans, lived in single-parent households, or suffered from serious functional afflictions. Art. 108 of the new Law no. 198/2023 on pre-university education, which came into force in September 2023, increased the merit-based scholarships to 450 lei (90 Euros) and social scholarships to 300 lei (60 Euros).

Scholarships for university students are decided by the universities themselves and fall broadly into the merit-based and social scholarship categories. For example, Babeș-Bolyai University in Cluj County divides its state-financed scholarship fund as follows: 70% for different types of merit-based scholarships, and 30% for social scholarships. The most common types of scholarships are awarded each semester and amount to between 700 lei/month (140 Euros) and 1,000 lei/month (200 Euros) for merit-based scholarships, and 580 lei/month (116 Euros) for most social scholarships.[61]

1.4. 'Family-type' units in Romanian law

1.4.1. Families according to Romanian private law

Romanian private law is relatively conservative in defining families, although it tacitly recognises legal consequences for some types of non-traditional families. Art. 258, para. 1 of the Civil Code states that the family is based upon a freely consented

59 Art. 154, para. 1c, TC.

60 Art. 154, para. 1k, TC.

61 Rules for awarding scholarships for undergraduate and graduate students at the Babeș-Bolyai University, available at: https://www.ubbcluj.ro/ro/studenti/files/burse/2022-2023/Regulament-de-burse-pentru-studenti-modificat-prin-HS-49.pdf (Accessed: 26 February 2024).

marriage between spouses and upon the parents' right and duty to ensure the raising and education of their children. Further provisions[62] clarify that 'spouses' can only be a man and a woman who have freely consented to a legal marriage.

The Civil Code also recognises single-parent households by allowing parental authority to be either exercised jointly by parents living separately[63] or exercised fully by a single parent if the court decides that this would be in the best interests of the child,[64] or if the other parent is either deceased, under guardianship, has lost the exercise of parental rights, or cannot give their consent for various reasons.[65]

Another atypical 'family-type' unit recognised by Romanian private law, known as a 'substitute family'[66], is one in which the parental authority is exercised by a third-party (e.g. a legal guardian or foster parent) and the child lives with this person.[67]

The most forward-thinking private law statute is the one concerning adoption. In addition to recognising adoptive families as fully-fledged families with all the rights and duties of a biological family, this statute also acknowledges the possibility for the cohabiting unmarried and different-sex partner of a single adoptive parent to subsequently adopt the same child if he or she has directly taken part in raising the child for an uninterrupted period of at least five years (Art. 6, para. 2c L. 273/2004).[68]

Romanian law also defines 'extended family' in relation to a child as including the child's relatives up to and including the third degree (i.e. up to aunts/uncles or great-grandparents) with whom the child or their family maintain personal relations and direct contact;[69] however, the status of an extended family does not imply nor exclude living together.

Conversely, Romanian family law does not recognise registered civil partnerships, either between same-sex or different-sex partners, and does not allow same-sex marriages.[70] The non-recognition of such unions is deemed a matter of public order of international private law.[71]

Although there is no specific regulation on consensual unions in Romanian private law, they are not expressly forbidden and are a fact of life. As such, private law incidentally recognises some effects of such unions: cohabitation between a man and a woman during the time when conception is plausible leads to a simple (rebuttable) presumption that the man is the father of the child conceived during this

62 Art. 259, para. 1 Civil Code, hereinafter 'CC'.
63 Arts. 397, 505 CC.
64 Art. 398 CC.
65 Art. 507 CC.
66 Art. 4d L. 272/2004
67 Arts. 399, 137 CC, Art. 63, L. 272/2004.
68 Florian, 2022, pp. 509–510; Avram, 2022, pp. 26–27.
69 Art. 4c, L. 272/2004.
70 Avram, 2022, p. 25.
71 Art. 277, CC.

union.[72] In addition, human assisted reproduction with a third-party donor is specifically allowed for consensual different-sex couples (Art. 441 CC).[73]

1.4.2. Families in Romanian social law

Romanian social law, which we consider to be part of public law, adopts a much broader and pragmatic definition of family and household than the family law.[74] While it still does not take into account same-sex couples, it covers most other living situations that involve families in the sociological sense.

The law regarding the allowance for families with limited income defines recipient families as either composed of a husband, a wife, and their dependent children living together;[75] single-parent families comprising a single adult and their dependent children living together;[76] or an unmarried man and woman living together with either of their children.[77] Families also include soon-to-be adopted children provisionally placed with the adopters by the court, foster children placed with unpaid foster parents, and children under guardianship.[78]

The definition of families in regard to the minimum social income is the same broad one specific to Romanian social law: married different-sex spouses, with or without dependent children; single parents with children; adult childless siblings living together separately from their parents; and cohabiting different-sex couples with dependent children.[79] Families are also broadly defined by the law on the minimum income for inclusion as comprising both traditional families with married spouses, either childless or with underage or dependent children; single-parent families: informal cohabiting different-sex partners, with or without underage or dependent children; and adult childless siblings living together separately from their parents (Art. 6 L. 196/2016).[80]

From all these social law definitions we can conclude that, for the sake of social benefits, families can be construed as either different-sex couples with or without dependent children, single parents with dependent children, or adult childless siblings living together separately from their parents. Same-sex couples do not qualify for social benefits as such, although they could indirectly receive such benefits if either of the partners is a single parent with dependent children.

72 Art. 426, CC.
73 Avram, 2022, p. 26.
74 Avram, 2022, pp. 25–28.
75 Art. 2, para. 1a, L. 277/2010.
76 Art. 2, para. 1b, L. 277/2010.
77 Art. 2, para. 1c, L. 277/2010.
78 Art. 4, para. 1, L. 277/2010.
79 Art. 2, L. 416/2001.
80 Avram, 2022, pp. 28–29.

1.5. Family and work allowances

1.5.1. Childcare leave

Romanian labour law allows employees to take paid child-rearing leave up until the child is 2 years old or, if the child has disabilities, up until the age of three.[81] It also allows employees to take a maximum of 45 days per year of medical leave to care for a sick child up until the age of seven or, for a child with disabilities and intercurrent afflictions, up until the age of 18.[82] During this work leave, the employment contract is suspended,[83] but it cannot be terminated by the employer[84]. A 2023 change to the medical leave law[85] allows parents to benefit from medical leave to care for a sick child up until the child's 12th birthday or up until 18 years of age for children with serious disabilities.[86]

Though this paid medical childcare leave is usually granted up to 45 days per year for each child, this number can be surpassed if the child has a contagious disease, is immobilised, or has surgery. In these situations, a specialist physician determines the necessary amount of childcare leave based on the evolution of the disease.[87]

1.5.2. Maternity leave

Paid maternity leave in Romania lasts up to 126 days, including pregnancy leave and childbirth leave.[88] The mother's income for the duration of the maternity leave is 85% of her average pre-tax income during the prior 6 months, capped at a maximum of 12 gross minimum wages per month,[89] which was 36,000 lei in 2023 (7,200 Euros). Maternity leave is paid for out of the National Health Insurance Fund.[90] Pregnancy leave and childbirth leave are usually 63 days each; however, the mother can choose, based on a physician's advice or her personal choice, to adjust between the two types of maternity leave, as long as she takes at least 42 days for childbirth leave and the total remains below 126 days.[91]

81 Art. 51, para. 1a, Labour Code.
82 Art. 51, para. 1b, LC.
83 Art. 51, para. 1, LC.
84 Art. 60, paras. 1 e and f, LC.
85 Art. 26, para. 1, Government Emergency Ordinance [hereinafter 'GEO'] 158/2005.
86 Art. 26 GEO 158/2005.
87 Art. 29, para. 1, GEO 158/2005.
88 Art. 23, para. 1, GEO 158/2005.
89 Art. 25 and Art. 10, para. 1, GEO 158/2005.
90 Art. 25 para. 2, GEO 158/2005.
91 Art. 24, GEO 158/2005.

1.5.3. Paternity leave

Law no. 210/1999 on paternal leave allows the father to take 10 paid working days off during their child's first eight weeks of life if paternity is legally established and can be proven with a birth certificate.[92]This leave is available for all types of workers, public officials, policemen, soldiers, and prison guards. The paid paternal leave can be extended to 15 working days if the father has a graduation certificate from a child-rearing course.[93] If the mother dies during childbirth or her own paid time off after childbirth (usually 63 days), the father has the right to the remainder of the mother's paid time off as supplemental paternal leave.[94]

1.5.4. Parental leave for child-rearing

The law on the child-rearing leave allows for either parent to take paid time off for child-rearing, which can be granted only after the mother's minimum compulsory 42 days maternity leave after childbirth have elapsed. This parental leave lasts until the child is 2 years old, or 3 years old for a child with disabilities.[95] This leave is available for either biological parent, adoptive or future adoptive parents after the court has entrusted the child to them, foster parents, legal guardians, and emergency foster parents with the exception of paid maternal assistants.[96]

The 2023 update to the law compels the parent who has not taken the paid time off for child-rearing to take at least 2 months off if they qualify.[97] The penalty for both parents not sharing the child-rearing leave is losing the benefit of the last 2 months of paid time off.

1.5.5. Special family-related work leaves in labour law

There are two other special family-related work leaves: the leave for caring for a cancer patient and the leave for maternal risk.[98] The leave for caring for a cancer patient is granted to any person, not necessarily a family member, who accompanies a cancer patient over 18 years of age, with the latter's consent, to surgery or specialist treatments. The maximum duration of this medical leave is 45 days per year for a cancer patient. The patient can choose only one companion per treatment or surgery. The companion is also entitled to one free psychological evaluation and

92 Art. 2, L. 210/1999.
93 Art. 4, L. 210/1999.
94 Art. 5, L. 210/1999.
95 Art. 2, para. 1, GEO No. 111/2010.
96 Art. 8, GEO 111/2010.
97 Art. 11, para. 1, GEO 111/2010.
98 Art. 2, para. 1d[1] and 1e, GEO 158/2005.

five free psychological counselling sessions each year that they receive this special medical leave.[99]

Pregnant employees or recent mothers have the right to a supplemental work leave of up to 120 days[100] for maternity risk.[101] This supplemental leave can be used before the regular maternity leave (which is usually 63 days before birth) or after the regular leave for giving birth (which is usually 63 days after birth) if the employer cannot accommodate the risks to the health and safety of the mother or negative consequences for the pregnancy or breastfeeding by changing the working conditions, work schedule, or place of work.[102] The leave for maternity risk is also available for pregnant employees, recent mothers, or breastfeeding mothers who cannot be transferred from night work to daytime work for objective reasons (Art. 19, para. 4 GEO 96/2003),[103] as well as for those that cannot be transferred from working in dirty or difficult environments.[104]

1.5.6. Day-care provisions

Day-cares (*creșe*) in Romania are considered to be part of the educational system and benefit children below the age of three. Kindergartens are institutions for the education of children between the ages of three and six. The new law on the pre-university education system,[105] which came into force on 3 September 2023, specifically mentions day-cares as educational institutions for children between 3 months and 3 years old that can function either independently as legal persons or as part of another educational institution that is a legal person.[106]

Villages, towns, or cities in which there are no day-cares/kindergartens or in which the number of available places in day-cares/kindergartens is less than the number of children below the age of three or between 3 and 6 years, respectively, can develop complementary early education services such as organised playgroups or community kindergartens.[107]

Employers can establish early education institutions mainly for their employees. Employers can receive financial benefits from the government for these institutions or can opt for partial tax deductions for the funds they provide to their employees for early education.[108]

99 Art. 30[1] GEO 158/2005.
100 Art. 10, GEO 96/2003.
101 Art. 31, GEO 158/2005.
102 Dub, 2017, p. 11.
103 Dub, 2017, pp. 11–12.
104 Art. 20, para. 4, GEO 96/2003.
105 Law No. 198/2023.
106 Art. 30, L. 198/2023.
107 Art. 30, para. 3, L. 198/2023.
108 Art. 30, para. 6, L. 198/2023.

The current regulation on day-cares (Methodology on day-cares and early pre-school education, approved by G.D. No. 566/2022; hereinafter 'the Methodology') specifies that these centres can be either educational institutions or so-called 'day centres' (*centre de zi*), operating as social services that provide care, education, and counselling for children during the daytime in order to prevent their separation from their parents.[109]

Day-cares can be either public or private and can provide either a standard programme (5 hours/day), extended programme (10 hours/day), or both[110]. Day-cares use a 'group' system that divides children according to their age as either small (below 12 months), medium (between 13 and 24 months), or big (between 25 and 36 months). There should be an average of seven children (between five and nine children) in the small group, 12 children (between 8 and 15 children) in the medium group, and 12 children (between 8 and 20 children) in the big group[111]. Extended programme day-cares must be open year-round, including during school holidays, but they can provide restricted services during that time based on demand and staff holidays.[112]

1.6. Generational policy

In relation to the youth, Romania's Law on Young People no. 350/2006 was meant to ensure the conditions for the proper social and professional integration of young people between 14 and 35 years old, according to their needs and aspirations.[113] Nevertheless, besides good intentions and broad policy desires, this law does not provide many particular benefits to young people, with the notable exception of some general entrepreneurial support for starting up small and medium enterprises,[114] free access to public libraries, and exemptions from admission fees in state universities for young people coming out of the child protection system or from a family with limited means.[115]

There are more benefits available for older adults and pensioners at all levels of society. For example, because there were millions of pensioners with very small pensions, a 2009 regulation (GEO no. 6/2009) established the 'minimum social pension', later known as 'social indemnity for pensioners'. The level of this social benefit is modified each year by the law on the state budget. Pensioners whose pension is less than the social indemnity receive the difference, paid from the state budget.[116] In 2023, the level of this social indemnity was 1,125 lei (227 Euros).

109 Art. 1, para. 4, Methodology.
110 Art. 8, paras. 3 and 4, Methodology.
111 Art. 10, Methodology.
112 Art. 14, paras. 1 and 3, Methodology.
113 Art. 1, L. 350/2006.
114 Art. 17, L. 350/2006.
115 Art. 18, L. 350/2006.
116 Art. 2, L. 350/2006.

Pensioners also have some tax benefits: the first 2,000 lei (400 Euros) of the monthly pension is exempted from income tax,[117] and pensions are totally exempt from health insurance contributions.[118] Pensioners are also exempt from social security contributions for freelance work and royalties.[119]

1.7. Family-friendly provisions in the pension system

1.7.1. Survivor benefits for dependent children and spouses (Law no. 263/2010)

The current Romanian public pension Law no. 263/2010, as well as the laws that preceded it, provides a 'survivor pension' for children and spouses of deceased providers who were either already retirees or fulfilled the conditions to receive a pension.[120] Children can receive the survivor pension following their parent's death if they are below 16 years of age (with no further conditions to fulfil), between 16 and 26 years of age only if they attend some form of organised studies, or for the duration of their disability if they become disabled during the previous two situations.[121]

The surviving spouse can receive the survivor pension for the duration of their life if they have reached the retirement age and if the marriage lasted for at least 15 years[122]. If the marriage lasted between 10 and 15 years, the survivor pension is diminished by 0.5% for each month under the required 15-year duration[123]. A spouse may still receive the survivor pension even for marriages of less than 10 years in special circumstances, such as if they have a severe disability, if the marriage lasted for at least 1 year, if the survivor's own income is less than 35% of the monthly national average pre-tax wage, if the deceased died either in a work-related accident or as a consequence of a work-related illness,[124] or if the surviving spouse has one or more dependent children below the age of seven[125]. A surviving spouse with no income or with an income of less than 35% of the national average monthly pre-tax wage can receive a survivor's pension for 6 months if they do not fulfil the other conditions for this type of pension.[126]

The survivor pension is calculated based either on the pension that the deceased was receiving or was entitled to receive or based on the pension for a person with severe disabilities if the provider died before reaching the standard retirement

117 Art. 100, para. 1, TC.
118 Art. 154, para. 1 h, TC.
119 Art. 150, para. 1, TC.
120 Art. 83, L. 263/2010.
121 Art. 84, L. 263/2010.
122 Art. 85, para. 1 L. 263/2010.
123 Art. 85, para. 2 L. 263/2010.
124 Art. 86, L. 263/2010.
125 Art. 88, L. 263/2010.
126 Art. 87, L. 263/2010.

age[127]. The survivor pension is 50% of the deceased person's pension if there is one recipient, 75% if there are two recipients, and 100% for three or more recipients[128].

1.8. Social security institutions supporting families

The Ministry of Labor and Social Solidarity and its subordinates, the National Agency for Payments and Social Inspection (GEO 113/2011) and National House of Public Pensions, pays most family allowances, benefits, and indemnities from the national budget or pensions budget, monitors local social services, and inspects employers' compliance with relevant regulations on family leave and worker accommodations.

County-level General Directorates for Social Assistance and Child Protection are local institutions belonging to each county's council. They receive applications for social benefits, check the fulfilment of requirements for social assistance, identify families and persons in social distress, and provide social services for children, families, persons with disabilities, and older adults, financed from the county budget (Art. 3 of the Model Regulation on General Directorates for Social Assistance and Child Protection, approved by G.D. 797/2017).

City- or town-level Directorates for Social Assistance have similar prerogatives to the county-level Directorates, but they provide social services to families funded by the city or town budget, if applicable (Art. 3 of the Model Regulation on Local Social Assistance Directorates approved by G.D. 797/2017).

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2. Family law instruments to support families, parents, and children in Romania

2.1. The importance of family law principles

2.1.1. The principle of the protection of marriage and family

Art. 26, para. 1 of the Romanian Constitution states that public authorities must respect and nurture private and family life. The family is defined in Art. 48, para. 1 of the Constitution as being founded upon the freely consented marriage, spousal equality, and the right and duty of parents to rear and educate their children (also Art. 258, para. 1 CC).[129]

127 Art. 89, para. 1, L. 263/2010.
128 Art. 89, para. 2, L. 263/2010.
129 Florian, 2022, pp. 6–7; Florian, 2021 in Baias et al. (eds.), p. 325.

Spouses are legally defined as being a man and a woman joined together in marriage[130]. Families have a right to be protected both by the state and by society at large[131]; this includes the state's duty to support, through both economic and social measures, marriages and the development and consolidation of marriages.[132] Marriage is the freely consented union between a man and a woman, formalised according to the law (Art. 259, para. 1 CC).[133] In relation to children, even some non-traditional types of families involving either children born and conceived out of wedlock or adopted children have an equal status because all children are equal before the law, no matter the source of their parental status (Art. 260, Art. 448 CC).[134]

Romanian family law forbids same-sex marriages[135] and denies the recognition of these types of marriage, even if they are concluded abroad and even if they involve foreign citizens[136]. The same non-recognition is applied to civil partnerships contracted abroad, involving either same-sex or different-sex partners, even if they are not expressly forbidden in domestic law but merely not regulated.[137] Even engagement is specifically regulated only between a man and a woman (Art. 266, para. 5 CC). The only area where Romanian law recognises certain effects of same-sex marriages and either type of civil partnership is the free movement of persons according to EU law (Art. 277, para. 4 CC).[138]

Legal doctrine notes that the sociological definition of a family is broader than the narrow legal definition of a family based on marriage, including other criteria such as cohabitation and keeping a joint household.[139] However, the law has been indirectly catching up for decades by recognising an equal status in relation to all children, including those born and conceived outside marriage or adopted.[140] On 23 May 2023, the European Court of Human Rights found in Case no. 20081/19 *Buhuceanu and others* that Romania had violated the plaintiffs' (21 same-sex couples) rights to family and private life, which is enshrined in Art. 8 of the European Convention on Human Rights, by not providing any form of legal status or recognition for same-sex couples.[141]

130 Art. 258, para. 3, CC.
131 Art. 258, para. 2, CC.
132 Art. 258, para. 3, CC.
133 Florian, 2022, pp. 6–7; Florian, 2021, pp. 325–327.
134 Florian, 2021, pp. 328, 602–603.
135 Art. 277, para. 1, CC.
136 Art. 277, para. 2, CC.
137 Art. 277, para. 3 CC).
138 Florian, 2022, pp. 7–8; Florian, 2021, pp. 359–360.
139 Motica, 2021, p. 14.
140 Avram, 2022, pp. 17–18.
141 ECHR Case nos. 20081/19 and 20 others *Buhuceanu and others v. Romania,* Judgement 23 May 2023. Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-224774%22]} (Accessed: 26 May 2023).

2.1.2 The principle of equality between spouses

Spousal equality is defined as both a constitutional principle (Art. 48, para. 1 Constitution) and a legal principle[142]. It is considered a mere practical application of the principle of equality between men and women in all areas of social life, including the same rights and duties between spouses and in relation to their children, be they offspring resulting from a marriage, from outside the marriage, or adopted.[143] The equality between men and women is derived from international human rights law and has specific consequences in family law.[144]

There is also a specific legal principle of parental equality, in regard to both the person and the assets of the child, because parental authority is held jointly and equally by both parents, and they are both responsible for raising their underage children (Art. 483 CC).[145]

2.1.3 The primacy of the best interests of the child

The primacy of the best interests of the child is regulated both by the Civil Code, which came into force in 2011, and Law no. 272/2004 on the protection and furthering of the rights of the child. The best interests of the child include the child's rights to a normal physical and moral development, socio-affective balance, and family life[146]. The primacy of the best interests of the child is compelling even in relation to the rights and duties of parents, other legal representatives of the child, or any other person with physical custody of the child (Art. 2, para. 3 L. 272/2004).[147]

This primacy of the best interests of the child will prevail in any decisions and undertakings regarding children by public authorities, private authorised service providers, and cases before courts[148]. The child's family must be involved in any decisions, actions, and undertakings regarding the child, while public authorities and private service providers must support the caretaking, growth, development, and education of the child within the family[149].

The criteria for evaluating the primacy of the best interests of the child are detailed in Art. 2, para. 6 of Law no. 272/2004 and include the child's needs for physical and psychological development, health, education, security, stability and belonging to a family; the opinion of the child according to his or her age and maturity; the history of the child with special regard to abuse, neglect, exploitation, or any form of violence against him or her, as well as future potential risks; the

142 Art. 258, para. 1, CC.
143 Florian, 2022, pp. 11–12.
144 Avram, 2022, pp. 47–48.
145 Motica, 2021, pp. 17–18.
146 Art. 2, para. 2, L. 272/2004.
147 Florian, 2022, pp. 18–20.
148 Art. 2, para. 4, L. 272/2004.
149 Art. 2, para. 5, L. 272/2004.

capacity of the parents or other caregivers to meet the specific needs of the child; and maintaining personal relations with any people to whom the child had previously developed attachment.

The Second Book of the Civil Code, titled 'About Family', contains rules on the primacy of the interests of the child. The Civil Code provisions only mention the necessity of taking into account the primacy of the interests of the child in different areas of family law, without defining the concept itself:[150] the possibility of limiting parent-child relationships if the child does not reside with said parent[151], any measures or procedures concerning the child[152], the possibility for the guardianship court to authorise underage marriage if there is disagreement between parents[153], the awarding of the benefit of continuing to reside in the former family home in cases of divorce[154], the possibility for the divorce court to authorise one spouse to keep the family name despite the other's disagreement[155], the divorce courts' decisions on the relationship between the divorcing parents and their underage children[156], the exercise of parental authority by only one parent in cases of divorce,[157] the issue of the child's residence after the parents' divorce if there is parental disagreement on the matter[158], adoption[159], the adoption of siblings by different families[160], overcoming the biological parents' refusal to agree to their child's adoption[161], instituting guardianship or other protective measures if the adopter loses the exercise of parental authority[162], the dissolution of an adoption if the adopted child needs protective measures[163], fictitious adoptions[164], the necessity of guardianship or other protective measures after the termination of adoption[165], the exercise of parental authority[166], court decisions in cases of parental disagreement on the exercise of parental authority[167], the possibility for the guardianship court to reject the parents' demand for the return of their child from third parties[168], the possibility to limit the exercise of

150 Avram, 2022, pp. 50–51.
151 Art. 263, para. 2, CC.
152 Art. 264, CC.
153 Art. 272, para. 2, CC.
154 Art. 324, para. 1, CC.
155 Art. 383, para. 2, CC.
156 Art. 396, para. 1, CC.
157 Art. 398, para. 1, CC.
158 Art. 400, CC.
159 Art. 452, Art. 454, CC.
160 Art. 456, CC.
161 Art. 467, CC.
162 Art. 472, CC.
163 Art. 476, CC.
164 Art. 480, CC.
165 Art. 482, CC.
166 Art. 483, para. 2, CC.
167 Art. 486, CC.
168 Art. 495, para. 2, CC.

parent-child relations with the non-resident parent[169], court decisions on the child's change of residence in cases of parental disagreement[170], parental court-sanctioned agreements on the exercise of parental authority[171], the withdrawal of the exercise of parental authority[172], and the provisional authorisation of parent-child relations in cases where the restoration of the exercise of parental authority is demanded by the affected parent[173].

2.1.4. Principle of fairness and the protection of the weaker party

The principle of fairness and the protection of the weaker party is not formally recognised as a family law principle in Romania,[174] not even in the statute concerning domestic violence[175]. Notwithstanding this doctrinal deficiency, there are legal rules in place for the prevention of and fight against family violence, which are mostly ascribed to Law no. 217/2003 for the prevention and suppression of family violence.[176]

These provisions have a very nuanced approach to family violence, which is broadly defined as including all types of verbal, psychological, physical, sexual, economic, social, spiritual, and cyber violence,[177] with a complete disregard for defences like custom, culture, religion, tradition, and honour.[178] This statute regulates temporary restraining orders against aggressors, which are issued by the police for a maximum duration of 5 days in cases of domestic violence, as well as the standard restraining order, which can be issued by the courts for a maximum duration of 6 months at a time.

2.2. Civil law provisions protecting the family and children, family property law, and other proposals

2.2.1. Management of children's property

There are two broad situations with regards the legal capacity of children to agree to contracts about their property in Romanian law: children under 14 years of age have no contractual capacity whatsoever[179], whereas children between 14 and 18 years of age have a so-called 'limited contractual capacity' (Art. 41, para. 1 CC).[180]

169 Art. 496, para. 5, CC.
170 Art. 497, para. 2, CC.
171 Art. 506, CC.
172 Art. 508, para. 1, CC.
173 Art. 512, para. 2, CC.
174 Florian, 2022, pp. 6–21; Avram, 2022, pp. 47–52; Motica, 2021, pp. 17–19.
175 Art. 2, L. 217/2003.
176 Avram, 2022, pp. 54–60; Florian, 2022, pp. 98–100.
177 Art. 4, para. 1, L. 217/2003.
178 Art. 4, para. 2, L. 217/2003.
179 Art. 43, para. 1a, CC.
180 Diaconescu and Vasilescu, 2022, pp. 101–112.

Married underage children (children can exceptionally marry from 16 years of age) or emancipated minors (emancipation is also possible from the age of 16 for 'well-grounded' reasons) have full contractual capacity, in the same way as an 18-year-old person.

Contracts and unilateral acts concerning children's property are concluded by their legal guardians[181], who is either a parent or a court-appointed guardian. Legal guardians act on children's behalf, either alone for acts regarding the preservation or the current management of rights and assets, as well as for sales or exchanges of deprecating or useless assets,[182] or with the prior authorisation of the guardianship court (*instanța de tutelă*) for normal sales and exchanges, estate divisions, and mortgages on the children's assets (Art. 144, para. 2 CC).[183] A legal representative cannot donate the child's assets, with the exception of small socially acceptable gifts, and cannot guarantee for the obligations of another person with the child's estate.[184]

A child's legal guardians must act in good faith in managing the child's estate.[185] Guardians are under the supervision of the guardianship court. An optional supervisory 'family council', comprised of three relatives or in-laws of the child,[186] advises the guardianship court regarding significant contracts if the legal guardian is not a parent. Legal guardians must provide a yearly report to the guardianship court about their care for the minor and the management of the child's estate,[187] as well as a final report at the end of their assignment.[188] Legal guardianship is an unpaid task[189] and can be performed either by a single guardian or by a married couple,[190] who will be held jointly liable for the guardianship duties.[191]

Children between 14 and 18 years of age have a limited contractual capacity. For most contracts or unilateral acts, these minors need the consent and approval of their parent or legal guardian and the authorisation of the guardianship court for major sales, exchanges, mortgages, or estate divisions[192]. For children aged 14 or older, the parent or legal guardian is no longer considered a legal 'representative' but a mere supervisor of the child's acts[193]. These children also cannot donate their assets under any circumstances, with the exception of small socially acceptable gifts, and

181 Art. 143, CC.
182 Art. 142, para. 1, Art. 144 para. 4, CC.
183 Diaconescu and Vasilescu, 2022, pp. 110–111.
184 Art. 144, para. 1, CC.
185 Art. 142, CC.
186 Arts. 124–125, CC.
187 Art. 152, CC.
188 Art. 153, CC.
189 Art. 123, CC.
190 Art. 112, para. 1, CC.
191 Diaconescu and Vasilescu, 2022, 117–118.
192 Art. 41, para. 1, CC.
193 Art. 146, para. 1, CC.

they cannot guarantee for the obligations of another person with their estate (Art. 146, para. 3 CC).[194]

2.2.2. Independent legal declarations of incapacitated children or children who have limited capacity to act

Even fully 'incapacitated' children under the age of 14 can still legally consent by themselves to two types of contracts: contracts that ensure the preservation of their rights or assets, such as contracting repairs for a building that is in imminent danger of collapsing, and 'current' contracts for disposing of assets of limited value with prompt execution, such as buying candy or a bus ticket (Art. 43, para. 3 CC).[195] Children between 14 and 18 years of age can conclude by themselves the same contracts that are allowed for their younger peers, such as contracts for the preservation of rights or assets, current sales, or exchanges of limited value with prompt execution; however, they can also independently conclude contracts for the management of their estate if these contracts are not prejudicial to him or her, for example, renting out property that they do not currently use.[196]

2.2.3. Privileged status of the family home property in the family (matrimonial) property law

The family home has had a special legal status in Romanian law since 2011, which is the same no matter the choice of the spouses' matrimonial property regime. A family home is defined as the joint dwelling of the spouses and, if they do not live together, the dwelling where the children reside[197]. Even a rented house or apartment can have the status of a family home, although this status is most significant for dwellings that belong to either one or both spouses. This special legal status of the family home is available only for married couples and only for their main residence, not for a secondary dwelling. Difficulties in determining a family home arise when the spouses live separately and do not have children or both of them have children residing with them.[198]

Even if they are the sole owner, neither spouse can transfer their rights to the family home or conclude any contracts that could affect the use of said home without the written consent of the other.[199] A spouse also may not move furniture or decorations out of the family home without the written consent of the other spouse. If consent is refused without a valid reason, the aggrieved spouse can require the prior

194 Diaconescu and Vasilescu, 2022, pp. 101–105.
195 Diaconescu and Vasilescu, 2022, p. 111.
196 Diaconescu and Vasilescu, 2022, pp. 102–103.
197 Art. 321, CC.
198 Florian, 2022, pp. 127–131; Avram, 2022, pp. 624–625; Nicolescu, 2021, in Baias et al. (eds.), pp. 418–420.
199 Art. 322, para. 1, CC.

authorisation of the family court to act alone. All acts concluded in defiance of the special family home regime are either voidable (if the third party with whom the contract is executed is aware of the special status of the home) or can lead to liability for civil damages from the contravening spouse.[200]

2.2.4 The right of the (minor) child to use his or her own home

The issue of the minor child's residence is extensively regulated in Romanian law, both in the Civil Code and in Law no. 272/2004. The basic rule is that underage children reside with their parents;[201] if the parents do not live together, they jointly decide the child's residence[202]. If the parents disagree about the child's residence, the guardianship court makes the decision after hearing the opinions of the parents, children above 10 years of age, and the 'psycho-social' investigation of the local authorities (Art. 496, para. 3 CC; Art. 21, para. 1 L. 272/2004).[203] Changes in a child's habitual residence made by one parent require the other parent's prior consent if this affects parental authority or the exercise of parental rights (Art. 497, para. 1 CC).[204]

The legal criteria for choosing a child's residence at one of his or her parent's houses are spelled out in Art. 21, para. 1 of Law No. 272/2004, which also stipulates the general criteria for the primacy of the best interests of the child. These criteria comprise the availability of each parent to involve the other in the decisions regarding the child and to respect the other's parental rights, the availability of each parent to allow the other to maintain personal relations with the child, the habitation status of each parent for the 3 years prior, the history of parental violence toward the child or other people, and the distance between each parent's residence and the child's educational institution.[205]

In divorce proceedings, a minor child's residence is one of the issues that must necessarily be resolved simultaneously with the dissolution of marriage itself, both in divorces at the notary's office[206] and judicial divorces.[207] In the absence of parental agreement upon the child's future residence after a divorce, the criteria for establishing the child's stable residence at one of his or her parents' dwellings is the generic 'best interests of the child' (Art. 400, para. 2 CC).[208]

The primacy of the best interests of the child also becomes relevant in adjudicating disputes between divorcing spouses about awarding the benefit of the rental agreement or the continued use of the jointly owned former matrimonial

200 Florian, 2022, pp. 131–137; Avram, 2022, pp. 631–639; Nicolescu, 2021, pp. 422–427.
201 Art. 496, para. 1, CC.
202 Art. 496, para. 2, CC; Art. 36, para. 3, Law No. 272/2004.
203 Florian, 2022, pp. 556–557; Avram, 2022, pp. 441–444.
204 Florian, 2022, pp. 558–559.
205 Florian, 2022, pp. 370–371; Avram, 2022, pp. 445–448.
206 Art. 375, para. 2, CC.
207 Art. 919, para. 2, Code of Civil Procedure.
208 Avram, 2022, p. 237.

residence. Art. 324 of the CC stipulates that the best interests of underage children are the foremost criteria for awarding the right to continue to reside in the former matrimonial home, which may be either rented from a third party or jointly owned, to one of the spouses after the divorce. If this former matrimonial home is jointly owned, the right to the exclusive use of this property, which is granted to one of the spouses, lasts until the final division of communal property by judicial decision.[209]

2.2.5 Consideration of movable property in a child's sole ownership or use in property division disputes between former spouses or partners

Contemporary Romanian law, including the prior family law regulations of the post-war period, has always regarded the independence of the parents' and children's estates as a private law principle. The current Art. 500 of the Civil Code stipulates that a parent has no right upon the assets of a child and that a child has no right upon their parents' assets, with the sole exceptions of the (reciprocal) right to inheritance and the right to receive maintenance.[210] Bearing in mind this principle of estate separation between parents and children, movable property in the sole ownership of the child can play no part in property division disputes between parents, whether they are married or in a consensual life partnership.

On the other hand, movable assets that are not the property of the child but only in his or her use could be entangled in property division disputes between parents. Nevertheless, their fate will be decided with scant regard to their usefulness for the child because Art. 988 of the Code of Civil Procedure includes only the following criteria for asset division: the parties' agreement, share size, the nature of the assets, the parties' domicile and occupation, and prior improvements to the property. As both parents have a duty to provide for their children, the final outcome of a property division dispute should have no negative influence on the child as long as the relevant movable asset merely becomes the exclusive property of one, instead of both, parents.

2.2.6 Costs and expenses for the care and maintenance of a minor child in the property contracts of parents who have agreed on a total separation of property

Romanian family law recognises only three matrimonial property regimes, one of which is the separation of property between spouses. Even if this regime implies the least solidarity between spouses, with usually no common assets, the law still provides for some joint liabilities as an exception to the general rule encompassed in Art. 364, para. 1 of the Civil Code that neither of the spouses is liable for debts incurred by the other. Para. 2 of the same provision stipulates that spouses are jointly

209 Florian, 2022, p. 138.
210 Florian, 2022, pp. 551, 566.

liable for debts incurred by either of them in regard to 'usual matrimonial expenses' and 'expenses for child-rearing and education'.[211]

This chapter of the Civil Code lays out other provisions in the same vein regarding parental rights and duties. Art. 499, para. 1 of the Civil Code states that both parents are jointly liable for their child's maintenance, including his or her upkeep, education, learning, and professional training. Even parents who have lost the exercise of their parental rights as punishment for mistreating the child must still provide maintenance for said child (Art. 510 CC).[212]

2.3. Family law issues relating to the establishment of family status, with particular reference to the interests of the child

2.3.1. Legal facts giving rise to paternity status

2.3.1.1. Presumption of paternity based on marriage

Given that marriage as a legal construct in Romania has always implied a duty to be faithful to one's spouse[213], paternity is legally attributed to the mother's spouse. This marriage-based legal presumption of paternity is two-pronged: a child either born or conceived during marriage is presumed to be the offspring of the mother's husband (Art. 414, para. 1 CC).[214]

The presumption based on conception during marriage must be corroborated with another legal presumption regarding the timeframe of conception. Art. 412, para. 1 of the Civil Code states that a child is presumed to have been conceived between the 300th and 180th day before birth. The law allows for rebuttal or narrowing down the timeframe of conception only by means of scientific proof.[215] This prong of the legal presumption means that, no matter what happens to the mother's marriage after the timeframe when conception is possible, (e.g. divorce, annulment, or the husband's death), the child is considered to be the (former) husband's offspring.[216]

If the child is born during his or her mother's marriage, the mother's husband is presumed to be the father. This is the case even if the marriage is not valid (either void or voidable) because this lack of validity does not affect any children born[217] as the rights and duties between parents and children of an invalid marriage are similar to those in the case of divorce (Art. 305, para. 2 CC).[218]

211 Florian, 2022, p. 275; Avram, 2022, p. 763.
212 Florian, 2022, p. 562; Motica, 2021, p. 303.
213 Art. 309, para. 1, CC.
214 Florian, 2022, p. 413.
215 Art. 414, para. 2, CC.
216 Florian, 2022, pp. 412–414; Motica, 2021, pp. 200–201.
217 Art. 305, para. 1, CC.
218 Florian, 2022, pp. 92–93.

2.3.1.3. Presumption of paternity based on human reproduction

Issues regarding paternity in cases of medically-assisted reproduction with a third-party donor are regulated by Arts. 441–444 of the Civil Code. Art. 441 states that no legal filiation and no liability can be established with the third-party donor in cases of medically-assisted human reproduction with a third-party donor.[219] For this procedure, both intended parents, either married or unmarried (but who must be a man and a woman or a single woman) have to consent before a notary (Art. 442, para. 1, corroborated with Art. 441, para. 3 CC).[220] This consent has no legal meaning if one of the parties dies or if they separate or petition for divorce before the medically-assisted conception is carried out (Art. 442, para. 2 CC). The consent to this procedure can be unilaterally revoked, in written form, even in front of the physician tasked to carry out the procedure.[221]

Although there are no direct provisions in this section of the Civil Code regarding the presumption of paternity of the husband, there is a provision that the child's filiation cannot be challenged by anyone for reasons pertaining to the medically-assisted reproduction;[222] thus, it is inferred that regular presumptions of paternity may apply. The mother's husband could challenge the paternity in cases of medically-assisted reproduction only if he did not consent to the procedure,[223] whereas if conception had taken place outside the medically-assisted procedure, the regular provisions regarding paternity challenges would fully apply (Art. 443, para. 3 CC).[224]

If the man consenting to the reproductive procedure is the mother's consensual partner, paternity is established either by extrajudicial acknowledgement from the father or, if the male partner refuses after having previously consented to the procedure, by judicial establishment of paternity,[225] which in this case is based solely on consent, not on the biological facts of conception.[226]

2.3.1.5. Full acknowledgement of paternity

The specific acknowledgement of paternity in Romanian family law is necessary only for children both conceived and born outside of marriage or, for children either conceived and/or born during the mother's marriage, if their paternity had previously been successfully challenged by the mother's husband or former husband. These children are deemed to be 'children born out of wedlock' and, thus, their paternity can be extrajudicially acknowledged by any man by means of a formal declaration

219 Florian, 2022, p. 475.
220 Avram, 2022, p. 310.
221 Art. 442, para. 2, CC.
222 Art. 443, para. 1, CC.
223 Art. 443, para. 2, CC.
224 Florian, 2022, pp. 476–477.
225 Art. 444, CC.
226 Florian, 2022, pp. 478–480; Avram, 2022, p. 311.

either at the civil registrar's office, at a notary's office, or by a declaration contained in their last will and testament but that, exceptionally, has immediate effect (Art. 416, para. 1 CC).[227] Even a deceased child's paternity can be acknowledged, but only when the child had their own biological descendants, thus precluding false acknowledgements made with the sole purpose of inheriting the dead child's estate (Art. 415, para. 3 CC).[228]

As paternity is so easy to acknowledge outside a judicial process, the truthfulness of this acknowledgement can be challenged in court at any time and by any person with a personal interest in the matter.[229] If the parties bringing the challenge are either the mother or the acknowledged child, the usual burden of proof is reversed, and the respondent (the acknowledging father) must prove that his declaration is accurate (Art. 420, para. 2 CC).[230]

2.3.1.6. Judicial establishment of paternity

In Romanian law, the judicial establishment of paternity, in the wider sense, can arise either for children 'born out of wedlock'[231] (directly both born and conceived outside of marriage or with a prior successfully challenged presumption of paternity) or because the challenge to the presumption of paternity itself can lead to a judicial decision about paternity. The narrow meaning of the judicial establishment of paternity is reserved for children 'born out of wedlock' if their father does not voluntarily acknowledge their paternity by an extrajudicial formal declaration[232]. The plaintiff in paternity establishment cases is always the child, who can be represented either by their mother, even if she is a minor, or by any other legal representative, such as a legal guardian appointed by the court.[233] These suits can also be brought or continued by the child's heirs[234] or can be directed against the alleged father's heirs (Art. 425, para. 3 CC).[235]

During such paternity suits, if there is proof that the alleged father cohabited with the mother during the timeframe when conception is considered legally possible, the burden of proof will be reversed from the norm, and the defendant's paternity is presumed.[236] The alleged father can still rebut this presumption during the trial, but only by proving that it is impossible for him to be the father (Art. 426, para. 2).[237]

227 Florian, 2022, pp. 442–446; Avram, 2022, p. 297.
228 Avram, 2022, p. 297.
229 Art. 420, para. 1, CC.
230 Florian, 2022, pp. 448–449.
231 Avram, 2022, p. 298.
232 Art. 424, CC.
233 Art. 425, para. 1, CC.
234 Art. 425, para. 2, CC.
235 Florian, 2022, pp. 451–453.
236 Art. 426, para. 1, CC.
237 Florian, 2022, pp. 454–455.

There is no statute of limitations for the judicial establishment of paternity during the life of the child[238], and only the child's heirs, if he or she died before bringing the suit, have 1 year after the child's death to bring the suit in his or her name[239].

Paternity trials can also arise when the presumption of paternity in favour of the mother's husband or former husband is challenged. The law restricts the ability to bring paternity challenges to the mother, the child, the mother's husband, or the alleged biological father[240]. The defendant in a paternity challenge legal suit is the child or his or her heirs if the alleged father is the plaintiff; the husband or his heirs if the mother or the child are plaintiffs; and the child and the husband or their heirs if the alleged biological father is the plaintiff[241]. The alleged biological father can only challenge the paternity of the mother's husband or former husband if the plaintiff necessarily proves that he is the true father (Art. 432, para. 1 CC).[242] The statute of limitations for paternity challenges is 3 years for the husband and the mother, whereas there is no statute of limitations for the child or the biological father during their lifetimes.[243]

2.3.2. Conflict in presumptions of paternity

The two legal presumptions of paternity regarding the mother's husband at birth or the mother's former husband at the time of conception could collide if the woman giving birth was married for at least 1 day between the 300th and the 180th day before birth and then remarries with a different husband just before the child's birth.[244] Current law does not specifically provide a ranking of paternity presumptions.[245] However, the anti-chronological way in which Art. 414, para. 1 of the Civil Code is written ('The child *born or conceived* during marriage has the mother's husband as a father') and the tradition of the clearer provision in Art. 53 of the former Family Code of 1953 has led some authors[246] to speculate that the presumption of the paternity of the mother's husband at birth is prevalent and more plausible than the presumption concerning the former husband at the time of conception. Other authors have argued that there is simply no legal preference for any of the current paternity presumptions and that such conflicts can (improperly) be resolved only later by judicial challenges.[247]

238 Art. 427, para. 1, CC.
239 Art. 427, para. 2, CC.
240 Art. 429, para. 1, CC.
241 Art. 429, CC.
242 Florian, 2022, pp. 417–433.
243 Arts. 430–433, CC.
244 Florian, 2022, pp. 414–415.
245 Florian, 2022, pp. 415–416; Avram, 2022, pp. 281–283.
246 Lupașcu and Crăciunescu, 2017, p. 404.
247 Florian, 2022, pp. 415–416; Avram, 2022, pp. 282–283.

2.3.3. Maternity status

Maternal filiation is the result of birth itself but can also be established by acknowledgement or judicial decision.[248] The acknowledgement of maternity is available only for children whose birth has never been registered in the official birth registry or who have been registered as having unknown parents (Art. 415, para. 1 CC).[249] Judicial establishment of maternity is permitted only when there is no medical certificate for the birth or when the truthfulness of the contents of the medical certificate of a live birth is challenged (Art. 422 CC).[250]

In Romanian family law, there is also a so-called '*status by habit or repute*'[251], which is basically a set of factual circumstances that demonstrate family connections between a child and the family to whom he or she purportedly belongs. These include the behaviour of the person toward the child by raising and educating him or her as their own and the reciprocating behaviour of the child toward that person (*tractatus*); the recognition of the child by the family, society at large, and public authorities as 'belonging' to the person considered to be the parent (*fama*); and the child effectively using the name of the person considered to be the parent (*nomen*). The value of this status is that, when it is compliant with the birth registration at the civil registrar's office, it is an almost absolute proof of maternal filiation.[252] Coupled with the birth registration, this status can only be challenged in regard to motherhood if there is a prior judicial decision that there had been a substitution of children or that the registered mother was not the woman who gave birth (Art. 411, para. 3 CC).[253]

The extrajudicial acknowledgement of maternity can be carried out by means of a formal declaration either at the civil registrar's office, at a notary's office, or by a declaration contained in their last will and testament but with an immediate effect.[254]

Maternity suits are also brought about when the maternity resulting from the birth registry is challenged because either the status by habit and repute is not consistent with the status resulting from the birth certificate or when a person only has the birth certificate but not the factual status. Any interested party, including the child, any parent, the person claiming to be the mother or the father of the child, and the heirs of any of these persons can challenge the maternity in these situations, and their claim is not subject to the statute of limitations (Art. 421, para. 1 CC).[255]

248 Art. 408, para. 1, CC.
249 Avram, 2022, p. 263.
250 Florian, 2022, pp. 392–403.
251 Art. 410, CC.
252 Art. 411, para. 2, CC.
253 Florian, 2022, pp. 394–395; Avram, 2022, p. 268.
254 Art. 416, para. 1, CC.
255 Florian, 2022, p. 395.

2.3.4. Adoption

2.3.4.1. Substantive law conditions of adoption

Adoption in Romanian law is usually reserved for children who have not reached full legal capacity.[256] The adoption of persons with full legal capacity is allowed only when they have been previously raised by the adoptive parents during childhood (Art. 455, para. 2 CC).[257] As a condition of adoption, legal doctrine has added that the adopted child must be lacking, temporarily or permanently, the protection of his or her biological parents, or for it to be in the child's best interests not to be left in their care. Although there is no special legal provision in this regard, the right of the child to be brought up by his or her biological parents is a fundamental one, and an 'acceptable' level of parental protection cannot give way to adoption.[258]

The adoption process involves the consent of the biological parents or the child's legal guardian of an adopted child who is at least 10 years old, of the single adopter or the adoptive couple, and of the spouse of the adopter who is not involved the adoption process (Art. 463 CC).[259] Adoptive parents can only be single persons or married couples who have full legal capacity and no psychiatric illnesses or mental disabilities[260]. They must be at least 18 years older than their prospective adoptees, although, for well-grounded reasons, the guardianship court can allow adoptions to proceed when the age gap is at least 16 years[261] between adoptive parents and adopted children. Romanian law does not have a maximum age for adoptive parents.[262]

In order to adopt, prospective adopters must show both moral and material guarantees for raising, educating, and ensuring the development of the adopted child. These prior conditions are verified and certified by state authorities (Art. 461 CC, Art. 13 L. 273/2004).[263]

Simultaneous or successive adoptions by two different persons are usually not allowed, with married couples[264] and stable consensual heterosexual couples who have raised the adopted child together for at least 5 years[265] being the only exceptions. Successive adoptions are also allowed when the previous adoption ceased for any reason or when the previous adoptive parents have died, and a new adoption is authorised.[266] Two persons of the same sex cannot both adopt the same child

256 Art. 455, para. 1, CC.
257 Florian, 2022, pp. 492–494.
258 Florian, 2022, pp. 494–495.
259 Florian, 2022, pp. 496–498; Avram, 2022, pp. 332–336.
260 Art. 459, CC.
261 Art. 460, CC.
262 Florian, 2022, pp. 502–503, 508.
263 Florian, 2022, pp. 503–504; Avram, 2022, pp. 337–338.
264 Art. 462, para. 1, CC.
265 Art. 6, para. 2c, Law No. 273/2004 on adoption procedure.
266 Art. 462, para. 2, CC.

together,[267] nor can they adopt the biological or previously adopted child of another same-sex parent (Art. 6, para. 2c L. 273/2004).[268]

Brothers and sisters cannot adopt one another under any circumstances (Art. 457 CC);[269] however, when they are the adoptees, they must be adopted together, except in cases when this is not in their best interests.[270]

Romanian law also forbids the adoption of spouses or former spouses together by the same adoptive parent, as well as adoption between spouses or former spouses when one current or former spouse would become the adoptive parent of the other (Art. 458 CC).[271]

2.3.4.2. Types of adoption

Since 1997, adoptions in Romania have exclusively been full-effect adoptions, where biological family links are fully extinguished (with the sole exception of the adoption of the other spouse's biological child, when links to one side of the family endure) and the child becomes related to the adopters' entire family in a similar manner to a biological child. However, from a procedural standpoint, there are different types of adoption: standard adoptions and simplified adoptions, as well as internal and international adoptions.

The standard adoption process involves three judicial stages: authorising the opening of the adoption procedure, granting provisional custody of the adoptee, and final authorisation of the adoption. These stages are intermingled with three administrative stages: drafting the child's individual protection plan, evaluating the general suitability of the prospective adoptive parents, and matching the adoptee with a prospective adoptive family after the procedure is opened.[272] Simplified adoptions involve just the final judicial stage but are reserved only for the adoption of a fully capable person by the person or couple that raised him or her during childhood, for the adoption of the other spouse's biological child, and for the adoption of the other spouse's or long-term, different-sex, consensual partner's previously adopted child.[273]

2.3.4.3 The legal effects of adoption

Adoption in Romania is effective only after the judicial decision authorising the adoption is final.[274] The main effect of adoption is to create familial connections between the adoptee, the adopters, and the adopters' families, while at the same time

267 Art. 462, para. 3, CC.
268 Florian, 2022, pp. 508–509.
269 Florian, 2022, p. 507.
270 Art. 456, CC.
271 Florian, 2022, pp. 507–508.
272 Avram, 2022, p. 348.
273 Florian, 2022, pp. 510–518.
274 Art. 469, CC.

extinguishing the family relations between the adoptee and his or her descendants, on one side, and the biological parents and their relatives on the other.[275] This extinction is partial if the biological or adoptive child of one spouse is adopted by the other spouse, in which case, only the familial connections between the adoptee and one biological parent and their side of the family cease to exist.[276]

An adopter has the same rights and duties toward an adopted child as a biological parent toward their child.[277] Adoptees also have the same rights and duties toward their adoptive parents as any child in regard to his or her biological parents (Art. 471, par. 3 CC).[278] These rights include the reciprocal right to inherit after the other person's death and the reciprocal duty to provide maintenance for the relative in need if they have the means and there are no other priority providers.[279]

Adoption has a consequence for the adoptee's surname because they receive, by default, either the adopter's surname or the adoptive couple's common surname. If the adoptive couple has no common surname, they must decide which of their distinctive surnames will be used for the child.[280] Only for well-grounded reasons, and solely by special request from the adopter or the adoptive couple, can the adoption court authorise a change in the child's given name. If the child is at least 10 years old, his or her consent is needed for any changes to his or her given name (Art. 473, para. 3 CC).[281]

After an adoption is final, the adoptee receives a new birth registration at the civil registrar, where the adoptive parents are written in as biological parents, while preserving the old birth registration with a side note about the issuance of the new one (Art. 473, para. 5 CC).[282]

2.3.4.4. Rights of the birth parent and birth grandparents

Birth parents have legal rights only during the adoption process: their consent is required at the first stage, when the court authorises the beginning of the process (Art. 463, para. 1a CC). Their consent must be freely given, but only after having received counselling about the effects of adoption, especially regarding the end of any familial relations with the child (Art. 465 CC). The biological parents' consent to adoption can be given at least 60 days after the child's birth and can be freely revoked for a maximum of 30 days after it was given (Art. 466 CC). The adoption court can ignore the biological parents' refusal to consent to adoption only in exceptional circumstances when there is proof that their refusal is made in bad faith

275 Art. 470, CC.
276 Florian, 2022, pp. 525–526; Avram, 2022, pp. 361–362.
277 Art. 471, para. 1, CC.
278 Avram, 2022, p. 362.
279 Avram, 2022, pp. 526–527.
280 Art. 473, paras. 1 and 2, CC.
281 Florian, 2022, pp. 528–529; Avram, 2022, p. 362.
282 Florian, 2022, p. 529; Avram, 2022, p. 362.

and without valid reason, but only if the adoption is in the best interests of the child (Art. 467 CC).

Birth grandparents have no specific rights during the adoption process, and all their grandparents' rights cease to exist when the adoption is final. Both the parents and other biological relatives have the right to obtain general information about the adoptee, confirmation about the adoption, the year when it was finalised, whether it was an international or domestic adoption, and whether the adoptee is known by the authorities to be alive or deceased. Any other information can be provided to the biological family only with the consent of the fully capable adoptee or with the consent of the adopters for an underage adoptee (Art. 80 L. 273/2004).[283]

2.3.5.2. Rights of future grandparents

The future grandparents of an adopted child become related to this child after the adoption is finalised. These familial connections imply the reciprocal rights to inherit and to maintenance. In a similar manner to other relatives or unrelated people who have previously factually enjoyed some sort of family life with the adoptive child, grandparents have the right to maintain personal relations with this child. These rights can be terminated only by court decision if there are well-grounded reasons relating to the endangerment of the physical, psychological, intellectual, and moral development of the child (Art. 17, para. 3 L. 272/2004).

Children who are at least 14 years of age must be asked to consent to the programme of maintaining personal relations with these other persons with whom they have previously had a family life. However, the court can overrule the minor's rejection and still order a schedule for personal connections with these people (Art. 17, para. 6 L. 272/2004).[284]

2.3.4.6. The adopted child's right to know his or her parentage

The legal principle stated by Art. 474 of the Civil Code establishes that all the information regarding an adoption is confidential. Law no. 273/2004 on the adoption procedure specifically allows adoptees to know their origins and past and to receive support for contacting their biological parents and relatives (Art. 75 L. 273/2004). The same law states that adoptees who are fully legally capable have the right to obtain information about their place of birth, institutional trajectory, and personal history, without divulging the identity of their birth parents and biological relatives (Art. 76 L. 273/2004). Only once they become fully capable adults do adoptees need specific court authorisation to obtain the available data from the public authorities about the identity of their biological parents and relatives (Art. 77, para. 1), although this access is conditional on attending at least one

283 Florian, 2022, p. 531.
284 Avram, 2022, p. 477.

counselling session and proving that they are emotionally stable (Art. 77, para. 2 L. 273/2004).[285]

Adopters have a duty to gradually inform a child that he or she is adopted, starting as early as possible (Art. 81, para. 1 L. 273/2004). The identity of the biological parents can be revealed prior to full legal capacity only for medical reasons (Art. 81, para. 2 L. 273/2004). Adoptees who already have information about the identity of their biological parents can ask the National Adoption Authority to facilitate contact with their biological parents and relatives (Art. 81, para. 3 L. 273/2004).[286] All the relevant information about the adoption, the child's origin, the biological parents' identity, and the child and his or her family's medical history must be kept for at least 50 years after the judicial decision to authorise the adoption is final (Art. 83 L. 273/2004).[287]

2.3.4.7. Place and role of (social) organisations promoting adoptions

Romanian law authorises private organisations to have a role in the adoption process (Government Ordinance no. 233/2012). These private entities can be any type of not-for-profit organisations, but they must be authorised for 2-year terms by the National Authority for the Protection of the Rights of the Child and Adoption. To exercise their authorised activities, these non-governmental organisations (NGOs) have to work together with the county-level General Directorates for Social Assistance and Child Protection. These private entities can work either for the benefit of the children who were or are about to be adopted, for the adopters, biological parents and the extended family, or the local community at large (Art. 16 G.D. no. 233/2012).

In relation to children who have been or are about to be adopted, these private organisations can provide information and counselling about the adoption process and the child's right to express their consent or opinions about the adoption, facilitate the child's familiarisation with the adoptive family, help children cope with the failure to find suitable adoptive families or the ceasing of an adoption for any reason, and collate informative materials for children about adoption and its effects (Art. 17 G.D. no. 233/2012).

Adoption NGOs can also help adoptive parents by informing them about the paperwork, process, and duration of adoption; preparing them to knowingly assume their parental roles; informing and counselling them about the legal requirements to reveal the identity of the adopted child's biological parents and allow the child to contact his or her biological parents and relatives; and assisting them with the post-adoption follow-up activities required by law. These NGOs can also evaluate adopters or the adoptive family in order to receive the adopter certification (Art. 18 G.D. no. 233/2012).

285 Florian, 2022, pp. 528–529; Avram, 2022, p. 363.
286 Florian, 2022, p. 530; Avram, 2022, p. 364.
287 Florian, 2022, p. 531.

In relation to the biological parents and extended family of an adopted child, private social organisations can provide specialised assistance if the adoption ceases, as well as counselling and preparing the biological parents and other biological relatives to come into contact with the adopted child (Art. 19 G.D. no. 233/2012).

Private social organisations that specialise in adoption can also be an invaluable resource for the community at large, raising awareness and promoting the domestic adoption process and the issues and needs of the parties involved in adoptions, thus helping to increase the number of successful national adoptions. These NGOs can organise meetings, conferences, workshops, media campaigns, printed materials, and any other services to promote national adoptions (Art. 20 G.D. no. 233/2012).

2.3.4.8. Follow-up of adoptions

Regular-type domestic adoptions are monitored for at least 2 years after the judicial decision to authorise the adoption is final. This monitoring aims to follow up on the evolution of the adopted children and their relationships with the adoptive parents in order to fully integrate adoptees in their new families and ensure the early detection of difficulties that might arise. Post-adoption monitoring is not carried out for adoptions by spouses of the biological or adoptive parent or for adoptions by a previous legal guardian, extended family, or former foster parents of at least 2 years (Art. 95 L. 273/2004).[288]

For national adoptions, follow-up is carried out with reports prepared every 3 months by the county-level General Directorates for Social Assistance and Child Protection for at least 2 years. Adopters have a duty to cooperate with the authorities in the creation of these reports and inform them about any change of domicile or structural changes within the family (Art. 96 L. 273/2004). For international adoptions or when children from a national adoption move abroad with their families, post-adoption surveillance is carried out, upon the request of the National Authority on Adoptions, by the authorised foreign social services in the new country of residence (Arts. 97–98 L. 273/2004). Adoption follow-up also involves support activities and specialised assistance for the needs of the adoptee and the adopters, such as providing information, counselling, and training for developing parental abilities; organising support groups for children and parents; supporting parents in informing the child about their adoption; counselling the adoptee in regard to learning the identity of their biological parents and relatives; and counselling and preparing the adoptee and his or her biological parents and relatives prior to meeting (Art. 99 L. 273/2004). The duration of the follow-up monitoring can be extended if the adopters do not attend the support activities or if they do not inform the adoptee about being adopted (Art. 100 L. 273/2004).[289]

288 Florian, 2022, p. 518.
289 Florian, 2022, pp. 518–519; Avram, 2022, pp. 388–389.

2.4. Maintenance of a relative

2.4.1. General conditions for the maintenance of a relative

Family legal maintenance in Romanian law exists between spouses and former spouses, direct blood relations, siblings, and other people specifically required by law (Art. 516 CC). These other persons include stepparents who have previously voluntarily paid for the maintenance of a minor if his or her biological or adoptive parents are deceased, missing, or themselves in need (Art. 517, para. 1 CC); a child who received maintenance from a stepparent for at least 10 years (Art. 517, para. 2 CC); the heirs of a person who has, either voluntarily or by legal duty, paid maintenance for a minor if the parents are deceased, missing, or themselves in need (Art. 518, para. 1 CC); and a person who has taken in a foundling until a more permanent protection measure is established (Art. 16, para. 2 L. 272/2004).[290] Romanian law allows for maintenance from relatives or spouses for people who are considered 'in need' because they cannot support themselves through their work or assets (Art. 524 CC).[291]

In order for a person to be compelled to pay maintenance, they must have the means to provide for another or at least have the capacity to obtain those means (Art. 527, para. 1 CC). Relevant means are incomes and assets, as well as the debtor's potential to obtain income and assets (Art. 527, para. 2 CC).[292] Another implicit requirement is that that there should not be another relative with a higher priority duty to pay maintenance for the same creditor.

2.4.2. Different interpretations of 'dependency' for minors and adults

For adults, 'dependency' or a 'state of need' refers to the person's inability to obtain, by his or her own means, the necessities for daily living such as food, clothing, dwelling, and healthcare. Adults in need are those that have no work income or rent from assets and no disposable assets that can be sold. Current law does not establish a causal connection between dependency and the inability to work. Dependency does not have to be total, and people receiving invalidity or old age pensions can still claim maintenance if these social benefits are insufficient. Adult dependency is still most often the result of the inability to work caused by illness, infirmity, or old age, but the receipt of legal maintenance is also correlated to the creditor's lack of marketable assets.[293]

Underage children receiving maintenance from their parents are considered legally 'dependent' if they cannot support themselves through their work income, without regard to their assets (Art. 525, para. 1 CC). Selling the child's assets in order

290 Florian, 2022, pp. 600–601; Irimia, 2021, in Baias et al. (eds.), pp. 692–694.
291 Irimia, 2021, pp. 698–699.
292 Irimia, 2021, pp. 702–703.
293 Florian, 2022, pp. 604–605; Avram, 2022, pp. 519–521.

to provide for his or her upkeep is permitted only in exceptional circumstances, for non-essential assets and with prior authorisation from the guardianship court, if the parents cannot provide for the child's maintenance without endangering their own existence (Art. 525, para. 2 CC).[294]

Adult children can receive maintenance from their parents for the duration of their studies, be they university, secondary, or any other post-secondary education, but only up to the age of 26 years (Art. 499, para. 3 CC). The implied requirement is that these adult children do not have the necessary means, either income or assets, to support themselves and cannot obtain them by themselves. Working adult children will receive no maintenance payments from their parents even if they are still studying, and adult children receiving full support from their educational establishment (such as boarding, meals, clothes, and scholarships from a military academy) will receive only partial payments from their parents for their unfulfilled needs. Adult children still living with their parents and who are provided with maintenance in kind are not entitled to monetary payments.[295]

In regard to adults, or children requiring maintenance from other relatives or people other than their parents, dependency is a function of both income and assets, with special consideration given to the adult's capacity to work for a living (Art. 524 CC). Both dependency and the means of the debtor can be proved by any means allowed by law (Art. 528 CC).[296]

2.4.3. Different interpretations of 'lack of merit' for minors and adult children

All individuals who fulfil the basic legal requirements to receive maintenance from their relatives, spouses, or other persons can have their demands rejected for 'unworthiness'. Unworthiness to receive maintenance can arise from serious deeds committed against the debtor, which are either against the law or in conflict with good morals (Art. 526, para. 1 CC). Even minors can lose the right to maintenance, but only if they have the mental capacity to be aware of the grievous nature of their deeds. Romanian judicial practice has decided that underage children who refuse to visit their maintenance-paying parent do not lose their maintenance if their tender age, mental capacity, and potential to be swayed by other people preclude the deliberate nature of their deeds. Qualifying grievous deeds would include criminal acts against their debtor, cruelty, or serious defamation or insults.[297]

Adult children are more likely to be disqualified from receiving maintenance if their deeds against their parents are objectively serious, even if they comprise only negligence and not malicious intent.[298] The refusal of an adult child to have personal

294 Florian, 2022, pp. 605–606, 625–626.
295 Florian, 2022, pp. 606, 629–631.
296 Florian, 2022, p. 606.
297 Florian, 2022, pp. 617–618; Avram, 2022, p. 521.
298 Florian, 2022, p. 618.

relations with the parent paying maintenance has not been considered in judicial practice to qualify as grounds for denying maintenance.[299]

A separate tier of limited maintenance, which only covers subsistence, is reserved for those who are in need as a result of their own negligence (Art. 526, para. 2 CC). In this situation, the debtor's right to receive maintenance payments is not completely lost but only severely limited.[300]

2.4.4. Different interpretations of the 'capacity of the parent' as a condition in proceedings to establish the maintenance of a minor or adult child

When the debtor is considered a parent with regard to paying maintenance for a minor or an adult child, their capacity to pay is valued the same way as for other maintenance situations, taking into account both the actual material means and the potential means of the debtor (Art. 527, para. 1 CC). Relevant means include both income and assets, actual and potential. The debtor's other obligations are also taken into consideration (Art. 527, para. 2 CC).[301]

The case law in relation to maintenance has ruled that the income of the debtor refers to work income (salary), other regular wages, pensions, unemployment benefits, and any regular work-related bonuses, but does not include occasional bonuses related to travel, transfer, or difficult work conditions. Some special incomes cannot be legally garnished and are, thus, excluded as means to pay maintenance, including state childcare allowances, maternity allowances, and scholarships. The debtor's means include any assets that are not strictly necessary and can be sold. For those debtors who are capable of working but have no proven work income, their potential income is presumed to be the minimum wage in the country of habitual residence, be it Romania or abroad. The debtor's means do not include his or her spouse's or other relative's incomes.[302] Those parents who lack the means to pay maintenance and have well-grounded reasons not to work, such as a serious illness or full-time studies, cannot be compelled to pay maintenance.[303]

2.4.5. Factors determining the amount of maintenance owed by parents

One of the biggest factors that influence the amount of maintenance payments for children in Romania is the legal limit specified by law for parents paying for their children. This limit is one-quarter of the parent's monthly income, after taxes, for one child; one-third for two children; and one-half for three or more children (Art. 529, para. 2 CC). Maintenance owed by a single person to their own children and any

299 Avram, 2022, p. 522
300 Florian, 2022, p. 617.
301 Avram, 2022, p. 523.
302 Florian, 2022, pp. 606–608; Avram, 2022, pp. 523–525.
303 Florian, 2022, pp. 609–610; Avram, 2022, pp. 524–525.

other entitled persons cannot surpass one-half of their monthly income after taxes (Art. 529, para. 3 CC).[304]

The broad legal criteria for determining the amount of maintenance, in all situations, are both the needs of the creditor and the means of the debtor (Art. 529, para. 1 CC). Maintenance can be either a fixed sum or a percentage of the debtor's income (Art. 530, para. 3 CC). Fixed-sum payments are adjusted every 3 months according to inflation (Art. 531, para. 2 CC). Payments are decided either by the parents' agreement or by court decision. If the court decides the maintenance payments, they are normally owed from the date of filing the court petition (Art. 532, para. 1 CC). Creditors can receive retroactive payments prior to filing the court petition, only if they prove that deceit by the debtor convinced them to delay filing for maintenance (Art. 532, para. 2 CC).[305]

Judicial practice usually decides maintenance payments for children at the maximum legal level for all low- and middle-income debtors. In 2023, the monthly minim wage in Romania, after taxes, was approximately 380 Euros, and the average after-tax salary was around 800 Euros. This totals, for a single child, a monthly maintenance payment of 95 Euros for a minimum-wage parent and 200 Euros for a middle-income parent, both of which are clearly insufficient when adjusted to the normal cost of living. Romanian case law frequently disregards the debtor's other obligations, such as credit card or bank loan payments, with the sole exception of other maintenance payments, when deciding the child's maintenance. Only for high-income debtors is there a certain regard to their other obligations if they can still provide a decent childcare monthly payment of at least 400–600 Euros without using the maximum ratio allowed by law.

Although, in theory, all the means available to the creditor are relevant in deciding the debtor's obligations, the modest amount of childcare tax credits, social benefits, and state child allowance (usually less than 60 Euros per month after 2 years of age for the latter) make them frequently irrelevant in judicial practice when compared to the cost-of-living expenses in the country.

2.4.6. Recovery of maintenance

Maintenance can be recovered if it is proven that previously paid maintenance, whether it was voluntarily paid or judicially enforced, was not actually owed for any reason. Recovery can be demanded from the individual who received it, as well as the person who had the actual duty to pay on the basis of unjust enrichment (Art. 534 CC).[306] These types of cases fall into two broad categories: when the creditor is later found not to be legally entitled to receive maintenance from any person (an 'undeserved' payment) or when the creditor has received payment from the wrong

304 Florian, 2022, pp. 612, 626; Avram, 2022, pp. 525–526.
305 Florian, 2022, pp. 612–613, 626–628.
306 Florian, 2022, p. 619; Irimia, 2021, pp. 707–708; Avram, 2022, p. 528.

debtor, usually because there was another person with a higher priority duty to pay. Recovery is not owed when maintenance was paid as a gift, without considering it a legal obligation.[307]

Cases of maintenance recovery are extremely rare in judicial practice, one of the reasons being that the person who must pay back the maintenance is usually an underage child who is practically insolvent and, therefore, lacks the financial means to make restitution.

As maintenance is also owed according to the debtor's material status, when it has been wrongly paid for another person of lesser means, restitution would only be to the amount that the 'true' debtor would have been compelled to pay, according to his or her unjust enrichment. This means that a person of higher means will only partially recover what they have paid.[308]

2.4.7. Maintenance and grandparents

In regard to maintenance between grandparents and grandchildren, the obligation is reciprocal in Romanian law because they are direct-line descendants and ascendants (Art. 516, para. 1 CC). Grandchildren can seek maintenance from their grandparents if the creditors have no spouses or their own descendants who can pay, but only if their parents and siblings are also non-existent or unable to pay for their maintenance (Arts. 519, 522 CC). Grandparents, in contrast, can demand maintenance from their own grandchildren only if their spouse or children cannot provide it.[309]

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3. Importance of assisted reproductive technologies in solving demographic problems in Romania

3.1. The rapid increase in the number of infertile couples in Romania – facts and trends

Infertility statistics in Romania have been collected in two sampling/polling studies, which were carried out in 2018 and 2023 by the Romanian Association for Human Reproduction. The 2018 poll was conducted online with 4,680 respondents. Among them, 3,331 were considered the fertile demographic contingent, including women between 25 and 45 years of age and men between 25 and 60 years of age who were in relationships with partners in the appropriate age range. Of these,

307 Irimia, 2021, p. 708.
308 Ibid.
309 Florian, 2022, pp. 600–602; Irimia, 2021, p. 692; Avram, 2022, p. 516.

16.8% were affected by infertility, either at the time of the survey or previously. Taking into account only those who wanted children as soon as possible (29.1%), the percentage of couples who had failed to have a child despite trying for 1–5 years was 27%, and a further 11% had been trying for a child for more than 5 years. [310]

The 2023 follow-up study on infertility in the urban environment reached similar conclusions. Among the respondents, 18% of pregnancies between 2018 and 2023 were the result of some form of fertility treatment. Further, 17.1% of the responding couples either were still or had been in an infertility situation. Only 21% of the interviewed couples wanted a child as soon as possible. Of these, 40% had been trying unsuccessfully for children for 1–5 years, and 10% had been trying for more than 5 years. Between January and February 2023, 23% of extant pregnancies were the result of fertility treatments. From 2018 to 2023, there were about 102,000 successful fertility treatments.[311]

3.2. Causes of infertility

Infertility is caused by factors affecting both women and men. For women, the most common medical issues causing infertility are vaginal infections, endometriosis, obstructed or surgically removed tubes, lack of ovulation, a high level of prolactin, polycystic ovaries, uterine fibrosis, side effects of medication, and thyroid issues. For men, the medical issues relate to a lack of sperm cells, a reduced number of sperm cells, reduced mobility or structurally deficient sperm cells, and genetic disease. Other issues affecting fertility are related to lifestyle, such as nutrition, stress, radiation exposure, or exposure to toxic factors.[312] For women below 35 years of age, infertility is medically defined as not having conceived after 1 year of vaginal sexual activity without contraception.[313]

3.3. Treatment of infertility

In Romania, assisted reproductive procedures (ARPs) are disparately regulated mainly by the Civil Code of 2009, the Law on Healthcare Reform no. 95/2006, the Law on the Rights of the Patient no. 46/2003, and lower-level regulations such as the Health Minister's Order on Therapeutical Transplants no. 1763/2007 and the Health Minister's Order No. 377/2017 on the Implementation of National Public Health Programmes.

As ARPs are not extensively regulated in the primary legislation (which comprises laws enacted by the parliament and governmental ordinances) or in secondary

310 Asociația pentru reproducere umană din România (2018), *Primul studiu de analiză a problemelor de infertilitate din România*, Bucharest, self-published.
311 Neagu, 2023.
312 Iordăchescu, 2020, p. 169.
313 Vlădăreanu and Onofriescu, 2019, p. 8.

legislation (such as ministerial orders), we could not identify any bans on specific ARP techniques. We can, thus, conclude that both intracytoplasmic sperm injection and *in vitro* fertilisation (IVF) are allowed. Most restrictions pertaining to ARPs are the general ones included in the new Civil Code of 2009, which came into force on 1 October 2011. The Civil Code has a special section on the rights to life, health, and physical integrity of natural persons.[314] These provisions ban eugenics, cloning, genetic interventions without a curative purpose, and using ARPs for the purposes of choosing the sex of a child, with the sole exception of preventative action for a sex-related genetic disease.

The Civil Code of 2009 includes a seven-article section on ARPs with a third-party donor. These general provisions were supposed to be followed by a new, special, and detailed law on medically-assisted reproductive procedures with a third-party donor; however, 11 years have now passed to no avail.[315] Although there have been at least two attempts since 2011 to regulate this area in more detail, all the proposed law projects have been rejected, even if they were initiated by the government or as a cross-party private members' bill. Following the new Civil Code, the first project to be promoted originated from the government in 2012 (PL-x no. 63/2012). This project was finally rejected by the lower House of Parliament in 2016 because the draft was considered poorly written from a technical viewpoint, with the rejection report of the Parliamentary Commission drawing from the objections of the Legislative Council. This project was considered too vague and to not offer practical solutions to a delicate and important societal issue. A later project, the cross-party private members' bill PL-x no. 462/2013 (finally rejected in 2022) was also rejected by the lower House of Parliament with similar reasoning (i.e. for being too vague, elliptically written, not offering practical solutions to a delicate social problem, and lacking resources for the stipulated expenses).

The general provisions of Art. 441, para. 3 of the Civil Code specifically determine that both heterosexual couples and single women have access to medically-assisted reproduction with a third-party donor. The law does not distinguish between a male or female third-party donor, so it can be broadly construed to include both types, as well as simultaneous donations of both sperm and oocytes for the same receiving couple or single woman.[316]

In regard to other reproductive techniques, we could identify only secondary legislation concerning transplants (such as the Health Minister's Order No. 1763/2007) that tangentially references access to these procedures. This secondary legislation only mentions different-sex couples in a (declared) intimate relationship as having access to reproductive cell 'transplants' between partners.

Romanian legislation is very traditional and restrictive in regard to civil partnerships or same-sex marriages. The Civil Code only recognises the 'traditional'

314 Diaconescu and Vasilescu, 2022, pp. 303–307.
315 Florian, 2022, p. 468; Avram, 2022, p. 309.
316 Motica, 2021, p. 224.

marriage between a man and a woman and, in Art. 277, specifically bans the recognition in Romania of any effects of a foreign civil partnership of any kind or a foreign same-sex marriage, with the exception of the freedom of movement provisions that derive from EU law.

There are no specific legal limitations on access to ARPs, only the broad Civil Code restrictions on eugenics (Art. 62) and genetic alteration (Art. 63), and the general transplant regulation and general patient consent requirements.

Publicly funded IVF with embryo transfer has been subject to a national public health subprogramme since 2011,[317] with extended funding from 2022. This procedure is restricted to infertile heterosexual couples, defined as couples who have been diagnosed by a certified specialist medical doctor with an affliction incompatible with natural reproduction or who have been unable to reproduce after 1 year of unprotected sexual relations. No third-party donations are allowed for sperm or oocytes, and surrogacy is excluded in what is perhaps the only specific mention of this procedure in Romanian domestic law.[318] To receive public funding for IVF, both partners must have public health insurance, the woman must be between 24 and 40 years of age, have a body mass index of between 20 and 25, and have an ovarian reserve determined to be within the normal limits.[319]

For the purposes of ARPs with third-party donations, Art. 441, para. 3 of the Civil Code defines 'parents' as either a couple or a single woman. This provision is not restricted to married couples but specifically refers to 'heterosexual' couples (a man and a woman).[320] The legal doctrine debates whether a 'single woman' refers only to women who do not have a partner whatsoever or if this definition also includes women whose partner has not consented to the medical procedure. Further provisions that allow the husband to deny paternal filiation if he did not previously agree to the medically-assisted reproduction with a third-party donor tend to suggest that this procedure is also available for women who are not technically 'single' but whose partner does not wish to agree to such procedures.[321]

3.4. Paternity and maternity resulting from legal human reproductive procedures

The gamete 'donor' can only be the parent of a child conceived through ARPs if there is a reproductive cell 'transplant' between partners, which can be construed as the *in vitro* fertilisation. Third-party gamete donations, either male or female, do not give rise to legal parenthood because maternal filiation depends solely on giving birth to the child, in a similar manner to 'natural' motherhood.[322] The 'fatherhood'

317 Brodeala, 2016, p. 64.
318 Brodeala, 2016, pp. 64–65; Florian, 2022, p. 473.
319 Florian, 2022, p. 473.
320 Motica, 2021, p. 224.
321 Florian, 2022, pp. 474–475; Avram, 2022, pp. 310–311.
322 Florian, 2022, p. 475.

of the third-party donor (the 'genetic' father) is specifically excluded by Art. 441, para. 1 of the Civil Code, which states in broad terms that medically-assisted reproduction with a third-party donor does give rise to filiation between the child and the donor.

There are no special presumptions of parenthood for ARPs: the mother is the person giving birth, and the father is presumed to be the mother's husband at the time of birth,[323] the former husband at the time of conception, or the mother's cohabiting partner at the time of conception (the latter presumption is applied only during paternity trials). The true source of paternal filiation in the case of medically-assisted reproduction with a third-party donor is the consent given by the mother's husband or consensual partner to undergo the procedure. Paternal filiation can be contested only when there is a lack of previous consent from the father or if the pregnancy did not arise from the medically-assisted procedure.[324] A consensual partner who gave his consent to this procedure is liable to recognise paternal filiation after birth[325] if there is no intervening marriage between parents.

3.5. Regulation of surrogacy in Romania

In Romania, surrogacy is not expressly forbidden nor is it specifically allowed or regulated. The provisions stating that the mother is the woman who gives birth (irrespective of the genetic relationship), even in medically-assisted reproductive procedures,[326] and that parental authority cannot be voluntarily transferred to another person, make surrogacy legally difficult.[327] Both gestational and traditional surrogacies[328] are equally impeded by the legal provisions on birth motherhood and the impossibility of voluntarily relinquishing or transferring parental authority.

Altruistic surrogacy is not explicitly banned, although it is heavily impeded. However, commercial surrogacy falls foul of multiple legal bans on trading the products of the human body, trading biological products, and human trafficking. Though surrogacy is heavily impeded in all cases, medical infertility or gestational difficulties sometimes garner undeclared 'sympathy' from the courts in trying to overcome the legal hurdles to its recognition.

There are a few published court cases where the effects of surrogacy have been recognised[329] with a circumvented legal reasoning. Usually, the paternal filiation (fatherhood) is voluntarily recognised by the genetic parent, and maternal filiation (motherhood) is recognised, on demand, as an effect of *possession of civil status (status by habit and repute)* and genetic filiation, with a special regard to the provisions of

323 Ibid.
324 Florian, 2022, pp. 476–477; Motica, 2021, p. 228.
325 Florian, 2022, pp. 478–480.
326 Florian, 2022, p. 469.
327 Dobozi, 2013, pp. 64–65.
328 Predescu, 2020, p. 477.
329 Brodeala, 2016, pp. 70–73.

Art. 8 of the European Convention of Human Rights in regard to the right to private and family life.[330]

3.6. Posthumous fertilisation

Romanian legal doctrine has discussed the legal implications of the technically possible posthumous IVF.[331] Posthumous fertilisation can be either carried out with seminal fluid obtained prior to the father's death or with posthumous semen retrieval.[332] Romania has not regulated posthumous IVF because there is generally no specific statute on medically-assisted human reproduction owing to the repeated failures to adopt several attempted projects in this regard.[333] The lack of specific regulation has led some authors to raise interesting legal questions about a child's legal paternity when there is a lack of consent from the biological father during his lifetime, as well as the inheritance rights of a child conceived by definition after their father's death. Nevertheless, definitive answers to these questions can only be established after a relevant statute is adopted.[334]

3.7. Legal status of so-called 'spare' embryos and genetic material

The cryopreservation of gametes is legally allowed in Romania, although it has been specifically excluded from public funding for national public health programmes that finance IVF with embryo transfer since 2017. In Romania, there are no special legal conditions for the cryopreservation of gametes. The only general conditions are the informed consent of the 'donor' and a contract with the authorised medical institution that harvests and deposits the gametes.[335]

As regards embryos, Romanian legal doctrine and case law has oscillated between considering them merely 'assets' or some kind of 'persons'. One legal case in which cryopreserved embryos were seized by the police in a criminal case and the mother could not retrieve them (case of *Knecht v. Romania,* 10048/10) reached the European Court of Human Rights.[336] The consensus in legal doctrine is that the lack of relevant special legal provisions in Romania can lead to unforeseen consequences, for example, uncertainty over who can inherit or decide the fate of unused 'spare' embryos and what happens when the storage fees are no longer paid.[337]

ARPs are not covered by the regular public health insurance but, since 2011, have been financed intermittently from public funds through special national health

330 Irinescu, 2019, pp. 213–214.
331 Sztranyiczki, 2021, pp. 395–414.
332 Sztranyiczki, 2021, pp. 396–397, 406.
333 Sztranyiczki, 2021, p. 409.
334 Sztranyiczki, 2021, pp. 410–412.
335 Tec, 2017, p. 246.
336 Tec, 2017, pp. 236–239.
337 Tec, 2017, p. 245.

programmes.[338] None of the financing programmes to date have distinguished between public and private health facilities for performing the procedures.

The national health programmes that have financed IVF with embryo transfer for couples targeted a 30% success rate. Health facilities that had previously received public funding for IVF would continue to be included in the programme only if they achieved a 30% success rate in the previous years when they received public funding. From 2017–2021, public funding was available only for IVF with embryo transfer and only for couples; specifically, no financing was provided for gamete donations or surrogacy.

From 2022, public funding has been available for up to three procedures per year for each couple or single woman, depending on funding availability.[339] Funding was usually limited to 1,000 procedures per year in previous fiscal years; however, for 2022, funding was increased to allow for 2,500 procedures per year and for a further 10,000 procedures per year from 2023 on a 'first come, first served' basis.[340] The 2022–2023 social national health programme for supporting couples and single persons to increase the birthrate was initiated in December 2022. Public funding is limited to 15,000 lei (3,000 Euros) for each beneficiary: 5,000 lei (1,000 Euros) for the medicine treatment and 10,000 lei (2,000 Euros) for the specific medical procedures.[341]

To receive public funding for ARPs, different-sex couples (married or not) or single women must be Romanian citizens, domiciled in Romania, and insured in the Romanian social health insurance system. The woman must be aged between 20 and 45, and the procedure must be carried out in an authorised partner medical facility in Romania.[342]

In regard to the child's right to know their origins, the general regulation on medically-assisted reproduction with third-party donors gives primacy to the principle of confidentiality in all matters relating to medically-assisted reproduction.[343] This confidentiality can be breached by court order, at the request of the interested party, only when a lack of information may give rise to a risk of serious consequences for the health of the conceived child or their descendants (Art. 445, para. 2). The relevant information may only be sent confidentially to a physician or the appropriate authorities. Confidentiality is also regulated as a patient right in all medical procedures, including ARPs (Art. 21 L. 46/2003).[344]

338 Brodeala, 2016, p. 64.
339 Art. 5, para. 3 of the Methodology for the social national health programme for supporting couples and single persons for increasing the birthrate, approved by Joint Ministerial Order No. 2155/20917/2022.
340 Arts. 6 and 7, Methodology.
341 Art. 5, paras. 6 and 7, Methodology.
342 Art. 5, para. 9, Methodology.
343 Art. 445, para. 1, CC.
344 Florian, 2021 in Baias et al. (eds.), p. 601.

4. Other responses to demographic issues

4.1. Raising the retirement age in Romania

The current standard retirement age in Romania is 65 years for men and 63 years for women.[345] These retirement ages have been increasing gradually from 62 years for men and 57 years for women; full implementation was achieved in March 2015 for men and will be attained in January 2030 for women.

The retirement age varies greatly for those with jobs that would impede them for working up until the standard retirement age. Professions with non-standard retirement ages include judges and prosecutors, the military, police, pilots, sailors, and workers in certain dangerous or toxic factories.

In 2022, the average number of retirees in Romania was just over 5 million people,[346] whereas the total number of dependent employees was 5,757,383 on 31 May 2023.[347] Even when including the independent workers and freelancers who were registered with the tax authorities[348] and who, therefore, also contributed to the public pension system, the total number of contributors to this system was approximately 6.5 million. These figures result in a ratio of 1.3 employees to 1 retiree, which is unsustainable in the long term for a pay-as-you-go pensions system. The pay-as-you-go approach is the dominant 'first pillar' of the Romanian pension system and is complemented by a compulsory, privately administered second 'pillar' for younger contributors and an optional private third 'pillar'.

To ensure the sustainability of the public pension system, in 2023, the Romanian government announced future plans to increase and unify the retirement age to 65 years for everybody (including women) and to limit the professional categories that can retire early with full benefits.

4.2. Increasing the number of family-friendly workplaces

The 2020 COVID-19 pandemic brought to the forefront a series of challenges to workplace culture, especially the wide availability of work-from-home and hybrid workplaces. These new challenges were combined with existing issues related to work-life balance and the difficulties faced by working parents in raising a young family. The society-driven challenges were met with both a market-oriented answer (employees' demands for hybrid and work-from-home workplaces have increased the availability of these types of contracts for the existing workforce and are used as perks to attract new employees) and reactions in the form of recent modifications to labour law.

345 Art. 53, para. 1, Law No. 263/2010 on the unitary system of public pensions.
346 Romanian National Statistical Institute, 2023.
347 Ministry of Work and Social Protection, n.d.
348 Agenţia Naţională de Administrare Fiscală (ANAF), 2023.

The Labour Code allows employers to establish individual work schedules for all employees, by the employee's demand or with their consent, permanently or for a limited time.[349] Individual work schedules imply a flexible division of work hours, with a fixed timeframe when all employees are simultaneously onsite and a flexible arrival and departure schedule.[350] The refusal to grant an individual work schedule must be notified in writing by the employer within 5 working days following the employee's demand.[351] Flexible working time includes work-from-home, flexible schedules, individual schedules, and part-time employment.[352]

4.3. Additional labour law benefits

Romania has a statute on the protection of maternity in the workplace.[353] This protection concerns pregnant employees and mothers who have recently given birth or are breastfeeding.[354] The protection of motherhood concerns the health and safety of pregnant women and recent mothers in the workplace (Art. 2a G.E.O. 96/2003).[355] Employers have a legal duty to prevent the exposure of pregnant women and recent mothers to health and safety risks and not to compel them to perform work that is dangerous to their health, their pregnancy, or their newborn child (Art. 4 GEO 96/2003). Employers also have an obligation to not reveal invisible pregnancies to other employees unless they have the pregnant woman's written consent and only if it is in the interest of workplace performance.[356]

All workplace activities that carry a specific risk of exposure to dangerous agents, processes, or work conditions must be evaluated by the employer and the workplace safety physician with regard to the nature, degree, and duration of exposure of mothers or pregnant women.[357] If the evaluation indicates risks to the health and safety of mothers or negative consequences for pregnancy or breastfeeding, the employer must adapt the affected employee's working conditions or schedule in order to avoid exposure to risks, without affecting the employee's income.[358] If changing the working conditions or schedule is not possible for well-grounded reasons, the employer has a duty to change the place of work for the concerned employee, without affecting her income.[359] If neither of these accommodations is possible for objective reasons, the pregnant employee or recent mother has the right to a supplemental

349 Art. 118, para. 1, LC.
350 Art. 118, para. 3, LC.
351 Art. 118, para. 5, LC.
352 Art. 118, para. 7, LC.
353 Government Emergency Ordinance No. 96/2003.
354 Art. 1, para. 1a, G.E.O. 96/2003.
355 Dub, 2017, p. 9.
356 Art. 8, GEO 96/2003.
357 Art. 5, GEO 96/2003.
358 Art. 9, para. 1, GEO 96/2003.
359 Art. 9, para. 2, GEO 96/2003.

work leave for maternity risk of up to 120 days,[360] which can be used before the regular maternity leave (which is usually 63 days before birth) or after the regular leave for giving birth (which is usually 63 days after birth).[361]

Pregnant employees or those who have given birth less than 6 months previously and have returned to work have a right to reasonable accommodations if their work is usually performed only standing up or only sitting down. These accommodations are made upon the advice of the workplace physician so that the employees can have breaks at regular intervals for either sitting down or moving around.[362] If these reasonable accommodations and work schedule changes cannot be allowed for objective technical reasons, the employer has a duty to change the affected employee's place of work (Art. 12, para. 3 GEO 96/2003).[363] Pregnant employees who cannot fulfil their normal work schedule for health reasons are entitled, based on the recommendation of their family physician, to have their work hours diminished by one-quarter while receiving the same monthly pay.[364]

4.4. Additional family support practices

Pregnant employees have a right to receive up to 16 hours per month of paid time off for prenatal medical checks if these can be carried out only during their working hours.[365] After giving birth, for their own health and that of their baby, all new mothers are compelled to take at least 42 days of paid medical leave.[366]

Breastfeeding employees have a right to receive two daily 1-hour 'breastfeeding' breaks during their worktime up until the child is 1 year old.[367] These 1-hour breaks include the travel time to the place where the child is. Upon the mother's request, the 'breastfeeding' breaks can be replaced by a 2-hour reduction to the daily worktime.[368] The breaks or reduction in worktime are included as normal worktime and do not lead to diminished monthly pay.[369] The employer can provide special 'breastfeeding' rooms in the workplace, but they must be hygienically adequate (Art. 17, para. 4 GEO 96/2003).[370]

Pregnant employees, recent mothers, and breastfeeding mothers cannot be compelled to work during nighttime.[371] If the employee's health is affected by night work,

360 Art. 10, GEO 96/2003.
361 Dub, 2017, p. 11.
362 Art. 12, para. 1 and 2, GEO 96/2003.
363 Ibid.
364 Art. 13, GEO 96/2003.
365 Art. 15, GEO 96/2003.
366 Art. 16, GEO 96/2003.
367 Art. 17, para. 1, GEO 96/2003.
368 Art. 17, para. 2, GEO 96/2003.
369 Art. 17, para. 3, GEO 96/2003.
370 Dub, 2017, p. 11.
371 Art. 19, para. 1, GEO 96/2003.

she has a right to be transferred to daytime work with the same basic monthly pay.[372] If such a transfer is not possible for objective reasons, the employee is entitled to the paid maternal risk leave of up to 120 days (Art. 19, para. 4 GEO 96/2003).[373]

Moreover, pregnant employees, recent mothers, and breastfeeding mothers cannot work in dirty or difficult environments.[374] These employees have the right to be transferred to another workplace with the same monthly pay.[375] If a transfer is not possible for objective reasons, the employee is entitled to the same paid maternal risk leave of up to 120 days.[376]

Employers cannot terminate the employment of pregnant employees, recent mothers, or breastfeeding mothers for reasons relating to their condition. They also cannot terminate the employment of workers who are on maternal risk leave, maternity leave, child-rearing leave for children below 2 or 3 years of age, or childcare leave for a sick child.[377] For mothers who have been on maternal risk leave, this protection from termination extends for 6 months after their return (Art. 21, para. 2 GEO 96/2003).[378]

4.5. Role of the father in the family

In Romanian family law, the father has equal rights to the mother (Art. 503, para. 1 CC).[379] The only legal difference is the way in which filiation is established: filiation is based on birth for motherhood, and based on marriage, formal extrajudicial recognition, or judicial decision for fatherhood.[380] The current Civil Code defaults to the joint exercise of parental authority for both married and unmarried couples, whether they are living together or separately, with this joint exercise being attainable as soon as filiation is established in relation to both parents.[381] Although there is no 'black letter' legal provision, judicial practice tends to favour the mother in regard to establishing the child's residence for parents living separately.[382] This bias is more pronounced for smaller children, especially those under 10 years of age, who are also not automatically heard by the judge in regard to parental authority and child residence issues. Social protection law gives equal status to the mother and father of a child, both of whom are equally entitled to receive social benefits in relation to their children.

372 Art. 19, para. 2, GEO 96/2003.
373 Dub, 2017, pp. 11–12.
374 Art. 20, para. 1, GEO 96/2003.
375 Art. 20, para. 2, GEO 96/2003.
376 Art. 20, para. 4, GEO 96/2003.
377 Art. 21, para. 1, GEO 96/2003.
378 Dub, 2017, p. 12.
379 Irimia, 2021, cited in Baias et al (eds.), p. 676.
380 Florian, 2021, p. 550.
381 Irimia, 2021, p. 676.
382 Baias and Nicolescu, 2021, in Baias et al. (eds.), pp. 539–540.

In 1999, Romania initiated a special statute (Law No. 210/1999) regarding paternal leave that allows for a father to take 10 paid working days off from work during the first 8 weeks of his child's life if paternity can be proven with a birth certificate.[383] This right is available for all types of workers, public officials, policemen, soldiers, and prison guards. Paid paternal leave can be extended to 15 working days if the father has a graduation certificate from a child-rearing course.[384] If the mother dies during childbirth or during her own paid time off after childbirth (usually 63 days), the father has the right to take the remainder of the mother's paid time off.[385]

The law on the child-rearing leave and child-rearing allowance (GEO No. 111/2010) allows for either parent to take time off for child-rearing after the mother's compulsory paid time off after childbirth, which is a minimum of 42 days. In addition to giving equal opportunities for both parents to be the child's primary caregiver during the first (usually) 2 years of life (or 3 years for children with disabilities), the latest 2023 update to the law actually compels the other parent (who has not taken paid time off for child-rearing) to take at least 2 months (up from the previous 1 month) of paid time off for child-rearing if they qualify,[386] under penalty of losing this portion of paid time off for both parents. This provision entices fathers to be more involved in child-rearing by giving them at least 2 months of paid time off during their child's early years because the mother is usually the parent taking most of the child-rearing leave, without being able to use all of it if she is not a single parent.

5. Conclusions and suggestions

The fertility rate has increased in Romania in the last decade. However, the total number of births remains low due to high emigration and decades of population decreases. The generous parental leave (up to 2 or 3 years) and allowance for child-rearing (85% of income prior to birth) since 2010 has simplified the economic equation for couples that want to have children. None of the other social benefits for families and children are as generous, and they likely have an insubstantial role in promoting family growth.

There are still deficiencies in day-care and after-school provisions for young school-age children in Romania, especially with regard to their availability and cost. State and local funding to build new day-cares is limited, and the costs associated with private childcare are high. There are few government incentives for enrolling

383 Art. 2 L. 210/1999.
384 Art. 4 L. 210/1999.
385 Art. 5 L. 210/1999.
386 Art. 11, para. 1, GEO No. 111/2010.

children in private day-cares, and the most generous tax deductions in this regard have still not been implemented.

There is also quite limited and restrictive assisted reproduction funding for infertile couples, and there are no detailed legal regulations covering assisted reproduction with third-party donors. While state funding always has its limits, better regulations for assisted human reproduction would be much easier to enact.

The purpose of a demographically rewarding family policy should be to allow and encourage couples and single parents to have as many children as they like by easing any material and legal or social obstacles to parenthood. While we will probably never return to the fertility rates of the early 20th century, allowing more families to easily have two or three children would be a realistic public policy objective.

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Chapter 16

Serbia: Legal Solutions in Family Law to Existing Serious Demographic Problems

Gordana Kovaček Stanić

Abstract

This chapter analyses family policy in Serbia, in particular, youth and older adult policy and the institutional framework for the implementation of family policy. The chapter presents different measures that aim to empower and protect families, including family and work allowances, provisions in the pension and tax system, and provisions for family homes. In addition, family law solutions that regulate family relationships, such as the establishment of family status, property, and maintenance are also examined. The chapter also explores the legal framework for assisted reproductive technologies, including the different procedures that are and are not available in Serbia, such as surrogate motherhood, and the establishment of family status. It concludes that most of the measures have financial grounds, making them helpful for young people wanting to start a family. However, questions regarding the ultimate effects of these measures, and whether they are stimulating enough for couples to decide to have more children or whether overall social, economic, and political circumstances prevail in the decision-making on childbirth, are raised.

Keywords: demography, allowance, family law instrument, assisted reproductive technology

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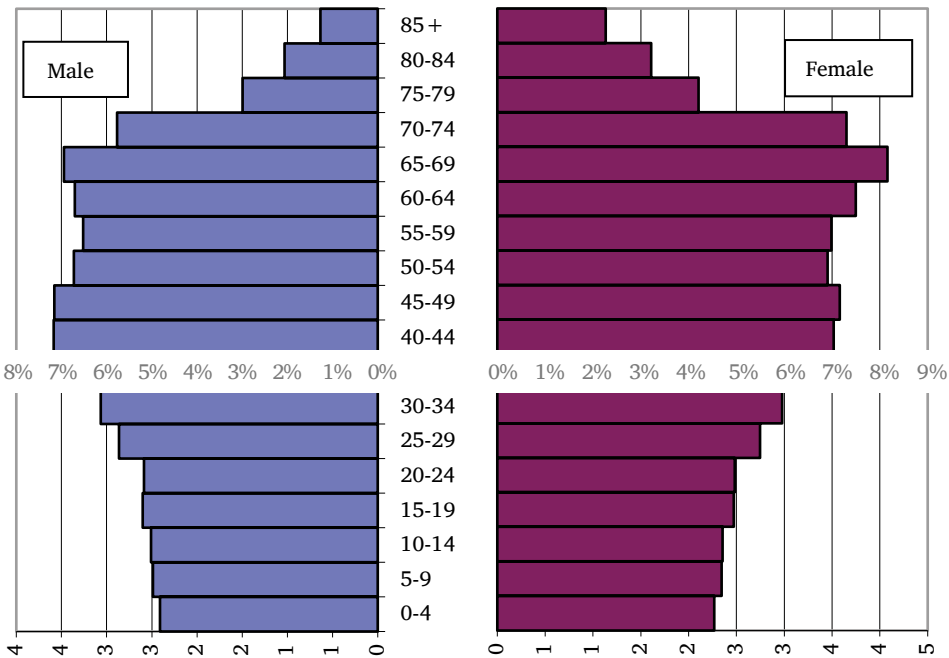
1. Family policy in Serbia[1]

1.1. Demographic data

The 2022 Census of population, households, and dwellings (hereinafter, 'the 2022 Census') was conducted in the Republic of Serbia from 1 to 31 October 2022 pursuant to the Law on the 2022 Census of population, households, and dwellings.[2] According to this census, the total number of inhabitants in the country was 6,647,003.

The most important demographic feature of any population is its age and sex structure. Data on the age and sex structure of a population are the basis for producing population estimates and projections, strategies, and policies concerning ageing, the youth, education, and planning. The population pyramid shown below indicates the results of the 2022 Census by age and sex, divided by 5-year age groups.

Table 1. Population by age and sex



1 Assistance for this research was provided by Ivana Marković, Master's student at the Faculty of Law, University of Novi Sad, Serbia.

2 Law on the 2022 census of population, households and dwellings, *Official Gazette of Serbia* No. 9/2020, 35/2021.

The average age of the population was 43.8 years, with women being approximately 3 years older than men on average (the average age of women was 45.2 years, while that of men was 42.4 years). Compared to the 2011 census, the average age had increased by about a year and a half.

In the period between the two censuses, there was no significant change in the share of people under the age of 15 in the total population, which was 14.3% in 2011 and 14.4% in 2022. Conversely, there was a noticeable decrease in the share of people aged 15–64, which fell from 68.3% in 2011 to 63.5% in 2022. Meanwhile, the share of people aged 65 and over increased from 17.4% in 2011 to 22.1% in 2022.

As a positive natural component of population dynamics, the birth of children directly affects the revitalisation of the population volume and its age structure. However, it can only perform these two important demographic functions if its level meets the minimum needs of simple population renewal. Hence, any birth rate that prevents the revitalisation of the population volume and its age structure is insufficient and will lead to depopulation and excessive ageing.

The indicator most often used to monitor the birth rate of a population is the total fertility rate. In conditions of low mortality, which are typical of modern societies, the total fertility rate required for the simple reproduction of the population amounts to an average of 2.1 live births during a woman's reproductive period. Nevertheless, birth rates that would lead to a constant population size inevitably vary over time and can be significantly different from 2.1. Therefore, as the level required for simple population renewal, a total fertility rate of 2.1 children per woman is an ideal-case model, which allows us to assess how close or far a real population is from this theoretical equilibrium.[3]

The table below shows the total fertility rates in the Republic of Serbia from 2011 to 2021.

Table 2. Fertility rates

2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
1.4	1.45	1.43	1.46	1.46	1.46	1.48	1.48	1.52	1.48	1.52

In the above data, we can observe a slight increase in the total fertility rate during this period. However, for decades, a recognisable characteristic of the demographic development of the Republic of Serbia has been the number of newborns, which is significantly below the level required for the natural renewal of the population. To overcome the problems of depopulation and excessive ageing, the Strategy for the Encouragement of Childbirth was adopted, which set a stationary population (i.e. a population in which the next generations will be the same size as the existing generations) as a general long-term goal.

3 Strategy for the Encouragement of Childbirth, *Official Gazette of Serbia* No. 25/2018.

The most significant indicators of the demographic trends are the birth rate, mortality rate, and natural increase. In Serbia, the natural increase has been negative for more than 20 years and has been continuing to decrease, as shown in the table below.[4]

Table 3. Birth rate, mortality rate, natural increase

	Birth rate (‰)	**Mortality rate (‰)**	**Natural increase (‰)**
2000	9.8	13.8	–4.0
2001	10.5	13.2	–2.7
2002	10.4	13.7	–3.3
2003	10.6	13.9	–3.3
2004	10.5	14.0	–3.5
2005	9.7	14.3	–4.6
2006	9.6	13.9	–4.3
2007	9.2	13.9	–4.7
2008	9.4	14.0	–4.6
2009	9.6	14.2	–4.6
2010	9.4	14.2	–4.8
2011	9.1	14.2	–5.2
2012	9.3	14.2	–4.9
2013	9.2	14.0	–4.8
2014	9.3	14.2	–4.9
2015	9.3	14.6	–5.3
2016	9.2	14.3	–5.1
2017	9.2	14.8	–5.5
2018	9.2	14.6	–5.4
2019	9.3	14.6	–5.3
2020	8.9	16.9	–8.0
2021	9.1	20.0	–10.9
2022	9.4	16.4	–7.0

4 Republički zavod za statistiku (Republican Statistical Institution), n.d.

1.2. Institutional framework for family policy

To enable an environment in which each family can realise its full potential, it is necessary for the state to create an appropriate institutional framework for family policy. In Serbia, the institutional framework consists of appropriate laws and other Acts that support and protect the family.

In the area of family protection, the Ministry of Family Care and Demography has the greatest importance. The Ministry's main goal is to create a family law protection system, implement population policy, care for families and children, and prepare national documents and campaigns related to demographic policy.

The relevant laws in the field of family policy are: (a) The Law on Financial Support for Families with Children.[5] This law was established to improve the conditions for meeting children's basic needs, harmonise work and parenthood, offer special incentives and support for parents to have their desired number of children, improve the financial position of families with children, assist families with children with developmental disabilities and disabilities, and support families with children without parental care (Art. 1/ 2); (b) the Labour Law[6] – the provisions laid down by this law governing maternity leave and leave from work for childcare are of particular importance; (c) the Law on Social Protection,[7] according to which the goal of social protection is to provide assistance and empowerment for an independent and productive life in society and prevent the emergence of and eliminate the consequences of social exclusion; (d) the Law on Biomedically Assisted Fertilisation;[8] (e) the law on pension and disability insurance;[9] and (f) the Family Act.[10]

Various strategies adopted by the government, which sets goals in the area of family policy, are also important, including the National Youth Strategy (NYS) from 2015 to 2025,[11] the National Youth Strategy for the Republic of Serbia for 2023 to 2030,[12] and the Strategy for the Encouragement of Childbirth.[13]

5 Law on Financial Support for Families with Children, *Official Gazette of Serbia* No. 113/2017, 50/2018, 46/2021; US decision, 51/2021; US decision, 53/2021; US decision, 66/2021, 130/2021, and 43/2023; US (Constitutional Court) decision.

6 Labor Law, *Official Gazette of Serbia* No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017; US (Constitutional Court) decision, 113/2017 and 95/2018 – authentic interpretation.

7 Law on Social Protection, *Official Gazette of Serbia* No. 24/2011 and 117/2022 – US (Constitutional Court) decision.

8 Law on Biomedically Assisted Fertilisation, *Official Gazette of Republic of Serbia* 40/2017.

9 Law on pension and disability insurance, *Official Gazette of Serbia* No. 34/2003, 64/2004 – decision of the USSR, 84/2004 – dr. law, 85/2005, 101/2005 – dr. law, 63/2006 – decision of the USSR, 5/2009, 107/2009, 101/2010, 93/2012, 62/2013, 108/2013, 75/2014, 142/2014, 73/2018, 46/2019 – decision US, 86/2019, 62/2021, 125/2022, and 138/2022.

10 Family Act (hereinafter, 'FA'), *Official Gazette of Serbia* No. 18/2005, 72/2011, 6/2015.

11 National strategy for youth for the period from 2015 to 2025 (hereinafter, 'NYS'), *Official Gazette of Serbia* No. 22/2015.

12 Strategy for youth in the Republic of Serbia for the period from 2023 to 2030, *Official Gazette of Serbia* no. 9/2023.

13 Strategy for the Encouragement of Childbirth, *Official Gazette of Serbia* No. 25/2018.

1.3. Youth and older adult policy

Young people are the present and the future of our society, a resource of innovation, and a driving force for societal development. As such, continuous and systematic investment in youth development is required. It is also necessary to establish a partnership between the youth and the state in order to increase young people's active participation in society, encourage their social integration, and ensure their inclusion in the development of youth policy.

To achieve the implementation, coordination, and promotion of youth policy, Serbia's government adopted the NYS for 2015–2025. This strategy is a comprehensive document that outlines the priority objectives, the implementation of which should contribute to the active and equal participation of young people in various areas of social life.

The NYS defines nine strategic goals in the form of desired changes to be achieved in the areas of interest to young people. The successful implementation of the NYS over the next 10 years is expected to result in improvements in the employability and employment of young women and men; the opportunities for acquiring qualifications and the development of young people's competencies and innovation; young people's active participation in society; young people's health and well-being; the conditions for the development of youth safety culture; support for young people at risk of social exclusion; mobility, the scope of international youth cooperation, and support for young migrants; the system of disseminating information to young people and knowledge about young people; and young people's consumption of culture and their participation in the creation of cultural programmes.

To implement the NYS, the government adopted Action Plans for the 2015–2017[14] and 2018–2020 periods.[15] These plans list all the stakeholders and participants in the implementation process and define the necessary funds to achieve the set goals.

During the 5-year implementation of the NYS, changes have occurred in the Republic of Serbia's legal system as a result of legislative activity. In addition to the need to harmonise the strategy with the Serbian regulations and Acts that are relevant to youth policy, it is also necessary to undertake a customised application of relevant international strategic documents. The COVID-19 pandemic affected, and continues to affect, the lives of young people. This is one of the reasons why the NYS also addresses issues related to youth activities in emergency situations.

In accordance with the Law on the Planning System of the Republic of Serbia,[16] as part of an evaluation of the performance of the NYS implementation for 2015–2020, various surveys on the position and needs of young people and the key results in the

14 Action Plan for the implementation of the National Youth Strategy for the period from 2015 to 2017, *Official Gazette of Serbia* no. 70/15.

15 Action Plan for the implementation of the National Youth Strategy for the period from 2018 to 2020, *Official Gazette of Serbia* No. 99/18.

16 Law on the planning system of the Republic of Serbia, *Official Gazette of Serbia* No. 30/18.

current period of NYS implementation were reviewed. Directions for the further development of youth policy have been proposed, which then formed an integral part of the new strategy. As a result, the government adopted the Youth Strategy in the Republic of Serbia for the period 2023–2030.[17]

This strategy defines one general goal and five specific goals. Its general goal is to improve young people's quality of life. The five specific goals are as follows: 1) youth work will be standardised in the system of non-formal education and be continuously implemented; 2) spatial capacities and services for the implementation of youth policy will be improved and functional in all local self-government units; 3) young people will be active participants in society at all levels; 4) young people will have equal opportunities and incentives to develop their potential and competencies, which will lead to social and economic independence; and 5) conditions for a healthy and safe environment and young people's social well-being will be created.

Developing a society for all generations implies respect for the phenomenon of ageing as a guide to a gradual but thorough harmonisation of social and economic flows with demographic changes. To improve the position of older adults, the Serbian government adopted the National Strategy on Ageing for the period 2006–2015.[18] This strategy was based on the following basic principles: the lifelong development of the individual; the promotion and protection of all human rights and fundamental freedoms; providing economic and social security and quality of life in old age; enabling the full integration and participation of older persons in the community; the elimination of all forms of social neglect owing to the decline in functional abilities in old age and disability; engagement in efforts to achieve gender equality; respect for diversity and, consequently, the different needs among the older adult population; the promotion of intergenerational and intra-generational transfers; solidarity and dialogue; establishing partnerships at all levels, including governments, the non-governmental sector, the private sector, and the older adult population; achieving equal opportunities for all; and the affirmation of personal responsibility.

Today, there is no national strategy in Serbia related exclusively to ageing. The creation of a current national strategy on ageing is one of the strategic goals of the Ministry of Family Care and Demography; the aim is to create conditions for a better quality of life and position for older adults in Serbia.

Every individual and family who needs help and support to overcome social and life difficulties and create conditions to meet their basic life needs has the right to social protection according to the Law on Social Protection. Social protection institutions play an important role in helping this right to be achieved. A social protection institution can be established by the Republic of Serbia, an autonomous province, a local self-government unit, an institution, or a person (Art. 10/ 2).

17 Youth strategy in the Republic of Serbia for the period 2023–2030 (hereinafter, the 'Strategy'), *Official Gazette of Serbia* No. 09/23.

18 National strategy on ageing, *Official Gazette of Serbia* No. 76/06.

Centres for social work can only be established by a local self-government unit, whereas institutes for social protection and institutes for the education of children and youth can only be established by the Republic of Serbia (i.e. an autonomous province; Art. 10/3). Centres for social work realise the rights established by Law on Social Protection and ensure the provision of social protection services. They are established by a local self-government unit for the territory of one or more local self-government units (Art. 14). Such centres provide various services that protect the family and different categories of persons, such as children and youth, adults, and older adults. There are currently about 170 social work centres in the Republic of Serbia.

As a guardianship body, a centre for social work is responsible for supervising the exercise of parental rights and establishing and terminating foster care and guardianship. It also has an active role in various proceedings related to family relations. Thus, it can file lawsuits for the protection of a child's rights, the exercise and deprivation of parental rights, child maintenance, and the determination of a measure of protection against domestic violence.

Other important bodies are the institutes for social protection, which were established to carry out development, advisory, research, and other professional work in social protection.[19] The Republic of Serbia has both republic and provincial institutes for social protection. The activities of these institutes are particularly important for improving social protection measures. Special attention is devoted to improving the position of children and young people and supporting the family. Certain measures aimed at protecting against domestic violence, suppressing child marriages, and protecting children from issues such as exploitation are foreseen.

The activities undertaken institutions for the education of children and youth comprise the care, upbringing, education, professional training, and protection of the health of children and youth in conflict with the law or who have behavioural disorders. In accordance with positive legal regulations, educational measures are implemented by these educational institutions.

When it comes to social protection institutions that support the family, the Regulation on the Network of Social Protection Institutions[20] is of great importance. This regulation establishes the network of social protection institutions that provide home accommodation services and centres for family accommodation and adoption in the Republic of Serbia (i.e. the autonomous province). It also closely regulates the spatial layout and activity of institutions that provide home accommodation services, their capacities, and user groups. In accordance with the Law on Social Protection, social protection institutions provide home accommodation services either for children and young people or for adults and older adult users (Art. 1/1).

19 Law on Social Protection, Art. 16.

20 Regulation on the network of social protection institutions, (hereinafter: the 'Regulation') Law on Social Protection *Official Gazette of Serbia* No. 16/2012 and 12/2013.

Home accommodation services are temporarily provided to children and young people up to the age of 26, that is, until the end of schooling and work training.[21] These services are provided to children and young people whose needs cannot be met within the biological, kinship, or foster family or through services in the community. Service provision is based on a decision by the guardianship authority or the court, based on the instructions of the centre for social work, until the child or young person returns to their biological family, is placed with a relative or foster family, is adopted, or gains independence (Art. 22/2).

Home accommodation services are provided to older persons over 65 years of age who, owing to limited abilities, have difficulty living independently without full-day support, care, or supervision; and to adults over 26 years of age, who, owing to difficulties with physical, intellectual, or mental functioning, need intensive 24-hour supervision, care, and support, and whose needs cannot currently be met in a family environment or through community services.[22]

The Centre for Family Placement and Adoption prepares, evaluates, and trains future foster parents and adoptive parents; provides support to foster parents and adoptive parents; reports to the centre for social work on the work of foster carers and the functioning of families that provide family accommodation services, proposing measures to eliminate possible omissions; and performs other tasks in accordance with the Law on Social Protection and other laws and regulations.[23]

1.4. Family and work allowances

The most important legal sources that regulate family and work allowances in Serbia are the Law on Financial Support for Families with Children and the Law on Labour 2005. The Law on Financial Support for Families with Children stipulates diverse allowances, such as parental allowance and child allowance. A mother is entitled to parental allowance for her first, second, third, and fourth child if she is a citizen of the Republic of Serbia and resides in the country. Mothers who are foreign citizens and have permanent residency are also entitled to parental allowance if their child was born on the territory of the Republic of Serbia. The child's father has the right to parental allowance if the child's mother is a foreign citizen, is deceased, has abandoned the child, is deprived of parental rights, or is prevented from directly caring for the child for objective reasons (Art. 22). One of the conditions for receiving parental allowance is that the child is vaccinated (Art. 25).

The parental allowance is progressive and is calculated based on the number of children. This allowance does not depend on the parents' social status, meaning that

21 Rulebook on closer conditions and standards for the provision of social protection services (hereinafter, 'Rulebook') *Official Gazette of Serbia* No. 42/2013, 89/2018, and 73/2019, Art. 22/1.

22 Art. 227/4, Rulebook.

23 Regulation, Art. 4.

all parents are entitled to it. The parental allowance is a lump sum of RSD 300,000 for the first child,[24] RSD 240,000 paid in 24 monthly payments for the second child, RSD 1,440,000 paid in 120 monthly payments for the third child, and RSD 2,160,000 paid in 120 monthly payments for the fourth child (Art. 23/1-4).

The Law on Financial Support for Families with Children stipulates that parents are entitled to a lump sum for the purchase of equipment for a child, amounting to RSD 5,000.00 for every newborn child (Art. 23/7).

A sum of RSD 87 billion is paid out annually to parents in Serbia to support childbirth.[25] The Law on Financial Support for Families with Children regulates child allowance (Arts. 26–33). The right to child allowance depends on the family's financial situation. The conditions for the right to child allowance are as follows: the total monthly income, minus taxes and contributions, per family member realised in the 3 months preceding the month in which the request for a child allowance is submitted must not exceed the defined census, and the total monthly cadastral income per family member in the previous year must not exceed 3% of the average cadastral income per 1 hectare of fertile land in the previous year or realised from land up to 500 square metres on which a residential building was built; or the total monthly cadastral income per family member in the previous year must not exceed 7% of the average cadastral income per 1 hectare of fertile land in the previous year, and the family has no other income. For single-parent families, the census is increased by 30%. Further, to be eligible for child allowance, one of the parents (or guardians) must directly take care of the child, be a citizen of the Republic of Serbia and reside there, or be a foreign citizen who has permanent residency status. A foreign citizen working in the territory of the Republic of Serbia may receive child allowance if this is determined by an international agreement.

The right to be reimbursed for the costs of stay in a preschool institution applies to children of preschool age without parental care, children who receive financial social assistance, children with developmental disabilities, and children with other disabilities (Arts. 34–36).

In 2004, the Autonomous Province of Vojvodina enacted the Programme for Demographic Development of AP Vojvodina with Means for its Implementation. Among the measures in this programme, the most important is the financial compensation that is provided to a mother for her third child to the amount of the average monthly wage in the province until the child reaches the age of 19. Unfortunately, this measure yet to be applied because of a lack of funds.

In Serbia, the Law on Labour 2005 regulates work allowances. According to this law, maternity leave lasts for three months and leave for childcare lasts for an additional nine months. Maternity leave is mostly available for mothers; fathers can take this leave only if the mother is unable to care for the child. However, leave for childcare is equally available for either mothers or fathers, and parents must

24 From 1 July 2023, this sum is increased to RSD 366,122.

25 Marković, 2023, interview with the Minister of Family Care and Demography.

agree on which of them will use this leave. It is also possible to share leave between parents. In 2022, 373 fathers used leave for childcare.[26] The Law on Labour encourages the birth of a third and fourth child as maternity leave and childcare leave last for 2 years.

The salary compensation during maternity leave and childcare leave is determined based on the sum of the monthly bases on which contributions to incomes that have the character of salary have been paid for the last 18 months preceding the first month of maternity leave (Art. 13 of the Law on Financial Support for Families with Children). Some private (mostly international) companies have in place benefits that favour mothers of newborn children. An example of good practice is 3AP, which offers a 'soft landing' for mothers returning from maternity leave. In the first 2 weeks upon their return to work, the mother works 50% of her contracted hours (i.e. 4 hours a day) to allow her to get back into the routine of working and adapting to working with a newborn baby. After the first 2 weeks, she works for 6 hours a day for the next 10 weeks, leaving more time for the baby or kindergarten arrangements. Mothers are also offered paid leave for 20 working days that can be used until the child turns one.

Fathers in Serbia do not participate equally in childcare responsibilities. The majority of respondents in research conducted by the association Prvi put s ocem ('First Time with Father') believe that the father's role in the upbringing of children is important only from the age of three. This association has been calling for fathers to take a more active role in children's lives for the past 10 years and has sent a request to the Ministry of Family Care to support its initiative for Serbia to inaugurate a National Father's Day. More than 50 countries in the world already have an annual Father's Day. The association's survey, which was conducted on International Father's Day, shows that as many as 61.6% of respondents did not believe that fathers participate equally in childcare responsibilities, and slightly more than a third (36.6%) believed that both mothers and fathers shared childcare duties.[27]

In addition to benefits for mothers, private (mostly international) companies, also have policies to support fathers of newborn children. One example of good practice is L'Oréal, which has offered paternity leave since 1 December 2021. To be eligible for paternity leave and pay, the employee must be the biological father or have adopted a child, have worked continuously for the company for 6 months before becoming a father, and have a fixed-term temporary or permanent contract. The 6 weeks of paternity leave can be taken in a block of all 6 weeks or three blocks of 2 weeks each. The deadline for using the paternity leave is 36 months after eligibility starts (childbirth or adoption).

26 Euronews Srbija, 2023a.
27 Marković, 2023.

Table 4. Paternity leave

Length of Service and Employment	Length of Paternity Leave Period	Entitlement Payments
6 months continuous employment and temporary contract	2 weeks	100% of salary
less than 1 year continuous employment and permanent contract	2 weeks	100% of salary
1 year continuous employment and permanent contract	6 weeks	100% of salary

1.5. Family-friendly provisions in the pension and tax system

According to the Law on Retirement and Disability Insurance, family members of a deceased insured person can be beneficiaries of the right to a family pension. Family members are considered to be a spouse or non-marital partner, children (born in or out of wedlock or adopted), stepchildren if they had the right to maintenance from the insured person, grandchildren, brothers and sisters, other children without parents (or children who have one or both parents who are completely unable to work) if they had the right to maintenance from the insured person, and parents (father and mother, stepfather and stepmother, and adoptive parents) if they had the right to maintenance from the insured person. A beneficiary of the right to a family pension can also be a spouse from a divorced marriage and a non-marital partner after the end of the cohabitation if they had a right to maintenance determined by a court ruling. The existence of non-marital cohabitation is determined in non-litigation proceedings (Art. 28). Further, the right to a family pension can be exercised by a spouse or non-marital partner if the marriage or cohabitation lasted for at least 3 years, or if they have a child in common with the deceased insured person or beneficiary.

A widow or widower becomes the beneficiary of the right to a family pension if, after the death of their spouse or non-marital partner, there are one or more children who are entitled to a family pension, and the widow or widower exercises parental rights toward those children. In this case, the widow or widower becomes the beneficiary of the right to a family pension without any further conditions, such as his or her age or incapacity to work. A widow or widower who becomes completely unable to work retains the right to a family pension while this incapacity exists (Art. 29/3 and Art. 30/3).

A child is entitled to a family pension until he or she reaches the age of 15. After reaching the age of 15, the child is entitled to a family pension until the end of schooling, but at the latest until he or she reaches 1) 20 years of age, if attending high school, or 2) 26 years of age, if attending a higher education institution.

A child also acquires the right to a family pension up to 26 years of age if he or she does not have the capacity for independent living and work, regardless of schooling, and after that age if he or she had the right to maintenance from the insured person until his or her death. A child whose schooling was interrupted due to being sent for military service has the right to a family pension for the duration of his or her military service, but at the latest until he or she reaches the age of 27. A disabled child acquires the right to a family pension after termination of employment, including self-employment (Art. 31).

A parent (father or mother, stepfather or stepmother, and adoptive parent) becomes a beneficiary of the right to a family pension if he or she had a right to maintenance from the insured person until his or her death, if they have reached 65 (men) or 60 (women) years of age, or if they became completely unable to work at the time of the death of the insured person (Art. 33).

The Law on Retirement and Disability Insurance extends the rights of children without both parents, meaning they are entitled to receive two separate family pensions, instead of one (Art. 73/1).

According to the Law on Citizen Income Tax,[28] income tax is not paid on the following earned incomes: incomes that are realised in accordance with the law regulating financial support for families with children, including compensation for the assistance and care of another person and compensation for bodily injury; assistance that, in the event of the death of an employee or a retired employee, the employer pays to a member of his or her family (up to RSD 87,799); social and humanitarian aid; scholarships and loans for pupils and students of a monthly amount of up to RSD 38,458; compensation for the work of a foster parent and the amount for the maintenance of a foster child; allowances that, in accordance with the regulations governing the Serbian Armed Forces, are paid to students and cadets of military schools; allowances that are paid to students of higher education institutions established for the realisation of police education study programmes; fees that, in accordance with the law governing dual education, (i.e. the dual study model), are realised by students who are learning through work as material and financial security; awards to pupils and students for results achieved during schooling and education, as well as awards won at international competitions and competitions within the educational system; and allowances for the cost of living for persons who participate in European Union programmes and those of other international organisations in the fields of education, training, sports, activities with young people, science, and research and innovation, which are paid in accordance with these programmes, up to a maximum amount of RSD 128,198 for expenses on a monthly basis.[29]

28 Law on Citizen Income Tax, *Official Gazette of Serbia* No. 24/2001, 80/2002, 80/2002, 135/2004, 62/2006, 65/2006, 31/2009, 44/2009, 18/2010, 50/2011, 91/2011, 93/2012, 114/2012, 47/2013, 48/2013, 108/2013, 6/2014, 57/2014, 68/, 5/2015,112/2015, 5/2016, 7/2017 113/2017, 7/2018., 95/2018, 4/2019, 86/2019, 5/2020, 153/2020, 156/2020, 6/2021, 44/2021, 118/2021, 132/2021, 10/2022,138/2022, 144/2022, 6/2023.

29 Arts. 9/2, 3, 9, 11, 12, 21, 22, 23, 23a, 26, 31.

Dependent family members are persons that the taxpayer has the obligation to maintain, including minor children (including adopted children); children (including adopted children) in regular education or during unemployment, if they live in the household with the taxpayer; grandchildren, if their parents do not pay maintenance and they live in a household with a taxpayer; spouses; and parents, including adoptive parents (Art. 10).

1.6. Family home

The regulation of the family home is of key importance for family creation and family protection in the case of the divorce or separation of parents. The Serbian Family Act 2005 regulated, for the first time, the right to reside (*habitatio*) in favour of a minor child and a parent who exercises parental rights. A minor child and a parent who exercises parental rights have the right to reside in a property owned by the other parent, provided that they do not possess a vacant property and that such a decision would not constitute a clear injustice for the parent that owns the property (Art. 194 FA). The reason for drafting such a provision is an obligation to provide the child with the protection and care that is necessary for his or her welfare (Art. 3, para. 2 of the United Nations Convention on the Rights of the Child).

The aim of the provision concerning the right to reside is to solve an inconvenient habitation situation that may face a child and a parent who exercises parental rights, especially after a divorce. When this law was on the agenda in a discussion before the Serbian Parliament, an objection to this solution was raised, which held that it was constitutionally unacceptable as it represented a limitation of the ownership right. However, on the one hand, the law recognises other cases of the limitation of ownership, and on the other, analysing the solutions that exist in the comparative law indicates that the family home has a specific legal regime in many foreign legal systems. This is particularly true in capitalist countries, in which ownership is considered an untouchable legal concept.

In one decision concerning the right to reside, the Supreme Court of Serbia reviewed a decision of the lower court that declared that it would be unjust to the defendant to constitute the right to reside in favour of his minor child and reversed the decision as wrongful. The fact that the apartment was a gift to the defendant from his mother did not constitute grounds for implementing the legal standard of 'clear injustice'. This legal standard does not concern how the ownership right is constituted but, rather, considers the entire situation of the defendant and whether it would be clearly unjust if the right to reside were constituted. This included the defendant's health, social status, or other circumstances that he could not improve by his own actions. The fact that the defendant was a psychologist with a full-time job and other circumstances in this case did not indicate the existence of clear injustice to the defendant.[30]

30 Decision of the Supreme Court of Serbia Rev. 1594/06 of 29 November 2006, *Bilten sudske prakse Vrhovnog suda Srbije* 06/4 [*Bulletin of Court Practice of Supreme Court of Serbia*].

In 2021, the Law on Financial Support for Families with Children introduced the right to payment for the purchase or building of a family house or apartment on the grounds of the birth of a child. The government of the Republic of Serbia issued a decision on the payment for the purchase or building of a family house or apartment on these grounds in 2023,[31] when the maximum amount was the equivalent of EUR 20,000.

The right to funds for the construction and participation in the purchase of a family-residential building or apartment based on the birth of a child can be exercised by the mother for a child born on or after 1 January 2022, provided that she is a citizen of the Republic of Serbia and resides there. This right can also be exercised by a mother who is a foreign citizen and has the status of a permanent resident if the child was born in the territory of the Republic of Serbia and/or is a citizen of the country. The mother of a newborn child has this right provided that she acquires a family-residential building or an apartment in the territory of the Republic of Serbia for the first time. Exceptionally, in the event of the death of the child's mother, the right may be exercised by the child's father (Art. 25a). Immovable property or a proportional part of immovable property built or purchased with funds represents the separate property of the mother and cannot be sold within 5 years of the purchase or construction without the consent of the guardianship body competent to protect the rights and interests of children (Art. 25g).

Financial support is available for the purchase of a family home in the form of the reimbursement of value-added tax. [32]A person is entitled to the reimbursement of value-added tax when he or she purchases his or her first dwelling. He or she must be of majority age and Serbian nationality, and must be residing in Serbia. As this reimbursement is given for a first dwelling, it is crucial for young people and families. The right to the reimbursement of value-added tax applies to dwellings of 40m^2 for one person, and of an additional 15m^2 for every member of his or her household if this household member is not the owner of another dwelling. Members of the household include spouses, children, adopted children, children of the spouse, adoptees of the spouse, his or her parents, his or her adopters, parents of the spouse, and adopters of the spouse. To be considered a member of the household, the person must live together with the buyer, must work, and must spend together with the buyer, and consequently, must have the same domicile. It is significant that non-marial partners are not considered members of the household according to this Act.

Other financial measures apply to the process of securing a bank loan. These include joint and several surety bonds that can be obtained by the loan applicant's spouse, brother, or sister, provided that they live together with the loan applicant (i.e. they are registered at the same address). To become a loan beneficiary or a joint and several debtors, an individual must be permanently employed, which should be proven by a certificate issued by the company that employs the applicant. In addition,

31 *Official Gazette of Serbia* No. 8.

32 Value Added Tax Law, *Official Gazette of Serbia* No. 84/2004, Art. 53a.

an income certificate provides proof of the applicant's financial and credit score. The credit score of a loan applicant, joint and several surety debtor, or co-debtor is established via a Bank Decision on the Terms for Granting a Bank Loan for the Purchase of a Family Home. The monthly instalment of the granted bank loan shall not exceed 50% of the applicant's net monthly income, reduced by the amount of the applicant's other bank loan repayments, child maintenance, and other liabilities.

As it is a long-term loan, a bank loan for the purchase of a family home is secured by a mortgage. Mortgages are created for real estate that is registered in the Real Estate Cadastre or Land Books; however, it is also possible to secure a mortgage statement for a building that is under construction. The procedure to grant (i.e. approve) a bank loan has been simplified. The mortgage is a pledge on the real estate that empowers the creditor to ask for the collection of payment secured by the mortgage from the value of the real estate, if the debtor fails to pay the outstanding debt, before unsecured creditors and mortgage creditors whose claims are made later in time, no matter who owns the title on the real estate. Permanent construction objects, including buildings, apartments, family buildings, and commercial buildings, owned by natural persons or legal entities, which are registered, not encumbered, and acceptable for the bank, can be subject to a mortgage. The bank will not accept loan applications for temporary objects or prefabricated buildings. The bank will accept a mortgage statement as a means of security (without joint and several surety) for buildings under construction if a person wishes to purchase an apartment in a building that is being built by companies that are clients of the bank clients or if the construction of this building is financed by the bank (in the list of construction companies and the attached documents). The value of the real estate that is being purchased or other real estate offered as a security must be determined proportionally to the value of the loan and must be established by a court expert who is recognised by the bank in its list of authorised court appraisers and attached documentation.

These measures are available to clients who will be a minimum of 23 years of age and a maximum of 65 years of age at the time of the last repayment instalment (or a minimum of 18 years and a maximum of 68 years at the time of the last repayment instalment for bank loans with no insurance granted by the National Corporation for Insurance of Residential Loans). The loan beneficiary, joint and several surety debtor, or co-debtor must be permanently employed and have at least 6 years of service with their present employer. For employees of private companies (entrepreneurs and employees of entrepreneurs), the precondition is that the company has operated for at least 3 years. All the terms regarding residential bank loans insured at the National Corporation are defined by the agreement laying down mutual obligations in insurance transactions related to claims based on the residential loan, entered into between the bank and the National Corporation. The financial support available to families includes bank loans (i.e. residential loans) and cash loans (i.e. personal loans). Assistance is also offered by cities, particularly the city of Novi Sad, which supports families with two or more children. The Novi Sad project operates

in cooperation with two banks, whereby the city grants selected participants up to EUR 15,000. If the participant has two children he or she will repay 80% of the total amount without interest; if he or she has three children, he or she will repay (to the author's knowledge) 50% of the total amount; and if he or she has four or more children, the amount does not have to be repaid.

2. Family law instruments to support families

2.1. Family law principles

One of the most important constitutional principles related to demographic issues in Serbia is the principle of the free decision to have children. Within the Serbian Constitution of 2006,[33] Art. 63 stipulates,

> Everyone shall have the freedom to decide whether they shall procreate or not. The Republic of Serbia shall encourage … parents to decide to have children and assist them in this matter.

This principle was introduced for the first time by the Constitution of the Republic of Yugoslavia of 1974. Art. 191 provided for the free decision to have children as a human right that could be restricted only on the grounds of health protection. In contemporary society, the principle of the free decision to have children is exercised according to the advancement of medicine and technology (e.g. assisted reproductive technologies). The Serbian Constitution explicitly prohibits the cloning of human beings (Art. 24/3).

In Serbia, the principle of the special protection of the family, mother, single parent, and child is stipulated in Art. 66 of the Constitution. The protection of the family is seen as the principle that protects all families based on marriage and non-marital cohabitation, as well as single-parent families. Children born in and out of wedlock are equal, as stipulated in Art. 64/4 of the Constitution. The Serbian Constitution also states that non-marital cohabitation is equal to marriage, in accordance with the law (Art. 62/5). Non-marital cohabitation is defined in Art. 4 of the Family Act as the sustained cohabitation of a man and a woman between whom there are no marriage impediments. Adoptive families have special protection: Art. 6/5 of Family Act oregrounds the principle that adoption is equal to parentage. An adopted child has equal rights with respect to its adopters as a child has with respect to its parents, and adopters have the same legal status as biological parents.

33 The Constitution of the Republic of Serbia was adopted in 2006, *Official Gazette of the Republic of Serbia* 98/2006.

The protection of the family involves the issues of how best to protect families and whether the protection and development of healthy family relationships should be addressed even before a family is formed. In this sense, counselling or conversations with competent persons may be of special importance for spouses, future spouses, and non-marital partners. Nevertheless, protection is given mostly to families that are not able to satisfy their functions according to contemporary standards.[34]

> 'The Serbian Family Act does not contain a definition of what constitutes a family. There are several reasons for this approach. One is that family law regulates family relations and relations among family members, so, while it enjoys civil and social protection under the Constitution the family itself is generally not the holder of the rights and duties. Another reason is that a precise definition of the family will lead to restrictions on the term "family." Family relations, however, tend to develop quickly — there are new forms of family unknown in earlier historical periods that would otherwise remain outside the concept of a family if the definition of family determined exactly who can be considered a family member.[35] In modern times, the most common family type is the nuclear family, consisting of parents and their immediate children. Some authors take a narrower definition to include only parents and children residing together. …. Today, Serbian family law attaches importance to extended families, regulating property relations among members of a family who live and work together through a special form of property that results from this situation: community property (Art. 195 FA)'.[36]

In Serbia, all persons are equal before the Constitution and law. Everyone shall have the right to equal legal protection, without discrimination. All direct or indirect discrimination based on any grounds, including sex, is prohibited (Art. 21 Constitution). As such, the principle of equality includes both spouses and unmarried, cohabiting partners.

One of the most important principles in the family law is that of the best interests of the child. This principle was explicitly formulated for the first time in Art. 6/1 of the Family Act of 2005, which states, 'Everyone is under the obligation to act in the best interest of the child in all activities related to the child'. However, statutory texts, including the Family Act of 2005, do not offer a definition of the principle of the best interests of the child (i.e. a legal standard), meaning this principle is dependent on interpretations in jurisprudence. Art. 3 of the United Nations Convention on the Rights of the Child[37] establishes that the best interests of the child should be

34 Kovaček Stanić, 2021, pp. 191–220.

35 Kovaček Stanić and Samardžić, 2019, cited in Rogerson et al., (2019) pp. 235–244.

36 Kovaček Stanić, 2021, p. 202.

37 Serbia is party to the United Nations Convention on the Rights of a Child, ratified in the *Official Journal of Yugoslavia* No. 5/90.

of primary importance in all activities that involve the child, regardless of which institutions or organs are undertaking these activities.[38] Unfortunately, this principle is only highlighted in family law relationships and not in private law as a whole in Serbia; however, it should be a civil law principle that applies to broader types of relationships.

According to the Constitution, special protection shall be provided for children without parental care and children with mental or physical disabilities.[39] Citizens and families that require welfare to overcome social and existential difficulties and create conditions for subsistence have the right to social protection, based on the principles of social justice, humanity, and respect for human dignity.[40]

The protection of the weaker party is another principle of family law. For instance, the weaker party has special rights in family law proceedings. In connection with territorial court jurisdiction, it is stipulated that a child may initiate action in disputes over the protection of his or her rights or in disputes over the exercise or deprivation of parental rights, both before a court of general territorial jurisdiction and before a court in the territory in which the child has residence or a dwelling place.[41] Similarly, in a dispute over protection from domestic violence, in addition to the court of general territorial jurisdiction, the court in the territory in which the family member who was subject to domestic violence has residence or a dwelling place also has territorial jurisdiction.[42] Courts have the discretion to decide on the cost of proceedings regarding family relations, taking into account the reasons of justice.[43]

2.2. Establishment of family status

For a long time in legal history, there was little question of who the mother of a child was. The principle from ancient Roman law, *mater semper certa est etiam si vulgo conceperit*, was broadly accepted;[44] in other words, the mother was the woman who gave birth to the child. In contemporary family law, including Serbian family law, statutory provisions often establish or define motherhood. The Family Act contains a provision explicitly stating that a woman who gave birth to a child is to be considered the child's mother (Art. 42). If the woman who gave birth to a child is not entered in the Register of Births as the child's mother, her maternity may be established by a final court judgement. The child and the woman claiming to be the child's mother have the right to the establishment of maternity (Art. 43).

38 Kovaček Stanić, 2022, pp. 187–216.
39 Art. 66/3, Constitution.
40 Art. 69, Constitution.
41 Art. 261, FA.
42 Art. 283, FA.
43 Art. 207, FA.
44 *Corpus Juris Civilis,* Dig. 2.4.5 (Theodor Mommsen and Alan Watson, eds., 1985): '*quia semper certa est, etiam si vulgo conceperit'*.

Maternity can also be contested.[45] A child, a woman entered in the Register of Births as the child's mother, a woman claiming to be the mother (if she requests the establishment of her maternity), and a man who is considered to be the father of the child all have the right to contest maternity. A child may initiate action to contest maternity regardless of the time limit. A woman entered in the Register of Births as a child's mother may initiate action to contest her maternity within 1 year from the day of learning that she did not give birth to that child, and no later than 10 years from the birth of the child. A woman who claims to be a child's mother may initiate action to contest the maternity of the woman entered in the Register of Births as the child's mother within 1 year from the day of learning that she gave birth to that child, and no later than 10 years from the birth of the child. A man who is considered to be a child's father under this Act may initiate action to contest maternity within 1 year from the day of learning that the woman entered in the Register of Births as the child's mother did not give birth to the child, and no later than 10 years from the birth of the child (Art. 250). However there are some restrictions for contesting maternity: maternity may not be contested if it has been established by a final court judgement, after the adoption of a child, or after the death of a child (Art. 44).

A common rule regulating who is considered the father of a child born in a marriage states that the husband of the child's mother is the father.[46] In Serbian law, the husband of the child's mother is considered the father if the child was born within 300 days after the termination of marriage, but only if the marriage was terminated owing to the death of the husband and if the mother does not conclude another marriage in this period. The husband from the new marriage of the child's mother is considered the father of a child born during that marriage, regardless of how short a time may have elapsed between the termination of one marriage and the commencement of the other.[47]

The Family Act regulates the situation of children conceived through biomedical assistance. The mother's husband or partner is considered the father of a child conceived through biomedical assistance, provided he has given written consent to the procedure of biomedically assisted fertilisation (BMAF). The paternity of a man considered to be the child's father may not be contested, except if the child was not conceived through a BMAF procedure. If a child is conceived through biomedical

45 This procedure is necessary in cases when incorrect data on a child's mother have been entered into the Register of Births, in the case of substitution of children, or when somebody else's health identification card has been used in a delivery hospital. In some cases, false documents are used in a hospital because the mother does not have medical insurance and is not aware that medical care for childbirth is free, regardless of insurance. Although there is no dispute regarding maternity in such cases, court proceedings must be initiated so that maternity can be properly established.

46 *Corpus Juris Civilis,* Dig. 2.4.5 *'pater vero is est, quem nuptiae demonstrant'*. see: Mommsen and Krueger, 1985.

47 Art. 45/1–3, FA.

assistance by donated semen cells, the paternity of the man who donated the semen cells may not be established.[48]

If a child was born out of wedlock, paternity must be established by acknowledgement or by a court judgement.[49] A person who has reached 16 years of age may acknowledge paternity.[50] Paternity may be acknowledged only if the child is alive at the time of acknowledgement. Acknowledgement of paternity before childbirth is effective but only if the child is born alive[51] The acknowledgement takes effect only if the mother and, under some circumstances, the child consent to the father's acknowledgement. A mother and child can consent to paternity if they are at least 16 years of age.[52] If either the mother or child cannot give consent, the consent of the other is sufficient.[53] If neither the mother nor the child can give their consent, the child's guardian may give consent to the acknowledgement of paternity with the prior consent of the guardianship authority (Art. 50 FA). Thus, the acknowledgement is not a unilateral act. If the man acknowledges his paternity and the mother (and/or a child older than 16) consents, this man is considered the child's father. The biological truth is not examined.

A child may initiate action to establish paternity by a court judgement regardless of the time elapsed. A mother may initiate action to establish paternity within 1 year from the day of learning that the man she considers to be the child's father did not acknowledge his paternity, and no later than 10 years from the birth of the child. A man claiming to be a child's father may initiate action to establish his paternity within 1 year from the day of learning that the mother or the child's guardian did not consent to his acknowledgement of paternity, and no later than 10 years from the birth of the child.[54]

Paternity can be contested under Serbian law. In the case of a child born within wedlock, another man can claim to be the father and seek to rebut the presumption of the husband's paternity. Such a challenge can also be brought by the mother, child, or the husband himself. A child may initiate action to contest paternity regardless of the time elapsed. Meanwhile, a mother may initiate action to contest the paternity of the man considered to be the child's father within 1 year from the day of learning that he is not the father, and no later than 10 years from the birth of the child. A mother's husband may initiate action to contest his paternity within 1 year from the day of learning that he is not the child's father, and no later than 10 years from the birth of the child. A man claiming to be a child's father may initiate action to contest the paternity of the man considered to be the child's father within 1 year

48 Art. 58 FA.
49 Art. 45/4, FA.
50 Art. 46, FA.
51 Art. 47, FA.
52 Arts. 48/1, 49/1, FA.
53 Arts. 48/2, 49/2, FA.
54 Art. 251, FA.

from the day of learning that he is the child's father, and no later than 10 years from the birth of the child.[55]

Challenges to the paternity of children born out of wedlock can also be brought. Only a man claiming to be a child's father may initiate action to contest the paternity of the man considered to be the child's father on the grounds of the acknowledgement. The mother and child cannot contest paternity based on acknowledgement if they gave their consent to this acknowledgement. If the paternity of a child born out of wedlock is established by a court decision, it cannot be contested.[56]

The adoption of a child is another situation that affects family status. The aim of adoption is to give legal protection to a child without parental care. However, adoption is also a family planning method for individuals who are not able to become parents; therefore, it is also a demographic measure. In 2022, 89 children were adopted in Serbia, with 280 children still waiting to be adopted. There are 814 potential adopters registered in the state registrar of adoption. Unfortunately, some children will not be adopted owing to their older age, illness, or special needs.[57]

A child may be adopted if it is in his or her best interests.[58] Only minors may be adopted, and a child may not be adopted before reaching 3 months old. A minor who has acquired full legal capacity may not be adopted (Art. 90 FA). The Family Act defines children without parental care who may be adopted as those who have no living parents; whose parents or their dwelling place are unknown; whose parents are fully deprived of parental rights; whose parents are fully deprived of legal capacity; or whose parents gave their consent to adoption (Art. 91 FA). The scope of care and protection of the adopters are the same as the rights and duties between a child and his or her parents (Art. 104). Only a person for whom it has been established has personal characteristics that suggest that he or she will exercise his or her parental rights in the best interests of the child may adopt. The Family Act defines that the following individuals may not adopt: a person fully or partially deprived of parental rights, or fully or partially deprived of legal capacity; a person suffering from an illness that may have detrimental effects on the adoptee; or a person convicted of a criminal act against marriage, the family, sexual freedom, or life and body (Art. 100). Spouses or cohabitees can adopt together, as can a person who is the spouse or cohabitee of the child's parent. Exceptionally, the minister responsible for family protection may grant adoption to a person who lives alone if there are particularly justified reasons for doing so (Art. 101 FA). The difference in age between the adopter and the adoptee must not be less than 18 years or more than 45 years. Exceptionally, the minister responsible for family protection may grant adoption to a person who is less than 18 years older or more than 45 years older than the adoptee if such an adoption is in the best interests of the child (Art. 99 FA). Adoption results

55 Art. 252, FA.
56 Art. 56/4, FA.
57 Euronews Srbija, 2023.
58 Art. 89, FA.

in the establishment of the same rights and duties between the adoptee and his or her offspring and the adopters and their relatives as between a child and his or her parents and other relatives.[59] Adoption terminates parents' parental rights unless the child is adopted by the spouse or cohabitee of his or her parent. Adoption also terminates the rights and duties of the child toward his or her relatives and the rights and duties of the relatives toward the child.[60]

Independent of his or her age, a child has the right to know who his or her parents are. A child who has reached the age of 15 and who is able to reason has the right to inspect the Register of Births and other documentation related to his or her origin ().[61] The official of the guardianship authority has an obligation to advise the future adopters to tell the child the truth regarding his or her origin as soon as possible.[62] However, in practice, adopters have the autonomy to decide whether to tell the adoptee the truth regarding their adoption or keep it a secret: there is no legal obligation to tell the truth, only the advice of the guardianship authority. The registrar is under the obligation to refer the child to psycho-social counselling before allowing him or her to view the Register of Births (Art. 326 FA). In addition to the adopted child, adopters also have the right to view the Register of Births for their adopted child.

'Full adoption' is the only type of adoption in Serbia, meaning that the birth parents have no rights after an adoption is concluded. The follow-up for adoptions is the same as for parent-child relationships: the guardianship authority supervises the exercise of parental rights when it is necessary to make decisions that correct parents' actions in the exercise of their parental rights.[63]

Concerning situations not connected to adoption, provisions in the Family Act that state that there is no time limit for a child to initiate proceedings to establish and contest maternity and paternity favour the child's right to know his or her biological origin. In these proceedings, the court is obliged to determine the biological truth, which may be based on DNA or other biomedical evidence. This provision also promotes the right of the child to know his or her biological origin. However, concerning the right of a child conceived by BMAF to know his or her origin, Art. 57 of the Serbian law on BMAF states,

> A child conceived by biomedically assisted fertilisation with reproductive cells of the donor has a right to ask, for medical reasons, to obtain data on the donor from the Board of Directors for Biomedicine kept in the State Registry. The child gains this right when he or she reaches 15 years of age if he or she is able to reason. These data are not on the personal information of the donor but only data of medical importance for the child, his or her future spouse or partner, or their future offspring ….

59 Art. 104 FA.
60 Art. 105 FA.
61 Art. 59 FA.
62 Art. 322/1 FA.
63 Art. 80 FA.

2.3. Child property and child maintenance

Parents have the right and duty to manage and dispose of their child's property.[64] It is necessary to obtain the prior or subsequent consent of the guardianship authority for the parental disposal of immovable and movable property of considerable value in order to establish if this disposal is in the best interests of the child (Art. 193/3 FA). Conversely, parents do not have the right or duty to manage and dispose of property that their child has acquired through his or her work;[65] rather, the child independently manages and disposes of such property (Arts. 192/1, 193/1 FA). A child who has reached 14 years of age (i.e. a senior minor) may undertake all legal transactions with the prior or subsequent consent of his or her parents. A young minor (i.e. a minor who has not reached 14 years of age) may undertake legal operations whereby he or she acquires exclusive rights, legal operations whereby he or she does not acquire either rights or obligations, and legal operations of small significance.[66]

Items for a child's personal use are part of the exclusive property of the spouse exercising parental rights and are not to be calculated in his or her share during the division of the community property between former spouses or partners living in non-marital cohabitation. If the parents exercise their parental rights jointly, they have community property rights over items for the child's personal use (Art. 183 FA). According to Serbian law, in the property contracts of parents who have agreed on a total separation of property or any other property regime, it is forbidden to waive the right to maintenance as this stipulation has no legal bearing (Art. 8 FA). The aim of this provision is to protect the weaker spouse as the right/obligation of maintenance exists regardless of the contract.

A minor child has the right to maintenance from his or her parents.[67] The age of maturity is 18 years of age in Serbian law; however, if a minor child has income or his or her own property, there is a duty to partially provide for his or her needs. This obligation is subsidiary to the duty of his or her parents (Art. 154/3 FA). As children aged 15 years and over have the right to work, they can earn wages. A child is entitled to work with the written consent of his or her parents, adopters, or guardian if such employment will not endanger the child's health, morals, or education, and if the employment is not otherwise prohibited by law (Arts. 24/1, 25/1 Labour Law).[68] The obligation of a minor child to partially provide for the needs of his or her maintenance from his or her own income or property is subsidiary to the duty of his or her parents.[69]

64 Art. 74 FA.
65 Arts. 192/2, 193/2 FA.
66 Art. 64/1 FA.
67 Art. 154/1 FA.
68 Labour Law, *Official Gazette of the Republic of Serbia,* No. 2005/24.
69 Art. 154/3 FA.

In addition to minor children, adult children are also entitled to maintenance in particular situations (Art. 155 FA). The first of these situations is the case of an adult child who is incapable of working and who lacks sufficient means of maintenance. The adult child has the right to maintenance from his or her parents for the duration of this status. The second situation relates to education: an adult child who regularly attends school has the right to maintenance from his or her parents, according to their abilities, up to the age of 26 years.

However, unlike the maintenance of a minor child, the Family Act provides a protective clause regarding the maintenance of an adult child: according to this clause, an adult child does not have the right to maintenance if the acceptance of his or her request could represent a clear injustice to the parents. It is an issue of court discretion to define clear injustice in a particular situation. In a Supreme Court of Serbia judgement of 11 December 2007 (No. Rev. 3216/07) regarding one case, the court held that there was no manifest injustice.[70] In this case, the son, who was a student at the University of Belgrade and was younger than 26 years, claimed for maintenance from his father. The father was fully incapacitated and deprived of legal capacity. During the proceedings, the court established the father's income and needs, as well as the son's income and needs, and determined that 25% of the father's income should be awarded as maintenance. The father's legal representative objected to the son's claim to maintenance on the grounds of clear injustice. Nevertheless, the Supreme Court believed that the fact the father was fully incapacitated and deprived of legal capacity did not affect his maintenance obligation.

In Serbia, maintenance is determined in accordance with the needs of the creditor and the capacities of the debtor, taking into account a minimum amount of maintenance. The needs of the creditor depend on his or her age, health, education, property, income, and other circumstances that significantly affect the determination of maintenance.[71] Children's needs range widely and include existential, educational, cultural, and social needs. The 1989 United Nations Convention on the Rights of the Child stipulates that children have the rights to rest and leisure, to engage in play and recreational activities appropriate to their age, and to participate freely in cultural life and the arts, among other rights (Art. 31 FA). The capacities of the maintenance debtor depend on his or her income, possibility of securing employment and earning wages, property, personal needs, and obligation to maintain other persons, and other circumstances that significantly affect the determination of maintenance.

The Family Act stipulates a minimum amount of maintenance as a cut-off point, which the court should take into account while determining maintenance in each concrete case. This sum is compensation for foster children that foster parents receive from the state, which is periodically determined by the ministry responsible

70 *Bilten sudske prakse* Okružnog suda u Novom Sadu 13, 2008 (Court practice bulletin of the *District Court in Novi Sad*), pp. 72–73.

71 Art. 160 of the FA.

for family protection, in accordance with law. The Family Act defines a rule stating that the amount of child maintenance must enable the child to have at least the same standard of living as the parent-debtor (Art. 162/3 FA). The aim of this provision is to prevent a situation in which a parent-debtor pays a much lower amount of the maintenance than his or her actual capacities because the creditor is unable to prove the debtor's level of income and property. In a lot of cases, the creditor's inability to prove a debtor's level of income and property is due to the grey economy that exists in Serbia.

In comparative law, the sum of maintenance is defined depending on specific facts, for example, the number of children (maintenance creditors) and the age of the children. For instance, in Russia, the level of maintenance for children cannot be lower than the amount provided by law in the form of a percentage of income and/or other revenue of the parents. For one child, this amount is one-quarter of the income and/or other revenue; for two children, it is one-third; and for three or more children, it is half (Art. 81 Family Code 1995).

In Germany, the Child Act of 1998 'sets out two means of calculating maintenance for all children: First, individually calculated in terms of par. 1610 I, II, BGB, and, secondly, set under par. 1612a BGB a.a. which minors can claim from parents not living in the same household as them. Set maintenance is a payment reflecting the age of the child and calculated from the average of what parent is able to pay and the average of what the child's needs. It is set out in a statutory order of the federal government'.[72] In 2007, 'the Bill makes provision for a statutory definition of the minimum amount of child maintenance by applying the tax-free allowance for minor children to the revised 1612a'.[73]

In Serbia, a parent who is unable to work and lacks sufficient means of maintenance has the right to maintenance from his or her mature or minor child, or other blood relative in a straight descending line (e.g. a grandchild), who earns wages or has income from property, in proportion to his or her capacities. However, this does not apply if the acceptance of the parent's request for maintenance would present manifest injustice for his or her child or other blood relative.[74]

A minor sibling has the right to maintenance from his or her mature sibling or minor sibling who earns wages or has income from property if the parents are not alive or lack sufficient means of maintenance.[75] Further, a minor stepchild has the right to maintenance from his or her stepmother or stepfather if the marriage between his or her parent and stepmother or stepfather has ceased as a result of death and not of annulment or divorce. A stepmother or stepfather who is unable to work and who lacks sufficient means of maintenance has the right to maintenance from his or her mature stepchild in proportion to his or her capacities, but not if the

72 Rainer, 1997, p. 174.
73 Kroll, 2007, p. 91; Detlehoff and Kroll, 2008, p. 121.
74 Art. 156 of the FA.
75 Art. 157 FA.

acceptance of this request for maintenance would present manifest injustice for the stepchild.[76] Both minor and mature children have the right to maintenance from their grandparents and other blood relatives in a straight ascending line if his or her parents are deceased or if they lack sufficient means of maintenance.[77]

In Serbian law, maintenance in most cases is determined in terms of money. However, maintenance may also be determined in other terms, but only if the maintenance creditor and debtor so agree.[78] An example could be if the debtor produces or trades goods that the child needs.

The maintenance creditor may, at his or her own choice, request that the amount of maintenance be determined as a fixed monthly amount of money or as a percentage of the regular monthly pecuniary income of the maintenance debtor. If the amount of maintenance is determined as a percentage of the regular monthly pecuniary income of the maintenance debtor (salary, compensation of salary, pension, royalties), the amount of maintenance may generally be no less than 15% and no more than 50% of this income, minus the amount of taxes and contributions to compulsory social insurance.[79] The possibility to constitute the amount of the maintenance as a percentage was introduced into Serbian law in 1993, at the time of hyperinflation, as the fixed sum was losing value on a daily basis.[80]

The enforcement of maintenance is a problem in practice, particularly if the debtor does not have a regular income. If the debtor has wages, the amount of maintenance is deducted automatically from his or her salary every month.

The agreement between parents on child maintenance is the legal mechanism that helps in exercising the child's right to maintenance. The Family Act favours parental agreements regarding parent-child relations and, therefore, also those regarding maintenance. In the situation of divorce by mutual consent, spouses are obliged to provide a written divorce agreement, which governs the exercise of parental rights, and a written agreement on the division of joint property. The agreement on the exercise of parental rights may take the form of an agreement on the joint exercise of parental rights or on the independent exercise of parental rights.[81] An agreement on the independent exercise of parental rights includes an agreement on the child's maintenance.

Another legal mechanism that helps in exercising the right of the child to maintenance regards proceedings on maintenance. An action for the maintenance of a child may be initiated by the guardianship authority,[82] which is the body responsible for family protection, family aid, and guardianship. The guardianship authority is

76 Art. 159 FA.
77 Art. 154/2, Art. 155/3.
78 Art. 161 FA.
79 Art. 162 FA.
80 Article 310a and 310b of the Law on Marriage and Family Relations, *Official Gazette of the Republic of Serbia* No. 22/93, 25/93, 35/94.
81 Art. 40 FA.
82 Art. 278/3 FA.

authorised to initiate maintenance proceedings in order to protect the child, for instance, in situations where the parent is not doing so. This procedure is particularly urgent. The first hearing must be scheduled within 8 days from the filing of the action to the court, and the court is obliged to render a decision within 15 days following the day the appeal was delivered.[83] Nevertheless, a rule states that the court is not bound by the claim for maintenance, meaning that it is authorised to make a decision on child maintenance that differs from the claim (Art. 281 FA).

Maintenance payment is privileged according to the 2004 Serbian Law on the Execution Procedure.[84] These payments are one of the first to be paid if real property is sold in an execution procedure, after the costs of this procedure (Art. 140).

An important question regarding child maintenance is in what period the child is entitled to maintenance from the absent parent. In Serbian law and theory, the accepted view is that the right to maintenance payment exists for the period after the maintenance claim is submitted to the court. It is not possible to claim maintenance retroactively. If there is more than one maintenance creditor, under Serbian family law, a child's right to maintenance has priority (Art. 166/4 FA). This is similar in the laws of other countries. For instance, in Germany, a 2007 Bill introduced changes to the priority system: 'The claims of minor children as well as those of adult children – if unmarried, not yet 21 years old, still living with their parents and attending school – ranked first'.[85]

The right to maintenance is also protected in inheritance and criminal law in Serbia. The Inheritance Act of 1995 stipulates that the heir loses the right to inherit if he or she has severely violated his or her maintenance obligation toward the deceased (Art. 4/1-4). In addition, according to Art. 195 of the Serbian Criminal Code, failure to pay maintenance constitutes a criminal offence.[86]

3. Importance of assisted reproductive technologies in solving demographic problems

> Infertility is estimated to affect 9% of reproductive-aged couples worldwide. Applied to Serbia, this estimate would mean that the number of infertile couples in which a woman is of reproductive age is 84,031 …. Interviews with infertility experts from professional teams [have] covered this issue …. Their undivided opinion is that the proportions of female and male infertility are equal and that the cause is unknown

83 Art. 280 FA.

84 Law on the Execution Procedure, *Official Journal of the Republic of Serbia* 2004/125.

85 Dethloff and Kroll, 2008, p. 129.

86 Law on Inheritance 995, *Official Journal of the Republic of Serbia* 1995/46; Criminal Code *Official Journal of the Republic of Serbia*, 2005/85 (the penalty could be a fine or imprisonment of 3 months to up to 3 years).

> in 15–20% of couples. Among the causes of female infertility in Serbia, reduced ovarian reserve dominates. This is primarily related to the postponement of childbearing until advanced age. Another reason is the obstruction of the fallopian tubes, which is most often caused by endometriosis or genital chlamydial infection. Induced abortion is no longer considered an important factor in infertility in Serbia. [In one study,] no infertility expert from professional teams mentioned infectious diseases, including tuberculosis, as an etiological factor in infertility …. Infertility experts from professional teams believe that the reasons for the increase in the frequency of male infertility in Serbia relate to lifestyle (obesity, insufficient physical activity, unhealthy food, and consumption of alcohol and tobacco), stress, and a polluted environment.[87]

Treatment of infertility is the process of determining the causes of infertility or reduced fertility and eliminating these causes by offering professional advice, prescribing medications, or conducting surgical procedures, as well as the process of taking and preserving the male and female sex cells in cases when the medical practice indicates a risk of male and female infertility. The procedures are *in vivo* insemination and *in vitro* fertilisation.

The Serbian Law on Biomedically Assisted Fertilisation of 2017 defines BMAF as a controlled procedure of female fertilisation conducted in compliance with current standards of medical science, different from sexual intercourse (Art. 3/1). Assisted reproductive technologies (ART) include *in vivo* fertilisation and *in vitro* fertilisation with embryo transfer. Procedures include insemination by husband/partner sperm (a homologous procedure) and artificial insemination by donor (AID) sperm (a heterologous procedure). Other procedures are egg and embryo donation, posthumous fertilisation, and surrogate motherhood. Posthumous fertilisation is when a woman wants to be fertilised by her husband's or partner's sperm after his death or to have an embryo transferred to her body after the death of her husband or partner. In Serbia, sperm, egg, and embryo donation are allowed, but surrogate motherhood is not.[88] Comparatively speaking, in some countries (e.g. Switzerland, Italy, and Austria), egg and embryo donation procedures are prohibited. In other countries (e.g. Slovenia), egg donation is permitted, but embryo donation is not. Posthumous fertilisation is allowed in, for instance, the UK, Spain, Belgium, Greece, and Northern Macedonia but is prohibited in, for instance, France, Italy, and other states of the region of former Yugoslavia except Northern Macedonia. In Serbia, posthumous fertilisation is not regulated.

The Serbian Law on Biomedically Assisted Fertilisation stipulates which BMAF procedures are prohibited (Art. 49). These include the donation and use of reproductive cells or embryos without the written consent of the donor; supporting the emergence of embryos through *in vitro* fertilisation with the aim of conducting

87 Rašević and Sedlecky, 2022, pp. 19–36.
88 Kovaček Stanić, 2014, pp. 737–746.

scientific research; enabling the emergence or viability of an embryo in order to obtain genetic material, cells, tissues, and organs for therapeutic purposes and transfer into the human body; use of the parts of embryos obtained in a BMAF procedure, except in cases when the law expressly permits this; allowing the creation of embryos with the same genotype, or embryos that are, on hereditary basis, identical to another living or dead individual (i.e. cloning); creating hybrids with the aim of reproduction or transplantation into a human being or a living form of nonhuman origin; creating chimera with the aim of reproduction or transplantation into a human being or a living form of nonhuman origin; performing the transplantation of a sperm, egg cell, embryo, or foetus of a nonhuman form into a human being; performing the transplantation of a sperm, egg cell, embryo, or foetus of a human form into an animal; performing the transplantation of a nucleotide string into the human genome; using a combination of sex cells of two or more donors (i.e. combining seed cells of more than one man or using egg cells of more than one woman in the process of BMAF); conducting BMAF with the simultaneous application of donated egg and seed cells; creating *in vitro* embryos for a purpose other than creating a human being; creating an embryo out of a cell or a cell fragment taken from the embryo or foetus, or transplanting such an embryo into a woman's body; fertilising an egg cell by a special selection of seed cells deliberately chosen to influence the birth of the child of a particular sex, or to conduct a procedure that increases and provides the possibility of having the embryo of a particular sex and to determine the gender in the *in vitro* embryo, unless this can prevent a serious genetic disease that is related to the sex of the child; performing the merging of human gametes with cells not of human origin, except for a hamster test enabling the development of a human being outside the womb; a woman giving a child to a third party with or without a fee or receiving any tangible or intangible benefits, or the offer of surrogate mother services by a woman or other individual with or without charges or other tangible or intangible benefits; implementing preimplantation genetic diagnosis to choose gametes or embryos of a particular sex and selection, or artificial modification (i.e. changing the genetic basis of sex cells or embryos with the aim of selecting the sex of the child in the BMAF process); creating identical twins by artificially splitting early embryos; and using the seed cells and egg cells of a donor who is related in a direct line by blood to the woman being fertilised, regardless of the degree, including the collateral line to the fourth degree of consanguinity, in-laws, and adoptive relatives.

The Law on Biomedically Assisted Fertilisation contains the principles upon which ART in Serbia are based. The first principle is that of medical justification (Art. 4). This principle is achieved by implementing BMAF procedures to treat infertility in cases where other methods of infertility treatment are not possible or have a significantly lower chance of success, including possible future infertility. The second principle is the principle of the protection of human beings. According to this principle, BMAF procedures must be implemented in such a way as to protect the individuality of the human being and the integrity of the embryo (Art. 5). The third principle is that of public interest. This principle is achieved by performing

BMAF procedures, as well as BMAF research, for the benefit of the person, family, or society and applying appropriate measures to protect human health, safety, dignity, fairness, and basic human rights (Art. 6). The fourth principle is the principle of protecting the rights of children and persons involved in BMAF. According to this principle, priority is given in decision-making on BMAF to the health, welfare, and protection of the child's rights and those of other persons involved in the BMAF procedure, particularly the woman undergoing the BMAF procedure and the child to be born through it (Art. 7). The fifth principle is the principle of equality, which is achieved by providing equal opportunities for both men and women in the treatment of infertility through BMAF procedures (Art. 8). The sixth principle is the principle of free decision-making. This principle is achieved by guaranteeing the right to free decision-making and by allowing free consent to all individuals subjected to BMAF infertility treatment (Art. 9). According to Serbian law, consent must be provided for each BMAF procedure and may be withdrawn in writing until the sperm, unfertilised eggs, or early embryos are transferred into the woman's body. Prior to inserting the sperm, unfertilised eggs, or early embryos, the responsible physician should confirm whether consent has been given or has been withdrawn (Arts. 27 and 28).

An additional principle is that of the protection of human dignity. This principle is ensured by implementing infertility treatment via BMAF procedures while preserving the human dignity, right to privacy and health protection, welfare, and rights of the unborn child (Art. 10). The law also regulates the principle of privacy protection, which is achieved by storing all the information on individuals involved in a BMAF procedure, including donors, and the relevant medical documentation in accordance with the law regulating the conditions for collecting and processing personal data (Art. 11). Another principle regulates safety. To achieve this principle, BMAF procedures must be conducted in accordance with the achievements and developments of medical science and by applying the highest professional standards and codes of professional ethics, as well as medical and ethical principles related to safety practices in BMAF (Art. 12).

The procedures regulated by the Law on Biomedically Assisted Fertilisation became more readily available from 2020 onwards, when an unlimited number of stimulation procedures and three embryo transfers for women under 43 years became free of charge.[89] Two stimulation procedures and one embryo transfer are also free of charge for a second child.

In Serbia, the population is predominantly Christian Orthodox.[90] The stance taken by the Christian Orthodox Church on ART is explained by Professor Dr Zdravko Pena as follows:

89 State instructions for conducting biomedically assisted fertilisation, *Official Gazette of Serbia* No. 06/2020.

90 2011 Census of population, households, and dwellings in the Republic of Serbia, Population, religion, mother tongue and ethnicity, 4, Statistical Office of the Republic of Serbia, Belgrade, 2013, pp. 38–39.

> Due to the fact that on the problems of cloning, *in vitro* fertilisation, the birth of children with selected features, the 'creation' of new organisms, the transplantation of human organs, and other biotechnological advances, there is no explicit testimony in the Bible or in the works of the Fathers of the Church, it is necessary to resort to general criteria with a biblical foundation. At the same time, these criteria must have a foundation in the sacramental life of the Church, where the entire life of its members is played out …. [91]
>
> Contemporary theology should help not by intruding with strict solutions, suggesting dogmatic principles, or prohibiting practices, but by calling upon the people to see life from the perspective of the Church, and in that way to examine Man, and then, in light of biblical anthropology, to examine the existential dimensions of biotechnological research …. The issue of artificial insemination should not be viewed only from the perspective of biology and the idealisation of the law of nature …. Favouring natural conception is certainly justified in all those situations where fertilisation may occur in this way, or when for some irrational reason that relationship is being avoided. If artificial insemination is the only solution to obtain offspring, the omission of this possibility, with the excuse that this practice disturbs the natural relationship between the spouses is completely unjustified, not only from a biological but also from a theological point of view …. Artificial insemination imitates the natural laws and tries to substitute them if they do not exist or they are not active.

In Professor Pena's opinion, the destruction of so-called 'spare' embryos and their use in research must be avoided.[92]

In addition, Harakas discusses the Christian Orthodox stance on embryo fertilisation outside the womb. Concerning artificial insemination, he states,

> The sacramental unity of marriage and the family … excludes all intrusions … also when an outside party contributing genetical material (whether semen or ovum) towards the creation of a child who ought to belong genetically to not one but both marriage partners …. This means the egg must come from the wife's own ovaries, and that the sperm must be the husband's own; for a donor, whether male or female, would constitute the intrusion of a third party into the marriage tantamount to adultery.[93]

Concerning *in vitro* fertilisation, Harakas adds,

> Serious objection is raised here to the fact that many more eggs are fertlilized then can be use; those not used are discarded …. As a step which de-humanizes life, and which separates so dramatically the personal relations of a married couple from

91 Interview with Professor Dr Zdravko Pena, Chair for Christian Ethics and Comparative Theology, Faculty of Theology, East Sarajevo, Bosnia and Herzegovina, *Pravoslavlje,* No. 1027–1028.

92 Ibid.

93 Harakas, 1982, p. 88.

> child-bearing is very suspect …. It would seem that the Orthodox Church should not encourage its members to become involved in *in vitro* fertilization procedures, nor does it seem that it would be wise for society in general to encourage this practice.[94]

In Serbia, married couples and heterosexual partners are considered the subjects of BMAF procedures as there is no regulation on same-sex partnerships. It seems that the rights of homosexual partners should not start from reproductive rights. According to Art. 25 of the Law on Biomedically Assisted Fertilisation, the right to a BMAF procedure may be exceptionally granted to an adult and legally capable woman living alone who is able to perform parental duties in the best interests of the child. The AID of a woman without a partner would mean that the child born from the procedure would not have a father according to family law, as it is not allowed to establish the paternity of a donor. In such a case, the child would have just one parent, the mother. From the perspective of family law, the interest/right of the child to have both parents must be considered. If a single woman has access to AID, this interest/right of the child would not be respected. On the other hand, it can be argued that a single woman has reproductive rights, including the right to AID. Whether a single woman would have the right to AID or not depends on whether the legislator of a particular country considers the interest/right of the child to have both parents or the single woman's right to AID more important. Supportive parenting is a solution in UK law in situations where a woman without a partner undergoes an ART procedure: to have access to ART, a single woman must meet the requirement of supportive parenting.[95] To implement this requirement, UK guidelines state,

> Where the child will have no legal father, the centre should assess the prospective mother's ability to meet the child's/children's needs and the ability of other persons within the family or social circle willing to share responsibility for those needs.

Supportive parenting appears to be a good solution, enabling two people to be involved in raising the child and, in that way, respecting the interest/right of the child to have both parents. It is suggested that this solution should be introduced in Serbian law *de lege ferenda*.

An important international legal source is the Convention on Human Rights and Biomedicine.[96] The fundamental intention of this convention is to ensure the dignity of the human being and to protect human dignity from the misuse of biology and medicine. To achieve this intention, the need to respect the human being both as an individual and as a member of the human species is recognised. According to the preamble of the convention, progress in biology and medicine should be used for the

94 Ibid.

95 Section 14 (2) (b) of the Code of Practice developed under the HFEA.

96 Convention on Human Rights and Biomedicine, 1997, ratified in Serbia: *Official Gazette of Republic of Serbia – International treaties* No. 12/2010.

benefit of present and future generations. The purpose and object of this convention are defined in Art. 1, as follows:

> Parties to this Convention shall protect the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine. Each Party shall take in its internal law the necessary measures to give effect to the provisions of this Convention.

One of the principles of this Convention is the primacy of the human being, as stipulated in Art. 2:

> The interests and welfare of the human being shall prevail over the sole interest of society or science.

Another principle is that of the equitable access to healthcare, as described in Art. 3:

> Parties, taking into account health needs and available resources, shall take appropriate measures with a view to providing, within their jurisdiction, equitable access to health care of appropriate quality.

Further, Art. 4 stipulates the principle of professional standards, as follows:

> Any intervention in the health field, including research, must be carried out in accordance with relevant professional obligations and standards.

The principle of free consent is laid down in Art. 5:

> An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it. This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks. The person concerned may freely withdraw consent at any time.

If the adult person is not capable of giving consent because of a mental disability, disease, or similar reasons, the intervention may only be carried out with the authorisation of his or her representative or an authority, person, or body provided for by law (Art. 6/3). The previously expressed wishes relating to a medical intervention of a patient who is not, at the time of the intervention, in a state to express his or her wishes shall be taken into account (Art. 9).

It is also stated that the use of medically assisted procreation techniques is not allowed for the purpose of choosing a future child's sex, except to avoid serious

hereditary sex-related diseases (Art. 14). Where the law allows research on embryos *in vitro*, the adequate protection of the embryos must be ensured.

3.1. Establishment of family status

Maternity and paternity resulting from legal human reproductive procedures in Serbia are regulated in the Family Act.[97] The Act explicitly stipulates that the mother of a child conceived with biomedical assistance is the woman who gave birth to the child. Thereby, the legislator has given primacy to the fact of carrying and delivering a child over genetic origin; in other words, regardless of the fact that a child can be conceived with a donated egg (or embryo), the legal mother is the woman who gives birth to the child. This means that even if the child does not carry her genetic characteristics, the woman is still the legal mother. The other rule concerns the prohibition of determining the motherhood of the woman who has donated the egg (Art. 57). The purpose of donating genetic material is that the woman who wants the child, and whose egg cannot be fertilised, obtains an egg from another woman, who is then fertilised with the sperm of her partner. After the transfer of the embryo into the body of the woman who wants the child, she carries and gives birth to the child. In this case, the child carries the genetic characteristics of the woman donor and the partner of the woman who wants the child. Donation of the embryo is also possible, and then the child will not have the genetic characteristics of either legal parent. Considering that the child will be raised by the woman who delivered the child, determining the motherhood of the woman who donated the egg would not have any purpose. However, if there is a (covered-up) case of surrogate motherhood, this stipulation has a much greater significance because the very mother whose egg is fertilised wants to be the mother.

The Family Act regulates the paternity of a child conceived through biomedical assistance, stating that the mother's husband or partner is to be considered the father of the child, provided that he has granted written consent to the procedure (Art. 58/1,2). This means that if the mother's husband has not granted written consent to the procedure of BMAF with donated sperm, he can contest his paternity. If the mother's partner has not granted written consent to the BMAF procedure, he will not be considered the father as there is no legal presumption that the mother's partner is the father of a child born in non-marital cohabitation.

The paternity of the man considered to be the child's father may not be contested, except if the child was not conceived through a BMAF procedure. If a child is conceived through biomedical assistance using donated semen cells, the paternity of the man who donated the semen cells may not be established (Art. 58/3,4,5). A man considered to be the father of a child conceived through biomedical assistance may initiate action to contest his paternity within 1 year from the day of learning that the

97 For more, see: Kovaček Stanić, 2010, pp. 147–161; Detlehoff and Ramser, 2007, p. 182; Kovaček Stanić, Samardžić, 2019, pp. 235–250.

child was not conceived through a BMAF procedure and no later than 10 years from the birth of the child (Art. 252/5).

Concerning the secrecy of donor identity, in Serbia, the child has the right to obtain only the donor's medical data.[98] Art. 57 of the Serbian Law on Biomedically Assisted Fertilisation states,

> A child conceived by biomedically assisted fertilisation with reproductive cells of the donor has the right to ask for medical reasons to obtain data on the donor from the Board of Directors for Biomedicine kept in the State Registry. The child obtains this right when he or she reaches 15 years of age if he or she is able to reason. These data on the donor are not of a personal nature, but only data of medical importance for the child, his future spouse or partner, or their future offspring.
> A legal representative or guardian of the child may ask for these data from the Board of Directors for Biomedicine with the permission of the court in an extra civil procedure, which is given if justifiable medical reasons exist.
> The medical doctor of the child may ask, for medical reasons, for information from the State Registry to prevent risks to the child's health.

From a comparative perspective, several countries have established the right of a child whose conception was the result of AID genetic material to know the identity of the donor. For example, Sweden's Act on Insemination, established in 1984, introduced this right.[99] This was a departure from the principle of donor anonymity, and this solution could be considered revolutionary in its approach to ART. In Sweden, donation of ova was introduced in 2002, and the child has the right to know the identity of a donor of ova. Several other countries have now introduced the right of a child to know the identity of the donor, including the UK, Austria, the Netherlands, and Switzerland.[100]

A child gains the right to obtain information on donor identity when he or she reaches the necessary level of maturity in Sweden, at age 14 in Austria, at age 16 in the Netherlands, and at the age of 18 without any condition or younger if material interest is proven in Switzerland. In the Netherlands and Switzerland, data on the donor should be kept for 80 years from the birth of a child.

98 Kovaček Stanić, 2021, pp. 199–210.

99 Act on Insemination of Sweden 1984:1140. The IVF Act was repealed by the Genetic Integrity Act on 1 June 2006. The right to identifying information about the donor is stipulated in Chapters 6 and 7 of the Genetic Integrity Act. See: Stoll, 2008.

100 UK Human Fertilisation and Embryology Act 1990, 1990 c. 37, replaced by the UK Fertilisation and Embryology Act 2008, 2008 c. 22, [Online]. Available at: http://www.legislation.gov.uk/ukpga/2008/22 (Accessed: 5 February 2024). Act on procreative medicine of Austria 1992; in Bernat and Vranes,1996; Act on artificial insemination (information on donor) of Netherlands 2002 Forder, 2000; Act on medically assisted procreation of Switzerland 1998 in Guillod, 2000 p. 365.

Several countries that have retained the principle of secrecy in connection with information on donors, including Russia and France.[101] Russia's Federal Law on the Basic Health Protection of the Citizens in the Russian Federation stipulates that in the usage of donor reproductive cells and embryos, citizens have the right to obtain information on the donor's medical-genetic examination, race, nationality, and outward appearance (Art. 55/8).

3.2. Surrogate motherhood

Surrogate motherhood is a procedure in which a woman consents to pregnancy and birth in order to relinquish the child to a couple that has commissioned the pregnancy.[102] The first published case of surrogate motherhood took place in Louisville, Kentucky, in November 1980. The woman who had carried and given birth to the child, which was conceived through artificial insemination with the sperm of the husband of an infertile woman, handed over the child to the married couple and, thus, fulfilled her obligation. Some authors have identified the roots of this phenomenon in biblical times.[103]

There is a significant difference between the donation of sperm, and even the donation of an egg, and surrogate motherhood because the latter includes carrying and giving birth to a child. Pregnancy and giving birth to a child lead to the creation of emotional ties between the mother and child, which are sometimes difficult to break. The problems that may emerge, both legal and existential, are sensitive and complicated, and in extreme cases, are opposed to the principle of the child's best interests. Nevertheless, surrogate motherhood is the only possible way for some couples to have a child who is genetically connected to them, which sometimes represents the most important goal in their lives. Surrogate motherhood could be permitted only in cases that are medically justified, that is, when it is the only way for an individual to have his or her own child. All other motives are unacceptable and prohibited (e.g. aesthetic reasons, professional reasons for which a woman would not wish to undergo pregnancy and delivery). In life, there are often different interests, and the law often must decide which interests it wants to protect. Which interests will be protected depends on many circumstances, such as ethical considerations, social acceptability, and in this case, the progress of reproductive medicine. By permitting surrogate motherhood, we are choosing to protect the interests of the

101 France: Bioethical Laws 1994, 2004, 2011; Terminal, 2016, p. 39.

102 In addition to 'surrogate motherhood', other terms used to label this form of reproduction using medicine include 'surrogate pregnancy', 'surrogate gestation', 'surrogate parenting', and in the Serbian literature, 'birth out of favour'.

103 The Bible recounts how Sarah, Abraham's wife, who could not have children of her own, talked Abraham into taking the concubine Hagar, and from that relationship a son, Israel, was born. It is suggested that Abraham, Sarah, and Hagar used the institution of surrogate motherhood through natural sexual intercourse, and the only difference is in the unfortunate fact that Hagar could not refuse the offer because she was Sarah's slave. The Bible, Gen. 16.

infertile couple, that is, the woman who cannot carry a pregnancy and her husband or partner.

In his book *Contemporary Moral Issues Facing the Orthodox Christian*, Harakas explains the Orthodox Christian stance on surrogate motherhood, using the term 'host mother':

> This procedure seems especially contrary to Orthodox Christian ethic in view of the special natural, spiritual and emotional relationship which exists between mother and a baby during pregnancy.

The Russian Orthodox Church has also declared a stance on surrogate motherhood. According to a document issued by the Synod of this Church, parents of a child born by a surrogate mother must repent before they can to baptise the child, or the child may be baptised when he or she reaches the age of majority and decides for him or herself. The Russian Orthodox Church is of the opinion that surrogate motherhood is a humiliating practice as a woman's body serves as a sort of incubator.[104]

In Europe, surrogate motherhood is allowed in the UK, the Netherlands, Israel, Greece, Ukraine, Armenia, Georgia, and Northern Macedonia but is prohibited in France, Austria, Spain, Italy, Germany, and Switzerland. In the Russian Family Code, motherhood is regulated in the cases of conception with medical assistance, including surrogate motherhood.[105]

There are two forms of surrogate motherhood: one is when a woman gives birth to a child who is genetically hers ('partial', genetic surrogacy), and the other is when the surrogate mother only carries and delivers the child, the child genetically belongs to the couple who wants the child, and either the egg cell of a third woman (donor) is fertilised or the embryo is donated ('full', 'total' gestational surrogacy). In these cases of conception and childbirth, there are two female participants, while in the latter case, there is also a third woman who will bring up the child. From a biological perspective, the woman whose egg cell is fertilised could be called the 'genetic mother', and the woman who carried the child could be considered the 'gestational mother'.

Serbian legislation does not currently permit surrogate motherhood. Relevant Acts include the Family Act of Serbia, passed in 2005, and the Law on Biomedically Assisted Fertilisation, passed in 2017. Articles in the Family Act related to motherhood do not create conditions for surrogate motherhood as they state that the mother of a child is the woman who gave birth to it. The Law on Biomedically Assisted Fertilisation explicitly prohibits the practice of surrogacy (Art. 49/18). Engaging in surrogate motherhood is a criminal offence that is punished by imprisonment of 3 to 10 years (Art. 66).

104 B92 26 December 2013, Source: Tanjug.
105 For more, see: Kovaček Stanić, 2013, pp. 35–57; Kovaček Stanić, 2014, pp. 151–169.

De lege ferenda, if it is decided that surrogate motherhood will be regulated in Serbia, in this author's opinion, this should start from restrictive solutions. This would mean that only gestational surrogacy would be permitted, in other words, the egg must originate from the woman who wants the child, and not from the surrogate mother.

3.3. Legal status of so-called 'spare' embryos and genetic material

The Serbian Law on Biomedically Assisted Fertilisation states that the Centre for BMAF or the bank may not give or distribute reproductive cells, tissues, or embryos to an institution or person contrary to the provisions of this law. Persons from whom the stored reproductive cells, tissues, or embryos originate can, for justified reasons, request their transfer to another centre in the territory of the Republic of Serbia, as well as to another institution outside this territory that is registered to perform BMAF procedures, and for use in a BMAF procedure for their own assisted reproduction (Art. 52/4,5).

Semen cells, egg cells, and early embryos are kept no longer than 5 years, but with the possibility to extend this period for 5 more years at the request of a person from whom the genetic material originates. Thereafter, semen and egg cells should be destroyed, and early embryos should be spontaneously decomposed and destroyed. After the total period, persons from whom genetic material originates should decide on the further process for the reproductive cells and early embryos, with the possibilities being to donate them to other persons or to consent to their use for scientific research purposes (Art. 51).[106]

However, the creation of human embryos for research purposes is prohibited in the Convention on Human Rights and Biomedicine (Art. 18). An important issue connected with research on human embryos that has been analysed in the literature is the ethical justification of clinical trials.[107]

4. Concluding remarks

In Serbia, the natural increase has been negative for more than 20 years, and unfortunately, has been decreasing. In 2022, the natural increase was -7%, the birth rate was 9.4%, and the mortality rate was 16.4%. This mortality rate was much higher than before the pandemic (e.g. in 2019, the mortality rate was 14.6), likely as a result of deaths related to COVID-19. Before the pandemic, the natural increase was approximately -5%. A negative natural increase is one reason why it is necessary to

106 For more, see: Deech and Smajdor, 2007, p. 159.
107 For more on the ethical justification of clinical trials, see: Živojinović, 2012, pp. 331–347.

introduce pro-natal family policy as part of state policy and introduce measures to encourage births.

Serbia has introduced the National Strategy for Youth and Strategy for the Encouragement of Childbirth. The Serbian Constitution and several laws protect family, parents, and children (e.g. the Law on Financial Support for Families with Children, Law on Biomedically Assisted Fertilisation, Labour Law, Family Act, etc.). A sum of RSD 87 billion per year is allocated to supporting parents in having children.

Maternity leave lasts for 3 months, and childcare leave lasts for an additional 9 months. Maternity leave is mostly available for mothers; fathers may take it only if the mother is unable to care for the child. Conversely, childcare leave is available for both mothers and fathers in the same way, which means that parents agree on which of them are going to use this leave. It is also possible to share leave between parents. In 2022, 373 fathers in Serbia used leave for childcare. Serbian law encourages the birth of a third and fourth child as the combined maternity and childcare leave for these children lasts for 2 years.

The procedures regulated by the Law on Biomedically Assisted Fertilisation became more available from 2020, when unlimited stimulation procedures and three embryo transfers for women under the age of 43 years became free of charge. Two stimulation procedures and one embryo transfer are also free of charge for the second child.

These are some of the measures that are currently implemented in Serbia. It should be noted that most of these measures are based on financial grounds. There is no doubt that they are helpful for young people wanting to create a family; however, it is questionable what their ultimate effects will be, and whether they are stimulating enough for couples to decide to have more children, or whether overall social, economic and political circumstances will still prevail in decisions regarding childbirth.

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Chapter 17

Slovakia: Safeguarding the Future – Legal and Policy Solutions to Demographic Trends

Lilla Garayova

Abstract

Europe is experiencing a complex set of demographic challenges characterised by declining birth rates, an ageing population, and evolving family structures. These demographic trends have the potential to impact various facets of society, including labour markets, social welfare systems, and intergenerational relationships. To address these challenges, European nations have devised legal solutions, primarily through family policy and family law instruments, aimed at supporting families, parents, and children. Some of these nations have developed strong legal tools in response to this demographic change, while others are struggling. These demographic challenges necessitate comprehensive legal responses that incorporate family policy and family law instruments. By promoting family well-being, supporting parents, and safeguarding the rights of children, these legal mechanisms contribute to addressing the complex demographic issues confronting Europe. Policy-makers must continue to adapt and refine these legal solutions to ensure the sustainability of European societies in the face of demographic change. This country report provides insight into the demographic challenges and their solutions specific to Slovakia.

Keywords: protection of families, marriage, matrimony, family law, demographic challenges, family policy

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1. Introduction

According to the European Values Study, 95.3% of Slovaks think that a child needs a home where both parents are present in order to be happy, which is well above the European average.[1] Family is highly valued in and important to Slovak society.

Broadly speaking, family is considered important for society itself and the life and destiny of humanity. Consequently, scientific and non-scientific disciplines are interested in the concept, essence, and content of the family, and how it has changed in the twenty-first century. The law is no exception. However, each field of study devotes a different space to the family and provides a different perspective. Dictionaries provide a number of general definitions of 'family', which is typically defined as 'a group consisting of two parents and their children living together as a whole', 'a group of persons connected by blood or marriage', or 'all descendants of the same ancestor'. From a sociological perspective, family is a group of persons connected by marriage, blood, or adoption, who form one household and interact with one another; families usually comprise spouses, parents, children, and siblings. Psychology understands the family as a social group connected by marriage or blood, responsibility, and mutual assistance. Of course, as the family is subject to regulation and the legal order, it is also of considerable interest to legal science. However, legal theory does not define the family, it only describes it through rights and responsibilities. In respect to the Slovak Republic, it is important to note the absence of a legal definition of the family, despite the fact that this term is used in a number of legal regulations of both private and public law, and Act No 36/2005 Coll. on the Family (hereinafter, the Family Act). The Family Act provides closest approximation to a definition insofar as it states that 'family founded by marriage is the basic cell of society. Society comprehensively protects all forms of the family'. Of course, this cannot be considered a definition of the family, just as it cannot be stated from the first sentence in the context of the second sentence that the family arises only by marriage. In fact, there is no definition of the family, legal or otherwise, anywhere in the Slovak legal order.

Among the various definitions of the family, the most comprehensive and popular describes the family as the basic unit of society, which helps its members create their own identity while shaping the conditions for their integration into society. The family is the environment where the child most easily and reliably becomes a social and creative person. It is the place where the necessary conditions for the growth of human capital are created, where societal wealth is rooted. Over the course of historical

1 The European Values Study (EVS) is a comprehensive cross-national survey that aims to understand the beliefs, values, and attitudes of people across Europe. It provides valuable insights into various aspects of society, including family values. It is important to note that these findings may vary over time and be influenced by various factors such as cultural, economic, and political changes. Established in 1983, the EVS is the oldest comparative survey on value orientations in Europe. It is conducted in nine-year cycles and examines continuity and change in values relating to the most important areas of human life. In Slovakia, the Slovak Academy of Sciences conducts the survey periodically and the data used in this country report are based on the data provided by the Slovak Academy of Sciences.

development, the family has undergone several forms, from blood kinship through to polygamous forms and the monogamous type (matriarchy, patriarchy). In developed countries, the period up to the early 1960s is referred to as the 'golden age of the family'. Families were formed by marriage and rarely ended by divorce. The main focus of family life was the birth and upbringing of children. Until the 1960s, the family in Slovakia had essentially the same form. The 1970s marked the end of the uniform family model in northern and western European countries. New marriages became less frequent, old marriages broke up more often, and unmarried partnerships began to grow in importance. In Slovakia, as in other former Eastern bloc countries, a different model emerged—one characterised by high reproduction and marriage rates on the one hand, and high mortality and divorce rates on the other. Change did not come until the late 1980s and early 1990s. The fundamental social changes after the Velvet Revolution of November 1989 were also reflected in the family behaviour of the Slovak population, which began to resemble the Western European reproductive model. The question is whether these changes are indicative of a crisis or a renaissance of the family in Slovakia. Answering this question is not simple and requires the detailed and comprehensive examination of the issue by experts of several disciplines. In this respect, demography often provides the only relevant and measurable data documenting changes in families and family behaviour, while law and legal policies provide the only relevant and reliable tool with which to tackle these challenges.

2. The Slovak population in numbers

The Population and Housing Census is one of the most important sources of data on the family in Slovakia. Traditionally, this census has been conducted in Europe and elsewhere in the world in 10-year intervals. In the territory of Slovakia, censuses have been conducted since the Middle Ages. With the development of society, the objectives, range, and methods of statistical surveys have changed and the first modern organised statistical survey based on the principles of international statistical congresses was held in the territory of a present-day Slovakia in 1869.[2] The first Czechoslovak Population Census was carried out in 1921. The population census in 1950 was linked with the census on houses and dwellings. At this time, agricultural, industrial, and trade establishments were also listed. The first integrated census, akin to that conducted today, was carried out in 1961 and collected data on the population, housing, and dwellings. The first Population, Housing, and Dwelling census in independent Slovakia was conducted in 2001. This marked the first time that a full census was conducted in the country, with the organisation, collection, processing, publication, and presentation of data undertaken by the Statistical Office

2 Information provided by the Statistical Office of the Slovak Republic.

of the Slovak Republic.[3] Historically, the 2011 Population and Housing Census is noteworthy for two reasons. First, pursuant to Regulation (EC) No 763/2008 of the European Parliament and of the Council of 9 July 2008 on population and housing censuses, population censuses were held in all European Union Member States at the same time. The 2011 census marked the first time in history that the residents of the Slovak Republic were allowed to choose whether to fill out the Census Sheets in paper or electronic form. Second, in addition to the official language, paper and electronic Census Sheets were also available in minority languages in Slovakia, namely, Hungarian, Romany, Ruthenian, and Ukrainian languages. The most recent census was conducted in 2021.

The 2021 Housing and Population Census was co-ordinated by the European Union and the United Nations as part of the global programme of population and housing censuses. The Slovak Republic carried out the 2021 census in accordance with European Parliament and Council Regulation (EC) No 763/2008 on population and housing censuses. Both EU regulations and national requirements were taken into consideration in conducting the census. The 2021 census was novel insofar as it was the first integrated and fully electronic census in Slovakia. The 2021 census was conducted in two stages: the housing census and the population census. The housing census was carried out by the municipalities from 1 June 2020 to 12 February 2021, without population participation via an electronic system. The population census consisted of the self-enumeration of the population (15 February–31 March 2021) and the assisted census of the population (3 May–13 June 2021). Given the unfavourable epidemic situation, the assisted census of the population was not carried out at the same time as the self-enumeration.[4]

In general, the census is a comprehensive survey that provides detailed information not only on the family as a basic social unit, but also on the members comprising the family. In particular, data on census households provide statistical data on the family, which have been defined in terms of kinship relations within the family. A household may also be made up of persons living together in the same dwelling and household without family ties. As such, it is necessary to distinguish between family and other households. The core of family households is the family, which may be complete or incomplete. A complete family comprises a married or unmarried couple, with children (irrespective of their age) or without children. An incomplete family consists of one parent with at least one child (irrespective of the age of the

3 The Statistical Office of the Slovak Republic is a central body of state administration of the Slovak Republic for the field of statistics, governed by Act No. 575/2001 Code of Acts on Organisational Activity of Government and the Organisation of Central State Administration as amended. The Office carries out tasks pursuant to Act No. 540/2001 Code of Acts on State Statistics as amended and tasks determined by other generally binding legal regulations. The Statistical Office of the Slovak Republic has operated as an independent institution since 1 January 1993, that is, the day of the formation of the independent Slovak Republic.

4 Statistical Office of the Slovak Republic. Population and Housing Census. Available at: https://tinyurl.com/2p8h8rzz (Accessed: 1 January 2024)

child). Simply put, for the purposes of demographic research, a family household consists of at least two persons in direct kinship. Other households are divided into multi-person non-family households and single-person households. A multi-person non-family household comprises two or more persons, related and unrelated, living together but not forming a family household. A single-person household consists of a single person who lives in the dwelling alone or as a lodger, or who lives with another person in a household but is self-sufficient. A disadvantage of the Housing and Population Census is its 10-year periodicity, which is insufficient for current requirements. In view of the purposes of this book and to examine the demographic challenges in Slovakia, this chapter primarily focuses on family households. This chapter also touches on other non-family household types, which represent an important type of contemporary forms of cohabitation or housing.

Since the family became the subject of statistical surveys in Slovakia over 60 years ago, there have been a number of changes in the structure of family households. Of these, the most significant were those related to the change in the reproductive model at the end of the twentieth century. Historically, the family unit was supposed to fulfil all basic functions (e.g. biological, educational, economic), but after the Velvet Revolution of 1989, it was necessary for families to adapt to the new political, economic, and social situation. Therefore, the early 1990s can be regarded as the start of a period of fundamental changes in the structure of the family and family behaviour.

Since the 1961 census, the number of households in Slovakia has increased steadily. Indeed, the number of registered households increased from 1,183,300 in the 1961 census, to 2,071,700 in 2001, to 2,376,103 as of 1 January 2021.[5] In relative terms, this represents an increase of over 100%.

Table 1. Number of households in Slovakia[6]

Year	Number
1961	1,183,300
1970	1,344,687
1980	1,660,477
1991	1,832,484
2001	2,071,743
2011	2,064,635
2021	2,376,103

5 Statistical Office of the Slovak Republic, 2021, Census Results.

6 Table created based on historical statistical data provided by the Statistical Office of the Slovak Republic.

In terms of the structure of households, complete family households maintained a dominant position in each census year. Until the end of the 1980s, the intensity of complete family formation was still high, given the prevailing proportion of married persons.

While complete family households accounted for more than 80% of census households in the 1961 census, this figure fell to 70.6% in the 1980 census. The complete family household continued to decline, falling to 56.4% in 2001 and an all-time low of 45.3% in 2021. In the decades following the Second World War (1939–1945), the prevailing orientation towards the traditional family was reflected in the highest proportion of complete families with children in the total number of family households. The system of pro-natality measures and policies implemented in Slovak society had a strong motivating effect on family formation and childbearing. The birth of a child often increased parents' chances of obtaining independent housing. The number of complete families with children increased steadily from 1961 to 1991. Despite the fact that the 1991 census took place in a different socio-political situation, the traditional reproductive model—the so-called Eastern European reproductive model—remained influential in Slovakia.

Since the beginning of the 1990s, the demographic behaviour of the Slovak population has undergone radical changes, increasingly approaching the Western European reproductive model. The decline in marriage and fertility is reflected in the decrease in the absolute and relative number of complete families with children. The opposite development trend has been observed in complete family households without children, which has increased due to the aforementioned changes in the demographic behaviour of the population, with young spouses delaying the decision to have children in the family until a later time. This trend has also been influenced by the gradually improved mortality rate of older people in the population, as a complete family without children can be made up of a couple whose children no longer fall into the category of dependent children.

Another characteristic feature in the evolution of households from 1961 to the present is the relatively dynamic growth of single-parent families. This is primarily a manifestation or consequence of the unfavourable development of the divorce rate. In 1961, there were 99,600 incomplete families in Slovakia. This figure had more than doubled by 2001, with some 246,400 incomplete families recorded in 2021 census, and increased further to reach 360,000 in the 2021 census. Of incomplete families, the predominant model is that of a single mother with a child or several children. Single-mother families make up almost 86% of incomplete families, with single fathers with a child accounting for the remaining 14%.[7]

Single-person households also warrant attention, given their representation in the total number of census households and the changes that have taken place in their structure since the early 1960s. There has been a significant increase in

7 Basic results on households from the 2021 Census of Population, Houses, and Dwellings. Available: https://tinyurl.com/3ju6j7zf (Accessed: 1 January 2024)

single-person households. Indeed, single-person households accounted for 9.3 percent of all census households in 1961, 30% in 2001, and 35% (835,614 households) in 2021. The majority of single-person households fall into the 20–34 age category, which is indicative of an increasing tendency to delay first marriages until an older age and the reduction of intensity of marriage, as well as a growing preference for an independent lifestyle without a permanent partner or without a partner at all. The trend towards an increase in the average age at marriage is common in Western European countries and Slovakia is following this trend as well. As a result of increased individualism and a weakening interest in family life, the number of single-parent households is expected to continue increasing in the future.

Throughout history, the institution of the family has undergone many transformations. Certainly, the roles of family members (the dominant role of the father is receding, while mothers are becoming more involved in their professional careers), functions (social and educational functions are being partially taken over by schools and other institutions), and family size (fewer children, the retreat of multi-generational households) have all changed. Nevertheless, the family remains a stabilising element of society in Slovakia.

After dropping below 30,000 in 1994, the number of marriages has fluctuated between approximately 24,000 and 28,000 per year since 2000. In the second half of the 1970s, when marriages peaked, there was around 44,000 marriages per year. In 2021, only 23,800 marriages were contracted—the lowest number of weddings since the establishment of Czechoslovakia in 1918. The average marital age has increased significantly as well, averaging at 34.9 years for men and 31.9 years for women.[8] It is worth noting that there are significant regional differences in the marital age and the number of marriages per annum. The marital age is significantly lower in the northern regions of the country, which are more religious and traditionally inclined, than in the southern and western regions. For many young people in Slovakia, family formation begins with the birth of a child rather than marriage. If we were to look at today's figures through the lens of the late 1980s, we would probably be slightly shocked at how quickly and significantly the nature of the family and reproductive behaviour has changed.

Divorce is the legal end of a marriage. The divorce rate in Slovakia increased from the 1990s until about 2009, whereafter it began to decline. Had the divorce rate remained at the 2009 level, more than 40% of marriages in Slovakia would have ended in divorce. However, the divorce rate has gradually declined since 2009. Paradoxically, this downward trend was further boosted by the pandemic. According to demographic researchers, this downward trend is due to the higher

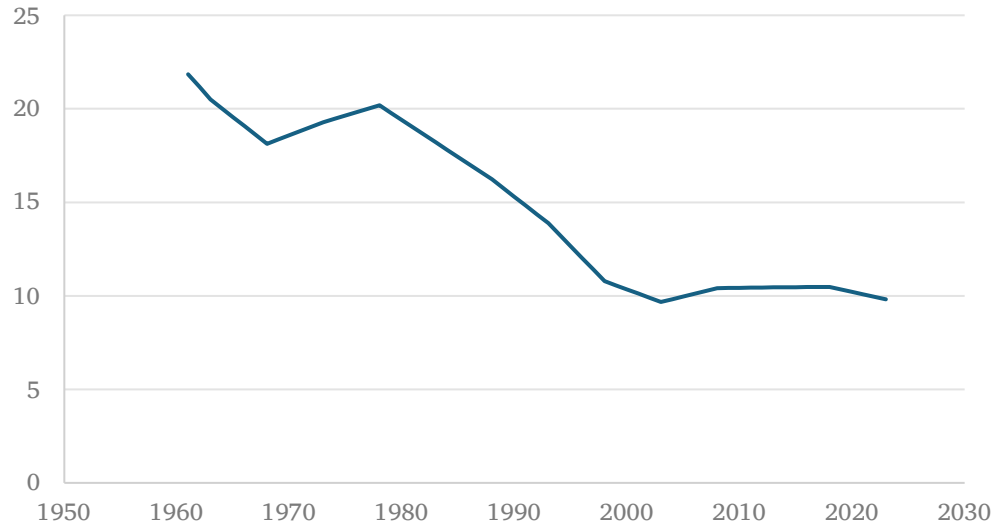
8 Statistical Office of the Slovak Republic (2020) *My v cislach*. [Online]. Available at: https://slovak.statistics.sk/wps/wcm/connect/f1a037e8-37bd-4645-a76d-d185838e3610/MY_v_cislach_Pohyb_obyvatelstva_2019.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE-f1a037e8-37bd-4645-a76d-d185838e3610-n5oX5zo (Accessed: 1 January 2024).

marital age—with people entering into marital union later, when they are more established and mature and tend to choose more compatible partners. Another contributing factor is the decline in marriages, with many young people deciding to live together without entering into a marital union. Divorce rate is difficult to assess across countries because a contributing factor to the divorce rate is the domestic legislation and legal conditions of divorce. The current divorce rate in Slovakia is similar to that of Poland, where the numbers are slightly lower. In contrast, Hungary and the Czech Republic have higher divorce rates. Slovakia's divorce rate has been and is significantly lower than other countries in Western and Northern Europe. This can be considered a good sign from the point of view of family and societal stability.

In 2021 census, 120,000 couples were cohabiting—a significant increase on previous years, with 90,000 cohabiting couples recorded in the 2011 census and only 30,000 in the 2001 census. Cohabitation is a form of sharing a household between two adult partners who live together for a long period of time and form a union without actually being married. Informal partnerships have increased dramatically in most post-industrial societies as a result of the transformation of social and moral norms, with the spread of such partnerships directly linked to the postponement of marriage to a later age. Cohabitation is a phenomenon that has been rising steadily in the Slovak Republic. Most EU countries have begun making cohabitation part of their legal systems and recognised various forms of it, including registered partnerships or civil unions. However, there are sizeable differences between EU Member States, particularly in terms of their interpretation of cohabitation and the rights and responsibilities that come with it. Slovakia belongs to the handful of EU Member States that do not provide for registered partnerships alongside Latvia, Lithuania, Poland, and Romania. In Slovakia, there is no legal institute serving as an alternative to traditional marriage, nor an institute that comprehensively covers the legal status, rights, and duties of cohabitants. This is due to the traditional nature of Slovak family law, that is, the way the institute of marriage and family are dealt with in the country's legal order. While a comprehensive legal framework of cohabitation is missing, it cannot be said that the Slovak legislation ignores cohabitation—there are many legal consequences in various fields of law that relate to the rights of cohabitants.

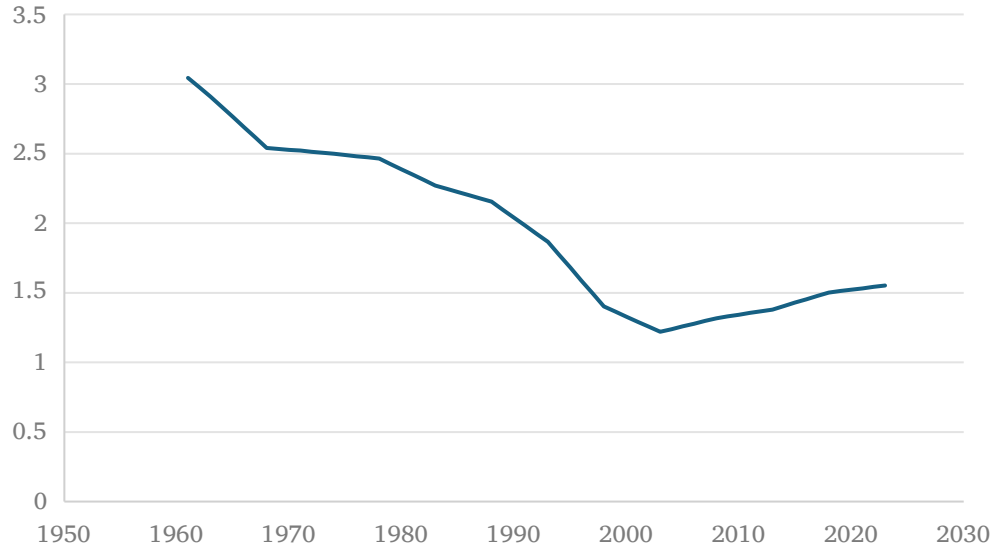
In terms of the number of children born, the trend in birth rates is stabilising. In 1961, the birth rate was 21.8 births per 1,000 people per annum, whereas the current birth rate is 9.813 births per 1,000 people per annum. The long-term negative changes in the birth rate have fundamentally affected the process of population ageing.

Table 2. Slovakia: Historical Birth Rate Data[9]



The development of the total fertility rate, although very moderate, has been on an upward trend for the past 20 years. The cumulative fertility rate ranged from 1.2 children per woman in 2001, to 1.5 children per woman in 2021.

Table 3. Slovakia: Historical Fertility Rate Data[10]



9 Ibid.
10 Ibid.

At the time of the Velvet Revolution in 1989, less than 10% of children were born out of wedlock. This proportion has increased over time, with the current figure suggesting that 37% of children are born out of wedlock. Compared to Western European countries, this proportion is still relatively low. The highest values of this indicator are held by the countries of Northern Europe, namely, Denmark at 44.6%, Norway at 49.3%, and Sweden at 55.3%.[11] The number of children born out of wedlock is still quite low compared to the neighbouring Czech Republic, where more than half of children are born out of wedlock. However, the long-term negative changes in the birth rate have fundamentally affected the process of population ageing from below. As life expectancy is developing somewhat positively, the Slovak population is ageing from above. Regardless of whether ageing is caused by low fertility or increased life expectancy, ageing is an urgent challenge facing the Slovak demographic reality.

In recent years, the population of the Slovak Republic has experienced continuing changes in demographic processes related to demographic transition. These changes are particularly overt in the fertility, marriage, divorce, and abortion rates. These demographic challenges have serious consequences for socio-economic stability. While many have referred to these challenges as the crisis of the traditional family, this is a matter of perspective. If we were to look at today's figures through the lens of the late 1980s, we would probably be slightly shocked at how quickly and dramatically the nature of family and reproductive behaviour has changed. Indeed, since the 1980s, the divorce rate has risen, the marriage rate has plummeted, fertility has been remarkably low, and the proportion of children born to unmarried women has risen significantly.

However, demography does not look only at current levels, but also at trends and what lies behind them. In this respect, the trends in Slovakia over the last decade are less bleak than elsewhere in Europe, largely due to certain family-friendly policies and in general the more traditional values of Slovak society. Moreover, while the numbers might look alarming at a first glance, it is important to look beyond the numbers and find the story behind them. For example, the low fertility rates at the beginning of the millennium were conditioned by the fact that the reproductive behaviour of women had changed. More specifically, women born in the 1950s and 1960s had already had a child by the 2000s, as they behaved according to the old model: early marriage and giving birth to a first and second child early (ideally before or by their thirties) to complete the family. Meanwhile, the younger cohorts born in the 1970s and 1980s had already begun to postpone motherhood and give birth in their thirties and forties. Therefore, at the overlap of these two groups, a very low fertility rate could be observed. However, we are now experiencing a catch-up of deferred motherhood, especially among women born in the 1980s. In an optimistic scenario, fertility could continue to rise for a few more years and reach a level above 1.7 children per woman. However, the intensity of second childbearing

11 Tydlitátová, 2011, pp. 28–56.

remains a problem for the fertility level itself.[12] We must prepare for the nature of the family to change definitively. The classic two-child family will no longer be the predominant model, there will be significantly more childless women, and one-child families are and will continue to be on the rise. Nor can the proportion of children born out of wedlock be expected to fall significantly. This is the transformation of the family that we are experiencing, and it will have consequences.

3. Family law in Slovakia

Before we delve into the policies and strategies currently in place to support families in Slovakia, it is crucial to explore some key elements of the country's family legislation, which forms the backbone of its family-friendly approach. Like many European countries, Slovakia faces demographic challenges that have significant implications for its society, economy, and legal frameworks. The country's family law plays a pivotal role in addressing these challenges, providing a legal foundation that supports families, parents, and children, and by extension, contributes to mitigating the demographic issues. This section outlines the key elements of Slovak family law, illuminating the legal instruments and policies designed to uphold family well-being and promote demographic stability.

The legal framework for family law in Slovakia is primarily codified in Act No. 36/2005 Coll. on Family and amendments, which serves as the cornerstone of family-related legal matters. This comprehensive legislation encompasses various aspects of family life, including marriage, parenthood, child custody, and the rights and obligations of family members. It reflects Slovakia's commitment to protecting family integrity, ensuring the welfare of children, and supporting parents in their responsibilities.

3.1. The basic principles of family law

Slovak Family Law draws its primary foundations from the Constitution of the Slovak Republic and the Family Act of 2005. The initial provision of the Family Act of 2005 outlines a set of fundamental principles that serve as the bedrock of Slovak Family Law. These principles are amongst the most pivotal components of national family law, except, perhaps, for Art. 41 of the Constitution of the Slovak Republic, which serves as the overarching framework for the entire family law system. The primary function of these fundamental principles is to serve as shared guidelines for interpreting family law. They require that all family law relationships be viewed and assessed through the prism of these principles, shaping the rights and responsibilities

12 Bleha, Šprocha and Vaňo, 2013.

of each party involved. An intriguing aspect of these principles is that, despite the intrinsic private nature of Family Law, they extend beyond the typical scope of private law principles. These principles not only govern the relationships between private entities but also define the roles and obligations of the State and society concerning the family and its protection. These principles offer clear directives regarding the preferred or prioritised types of family relationships as perceived by the State and the expectations associated with them. Consequently, no public authority may exercise discretion in interpreting family law relationships that deviates from the foundational tenets of family law. These basic principles are enshrined in articles 1–5 and represent the values and principles of Family Law in Slovakia.

Art. 1: *'Marriage is a union of a man and a woman. The society comprehensively protects this unique union and helps its welfare. Husband and wife are equal in their rights and responsibilities. The main purpose of marriage is the establishment of a family and the proper upbringing of children'.*

Defined as the bond between two individuals who are intimately connected and uniquely significant to each other, marriage continues to be the most coveted mode of human companionship. Research conducted by psychologists underscores the paramount significance of marriage in enhancing an individual's physical and mental well-being.[13] These studies have shown that people in marriage live longer and happier lives.[14] There is a higher incidence of violence among unmarried cohabiting partners and single individuals than among married couples.[15] Marriage necessitates an emotional commitment to a relationship, and this commitment has a positive impact on an individual's personal welfare. Marriage forges new social connections, assimilates individuals into social circles, and fortifies their societal standing. In addition to holding significant importance within the confines of family life, marriage exerts a direct influence on the broader community. It is imperative to note that these positive roles are fulfilled solely within a functional and functioning marriage.

The Family Act interprets the functionality of marriage through the principle of spousal equality. This equality extends beyond rights to encompass responsibilities as well. Each spouse is expected to contribute to the family's well-being in accordance with their capabilities, skills, and financial circumstances. The equality of spouses is manifested in their roles as partners and parents, and neither gender should face discrimination when evaluating the legal status of a marriage. In assessing disputes, each case should be individually scrutinised to determine how the spouses exercise their rights derived from their marriage and fulfil their obligations.

Under Slovak law, marriage is limited to the union of a man and a woman. This provision has even been incorporated into Art. 41 of the Constitution of the Slovak Republic, the only legislative change that this article has undergone since the

13 Uecker, 2012, p. 67.
14 Stavrova, 2019, p. 89.
15 Kenney and McLanahan, 2006, p. 140.

Constitution has been in effect. To date, no legal alternative to marriage exists in the Slovak legal order. It is rooted in the traditional view of family law in the Slovak legal order and the emphasis on the biological-reproductive function of the family.

Art. 2: *'Family founded by marriage is the basic cell of society. Society comprehensively protects all forms of the family'.*

The scope of the concept of 'family' extends beyond 'marriage-based family'. The State offers its protection and support to all types of families, regardless of their method of formation, as long as they provide their members with a sense of security and solidarity. Even under the International Covenant on Civil and Political Rights,[16] the *'family is the natural and fundamental group unit of society and is entitled to protection by society and the State'.* The Covenant on Civil and Political Rights further declares the right of every man and woman of a marriageable age to marry and to build a family. This right is closely linked to the right to respect for private and family life as outlined in the European Convention on Human Rights.[17]

Art. 3: *'Parenting is a mission of men and women recognised by society. The society recognises that a stable family environment formed by the child's father and mother is the most suitable for the all-round and harmonious development of the child. Therefore, the society provides parents not only with its protection, but also with necessary care, especially with material support for parents and assistance in the exercise of parental rights and responsibilities'.*

Among the most crucial roles of the family is its educational role. Assuming the role of a parent entails the responsibility of ensuring the proper upbringing of a child. When analysing Art. 3 of the Family Act, the comparison with its predecessor from 1963 is quite telling. According to the 1963 Family Act, 'Motherhood is a woman's most honest mission. Society provides motherhood not only with its own protection, but also with all its care, especially with material support for mothers and children and assistance in their upbringing'.[18] In contrast with the 1963 wording, the 2005 Family Act no longer refers to motherhood or the woman's mission—the use of terms like 'parenthood' and 'parenting' reflecting a clear shift in societal values. This further supports the principle of equality of the spouses in marriage in terms of both their rights and their responsibilities. Trends regulating the boundaries between family privacy and State interests are currently leaning towards the theory of responsibility for the exercise of parental rights and obligations. As stated by the Constitutional Court of the Czech Republic, conceiving a child is not a sport or a pastime, although it may seem that way to some individuals in the beginning. In reality, when they have a child, parents assume lifelong duties and responsibilities. Therefore, it is essential that parents behave in such a way that they can meet their

16 Art. 23 of the International Covenant on Civil and Political Rights, adopted and opened for signature, ratification, and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976, in accordance with Art. 49

17 Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Council of Europe Treaty Series 005, Council of Europe, 1950.

18 Family Act No. 94/1963 Coll.

obligations and responsibilities under all circumstances.[19] If the parent naturally performs this function properly, the State provides help and support in terms of both privacy and social care. However, if the proper upbringing of a child is endangered or disrupted, the Family Act gives the court the right to take measures to remedy this situation without a proposal.

For this reason, in 2016, Art. 3 of the Basic Principles was supplemented with a second sentence stating that Slovak society recognises that a stable family environment formed by the child's father and mother is the most suitable for the all-round and harmonious development of the child. This formulation clearly favours the traditional family union of a man and a woman and their children over other forms of cohabitation. This amendment established the family environment formed by the child's father and mother as the most suitable environment for the all-round and harmonious development of the child. This is primarily to express society's belief that the competent authorities and institutions, which may by their decisions affect the child and their rights, are obliged to respect the fundamental right of the child—while considering the circumstances of the situation, of course—to grow up from birth in a natural family environment. This underscores the importance of the parents for the child's healthy, versatile, and harmonious development. However, prior to the amendment, this definition resulted in many debates, with some experts arguing that the wording of this sentence in its current form may be discriminatory. This definition could be interpreted to claim that a family where one of the parents is absent is incomplete and unable to fulfil its potential completely, without considering the various reasons for such an absence (e.g. the death of one of the parents). There were concerns that while this principle is well intended in seeking to protect the rights of the child, when it comes to its application, this provision may result in discrimination. For instance, in certain divorce cases, the provision may lead the judge to seek to preserve a broken marriage for the sake of the minor.

Nonetheless, the change in the wording of this principle is a positive one as it declares that parental rights and responsibilities belong to both parents and that both holders of parental rights and responsibilities, namely, the mother and father, are equal in their parental rights and responsibilities, thereby barring discrimination in this area.

Art. 4: *'All family members have a duty to help each other and, according to their abilities and possibilities, to ensure the increase 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 the family with a peaceful and safe environment. Parental rights and responsibilities belong to both parents'.*

19 From the ruling of the Supreme Court of the Czech Republic 4 Tdo 250/2012-24. The Supreme Court of the Czech Republic ruled in a closed session held on 18 April 2012 on an appeal filed by the accused V. J. against the resolution of the Regional Court in Hradec Králové of 24 November 2011, file no. 10 To 368/2011, in a criminal case conducted at the District Court in Jičín under file no. No. 8 T 57/2011.

Family solidarity forms the foundation for fulfilling the socio-economic role of the family, encompassing all its members indiscriminately, and its interpretation is reflective of societal values. Contributing to collective well-being should be of inherent value for all individuals, especially within the family, as it represents the fundamental social unit to which one belongs.

This solidarity extends beyond financial matters in the eyes of the law. It is also recognised as the bedrock of mutual aid and support. Legal mandates explicitly place an obligation on individuals to participate in addressing the household's needs. It is imperative to comprehensively comprehend and evaluate the rights and responsibilities of family members. No member should be solely burdened with obligations or solely entitled to rights. The institute of good morals plays an important role in Slovak Family Law, although it is only explicitly mentioned once in the Family Act. It balances the mutual position of participants in family law relationships to contribute to a harmonious family life.

Throughout the course of human history, the traditional family structure has demonstrated its enduring significance. Therefore, maintaining a traditional approach to Slovak Family Law is both reasonable and imperative. Emphasising traditional values and their adherence is essential not only within the family but also throughout society as a whole.

Art. 5: '*The best interest of the minor shall be the primary consideration in all matters affecting him or her. In determining and assessing the best interests of the minor, particular account shall be taken of: level of childcare; the safety of the child, as well as the safety and stability of the environment in which the child resides; protection of the dignity as well as of the child's mental, physical, and emotional development; circumstances related to the child's state of health or disability; endangering the child's development by interfering with his or her dignity and endangering the child's development by interfering with the mental, physical, and emotional integrity of a person who is close to the child; conditions for the preservation of the child's identity and for the development of the child's abilities and characteristics; the child's opinion and his possible exposure to a conflict of loyalty and subsequent guilt; conditions for the establishment and development of relationships with both parents, siblings, and other close persons; the use of possible means to preserve the child's family environment if interference with parental rights and responsibilities is considered.*'

The principle of the best interests of the child is the guiding principle of all family laws. Some authors even consider it the basis of family law. This is not only based on domestic law, but also follows international law, particularly the Convention on the Rights of the Child, in which it is mentioned repeatedly. This principle is most often identified with the general clause contained in the Convention on the Rights of the Child, specifically in Art. 3, which imposes an obligation to consider the best interests of the child in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies.

Despite the fact that several provisions of the normative part of the Family Act referred to the best interests of the child (e.g., §23, §24, §54, §59), as well as the provisions of special regulations (e.g. Act No. 305/2005 Coll. on the social legal protection of children and on guardianship, Act No. 176/2015 Coll. on the Commissioner for Children and the Commissioner for Persons with Disabilities), this principle was not defined for a long time and its determining criteria were never established. By supplementing Art. 5 of the Family Act through an amendment to Act No. 175/2015 Coll., this important principle of the Convention on the Rights of the Child has gained a more appropriate position in Slovak family law, namely, as a basic principle of the Family Act. This regulation was passed to emphasise the obligation of courts as well as other bodies whose decisions significantly influence the rights and obligations of children to proceed carefully and responsibly in their assessment of the circumstances of a particular case and to take into account the best interests of the child in all circumstances. It was not the intention to prescribe what is best for the child in every situation. Therefore, the Family Act does not directly define the concept of the child's interests as such, and it should be determined according to the circumstances of the case and the needs of the child concerned. As each child is unique, each child has their own specific needs. The State is obliged to take all necessary measures to consider the best interests of the child and to ensure that the best interests of children are taken into account in all of the actions of the competent authorities and public institutions whose decisions affect the rights of the child.

The best interests of the child is a complex concept, albeit a flexible and adaptable one, the content of which must be determined based on specific cases. It needs to be adapted and defined based on the specific situation of the child concerned, considering the personal context, situation, and needs of the child. Characterised by flexibility, the concept of the best interests of the child makes it possible to respond to situations in an individual manner. However, it also leaves room for manipulation. In assessing and determining the best interests of the child, it is necessary to consider the individual elements according to their relevance to the situation, while recognizing that these are specific rights and not only elements in the determination of the best interests of the child.

General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration contains a list of elements to consider when assessing the child's best interests: namely, the child's views; the child's identity; the preservation of the family environment and maintaining relations; the care, protection, and safety of the child; the situation of vulnerability; the child's right to health; and the child's right to education. The assessment of the best interests of the child considers all of these elements, the weight of which are interdependent. Of course, all of these elements will not be applicable to every case, and the way in which the individual elements are used will be specific to each case. Therefore, the content of each element will vary for each child, depending on the specific circumstances. The importance of each element in the overall assessment of the case will also vary. In specific cases, these elements of assessment and the determination of

the best interests of the child may even contradict each other. In such situations, the age and maturity of the child should be decisive for their balance, with the child's level of physical, emotional, cognitive, and social development taken into account when assessing their maturity.

In this context, it is also necessary to consider that the child's abilities evolve over time. Accordingly, decision-makers should impose measures that can be revised or adapted to the child's development and not make final and irreversible decisions. With this in mind, it is important to assess not only the child's physical, emotional, educational, and other needs at a particular moment, but also the child's possible development scenarios, and to analyse these scenarios in the short and long term.

While the concept of the best interests of the child is not new, it was only adopted into Slovak family law in 2016, via Act No. 175/2015 Coll., which amended and supplemented Act No. 36/2005 Coll. on the Family and Amendment of Certain Acts. This amendment introduced the principle of the best interests of the child into the Family Act through the addition of Art. 5. The principle was added as a non-hierarchical enumeration of the criteria. According to Art. 5, the best interest of the minor shall be the primary consideration in all matters affecting him or her. This provision in itself is rather vague. However, given the uniqueness of each child, a clear definition of the best interests of the child would be inappropriate. A uniform definition would make adaptability and flexibility—prerequisites for an individual approach to assessing a given child's situation—impossible in practice. The various elements that need to be considered include the safety of the child, as well as the safety and stability of the environment in which the child resides; the protection of the child's dignity as well as their mental, physical, and emotional development; the circumstances related to the child's health status or disability; the child's opinion and possible exposure to a conflict of loyalty and subsequent guilt; conditions for the establishment and development of relationships with both parents, siblings, and other close persons. The Family Act does not prioritise any of these criteria. It is up to the responsible authority to assess which element prevails as a starting point based on the circumstances of the individual case. The flexibility and adaptability of the concept are also based on the possibility of relying on facts other than those mentioned in Art. 5 of the Family Act, as the enumeration of the criteria mentioned therein is not final or fixed.

The implementation of this principle in the Family Act is necessary. Before 2016, public authorities involved in decision-making on children tended to generalise, regardless of the specific circumstances of the case. Such an approach was in serious conflict with the obligations of the Slovak Republic to respect the uniqueness of each child and its peculiarities. In general, Slovakia has a major problem with the predictability of judicial decisions. To counteract this tendency to generalise, the best interest of the child was incorporated into the Family Act, enumerating the most important attributes of deciding on the best interests of the child in a demonstrative and non-hierarchical way. According to the legislator, the inspiration for formulating a legal definition in this manner was primarily General Comment No. 14 (2013) on

the right of the child to have his or her best interests taken as a primary consideration. It was necessary to create a non-exhaustive and non-hierarchical list of elements that are crucial criteria and should be included in the assessment of the best interests of the child. The alphabetical order does not mean that one criterion takes precedence over others. In any case, it is important to consider the specific circumstances of the case.

As the child has the status of a special subject and a weaker party, he or she requires increased protection to ensure the fulfilment of his or her rights. This is also the starting point of the Convention on the Rights of the Child, which introduced the notion of the best interests of the child, highlighting that it should be given priority in any action concerning children by public authorities, courts, and public or private welfare institutions. To defend the best interests of the child, it is essential to pay attention to the establishment of mechanisms at the national, regional, and local levels, as well as mechanisms and procedures for lodging complaints and appeals to fully realise the child's right to properly integrate their best interests by implementing measures and judicial and administrative proceedings relevant to or affecting the child. Parents have a primary duty to ensure the child's standard of living. It is the duty of the State to ensure that this obligation is and can be fulfilled.

In conclusion, given the uniqueness of each child and their needs, a single definition of the concept of the best interests of the child would not be appropriate. On the contrary, it is necessary to maintain the flexibility and adaptability of this concept. In assessing the child's best interests, particular attention should be given to the circumstances relating to the individual characteristics of the child concerned, such as his or her age, sex, degree of maturity, experience, ethnicity, physical, sensory or intellectual disability, and the social environment in which the assessed child lives. Further circumstances to consider include the presence or absence of the child's parents and the quality of the child's relationship with the biological or surrogate family. The family is the basic unit of society and the natural environment for the growth and prosperity of its members, especially children. The Convention on the Rights of the Child (Art. 16) protects the child's right to family life. An important element of the system of this protection is the prevention of the separation of the child from the family environment and the preservation of the family as a unified community. Nevertheless, if the child is separated from one or both parents, he or she has the right *'to maintain regular personal relations and direct contact with both his or her parents, provided that this is not contrary to his or her best interests'*. Given the seriousness of the influence of the separation of the child from the parents, such a separation should occur only in the ultima ratio, that is, exclusively as the last solution to the situation, such as if the child is in imminent danger of injury or in other necessary cases. Separation should not take place without first applying all the available measures to protect the child. Likewise, the child must not be separated from his or her parents because of a disability. If separation becomes necessary, decision-makers must ensure that the child maintains connections and relationships with his or her parents and family (i.e. siblings, relatives, and persons with whom he

or she has a strong personal relationship), unless this is contrary to his or her best interests. If the child's relationship with the parents is interrupted (e.g. by migration, either of the parents without the child or the child without the parents), the obligation to maintain the family community must also be considered when assessing the best interests of the child in the context of decisions on family reunification.

3.2. Protection of marriage

In Slovakia, the legal recognition of marriage is defined as a union between a man and a woman. The legislation outlines the rights and obligations of spouses, including property relations, maintenance duties, and mutual support. The law also addresses the dissolution of marriage, providing clear guidelines for divorce proceedings, the division of marital property, and alimony obligations, ensuring a fair and equitable process for all involved parties.

The legal regulation of marriage and its legal consequences form the basic predicament of Slovak family law and its legal regulation: Family Act No. 36/2005. Marriage is not of a contractual nature, but a union of a man and a woman, which is preferred by society in terms of starting a family and the proper upbringing of children. The legal regulation of marriage enables, among other things, the socially desirable stability of family relationships and the precise definition of rights and obligations arising from family functions, including the social records of marital relations. According to Art. 1 (Basic Principles) of the Family Act of 2005, '*marriage is a union of a man and a woman. The society comprehensively protects this unique union and helps its welfare'.* As evident from the wording, the basic approach of the legislator to the principle of marriage protection as a legally presumed relationship between a man and a woman, in contrast to the previous legislation, is also reflected in the fact that the new family law *explicitly refers to the union of a man and a woman when defining marriage*. We also distinguish between the married and unmarried cohabitation of a man and a woman from the marriage, with the former the only legally protected union of a man and a woman. However, the legal regulation of unmarried cohabitation is absent in Slovakia's legal system, although there are examples in Slovak legislation that address the specific legal claims of a partner in the cohabitation of a man and a woman. Nonetheless, the relationship itself is neither defined nor protected in Slovak law, apart from certain claims. The basic principles of the protection of marriage are laid down in Art. 1 of the Family Act, where the legislator emphasises the core principle of marital bonds in the Slovak Republic. It characterises marriage as a unique union of a man and a woman, which completely excludes from the institute in question possible unions of persons of the same sex and other types of relationships, such as registered partnerships, which the Family Act does not mention in its terminology at all. The comprehensive protection of marriage and the need to help it prosper are also emphasised. Although the law identifies as the purpose of marriage the primary creation of a harmonious and lasting community of life—such as the family and, in connection with the family's reproductive function, the proper

upbringing of children—we do not believe that childless couples should go unprotected or that such marriages cannot fulfil their mission. The purpose of marriage as set out in Slovak law is considered obsolete by many experts, who highlight that there are more and more childless couples due to medical reasons. However, the 2005 legislation considered the main purpose of a marriage to be reproduction and ultimately the proper upbringing of children.

According to the article in question, the husband and wife are equal in their rights and obligations both to each other and to others in society. They have a duty to live together, to be faithful, respect each other's dignity, help each other, take care of their children together, create a healthy family environment, and decide on family matters together. No discrimination is allowed in this relationship when it comes to rights and obligations.

Legislation explicitly referring to marriage as the union of a man and a woman has been contested several times on the grounds of discrimination and human rights. Nonetheless, both the Constitutional Court and the Supreme Court of the Slovak Republic have upheld this principle as the core principle of family law and have not found Art. 1 discriminatory or in violation of human rights.

In 2012, the Supreme Court of the Slovak Republic held, in decision 5/2012, that *'the intention of the legislator was to allow the establishment of marriage exclusively to persons of different sex, and not of the same sex'*. In this case, two men turned to the Supreme Court because they were not able to enter into marriage and claimed that their fundamental constitutional rights had been violated. However, the Supreme Court ruled that their rights were not violated; in fact, they were allowed to marry in accordance with the Constitution of the Slovak Republic and the Family Act. However, neither of these legal documents established a legal claim to the right of persons of the same sex to marry. Consequently, even in this case, the fundamental right is granted to the plaintiffs as a constitutional right (subject to marriage to a woman). Nevertheless, as the Family Act does not allow same-sex persons to enter into marriage, neither public administration bodies nor the court can act beyond their competence and the Family Act and allow them to enter into marriage, as they would violate Art. 2 par. 2 of the Constitution of the Slovak Republic and Art. 1 of the Family Act. Both the Constitutional Court and the Supreme Court have confirmed the basic principles of family law in Slovakia, and on this basis, marriage or registered partnership between persons of the same sex is prohibited in the Slovak Republic. The legislator clearly states that marriage can only take place between a man and a woman, that is, between people of different sexes. The legislator considered the basic principles to be the legal expression of moral postulates. During the historical development of family law, moral norms played an important role in the implementation of family law relations. It is specific to family law to adopt moral rules and give them a normative character. It clearly follows that the intention of the legislature was to allow marriages to be entered into exclusively by persons of the opposite sex. The Supreme Court also held that the Anti-discrimination Act could not be applied to the area of family law. This law regulates the application of the principle of equal

treatment and provides for the means of legal protection in the event of a breach of this principle in the enshrined areas.

Besides Art. 1 (Basic Principles), the Family Act further defines the conditions of entering into marriage and the purpose of marriage in §1, according to which *'marriage is a union of a man and a woman, which arises on the basis of their voluntary and free decision to enter into marriage after the fulfilment of the conditions stipulated by this Act'.* Based on the provisions of §1 of the Family Act, marriage is the oldest social institution and can be defined as the relationship between one man and one woman legally connected for life to fulfil obligations to each other as well as to society. As such, marriage is a social institution founded on gender differences. Thus, in accordance with nature, tradition, morality, and social consent, Slovak law regulates marriage so that it serves the individuals of society and fulfils its natural, biological, personal, moral, familial, and social tasks or mission. This provision of the Family Act is also strengthened and ensured by the Constitution of the Slovak Republic, Art. 41(1), which states at the highest normative level that, *'Marriage is a unique union between a man and a woman. The Slovak Republic broadly protects and promotes its good. Marriage, parenthood and the family are protected by law'.*

As the special protection of children is guaranteed, marriage—as well as the family—is given the highest level of protection and the constitutional legal obligation of the State to assist this institution and to implement legislation that benefits marriage.

Slovak family law is very traditional. It does not recognise same-sex marriages or non-traditional forms of marriage, and it does not define or protect cohabitation (regardless of the gender of the cohabitants). These traditional principles form the basis of the Family Act, with the most important elevated to the constitutional level. Marriage is a legal relationship between one man and one woman. This is the first premise of family law. It has also been part of the Constitution of the Slovak Republic since 2014.

The previous version of the Constitution only stipulated that *'matrimony, parenthood and the family shall be protected by law'.* However, in 2014, the description of marriage as the union of one man and one woman was elevated to the constitutional level with the amendment to Art. 41 of the Constitution of the Slovak Republic. Since the creation of the independent Slovak Republic, two attempts have been made to provide legal protection to same-sex registered partnerships. While the public rejected these attempts, in the early 2010s, the Slovak public grew more receptive to the idea of registered partnerships. However, this public perception became more conservative after the ruling of the European Court of Human Rights in the case of X and Others v. Austria 53 ILM 64 in 2013. This ruling was the first recognition of the right of unmarried same-sex couples to second-parent adoption in European states that are a party to the European Convention on Human Rights. While celebrated in many EU member states, the ruling had an adverse effect on the more traditionally inclined Slovakia, where the idea of same-sex couples being allowed to adopt children was poorly received by the public. Following societal pressure, the Constitution was amended

to state that, *'Marriage is a unique union between a man and a woman. The Slovak Republic broadly protects and promotes its good. Marriage, parenthood and the family are protected by law'*. While this principle had already existed in the 2005 Family Act, its elevation to the constitutional level indicates the significantly stronger protection of this principle. Indeed, although the principle already existed in Slovakia's legal order, it was only granted constitutional protection in 2014.

Slovak family law comprises a robust legal framework designed to support families, safeguard children's rights, and address the demographic challenges facing the country. By continuously adapting its legal instruments and policies to reflect societal changes and demographic realities, Slovakia endeavours to promote the well-being of families and ensure the sustainability of its society amidst evolving demographic landscapes. As demographic issues persist and evolve, the ongoing refinement of family law remains essential to fostering a resilient and supportive environment for all families in Slovakia.

4. Slovakia's strategy to support families

Having parsed Slovakia's demographic and legal realities, we can clearly see that there is reason for hope. While we must accept that families are changing, we can clearly see that the numbers have been stabilising and even improving in some cases in Slovakia over the past 20 years. Why is this the case? In the realm of empirical research, a wealth of data underscores the direct correlation between family policies and demographic outcomes. Studies have consistently shown that countries with comprehensive family policies tend to have higher birth rates, increased labour force participation among women, and improved overall family well-being. The aim of family policy should be to create the conditions and provide the means for family formation, growth, and healthy functioning. The State should help eliminate obstacles that make it difficult for parents to combine their interests, resources, and abilities with family responsibilities. According to Organisation for Economic Co-operation and Development (OECD) data from the Eurobarometer surveys, it is clear that people across Europe would like to have more children. Other surveys suggest that, on average, people are having one child fewer than they would like to have. This is often due to the family's financial and housing situation and the lack of family-friendly policies.

Recognising the urgency of addressing demographic challenges, Slovakia has implemented a range of family-friendly policies aimed at supporting families, enhancing work–life balance, and creating an environment conducive to child-rearing. These policies encompass financial incentives for families, access to affordable childcare, and support for parents to reconcile work and family life. In addition to contributing to the well-being of families, these measures have a demonstrable impact on addressing demographic challenges.

Slovakia has a new strategy to support families in the context of unfavourable demographic trends. The development of a strategic framework follows from the Government's Programme Statement for 2021–2024. In this respect, the National Strategic Framework for Family Support and Demographic Development until 2030 (hereinafter, the Strategic Framework) aims to identify the baseline situation and define a vision, strategic direction, and framework measures to improve quality of family life, provide more care and protection for families, especially for minor children, and improve the socio-economic situation of families, ultimately producing a positive impact on the demographic development of the country. It is a long-term strategic framework that addresses the issue from a broader perspective. Slovakia's vision per the Strategic Framework is to create a family- and child-friendly country, foster a community where the stability of relationships and intergenerational solidarity protects all family members from poverty. Slovakia also seeks to cultivate a social climate in the media, institutions, and public spaces that is family-friendly and where there is mutual respect for human life.

The Strategic Framework describes the basic demographic trends and assumptions of future population development in Slovakia. It also focuses on the following priority areas: prevention, child and youth protection, health and healthcare in the context of demographic development, the reconciliation of family care and employment, the labour market and employment, economic and financial instruments, housing, and return migration. The priority areas are mapped in terms of both the last decade and the current situation and supplemented by relevant statistical data and trends from the Slovak Republic and broader European area. The Strategic Framework specifically identifies and names strategic directions and framework measures, which represent incentives for key activities and challenges for the future. Each priority area requires the inter-ministerial co-operation and co-ordination of measures by several entities, including local governments, which play an important role in preventing family crisis situations and providing social assistance. All public policy measures should be aimed at protecting the functional family; promoting marital, family, and parental culture; supporting the fulfilment of family functions; preventing the emergence of crisis situations in the family; building relations between family members; promoting marriage; and supporting parenthood. The vision and objectives set out in the Strategic Framework are supported by the legislation of the Slovak Republic, in particular the Constitution of the Slovak Republic, which declares that *'Marriage is a unique union between a man and a woman. The Slovak Republic protects marriage in every way and promotes its good. Marriage, parenthood and the family are protected by law. Special protection of children and minors is guaranteed'.*

The importance and legitimacy of the objectives and measures are also supported by the results of the 2021 National Values Survey of Slovakia, in which the values of 'family' and 'quality of life' ranked first among the population of Slovakia. Indeed, the majority of survey respondents selected family as the personal value that matters most to the people of Slovakia and which most describes them, and quality of life as the social value most desired by Slovak citizens. The new National Strategic

Framework for Family Support and Demographic Development in the Slovak Republic until 2030 was created in the spirit of these values.

Marriage, parenthood, and the family are protected by law. As noted, according to the Constitution of the Slovak Republic, marriage is a unique union between a man and a woman. The Slovak Republic protects marriage in every way and promotes its welfare. The special protection of children and minors is guaranteed. Parents have the right to care for and raise children, and children have the right to parental upbringing and care. Parents who care for children have the right to assistance from the State. The legal basis for marriage as a union between a man and a woman is also contained in the Family Act. Family based on marriage is the basic unit of society, and society protects and promotes the welfare of this unique union in every way. According to our legislation, the main purpose of marriage is the establishment of a family and the proper upbringing of children. Husband and wife are equal in rights and duties. A stable family environment comprising the father and mother of the child is optimal for the all-round and harmonious development of the child. The best interests of the minor child shall be a primary consideration in all matters concerning him or her. Society provides both the protection and the necessary care for parenthood, even without a marital relationship, in particular by providing material support for the parents and assistance in the exercise of parental rights and obligations. All members of the family have a duty to help one another and, according to their abilities and capacities, to ensure the improvement of the material and cultural standard of the family. Parents have the right to raise their children in accordance with their own religious and philosophical convictions and have the duty to provide a peaceful and secure environment for the family. Parental rights and duties belong to both parents.

The need to support families also follows from the Programme Declaration of the Government of the Slovak Republic for 2021–2024, in which the Government of the Slovak Republic *'recognises the family as the main bearer of fundamental human, cultural, social, civic and spiritual values'*. The government sees family support as a priority instrument for addressing the problem of adverse demographic development.

In the following three subchapters, this chapter discusses the services available for families, examines the financial incentives within the realm of family policies, and addresses alternative solutions for demographic challenges, such as artificial reproductive technologies.

5. Family-friendly policies in Slovakia

Family-friendly policies start before pregnancy, namely, in the prenatal phase. The right to prenatal healthcare services is a fundamental aspect of maternal and child health, and Slovakia has made efforts to ensure that expectant mothers receive adequate care during pregnancy. The country recognises the importance of

prenatal healthcare in promoting healthy pregnancies, reducing maternal and infant mortality, and ensuring the well-being of both mothers and their unborn children. In Slovakia, the right to prenatal healthcare services is embedded in the broader framework of healthcare rights guaranteed by the Constitution and international agreements. In its commitment to protecting human dignity and health, the Slovak Constitution establishes the foundation for ensuring access to healthcare services, including those related to pregnancy and childbirth. The Healthcare Act[20] provides a more detailed account of the right to prenatal healthcare.

In Slovakia, a universal healthcare system provides coverage for all citizens and residents. Prenatal healthcare services—including antenatal check-ups, screenings, and consultations—are generally accessible to pregnant women without discrimination. The principle of equity in healthcare services ensures that financial barriers do not hinder access to essential prenatal care. Under public health insurance, a pregnant woman is fully reimbursed for one preventive check-up once a month and one preventive check-up six weeks after childbirth with a doctor specialising in gynaecology and obstetrics.[21] During pregnancy, a woman has the right to all examinations forming part of the preventive check-up during pregnancy pursuant to the above-mentioned Healthcare Act. In this respect, Annex No. 2 to this Act sets out what is covered by the preventive check-up during pregnancy. The Healthcare Act emphasises the importance of regular prenatal check-ups to monitor the health of both the mother and the developing foetus. These check-ups typically include physical examinations, ultrasound screenings, and discussions about maternal nutrition, lifestyle, and potential risks. The goal is to detect and address any health issues early on, promoting a healthy pregnancy and minimising complications. In Slovakia, pregnant women have the right to receive comprehensive information about prenatal care, childbirth, and postnatal care. This includes guidance on healthy lifestyle choices, nutrition, and the importance of early medical screenings. Access to educational resources empowers expectant mothers to make informed decisions about their health and the well-being of their unborn children. Slovakia has implemented maternal screening programmes to identify potential risks and genetic abnormalities during pregnancy. These screenings are voluntary and seek to provide expectant parents with information that can guide decision-making regarding the pregnancy and prepare for any necessary medical interventions or support. Prenatal healthcare services in Slovakia are delivered by trained and qualified healthcare professionals, including obstetricians, gynaecologists, midwives, and other specialists. This ensures that pregnant women receive care from individuals with expertise in maternal and foetal health.

According to the Healthcare Act, everyone (including pregnant women) has the right, under the conditions laid down by law, to: (a) the protection of his or her

20 Act 577/2004 Coll. on the Scope of Health Care Reimbursed by Public Health Insurance and on Reimbursement for Services Related to the Provision of Health Care, as amended.

21 Erdősová et al., 2024.

dignity and respect for his or her physical integrity and psychological integrity; (b) information concerning his or her state of health; (c) information on the purpose, nature, consequences, and risks of the provision of health care, on the choices available to him or her in the proposed procedures and on the risks of refusal to provide health care (informed consent); (d) refusal to receive healthcare, except in cases where, under this Act, healthcare may be provided without informed consent; and (e) humane, ethical, and dignified treatment by health professionals.

While Slovakia has made significant strides in ensuring the right to prenatal healthcare services, challenges persist. Geographic disparities in healthcare access, particularly in rural areas, remain a significant concern. Additionally, there is an ongoing need to address cultural and linguistic barriers that may affect communication between healthcare providers and pregnant women from diverse backgrounds. The government has made continuous efforts to enhance public awareness about the importance of prenatal care, promote maternal health literacy, and invest in healthcare infrastructure. Such measures will contribute to the further improvement of prenatal healthcare services in Slovakia. By addressing these challenges, Slovakia can continue to uphold the right to prenatal healthcare, ensuring that every expectant mother has the opportunity to experience a healthy and supported pregnancy.

Healthcare provided during childbirth is, by law, emergency care that is fully reimbursed by public health insurance. Charges may be made for services that are not covered by public health insurance or are in excess of insurance. Obstetric hospitals—of which Slovakia has 53—refer to these services as above standard. What is considered above standard varies from one maternity hospital to another, as do price lists. Based on the Healthcare Act, each pregnant woman has the right to choose the maternity hospital in which she wishes to give birth (everyone has the right to choose their health care provider under the law). Hospitals provide all the necessary information about the birth process before the baby is born and what the pregnant woman needs to bring with to the hospital, including the necessary documents. Amid the growing awareness of the disrespectful treatment of women in relation to childbirth, particularly in the third sector, in 2018, the Slovak health system created an effective and sustainable tool for establishing a welcoming and equal approach to mothers and newborn babies through the proactive co-operation of all maternity hospitals in the country and in accordance with the recommendations of the World Health Organisation's (WHO) Baby Friendly Hospital Initiative (BFHI). In the same year, a national focal point for BFHI in Slovakia was created and more than 200 gynaecologists and obstetricians, paediatricians/neonatologists, midwives, and nurses from all Slovak hospitals with maternity units were instructed on appropriate approaches to mothers and newborn infants. In Košice, in co-operation with the Office of the Government Plenipotentiary for Roma Communities of the Slovak Republic, the training focused on the specificities as well as the cultural needs of the Roma population. The increase in proactive co-operation with maternity hospitals was embedded in the approved Standard Procedure for the Performance of Prevention: Mother and Newborn Care in accordance with the principles of the BFHI

regarding support of relational bonding and lactation, which went into effect on 1 January 2019. To improve the quality of health care provision to mothers and newborn babies, the amendment of the healthcare act established a clinical audit to verify the level of implementation of the standard procedure in hospitals. The first BFHI clinical audits were conducted in 2020, prior to the start of the COVID-19 pandemic. The response to the audit was very positive, with hospital statutory officers and obstetric and neonatal managers affirming their desire for audits to be retained in the system and to continue improving and maintaining quality of care. However, no further BFHI clinical audit has been carried out since 2020. Implementation was significantly hindered by the pandemic as well as the lack of health department funding and the professional staff necessary to conduct clinical audits.

A novelty with regards to childbirth in Slovakia is that women giving birth have the right to be accompanied by a person during childbirth. The amendment to the Healthcare Act due to come into force on 1 June 2024, grants a woman the right to have a person, or more than one person if the conditions of the maternity hospital allow, present during childbirth. At the same time, the presence of such persons may be limited by the attending physician to the extent and time necessary if their presence is deemed incompatible with the nature of the medical procedure to be performed. The drafters of the law have specified that the designated person cannot be a person who is in custody, in the execution of a prison sentence, or in the execution of a detention order.

Slovak legislation on home births is lacking. As mentioned above, the Healthcare Act lays down the conditions under which investigative and therapeutic procedures may be conducted, as well as when these procedures may be carried out without the patient's consent. Based on this legal provision, it is clear that a woman can give birth anywhere—including a natural environment (at home)—with the understanding that she will be provided with emergency health care. This means that there is no legislative prohibition in Slovakia for a woman to give birth at home, nor is there any legislative provision for a woman to give birth only in an institutional health care facility. However, home births are rare in both Slovakia and the Czech Republic, as pregnant women prefer hospitals. The possibility of a child being born outside the premises of a health care facility is also provided for in the Act on Civil Registry, according to which *'the notification of the birth to the civil registry office is given by the health care facility, in other cases by one of the parents'.* It follows from the provisions of Art. 4(3) of Decree No 364/2005 of the Ministry of Health that a midwife is entitled to perform defined acts (including physiological birth) independently, but in a health care facility. Thus, the law does not explicitly prohibit home birth, nor does it presuppose it. This means that the midwife would be acting contrary to lege artis, thereby exposing herself to the risk of disciplinary or criminal prosecution.

In recent years, digitalisation and automatization have significantly eased the administrative burdens related to giving birth. The birth certificate is issued automatically after birth (provided that a parental agreement on the name and surname

of the child has been signed). The mother can also request that the birth certificate be sent by post at the maternity hospital. The relevant registry office will send the birth certificate without delay, usually on the fourth or fifth day after the birth of the child. The address for delivery of the birth certificate is always set to the mother's permanent residence. Alternatively, the birth certificate can be picked up at the relevant registry office. It is also possible to change the delivery address, specifically via electronic services. As of 1 August 2022, it is no longer necessary to register the child with the health insurance company; rather, the child is automatically registered with the mother's health insurance company.

Registration of the child with the chosen paediatrician should take place within three days of discharge from the maternity hospital. It is possible to arrange with the paediatrician both the date and the place of the visit in the outpatient clinic or in the family's home. The care of the child and the choice of paediatrician should be agreed by signing a general outpatient care agreement. In order to conclude this agreement, the paediatrician must be informed of the child's birth certificate number and the health insurance company to which the child is registered. It is during the early years of life, when the first experiences between parents and children occur, that the formative and cumulative foundations of the child's future development, physical and mental health, learning, and overall well-being in adulthood are established. Caring for a child's early development is one of the social determinants of health. It is defined by the quality of the environment surrounding the child, ranging from the intimate sphere of the family to the quality of society as influenced by the setting of universal policies. The research on the importance of a child's early years is so compelling that there is a consensus among economists that the most cost-effective investments in human capital are those in young children. The concept of early childhood care supports the goal of health care, saving and preserving life, and supporting and nurturing the developmental potential of all children. In the health system of the Slovak Republic, professional support for parents' care for healthy early childhood development in the framework of prevention is carried out according to the applicable legislation and standard procedures. Responsible parents are a child's most important sources of support, guidance, wisdom about the world, and learning. However, Slovakia continues to grapple with the long-standing problem of an ageing and declining number of paediatricians providing general care to children and adolescents, as well as the shortage of child psychiatrists and psychologists. This shortage is negatively affecting the availability and accessibility of health care, including mental health care. In particular, general outpatient clinics for children and adolescents are a real entry point to support families and communities in early childhood development.

For a child born in the territory of the Slovak Republic, the date of birth is the start of permanent residence. The child is automatically given the same permanent residence as their mother, which means that the parent does not need to report anything. Of course, it can be changed at the municipal office in the place of residence.

The right of a woman to maternity leave, enshrined in the provisions of Section 166(1) of the Labour Code, is part of the broader constitutional right to protection of pregnant women in employment relationships (Art. 41 of the Constitution of the Slovak Republic), as well as the constitutional right to special working conditions for women (Art. 38 of the Constitution). In order to protect women's health in the last weeks of pregnancy, after childbirth, and when caring for her newborn child, maternity leave also constitutes part of the constitutional right to health protection. In connection with the birth of and care for an infant, women are entitled to maternity leave for the duration of 34 weeks. Single mothers are entitled to maternity leave of 37 weeks. Women giving birth to two or more children simultaneously are entitled to 43 weeks of maternity leave. In respect to the care for a newborn child, men are also entitled to paternity leave of 34 weeks from the birth of the child, provided that they are caring for the newborn child instead of the mother. As a rule, a woman shall take maternity leave from the beginning of the sixth week before the expected date of birth, but no earlier than the beginning of the eighth week before that date. If a woman takes less than 6 weeks of maternity leave before giving birth because the birth occurs earlier than the doctor has determined, she shall be entitled to maternity leave from the date of commencement until the expiry of 34 weeks; this is extended to 37 weeks in the case of a single mother and 43 weeks in the case of a woman who has given birth to two or more children at the same time. If a woman takes less than 6 weeks of maternity leave before giving birth for any other reason, she shall be granted maternity leave from the date of childbirth only until the expiry of 22 weeks; a single woman and a woman who has given birth to two or more children at the same time shall be granted maternity leave until the expiry of 37 weeks. Maternity leave in connection with childbirth may not be less than 14 weeks and may not end or be interrupted before the expiry of 6 weeks from the date of childbirth. This is especially important to mention given recent isolated cases of women not taking even minimal maternity leave, especially among women in leadership and managerial positions. In such cases, women took convalescent leave for the purpose of childbirth and childcare. Unthinkable in the past, this practice can be described as extreme and unusual, although not without logical explanation. Broadly speaking, women often return to work early due to fear of losing an attractive job and desire to uphold work commitments. The disadvantages of this approach are the possible threat to the woman's health in the context of recovery after childbirth and the stress of caring for a child while simultaneously fulfilling work commitments after recovery leave has come to an end. At the same time, the woman is also deprived of the protection against termination of employment enshrined in the Labour Code, which is linked to the taking of maternity and parental leave. This is why the legislator has set a minimum length of maternity leave, which cannot be less than 14 weeks and may not end or be interrupted before the expiry of 6 weeks from the date of childbirth.

On 4 October 2022, the National Council of the Slovak Republic approved an amendment to Act No. 311/2001 Coll., the Labour Code, as amended (hereinafter,

the Labour Code), an amendment to Act No. 461/2003 Coll., the Social Insurance Act, as amended (hereinafter, the Social Insurance Act), and other regulations prepared by the Ministry of Labour, Social Affairs and Family of the Slovak Republic. The adoption of these amendments aligns the legislation of the Slovak Republic with the European Union Directive on work–life balance for parents and persons with caring responsibilities[22]. Based on these new legislative provisions, the father of a newborn is entitled to an additional paternity leave of 2 weeks (14 calendar days) within a period of no later than 6 weeks from the birth of the child. The six-week period from the birth of the child may be extended by the period during which the child is hospitalised after birth for medical reasons. This means that fathers can now spend two weeks with their child as soon as the child is born, but no later than six weeks after the birth. If the father decides that he wants to take advantage of the legal option to stay at home with the mother and child for 14 days, he is entitled to this additional paternity leave during this period. The use of this additional paternity leave is optional, not obligatory. Therefore, if the father does not want to or for individual reasons cannot take 14 days of paternity leave in the period of no later than 6 weeks after the birth of the child, he can still take advantage of the regular paternity leave if he is taking care of the child instead of the mother. The additional paternity leave is an incentive intended to help new parents cope with the stress of having a newborn and allows fathers to stay at home with the mother and the child for those two weeks. If the father decides to take two weeks of paternity leave, he is entitled to paternity pay; the mother is also entitled to maternity pay during this period. This means that both the father and the mother of the child will receive social security benefits during the two-week period. The conditions for entitlement to two weeks of paternity leave are similar to those for maternity pay. The father must meet the following conditions: he must be actively insured for sickness; have 270 days of sickness insurance in the two years preceding the claim for paternity pay, including any previous period of sickness insurance which has been terminated; and be responsible for childcare (i.e. the father must use these two weeks to actively care for the newborn child). Additionally, if the father claiming paternity pay is a self-employed person or a person voluntarily insured for sickness, he must not be in arrears with the Social Insurance Office.

To encourage the provision of care for the child, the employer is obliged to provide parents with parental leave upon request until the day the child reaches three years of age. In the case of a child with long-term unfavourable health condition requiring special care, the employer is obliged to provide the parent, upon request, with parental leave until the day the child reaches the age of six.

If the child has been taken into the care of a nursing home or other medical institution for health reasons and the mother has not yet started work, maternity leave shall be interrupted by this commencement at the earliest at the expiry of six

22 Directive No. 2018/1158 of the European Parliament and of the Council of 20 June 2019 on work–life balance for parents and carers and repealing Council Directive 2010/18/EU.

weeks from the date of delivery. A mother or a father who has ceased to care for the child and whose child has for that reason been placed in alternative care shall not be entitled to maternity leave and parental leave for the period during which she or he is not caring for the child.

If the child is stillborn, the woman shall be entitled to maternity leave for 14 weeks. If the child dies while the woman is on maternity leave or while the woman or the man are on parental leave, they shall be granted this leave for a further two weeks from the date of the child's death, up to a maximum of the date on which the child would have reached the age of one year.

After maternity/paternity leave and the following parental leave conclude, it is important to ensure that parents with children are able to re-enter the workforce. Flexible forms of employment could be beneficial in this sense, and constitute one of the key pillars of the Government's Strategic Framework that needs significant improvement by the year 2030. Among OECD countries, Slovakia ranks last in the use of part-time employment. The lack of opportunities for part-time employment after parental leave often leads mothers to take on low-skilled jobs, as these jobs allow more time to take care of the child. However, in this situation, women's knowledge potential and human capital are not being harnessed adequately. As such, there is a need to increase the attractiveness of part-time employment for both the employer and the employee, as regulated by Section 49 of the Labour Code, particularly in jobs where it is not possible to work from home. Part-time employment is often associated with so-called job sharing, which is regulated by Section 49a of the Labour Code. According to the OECD, in 2021, the average part-time employment of mothers with children aged 0–14 years was 18.44% in the EU and only 5.01% in Slovakia. In this respect, it is important to note that agreements for work performed outside the employment relationship are also used in Slovakia. However, these agreements are difficult to capture in the statistics, making it impossible to determine the proportion of parents working on agreement during or after parental leave.

A key aspect of reconciling family care with employment is flexibility in working time, flexible working hours, and appropriate adjustment or staggering of working time. Flexible working hours for parents, combined with the guarantee of a preschool placement for children up to five years of age, appears to be a very effective tool for increasing the birth rate. In addition to working time flexibility, workplace flexibility helps parents reconcile work and family life, where working conditions allow it. Measures guaranteeing flexibility of working time and workplace flexibility can significantly contribute to a higher level of reconciliation between family and working life.

Slovak legislation does place a particular emphasis on preschool education, including nursery and kindergarten care. Childcare for children under the age of three is provided by nurseries, which were not regulated by the law until 2017. Prior to regulation, a free trade agreement was sufficient to provide these services. The amendment to the Social Services Act, which went into effect in 2017, introduced new rules, regulations, and conditions for the provision of care for children under

three years of age. As of 1 March 2017, nurseries were defined as a social service to support the reconciliation of family life and working life in a childcare facility for children up to three years of age. Only a child up to three years of age whose parent is preparing for a profession by studying at secondary school or university, preparing for the labour market, carrying out activities related to entering or returning to the labour market, or engaged in gainful employment (e.g. employed or self-employed) can be admitted to a nursery. Nursery care can be provided until the end of the calendar year in which the child reaches the age of three. In nursery care, one childminder can be employed for a maximum of five children and at least 75% of all nursery staff must be professional staff with vocational education in the field. The childminder must have at least: (a) full secondary vocational education obtained in a field of education with a vocational focus in the field of childcare; or (b) full secondary general education or full secondary vocational education and have completed an accredited childcare course of at least 220 hours.

In a childcare establishment for children up to three years of age, care may be provided for a maximum of 12 children in a single room which fulfils the function of both a playroom and a bedroom; this applies even if the bedroom is structurally separated from the playroom and the children use both of these areas. The number of children may be increased by a maximum of three children if the day room or the bedroom and playroom do not provide care for a child under one year of age. In other words, if a child under one year of age is cared for in such a facility, the maximum number of children is 12; otherwise, up to 15 children may be cared for. The nursery must conclude a written contract with the parent for the provision of a service to support the reconciliation of family life and working life in a childcare facility for children up to three years of age. In a childcare establishment for children up to three years of age, normal childcare, boarding, education, and leisure activities shall be provided.

Kindergarten care is provided in accordance with the Education Act, which was amended in 2023. In respect to kindergarten care, the Education Act states that *'Education and training under this Act shall be based on the principles of (a) free education in a kindergarten established by a local state education authority or a local self-government authority (hereinafter referred to as a "state school") for children for whom pre-primary education is compulsory, (b) the right to be admitted to pre-primary education in a kindergarten from the school year following the school year in which the child reaches the age of three'*.

As of January 2021, all five-year-old children in Slovakia are required to complete compulsory pre-school education and are thus guaranteed a place in a kindergarten. Kindergarten care is provided from the age of three. However, due to compulsory kindergarten attendance from the age of five, these children were given priority admission to every kindergarten. If the capacity of the facility was small or there were many five-year-old children in the area, younger children are simply not admitted. The availability of pre-school care facilities has had an impact on the employment of parents, especially mothers. In particular, mothers with children aged

between the ages of three and six years have problems getting a job after parental leave has come to an end. Individual measures to improve the situation in this area need to be tailored to regional needs and opportunities. As of 15 September 2022, there were more than 19,000 outstanding applications for kindergartens, indicating a significant number of children still waiting to be admitted to a kindergarten facility. According to the legislation in force, children one year before compulsory school attendance had priority admission to kindergartens. It can thus be assumed that the majority of these waitlisted applications are from the legal representatives of children under five years of age. The greatest shortage of places in kindergartens is in the larger cities, especially in Bratislava and its surrounding areas such as Senec and Pezinok. In response to this huge practical problem, in 2023, the National Council of the Slovak Republic passed an amendment to the Education Act that introduced parental entitlement to a place in kindergarten from the age of three. The amendment also stipulates that the State must pay support for every child who needs it from 2026. The amendment introduced a legal entitlement to a nursery place for children as young as three years of age. This place must be provided by the municipality. For children aged three years and older, this entitlement will only be effective in real terms from the 2025/2026 school year. From September 2024, it should apply to all four-year-olds. As such, the provision is being phased-in gradually. Every child should obtain a nursery place in the catchment area of their permanent residence. If this is not possible, it is the responsibility of the local authority to find a place in another nursery.

As of August 2023, calls were launched to increase the capacity of kindergartens. Kindergarten founders can apply for funding for projects to make up the shortage of places in childcare facilities. For the next two school years, municipalities have the opportunity to set up nurseries in other premises available to the municipality. These do not have to meet all hygiene and other standards, which are very demanding in respect to the running of a nursery. Municipalities have an important role to play, as they provide a regional perspective on the issue of increasing pre-school capacity, one that is more effective in terms of supply management and planning. Here, it is important for municipalities to monitor the demographic situation and developments in their region. In the short term, it is necessary to estimate the demand for pre-school facilities, which a municipality can achieve by analysing the age-specific population of permanent or temporary residents. The age distribution of the population will allow the municipality to estimate the current and future demand for pre-school facilities. However, citizens do not always have to be registered as permanent or temporary residents where they reside and where they use the services. Therefore, municipalities face not only lower revenues but also a certain degree of inaccuracy in characterising its residents and estimating their needs. This problem could be solved by introducing a new status or by replacing permanent or temporary residence with habitual residence, among other measures. Usual residence is simply understood as the place where a person stays most of the year outside work. This would bring more resources to municipalities and make it easier for them to plan and provide services

for residents, including expanding pre-school capacity according to demand in a particular region.

One of the current challenges families face is the disproportionately high cost of pre-school care. When comparing the cost of pre-school care for a family of four in the V4 countries, Scandinavian countries, and Germany, it is the family of four in Slovakia that allocates most of the family budget to pre-school care. Therefore, direct and indirect financial support should be used to cover the costs associated with early childcare. The government is currently working on an action plan to increase the financial support for families in need of pre-school care. It is children from disadvantaged backgrounds and poorer families who will benefit most from this policy, with early childhood care and education able to improve children's life chances in the future and reduce socio-economic inequalities. Indeed, such measures can have positive effects on reducing intergenerational poverty in the long term. Investing in quality pre-primary and primary education delivers the highest returns to society. Here, emphasis is placed on the quality of early childhood care. Quality early childhood care is the most important source of cognitive and social skills development, especially for children from low-income families. The availability of childcare services even during non-school hours is often a key issue influencing parents' labour market decisions. It would appear that children from low-income families would benefit most from the use of after-school care services.

6. Financial incentives for families

Family policy should be geared towards fostering an environment that encourages family formation, growth, and healthy functioning. The State has a crucial role in removing obstacles that hinder parents from effectively balancing their interests, skills, and abilities with family responsibilities. These efforts are grounded in the belief that family policy serves the best interests of Slovakia, functioning as a forward-looking strategy for the nation's future.

Research has yet to conclusively establish a direct correlation between improved financial conditions and a proportional increase in birth rates. Nevertheless, enhancing financial circumstances undoubtedly helps alleviate economic barriers to parenthood and family expansion. Therefore, it is imperative to strategically prioritise family-focused initiatives and improve the overall conditions under which families operate. The State cannot afford to relinquish its role in promoting demographic development, even when guaranteed success is not assured. In short, family policy should be a proactive effort to support families. Although financial improvements may not guarantee increased birth rates, they undeniably contribute to easing economic challenges associated with parenthood. Prioritising family-centric initiatives is crucial for the State and underscore its commitment to shaping a positive future for Slovakia.

The comprehensive analysis of 2014 Eurobarometer surveys conducted by the OECD reveals a consistent theme: the prevalent desire among individuals across Europe to have larger families.[23] Despite this aspiration, supplementary surveys indicate that, on average, individuals tend to have one child fewer than their ideal family size. This notable discrepancy is frequently traced back to the challenges families face in terms of financial and housing constraints. This pattern is similarly observed in the context of Slovakia. The interplay between family size preferences and the tangible realities of financial and housing situations reflects a broader societal dynamic with implications for demographic trends. Addressing these challenges is imperative for both national and European policy-makers seeking to align family policies with the aspirations and constraints faced by individuals and families.

The arrival of a new child has considerable financial implications for a family, generally translating to a reduction in annual income by hundreds to thousands of euros. This financial strain results from increased expenditures in various areas, such as housing, transportation, utilities, food, and clothing. Surveys and estimations specifically applicable to Slovakia indicate that the average monthly cost per child ranges between EUR 150 and EUR 350, amounting to a minimum of EUR 1,800 per annum.[24] This surge in expenses inevitably influences a family's standard of living, impacting choices related to housing, nutrition, leisure, and overall lifestyle. Accordingly, the family's net income experiences a notable decline, underscoring the intricate financial dynamics associated with expanding one's family. Understanding these financial intricacies is crucial for policy-makers and legislators striving to formulate family-friendly policies that consider the economic realities faced by individuals and families in the context of child-rearing responsibilities.

Historically, children served as an investment in a family's economic prospects, actively contributing to various familial activities from a young age, be it in the fields, workshops, or in caregiving roles. However, this narrative has shifted in contemporary society, with the cost of raising children outweighing any direct economic returns for parents. The decision to bring a child into the world and nurture them demands profound motivation and necessitates sacrifices, ranging from compromising comfort and the standard of living to forgoing personal fulfilment and certain aspects of quality of life.

In light of these considerations, it is imperative that the State acknowledge and address the financial challenges associated with parenthood. While no monetary benefit can fully offset the sacrifices made by parents, offering them certain benefits can serve as a gesture of recognition and encouragement. Although insufficient to redress the inherent sacrifices, these benefits can play a crucial role in incentivising individuals to embark on the journey of parenthood. It is crucial for the State to extend support that acknowledges the multifaceted sacrifices made by parents, recognising

23 Directorate-General for Communication, 2014.
24 Hidas and Horváthová, 2016.

that the decision to expand one's family is not merely motivated by financial incentives but also by a desire to nurture and contribute to societal continuity.

Achieving a societal atmosphere that encourages family growth and child-rearing necessitates a comprehensive approach involving a synergistic combination of diverse strategies. It is imperative for Slovakia to transition into a nation that not only acknowledges but actively promotes the welfare of families and children. This transformation is foundational for creating an environment where families can thrive, setting the stage for a lasting and considerable upswing in the birth rate. In addition to policy adjustments, this multifaceted initiative involves a cultural shift towards valuing and supporting the familial structure. By fostering a family-friendly ethos, Slovakia can lay the groundwork for sustained demographic growth and societal well-being.

Currently, Slovakia prides itself for its generosity in respect to supporting families relative to the median income in the country. Slovakia provides several financial incentives, among which the following are the most important.

The childbirth allowance constitutes a governmental social benefit designed to defray the costs associated with meeting the essential needs of a newborn child.[25] The rightful beneficiary is the mother who physically gives birth to the child. In cases where the child's mother is deceased, missing, or the child has been legally entrusted to the father's personal care, the father becomes eligible for this allowance. The prerequisites for claiming the childbirth allowance include the actual birth of the child and the entitled person's permanent residence and domicile within the borders of the Slovak Republic. This allowance is disbursed as a one-time payment to the entitled individual with a permanent residence and domicile within the Slovak Republic upon the birth of their child. In situations where multiple children are born simultaneously, the entitlement to the childbirth allowance arises for each child. However, specific conditions exist that may preclude eligibility. These include instances where the beneficiary has not entered into an agreement for the provision of general outpatient care for the child, has consented to the child's adoption, or has seen the child entrusted to a substitute for parental care. Eligibility is also voided if the mother is a minor without parental rights granted by a court concerning the child's personal care or if, during the period from the fourth month of pregnancy until childbirth, the mother has failed to attend monthly preventive check-ups with a gynaecology and obstetrics specialist. The conditions outlined ensure that the childbirth allowance is granted judiciously, prioritising the well-being and care of both the mother and the newborn child. The childbirth allowance is disbursed at varying amounts based on the number of births and specific circumstances. For the first to fourth birth, the allowance amounts to EUR 829.86. In the case of the fifth and subsequent births, the allowance is reduced to EUR 151.37. In situations where more than one child is born concurrently, an additional EUR 75.69 is added to the allowance for each child.

25 Act No. 383/2013 Coll. on Childbirth Allowance and on Allowance on More Concurrently Born Children.

These differential amounts are structured to accommodate the unique circumstances associated with the number of births, ensuring that the childbirth allowance remains equitable and reflective of individual situations.

The allowance for multiple children born at the same time is a state social benefit provided once a year to offset the increased expenses incurred in connection with the proper care of three or more children born at the same time, two children born at the same time within a period of two years, or the birth of more than two children within a period of two years.[26] An eligible person is the parent of the children or a natural person who has taken the children into substitute care on the basis of a final court decision. If the parents do not agree which of them shall claim the allowance, the mother of the children shall have the priority right to the allowance. The conditions for entitlement to the allowance for parents to whom three children are born at the same time are as follows: (a) at least three of the three or more children were born at the same time, or are twins born within a two year period, and are no older than 15 years of age; (b) for twins or more children born at the same time within a period of two years, the age limit for the children born first in the sequence shall be observed; (c) the proper care of the above children by the beneficiary; and (d) the permanent residence of the beneficiary and the above-mentioned children in the territory of the Slovak Republic. The allowance is granted to the parents for each child only once in a calendar year. The amount of the allowance for multiple children born at the same time is EUR 110.36.

Child allowance is a state social benefit aimed at assisting the eligible person in the upbringing and maintenance of their dependent child. Additionally, it contributes to the partial payment of school needs, supporting the fulfilment of the dependent child's school obligations. The allowance is provided monthly until the child reaches the age of 25, as long as they meet the condition of dependency. For the purposes of child benefit, a child is considered dependent if they (a) are continuously preparing for a profession through full-time study at a secondary or higher education institution; (b) cannot continuously prepare for a profession due to illness or accident, (c) are exempt from the obligation to attend school; (d) being educated in a primary school for pupils with disabilities; or (e) based on an assessment of the child's long-term unfavourable health condition, considered incapable of continuous vocational training or gainful employment, but not beyond the age of majority.

A child is not considered a dependent child eligible for child benefit if they are entitled to an invalidity pension or have already obtained a second-level higher education qualification. Eligible persons who can claim the child benefit include the parent of the dependent child, the parent to whom the child has been entrusted by a court order, a person to whom a dependent child is entrusted in substitute care based on a final court decision, an adult dependent child if there is no parent of the

26 Act No. 383/2013 Coll. on Childbirth Allowance and on Allowance on More Concurrently Born Children.

dependent child, an adult dependent child if they have a modified parental maintenance obligation, an adult dependent child if they have been entrusted to the care of a substitute parent until reaching the age of majority, an adult dependent child who has entered into marriage, an adult dependent child whose marriage has been terminated, and a minor parent who has been granted parental rights and responsibilities. In cases where multiple beneficiaries meet the aforementioned conditions, the allowance for the same child is due to only one of them based on their agreement. The amount of the child allowance is EUR 60, with an additional EUR 110 for the calendar month in which the dependent child enters their first year of primary school.

The child allowance supplement is a state social benefit designed to complement the child benefit received by an eligible person. Its purpose is to assist in the upbringing and maintenance of a dependent child to whom the tax bonus cannot be applied, as specified by relevant regulations. The supplement to the child allowance is disbursed monthly, concurrently with the child allowance. Persons entitled to claim the child allowance supplement include the parent of a dependent child or the person to whom the dependent child is entrusted in substitute care based on a final court decision. In cases where there are multiple eligible persons meeting the conditions outlined above, the supplement to the allowance for the same child is directed to the eligible person entitled to receive the child allowance. The amount of the child benefit supplement is EUR 30.

Parental allowance is a state social benefit designed to support eligible individuals in ensuring the proper care of a child up to the age of three or up to six years if the child has a long-term adverse health condition. The entitled person may include the child's parent, a person entrusted with the child's care based on a court decision, or the spouse of the child's parent residing in the same household.[27] Conditions for entitlement to parental allowance include providing proper care for the child and having permanent or temporary residence in the territory of the Slovak Republic or being a person under special regulations. The entitlement applies to a child up to six years of age, considering various circumstances such as continuous preparation for a profession, health conditions, being exempt from school attendance, or being unable to attend school due to disability. The allowance is granted to one entitled person designated by mutual agreement among caregivers. The parental allowance amounts to EUR 345.20 per month, or EUR 473.30 per month if the entitled person received maternity pay or an equivalent benefit before the entitlement arose. For each child born at the same time, the allowance is increased by 25%. However, if the entitled person neglects the compulsory school attendance of another child in their care for at least three consecutive months, the allowance is reduced by 50%. The Ministry of Labour, Social Affairs, and Family of the Slovak Republic sets the parental allowance amounts on an annual basis, with the full text published in the Collection of Laws of the Slovak Republic by December 31.

27 Act No. 571/2009 on parental benefits.

Childcare allowance is a state-provided benefit aimed at assisting parents or individuals entrusted with a child's care in covering the associated expenses.[28] This allowance is extended until the child reaches three years of age, or up to six years for a child with a long-term adverse health condition. Per the scope of this allowance, childcare involves the provision of care for a child and ensuring the child's physical and psychological development, while the parent is engaged in gainful employment or pursuing secondary or university education. This care can occur in various environments, such as the child's family, a specifically designed setting, or within the family environment of the caregiver. Eligible childcare providers encompass establishments under specific regulations, legal entities offering childcare services, natural persons providing care under special regulations, and parents who are gainfully employed and not receiving parental allowance. Those eligible to claim the childcare allowance include the child's parent or a parent entrusted with the child's care by a court decision. In cases of joint or alternate personal custody, the allowance is distributed based on a written agreement between the parents. If no agreement exists, the allowance is allocated to each parent on an alternating basis. The new agreement's legal effects commence after the sixth calendar month following the start of allowance payments, unless specified otherwise.

The childcare allowance is granted per child. If multiple eligible persons meet the criteria, the allowance is payable to only one of them. The monthly amount varies based on the type of childcare provider and is subject to government adjustments. For instance, it covers payments agreed between the provider and the eligible person, reimbursements, or fixed contributions when childcare is provided by specific entities or natural persons. The monthly amount of childcare allowance depends on the type of childcare provider. Specifically, the childcare allowance amounts to a maximum of EUR 280 for childcare agreed between the provider and eligible person, up to EUR 160 for reimbursement agreed between the provider and the beneficiary for childcare based on a trade license or in a playgroup, a maximum of EUR 80 if childcare is provided by a kindergarten part of the Slovak Republic's schools and educational establishments network, and a specified monthly contribution of EUR 41.10 if childcare is provided by another natural person (e.g. a grandparent) without receiving parental allowance or by a gainfully employed parent not otherwise providing care for the child.

The childcare allowance is a vital support mechanism and reflects the government's commitment to assist families in balancing work and family responsibilities. Adjustments to the allowance amounts may occur through government regulations to ensure continued support aligned with the evolving needs of families.

Maternity benefit is a sickness insurance benefit dispensed by the Social Insurance Institution and designed to support individuals with pregnancy or childcare responsibilities. Preceding maternity pay, a pregnant woman may be eligible for a pregnancy allowance, which is also provided by the Social Insurance Institution.

28 Act No. 561/2008 Coll. on Childcare Allowance.

In instances where a woman receives maternity pay, she subsequently qualifies for an increased parental allowance. Significantly, entitlement to maternity allowance extends to individuals other than the biological mother, including the child's father, adoptive parents, and foster parents, among various other eligible individuals. That said, the maternity benefit is not automatically granted to every parent; it is not an entitlement without evaluation. This contrasts with the parental allowance, which is generally accessible to all parents irrespective of their pre-birth employment status. Each application for maternity allowance is reviewed by the Social Insurance Institution, which evaluates whether the applicant fulfils the eligibility criteria, especially for an insured person who pays sickness insurance premiums. The amount of maternity allowance is not fixed and varies for each insured individual. The calculation primarily rests on the income derived from employment or business activities. Maternity allowance is computed as 75% of the taxable amount, encompassing gross salary for employees and business income for self-employed individuals. In 2023, the maximum maternity allowance an insured woman could receive was EUR 1,791.70 per 30-day month or EUR 1,851.40 per 31-day month. This maximum benefit was allocated to an insured woman whose assessment base, on which sickness insurance premiums were paid in the reference period (typically the preceding year; in this case 2022), was at least EUR 2,422 per month. This benchmark was set at twice the average monthly wage applicable in 2021, equivalent to 2 x EUR 1,211.

The entitlement to maternity benefit commences at the onset of the sixth week before the anticipated childbirth date, as determined by a doctor (i.e. at 34 weeks of gestation). The earliest entitlement kicks in from the commencement of the eighth week before the expected childbirth date (i.e. at 32 weeks of gestation). However, if the insured woman delivers earlier, the entitlement to maternity benefit initiates from the actual date of delivery. The entitlement to maternity benefit concludes at the termination of the 34th week from the date of entitlement to maternity benefit. However, special provisions exist for certain categories: pregnant single women who are insured have an extended maternity support period, with entitlement ceasing at the close of the 37th week following the date of entitlement to maternity pay; for insured women giving birth to twins or multiple children and caring for at least two of them, the entitlement to maternity pay continues until the conclusion of the 43rd week following the date of entitlement to maternity pay.

There is also a tax bonus system that helps families. Employees have the right to claim a tax bonus for each dependent child residing in their household. A dependent child includes a biological or adopted child, a child taken into substitute care based on a competent authority's decision, a child from the other spouse, and an adult dependent child entrusted to substitute care until reaching the age of majority. This tax bonus can be claimed by the employee from the month of the child's birth until the month in which the child turns 25, but only if the child is consistently engaged in full-time study at a secondary school or university. According to the Child Allowance

Act,[29] a dependent child includes a child exempted from school attendance, a child attending a primary school for pupils with disabilities, or a child unable to engage in continuous vocational training or gainful employment due to a long-term adverse health condition, up to the age of majority. As of 1 January 2023, the monthly child tax bonus amount varies based on the age of the dependent child, with a child up to the age of 18 entitled to a monthly tax bonus of EUR 140, and a child over the age of 18 years entitled to a monthly tax bonus of EUR 50.

Until 20 April 2023, the eligibility for the tax bonus for a child attending the last year of kindergarten or primary school was also influenced by whether the taxpayer claimed a subsidy for meals for this child. However, as of 1 May 2023, the provision of a food subsidy is no longer considered when claiming the tax bonus. It is important to note that the monthly amount of the child tax bonus may not be the maximum for every employee. According to the Income Tax Act, the tax bonus is capped at a certain percentage of the partial tax base depending on the number of dependent children. The calculation involves factors like the gross salary, employee contributions, and the number of dependent children. Only one parent can claim the child tax bonus with one employer, and parents cannot claim the credit in the same month. If parents have multiple children, only one parent can claim the child tax credit for all dependent children. It is also possible for parents to split the entitlement based on mutual agreement, such as one parent claiming the tax bonus for a certain period, and the other for the remaining months.

7. Artificial reproductive technologies

In the contemporary landscape, technological advancements pervade nearly every facet of our existence, enriching and streamlining our daily activities. Despite these transformative effects, it is imperative that we scrutinise individual technologies by considering the ramifications of their application and adopting a comprehensive approach that evaluates the entire implementation process rather than solely focusing on outcomes. Within this framework, it is important to concentrate on biomedical technologies germane to the creation of human life, with particular focus on assisted reproduction techniques and their legal regulation within the Slovak Republic. This subchapter discusses biomedical and scientific research activities associated with these techniques. Challenges linked to declining birth rates and complications in natural conception due to advancements in modern biomedical technologies are intricately tied to medically assisted procreation, particularly methods of assisted reproduction deemed the most dependable treatment for infertility.

29 Act No. 600/2003 Coll. on child allowance.

In this respect, the fundamental question concerns whether assisted reproduction methods should be categorised as treatments. However, the exploration of assisted reproduction gives rise to ethical, moral, and legal considerations pertaining to safeguarding the conceived life and respecting the integrity and dignity of not only the conceived life but also the spouses/partners engaged in the assisted reproduction process. This subchapter critically analyses the legal regulation surrounding assisted reproduction techniques in the Slovak Republic, highlighting problematic aspects stemming from insufficiencies and ambiguities in the existing legal framework. In doing so, this subchapter discusses de lege ferenda proposals.

Assisted reproduction encompasses a series of procedures designed to facilitate the conception of a child. The WHO defines assisted reproduction as 'all treatments or procedures that include the in vitro handling of both human oocytes and sperm or of embryos for the purpose of establishing a pregnancy'.[30] This broad classification includes various techniques, such as in vitro fertilisation (IVF), transcervical embryo transfer, gamete intrafallopian transfer (GITF), zygote intrafallopian transfer (ZIFT), tubal embryo transfer, cryopreservation of embryos and gametes, oocyte donation, embryo donation, and surrogacy. Significantly, assisted reproduction excludes assisted insemination (i.e. artificial insemination) involving the sperm of a partner or donor.[31]

The predominant method employed in assisted procreation is IVF, wherein ovarian stimulation is initially conducted to procure an adequate quantity of biological material. Subsequently, the artificial fusion of male and female sex cells occurs under laboratory conditions, resulting in the formation of a zygote or fertilised egg. This zygote is then cultured and observed within a controlled laboratory environment, culminating in the selection and subsequent transfer of embryos to the mother's uterus.

The ethical, moral, and legal quandaries surrounding Medically Assisted Procreation (MAP) revolve around the protection of conceived life, the issue of the overproduction of embryos, and the potentially undignified and destructive treatment of surplus embryos. This is why it is crucial that we adopt a sensitive approach in examining our legal landscape.

7.1. Legal regulation of assisted reproduction in Slovakia

In general, the legal framework pertaining to artificial insemination in Slovakia is characterised by a disconcerting lack of coherence, internal contradictions, and inadequacy. This prevailing state of affairs has created a regulatory environment that is susceptible to exploitation by assisted reproduction clinics. The absence of legislative clarity and consistency has provided room for ambiguity, enabling clinics to navigate and interpret the law in a manner that may not align with its intended purpose.

30 International Committee for Monitoring Assisted Reproductive Technology (ICMART), World Health Organisation (WHO), 2009.

31 ICMART and WHO, 2009.

At the international level, the Universal Declaration on the Human Genome and Human Rights was unanimously adopted and endorsed by the General Conference of UNESCO in 1997.[32] It subsequently gained further recognition when it was endorsed by the General Assembly of the United Nations in 1998. A pivotal instrument in safeguarding the rights of patients and users of health services is the Oviedo Convention on Human Rights and Biomedicine (hereinafter, the Oviedo Convention),[33] which is acknowledged as a standard in this domain. The Oviedo Convention serves as a benchmark for evaluating the efforts and progress made by EU Member States. Slovakia signed the Oviedo Convention on 4 April 1997, and ratified it on 15 January 1998, making it the first Eastern European country to do so. The Oviedo Convention came into force on 1 December 1999, and was officially incorporated into national law under No. 40/2000 Coll.

The right to access infertility treatment is recognised as a fundamental human right, aligning with Art. 14 and Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Additionally, the European Parliament resolution on the demographic future of Europe underscores the principle of non-discrimination, emphasising equal access to infertility treatment without bias based on religion or belief, disability, age, or sexual orientation. However, in Slovakia, the performance of assisted reproduction interventions remains limited. Notably, the requirement for an intimate physical relationship between a man and a woman as a precondition for undergoing assisted reproduction treatments poses a discriminatory hurdle for single women seeking pregnancy through assisted reproduction.

These international conventions have had a substantial impact on Slovakia's internal legislative processes. In addition to highlighting a shared set of values grounded in human rights across Europe, these conventions have spurred a deeper awareness of the imperative to fortify these values by aligning national laws with the principles enshrined in the Oviedo Convention. They have also catalysed political debate and efforts towards formulating a legal policy in Slovakia.

Slovakia's commitment to ethical considerations in the realm of biomedicine is underscored by its ratification of the Additional Protocol to the Convention Council of Europe for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, specifically on the Prohibition of Cloning Human Beings.[34] This protocol, in force since 1 March 2001, unequivocally prohibits any intervention seeking to create a human being genetically identical to another human being, whether living or deceased. Slovakia has also ratified the Additional Protocol on Biomedical Research, emphasising the crucial role of ethics committees, thorough evaluation of research merits, the duty of care, and the necessity of

32 UNESCO, 1997.

33 Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine.

34 Council of Europe (1998) Additional Protocol to the Convention Council of Europe for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, specifically on the Prohibition of Cloning Human Beings.

informed, free, express, specific, and documented patient consent, as articulated in Art. 14 of this protocol. These ratifications affirm Slovakia's dedication to upholding human dignity and rights in the context of biomedical research and underscore its alignment with international standards and principles.

In respect to Slovakia's domestic legislation, the first legal act pertaining to Medically Assisted Procreation techniques within Slovak jurisdiction is embodied in the Measure of the Ministry of Health of the Slovak Socialist Republic, numbered 24/1983 (hereinafter, Measure no. 24/1983), which delineates the conditions governing MAP.[35] Notably, this measure still exists without repeal, and several of the stipulations it prescribes have been supplanted by subsequent legislation. It is worth noting that the legal framework governing assisted reproduction techniques in Slovakia has been critiqued by numerous experts, including those not directly engaged in the implementation of assisted reproduction technologies. According to prevailing expert consensus, this regulatory framework is deemed insufficient, antiquated, and lacking in conceptual clarity. Remarkably, this regulation, which has endured for four decades, operates as a sub-legislative norm with relatively limited legal force. Obtaining access to the text of this measure requires considerable patience and research enthusiasm, given its age and relative obscurity. Indeed, despite its historical significance and the fact that it is still in force, compliance with this measure is frequently overlooked. However, in a state governed by the rule of law, adherence to such regulatory frameworks is imperative.

Although never officially repealed, Measure no. 24/1983 appears to be largely disregarded in practical applications. Nevertheless, it delineates certain parameters and reasonable limits that merit attention. First and foremost, it restricts artificial insemination to married couples, mandating joint application by both spouses. It also confines artificial insemination to instances where medical reasons necessitate intervention. These medical reasons encompass fertility disorders in the husband, female genitalia disorders, the risk of hereditary diseases or developmental defects, and other impediments preventing the couple from conceiving healthy offspring together. Crucially, artificial insemination, as per Measure no. 24/1983, is sanctioned solely for women of full age, typically under the age of 35. In cases where the husband's sperm is unusable, the measure allows for the use of donor sperm selected by a medical professional, contingent upon the consent of the spouses. Anonymity between the spouses and the donor is stipulated, with the doctor responsible for ensuring that the donor has no blood relation to the woman.

Measure no. 24/1983 defines artificial insemination as *'a medical procedure whereby insemination is carried out on a woman with her husband's semen or the semen of another man'*. This definition confines artificial insemination to the specific act of insemination and excludes considerations for practices such as insemination outside the mother's body, embryo transfer, cryopreservation, and the like. Significantly,

35 Measure of the Ministry of Health of the Slovak Socialist Republic No 24/1983 of the Bulletin on the modification of conditions for artificial insemination (No Z-8600/1983-D/2).

these advanced practices were not contemplated when this measure was created, reflecting the evolution and expansion of assisted reproductive technologies beyond the scope initially envisaged by this regulatory framework.

In Slovakia, multiple centres specialising in assisted reproduction offer a diverse array of services. However, the expansive scope of care furnished by these centres is incongruent with the quality of the legal regulation governing these intricate techniques. Until 2017, MAP was only regulated in secondary legislation.[36] Given the myriad moral, ethical, and legal complexities intertwined with the implementation of MAP techniques as well as with their profound impact on human rights, the preservation of dignity, and the obligations emanating from international conventions binding the Slovak Republic, relying solely on norms possessing lesser legal force for such an extended duration is untenable within a state governed by the rule of law. Indeed, until 2017, there was only secondary legislation in this area, which was a huge shortcoming of the legislation of this field, especially considering the gravity of the ethical, moral, and legal considerations at stake.

In 2016, Act no. 317/2016 Coll., titled on Requirements and Procedures for the Collection and Transplantation of Human Organs, Human Tissues and Human Cells and on Amendments to Certain Acts,[37] was enacted to align the transposition of six binding EU directives.[38] This legislation is commonly referred to as the Transplantation Act. Despite the incorporation of this legislation, a conspicuous void persists as Slovakia's legal framework lacks a precise definition for assisted reproduction, resulting in a regulatory landscape characterised by fragmentation and disarray. It is worth noting that, in the absence of a dedicated legal definition, the regulation of assisted reproduction techniques in Slovakia's jurisdiction is marred by an inherent lack of coherence.

Human rights possess an internationally recognised nature that transcends state recognition, as states determine the extent of legal protection rather than the

36 Key legal acts: Government Regulation of the Slovak Republic No. 20/2007 Coll. on details on procurement, tissue and cell donation, criteria for selection of tissue and cell donors, laboratory tests required for tissue and cell donors, and procedures for procurement of cells or tissues and their acceptance by a health care provider, as amended by Government Regulation No. 119/2014 Coll.; Government Regulation of the Slovak Republic No. 622/2007 Coll, detailing the processing, storage, warehousing, or distribution of tissues and cells and the reporting and investigation of adverse reactions and events and the measures taken, as amended by Government Regulation No 9/2016 Coll.

37 Act no. 317/2016 Coll. on Requirements and Procedures for the Collection and Transplantation of Human Organs, Human Tissues and Human Cells and on Amendments to Certain Acts (Transplantation Act), as amended.

38 1. European Parliament, Council of the European Union (2004) Directive 2004/23/EC
2. European Commission, Commission Directive (2006) 2006/17/EC amended by European Commission (2012) Commission Directive 2012/39/EU
3. European Commission (2006) Commission Directive 2006/86/EC amended by European Commission (2015) Commission Directive 2015/565
4. European Parliament, Council of the European Union (2010) Directive 2010/53/EU
5. European Commission (2012) Commission Implementing Directive 2012/25/EU
6. European Commission (2015) Commission Directive (EU) 2015/566.

existence of these rights. In the context of legislation in Slovakia and its implications for the protection of unborn life, various approaches can be considered. A critical aspect is the absence of a clear legislative definition of embryos, which has led to ambiguity in the treatment of surplus embryos resulting from MAP techniques. The legal framework addressing the activities of MAP techniques is primarily found in the Transplantation Act. Specifically, Art. 2(5) of the Transplantation Act defines reproductive human cells as human tissue or human cells intended for the purpose of assisted reproduction. However, there is a notable gap in the legislation, namely, the lack of a specific definition clarifying whether human cells intended for assisted reproduction encompass embryos.

This legislative void leaves the handling of surplus embryos in the domain of assisted reproduction techniques without explicit legal guidance. The absence of a distinct definition for embryos in the Transplantation Act contributes to the broader challenge of determining the legal status and protection afforded to unborn life in Slovakia. Clarifying this conceptual ambiguity is imperative for establishing a comprehensive legal framework that aligns with the principles of human rights and ethical considerations associated with assisted reproduction techniques. It is important to note the legislative process behind the development of the Transplantation Act, especially the inter-ministerial comment procedure. Notably, a substantive comment of considerable significance emerged during this process. The petitioner introduced a distinctive definition in Art. 2(15) of the draft Transplantation Act, asserting that *'Reproductive cells are tissue or cells intended for the purpose of assisted reproduction. A human embryo shall not be considered as reproductive cells'.* This proposed provision was then submitted to the Legislative Council of the Government of the Slovak Republic, a perpetual advisory body to the government. During its fifth meeting, held on 12 July 2016, the Council advocated for a modification to the proposal, documented under reference number 22125.[39] The revised version was recommended for submission to the Government of the Slovak Republic for deliberation. However, a twist emerged during the Government's meeting on 16 August 2016, where a modified and entirely new iteration of the Transplantation Act secured approval. Notably, the initially proposed provision of Section 2(5), encompassing the essential comment from the inter-ministerial comment procedure, was omitted. Instead, the original definition of reproductive cells was reinstated in the draft, emphasising that *'Reproductive human cells are human tissue or human cells intended for the purposes of assisted reproduction'.* This turn of events meant that the question of whether embryos can be considered reproductive human cells was left unanswered. This is of crucial significance because according to the European directives that the Transplantation Act transposes, the reproductive cells intended for assisted reproduction encompass not only ova and sperm but also embryos. This nuanced interpretation adds layers of complexity to the legal landscape surrounding assisted reproduction techniques, necessitating thorough scrutiny and clarification.

39 Legislative Council of the Government of the Slovak Republic, 2016.

Overall, the Transplantation Act is a significant piece of legislation addressing cell, tissue, and organ donation, emphasising the quality and safety of donated cells to mitigate the risks of infection and disease transmission during transplantation. The Transplantation Act serves as a conduit for transposing six EU directives, some of which touch upon the donation of gametes for assisted reproduction purposes. Consequently, amendments have been incorporated into national law, recognising that the donation of reproductive human cells between partners in an intimate relationship, regardless of marital status, constitutes partner donation. The written informed consent of the donor for partnered donation also extends to encompass the potential use of unused reproductive cells for other reproductive purposes, scientific research or disposal.

This legislative shift marks a departure from the earlier mandatory measures that exclusively mentioned spouses in the context of artificial insemination. Influenced by EU directives, the Transplantation Act extends the provision of assisted reproduction to unmarried partners who declare an intimate physical relationship. However, it is crucial to note that while the Transplantation Act is often regarded as a legal basis for assisted reproduction for non-marital couples in practice, the directives themselves should not be interpreted as an overarching legal foundation for the legalisation of specific assisted reproduction procedures. Directive 2004/23/EC, which establishes quality and safety standards for donated human tissues and cells, explicitly states that it should not conflict with Member States' decisions regarding the use or non-use of specific types of human cells, including germ cells and embryonic stem cells. Consequently, if national legislation does not permit certain methods of gamete use, the directive cannot be construed as a basis for altering such legislation. Nonetheless, the prevailing practice in Slovakia suggests that artificial insemination is performed on individuals beyond the confines of marital relationships.

Paradoxically, the absence of a comprehensive legal framework notwithstanding, these techniques continue to receive financial support through public health insurance mechanisms. The provision of assisted reproduction services funded by public health insurance is contingent upon adherence to indications delineated in secondary legislation. Government Regulation No. 776/2004 Coll., as amended, prescribes the Catalogue of Health Performances, delineating distinct health care procedures for assisted reproduction. This regulatory framework[40] outlines the parameters for one cycle prior to oocyte retrieval, one cycle encompassing oocyte retrieval for IVF without embryo transfer, and one comprehensive cycle involving embryo transfer. These specified cycles are established as integral health care procedures within the realm of assisted reproduction. However, the current regulatory framework lacks precise terminology when addressing the specific methods offered by assisted reproduction centres. The existing language within the regulation does not provide a detailed and comprehensive elucidation of the various assisted reproduction techniques available at these centres.

40 Government Regulation No. 776/2004 Coll., as amended.

The regulatory framework governing assisted reproduction in Slovakia is further delineated by Government Regulation No. 777/2004 Coll., which plays a pivotal role in determining the extent of coverage provided by public health insurance for various treatments. This regulation identifies a list of diseases and specifies the treatments that fall under different coverage categories, including full coverage, partial coverage, or no coverage at all. In the context of artificial insemination, IVF, and other assisted reproduction methods, the public health insurance system extends coverage for a maximum of three cycles of assisted reproduction procedures. This coverage is applicable to women up to the age of 39, contingent upon specific medical conditions. The enumerated medical reasons that warrant public health insurance coverage for assisted reproduction procedures include: missing fallopian tubes or irreversible damage to the fallopian tubes (excluding conditions resulting from previous sterilisation or abortion); endometriosis in women; irreversible damage to the ovaries, excluding damage resulting from an abortion; idiopathic sterility; male sterility factors such as azoospermia, asthenospermia, ejaculatory dysfunction, and conditions related to chemotherapy or post-traumatic situations; immunological causes of sterility; and the risk of hereditary diseases preventing the couple from conceiving healthy offspring, endocrine causes of sterility.

As a result of this government decree, the public contributes to the co-payment of artificial insemination procedures for the specified medical reasons, including techniques like IVF with embryo transfer. This approach ensures that individuals with certain medically recognised conditions have access to assisted reproduction procedures with financial support from the public health insurance system. The regulation reflects a targeted and nuanced approach to coverage, aligning with medical necessity and contributing to a more inclusive and accessible assisted reproduction landscape in Slovakia.

The incongruity between the absence of a clear legal definition and the concurrent financial support via public health insurance raises pertinent questions regarding the coherence and adequacy of the existing legal framework governing assisted reproduction. The coexistence of financial support within the public health insurance paradigm and the lack of a comprehensive legal definition underscores the urgency for a more systematic and coherent approach to regulating these intricate techniques.

In Slovakia, the principles of confidentiality and informed consent, along with the legal and ethical aspects of collecting and safeguarding information, are clearly defined by national law. The right of a patient to provide informed consent, particularly in the context of diagnostic procedures such as genetic tests, is recognised as one of the fundamental patient rights in Slovakia. According to national law, any intervention in the health field, including diagnostic procedures, can only proceed after the concerned individual has provided free and informed consent. This involves the individual receiving appropriate information regarding the purpose and nature of the intervention, as well as being informed about its potential consequences and risks. Importantly, the person retains the autonomy to freely withdraw consent at

any point during the process. Emphasis is placed on the right to medical secrecy or confidentiality, ensuring that everyone has the right to privacy concerning information related to their health. This includes a commitment to respecting the private life of individuals in the context of their health information.

The processing of personal data and the protection of the rights of data subjects are subject to specific regulations outlined in Act No. 428/2002 Coll. on Protection of Personal Data. This legal framework sets forth provisions for the responsible handling of personal data and the safeguarding of the privacy and rights of individuals during data processing activities, aligning with contemporary standards of data protection and privacy.

Conscientious objection within the realm of assisted reproduction, as well as other medical procedures such as abortion and sterilisation, is safeguarded for healthcare professionals in Slovakia. This protection is explicitly outlined in the Code of Ethics for Healthcare Professionals, an annex to Act No. 578/2004 Coll. on Healthcare Providers. According to the Code of Ethics, healthcare professionals—including doctors, nurses, and pharmacists—are not compelled to participate in acts that go against their conscience. Per this provision, *'a healthcare professional may not be required to perform or participate in a performance that is contrary to his or her conscience, except in cases of imminent danger to the life or health of persons'.* This clause acknowledges and respects the individual ethical and moral considerations of healthcare practitioners. In cases where a healthcare professional invokes conscientious objection, they are obligated to inform their employer and, if applicable, their patients. This transparency ensures that alternative arrangements can be made to address the healthcare needs of patients while respecting the conscientious objections of the healthcare professional.

Furthermore, the legal framework in Slovakia extends beyond individual practitioners to protect healthcare facilities as a whole. Assisted reproduction procedures, as well as abortion and sterilisation, may not be provided by a healthcare facility if *'the provision of health care is prevented by the personal beliefs of the health care professional who is to provide the health care'*.[41] Outlined in Art. 12(2) and (3) of Act No. 576/2004 Coll. on Health Care, this provision recognises the collective conscientious objections within a healthcare institution, ensuring that healthcare services align with the ethical considerations of the professionals involved. Essentially, if no employees within a hospital are willing to perform certain procedures due to conscientious objection, the hospital is not obligated to provide them. This legal framework seeks to strike a balance between ensuring patient access to necessary medical procedures and respecting the moral and ethical convictions of healthcare professionals and institutions.

As such, Slovakia's legal framework places significant emphasis on upholding patient rights, including the right to provide informed consent, maintaining confidentiality in health-related information, and ensuring the protection of personal data

41 Act No. 576/2004 Coll. on Health Care.

in compliance with established laws and regulations. These measures collectively contribute to fostering a patient-centric, ethical, and legally sound healthcare environment in Slovakia. Unfortunately, in to the field of assisted reproduction, these measures fall short. The existing legal landscape surrounding assisted reproduction in the Slovak Republic appears inadequate and out of sync with the evolving methods employed within the country, particularly in respect to extra-uterine insemination. Individual reproductive health centres have independently crafted their procedures to navigate legal ambiguities, highlighting the diminishing relevance of the Ministry of Health's longstanding Measure no. 24/1983.

The complex issues related to assisted reproduction can be categorised into regulated and unregulated aspects within the framework of Slovak law. Issues partially regulated by Slovak law include: (a) the accessibility/admissibility of assisted reproduction, which is addressed by the Measure of the Ministry of Health of the SSR 24/1983; (b) the determination of parental rights, which is governed by the Family Act – No 36/2005 Coll., as amended -; (c) the informed consent of applicants, which is regulated under the Health Care Act – 576/2004 Coll., as amended -; and (d) gamete donation, which is covered by the Health Care Act and government regulations. Unregulated issues include: (a) the inadequate legal definition of assisted reproduction and its purpose; (b) the lack of explicit legal definition of embryonic cells (embryos); (c) ambiguity surrounding the storage of gametes and embryos, particularly in respect to the ethical and legal concerns arising from the unspecified conditions for storage duration and destruction of surplus embryos; (d) embryo donation, which remains undefined within the legal framework; and (e) the lack of legal provisions regarding the use of surplus/supernumerary embryos for research and therapeutic purposes.

The current legal vacuum not only raises bioethical and legal dilemmas but also challenges established legal categories. Scientific advancements in assisted reproduction challenge traditional legal norms rooted in Roman law, necessitating legislative adaptation. The legislature needs to make critical decisions on whether to criminalise, prohibit, severely restrict, or permit and regulate assisted reproduction. Addressing the legal status and capacity of embryos in accordance with the Slovak Constitution further complicates the legislative process. The recognition of reproductive rights as fundamental and inviolable, especially in respect to the rights to privacy and health, prompts a nuanced approach to regulation.

While the adoption of legislation could enhance legal certainty, there is a delicate balance that needs to be upheld. Overly restrictive regulations may prompt patient migration to other EU states, akin to the Italian experience.[42] Striking a balance between paternalistic and liberal approaches is crucial for effective legislation. Despite a previous attempt via the Biomedicine Bill in 2006, the absence of a comprehensive regulatory framework at the national level is considered an unsatisfactory state of affairs. The impending decision by the Slovak legislator warrants careful consideration

42 Fenton, 2006, p. 74.

of various options, keeping in mind the broader implications for individual freedoms and medical research.

Globally, there has been an exponential surge in the adoption of assisted reproductive techniques, which have become an integral facet of people's lives. This burgeoning field has also experienced a notable expansion in the Slovak Republic. However, the legislative framework governing these techniques within the country remains markedly inadequate, raising justifiable concerns regarding the effective implementation of the constituent acts that delineate the procedures of individual techniques. Within this legal landscape, human life conceived through assisted reproduction is often treated as a consumable material subject to disposal if it fails to meet unspecified quality criteria, a lacuna that remains unaddressed by the existing legislation. Although individuals undergoing assisted reproduction techniques are required to provide written informed consent, arguably, this compliance typically only adheres to formal criteria. The instructional and consensual documentation fails to adequately capture the ethical and moral quandaries inherent in the procedures.

The current legal regulation of assisted reproductive techniques in Slovakia is inadequate. Indeed, the existing framework lacks a robust safeguard for conceived human life and fails to establish clear legal boundaries governing the implementation of assisted reproduction techniques. This legislative deficiency raises ethical and moral concerns, necessitating the re-evaluation and enhancement of the regulatory framework to align more closely with the imperatives of protecting human life within the context of assisted reproduction.

The aforementioned deficiencies in the legal regulation of assisted reproduction techniques are longstanding issues, with the enactment of the Transplantation Act failing to resolve these shortcomings. In light of de lege ferenda considerations, the ethical and moral dilemmas associated with MAP techniques and the surplus production of embryos should be addressed. Considering the Slovak Republic's commitment to the protection of life before birth, embryos should be expressly excluded from the categorisation of reproductive cells as outlined in the Transplantation Act. This would mitigate ethical concerns, enhance clarity in legal definitions, and foster a more conscientious application of assisted reproduction techniques within the framework of prevailing laws.

Another noteworthy criticism concerning the moral and ethical quandaries associated with assisted reproduction techniques is the absence of alternatives for individuals who decline such methods within the current legislation and the financing options available through public health insurance in Slovakia. Despite existing alternatives, individuals rejecting assisted reproduction techniques are not provided with viable options. For instance, a notable alternative is Restorative Reproductive Medicine (RRM), which encompasses lifestyle modifications for enhanced health and reproductive function, educating individuals or couples on understanding fertility cycles, and medical interventions supporting various physiological processes related to fertility. RRM also includes surgery to rectify pathologic issues and restore normal anatomy and function. Central to the RRM approach is the identification of

underlying causes or contributing factors. A specific model within RRM is Natural Procreative Technology, also known as NaPro Technology (NPT), a holistic and natural approach to reproductive medicine that focuses on identifying and addressing the underlying causes of fertility issues. Developed at Creighton University School of Medicine and the Saint Paul VI Institute for the Study of Human Reproduction, NPT involves various methods and treatments to support conception while respecting the natural processes of the human body. This model incorporates the Creighton Model Fertility Care System for educating couples about the fertility cycle and medical and surgical treatments to support conception in vivo. First gaining popularity in Slovakia in 2005, NPT has been available as a treatment option since 2012, although not one financed from health insurance. In line with the situation in Slovakia, the availability of NPT is generally not covered by public health insurance and is not actively promoted or financed in most European countries. However, noteworthy exceptions exist in countries with a significant Catholic influence, such as Ireland and Poland. For instance, NPT is widely available and financed by public health insurance in Ireland, where numerous active doctors and facilities offer treatments in major cities across the country. As an important benefit inherent in this methodology resides in finding and eradicating the origins of infertility, NPT is a genuine therapeutic modality. By valuing the human dignity of couples investigating the roots of their infertility, this approach ensures that, upon the elimination of identified causes, conception can occur naturally, preserving the dignity of the conceived life. Given these considerations, public health insurance should encompass this method as a viable alternative to conventional assisted reproduction techniques.

Similar to all medical interventions, assisted reproduction carries both potential benefits and risks. Precision in regulations is imperative to maximise advantages while minimising potential harm. To this end, it is crucial to engage all relevant stakeholders in the development of health policies governing assisted reproduction practices.

7.2. Assisted reproduction in practice in Slovakia

The demographic data outlined in the previous chapters shows a positive birth rate trend and an optimistic prognosis of the future birth rate. Despite these favourable statistics, there is a concerning rise in the number of infertile couples, representing a negative trend. Historical data from the 1980s and 1990s reported an infertility rate of 12–13% in Slovakia. Today, almost 20% of couples in Slovakia are reportedly experiencing infertility.[43] For one out of every six infertile couples, the issue of infertility is resolved through alternative means. However, for 9% of couples, assisted reproduction is the sole viable path to achieve parenthood. The first child conceived via assisted reproductive technologies in Slovakia was born in 1984. In 2004, just 0.3% of children were born through the implementation of

43 Statistical data provided by the Health Insurance Company Union.

assisted reproduction techniques. According to 2023 estimates, approximately 2% of children in Slovakia are born via ART each year.[44]

The most recent data specific to Slovakia reveals that, on average, 50% of infertility cases are attributed to male factors, and this percentage is consistently increasing. Conversely, in instances of female infertility, approximately 40% of women face childlessness due to functional ovarian hormonal disorders. Additionally, a substantial cohort of women exhibits positive antibodies to their partner's sperm, emphasising the complexity and multifaceted nature of infertility issues. The observed demographic trends and the prevalence of infertility underscore the importance of continued research and comprehensive approaches to address the evolving landscape of reproductive health in Slovakia.

As noted, Slovak legislation is chaotic and outdated and still largely reliant on Measure no. 24/1983, which was enacted some four decades ago, while more recent legal acts only partially regulate artificial reproduction. As a result of this legislative gap, medical facilities have been creating their own guidelines, making it difficult to evaluate how artificial reproductive techniques work in practice. Passed by the Ministry of Health, Measure no. 24/1983 only uses the term 'artificial insemination', with no mention of 'artificial reproduction' or 'medically assisted reproduction'. That said, it does define fundamental prerequisites for the conduct of artificial insemination, many of which are analogous to various forms of assisted reproduction. Nonetheless, aside from the regulations articulated in the Health Care Act and the Transplantation Act or other legislative frameworks, Slovakia lacks an effective mechanism to compel individual assisted reproduction centres to rigorously adhere to these stipulations.

According to the specific provisions laid out in Measure no. 24/1983, the performance of assisted reproduction is deemed permissible if the following conditions are satisfied:

1. Existence of Medical Reasons: This criterion aims to prevent the misuse of artificial insemination by women whose medical condition would not inherently hinder natural conception. Health grounds are enumerated in Art. 2(2) and include disorders of the husband's fertility, anatomical or other disorders of the female genitalia, the risk of hereditary disease or developmental defect, and other impediments preventing spouses from having healthy offspring. This stipulation remains relevant today.

2. Marital Union Requirement: Measure no. 24/1983 mandates the existence of a marital union for those seeking artificial insemination. Consequently, unmarried couples, single mothers, or widows are excluded under the measure. While opinions differ on the validity of this requirement, in practice, the eligibility for assisted reproductive technology has expanded to include married and unmarried couples, in correspondence with global trends.

44 Ministry of Health of the Slovak Republic: Draft National Programme on Protection of Sexual and Reproductive Health in the Slovak Republic, op. cit., part 8.8.

3. Joint Written Request: Measure no. 24/1983 necessitates a written request from both spouses in order to preclude the execution of an assisted reproduction procedure against the parties' will, especially that of the husband, who might be unaware of the procedure in certain circumstances. The applicant spouses are also obliged to sign a declaration acknowledging their awareness of the legal consequences, potential complications during pregnancy and maternity, and family law implications of the artificial insemination procedure.

4. Applicant's Capacity: According to Art. 3(2), the applicant for artificial insemination must be a person of full age, typically under 35 years, provided their health or that of their spouse does not pose a hindrance.

5. Procedure in Competent Health Facility: The performance of the procedure is limited to competent health facilities, exclusively within women's wards of type III hospitals with polyclinics. In exceptional circumstances, the Ministry of Health may authorise artificial insemination in other health facilities, as outlined in Art. 6(1).

In Slovakia, the relevant authorities overseeing matters related to assisted reproduction include the Ministry of Health of the Slovak Republic[45] and the Institute of Medical Ethics and Bioethics.[46] These institutions play a pivotal role in the regulatory and ethical dimensions of assisted reproduction within the country. The Central Ethics Committee of the Ministry of Health[47] actively engages in the formulation of and commentary on new health legislation, particularly with respect to assisted reproduction issues. Its involvement in the legislative process underscores its significance as a key body in shaping the ethical framework surrounding reproductive health practices.

In accordance with Slovak law, each inpatient health care facility is mandated to have an ethics committee. These committees are entrusted with providing opinions and decisions on a range of ethical dilemmas that may arise in the context of assisted reproduction. This responsibility is guided by ethical guidelines established to navigate the complex questions and challenges inherent in assisted reproduction procedures. The presence of ethics committees at the institutional level reflects a commitment to ensuring that ethical considerations are integral to decision-making processes in the realm of reproductive health.

Meanwhile, at the supranational level, Slovakia has extended its engagement to include participation in the regular activities of the Council of Europe committees. Notably, Slovakia is actively involved in the work of the Committee on Bioethics (DH-BIO). This participation underscores the commitment to collaborative efforts at the international level, where the exchange of expertise, best practices, and alignment with broader ethical principles in bioethics are prioritised.

45 Ministry of Health of the Slovak Republic, see more on: http://www.health.gov.sk/ (Accessed: 1 January 2024).

46 Institute of Medical Ethics and Bioethics, n. f., Bratislava, Slovakia, see more on: http://www.bioethics.sk/ (Accessed 1 January 2024).

47 For more information see: https://www.health.gov.sk/?eticka-komisia (Accessed: 1 January 2024).

The multi-level involvement of relevant authorities from national institutions to supranational committees highlights Slovakia's commitment to fostering a comprehensive and ethically sound approach to assisted reproduction. The co-ordination and collaboration among these entities contribute to the ongoing development and refinement of the ethical guidelines and legislative frameworks that govern assisted reproduction practices in the country.

8. Conclusion

This country report has navigated through the intricate landscape of demographic challenges and solutions in Slovakia within the broader context of Europe. The European continent is grappling with a complex set of demographic issues, including declining birth rates, ageing populations, and evolving family structures. These trends have profound implications for various aspects of society, including labour markets, social welfare systems, and intergenerational relationships. European nations, including Slovakia, have responded to these challenges by crafting legal solutions, primarily through family policy and family law instruments. While some countries showcase stronger legal frameworks to address demographic changes, others face more pronounced struggles. There is a clear imperative for comprehensive legal responses incorporating family policy and law instruments, with a focus on promoting family well-being, supporting parents, and safeguarding children's rights.

As revealed in this chapter, Slovakia faces unique demographic challenges, as reflected in census data. In this respect, there has been a steady but moderate increase in the total fertility rate over the past two decades. However, it is important to note the changing nature of families, with the number of childless women and one-child families anticipated to increase. The resilience and adaptability of family structures are key considerations as Slovakia addresses its demographic future.

Slovakia has embraced family-friendly policies as part of its strategy to support families. The National Strategic Framework for Family Support and Demographic Development until 2030 outlines a comprehensive approach to enhance the quality of family life, provide care and protection for families and minors, and improve the socio-economic situation of families. The emphasis on prevention, child and youth protection, health, reconciliation of family care and employment, the labour market and employment, economic and financial instruments, housing, and return migration underscores the multifaceted nature of Slovakia's approach.

Examining family-friendly policies, Slovakia has taken steps to ensure prenatal healthcare services, foster flexibility in working time and workplace arrangements, and prioritise preschool education. Guided by the vision of creating a family and child-friendly nation, the Strategic Framework aligns with legislative support, including constitutional provisions protecting marriage, parenthood, and the family.

Financial incentives play a crucial role in family policy, and Slovakia stands out as one of the most generous nations in this regard. Various financial support mechanisms aim to alleviate economic barriers associated with parenthood and enhance overall family conditions. Although research has yet to establish a direct correlation between improved financial circumstances and increased birth rates, the importance of strategic initiatives in promoting demographic development cannot be overstated.

The chapter concluded by delving into the legal regulation of assisted reproduction techniques in Slovakia. Analysis revealed a legislative landscape characterised by inconsistency, inadequacy, and a lack of clarity, posing challenges for both practitioners and those seeking the aid of assisted reproductive technologies. The inability of the existing legal framework to keep pace with rapidly evolving biomedical technologies only underscores the need for de lege ferenda proposals.

This country report encapsulates the nuanced interplay between demographic challenges and legal solutions, offering insights into Slovakia's journey within the broader European context. As European societies evolve in the face of demographic changes, policy-makers must remain adaptive, refining legal solutions to ensure the sustained resilience and well-being of families, parents, and children.

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Chapter 18

Slovenia: Empowering Families – Legal Instruments for Supporting Children, Parents, and Families Amidst Demographic Challenges

Suzana Kraljić

Abstract

Like other countries, the Republic of Slovenia also faces selected demographic challenges, which have significant impacts on the field of family law and family relationships. Rapid demographic changes require various measures by the authorities of the Republic of Slovenia (e.g., ministries, courts, social work centers, etc.), which provide appropriate solutions and adaptations to changing demographic structures (e.g., aging population, delayed childbirth, poverty). The author analyzes selected family law financial instruments through which the Republic of Slovenia supports families and their family members. These instruments and measures extend to many areas, which are common in their importance for the formation of the family itself (e.g., legal regulation in the field of reproductive health and assisted reproductive technologies). Likewise, instruments and measures supporting parenthood, families, and children are presented, whether from the perspective of education, healthcare, labor law, or social aspects. Changes perceived in family law in recent years are also analyzed, which have also contributed to significant demographic shifts and required legislative changes in the Republic of Slovenia (e.g., same-sex partnerships, joint adoption by same-sex partners, an increase in couples seeking medical assistance in conceiving a child). The author thus addresses and links contemporary demographic changes with measures aimed at strengthening families and addressing the diverse

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needs of children, parents, and families in the developing demographic context of the Republic of Slovenia. In doing so, the importance of holistic approaches addressing not only material needs but also emotional, social, and developmental aspects is emphasized, as only then can the strengthening of family and child welfare amidst the significant demographic challenges be ensured.

Keywords: demographic changes, family support instruments, child's best interest, family and child protection, reproductive health, education, parenthood

1. Family policy in Slovenia

1.1. Demographic data

On 1 January 2023, Slovenia had 2,116,972 inhabitants—9,800 more than a year earlier. In 2023, the number of Slovenian citizens decreased by almost 7,600, while the number of foreigners increased by 17,400. Among them, the number of Ukrainians increased the most, with the influx of nearly 6,100 Ukrainians indicating a 250% increase compared to 2022.[1]

In 2022, only 17,627 children were born in Slovenia, a decline of 7% or 1,357 children over the previous year. Of 2022 births, 9,051 were boys and 8,576 were girls. According to live birth data from the last 101 years, 2022 ranks fifth in terms of years with the fewest recorded births. The smallest generation was born in 2003, followed by 2001, 2002, and 1999.[2]

The total fertility rate for 2022 was 1.55. The average age of mothers at childbirth has not changed in the last four years, that is, since 2019. On average, births occurred to women aged 31.1 years. In 2022, the average age of women who gave birth for the first time was 29.6 years. Therefore, mothers aged 26–32 gave birth to proportionally more children in 2022.[3]

Of the total number of children born in 2022, some 2,704, or 15%, were born to foreign nationals. Of these, the majority occurred to Bosnian and Herzegovinian mothers (46%), followed by Kosovan (20%) and Croatian (11%) mothers. The average age of foreign-born women who gave birth in Slovenia in 2023 was 29.4 years, 2 years younger than the average age of Slovenian women that year (31.4 years).

1 Razpotnik, 2023.
2 Žnidaršič, 2023.
3 Žnidaršič, 2023.

In 2022, 7,534 children were born to married mothers and 10,093, or 57%, to unmarried mothers. The average age of married mothers was 31.3 years, approximately 0.4 years higher than that of unmarried mothers (30.9 years).[4]

Slovenia has experienced a natural decrease every year since 2017, with more people dying each year than are being born. In 2022, the natural growth was positive only in September. At an annual level, the natural increase was -4,865 inhabitants or -2.3 per 1,000 inhabitants.

In 2022, 22,492 (11,136 males and 11,356 females) residents of Slovenia died. This was 3% less than in 2021, and 6% less than in 2020, but 9% higher than in the pre-epidemic year of 2019. At the national level, the death rate was 10.7 per 1,000 inhabitants. In 2022, the average age of death was 78.7 years, 0.4 years higher than in 2021 (78.3 years) but six months lower than the average age of death in 2020 (79.2 years), when mortality was heavily affected by the Covid-19 pandemic. In 2022, the average age of death was 74.9 years for males and 82.5 years for females.[5]

If mortality rates remain constant, boys born in Slovenia in 2022 can expect to live to the age of 78.4 years, almost one year longer (0.8 years) than boys born the year before. Girls born in 2022 can expect to live to 83.9 years of age, approximately 0.2 years longer than girls born the year before.

Among the deaths recorded in 2022 were 44 infants (29 boys and 15 girls), equating to 2.5 per 1,000 live births. The infant mortality rate is decreasing in Slovenia. In the years after the Second World War (1939–1945), there were more than 50 infant deaths per 1,000 live births. However, in the last 16 years, the death rate has fallen below 3 deaths per 1,000 live births.[6]

1.2. Institutional framework for family policy

As an EU Member State and contracting party to international instruments, Slovenia has a duty to detect changes in family life in a timely manner. It should design or plan its family policy to respond to the new situation and prepare strategic documents and legislation that will comprehensively regulate this domain, offer various forms of assistance and support, ensure equality and social inclusion, and protect the most vulnerable groups in society. As the field of family policy is relatively broad, Slovenia as a State can only fulfil this task through close intersectoral and interdisciplinary co-operation and appropriate collaboration with experts. To this end, the Council of the Republic of Slovenia for Children and Family (hereinafter, the Council) has been established as a permanent expert advisory body on the basis of the Family Code (FC).[7] The Council performs expert and consultative tasks for

4 Žnidaršič, 2023.
5 Šter, 2023.
6 Šter, 2023.
7 Family Code (Slovene Družinski zakonik) (FC): Uradni list RS, št. 15/17, 21/18 – ZNOrg, 22/19, 67/19 – ZMatR-C, 200/20 – ZOOMTVI, 94/22 – odl. US, 94/22 – odl. US, 5/23.

the Government of the Republic of Slovenia, including assisting in the drafting of legislation, monitoring the situation of children and the family, and reporting on the matter of children's rights in Slovenia. Council members are appointed by the Government of the Republic of Slovenia on the proposal of the Minister responsible for the Family. Council members comprise representatives of the Government of the Republic of Slovenia, non-governmental organisations in the field of children and the family, and professional institutions.[8]

Courts and social work centres have been entrusted with an important role in ensuring and implementing children's rights. As a rule, the district courts have jurisdiction to decide on cases under the first instance. In this respect, court cases relating to parent–child relationships, adoption, granting of parental responsibility to relatives, foster care, and guardianship are dealt with as a matter of priority.[9]

Broadly speaking, social work centres can decide on administrative matters under the FC. Appeals against decisions of social work centres are decided by the Ministry responsible for the Family. Administrative matters under the FC are also dealt with as a matter of priority.[10]

In addition, Art. 12 of the FC provides that the State, through education, health care, social welfare, and counselling, shall enable people to prepare themselves in all respects for a harmonious partnership and family life, and shall also help them to resolve problems in their relationships with each other and with their children.

1.3. Family support benefits

It is the responsibility of the State to create the right conditions for families, make choices and achieve a high quality of life for families, and ensure that all family members—especially children—are protected and safeguarded. The State does this in part by contributing to the cost of subsistence, caring for and protecting children, and granting special rights on the grounds of parenthood. The purpose of these rights and direct financial support to families is to enable parents to provide good quality parenting and ensure that children have a good quality childhood; provide families with the best possible living conditions; facilitate the reconciliation of family and professional responsibilities; and improve the living conditions of socially weaker families, multi-child families, single-parent families, and families with children with special needs.[11]

Parental Protection and family benefits are regulated by the Parental Protection and Family Benefits Act (PPFBA-1).[12] Among its various functions, the PPFBA-1 regu-

8 Republika Slovenija, 2018, p. 7.
9 Art. 14, FC.
10 Art. 15, FC.
11 Republika Slovenija, 2018, p. 34. ff.
12 Parental Protection and Family Benefits Act (Slovene Zakon o starševskem varstvu in družinskih prejemkih) (PPFBA-1): Uradni list RS, št. 26/14, 90/15, 75/17 – ZUPJS-G, 14/18, 81/19, 158/20, 92/21, 153/22.

lates insurance for parental protection and the rights arising therefrom, family benefits, and the conditions and procedure for claiming individual rights. The PPFBA-1 defines the following rights and benefits: a) the right to maternity, paternity, and parental leave and benefits; b) the right to part-time work resulting from parenthood; c) the right to payment of contributions in the case of four or more children; d) the right to breastfeeding breaks; e) parental allowance; f) childbirth grant; g) child benefit; h) large family allowance; (i) child care allowance; and j) partial payment for loss of earnings.

Parental protections, in particular parental leave and, to some extent, part-time work, are essential to closing the gender gap in the labour market insofar as they allow women to remain active in the labour market after childbirth. They also promote a more equal sharing of childcare responsibilities between women and men and facilitate the reconciliation of work and family life.

Maternity leave is designed to allow women to prepare for childbirth, care for and protect the child immediately after birth, and protect the mother's health during and after the birth. Mothers are entitled to 105 consecutive days of leave, of which 15 days are compulsory. Maternity leave shall begin 28 days before the expected date of birth, except in cases of premature birth. In exceptional cases, the father, another person or a grandparent shall be entitled to maternity leave. Maternity allowance comprises 100% of the basic amount and is capped at 2.5 times the average monthly salary in the Republic of Slovenia.[13]

Paternity leave is designed to give fathers the opportunity to take part in the care and protection of their children from an early age. Fathers are entitled to 15 calendar days (11 working days) of paid leave and 15 days of partial or full leave with pay to care for a child up to six months of age or, under exceptional circumstances, up to twelve months of age. Thereafter, fathers have the right to 130 days of parental leave for that child until the child's first year of primary school. Other persons actually caring for and protecting the child after its birth (i.e. the other person and the mother's spouse or cohabitation partner) are also entitled to paternity leave. The paternity allowance is 90% of the basic amount and capped at 2.5 times the average monthly salary in the Republic of Slovenia. In 2016, when 20,345 children were born, 16,291 fathers took the first 15 days of paternity leave.[14]

Parental leave is provided for the care and protection of the child. It is granted to mothers and fathers for 130 days for each parent (260 days in total) in the form of full or partial leave from work. While the mother can transfer 100 days of parental leave to the father, 30 days are non-transferable and can only be taken by the mother. In general, the father can take a maximum of 230 days of parental leave or, in exceptional cases, all 260 days. The father can transfer 130 days of parental leave to the mother, who may take all 260 days of parental leave. Parental leave is extended in the event of the birth of twins or more children at the same time, a prematurely

13 Republika Slovenija, 2018, p. 36.
14 Republika Slovenija, 2018, p. 36.

born baby, the birth of a child needing special care, etcetera. A maximum of 75 days of parental leave may be carried over and taken by the parents until the child has completed their first year of primary school. Also entitled to parental leave are adoptive parents and persons entrusted with the care and custody of a child for adoption, including one of the child's grandparents. Parental allowance is 90% of the basic amount and is capped at twice the average monthly salary in the Republic of Slovenia. Slovenia has a relatively low rate of take-up of parental leave by fathers. The proportion of fathers taking parental leave has remained roughly the same throughout the years at 6–7%.[15]

The parental allowance is paid to mothers (or fathers after 77 days from the birth of the child) who are not insured for parental responsibility (e.g. students, unemployed persons) and amounts to EUR 252.04 per month. Beneficiaries are covered by pension and invalidity insurance for the duration of the entitlement. The beneficiary and the child must have permanent residence in the Republic of Slovenia and actually reside in Slovenia. The entitlement typically lasts 365 days and is extended in the event of the birth of twins or more children at the same time, a prematurely born baby, a child in need of special care, etcetera. In the last two years, approximately 3,600 beneficiaries have been entitled to parental allowance annually, totalling some EUR 10.5 million.[16]

The birth grant is allocated for the purchase of equipment for the new-born baby. The benefit is paid in a lump sum and currently amounts to EUR 280.00. It is available to any child whose mother or father has permanent residence and currently resides in the Republic of Slovenia and whose average monthly income per person does not exceed 64% of the net average wage (EUR 659.30), in accordance with the provisions of the Exercise of Rights from Public Funds Act (ERPFA),[17] which are applicable to the determination of entitlement to child benefit. Based on the Act on Fiscal Balance Act (FBA)[18] and the 2015 amendment to the PPFBA-1, childbirth assistance was limited to families in the sixth income class. It is imperative that the right to childbirth assistance be restored as a universal right as soon as possible. To improve the impact of the entitlement, it should be transformed from a direct cash transfer into a credit redeemable in select shops exclusively for products intended for children. Doing so will ensure that the funds are used in a targeted way. As the State wishes to create a supportive environment for children enabling their ability

15 Republika Slovenija, 2018, p. 36.

16 Republika Slovenija, 2018, p. 38.

17 Exercise of Rights from Public Funds Act (Slovene Zakon o uveljavljanju pravic iz javnih sredstev) (ERPFA): Uradni list RS, št. 62/10, 40/11, 40/12 – ZUJF, 57/12 – ZPCP-2D, 14/13, 56/13 – ZŠtip-1, 99/13, 14/15 – ZUUJFO, 57/15, 90/15, 38/16 – odl. US, 51/16 – odl. US, 88/16, 61/17 – ZUPŠ, 75/17, 77/18, 47/19, 189/20 – ZFRO, 54/22 – ZUPŠ-1, 76/23 – ZŠolPre-1B)

18 Fiscal Balance Act (Slovene Zakon za uravnoteženje javnih financ) (FBA): Uradni list RS, št. 40/12, 96/12 – ZPIZ-2, 104/12 – ZIPRS1314, 105/12, 25/13 – odl. US, 46/13 – ZIPRS1314-A, 56/13 – ZŠtip-1, 63/13 – ZOsn-I, 63/13 – ZJAKRS-A, 99/13 – ZUPJS-C, 99/13 – ZSVarPre-C, 101/13 – ZIPRS1415, 101/13 – ZDavNepr, 107/13 – odl. US, 85/14, 95/14, 24/15 – odl. US, 90/15, 102/15, 63/16 – ZDoh-2R, 77/17 – ZMVN-1, 33/19 – ZMVN-1A, 72/19, 174/20 – ZIPRS2122 , 139/22 – ZSPJS-AA).

to make choices, the level of funding for this entitlement should be higher for the second child and subsequent children.[19]

Rights to family benefits and allowances help parents support, raise, educate, and care for their children. The primary purpose of the various rights and benefits is to ensure that the birth of a child does not have a negative impact on the family's financial situation. This is particularly important for large families and families caring for a child requiring special care and protection.[20]

The child benefit is supplementary to a child's maintenance, education, and upbringing. The benefit is provided to any parent or person responsible for a child with a registered residence in the Republic of Slovenia until the child reaches the age of 18, provided that the child also meets other conditions under the law regulating family benefits.

Table 1. Amount (in euros) of child benefit for a child until the end of primary school or until the age of 18 as of 1 March 2023)[21]

Income Class	Average monthly income per person	First child	Second child	Third and subsequent child
1	Up to EUR 221.46	135.44	148.97	162.53
2	Above EUR 221.46 up to EUR 369.11	115.79	128.00	140.14
3	Above EUR 369.11 up to EUR 442.94	88.25	98.64	108.99
4	Above EUR 442.94 up to EUR 516.76	69.61	79.42	89.42
5	Above EUR 516.76 up to EUR 652.12	56.91	66.42	75.86
6	Above EUR 652.12 up to EUR 787.44	36.07	45.13	54.16
7	Above EUR 787.44 up to EUR 1,008.93	27.06	36.07	45.13
8	Above EUR 1,008.93 up to EUR 1,218.08	23.56	32.58	41.59

19 Republika Slovenija, 2018, p. 39.
20 Republika Slovenija, 2018, p. 41.
21 Republika Slovenija Gov.si, 2023.

If the child is in secondary school, the child benefit is increased for income classes 7 and 8.[22]

Table 2. The amount of child benefit in euros according to the income class for a child in high school, but no later than the age of 18[23]

Income Class	Average monthly income per person	First child	Second child	Third and subsequent child
7	Above EUR 787.44 up to EUR 1,008.93	34.16	43.17	58.82
8	Above EUR 1,009.93 up to EUR 1,218.08	27.11	36.13	47.26

If the child lives in a single-parent family, the amount of child benefit is increased by 30% on the condition that the other parent is unknown or provides no financial support, either because they have died or are not receiving benefits. For children under the age of four who are not in pre-school education, the amount of child benefit is increased by 20%.

The large family allowance is an annual benefit for families with three or more children under the age of 18 or for as long as the parents are obliged to support them under the rules governing family relationships (up to a maximum of 26 years). Another person, such as a foster parent or carer, may be entitled to the allowance if three or more children from the same family live without their parents. For example, one parent is entitled to the large family allowance if the parent and the children share a permanent place of residence and live in the Republic of Slovenia, and if they meet the means test of 64% of the average monthly income per family member or EUR 659.30 per family member. Another person is also entitled to this allowance if three or more children from the same family live without parents. The allowance is EUR 468,00 for a family with three children and EUR 568,71 for a family with four or more children. The large family allowance is paid in a lump sum. Entitlement to the large family allowance is limited to families in the sixth income class (53–64%).[24]

Childcare allowance is a benefit that can be claimed by a parent or other person (e.g. a foster parent or carer) for a child in need of special care providing the child is a permanent resident and lives in the Republic of Slovenia. The child is entitled to this allowance for as long as the reasons apply until the age of 18, and thereafter if the parents are obliged to support the child, in accordance with the rules governing family relationships. Entitlement to care allowance is granted based on the opinion of a medical committee. The care allowance is a monthly benefit of EUR 100, or

22 Republika Slovenija Gov.si, 2023.
23 Republika Slovenija Gov.si, 2023.
24 Republika Slovenija, 2018, p. 42; Republika Slovenija Gov.si, 2023a.

EUR 200 for children with severe mental disabilities, severe physical disabilities, or children with certain illnesses on the list of serious diseases. More detailed criteria for the identification of children in need of special care are stipulated in the rules on criteria for exercising rights for children in need of special care and protection.[25]

1.4. Other tax and contribution benefits

The child tax credit (deduction) is granted to parents for each dependent child until the age of 18 and for children below the age of 26 who are in continuous or intermittent education up to one year at the secondary, higher or higher education level, are not employed or self-employed, and who have no income or an income less than the amount of the special allowance for each other member of the family. The tax credit for the first dependent child is EUR 2,698, reducing the income tax base. The tax credit for dependent children increases to EUR 2,933 for the second child, EUR 4,892 for the third child, EUR 6,851 for the fourth child, and EUR 8,810 for the fifth child. Parents are entitled to an additional credit for a dependent child who needs special care and protection.[26]

Certain persons have the right to assistance in the purchase of a highway vignette. Specifically, a parent or other person who owns or uses a vehicle classified in the second toll class B under the law governing toll roads and tolls, and who, at the time of the last registration of the vehicle, was entitled to and exercised the right to a 50% reduction in the annual charge for large families for that vehicle (4 children up to the age of 18) under the law governing the annual charge for the use of vehicles on the road, shall be entitled to a one-off grant for the annual highway vignette for that vehicle of the difference between the price of the annual highway vignette set for the second toll class A in the law governing toll roads and tolls.[27]

Payment exemption from the annual charge for using vehicles in road transport may be granted for certain passenger cars if they are used for transporting children who need special care and protection until the age of 18 or up to the age of 26 if they are in school. Families and foster families with at least four children under the age of 18 registered at the same permanent address who use a private car are entitled to a 50% reduction in the annual charge for one of the vehicles owned or used by one of the family members.

Motor vehicle tax is not payable on vehicles purchased for the transport of families with three or more children, that is, a motor vehicle with five or more seats. This exemption is limited to the purchase of one such vehicle within a three-year period by one parent in a family with three or more children under the age of eighteen.

25 Rules on criteria for claiming rights for children in need of special care (Slovene Pravilnik o kriterijih za uveljavljanje pravic za otroke, ki potrebujejo posebno nego in varstvo): Uradni list RS, št. 89/14, 92/15, 18/17, 17/18, 3/19, 97/21.

26 Finančna uprava RS (FURS), 2022.

27 Republika Slovenija Gov.si, 2023a.

Motor vehicle tax is also not payable on vehicles purchased for the transport of disabled persons. This exemption is limited to the purchase of a vehicle once every five years by disabled persons' organisations and by persons who hold a driving license or require the assistance of other persons who have a driving license (including children who need special care and protection).

Parents of children enrolled in public and private preschool institutions with concessions and private preschool institutions financed from municipal budgets may apply for reduced payment of kindergarten fees.

1.5. Housing and household creation

As housing is an important element of social security and individual dignity, it is the responsibility of the State to create opportunities for citizens to acquire adequate housing. The Constitution of the Republic of Slovenia and some international documents (e.g. Istanbul Declaration, Habitat Agenda, and the 2030 Agenda for Sustainable Development) clearly state that adequate housing is a fundamental human right. Housing is undoubtedly an essential area in the context of family policy, as a family's housing situation is a prerequisite for a good quality family life.[28]

In order to regulate this area, the Republic of Slovenia regularly prepares and adopts strategic documents that identify current problems and define measures to address them. In this regard, the Resolution on the National Housing Programme 2015–2025[29] is a fundamental document that sets out the general objectives of housing provision and the future development of the housing sector. These objectives include ensuring a balanced supply of suitable housing on the housing market, facilitating access to housing for all residents, providing quality and functional housing, and encouraging residents to be more mobile in their homes. The Resolution on the National Housing Programme 2015–2025 also recognises the problem of the accessibility of housing for more vulnerable target groups, placing emphasis on young people, young families, and single-parent families within this target group, as well as large families, single-person households over 65 years of age, persons with disabilities (especially mobility impairment), and persons in complex social situations (e.g. victims of violence, ethnic minorities, migrants, refugees, and persons with long-term mental health problems). The competent ministry and the Housing Fund of the Republic of Slovenia promote the construction of public rental housing to increase accessibility to housing in the country.[30]

In the context of youth housing, the relatively late age at which young people leave their parental homes is particularly worrisome. Moving into an independent household is generally considered one of the key markers of the transition to

28 Republika Slovenija, 2018, p. 103.

29 Resolution on the National Housing Programme 2015–2025 (ReNSP15–25) (Slovene Resolucija o nacionalnem stanovanjskem programu 2015–2025): Uradni list RS, št. 92/15.

30 Republika Slovenija, 2018, p. 103–104.

adulthood. Several factors influence when young people make the transition to independent housing, and thus to the creation of an independent household and their own family. In addition to individual factors, youth housing is affected by significant structural factors. Experts have pointed out that housing availability has an important impact on leaving home, with young people tending to move away from home earlier in countries with a larger rental sector. Slovenia has a very small rental sector in both the for-profit and non-profit housing sectors. Consequently, young people have fewer opportunities to become independent and face greater difficulty in transitioning to independent housing, often resulting in their postponing the decision to start a family. Housing is key to achieving a high quality of life. Therefore, the State must take as many measures as possible to regulate this area adequately and provide young people and young families with a degree of social security. Doing so will also create a supportive environment enabling young people to start a family.[31]

Even when young people do manage to move away and start a family, their housing conditions are worse than those of other families. Trends in home ownership show that entry into the owner-occupied sector is extremely difficult, especially for young families, and often only possible with the help of intra-family transfers in the form of loans, land or a housing unit, in addition to their own investment and bank loans. Consequently, young people in Slovenia gain independence much later than in most Western European countries.

Another important indicator in assessing the housing situation of families is the household's housing cost burden. Although not outstanding, Slovenia's household housing cost burden is relatively low compared to the EU average. For instance, in 2014, Slovenia had a household housing cost burden of 6.4%, lower than the EU average of 11.4%.[32]

1.6. Family and work allowances

More flexible forms of work, including the right to shorter working hours, make it easier to reconcile work and family commitments. PPFBA-1 provides that a parent who is caring for and looking after a child up to the age of three has the right to work part-time rather than full-time. If they are caring for at least two children, this right extends until the youngest child has completed their first year of primary school in accordance with the regulations governing primary school.[33] One year of part-time work is non-transferable for each parent, subject to certain exceptions. In 2014, the duration of the entitlement was extended until the younger child had completed their first year of primary school, provided that the parents have the care and

31 Republika Slovenija, 2018, p. 104.
32 Republika Slovenija, 2018, p. 108.
33 See Basic School Act (Slovene Zakon o osnovni šoli): Uradni list RS, št. 81/06 – uradno prečiščeno besedilo, 102/07, 107/10, 87/11, 40/12 – ZUJF, 63/13, 46/16 – ZOFVI-K, 76/23.

custody of at least two children. A non-transferability condition of one year for each parent was added to encourage fathers to use this right.[34]

The number of beneficiaries and the amount of resources available to pay social security contributions for part-time work have increased over the years. In 2011, EUR 11.5 million in funding was needed to cover 10,108 beneficiaries, while in 2016, EUR 17.2 million was needed to cover 14,485 beneficiaries. Note that as contributions are paid on a pro-rata basis on the minimum wage, the amount of funding needed increases as the minimum wage rises, rather than depending solely on the number of beneficiaries. That the payment of contributions is linked to the minimum wage means that a large proportion of beneficiaries are paying their contributions on a base lower than their salary, resulting in a lower pension assessment. Given the impact on pension rights, it is worth considering a change in legislation to ensure that the beneficiaries of the right to part-time work receive the same pension as they would have if they not taken advantage of this measure.[35]

It is important to stress that, like men, the majority of women in Slovenia are employed on a full-time basis. Compared to other EU Member States, the Republic of Slovenia has one of the highest employment rates for women with children, and their situation is more equal to that of men. In recent years, a new trend has been observed, namely, an increase in the share of women working part-time when they have young children. It is important to note that this type of measure is predominantly used by women and has a negative impact on women's position in the labour market. There has also been an increase in sole traders' use of this right.[36]

Mothers in full-time employment are entitled to an allowance of one hour a day for breastfeeding breaks for a child up to nine months of age (based on a certificate from a paediatrician, up to the child's ninth month of age) at a pro-rata share of the minimum wage. Mothers in full-time employment can take breastfeeding breaks for children aged 9–18 months (based on a certificate from a paediatrician), for which the State provides a social security contribution of a pro-rata fraction of the minimum wage. This measure has not proved overly popular in Slovenia, with only a small number of eligible women taking advantage of it (less than 10 per year). This is probably due to the length of parental leave, which is primarily taken by mothers.[37]

Partial payment for loss of income is a personal benefit received by a parent or other person when they leave employment or start working part-time, or when they deregister from the register of unemployed persons to stay at home with a child who needs special care and protection because of a severe mental disability, severe physical disability or a disease on the list of serious diseases (i.e. a child with the most severe degree of disability or handicap). A spouse or civil partner is also entitled to a partial payment when they actually care for and protect the child of

34 Republika Slovenija, 2018, p. 38.
35 Republika Slovenija, 2018, p. 38.
36 Republika Slovenija, 2018, p. 38.
37 Republika Slovenija, 2018, p. 38.

their spouse or cohabitation partner, provided that this right is not exercised by the mother or father of the child and that they fulfil the prescribed conditions. One of the parents (i.e. the mother or father) receives a salary allowance of 1.2 times the minimum wage per month and is entitled to childcare allowance; if they work part-time, they are entitled to a pro-rata share of the partial payment for loss of income. If one of the parents or another person cares for and looks after two or more children, the amount of the partial payment for loss of income shall be increased by 30%. However, the right to a partial payment for loss of income shall also be granted to a parent who cares for and looks after two or more children with a moderate or severe mental or physical disability at home. In this case, the mother or father of the child is entitled if they have two or more children, even if they do not have the most severe developmental disability. One parent may be entitled to a partial payment until the child reaches the age of 18. To qualify for this entitlement, both the child and the parent must have permanent residence and actually live in the Republic of Slovenia. The right is valid until the child reaches the age of 18 or for a maximum of two months after the child's death. If the social work centre issues a negative decision to one parent based on the opinion of a medical commission, the parent has the right to appeal to the Ministry of Labour, Family, Social Affairs and Equal Opportunities.[38]

1.7. Generational policy

According to statistics for 2022, 21.4% of the population of the Republic of Slovenia is over the age of 65. The ageing of the population and lengthening of working lives are changing the need for institutional and other care for older people and adults in need. The organisation of elderly care undoubtedly impacts the quality of family life and the reconciliation of work and family life. Therefore, it is essential that the State offers a sufficient variety of services to help care for the elderly while ensuring the provision of various forms of institutional care, such as retirement homes and assisted living facilities. The latter are generally intended for older people who can no longer care for themselves or those who can still live relatively independently but require some degree of assistance from professional staff. This institutional care service should be strengthened, particularly with the recognition of the positive effects such care has on people's quality of life by experts at home and abroad. However, if older people are not strong enough for or do not want this form of care, the state must provide sufficient capacity in care homes. While the waiting time for homes has decreased to some degree, need still outpaces supply.[39]

The elderly care sector is important in several respects. As we are becoming a long-lived society with an increasing number of older people, there is growing need for comprehensive solutions and co-ordinated responses. Accordingly, in July 2017, the Government of the Republic of Slovenia adopted the Strategy for a Long-Lived Society

38 eUprava, n.d.
39 Republika Slovenija, 2018, p. 60.

as the basis for co-ordinated responses by individual stakeholders (e.g. ministries, the economy, science, non-governmental organisations, and civil society). Additionally, the Long-Term Care Act[40] was adopted in response to demographic challenges.

1.8. Family-friendly provisions in the pension system

Children, stepchildren, grandchildren, other children without parents, and parents who were dependent on the deceased insured person or beneficiary may be entitled to a family pension. Family members should acquire the right to a family pension after the death of the insured person or beneficiary if the deceased fulfilled the conditions for entitlement to an early retirement pension, old-age pension or disability pension, and the death is considered a category 1 disability. If the death resulted from an occupational injury or disease, the family members should acquire the right to a family (survivor's) pension irrespective of the pensionable period completed by the deceased.

Children are entitled to a family pension until they reach the age of 15 or the end of their schooling up to the age of 26. Children who are not attending school are entitled to a family pension until the age of 18 if they are registered as 'unemployed' with the Employment Service as unemployed and meet all of the obligations under the labour market rules. The same conditions apply to stepchildren, grandchildren and other children without parents who the insured person or beneficiary has maintained until their death.

Parents who were dependent on the deceased until their death may be entitled to a family pension if they had reached the age of 60 at the time of the insured person's or beneficiary's death or if they are incapable of work.

An insured person or beneficiary of a family (survivor's) pension is deemed to have supported their family members if: a) they shared a common habitual residence with them at the time of their death; and b) the average monthly income of the family member in the last calendar year before death did not exceed 29% of the minimum pensionable earnings.

Total incapacity for work, a condition for entitlement to a family (survivor's) pension in the case of children, is defined as the inability to live independently and, in the case of other persons, as a category 1 disability.

1.9. Social security institutions providing support for families

The purpose of the Republic of Slovenia's social protection system is to provide individuals and families with social security and facilitate social inclusion. To this end, the State must ensure conditions that will enable the realisation of development opportunities to achieve a quality of life for individuals, families and children

40 Long-Term Care Act (Slovene Zakon o dolgotrajni oskrbi): Uradni list RS, št. 196/21, 163/22, 18/23 – ZDU-1O.

comparable to that of others in the environment and which meets the criteria of human dignity. Where, for various reasons, an individual or family is unable to provide for their own social security and well-being, they are entitled to certain social protection rights.

The state has a duty to ensure the social security, protection, and inclusion of families, especially children, and to prevent or reduce the risk of poverty through various mechanisms. The various forms of assistance (e.g. services, programmes, and social transfers) are fundamental in this context and must be of good quality, widely available, and diversified. Such forms of assistance—especially social protection services—can make a significant contribution to the reconciliation of work and family life.

Social work centres are critical to the social protection system, particularly insofar as they serve as to link the entire social protection system. As their role in the community continues to strengthen, social work centres serve to promote new programmes and actions adapted to the needs of particular environments. These needs, which are growing in number and complexity, require a single new, rapid, and effective response: namely, a modern social protection system that works in the community.

Home help for families includes professional advice and support to help families manage their relationships, professional advice and support to help them care for their children, and training to help them carry out their daily tasks. The service is provided by every social work centre and is widely available.

Another important service that can aid a family in need is home help, which includes social care at home and mobile assistance. Home care is a social service provided in the home for those who cannot care for themselves due to old age or severe disability, and whose relatives are unable or incapable of providing such care. It consists of various forms of organised practical assistance to replace, for a limited period of time, the institutional care available in an institution with another family or another organised form. A specific form of home-based assistance is mobile assistance, which is a form of professional assistance that provides persons with mental and physical disabilities with professional treatment at home. The provision of this service depends on the needs of the persons in need and is also directed towards their relatives. It primarily provides special educational, social, and psychological treatment.

A third important service for families is social services, which include helping with household and other tasks in the event of a child's birth, illness, disability, and accidents, as well as other situations where such help is needed to integrate a person into everyday life. The service is primarily directed towards providing practical forms of assistance, such as delivering meals, buying groceries or other necessities, and washing and ironing laundry.

For families or individuals in need of a different type of assistance to that offered by the aforementioned services, there are a number of social protection programmes aimed at preventing and solving social problems affecting vulnerable groups and, in some cases, at maintaining an acceptable social situation for individuals or families who cannot be expected to find a (quick) solution to their problems. These

programmes are complementary to social protection services and measures. They are implemented based on meeting the verification requirements and other conditions set out in the call for tenders. Programmes are designed to consider the characteristics and needs of each target group and the specificities of the environment in which they are implemented. Social protection programmes cover the following areas: prevention of violence, support for victims of violence, and work with perpetrators of violence; addiction; mental health; homelessness; support for children and adolescents deprived of suitable family life and adolescents with mental problems; support for older people in need of support in their daily lives; support for independent living for people with disabilities; psychosocial support for children, adults, and families; social inclusion of Roma; and the prevention and redress of social hardship of other vulnerable groups.

The Republic of Slovenia also offers a Maintenance Fund, which provides basic social security in the form of a maintenance allowance to children who do not receive maintenance.

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2. Family law instruments to support families, parents, and children in Slovenia

2.1. The importance of family law principles

2.1.1. The principle of marriage and family

In recent years, Slovenia has experienced significant changes in family structures and dynamics. This is particularly evident in the pluralisation of family forms and ways of family life, the changes in the parent–child relationship, couple dynamics, and family roles. Every family, regardless of its form (e.g. nuclear family, patch-work family, extended family), represents an 'individuum' who differs from other families. Each family has its own characteristics and is shaped by the individuals themselves, as well as their religious, cultural, geographical, historical, economic, and social context.

Despite these changes, the family remains a fundamental social institution of great importance to the individual. In Slovenia, the family is essential to individuals at all stages of their lives and is ranked highest on the list of their values. In 2015, 98% of respondents to a public opinion survey stated that family was important to them. Even for young families, the family represented an essential positive value. Interestingly in comparison to a study from 1990th, responses indicated an increase in the value placed on fidelity, mutual respect, mutual understanding, and a happy sexual relationship for a successful marriage. However, there was a decrease in the proportion of respondents who considered adequate income, suitable housing, the

same religious and political beliefs, and social environment as important for a successful marriage.[41]

The family is the fundamental social unit of every society. As such, it is hardly surprising that the family receives considerable national and international attention. The field of family law has undergone significant changes since 2017, when the Republic of Slovenia adopted a new FC replacing regulations that had been in effect for more than 40 years. In 2018, the country adopted the 'Resolution on the Family Policy 2018–2028: "A Society Friendly to All Families",[42] which defines the basis of Slovenian family policy for the period from 2018 to 2028. Per Art. 2 of the FC, the current definition of 'the family' is fairly broad. Specifically, a family is defined as the living community of a child, regardless of the child's age, with both or one parent or with another adult person, if the latter cares for the child and has certain obligations and rights towards the child. Therefore, the FC recognises the family as an important social institution that enjoys special protection. However, Art. 3(2) of the FC explicitly states that the importance of marriage lies in the conception of the family. By defining marriage in this way, the FC deviates from modern definitions of marriage.

Since the adoption of the 'Resolution of the Family Policy' ('Resolucija o družinski politiki'), family policy in Slovenia has adopted an integral or holistic or inclusive approach. This means that family policy includes all types of families, considers the plurality of family forms and the different needs arising therefrom, respects the autonomy of the family and the individuality of its individual members, protects children's rights within the family and beyond, and prioritises the protection and quality of life of families and children. Other important components of the family policy include harmonising professional and family life, ensuring equal opportunities for both sexes, establishing a wide range of programmes and services for families, and contributing to the costs of facilitating child maintenance and protecting families in particular circumstances.[43]

2.1.2. The principle of equality between spouses

The constitutional legal basis of marriage is laid down in Art. 53 of the Constitution of the Republic of Slovenia (CRS).[44] Art. 53(1)(1) of the CRS stipulates that marriage is based on the equality of the spouses, thereby providing a constitutional basis for the principle of the equality of spouses. This is a derivation of the provision

41 Rus and Toš, 2021, p. 164.

42 Resolution on the Family Policy 2018–2028: 'A Society Friendly to All Families' (Slovene: Resolucija o družinski politiki 2018–2028: 'Vsem družinam prijazna družba') (hereinafter, Resolution on the Family Policy): Uradni list RS, št. 15/18.

43 Resolucija o družinski politiki, 2018, p. 7.

44 Constitution of the Republic of Slovenia (Slovene: Ustava Republike Slovenije (hereinafter, CRS) Uradni list RS, št. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99, 75/16 – UZ70a, 92/21 – UZ62a.

of Art. 14 of the CRS, which refers to the right to equality before the law. The FC strengthens this principle in Art. 21, which also explicitly states that spouses are equal in marriage. In June 2022, the Constitutional Court of the Republic of Slovenia ruled that Art. 3(1) of the FC was incompatible with the CRS, as it provided that marriage was the union of husband and wife.[45] To resolve this unconstitutionality, the Act on Amendments to the Family Code (FC-B)[46] introduced the following amendments: a) Art. 3(1) of the FC now reads, 'A marriage is a life union of two persons, the formation, legal consequences and dissolution of which are governed by this Code'; b) Art. 4 of the FC now defines cohabitation as 'a long-lasting living union of two persons'; and c) in Art. 22 of the FC, which pertains to the conditions for the existence of a marriage, the first indent, which stipulated that the two persons entering into a marriage had to be of different sexes, was repealed.

As a result of the amendment to the FC, equality is granted in entering marriage and cohabitation, which can now be entered into by both different- and same-sex spouses or partners. Therefore, the amendment of the FC led to the termination of the Civil Unions Act.

2.1.3. The primacy of the best interests of the child

The family is the fundamental unit and is primarily dedicated to protecting children (Art. 2(2) of the FC). Given their youth and their (in)capacity to understand, children constitute a vulnerable population group, whose dependence on others has exposed them to the will and power of adults throughout history. Adults have made decisions about their child in accordance with their own wishes, expectations, and needs. As a result, children have been subjected to a wide range of abuse, neglect, violence, and exploitation. Today, children's rights are protected at the international level, notably in the Convention on the Rights of the Child (CRC), and at the national level. In the Republic of Slovenia, the child's best interests have taken on new dimensions since the adoption of the CRC and have become an indispensable basis for decision-making in all matters concerning children. The CRC is an international human rights treaty that defines children's civil, political, economic, social, health, and cultural rights, and has brought about a collective responsibility towards children.

Art. 3 of the CRC aims to ensure that children's rights are applied and respected in accordance with the child's best interests. This extends to judicial and administrative decisions concerning the child as an individual and to all stages of the adoption of laws, policies, strategies, programmes, plans, budgets, legislative and budgetary initiatives, and guidelines. Therefore, this general provision applies to everyone who deal with children, including parents and guardians.

The principle of the child's best interests is a fundamental starting point in all vertical and horizontal relationships. This has increased the obligations of both the

45 The decision of the Constitutional Court of the Republic of Slovenia U-I-486/20-14, 16 June 2022.
46 Act Amending the Family Code: Uradni list Republike Slovenije, št. 5/23.

State and parents since the adoption of the CRC. The child must be afforded both material and emotional protection. They must be protected from all forms of discrimination, particularly neglect, torture, and exploitation. Art. 7 of the FC stipulates what is in the best interests of the child at an abstract level. The notion of the 'best interests of the child', the fundamental guiding principle in all matters concerning the child, is not defined in Slovenian positive jurisdiction but constitutes a legal standard. However, the legal standard is individually adaptable and traceable to the individual child's needs. The court must fill in its content by considering the circumstances of each specific case. It is for the court to assess how to safeguard the child's best interests in the most appropriate way.[47]

In defining the content of this legal standard, the court must also follow the principle of proportionality because the exercise of parental responsibility and the obligations and rights arising from therefrom are primarily the responsibility of the parents, who exercise them in accordance with the principle of autonomy. Therefore, parents have priority over all others in exercising parental responsibility. The fundamental premise that parents act in their child's best interests applies in this case. Anyone who disagrees—whether a natural person (e.g. the other parent) or a legal person (e.g. a public authority)—has the burden of rebutting this legal presumption and proving the contrary to the appropriate standard of proof. This is because interventions in parental responsibility (e.g. restriction or deprivation) must be proportionate and in line with the principle of the least restrictive measure. In choosing a measure to protect the best interests of the child, two limitations must be taken into account: a) the adopted measure should restrict the parents as little as possible in the exercise of parental responsibility, provided that it is sufficient to protect the best interests of the child; b) in particular, the adopted measure should not deprive the parents of the child, provided that it is sufficient to protect the best interests of the child.[48] In assessing what is in the child's best interests, the current, short-term, and long-term best interests of the child must be considered.

2.1.4. Principle of fairness and protection of the weaker party

The Domestic Violence Prevention Act (DVPA)[49] provides measures to protect domestic violence victims.[50] Art. 3(1) of the DVPA explicitly prohibits domestic violence. The purpose of the DVPA is to protect the victim of domestic violence in urgent and expeditious proceedings by preventing and stopping acts of violence. However, the violence must be of such a nature as to require urgent and immediate intervention by the State in private relationships. Of course, the principle of proportionality must

47 The decision of the Constitutional Court of the Republic of Slovenia Up-70/15, 10 December 2015.
48 Art. 156, FC.
49 Domestic Violence Prevention Act (Slovene: Zakon o preprečevanja nasilja v družini) (hereinafter, DVPA): Uradni list RS, št. 16/08, 68/16, 54/17 – ZSV-H, 196/21 – ZDOsk.
50 Art. 1(1) of the DVPA.

be taken into account. That said, the imposition of a measure under the DVPA does not have any punitive function. Nonetheless, the imposition of an urgent measure is intended to prevent the possibility of further domestic violence. It is a protection against violence, not a sanction for violence that has already occurred.

Children enjoy special protection from violence. A child is a victim of violence even if they are present when violence is perpetrated against another family member, or live in an environment where violence is perpetrated.[51]

Authorities and organisations are obliged to take all procedures and measures necessary to protect the victim, considering the level of their vulnerability and protecting their best interests while ensuring that the victim's integrity is respected. If the victim of violence is a child, the best interests and rights of the child shall take precedence over the best interests and rights of the other parties to the proceedings.[52] Furthermore, authorities, organisations, and non-governmental organisations which, in the course of their work, become aware of circumstances that may lead to the conclusion that violence is being committed have a duty to inform. They are obliged to inform the social work centre immediately unless the victim expressly objects and there is no suspicion of the commission of an offense which is prosecuted ex officio.[53] Notwithstanding the provisions on professional secrecy, everyone—particularly health professionals and staff of educational, educational, and social institutions, as well as providers of facilities for children in sports and cultural associations—is obliged to immediately inform the social work centre, police, or public prosecutor's office if they suspect that a child or a person who is unable to care for themselves due to personal circumstances is a victim of violence.[54]

2.2. Civil law provisions protecting the family and children, family property law, and other proposals

2.2.1. Management of children's property

The child's parents manage the child's property for the child's benefit (Art. 147 of the FC). Parents are free to manage the child's property but must act in accordance with the fundamental principles of obligation. In their management, they must respect the principle of good faith and fair dealing (Art. 5(1) of the Obligation Code).[55] They must act with the care of a good steward. In assessing whether the parents' conduct can be characterised as the care of a good steward, their education, skill, ability, responsiveness, and age, amongst other factors, are considered. The environment in which the parents live is also taken into account. An objective criterion is

51 Art. 4 of the DVPA.
52 Art. 5 of the DVPA.
53 Art. 6, para. 1, DVPA.
54 Art. 6, para. 2,DVPA.
55 Obligations Code (Slovene: Obligacijski zakonik) (hereinafter, OC): Uradni list RS, št. 97/07 – uradno prečiščeno besedilo, 64/16 – odl. US, 20/18 – OROZ631).

created for any person with the same characteristics as the parent regarding whom the judgment is made as to whether they have acted as a good steward in managing the child's property. Parents may also be liable for damages for the harm they cause.

As a good steward, parents must do their best to preserve their children's assets. If possible, they should also try to increase their children's assets (e.g. by filing claims for damages). In managing the child's property, parents should also consider the child's wishes, provided that the child can express them and understand the meaning of their expressed wishes and the potential consequences thereof. However, the child's best interest is the guiding principle.

Parents are allowed to use the income from the child's property for the child's maintenance, upbringing, and education and, if they do not have sufficient resources, for the family community's urgent needs[56]. Parents are expected to provide the resources necessary to cover the child's needs, but parents are also allowed to use the child's property for the child's needs. Parents may dispose of or encumber items from their child's property only for the child's maintenance, upbringing, and education, or if required for the child's best interests[57]. However, there is a risk that the parents will jeopardise their child's best interests by disposing of or encumbering items from their child's property. In this case, the court must impose the measures provided for in the FC to protect the child's best interests (Art. 146(2) of the FC).[58]

Parenting also involves preparing children to handle money independently and responsibly. They can start doing so when their child is at a very early age by involving them in different financial situations in which they learn to manage money (e.g. handling pocket money or money received for a birthday). The possibility of concluding an employment contract independently is undoubtedly a significant step towards the child's independence even before reaching the age of majority. Therefore, it is understandable that a child who has reached the age of 15 and is in employment can dispose of their salary. However, to raise a child and prepare them for independence from the age of 18, children must contribute to their maintenance and education, although the parents are obliged to maintain and provide for their education until the age of 18 or 26 if the child is studying.

2.2.2. Independent legal declarations of incapacitated children or children who have limited capacity to act

According to the FC, a child is a person who has not yet reached the age of 18, unless they have previously acquired the full capacity to contract.[59] The age of 18 constitutes an objective criterion distinguishing a child from an adult. When a child

56 Art. 148, FC.

57 Art. 149(1), FC.

58 Kraljić, 2019, p. 499.

59 According to the FC, this is possible if the minor marries before the age of 18 (court authorisation required), or if the minor becomes a parent and the court grants them full capacity to contract in a non-contentious civil proceeding on the basis of a petition.

reaches the chronological age of 18, a legal presumption arises whereby they are presumed old and mature enough to acquire full capacity to contract, enabling them to enter into legal transactions independently and to acquire the rights and obligations arising therefrom. Therefore, the age of 18 is the age of legal emancipation by operation of law. Parental responsibility ceases at the age of majority, and parents are no longer the child's legal representatives. The child becomes legally independent from their parents.

However, children can express their own opinions or take independent decisions on some issues regardless of whether they are 18 years old. For instance, under the Freedom of Religions Act,[60] a child who has reached the age of 15 has the right to make their own decisions related to religious freedom. Under the Patients' Rights Act,[61] a child who has reached the age of 15 is deemed to have the capacity to consent unless the doctor assesses the child's maturity and considers them incapable of consent. In such a situation, the doctor will consult the legal representative of the child (parents or guardian). Under the FC, a child over the age of 15 may marry if they obtain the permission of the court. Under the Personal Names Act,[62] a child over the age of nine must consent to a change of personal name. In family law disputes, the court shall allow a child who has attained the age of 15 years and is capable of understanding the meaning and legal consequences of their actions to perform procedural acts independently as a participant in the proceedings (Art. 45(2) of the Non-Contentious Civil Procedure Act[63]). Additionally, the child's legal representative may only perform procedural acts until the child declares that they will perform procedural actions independently[64].

2.2.3. Family Home Privileges: Child Rights and Property Division

Housing issues should be resolved jointly and by mutual agreement, even during divorce. However, as this is not always possible in divorce, each spouse may request that the other spouse give them the use of the dwelling in which they live or lived together or a part thereof[65].

The principle of equality puts both spouses in an equal position, allowing either spouse to apply to the court for the use of the dwelling. In deciding whether to grant the use of the dwelling to a spouse in non-contentious civil proceedings, the court will consider the children's best interests, the housing needs of the

60 Freedom of Religion Act (Slovene: Zakon o verski svobodi): Uradni list RS, št. 14/07, 46/10 – odl. US, 40/12 – ZUJF, 100/13.

61 Patient's Rights Act (Slovene: Zakon o pacientovih pravicah): Uradni list RS, št. 15/08, 55/17, 177/20, 100/22 – ZNUZSZS.

62 Personal Name Act (Slovene: Zakon o osebnem imenu): Uradni list RS, št. 20/06, 43/19.

63 Non-Contentious Civil Procedure Act (Slovene: Zakon o nepravdnem postopku) (hereinafter, NCCPA-1): Uradni list RS, št. 16/19.

64 Art. 45(3), NCCPA-1.

65 Art. 109(1), FC.

spouses, and their legitimate interests[66]. The principle of the child's best interests is also the fundamental guiding principle in deciding whether to grant the use of the dwelling. The circumstances arising from the divorce should affect the children as little as possible. As the home is a familiar environment for children, where possible, every effort is made to ensure that they remain in the dwelling in which they live.

If, at the time of the divorce, only one of the spouses is the owner or holder of a building right or a right of usufruct or use over the land on which the dwelling is situated, or only one of the spouses is the floor owner of the dwelling or the beneficiary of an easement over the dwelling, or if those rights belong to one of the spouses jointly with a third party, the court shall only grant the dwelling, in whole or in part, to the use of the other spouse if the other spouse does not have any other suitable dwelling and the refusal of their claim would result in an extremely difficult living situation for this spouse and for the children.[67]

The decision to allocate to the other spouse rests on two cumulative presumptions, namely, that the spouse to whom the court will allocate the dwelling will have no other suitable accommodation and that refusal of the request would result in a challenging living situation for the spouse and the children. The court addresses these two legal standards—adequate housing and extreme hardship—on a case-by-case basis. After examining the circumstances of each case, the court will make a decision on and grant the use of the dwelling only for the period necessary for the spouse and the children to adjust to the new situation and their living conditions (Art. 109(4) of the FC).[68] The court will grant the use of the dwelling to the spouse for a maximum period of six months, with the possibility for six-month prolongation. If the court allocates the dwelling to the spouse, it shall, on the application of the other spouse, also determine the amount of the user fee to be paid by that spouse as compensation for the use of the dwelling, unless the spouse does not have sufficient resources on which to live.[69] The spouse obliged to give the other spouse the use of the dwelling must refrain from anything that would make it difficult or impossible for that spouse to use the dwelling or part of it[70]. If, on divorce, a spouse who is being abused by the other spouse, or whose children are being abused by the other spouse, may requests the other spouse to give them the exclusive use of the dwelling in which they live or have lived together[71].

66 Art. 109(2), FC.
67 Art. 109(3), FC.
68 Kraljić, 2019, p. 352.
69 Art. 109(6), FC.
70 Art. 109(7), FC.
71 Art. 109(8), FC.

2.3. Family law issues relating to the establishment of family status, with particular reference to the interests of the child

2.3.1. The legal facts pertaining to paternity status

The legal presumption of paternity is set out in Art. 113 of the FC. For a child born in wedlock, the husband of the child's mother is considered the child's father. If the husband's death dissolves the marriage and the child is born within 300 days of the dissolution of the marriage, the deceased husband of the mother is considered the child's father. However, if the mother enters into a new marriage within 300 days of the dissolution of the previous marriage, the mother's new husband shall be considered the child's father, irrespective of the reason for the dissolution of the previous marriage[72].

A man who acknowledges paternity or whose paternity is established by a court decision is considered to be the father of a child who was not born in wedlock or within 300 days after the marriage's dissolution by the husband's death[73]. A man capable of understanding the meaning and consequences of acknowledgement may acknowledge paternity at a social work centre, before a registrar, in a public deed, or in a will[74]. The child's mother must also consent to the acknowledgement if she has attained the age of 15 and is capable of understanding the meaning and consequences of consenting to the acknowledgement[75]. However, where the mother is no longer alive or her whereabouts are unknown and the child is not yet capable of consenting to the acknowledgement of paternity, the child's guardian may consent with the permission of the social work centre. Where the mother is no longer alive or her whereabouts are unknown and the man has acknowledged the child who has left issue after the child's death, the consent to the acknowledgement of paternity may be given by the child's children or, in the absence of such children, by the child's descendants of the next generation. A child conceived but not yet born may also be recognised if the mother consents. The acknowledgement of paternity of a child not yet born shall have legal effect only if the child is born alive. A child may also be acknowledged after the child's death, but only if the child has left descendants. Likewise, a stillborn child or child who dies immediately after birth may also be recognised[76].

If there is no acknowledgment of paternity, a petition for establishing paternity may be initiated. The mother may file a petition for paternity within one year of the child's birth or within one year of the date on which she became aware of the circumstances giving rise to the petition. However, if the person named by the mother

72 Art. 113, FC.
73 Art. 114, FC.
74 Art. 115, FC.
75 Art. 118(1), FC.
76 Art. 119, FC.

as the child's father does not acknowledge paternity, the mother may file a petition for the establishment of paternity within one year from the date of the declaration of whom she considers to be the child's father[77]. A petition for the establishment of paternity may also be initiated by a child born out of wedlock or within 300 days of the dissolution of the marriage if that marriage has been dissolved by the death of the husband of the child's mother or by a child whose paternity has been contested. The child may bring the petition not later than five years from the date on which they became aware of the circumstances decisive for bringing the petition. The five-year time limit for filing a petition on behalf of the child may not begin to run before the child is able to perform the procedural acts independently[78]. If the mother does not agree with the paternity acknowledgment or does not make a declaration within one month of receiving the registrar's notification of the paternity acknowledgment, the person who acknowledged the child as his own may file a petition for a declaration that he is the child's father. He may file the petition within one year of the paternity acknowledgment.[79] Anyone who believes that he is the child's father may, within one year of becoming aware of the circumstances from which he believes that he is the child's father, file a petition for the establishment of paternity.[80]

When a child is conceived with biomedical assistance, the child's father is the mother's husband or partner from cohabitation, provided they have consented to the procedure under assisted reproduction rules. Paternity may not be contested in this case, except where doubt exist that the child was not conceived through the assisted reproduction procedure. If the child has been conceived with the help of a donor's sperm cell, its paternity may not be established (Art. 134 of the FC).[81]

2.3.2. Maternity status

Maternity is the legal bond between mother and child, traditionally established by a child's birth. It is an ancient Roman legal presumption, '*mater sempre certa est*', which has survived to the present day. The legal presumption of maternity was considered absolute as no contrary evidence could be adduced. In contrast to preceding legislation, the FC explicitly regulates this legal presumption. Art. 112 of the FC provides that the woman who gave birth to the child shall be deemed the child's mother. The wording of the legal presumption in the FC reflects the modern view that maternity may also be questionable ('shall be deemed'). The legal presumption of maternity in Art. 112 FC can be challenged. Although this is extremely rare in practice, the legislator has provided for this possibility, referring to the meaningful application of the provisions applicable to the contestation of paternity.

77 Art. 121, FC.
78 Art. 122, FC.
79 Art. 124, FC.
80 Art. 125, FC.
81 Kraljić, 2019, p. 430.

Maternity establishment is relevant for children born as foundlings, in countries that allow anonymous births (not permissible in Slovenia), and in cases of child swapping (intentional or unintentional).

If the mother has consented to the assisted reproduction procedure, her maternity cannot be contested. If the child has been conceived with the help of a donor egg, her maternity may not be contested.[82]

2.3.3. Adoption

Adoption is a special form of child protection. The relationship between the adoptive parent and the child equivalent is equivalent to that between parents and their children[83] (*adoptio naturam imitatur*). The FC only provides for full adoption (*adoptio plena*).

Both the CRC and the CRS stipulate that children who are not cared for by their parents, who have no parents or who are without adequate family care enjoy special protection from the State.[84] Adoptions should only be carried out if the parents can no longer preserve their family environment, despite receiving help and support, or can no longer take care of their child. Adoption should only be the *ultima ratio* (subsidiarity principle) measure if all less restrictive measures have failed to produce the desired circumstances allowing the child to remain in the family environment of the family of origin. Poverty, poor financial situation, and parent illness alone do not constitute a bare basis for child adoption. In any event, the principle of the protection of the best interests of the child is also a fundamental principle in adoption. Adoption must be in the child's best interests, which must prevail over the interests of the parents or adoptive parents. Adoption is about finding a family for the child, not the child's family.

Although the adoption procedure was transferred from social work centres to the courts, social work centres still play a key role in adoption, as they verify both the conditions of the child to be adopted (i.e. passive adoptive capacity) and the conditions to be met by the person who wishes to become an adoptive parent (i.e. active adoptive capacity). In particular, the court must verify, in non-contentious civil proceedings, whether the adoption is in the child's best interests.[85]

Only a child may be placed for adoption. The conditions for the adoptee are as follows: a) if the parents consented to the adoption after the child's birth, either before a social work centre or a court. For a child under eight weeks of age, the consent must be confirmed after the child reaches eight weeks, otherwise the consent has no legal effect. The consent of a parent deprived of parental or permanently incapable

82 Art. 133, FC.
83 Art. 9, FC.
84 cf. Art. 56. of the CRS and Art. 21. of the CRC.
85 Art. 229, para.1, FC.

of expressing their will is not required.[86] Prenatal adoption is also not possible because adoption is a special form of child protection and not nasciturus.; b) if the child's parents are unknown; c) if the parent's place of residence has not been known for a year;[87] d) if the child has no living parents.[88]

The conditions for adopters are as follows: a) Spouses or cohabitants (including same-sex partners) can only adopt a child together unless one adopts the child of their spouse or cohabitee. Exceptionally, a child may also be adopted by one person if this is in the best interests of the child;[89] b) The child and the adoptive parent should not be relatives in the direct line (ancestor–descendant) or siblings;[90] c)The adoption could not be concluded while the relationship of guardianship was present between the adoptive parent and the child;[91] d) If the child, who is capable of understanding the meaning and consequences, should give their opinion on the adoption;[92] e) he adoptive parent should not be a person who is deprived of parental responsibility; lives together with the person deprived of parental responsibility; has been convicted by a final judgment of an intentional offense prosecuted ex officio or of an offense against life and limb or of an offense against sexual integrity for which the perpetrator is being prosecuted on the motion; lives with a person who has been finally convicted of an intentional offense which is being prosecuted ex officio or of an offense against life and limb or of a sexual offense for which the offender is being prosecuted on the application; is reasonably believed to have exploited the adoption to the detriment of the child; does not give a guarantee that they will exercise parental responsibility for the best interest of the child; is of unsound mind or suffering from a mental disability or illness, such as to make the adoption not in the child's best interests.[93]

The social work centre registers a child who meets the conditions for adoption in the central database on children needing adoption. A person who fulfils the conditions for adoption is, in turn, granted the status of 'candidate for adoption' by the social work centre and entered in the central database of candidates for adoption.[94]

For a child registered in the central database of children in need of adoption, the social work centre will select the most suitable candidate from among all possible candidates for adoption—taking into account the child's characteristics and needs, the wishes expressed by the candidate, the expert opinion of the social work centre, the wishes of the biological parents regarding prospective adoptive parents, and the time of registration in the central database of candidates for adoption—and file a

86 Art. 218, para. 1, FC.
87 Art. 218, para. 2, FC.
88 Art. 218, para. 4, FC.
89 Art. 213, FC.
90 Art. 214, para. 1, FC.
91 Art. 214, para. 2, FC.
92 Art. 215, para. 2, FC.
93 Art. 216, FC.
94 Art. 225, FC.

petition for adoption with the court. The time of registration does not have to be considered if it is in the best interest of the child to be adopted by a specific candidate for adoption. [95]

Based on Art. 122(2) of the NCCPA-1, in conjunction with Art. 213 of the FC, a distinction can be made between single and joint adoption. In a single adoption, the child is adopted by the partner (e.g. new husband or cohabiting partner) of the child's parent (e.g. mother). If the child's other parent (e.g. father) is still alive, he must consent to the adoption (unless he has been deprived of parental responsibility). A single adoption is also given when only one person adopts the child. In the first case, the child has two parents or two persons have parental responsibility of the child, whereas in the second case, only one person has parental responsibility. In the case of a joint adoption, the child is adopted by spouses or cohabiting partners (different- and same-sex partners).

If the court finds that the conditions for adoption laid down in the FC are fulfilled, and in particular, that the adoption is in the child's best interests, it will issue a decision on the adoption.[96] If the court finds, in a non-contentious proceeding, that the conditions for adoption are not fulfilled or that the adoption would not be in the child's best interests, it will reject the adoption petition.[97]

Once the adoption order becomes final, it has consequences for the child and their biological parents. On the one hand, the legal relationship between the child and their natural parents is severed when the adoption order becomes final. On the other hand, adoption creates the same relationship between the child and their offspring and between the adoptive parent and their relatives as between the child and their biological parents.[98] Adoption establishes a stable and lasting relationship between the adoptive parent and the adopted child, and the adoption relationship cannot be dissolved. If all the conditions laid down by law for adoption are not met, the adoption will be invalid.

The final adoption order also marks a significant turning point for the information relating to all three parties involved, namely, the adopted child, the child's biological parents, and the adoptive parents. Once the adoption decision has become final, the adopted person has no right to be informed of the personal data of their biological parents. Neither biological parent has the right to know who adopted their child. Information on the adoption from the civil register is possible only with the written consent of the person to whom it relates. A child who has attained the age of 15 years may give their own consent if they are capable of understanding the meaning and consequences. The social work centre will obtain consent at the initiative of the adoptee or the biological parents.

95 Art. 226, FC.
96 Art. 229, para. 1, FC.
97 Art. 229, para. 2. FC.
98 Art. 219, FC.

2.3.4. Maintenance of a relative, with special regard to the maintenance of minors and adult children

Maintenance is an important issue of family law in Slovenia. Maintenance is based on the principle of mutual assistance between family members and family solidarity. Following the maintenance obligation under Art. 196 of the FC, maintenance is fixed monthly in arrears, starting from the date of the maintenance petition. The amount of maintenance may be modified at the request of the creditor or the debtor. It may be increased, reduced or abolished by an enforcement order to be decided by the court. However, for maintenance to be modified, there must also be a change in the creditor's needs or the debtor's capacity since the maintenance was ordered.

The concept of 'maintenance' includes anything that someone is legally obliged to devote to the necessary support of either a child, spouse or parent. In the first instance, maintenance refers to a sum of money fixed by a court or agreed between the creditor and the debtor in the form of an enforceable notarial deed. However, maintenance can also mean support, maintenance, and assistance or the provision of material goods and necessities that the beneficiary needs to live.

When the court decides on the amount of the maintenance obligation of a parent as the maintenance obligor, it must also assess the parent's means. In doing so, the court considers his/her material and earning capacity, which is typically determined by reference to income, regular and extraordinary. That is, the income from employment plus any financial income the taxable person may have. It is clear from the case-law that a reduction in income alone (e.g. termination of employment) is not a necessary condition for a reduction in maintenance, as the amount of a maintenance obligation depends on the financial situation of the maintenance debtor and not on his/her income. Thus, even a maintenance obligor who has credit obligations cannot reduce the maintenance obligation towards the child by the latter.

In determining the amount of child support, Art. 190 of the FC considers the individual needs and best interests of the child. The maintenance determined must be appropriate to ensure the child's successful physical and mental development. Therefore, maintenance must cover the child's living needs, particularly accommodation, food, clothing, footwear, care, education, upbringing, recreation, entertainment, and other special needs.[99]

The right to maintenance cannot be waived.[100] Nor does the withdrawal of parental responsibility lead to waiving the obligation to support the child.

A statutory maintenance obligation (not a contractual one) is personal and ends on the death of the maintenance debtor or beneficiary. The maintenance obligation arises when certain conditions laid down by law are met. The court decides whether specific prerequisites are met in a particular case on a case-by-case basis (e.g. spousal dependency, full-time education of an adult child). The Slovenian FC establishes a

99 Art. 190, FC.
100 Art. 188, FC.

maintenance obligation a) from parents to children, b) from children of full age to their parents, c) between spouses as well as between former spouses.

If a person is obliged to support several other persons, the principle applies that the children take precedence over the support of the other potential beneficiaries. However, there are differences between individual beneficiaries and obligors.

Parents are obliged to support their children until the age of 18. Parents shall provide their children with the living conditions necessary for their development, per their capacities.[101] The maintenance obligation refers to the provision of financial resources for the child's basic needs, including living expenses, food, clothing, housing, education, and healthcare. Where the parents do not support the child in their household, they are obliged to contribute to the child's maintenance monthly.[102] Parents are also obliged to support a child of full age who is in full-time education and who is not in employment or registered as unemployed. The maintenance obligation lasts until the child reaches the age of 26 at the latest.[103] Parents are obliged to support a child who is married or cohabiting only if the spouse or cohabiting partner is unable to support the child.[104] A spouse or cohabiting partner is obliged to support the child of spouse or cohabiting partner who lives with them unless the child can be supported by the parent or the other parent. This obligation shall cease upon the dissolution of the marriage or cohabitation with the child's mother or father, unless the marriage or cohabitation has been dissolved by the death of the child's mother or father. In this case, the surviving spouse or cohabitee is obliged to support the child of their deceased spouse or cohabitee only if they were living with the child at the time of the dissolution of the marriage or cohabitation.[105]

An adult child must support their parents to the best of their ability if they do not have sufficient resources to live on and cannot acquire them, but for no longer than the period for which the parents have actually supported them. An adult child need not maintain a parent who has, for unjustifiable reasons, failed to fulfil the maintenance obligations towards them.[106]

A spouse who lacks the means to live and who, through no fault of their own, is not employed may request the other spouse to support them as far as they are able during the marriage.[107] A dependent spouse who has no means of subsistence and who, through no fault of their own, is not employed may claim maintenance from the other spouse in a non-contentious civil divorce proceeding, or by means of a special petition, which must be brought within one year of the divorce becoming final.[108] The post-divorce petition for maintenance may be filed only if

101 Art. 183, para. 1, FC.
102 Art. 183, para. 5, FC.
103 Art. 183, para. 3, FC.
104 Art. 183, para. 4, FC.
105 Art. 187, FC.
106 Art. 185, FC.
107 Art. 62, FC.
108 Art. 100, para. 1, FC.

the conditions for maintenance existed at the time of the divorce and continue to exist when the maintenance is claimed.[109] However, the court will reject a maintenance petition if the maintenance payment to the former spouse would be unfair given the causes that led to the marriage becoming unsustainable. The maintenance petition may also be rejected if, before or during the divorce proceedings or after the divorce is finalised, the former spouse claiming for maintenance has committed a criminal offence against the former spouse, a child or the spouse's parents.[110] No maintenance obligation will be created between divorced spouses if doing so would jeopardise their own maintenance or that of the children they have to support.

The maintenance should be provided voluntarily by the maintenance debtor. If they fail to do so, the courts may enforce the maintenance obligation in enforcement proceedings. If the parent ordered to pay maintenance fails to do so, the child or the child's representative can apply to the Maintenance Fund of the Republic of Slovenia and request a maintenance refund.

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3. The importance of human reproductive techniques (assisted reproductive technologies) in solving demographic problems in Slovenia

3.1. The rapid increase in the number of infertile couples in Europe: facts and trends

Fertility is a crucial element of the reproductive system, as it enables the continuation of the human species in the broadest sense. As such, infertility is a public health and social problem.[111] Infertility is especially problematic when it concerns couples who want children but cannot conceive them naturally.

The World Health Organisation (WHO) defines infertility as 'a disease of the male or female reproductive system defined by the failure to achieve a pregnancy after 12 months or more of regular unprotected sexual intercourse'.[112] Infertility is divided into primary and secondary infertility. We talk about primary infertility in a woman if she has never gotten pregnant and in a man if he has never impregnated any of his partners. In the case of a woman, secondary infertility is defined as the inability to conceive again, and in the case of a man, the inability to impregnate a

109 Art. 100, para. 2, FC.
110 Art. 100, para. 3, FC.
111 Najzdravnik, n.d.
112 World Health Organization, 2023b, p. ix.

female partner after the previous successful fertilisation of the same or any previous female partner.[113]

Addressing infertility is central to achieving two Sustainable Development Goals (SDGs), namely, SDG 3 ('Ensure healthy lives and promote well-being for all at all ages') and SDG 5 ('Achieve gender equality and empower all women and girls'). Infertility is also recognised as crucial to achieving human rights to the enjoyment of the highest attainable standard of physical and mental health and to deciding the number, timing, and spacing of one's children.[114]

3.2. Causes of infertility

Today, many couples face problems related to infertility. According to the European Society of Human Reproduction and Embryology (ESHRE), one in six couples in the world faces some form of infertility at least once in their reproductive lives. According to ESHRE estimates, between 8 and 12% of women aged 20–44 years around the world are currently infertile and will be for at least 12 months. Most assisted reproductive technology (ART) treatments occur in women between the ages of 30 and 39.[115]

Many factors can affect fertility or infertility. Culture, environment, and socioeconomic status are amongst the most important factors. It is also necessary to consider the standard of living or lifestyle (e.g. smoking, stress, body weight; the increasing age of the partner is also one of the most common reasons for infertility today), level of medical care, and the quality and access to food, among other factors.[116]

In less economically developed countries, the factors affecting infertility are linked to the consequences of sexually transmitted infections (STIs) and poorer or insufficient medical care.[117] The highest level of infertility is recorded in Sub-Saharan Africa, where 30–40% of couples are identified as infertile during their fertile years. This is primarily due to STIs, largely as the result of low awareness of STI prevention and protection. Cultural habits, such as polygamy and ritual circumcision of the female external genitalia, often lead to infection and other complications that reduce reproductive capacity. Past births that took place in poor and unsanitary conditions also have significant consequences for couples who wish to have more children.[118]

In Mexico, the increase in infertility is associated with industrial and agricultural environmental pollution, such as the presence of arsenic in drinking water, which significantly increases the risk of congenital malformations and infertility

113 WHO, 2023.
114 World Health Organization, 2023b, p. ix.
115 ESHRE, 2022.
116 Najzdravnik, n.d.
117 Bregar, 2015, p. 281.
118 Najzdravnik, n.d.

in women. Mexico also has a high rate of intravenous drug abuse, which is also an important factor in infertility. In some countries (e.g. Brazil), women still suffer discrimination and lack equal access to health care.[119]

While infertility is also an issue in developed countries, the influencing factors differ from those in less economically developed countries. Certainly, the EU also faces the problem of infertility. One of the critical factors affecting infertility in the EU is later family planning. Essentially, women are deciding to have children later, but women's fertility declines with age. Infertility is also affected by the prevalence of obesity and cancer, which is higher in European countries than elsewhere. EU countries also have a greater proportion of people living high-stress lifestyles, with stress recognised as a key factor contributing to reduced fertility in men and women. The increase in infertility is also influenced by smoking, alcohol, drugs, and even the excessive consumption of coffee.[120]

The physiological causes of infertility differ between men and women. Physiological causes are responsible for 20–30% of infertility cases in men and 20–35% of cases in women. Meanwhile, 25–40% of cases of infertility are due to problems in both partners.[121] Physiological causes of female infertility mainly include ovulation disorders (e.g. polycystic ovary syndrome, obesity), endometriosis, and tuboperitoneal cause with obstructed fallopian tubes. Other factors include the woman's age, developmental abnormalities of the uterus, fibroids, excess body weight, STIs, systemic diseases (e.g. diabetes, thyroid diseases), and medications (e.g. antidepressants, steroids). In men, testicular neoplasia, hypogonadism, and inflammation are recognised as the primary reasons for infertility.[122]

3.3. Infertility treatment and reproductive technologies

Countries legislate ART procedures in different ways. Regardless, these procedures remain largely inaccessible to many people in the world, notably due to barriers of geographic location and financial cost. The legal regulation, legalisation, or prohibition of particular ART and eligibility criteria for the (co)financing of reproductive technologies differ from country to country. Consequently, many individuals and couples opt to seek help in the field of reproductive medicine outside their home country. This is the case in Slovenia.

Slovenia accepted the Infertility Treatment and Procedures of Medically-Assisted Reproduction Act (Infertility Act) in 2000. Art. 1 of the Infertility Act states that it regulates medical measures that help women and men conceive a child and thus enable them to exercise their freedom of decision regarding the birth of their children. ART procedures can be performed within the framework of the public

119 Najzdravnik, n.d.
120 Najzdravnik, n.d.
121 ESHRE, 2022.
122 Najzdravnik, n.d.

health service in centres for ART procedures that have a special permit for this activity.[123]

Art. 55 of the CRS stipulates that everyone shall be free to decide whether to bear children. However, the State provides opportunities for realising this freedom and creates conditions that allow parents to make decisions about the birth of their children. The constitutional provision of Art. 55 of the CRS is also supplemented by the first paragraph of Art. 2 of the Infertility Act, which stipulates that everyone has the right to infertility treatment in the manner and under the conditions stipulated by the Infertility Act. The Infertility Act defines infertility treatment as a) treatment determining the causes of infertility or impaired fertility; b) the elimination of these causes through professional advice, medication or surgical interventions; and c) the removal and storage of sperm cells of a man or egg cells of a woman who, according to the findings and experience of medical science, is at risk of becoming infertile (Art. 3 of the Infertility Act).

Art. 4 of the Infertility Act defines biomedical ART procedures. ART procedures are procedures for impregnating a woman, which are carried out with the help of biomedical science to achieve pregnancy in a way other than sexual intercourse.[124] Under the Infertility Act, ART procedures mainly comprise a) intra-uterine insemination (intake of sperm cells into the female genital organs; b) intake of egg cells together with sperm cells into the female genital organs) and extra-uterine insemination (the union of egg cells and sperm cells outside the woman's body; c) transfer of early embryos into a woman's uterus).[125]

ART procedures may only be performed with the intention of giving birth to a child.[126] Entitled to ART procedures are a man and a woman living in a mutual marriage or cohabitation (hereinafter, spouses) who, according to the experience of medical science, cannot expect to achieve pregnancy through sexual intercourse and cannot be assisted with other infertility treatment procedures.[127] Spouses are also entitled to ART procedures in cases where these procedures can prevent severe hereditary disease from being passed on to the child.[128] Mutual marriage or cohabitation must exist during the intake of gametes (sex cells) or early embryos into the woman's body.[129]

Entitled to ART procedures are spouses who are reasonable adults at a suitable age to provide parental responsibility. They must be of an appropriate psychosocial state, such that it can be reasonably expected that they will be able to perform parental responsibility for the benefit of the child. Additionally, the woman must of an age suitable for childbearing (Art. 6 of the Infertility Act).

123 Art. 15, para. 1, Infertility Act.
124 Art. 4, para. 1, Infertility Act.
125 Art. 4, para 2, Infertility Act.
126 Art. 5, para. 1, Infertility Act.
127 Art. 5, para. 2, Infertility Act.
128 Art. 5, para. 3, Infertility Act.
129 Art. 4, para. 5, Infertility Act.

In 2021, the Constitutional Court of the Republic of Slovenia (CCRS)[130] annulled Art. of the Rules on Compulsory Health Insurance (RCHI), which stipulated that a woman up to the age of 43 years has the right to insemination with biomedical assistance within the framework of specialist outpatient services. The CCRS found that the health insurance rules restricted access to this right for couples when the woman reached 43. The Infertility Act stipulates that a woman must be of an age suitable for childbearing.

According to Art. 4 of the Infertility Act, an ART procedure can only be performed based on the written consent of the spouses, which is issued for each ART procedure separately. If necessary, the doctor refers the spouse to psychosocial counselling about the intended ART.[131] The doctor must explain the rules regarding the storage of germ cells and embryos to the spouses and ask them about their wishes regarding the storage duration and decision-making about unused embryos (paragraph 3 of Art. 22 of the Infertility Act). The doctor is also required to explain any other measures for solving or circumventing the cause of their infertility to the spouses, even those that are not performed at the doctor's practice, as well as non-medical options, such as adoption or the abandonment of treatment.[132]

One or the other of the spouses can revoke consent and withdraw from the ART procedures until sperm cells, unfertilised ova or early embryos have been introduced into the woman's body.[133]

The donor's reproductive cells can only be used when, under the basis of biomedical science and experience, it can be judged that they are suitable for fertilisation and that their use will not pose a risk to the health of the woman or the child.[134]

Slovenian legislation does not allow *posthumous fertilisation*. ART procedures introducing gametes or early embryos into a woman's body are prohibited from using the gametes of a donor who is no longer alive. Before the doctor transfers the donor's gametes or an early embryo created with the help of the donated gametes into the woman's body, the doctor must determine whether both donors are still alive.[135]

Gametes from one male or female donor can be used for ART procedures as long as no children are born in a maximum of two different families.[136]

3.4. Legal status of the so-called spare embryos and the genetic material

Before the spouses give written consent to the ART procedure, the doctor must educate them about the ART procedure, including the possibility of success, possible consequences, and dangers of the procedure for the woman, man, and child, and

130 Decision Ustavno sodišče Republike Slovenija U-I-307/19-10, 21 January 2021.
131 Art. 22, para. 2, Infertility Act.
132 Art. 22, para. 47, Infertility Act.
133 Art. 23, para. 1, Infertility Act.
134 Art. 28, para. 1, Infertility Act.
135 Art. 28, para. 2, Infertility Act.
136 Art. 29, Infertility Act.

advise them accordingly. The doctor must inform them of the purposes for which their personal data are collected and processed and explain that their data are protected as a professional requirement.[137]

As a rule, ART procedures use the gametes of a woman and a man who are married to each other or are extramarital partners.[138] For ART procedures, the egg or sperm cells of the donor—who, according to paragraph 1 of Art. 14 of the Infertility Act, must be of legal age, healthy, and of sound mind—can be used under the following circumstances: a) if, according to the experience of biomedical science, there is no possibility that pregnancy will occur using the gametes of spouses or extramarital partners; b) if other ART procedures provided for by the Infertility Act have been unsuccessful; or c) doing so is necessary to prevent the transmission of a severe hereditary disease to the child.[139]

However, ART procedures involving the simultaneous use of donated egg and sperm cells are not permitted.[140] Therefore, at least one of the parents must be the biological parent of the child conceived with the help of the procedures.

A sperm donor is a man whose sperm cells are used to impregnate a woman who is not his legal wife or cohabiting partner. An oocyte donor is a woman whose oocytes are used to fertilise another woman.[141] Giving and receiving payment or any other benefit for donated reproductive cells is prohibited, with any such contracts void under the law.[142] A gamete donor may only give their egg or sperm cells to the same centre for ART procedures.

According to the Slovenian Infertility Act, the following acts are prohibited: a) the donation of human embryos; b) use of a mixture of sperm cells from two or more men or egg cells from two or more women in the ART procedure[143]; c) use of a donor's sperm cells to impregnate a woman who cannot marry him due to kinship. In respect to the latter, the donor's egg cells may not be fertilised with the sperm cells of a man who cannot enter into a valid marriage with her due to kinship.[144]

3.5. The availability of ART in practice

Compulsory insurance guarantees that insured persons will receive at least 80% of the value of health care services for services relating to the provision and treatment of reduced fertility and artificial insemination, sterilisation, and the artificial termination of pregnancy.[145] The Health Care and Health Insurance Act (HCHIA) provides

137 Art. 22, para. 1, Infertility Act (medical confidentiality).
138 Art. 8, para. 1, Infertility Act.
139 Art. 8, para. 2, Infertility Act.
140 Art. 8, para. 3, Infertility Act.
141 Art. 9, Infertility Act.
142 Art. 1, para. 10, Infertility Act.
143 Art. 13, Infertility Act.
144 Art. 14, para. 2, Infertility Act.
145 Art. 23, paras. 1, 3, Health Care and Health Insurance Act (HCHIA).

for paying at least 80% of the value of health care services. If a person does not have supplementary health insurance, they will have to bear 20% of the costs related to the provision of services and treatment for reduced fertility and assisted reproduction, sterilisation, and termination of pregnancy.

In the case of IVF, a woman is entitled to a maximum of six procedures for the first live birth and up to four procedures for each subsequent live birth. In the case of a woman under 35 years of age, the first two IVF procedures shall involve the elective transfer of one embryo of good quality. An ART procedure with thawed embryos is counted as part of the same IVF procedure in which the embryos were frozen.[146]

3.6. Legal human reproductive procedures and their implications for parenthood

The Republic of Slovenia's FC contains provisions on paternity and maternity for children conceived with biomedical assistance. If the mother consented to the process of insemination with biomedical assistance in accordance with the procedures governing ART procedures, her maternity may not be contested. If the child was conceived with biomedical assistance using a donor's ovum, the donor is prohibited from establishing maternity.[147]

The father of a child conceived with biomedical assistance is the mother's husband or her extramarital partner, provided they have consented to the procedure under the ART procedures regulations. Therefore, the paternity of the person who is considered to be the child's father may not be challenged, except when asserting that the child was not conceived through the ART procedure. If the child was conceived with biomedical assistance using a donor's sperm cell, the donor is prohibited from establishing paternity.[148]

However, a woman who intends to leave the child to a third party after birth (surrogate motherhood), with or without payment, is not entitled to ART procedures.[149] According to the Criminal Code in paragraph 4 of Art. 121, anyone who illegally carries out the procedure of fertilisation with biomedical assistance due to surrogacy shall be imprisoned for up to three years.

Following Art. 27 of the Infertility Act, donors have no legal or other obligations or rights to children conceived in ART procedures.

146 Art. 37, para. 2, RCHI.
147 Art. 133, FC.
148 Art. 134, FC.
149 Art. 7, Infertility Act.

4. Other responses to demographic issues

4.1. Raising the retirement age

On 1 January 2023, the gender pay scale in Slovenia was equalised. As of 1 January 2023, the vesting percentage for women and men is 63.5% for 40 years of pensionable service and 29.5% for 15 years. For each additional year of pensionable service, 1.36% of the pensionable base is added to the pensionable age for both men and women.

To qualify for an old-age pension, the insured person (male and female) must satisfy both the age and the pensionable service conditions: a) they must be at least 60 years of a) age with 40 years of pensionable service without supplementation; or b) 65 years of age with at least 15 years of insurance service. Slovenia does not currently envisage pension reform raising the retirement age.

Among OECD countries, Slovenia has one of the lowest labour market participation rates of workers above retirement age. In Slovenia, workers with an uninterrupted working career since the age of 20 can retire with a full pension at age 60. This is below the international average, with the gap between Slovenia and the OECD average expected to widen further as Slovenia is not planning to increase the average age of retirement. Indeed, in other OECD countries, the current age of retirement is 64 years, and is anticipated to increase to about 66 years for those entering the labour market today.[150]

4.2. Increasing the number of family-friendly workplaces and additional labour law benefits

Point 3.5 of the Resolution on the Family Policy defines the labour market and employment. In recent years, Slovenia has been affected by the global economic crisis, which has significantly impacted the labour market. The most notable consequence of this has been the decline in the employment rate and rise in the unemployment rate. Although unemployment has increased in all age categories, young people under 30 have been the most affected. Even before the crisis, young people were already facing employment insecurity, which was reflected in precarious and temporary forms of employment (e.g. temporary jobs, contract work).[151] While Slovenia's overall labour force participation rate is one of the highest in the EU, it is below average among young people. This is partly due to the relatively lengthy participation of young people in the education system. All of these factors undoubtedly impact young people's material and social situation. Their position in the labour market negatively affects their chances of becoming independent, ability to plan

150 OECD, 2022.
151 Resolution on the Family Policy, point 3.5.

their lives, and likelihood of starting a family, impacting their family's material and social situation.[152]

To address this issue, Slovenia has enacted the Active Employment Policy (AEP), which intensively targets young people in the labour market through various measures, and increased labour market regulation to encourage permanent employment. While the first measure, the AEP, provides young people with relevant work experience and speeds their ingress into the labour market, it does not provide them with permanent jobs. Accordingly, the second measure is intended to provide quality, secure, and sustainable full-time jobs. In the long term, secure jobs enable young people start a family and ensure the material and social security of their families.[153]

Reconciling work and family life is essential to family policy and crucial in creating or promoting equal opportunities for women and men in society. It is understood as a broader mechanism encompassing a wide range of measures, including childcare and long-term care for the elderly and other dependent family members and dependants; adequately regulated paid maternity, paternity, and parental leave (as individual and non-transferable rights) and allowances; benefits for absence from work in the event of children's illness; and flexible forms of labour and employment. The following conditions must be met for family and working life to be reconciled. First, there must be parental consent in two-parent families for the fair sharing of care and household responsibilities. Second, adequate social infrastructure and measures to facilitate the reconciliation of these responsibilities must be adopted and implemented by both the State and employers.[154]

The labour market affects young families in two ways. First, employment (i.e. unemployment/employment, form and security of employment, and so on) is an important factor in planning and deciding to start a family. Young people are particularly exposed to the risks of unemployment, precarious work, and general job insecurity, which can have a negative impact on their life choices and opportunities, including decisions about partnership and parenthood. Second, the labour market impacts the social and economic security of families with children, as the parents' labour market situation (i.e. employment or unemployment, type of employment) determines the household's disposable income. Given the impact of the labour market on young people's chances of starting a family and the quality of life of families, the Resolution on the Family Policy identifies objectives and measures in the labour market and employment sector that could have indirect positive impacts on the quality of life of families and facilitate the decision to have children. It is the responsibility of the State to design policies and measures that will create favourable conditions for maximising the labour market participation of the active population, ensure quality and secure employment (especially for young people), and create a

152 Ibid.
153 Ibid.
154 Resolution on the Family Policy, point 3.6.

supportive and non-discriminatory working environment for parents.[155] Low-paid, insecure, and part-time jobs can lead to poverty, and efforts should be made to increase the labour intensity of individuals with families.

In Slovenia, more than 240 public and private sector organisations employing over 80,000 people have been certified as Family Friendly Businesses. This indicates that an increasing number of employers recognise the importance of reconciling their employees' family and professional lives and are willing to pay special attention to this area.[156]

Young people consider the following to be important aspects of a job: job security, freedom to organise working time, prospects for reconciling family and work commitments, and possibility of taking sick leave to care for a sick child. The latter was important to 90% of women and 75% of men.[157]

Both mothers and fathers face difficulties in the labour market due to parenthood. Women often do not have their contracts renewed because of pregnancy or do not have the same job waiting for them when they return from parental leave, and motherhood makes it harder for them to progress in their careers. Men face the problem that employers often see them only as workers, and not as fathers. Although paternity leave is well-established and taken by the vast majority of fathers entitled to it, employers are less sympathetic to fathers who take part in their parental leave. The Fathers and Employers in Action Survey (2015) found that fathers seldom take paternity and parental leave because their employer did not favour it. Of these respondents, only 8% took parental leave, 9% took 15-day paternity leave, and 12% took 75-day paternity leave. Men reported that they opted against doing so because they believed their job would suffer as a result, with 15% taking parental leave, 19% taking 15-day paternity leave, and 31% taking 75-day paternity leave.[158]

4.3. Additional family support practices

The family is a fundamental social institution in Slovenia and a key component of family policy. It is an essential task of the State to create the conditions for families and individuals to achieve a high quality of life. In this respect, the State is responsible for ensuring social inclusion and protection, thereby creating the possibility for the healthy development of all family members. To achieve these objectives more effectively, the State has developed a family support programme model that focuses on providing various forms of assistance to families and, in some ways, complements other programmes and services, such as those pertaining to social protection. These programmes primarily target children, adolescents, and their families, positively impacting the quality of life of the individual and the family

155 Resolution on the Family Policy, point 3.5.
156 Resolution on the Family Policy, point 3.5.2.
157 Resolution on the Family Policy, point 3.5.2.
158 Resolution on the Family Policy, point 3.5.2.

and reducing various risks. They are mainly oriented towards prevention activities and programmes.[159]

Family support programmes are explicitly defined in the FC. They are aimed at preparing for parenthood, promoting positive parenting and strengthening parenting competencies, improving communication and family relations, encouraging creative and active leisure time for children and families, facilitating the reconciliation of work and family life, providing psychosocial support for children and parents, and other activities to improve the quality of family life. Positive parenting is based on the idea of respecting children's rights and providing a safe environment, which also implies the absence of any form of violence as an educational method. As such, it involves ensuring the best protection and best interests of the child, which means taking proper care of the child, empowering the child, guiding the child, and treating the child as an individual with inherent rights. Positive parenting should not be understood in the context of permissive parenting; rather, it is based on the healthy setting of the boundaries that the child needs to develop to their full potential. Genuine contact with the child, spending quality time together, and considering the child's needs and wishes are thus essential. The latter is significant as we want children to participate in all aspects of life as much as possible. It is the responsibility of the State to promote and disseminate the concept of positive parenthood while creating the conditions necessary for it (e.g. the adequate regulation of the reconciliation of work and family life).[160]

4.4. The role of the father in the family

Economic independence is essential for equality between women and men, and reconciling family and professional responsibilities is a prerequisite for achieving it. Like elsewhere in Europe and the world, in Slovenia, women are still responsible for a more unpaid work, hindering their career development in the labour market. At the same time, due to entrenched traditional ideas about the social roles of women and men, employers seldom see men as fathers, only as workers with no care responsibilities. Consequently, women face career barriers due to their role as mothers, while men face obstacles to being active fathers. Eliminating such stereotypes and raising awareness among employers and society in general that men have a right to active fatherhood is one of the most important measures in promoting the fairer distribution of care responsibilities between men and women.[161]

The aim is to equally share care and family responsibilities between women and men. Involvement in parenthood starts with attendance at childbirth. Therefore, in 2019, 84.1% of fathers were present for their first-born children.[162]

159 Resolution on the Family Policy, point 3.1.
160 Resolution on the Family Policy, point 3.1.
161 Resolution on the Family Policy, point 3.5.
162 NIJZ, n.d., p. 5.

Although the situation is improving and men are increasingly involved in childcare and other family responsibilities (e.g. housework), there are still significant gender gaps in the use of time. Indeed, women spend just over 200 hours more per year on housework than men, and over 500 hours more on childcare. Slovenia also exhibits the traditional distribution of caring for sick family members and members of the family. Women take 81% of all leave days to care for a sick family member, compared to just 19% for men. An important reason for this traditional distribution of care and household responsibilities is the entrenched stereotypes regarding the social roles of women and men, in which the man is perceived as the breadwinner and the woman as the emotional carer of the family.[163]

163 Resolution on the Family Policy, point 3.6.1.

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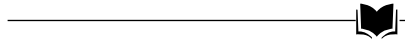
Chapter 19

Spain: Intergenerational Solidarity – Exploring the Impact of Demographic Change on Family Dynamics and Social Policy



Montserrat Gas-Aixendri

Abstract

This chapter delves into the multifaceted theme of intergenerational solidarity, a subject of growing importance catalysed by the European Union's designation of 2012 as the European Year of Active Ageing and Solidarity between Generations. Against the backdrop of Spain's demographic transformation, characterised by increased longevity and declining fertility rates, the imperative to establish sustainable and equitable intergenerational relationships transcends national boundaries. This chapter shows that stronger intergenerational solidarity within the family matches with other cumulative effects, in particular in relation to family social capital, which proves to be generated by intergenerational family solidarity and, in turn, helps multiply it.

The circumstances surrounding the study reported in this chapter facilitated collaboration among institutions engaged in research on intergenerational solidarity in Southern Europe. Motivated by the European Year, the *Università Cattolica del Sacro Cuore* in Italy conducted a study from 2012 to 2014 titled '"I Don't Want to Be Inactive" – A Longer Life: A Generational Challenge and an Opportunity for Society'. Collaboration networks among researchers enabled the Institute for Advanced Family Studies at the *Universitat Internacional de Catalunya* to establish a parallel investigation in Spain within the framework of institutional cooperation between

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these two academic entities, adapting the study's content to Spain's unique circumstances and research objectives. In this chapter, we embark on a brief review of the two primary studies conducted in Spain on the subject of intergenerational family solidarity.

Keywords: Intergenerational solidarity; family relationships; active ageing; demographic change; social policy.

1. Introduction

The focus on the subject of intergenerational solidarity and its examination in Spain gained momentum with the European Union's[1] resolution to designate 2012 as the European Year of Active Ageing and Solidarity between Generations. This decision serves as evidence of the increasing significance of the ongoing demographic changes that have emerged as a pivotal concern in the agendas of policymakers within European institutions.[2]

Though the demographic picture in Spain indicates that the country has found itself in an 'emergency situation' owing to an increase in longevity and a decline in fertility that have grown with singular intensity, the need to find new balances – and above all, sustainable and fair balances – in the relationships between the generations is a necessity that goes beyond any national border.[3] Among the universally acknowledged challenges to be addressed, as recognised by Eurostat,[4] are pressure on public budgets and fiscal systems, strains on pension and social security systems, adjusting the economy and particular work to an ageing labour force, possible labour market shortages as the number of working age persons decrease, the likely need for increased numbers of trained healthcare professionals, higher demand for healthcare services, long term (institutionalised) care, and potential conflicts between generations over the distribution of resources.

While the focus on the implications of demographic ageing may appear pertinent and urgently needed to many, it is crucial to acknowledge that the initiative undertaken by the European Parliament and the Council has historical antecedents that are not particularly distant. In a similar vein, 1993 was also declared the European Year of Older People and Solidarity between Generations. At the end of 1993, the EU Council and Ministers for Social Affairs declared that the Member States wished to pursue policies based on the essential principles of solidarity between and within

1 Decision n. 940/2011/EU of the European Parliament and of the Council of 14 September 2011.
2 Herrera Campo, 2016; Karacsony, 2020.
3 Zanfrini, 2012.
4 Eurostat, 2011.

generations in order to promote the social integration of older persons.[5] As promptly documented by Snel and Cremer,[6] based on the proceedings of the European Symposium on Work and Ageing, which was held during the celebrations of that year, the questions posed then regarding policymakers' agenda are identical to those raised today.[7]

Building on the challenges highlighted by the European Year 2012, awareness of the imperative to address the issue of an ageing society has evolved through a more profound study of its relevance and impact. As demonstrated in this chapter, these circumstances have facilitated collaboration among research institutions that are simultaneously engaged in studying active ageing and intergenerational solidarity in Southern Europe, along with providing access to research funds that supplied the necessary resources for related research. First, spurred by the impetus from the European Year, the Università Cattolica del Sacro Cuore (UCSC) in Italy, conducted a study from 2012 to 2014 titled, '"I Don't Want to Be Inactive" – A Longer Life: A Generational Challenge and an Opportunity for Society'.[8] Through collaborative networks among researchers, the Institute for Advanced Family Studies (IESF) at the Universitat Internacional de Catalunya (UIC Barcelona) established contact with UCSC researchers. Within the framework of institutional collaboration between the academic entities of Italy and Spain, a replication was initiated in the Spanish territory, with the study's contents being adapted to Spain's specific situation and the research objectives being redesigned, mirroring the survey conducted in Italy.

Second, the research received financial support and was conducted within the framework of the Santander IsFamily Chair.[9] The objective of this Chair is to depict the family as a model of intergenerational solidarity capable of adapting to change and providing support to its members. The research conducted by the Chair, of which the survey on intergenerational family solidarity (IFS) presented in this chapter is a component, views the family as an environment for the intergenerational transfer of resources. The primary threads of the research revolve around three fundamental aspects influencing the family: the economy, the health and care of individuals, and education.

This research also contributes to shaping social policies that facilitate families in carrying out these intergenerational processes. The Santander IsFamily Chair aspires to create a body of knowledge and initiatives that leverage the intergenerational potential of the family as an agent of social change. Consequently, the Chair plays a

5 C 343/01, 21/12/1993 p. 0001–0003.

6 Snel and Cremer, 1994.

7 Marcaletti, 2012.

8 Bramanti, Meda, and Rossi, 2016; Rossi et al., 2014; Scabini and Rossi, 2016.

9 The Santander IsFamily Chair (Intergenerational Solidarity in the Family) is an initiative established by the Institute for Advanced Family Studies in UIC Barcelona in cooperation with Banco Santander. The studies carried out under the Chair will, from a multidisciplinary and cross-disciplinary perspective, consider the family to be a field in which resources are transferred between generations, focusing on three of its fundamental aspects.

role in the development and realisation of a society that accommodates all generations, allowing everyone to actively participate and enjoy equal rights and opportunities throughout their lives.

This chapter commences with a concise review of the two primary studies conducted in Spain on the topic of IFS. Thereafter, the chapter outlines the objectives of the IESF-UIC survey titled, 'Older Parents, Generations, and Family Solidarity: A Multilevel Analysis of the Spanish Context'.[10] The main results of this survey are also presented.

2. Exploring intergenerational solidarity in Spain

In addition to the IESF-UIC study presented in this chapter, various other studies dedicated to analysing IFS have been conducted in Spain. One notable example is the research derived from the OASIS project.[11] Two other studies that explicitly focus on assessing IFS in Spain are also particularly noteworthy.

The first of these studies, 'Individualisation and Family Solidarity', led by Gerardo Meil[12] and published in the 'Social Research' collection of the Fundación La Caixa, undertook an analysis of the resilience of family values and explored the dynamics of support and solidarity exchanged among different generations within families in Spain. The study also investigated the extent to which the family contributes to the individual well-being of its members, concurrently identifying primary family conflicts. This study drew on multiple sources of data, including the Social Networks and Solidarity survey (2007) designed by Meil; various surveys conducted by the Centre for Sociological Research; the International Social Survey Programme;[13] the second (2004) and fourth (2008) rounds of the European Social Survey; the Gender and Generations Survey; the Survey on Health, Ageing and Retirement in Europe (2004, 2007); and the European Quality of Life Survey (2007)

The principal discovery of the study suggests that in Spain, IFS is predominantly experienced by older individuals, who strongly adhere to norms of solidarity between generations. This is observed even in the face of pressures associated with calls to reinforce the role of the state and the market in caring for dependent family members. Another noteworthy indicator of the significance of IFS in Spanish society is the pivotal role played by families as primary agents of solidarity during the economic crisis that commenced in 2008. Conversely, key findings pertaining to the impact of individualisation on IFS reveal that the individualisation process

10 Marcaletti and Cavallotti, 2018.
11 Lowenstein and Ogg, 2003.
12 Meil, 2011.
13 For webpage see: https://issp.org/.

does not lead to spatial distancing between generations. Furthermore, in Spain, as in many other countries in Europe, the individualisation process coexists with the trend of adult children continuing to reside with their parents.[14] This phenomenon stems from the children's desire to maintain a standard of well-being that living with their parents can provide, particularly in challenging times. Simultaneously, from the parents' perspective, when children do not delay leaving the parental home, the concept of 'intimacy at a distance'[15] helps alleviate the effects of spatial distancing. Examining individualisation through the lens of indicators related to spatial proximity indicates that it has not diminished the frequency of contact among family members in Spain.

Moreover, functional solidarity in the country demonstrates considerable strength, with its frequency and the nature of assistance varying based on the life-course phase individuals find themselves in. Additionally, financial support, while not as prevalent as practical aid, is often directed towards purchasing a home.

In summary, existing research findings underscore that IFS remains a crucial component of social capital, enhancing both subjective and material well-being. However, for individuals to access this social capital, they must invest time and effort in maintaining consistent and satisfactory relationships, ensuring the resilience of family bonds.[16]

A second noteworthy contribution to the analysis of IFS in Spain is the study 'Older People and Intergenerational Solidarity in the Family'.[17] This research measured three of the six dimensions identified by Bengtson and Roberts[18] as defining IFS, generating an index of intergenerational solidarity. The analyses relied solely on official statistics, specifically the Use of Time Survey and the Family Budget Survey, both conducted and published by the Spanish National Institute of Statistics.

The primary findings of the research support the following five conclusions: 1) the intergenerational solidarity index calculation emphasises that the family is the pivotal institution for fostering intergenerational solidarity in society; 2) older people possess social value and serve as the primary contributors to social capital; 3) the social and economic significance of older individuals necessitates appropriate public and private recognition of their role. It is ethically imperative to ensure the economic dignity of all individuals, with particular attention to older people; 4) the solidarity function is not solely the exclusive responsibility of the state because this would be economically unviable and its development hinges on political choices; and 5) the recommended approach for promoting IFS is applying the principle of subsidiarity.

14 Sompolska-Rzechuła and Kurdyś-Kujawska, 2022.
15 Gratton and Haber, 1993; Rosenmayr, 1970.
16 Meil, 2011.
17 López López, González Hincapié, and Sánchez Fuentes, 2015.
18 Bengtson and Roberts, 1991.

The IESF-UIC study titled 'Older Parents, Generations, and Family Solidarity: A Multilevel Analysis of the Spanish Context' distinguishes itself from the aforementioned research by its unique characteristics, methodology, and strengths, which can be summarised as follows. This study stands out as the only survey conducted in Spain based on a national population sample, specifically designed to analyse intergenerational solidarity within families. Despite its non-probabilistic sampling approach, the survey replicates and respects the majority of characteristics exhibited by the target population. Moreover, focusing exclusively on intergenerational solidarity within the family, the survey delved into various aspects of this theme by employing a range of investigative tools, including sets of questions previously validated in other studies, as well as newly devised questions.

Further, the IESF-UIC study adopted a relational approach, in a perspective shared with the survey conducted in Italy and the Older People and Intergenerational Solidarity in the Family study.[19] The relational approach[20] interprets relationships both as objects of observation within the social world and as tools for observing reality itself. This perspective influences choices in operationalising the fundamental concepts that define relationships, facilitating their empirical observation in surveys. In the questionnaire employed for the IESF-UIC study, variables measuring functional family solidarity, the extent of the family network, family social capital, and the normative function of family solidarity were operationalised according to the principles of relational sociology.

3. Results

As foreshadowed in the introduction of this chapter, the aim of the IESF-UIC study was to scrutinise the dimensions of intergenerational solidarity within families in Spain. The research drew inspiration from the study '"I Don't Want to Be Inactive" – A Longer Life: A Generational Challenge and an Opportunity for Society', conducted by UCSC. Indeed, the IESF-UIC survey replicated a similar study for Spain, modelled after the one led by UCSC, albeit with several modifications.

In this chapter, we present the results of the univariate and bivariate analyses focusing on some of the most significant themes that characterised the research, including a general description of the sample; the structure of family relationships; family networks, social ties, and functional solidarity; normative solidarity and social capital; health status, leisure activities, and the use of technologies; participation in associations and volunteering; and representations of old age.

19 López López, González Hincapié, and Sánchez Fuentes, 2015.
20 Donati, 1991, 2013; Terenzi, Boccacin, and Prandini, 2016.

4. Description of the sample

The survey sample was composed of 608 valid cases of parents aged 65–74 years who were resident in Spain and lived with their children. The questionnaires were administered and collected at the end of 2016.

The sample offered a good representation of the age and gender distribution of the total population of the same age in Spain, although it featured the bias of including only parents with living children. In defining the sample, it was not possible to find official data that would enable a comparison of the characteristics used to describe the sample of parents aged 65–74 years old, which was distributed to reflect the total population. We can only observe that within the sample, 16.3% of parents had one child, 43.4% had two children, and 40.3% had three or more children. In 6.1% of the cases, the parents had one or more deceased children.

In terms of spatial mobility, in 11.7% of the cases, no child lived less than 50 km away from their parents, confirming the stronger role that intimacy at a distance still plays in a country like Spain. In addition to distance, if we also consider the number of children the parents had, the percentages are higher. For parents who had only one child, in 73.7% of the cases, the child lived closer than 50 km from their parents; for parents with two children, 63.3% lived that close; and for parents with three or more children, 57.1% lived within 50 km. If we consider that 71.4% of the parents were born in the municipality of their current residence or in another municipality of the same Autonomous Community, it is possible to observe how the interviewees with only one child had, throughout their lives, experienced approximately the same geographical mobility as their own descendants. Greater mobility of the descendants was observed among parents with two or more children.

Regarding the number of grandchildren, 18.4% of the sample had none, 16.0% had one, 21.2% had two, and 44.4% had three or more. Given the age of the sample, it is interesting to consider that amongst those who had grandchildren, in 35.3% of the cases, the grandchildren had already reached the legal age of 18.

In terms of other family members, only 3.6% of interviewees did not have siblings, 17.3% had one, 22.4% had two, 17.1% had three, and 39.6% had four or more. This relative majority of respondents who were raised in large families better explains the demographic transition underway in Spain: 56.7% of those interviewed had three or more siblings, but only 40.3% had three or more children themselves (it should also be noted that this percentage is lower in the actual population because those without children were excluded from the sample). To conclude the description of the interviewees' family structures, it was observed that in 3.0% of the cases, the respondent's father was still alive, while in 11.3% of the cases, their mother was still alive. The percentages of respondents with living mothers- and fathers-in-law were also very low and reflected the same proportion (3.6% and 10.2%, respectively). Considering the age of the interviewees, these figures are very low, a fact that contributes – as we will explain later – to pushing the flows of intergenerational solidarity more towards the descendants (descending family solidarity)

or peers (horizontal family solidarity) than towards older generations (ascending family solidarity).

In terms of descriptive census characteristics, in 61.8% of the cases, the survey was answered by the primary earner of the household (a figure that rises to 89.1% for males); in 26.2% of the cases, another person answered; and in 12.0% of the cases, the survey was answered by a person who contributed financially to the household and roughly to the same extent as the other household members. Based on the income of the main earner in the household, 18.9% of those interviewed were upper or upper-middle class, 44.7% were middle class, and 36.4% were lower-middle or lower class (General Media Survey). This sample is representative for Spain. Four in five interviewees, thus, fell into the middle or lower classes based on their stated income and financial situation. Despite their positioning in the lower-middle social class, it is interesting to note that 91.9% of interviewees owned their own home, only 5.8% lived in rented accommodation, and 2.3% had other living arrangements. Home ownership is, without a doubt, a fundamental source of financial protection for older people in Spain.[21] In addition to this, 79.9% of the interviewees were receiving a retirement pension, whereas other forms of income (each interviewee indicated an average of 1.1 sources of income), including survivor's pension (9.7%), income from employment (5.9%), and rental income (3.1%), comprised minority shares. A total of 6.6% of the sample stated that they had no income.

On average, 1.53 individuals contributed to the household income. The average number of people living off this income, irrespective of whether or not they lived in the household, was 2.13. This figure underscores the idea of the family as a place for redistributing wealth. Moreover, 24.3% of interviewees did not know the average net monthly income of the household (including personal income and that of all members of the household) or did not want to answer the question. However, amongst those who did answer, half of the sample had an average monthly household income of up to 1,200 euros, while only 3.0% declared having an income exceeding 3,000 euros. The majority of those interviewed (59.4%) stated that they had no financial difficulties or problems with regard to saving a little money every month. More than a quarter of the sample (28.7%) reported that they were only able to cover their outgoings, while 11.9% had financial difficulties or needed financial support.

Regarding educational attainment, 8.8% of those surveyed had no formal education. The majority had completed the first cycle of secondary education (57.9%), 17.5% had completed the second cycle of secondary education, and 15.9% had attained a tertiary education degree. In general, though this level of education may appear low, it differs greatly from that of the interviewees' parents, among whom, 37.6% were or had been illiterate or had or previously had no formal education, with the majority only completing the first grades of secondary education. The only significant difference in educational attainment between men and women in the sample was that 18.1% of men had completed a tertiary education degree, compared to 13.9% of women.

21 See: EUROSTAT, 2020.

In terms of being economically active, and consistent with what was observed concerning the households' sources of income, only 2.5% of the interviewees were currently employed (3.2% amongst males). This figure aligns with the 2016 official statistics for Spain, which indicated that the employment rate amongst the 65 to 74 age group was 3.4%. The vast majority of the interviewees were retired or pensioners (80.3%, rising to 96.1% amongst males, as 30.9% of the female interviewees stated that they were housewives).

In terms of the interviewees' current or last job, the generation studied in our survey lived through the transition from a mostly agricultural and industrial economy to another which, whilst still reliant on manufacturing, is more service-oriented. The proportion of labourers amongst those interviewed (43.7%) was practically the same as in their parents' generation (43.0%). However, among the parents' generation, the percentage working in agriculture (mostly as day labourers) exceeded a quarter of the total (28.3%), whereas senior, intermediate, and entry-level administrative employees comprised a minority (9.4%). In relation to their fathers and mothers, these proportions were almost the inverse amongst those interviewed: those working in agriculture comprised just 7.7% of the total sample, whereas those working at different levels in administrative jobs comprised 22.1%.

In summary, the key findings indicated that the sample effectively represented the Spanish population within the age group selected for the study. In addition, the current generation, while not as numerous as its predecessor, belongs to large families. Over four in five interviewees were grandparents, and a significant portion had adult grandchildren; conversely, few interviewees had living parents or parents-in-law. This generation was predominantly inactive in the labour market, with the majority being retirees or housewives, although a small proportion were engaged in employment or job seeking. Further, the educational attainment of this generation was moderate to low, aligning with their social class. Nearly all the interviewees resided in their own homes, with four in five relying on a pension and household income – for half of the interviewees, this income was less than an average of 1,200 euros net per month, which is low for Spain.

5. Structure of family relationships

Following the above analysis of the general characteristics of the sample, we now examine the marital status and household composition (cohabitees) of the older parents studied. Approximately two-thirds of those interviewed were married or lived with their partner (69.6%), just over one-fifth (21.2%) were widowed or single, and the rest were separated or divorced (9.2%). Women were more commonly single or widowed (28.4% compared to 13.0% of men) and separated or divorced (9.9% compared to 8.5% of men). Concerning household composition, the most striking finding

was that 18.9% of the sample lived alone. Of those who did not live alone, 85.5% lived at home with their spouse or civil partner, 31.8% lived with their children, and 6.9% lived with grandchildren or nieces/nephews. Consequently, half of the households comprised partners living without children (51.0%), followed by people living alone (18.9%), and partners living with children/grandchildren (16.5%). The smallest households comprised single-parent families (9.4%) and other household types (9.4%). The typical arrangement of the survey cohort (69.9%) was, therefore, living with a partner (without children) or alone (see Table 1).

Table 1. Structure of family relationships[22]

Type of family	**Frequency**	**Percentage (%)**	**Percentage excluding single parents** *(N = 489) (%)*
Partner with children	85	14.0	17,2
Partner without children	310	51.0	62,9
Partner with children and grandchildren	15	2.5	3,0
Single parent	57	9.4	11,6
Other	26	4.3	5,3
Single person	115	18.9	
Total	608	100.0	100.0

Almost one-third of households were multigenerational. In total, 25.0% of households comprised two generations, 4.8% comprised three generations, and the remaining 70.2% comprised just one generation. These data suggest that multigenerational families are not a reality of the past: though fully multigenerational families (i.e. three cohabiting generations) represented only a small minority, those that covered two generations (e.g. elderly parents and adult children, parents and ancestors) were more widespread and cannot be considered a novelty.

Looking at the interviewees' care duties for other members of their families, 5.4% of those living with a partner were also their carers, either because their partner was dependent or because they had a chronic illness requiring care (full-time care in half of cases). This figure rose to 27.3% amongst those who had living parents or parents-in-law, who – as we have seen above – represented just a small number of those interviewed: 3.0% had a living father and 11.3% had a living mother (full-time care was required in one in four cases). Only 1.8% of those with siblings were responsible

22 Source: Author's own work.

for their care. In total, 52.6% of those with grandchildren cared for them; in 50% of these cases, care was provided on a part-time basis. This last figure anticipates one of the peculiar characteristics that emerged when analysing the sample, namely, the high involvement of older parents in the care and custody of their grandchildren. This activity takes time, to the detriment of other aspects of active ageing, such as leisure activities or civic participation.

In conclusion, two-thirds of the sample (especially women) lived alone or with a partner and were, thus, more prone to experiencing eroded family dynamics and loneliness. More than one in four of the total sample had children still living at home (rising to almost one-third when considering only those interviewees who did not live alone). Taking these characteristics into consideration, multigenerational households represented less than one-third of the total. Care was provided mostly downwards towards grandchildren and children. Few of the interviewees had living parents.

6. Family networks, social ties, and functional solidarity

A dedicated segment of the survey focused on examining the interviewees' family and social networks, shedding light on their experiences of reciprocity and solidarity in their relationships. Initially, the survey inquired about the number of family members, friends, and neighbours with whom the older parents interviewed maintained substantial and authentic connections. This definition aligns with the relational sociology framework proposed by Donati.[23] Subsequently, the survey delved into the number of family members, friends, and neighbours whom the respondents believed they could count on in times of need. These questions were strategically incorporated to gauge the extent of the interviewees' relationships, a scope positively correlated with the structural characteristics of the family unit. For instance, older parents cohabitating with their children had an above-average number of family members, friends, and neighbours with whom they maintained significant ties and upon whom they could rely in times of need.

In terms of the frequency distribution, 19.7% of those interviewed had between 1 and 4 family members with whom they maintained significant and genuine ties, 26.6% had between 5 and 9, 30.1% had between 10 and 19, 22.5% had 20 or more family members, and only 1.0% had none. The frequency distribution was, therefore, concentrated on between 5 and 9 and between 10 and 19 family members. Adding together the percentages from these categories totals 56.7% of the sample. The average number of family members among the interviewees was 12.8, with a median value of 10. In addition, 42.1% stated that they had between 1 and 4 genuine friendships,

23 Donati, 2013.

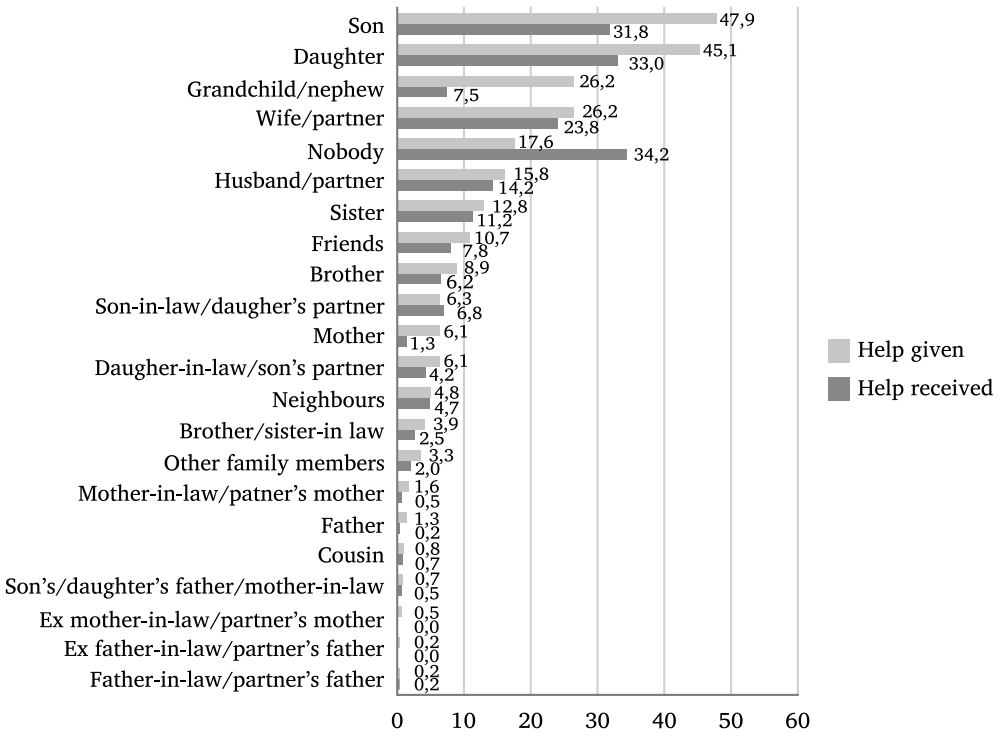
24.5% had between 5 and 9, 16.3% had between 10 and 19, 7.1% had 20 or more, and 10.0% stated that they had no friends. Consequently, the frequency distribution with respect to friends was concentrated in less numerous categories, that is, between 1 and 4 friends and between 5 and 9 friends, which added together represents exactly two-thirds of the total (66.6%). The average number of friends the interviewees reported was 6.8, with a median value of 4. Finally, for neighbourhood ties, 51.6% of the interviewees stated that they had a significant relationship with between 1 and 4 neighbours, 11.3% had a significant relationship with between 5 and 9 neighbours, 9.9% had a significant relationship with between 10 and 19 neighbours, 3.1% had a significant relationship with 20 or more neighbours, and almost a quarter of the total (24.0%) had no relationships with their neighbours. In this case, the frequencies were concentrated in the even less numerous or nil categories. The sum of results for no neighbour ties and between 1 and 4 neighbour ties exceeded three-quarters of the total (75.6%). On average, interviewees had relationships with 4.2 neighbours, with a median value of 2.

Similar results were recorded for the number of family members, friends, and neighbours who the interviewees felt they could rely on in times of need, with even lower figures obtained than for the number of significant and genuine ties they reported having. More than two-thirds of the total sample (67.1%) had 1–4 or 5–9 family members they felt they could rely on; the average number was 8.4, and the median was 6. In terms of friends they could rely on, 70.2% of the interviewees had none or 1–4, with an average number of 4.2, and a median value of 3. Similarly, 31.9% had no neighbours they could rely on; a total of 86.5% had either no neighbours or 1–4 neighbours they could rely on, with an average number of 2.4, and a median value of 1.

These data show that the number of family members, friends, and neighbours that the interviewees felt they could rely on in times of need was lower than the number with whom they maintained significant and genuine ties. Some structural characteristics of the family unit help increase the scope of relationships more than other personal traits (such as gender, age, or feeling old). For those interviewees with children still living at home, the average number of people with whom they had significant ties rose to 14.5 family members, 8.4 friends, and 4.4 neighbours. The same pattern was observed for support in times of need: the average number of people interviewees with children felt they could rely on rose to 8.8 family members, 4.9 friends, and 2.7 neighbours.

According to the structure of these family, friendship, and neighbour networks, another aspect investigated was functional solidarity, which is the support exchanged amongst these networks of relationships. It was striking that the interviewees felt that they consistently gave more support than they received in all types of relationships (Figure 1). The only instance where this was not the case was relationships with a ‘son-in-law/partner of the daughter’, in which the interviewees believed they received a little more support (6.8%) than they gave (6.3%).

Figure 1. Help given and help[24]



Of particular relevance is that more than a third of those interviewed (34.2%) reported that they had not received any type of support in the 12 months prior to the interview, and half of this number claimed they had not supported anyone during the last year (17.6%). Examining the hierarchies of the support given and received (excluding the 'nobody' category) proves interesting. Help was most frequently given in the order of son, daughter, grandchild, wife/female partner, and husband/male partner. Help was most frequently received from, in descending order, daughters, sons, wives/female partners, husbands/male partners, and sisters. Consequently, children, followed by spouses, were both the main targets and the main providers of support, with slight gender-based differences. Help was directed more towards male children than female children, whereas daughters provided more help than sons. Support flowed from parents to children (and vice versa) and to grandchildren more than towards spouses/partners. The difference between the support given and received was greater in these vertical relationships and tended to be minimised in horizontal relationships. We can speculate that in relationships where support has

24 Source: Author's own work.

more of a normative basis, the trend is to provide more. Indeed, comparing the mean values suggests that for both support given and received, the figures are consistently higher when the normative bind is stronger.

Moreover, it is interesting to compare the perception of support given and received between the husband/male partner and wife/female partner. In general, male interviewees declared that they gave more support than female interviewees but that they had received less. Within the couple relationship, this evidence is amplified, with male partners reporting that they had given and received support from their female partners much more than the other way around.

In light of the above, we can add that in terms of the direction of the support given, 66.1% of interviewees provided support to their children (or grandchildren); in other words, there was a descending flow of support from the older to the younger generation. Further, 17.6% stated that no support had been exchanged, 7.9% reported that support had been given horizontally (between partners, siblings, cousins, brothers/sisters-in-law, etc.), 6.7% stated that support had been given in both an ascending and descending direction, and 1.6% stated that only ascending support had been given. Overall, over the previous 12 months, almost three in four interviewees had provided help and support to their descendants (66.1% + 6.7%), whereas only one interviewee in 12 had provided some form of help to older generations (1.6% + 6.7%).

In summary, we can conclude that the structure of family relationships and the composition of family units constitute two variables that are highly influential in shaping both the quantity and quality of support exchanges. This influence spans not only across the intergenerational level but also, as we have explored, within the same generation.

7. Normative solidarity and social capital

The survey concentrated on two intricately related aspects of IFS. On the one hand, it delved into what is identified as normative solidarity, and on the other, it examined what serves both as a product of these norms and their perpetuator – family social capital. Regarding the first of these two aspects, particularly parents' relationships with their children, the interviewees were questioned about the support they perceived they had provided concerning three pivotal life choices: career, settling down, and starting a family.

Overall, 65.1% of interviewees considered that they had provided a lot of support to their children to cultivate a profession, 30.3% quite a lot, 3.1% a little support, and 1.5% none. Concerning settling down, 35.7% of interviewees believed they had provided a lot of support, 34.7% quite a lot, 17.9% a little support, and 11.7% none. Finally, 31.4% felt they had provided quite a lot of support to their children to start

a family, 28.6% a lot, 21.7% a little support, and 18.3% none. More support was, therefore, given to help children make career decisions than to assist them in having their own children.

Analysing the responses by sex reveals that mothers provided more support than fathers in all dimensions, with greater differences noted with regard to support for settling down and having children. Distinguishing between the two age groups shows that older interviewees felt they had provided more support. The average scores (where 1 = none and 4 = a lot) show a clear downward trend in scores from 'cultivate a profession' to 'settle down' and 'have children'. The exception in this case was interviewees who had children still living at home, who had higher perceptions of having supported their children to cultivate a profession. Conversely, those who did not have children living at home had higher scores – for understandable reasons – for providing assistance to their children to settle down and have children of their own.

Overall, when describing their relationships with their children, the interviewees reported having given and received affection, respect, and support in equal measure, with financial help being the only exception. Feelings of blame, remorse, and resentment towards children were extremely low. The interviewees' satisfaction with their children's achievements was predominant, especially among mothers, individuals aged 65–69, and those who had helped all their children to leave the family unit. As parents, the interviewees felt they had done everything possible to ensure their children's well-being and that they had behaved appropriately with them.

However, examining subsamples of the interviewees reveals some differences. There was considerable female/maternal positivity towards children, which prevailed over male/paternal positivity in all indicators, regardless of whether or not the interviewees lived with their children. The sense of having given and received affection, respect, and support in equal measure was slightly stronger among those who resided with their children. Similarly, factors associated with the parental role emerged slightly more within this demographic.

Concerning the respective roles of parents and children, the survey asked another two questions related to the moral obligation to provide care (i.e. another dimension of normative solidarity), each with two possible answers to choose from. The question first investigated parents' attitudes towards their children, and the second examined children's attitudes towards their parents.

In answer to the question on parents' responsibility towards their children, 63.8% of those interviewed responded that 'parents are duty-bound to do the best by their children, although this comes at great sacrifice'. Conversely, 21.7% responded that 'parents have their own lives and should not be asked to make excessive sacrifices'. The rest of the respondents answered 'none of the two' or 'don't know'.

In answer to the question on children's responsibility towards their parents, 44.9% responded that 'adult children have their own lives and should not be asked to make excessive sacrifices'. Conversely, 33.4% responded that 'adult children are

duty-bound to support their elderly parents, although this comes at great sacrifice'. The rest of the respondents answered, 'none of the two' or 'don't know'. The parents' perceptions indicate that normative solidarity was, therefore, professed as more binding for parents than for children.

Analysing the data by sex shows that women were more likely than men to support their children and to receive support from them, without asking for excessive sacrifices. Breaking down the data by age shows that the two age groups (65–69 and 70–74) agreed in equal measure (63.8% in both cases) to the initial statement: 'parents are duty-bound'. However, they differed with respect to the statement that 'parents have their own lives' (23.6% and 19.5%, respectively). The youngest group yielded slightly higher percentages for the statements regarding children's responsibilities towards their parents: 34.0% of the youngest group of interviewees felt that 'adult children are duty-bound', compared to 32.6% of the oldest group. Within the youngest group, 45.7% felt that 'adult children have their own lives', compared to 44.0% of the oldest group.

Finally, if we distinguish between interviewees who did not live with their children and those who did, the latter group yielded the highest percentage of agreement with the statement on parents' responsibility towards their children (66.2% and 63.0%, respectively). The percentage for the statement on children's responsibility to support their parents was also the highest for those still living with their children (40.8%). The circle of normative solidarity is, therefore, stronger when parents and their children still live together.

By establishing and crystallising shared rules of conduct within the family, normative solidarity contributes to giving shape and content to family social capital. From this perspective, analysing social capital means analysing the way in which normative solidarity regulates and reproduces the quality of relationships between family members. Moreover, social capital[25] is an important aspect for analysing the connection between intergenerational solidarity and the possession of relational resources in family life –defined as primary social capital[26]– and in the widest relational sphere (secondary and generalised social capital).

Primary social capital was measured via structured questions about trust, reciprocal support, collaboration, and shared activities. The interviewees were asked to answer about their families, including themselves and their children, even if they did not live together.

In terms of trust within family relationships, the interviewees stated that they trusted their families (4.36 out of 5), that they felt they could rely on one another (4.39), and that they could freely express ideas and opinions (4.27). They also lent and shared personal items among their family members (3.64). Comparing the average scores for the interviewees who did not live with their children with those

25 Adler and Kwon, 2002; Bourdieu, 1986; Coleman, 1990; Fukuyama, 1995; Portes, 1998; Putnam, 1993.

26 Donati, 2003; Donati and Prandini, 2007; Prandini, 2006.

who lived with one or more of their children, those in the latter group yielded higher values for all the questions that were framed positively (i.e. questions about reciprocal trust, trust in others, freedom of expression of ideas and opinions, and exchanging belongings). The average scores for negatively framed questions (i.e. questions about hiding important matters or feeling betrayed by others) among those who lived with their children were lower. The results, therefore, suggest a direct relationship between living together and feeling trust, which in turn, is an element of primary social capital.

Regarding reciprocal support, the highest number of interviewees stated that the members of their family could rely on one another for moral support (4.25 out of 5). This was followed, in descending order, by the beliefs that if one family member has problems, they can ask the others for help (4.10); that anyone who provides help with a certain matter knows that the others will do the same for them (4.08); that those who give advice also accept it (4.00); and (with a somewhat lower score) that the members of their family expect too much of one another (2.21). All these average scores increased for interviewees who lived with their children, with the exception of the question on having excessive expectations of family members. This question was framed negatively, and the resulting score for parents living with children was slightly lower. Again, the results show a direct relationship between living together and volunteering reciprocal support, which in turn, is another element of primary social capital.

In terms of cooperation and the division of labour, the highest number of interviewees stated that both parents shared in educating their children (4.17 out of 5), followed in decreasing order by the beliefs that when there is a problem, everyone works together to solve it (4.01); that decisions are made jointly by everyone (3.98); that everyone lends a hand with daily tasks (3.73); that everyone helps (based on their ability) with domestic chores (3.69), and; that when there is a problem, everyone is invited to make suggestions (3.62). Comparing the results between interviewees who did not live with their children and those who did reveals higher levels of cooperation amongst the second group; in other words, in this case, there was also a direct relationship between cooperation and living together.

This section, which was dedicated to the results pertaining to the normative dimension of IFS and family social capital, underscores that the moral commitment to collaborate, share, and provide support, as well as the practical implementation of these values, is more pronounced in households where older parents reside with their children. Conversely, the level of support extended to children to enable them to establish their own families and have children is more significant among couples of older adult parents who live without cohabiting children.

8. Health status, leisure activities, and use of technologies

One section of the survey specifically addressed the interviewees' health, use of leisure time, and use of technology. Concerning health status, 68.4% of the interviewees did not suffer from any chronic disease, whereas 16.3% had a disease that did not limit them in any way, 11.7% had a disease that did not seriously limit them, and 3.6% suffered from a disease with serious limitations. Hence, a total of four in five of the interviewees (80.1%) did not suffer from any disease or disease-related limitations. This figure rose to 82.8% amongst men and fell to 77.8% for women. Similarly, the rate of absence of diseases and limitations also rose to 82.8% amongst relatively older interviewees (70–74 years) and dropped to 76.9% amongst the youngest (65–69 years).

Despite there being no identifiable causality between the feeling of being old and the condition of being ill (that is, knowing which is the cause and which is the effect), there was, nevertheless, a correlation between the two. The percentage of those suffering from a disease with no serious limitations was double amongst interviewees who felt old compared with those who did not (23.6% vs. 11.5%). This percentage tripled for those with diseases involving serious implications (6.2% vs. 1.9%).

The results indicate that the sample was in good health overall: more than two in three interviewees stated not having any chronic diseases. This may also be explained by the bias produced by the sampling strategy that was used, whereby the chance door-to-door method could have been biased towards 'preselection' of available 'healthy' interviewees.

In addition to their health status, the interviewees were asked about their frame of mind during recent weeks as this is a fundamental aspect of overall psycho-physical well-being. In particular, we asked a set of specific questions on sleep, feeling useful, decision-making ability, stress, reaction to difficulties, state of unhappiness/depression, and confidence in oneself to measure the interviewees' frame of mind.

The interviewees responded that they often felt able to make decisions (2.76 out of 3.00, with 1 = never and 3 = often) and felt useful (2.74). They reported having problems sleeping because of worries 'sometimes' more than 'never' (1.76) and felt constantly stressed in the same measure (1.71). They may have felt unable to overcome difficulties (1.61) and unhappy and depressed (1.56). More rarely, interviewees described having lost confidence in themselves (1.37). These findings reveal a generation that considers itself cognitively healthy and in a position to support others.

Female interviewees reported sleep problems, stress, and feeling unhappy/depressed more than males. Comparing the two age groups in the sample did not reveal any significant differences, nor did living with children cause any significant differences in the results. The data, therefore, confirm greater vulnerability amongst women to psychological distress – a risk that can also be exacerbated by

living conditions. Sleep loss on account of worry and feeling unhappy was more prevalent amongst widows. This was also the case for women who were separated/divorced, with this group experiencing a much higher level of stress. A sense of usefulness was much more evident amongst married women or those living with a partner.

During their leisure time, the interviewees mainly went for walks or bicycle rides, did gardening, grew vegetables, or went fishing (2.44 out of 3.00, with 1 = never and 3 = often). Other activities included reading newspapers (2.12) and books (1.92); going on excursions and trips (1.90); going to the cinema, theatre, or concerts (1.55); going swimming, doing physical training, or dancing (1.47); visiting exhibitions, museums, and archaeological sites (1.46); going to football matches and other sporting competitions (1.39); using the library and attending conferences (1.32); and playing football, tennis, golf, and boules (1.16). There was no difference between the genders in the average scores for free-time activities that are most suitable for couples (e.g. going to the cinema and theatre, visiting exhibitions, going on excursions and trips). The highest average scores amongst women were for physical training and dancing and reading books. Amongst men, the highest scores were for walking, vegetable growing and fishing, playing outdoor sports, reading the newspaper, and watching sporting competitions. All leisure activities were practised less as the interviewees' age increased.

Although the older parents interviewed were in good health, none of them showed signs of being particularly active during their free time, as shown in the results above. One interviewee in eight (12.5%) stated never doing any of the first type of free-time activities (i.e. those that imply a greater level of physical activity outdoors, such as swimming, physical training, dancing, walks, gardening, fishing, football, and tennis, etc.). This figure rose to 14.8% amongst women, 16.0% amongst interviewees aged 70–74, 18.6% amongst those who felt old, and (somewhat surprisingly) 17.2% amongst those who lived with their children, as though the mere presence of these children had robbed them of free time to practice physical activities outdoors, and not the other way around.

Another interesting topic that can be related to active ageing is the relationship the sample had with technology as this is a fundamental indicator of the level of openness to innovations, their willingness to learn, and older adults' ability to use the most modern and up-to-date information and communication technologies. Psychophysical wellbeing, pro-activeness, and the use of information and communication technologies are often cited as fundamental aspects of a good active ageing strategy.[27] However, the relationship between our sample of interviewees and new technologies was concerning and revealed the strength of the digital divide,[28] something that can only be positively overcome via intergenerational exchanges, as we will see later.

27 Bramanti et al., 2016.
28 van Dijk and Hacker, 2003.

The interviewees either owned or had the following electronic devices or services in their homes (multiple choice question): smartphone with internet connection (81.8%), internet connection (modem and router) with contract (73.7%), laptop or desktop computer (68.1%), tablet (29.2%), pre-paid TV package (24.3%), e-reader (12.0%), and videogame console (7.9%). However, the results showed that their level of use of these technologies was low (multiple choice question): smartphone with internet connection (50.7%), internet connection (modem and router) with contract (34.9%), laptop or desktop computer (28.8%), tablet (11.2%), pre-paid TV package (13.7%), e-reader (4.8%), and videogame console (0.3%). There was, therefore, a significant difference (30 percentage points) between the possession and use of smartphones, internet connections, and personal computers.

The use of the Internet was particularly polarised as more than half of the sample never connected to the Internet (51.5%), whereas more than one in four connected almost every day (26.2%). A further 9.0% of the total sample was always online. Users of new technologies represented more than one-third of the total sample.

Intergenerational mediation and exchanges play an important role in the relationship that older adults have with technology. Those interviewed had used different means to learn how to get online (multiple choice question): 49.5% of those who connected to the Internet had learned to do so with their children and 7.1% with their grandchildren. Furthermore, 35.6% taught themselves and 20.3% completed an information technology course. A lower number reported having learned to use the Internet in pairs (e.g. with their partner, friends, or relatives and peers).

Interviewees who used the Internet stated (multiple choice question) that they were now more informed about current affairs than before (54.2% of cases) and that they used it to stay in touch with friends and family (53.2%). Fewer interviewees said that the Internet had helped them get back in touch with old friends (26.1%) or that it had facilitated new topics of conversation with their children and friends (25.4%).

In summary, our study results reveal that the sampled older parents maintained a robust state of health, which was closely linked to a strong sense of purpose within their familial and societal roles. However, the female subgroup exhibited somewhat higher levels of psychological unease. Despite the overall positive health outlook, a significant portion of the respondents was relatively inactive, with this trend being more prominent among women, the oldest interviewees, those who perceived themselves as old, and those cohabiting with their children. The fact that over half of the sample refrained from going online underscores the challenging relationship older generations have with technology. Nearly half of those who did engage online had acquired these skills from their children, emphasising the crucial role of intergenerational dynamics in knowledge exchange and learning in both directions.

9. Participation in organisations and volunteering

After investigating the interviewees' psychophysical wellbeing, free-time activities, and use of technology, the survey then specifically looked at an aspect of active ageing strategies that the European Commission documentation refers to as 'ageing well … and staying socially active and creative'.[29] This is one aspect of the initial concept of active ageing formulated by the World Health Organization, which was expressed in terms of maintaining (or maximising) the possibilities for (social) participation whilst ageing.[30] Participation in organisations and volunteering are good examples of where individuals can get involved at the community level and is related to social capital endowment.

The majority of interviewees (72.2%) were not members of any group or organisation. In descending order (multiple choice question), 8.2% were members of groups that run educational and cultural activities, 5.4% were in church groups, 4.1% were in groups and organisations that provide social support, 3.3% were in groups linked to political parties and trade unions, 3.0% were in human rights groups, 2.6% were in sports or recreation groups, 2.0% were in local and neighbourhood committees, 1.6% were members of professional organisations, and 1.2% were in groups that promote natural environment conservation.

Of those involved in a group, only a minority (42.0%) participated as a volunteer, either doing so irregularly (40.2%), for less than one hour (13.0%), or for between 1 and 5 hours per week (32.0%). In ascending order, 16.6% of those interviewed had participated in meetings to discuss problems in their town or neighbourhood, 36.3% had made charitable donations in the last year, and 90.5% voted in the most recent elections held before the interview.

The results demonstrate that despite being in a good physical and cognitive state and seeing themselves as useful, the generation studied in this survey was not very socially active or committed. This contrasts with the values this population group shared: on a scale ranging from 1 to 4, where 4 indicates 'very important', values that usually imply involvement in prosocial activities were scored by the interviewees as follows: respect towards others (3.81), responsibility (3.77), solidarity (3.63), respect for the environment (3.33), and culture (3.18).

The findings also go some way to confirming that the sample had a characteristically low propensity to participate. On the one hand, the interviewees instead devoted their time to their grandchildren (where relevant) but almost never full-time: 82 of the 100 interviewees had grandchildren; of these, 75 provided part-time or limited support at certain times. On the other hand, in addition to their limited uptake of leisure activities (with the exception of walks, gardening, and fishing), the sample displayed a very low level of social participation, with little added value in terms of the specific support they provided: of the 100 interviewees, only 28

29 European Commission, 2007.
30 World Health Organization, 2002.

belonged to a group; among these, only 12 gave time to the group or organisation voluntarily, and of these 12, only two volunteered for more than 5 hours each week. We noted a more intense level of participation in terms of donations to charity and voting in elections. Research into active citizenship would attest to this being typically linked to a low level of pro-activeness.

10. Representation of old age

A noteworthy aspect of the survey that deserves discussion is the section that delved into how older parents perceive old age. The initial three questions in this section specifically explored perspectives related to societal views, familial perceptions, and the interviewees' individual understandings of ageing.

When asked about feeling old within themselves, 60.2% of the sample declared that they do not feel old in the slightest, 27.1% felt a little old, 11.0% felt quite old, and 1.6% felt very old. However, the percentages varied when they were asked to what extent their families considered them old, with the share of 'not feeling old' decreasing (53.8% not in the slightest, 32.6% a little, 11.2% quite old, and 2.5% very old), and when asked to what extent society considers them old (42.3% not in the slightest, 32.1% a little, 21.4% quite old, 4.3% very old). As such, the interviewees generally felt younger than they believed their family and society perceived them to be.

For analysis, we used the first dimension, 'Do you feel old in and of yourself?', to distinguish the group who declared that they did not feel old in the slightest (60.2% of the sample) from those who felt old to varying degrees (the remaining 39.8%). We use this dichotomous variable to more closely examine the results presented according to other aspects of the representation of old age.

When asked about factors that contribute to a person feeling old, the interviewees indicated, in descending order (multiple choice question), physical conditions (72.9%), perceived loss of cognitive faculties (44.6%), loneliness (42.6%), having lost one or several loved ones (19.4%), lack of future plans (13.7%), not knowing how to pass the time (13.3%), having stopped work (9.0%), financial difficulties (7.9%), having cut down on social interactions (7.2%), and feeling excluded from new communication technologies (2.0%).

Those who did not consider themselves old mostly highlighted dimensions such as loneliness, lack of future plans, and not knowing how to pass the time. Those who considered themselves old seemed to have largely accepted these dimensions as aspects of old age.

However, amongst those who considered themselves old, the dimensions most frequently mentioned were even more pronounced, from physical conditions to the perceived loss of cognitive faculties, and, particularly, having lost one or several loved ones. These results are unsurprising, given that the literature on the subject

sets out the onset of chronic diseases and the loss of a partner as two of the symbolic thresholds of old age.[31]

When asked which aspects of life are most important in old age, the interviewees responded with, in descending order, enjoying good health (80.1%); having good family relationships (52.6%); being independent (46.7%); having a good relationship with one's partner (21.4%); having good friends (18.4%); having a sufficient amount of savings (11.0%); having many experiences, interests, and hobbies (10.9%); enjoying oneself (9.2%); and having a religious faith (5.4%).

With respect to the total sample, amongst those who considered themselves to be old, the most significant aspects mentioned were being independent; having a good relationship with one's partner; having sufficient savings; having experiences, interests, and hobbies; and having a religious faith. Conversely, compared to the overall sample, this group selected the following aspects less frequently: enjoying good health, having good family relationships, and having good friends. Once again, the results imply that those who considered themselves to be old took for granted and accepted certain fundamental aspects of the transition into old age (worsening health, deterioration of family relationships, loss of friends), which up to now had not been experienced to the same degree by those who did not feel old.

Furthermore, when asked about which aspects of life they were most satisfied with, the interviewees responded with, in descending order, family (average score of 3.69 on a scale of 1 to 4), where they lived (3.45), their life as a whole (3.43), their friends (3.39), the relationships with their neighbours (3.30), the work they had done (3.20), their state of health (3.17), the goals they had achieved (3.17), their spiritual life (3.05), and their family income (2.85). There was no significant difference between those who felt old and those who did not in terms of the scores for these variables. In effect, those who felt old did not yield higher scores than those who did not feel old for any of the above-mentioned aspects. This is particularly evident with regard to the interviewees' lives as a whole, their state of health, their friends, the work they had done, and the goals they had achieved. Surprisingly, the results for the last of these two aspects seem to contradict the stereotype of old age, which assumes that an older person has a greater appreciation of how much they have done with their life and the goals they have achieved.

The sample of older parents was also asked about which aspects of life they would like to develop in the future. Their responses, in descending order, were to spend more time with their families (53.5%), travel (53.3%), dedicate more time to themselves (47.0%), dedicate more time to others (17.3%), develop cultural interests (16.8%), volunteer (7.6%), get involved in social affairs and politics (2.0%), and find a job (0.8%). Interestingly, with respect to the overall sample, those who considered themselves old indicated with greater frequency that they wanted to spend more time with their families and dedicate more time to themselves and to others. This group of interviewees mentioned other aspects less often.

31 Settersten Jr. and Angel, 2011.

Finally, the survey also asked the interviewees about their worries for the future. The most frequently mentioned worry was suffering from serious health problems (67.6%), followed by, in decreasing order, being a serious burden on their children and families (45.1%), ending up alone (30.9%), no longer feeling useful to their families (26.2%), concerns about who would look after them when they were no longer independent (22.2%), having financial difficulties (18.6%), ending up in a retirement home (14.8%), and not being able to continue with their hobbies (8.2%).

With respect to the total sample, the worries least frequently cited by those who felt old were not feeling useful to their families and not being able to continue with their hobbies. All other worries were more pronounced in this group, particularly those related to being a serious burden on their children and families and concerns about who would look after them if they were no longer independent. These two aspects are closely tied to the deterioration of a person's physical and mental faculties, and in this regard, the interviewees did not wish to strengthen normative solidarity: as the results show, just one-third of interviewees believed that children have a duty to support their older adult parents despite the great sacrifices involved.

Summarising the diverse facets of old age examined in the survey, several intersecting domains such as health, financial well-being, and family dynamics warrant a more in-depth analysis. In the context of health, respondents expressed the belief that an individual's physical condition contributes significantly to their perception of old age, emphasising that health is the paramount aspect in ageing. When gauging interviewees' satisfaction levels, they consistently rated their health as 'quite satisfactory', and a robust correlation emerged between this variable and the degree to which an interviewee felt old. Notably, their primary concern about the future was the potential for severe health issues.

Transitioning to the interviewees' financial situation, economic challenges were not prominently cited among the primary factors contributing to an individual feeling old. Additionally, family income was reported to bring relatively little satisfaction according to the respondents. Those who expressed a sense of feeling old tended to assess these financial aspects more pessimistically. However, a paradox arises when considering that half of the sample also expressed a desire to travel in the future, suggesting they had a certain degree of financial resources at their disposal, which contrasts with their negative assessments. Nonetheless, the fact that one in five interviewees expressed concern about potential financial difficulties remains a significant area for consideration.

In the realm of family dynamics, one in five interviewees highlighted that the loss of one or more loved ones contributed to a sense of ageing. Notably, just over half of the interviewees mentioned the significance of good family relationships among the most crucial aspects of old age. However, surprisingly, only a little more than one in five underscored the importance of maintaining a good relationship with their partner, despite nearly 70% of those interviewed living with a partner. Family emerged as the most satisfying aspect of life for the interviewees and investing time and attention in family constituted the primary future project for most of them.

Nevertheless, it is essential to note that many of their prevalent concerns centred around family relationships, particularly the potential fragility or dysfunction of the support provided by the family network. Variables such as being a serious burden on their children, the fear of ending up alone, no longer feeling useful to their families, and the apprehension of residing in a retirement home all signify these worries.

11. Conclusions

This examination of the primary findings stemming from the analysis of IFS in Spain prompts the question, 'What links can be discerned between IFS and active ageing?'.

To begin with some overarching considerations, it is crucial to note how family solidarity remains a vital element, ensuring family and social cohesion, and functioning as a social safety net in challenging circumstances. For instance, this was evident in situations where young people may experience delays in achieving autonomy, finding themselves, in some cases, still residing with their parents at an adult age. The exchanges where older adult parents were central, either as providers or recipients of various resources, are noteworthy, even though they did not encompass all the interviewees. As revealed by the results, approximately one in six older adult parents declared that they had not assisted any family member, friend, or neighbour in the last year. Additionally, one in three interviewees mentioned not having received any help. The existing literature affirms that in Southern European countries like Spain, intergenerational exchanges are less frequent but characterised by greater regularity and intensity.[32]

Concerning active ageing, despite enjoying robust health, the studied older adult parents demonstrated limited engagement in leisure activities, associations and civic participation, and technology use. One plausible hypothesis is that this generation of older adults is actively involved in caregiving responsibilities, particularly for their children and grandchildren, manifesting a form of intergenerational solidarity. This engagement occurs in the absence of comprehensive public policies in Spain that provide substantial support for the different family generations responsible for caring for dependent family members, whether they are minors or elderly.

The results affirm two observations documented in the literature. First, the diminished engagement in active ageing among those assuming caregiving roles stems from a cumulative effect. Family members already engaged in caring for one relative tend to extend their caregiving responsibilities to other family members at some point.[33] For instance, half of those interviewees who cared for a partner, sibling,

32 Bazo, 2002, 2004.
33 Zelezná, 2018.

or parent or parent-in-law were simultaneously involved in caring for their grandchildren. Additionally, many of these individuals still had cohabiting children.

Conversely, and concurrent with this pattern, the existing literature has highlighted a distinct correlation between providing care, especially to grandchildren, and experiencing health issues.[34] Our study aligns with this observation, indicating that older adult parents with chronic health problems are more likely to provide care for their grandchildren than those without health issues.

Furthermore, the study reveals that heightened levels of intergenerational solidarity within the family correspond to other cumulative effects. This is particularly evident in relation to family social capital, which not only stems from IFS but also, in turn, contributes to its multiplication.

In conclusion, the majority of the studied generation of older adult parents did not perceive themselves as old in most cases. On the contrary, this inclination was only evident in very specific circumstances, notably those associated with feelings of loneliness or the presence of chronic diseases. Indeed, older individuals living alone often experience a social environment characterised by fewer significant, supportive connections in family, friendship, and neighbourhood relationships. The sensation of loneliness, potentially coupled with the state of being alone – though not necessarily – is subject to diverse measurement approaches, as demonstrated in the literature.[35] This sensation appears to be more pronounced among older individuals in Southern European countries like Spain.[36] One study[37] introduced the concept of a threshold of loneliness, suggesting that different societal norms dictate the varying levels of social relations needed to avert loneliness. In Southern European countries, these levels are generally higher, resulting in an increased sense of perceived loneliness, irrespective of the condition of material loneliness.

The survey findings affirm that the feeling of loneliness is accentuated among individuals living alone, particularly concerning their perceptions of being alone, experiencing the loss of loved ones, and apprehensions about future care when they lose autonomy. However, the fear of being alone is more pronounced among those who do not live alone, supporting the application of the threshold of loneliness theory in interpreting different life-course phases in old age. Moreover, analysing the survey results provides evidence that the factors associated with loneliness have a more substantial impact on concerns for the future than on the sense of feeling old.

34 Di Gessa, Glaser, and Tinker, 2016.
35 Jylhä and Saarenheimo, 2013.
36 Sundström et al., 2009.
37 Johnson and Mullins, 1987.

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Part IV

CONCLUDING REMARKS

Chapter 20

Difficulties and Possible Escapes from Central Europe's Demographic Winter: A Summary of Best Practices

Tímea Barzó

Abstract

The final chapter of the volume is a synthesis study, which aims to summarise the main regulatory features of the country reports in a logical order. However, the study does not focus solely on the specificities of Central Europe, but also takes a more holistic approach, drawing on the first part of the volume, and briefly reviews the demographic situation in the world and in Europe, as well as the related regulatory environment of the European Union.

Keywords: family policy, ageing society, population of Central Europe, fertility rate, demographic challenge of Central Europe, best practices of demographic winter

1. The introduction of a very interdisciplinary volume

Europe is undoubtedly the cradle of culture. However, in recent years, more coffins have been built than cradles. As the European Parliament has pointed out, while European Union residents made up some 13.5% of the global population in 1960, this figure had declined to 6.9% by 2018. By 2070, EU residents

Tímea Barzó (2024) 'Difficulties and Possible Escapes from Central Europe's Demographic Winter: A Summary of Best Practices'. In: Tímea Barzó (ed.) *Demographic Challenges in Central Europe. Legal and Family Policy Response,* pp. 757–815. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2024.tbdecce_20

are expected to account for just 4% of the global population.[1] In light of these statistics, it is perfectly understandable why our current period is being referred to as a 'demographic winter', or even as a 'demographic ice age'. In the EU, the number of older people—that is, people aged 80 years and older—is anticipated to increase by 57.1% between 2010 and 2030, with significant consequences for social security systems. Between 1998 and 2018, the population fell by up to 15% in some regions of the EU due to rapid depopulation and population ageing. Such rapid demographic change has generated disproportionally high adjustment costs.[2]

1.1. The ageing of the population

Ageing in demographic terms refers to the age distribution of the population. A population in which the proportion of older people is greater than that of young people is called an ageing population.[3]

According to the European Parliament, Europe has become an 'Old Continent'. In the P9_TA(2021)0347 Resolution, the European Parliament drew attention to Europe's ageing population, a demographic phenomenon involving a decrease in both fertility and mortality rates and a higher life expectancy.

Europe has earned the nickname of the 'Old Continent'[4] on account of its age composition, specifically the large and growing proportion of older age groups. Indeed, if we compare the proportions of younger and older people in Europe and other societies in the world, it is clear that the demographic outlook for Europe as a whole is largely negative, as the continent keeps ageing.

The following population pyramid shows the age of the EU population in 2022. As UNESCO notes, the ageing of populations as a demographic trend is *'progressively transforming the traditional population age pyramid into a treeshaped form'*.[5]

1 Old continent growing older: Possibilities and challenges related to ageing policy post 2020 European Parliament resolution of 7 July 2021 on an old continent growing older—possibilities and challenges related to ageing policy post-2020 (2020/2008(INI)) (2022/C 99/13); Eurostat, 2023a, p. 11.

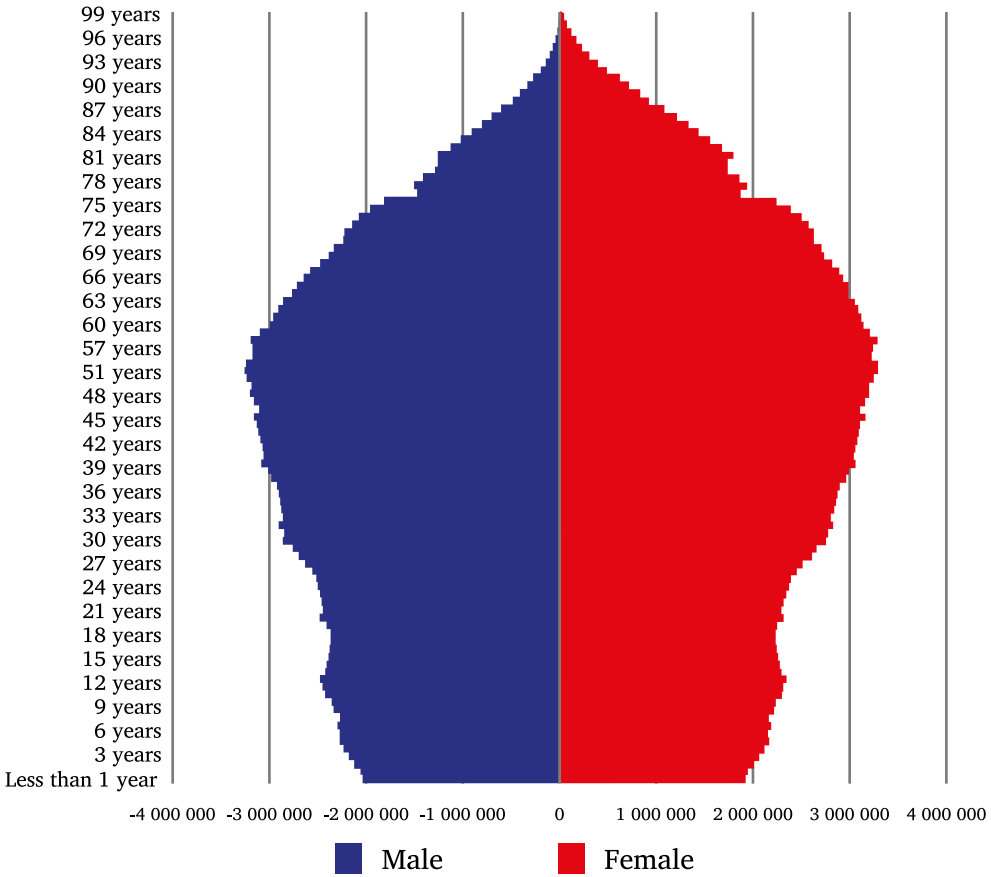
2 Old continent growing older: Possibilities and challenges related to ageing policy post 2020 European Parliament resolution of 7 July 2021 on an old continent growing older—possibilities and challenges related to ageing policy post-2020 (2020/2008(INI)) (2022/C 99/13).

3 Sauvy, 1963, p. 355.

4 Old continent growing older: Possibilities and challenges related to ageing policy post 2020 European Parliament resolution of 7 July 2021 on an old continent growing older—possibilities and challenges related to ageing policy post-2020 (2020/2008(INI)) (2022/C 99/13).

5 United Nations, 2019.

Figure 1. Population Pyramid of the EU in 2022[6]



Another illustrative table of statistics demonstrates that the European society is the oldest in the world. As the table below shows, the age composition of European society has changed dramatically over the past 70 years.

6 Source: Eurostat Population on 1 January 2022 by age and sex [DEMO_PJAN__custom_7604679]. I am grateful to Dr András Pári for the professional preparation of the charts.

Table 1. Aging index of the world population[7]

	Ageing Index (%)						
	Africa	**Asia**	**Europe**	**Latin America and the Caribbean**	**Northern America**	**Oceania**	**World**
1950	8%	11%	30%	8%	30%	24%	15%
1951	8%	11%	30%	8%	30%	24%	15%
1952	8%	11%	31%	8%	30%	23%	14%
1953	8%	11%	31%	8%	30%	23%	14%
1954	8%	10%	32%	8%	30%	23%	14%
1955	8%	10%	32%	8%	30%	23%	14%
1956	8%	10%	32%	8%	30%	22%	14%
1957	7%	10%	32%	8%	29%	22%	14%
1958	7%	10%	32%	8%	29%	22%	14%
1959	7%	9%	32%	8%	29%	22%	13%
1960	7%	9%	32%	8%	29%	22%	13%
1961	7%	9%	33%	8%	29%	22%	13%
1962	7%	9%	33%	8%	30%	22%	13%
1963	7%	9%	34%	8%	30%	22%	13%
1964	7%	9%	35%	8%	30%	21%	13%
1965	7%	9%	36%	8%	30%	21%	13%
1966	7%	9%	37%	8%	31%	21%	14%
1967	7%	9%	38%	8%	32%	21%	14%
1968	7%	9%	39%	8%	32%	21%	14%
1969	7%	9%	40%	8%	33%	21%	14%
1970	7%	9%	42%	9%	34%	21%	14%
1971	7%	10%	43%	9%	35%	21%	14%

7 Source: United Nations, 2019.

	Ageing Index (%)						
	Africa	**Asia**	**Europe**	**Latin America and the Caribbean**	**Northern America**	**Oceania**	**World**
1972	7%	10%	44%	9%	36%	22%	14%
1973	7%	10%	46%	9%	37%	22%	15%
1974	7%	10%	47%	9%	39%	22%	15%
1975	7%	10%	49%	10%	41%	23%	15%
1976	7%	10%	50%	10%	43%	24%	15%
1977	7%	10%	52%	10%	45%	24%	16%
1978	7%	11%	54%	10%	46%	25%	16%
1979	7%	11%	55%	11%	48%	26%	16%
1980	7%	11%	56%	11%	49%	27%	17%
1981	7%	12%	56%	11%	50%	28%	17%
1982	7%	12%	56%	11%	51%	28%	17%
1983	7%	12%	55%	11%	52%	29%	17%
1984	7%	13%	56%	11%	53%	29%	17%
1985	7%	13%	56%	12%	54%	30%	17%
1986	7%	13%	57%	12%	55%	31%	18%
1987	7%	13%	58%	12%	56%	32%	18%
1988	7%	14%	59%	12%	56%	33%	18%
1989	7%	14%	60%	13%	57%	33%	18%
1990	7%	14%	62%	13%	57%	34%	19%
1991	7%	15%	64%	13%	57%	34%	19%
1992	7%	15%	66%	14%	57%	35%	19%
1993	7%	15%	68%	14%	57%	35%	20%
1994	7%	16%	70%	15%	57%	36%	20%
1995	7%	16%	72%	15%	58%	36%	20%
1996	7%	17%	75%	16%	58%	36%	21%

	Ageing Index (%)						
	Africa	**Asia**	**Europe**	**Latin America and the Caribbean**	**Northern America**	**Oceania**	**World**
1997	7%	17%	77%	16%	58%	37%	21%
1998	7%	18%	79%	17%	58%	37%	22%
1999	7%	19%	81%	17%	58%	37%	22%
2000	7%	19%	84%	18%	58%	38%	23%
2001	8%	20%	87%	18%	59%	38%	23%
2002	8%	21%	91%	19%	59%	38%	24%
2003	8%	22%	94%	19%	59%	39%	25%
2004	8%	22%	97%	20%	60%	39%	25%
2005	8%	23%	100%	21%	61%	40%	26%
2006	8%	24%	103%	22%	62%	41%	27%
2007	8%	25%	104%	22%	63%	41%	27%
2008	8%	25%	105%	23%	64%	42%	27%
2009	8%	26%	105%	24%	66%	42%	28%
2010	8%	26%	105%	25%	67%	43%	28%
2011	8%	27%	105%	26%	69%	44%	29%
2012	8%	28%	107%	27%	71%	45%	29%
2013	8%	29%	108%	28%	73%	46%	30%
2014	8%	30%	110%	29%	75%	47%	31%
2015	8%	31%	111%	30%	76%	48%	32%
2016	8%	32%	112%	31%	79%	49%	32%
2017	8%	34%	114%	33%	81%	50%	33%
2018	8%	35%	116%	34%	84%	51%	34%
2019	8%	37%	118%	35%	87%	52%	36%
2020	9%	38%	120%	37%	90%	53%	37%
2021	9%	40%	122%	38%	94%	55%	38%

1.2.Population change

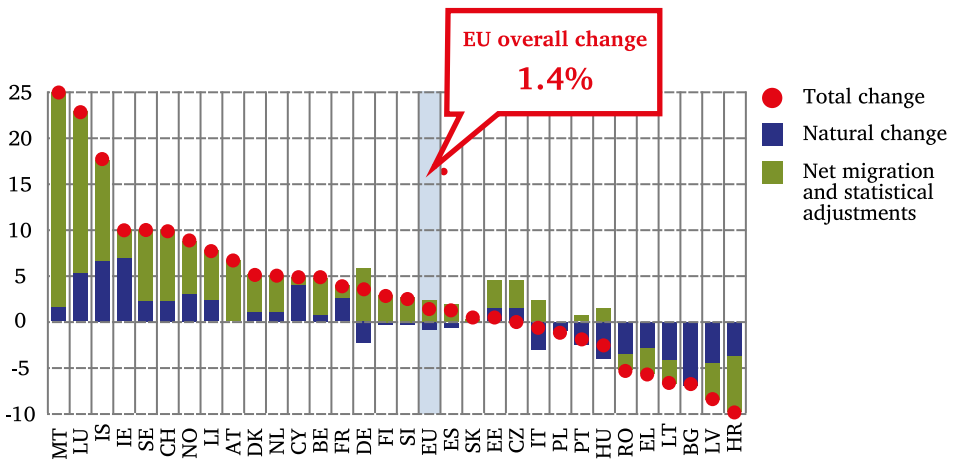
According to the most recent edition of Eurostat's *Key Figures on Europe*,

> Between 1 January 2012 and 2022, the EU's population rose 6.2 million (or 1.4 %); net inward migration was the driving factor behind this growth. A natural decrease in the number of inhabitants (more deaths than births) in Latvia, Lithuania, Croatia, Romania and Greece was reinforced by net outward migration (more people emigrating than immigrants arriving) leading to a decline in population numbers. There was also an overall decline in the populations of Bulgaria, Hungary, Portugal, Poland and Italy, despite net inward migration.[8]

Per this Eurostat report, at the beginning of 2022, there were 37.5 million foreign citizens living in EU Member States. Indeed, foreign citizens accounted for 8.4% of the total population of the EU. Figures varied widely. For instance, where 47.1% of Luxembourg's population was of a foreign nationality, just 1% of Croatia's population were foreign citizens. Moreover, the majority of the EU Member States reported a higher number of non-EU citizens than foreign citizens from other EU Member States within their populations.[9]

Figure 2. Population change of the EU[10]

(% of total population, 1 January 2012–2022)



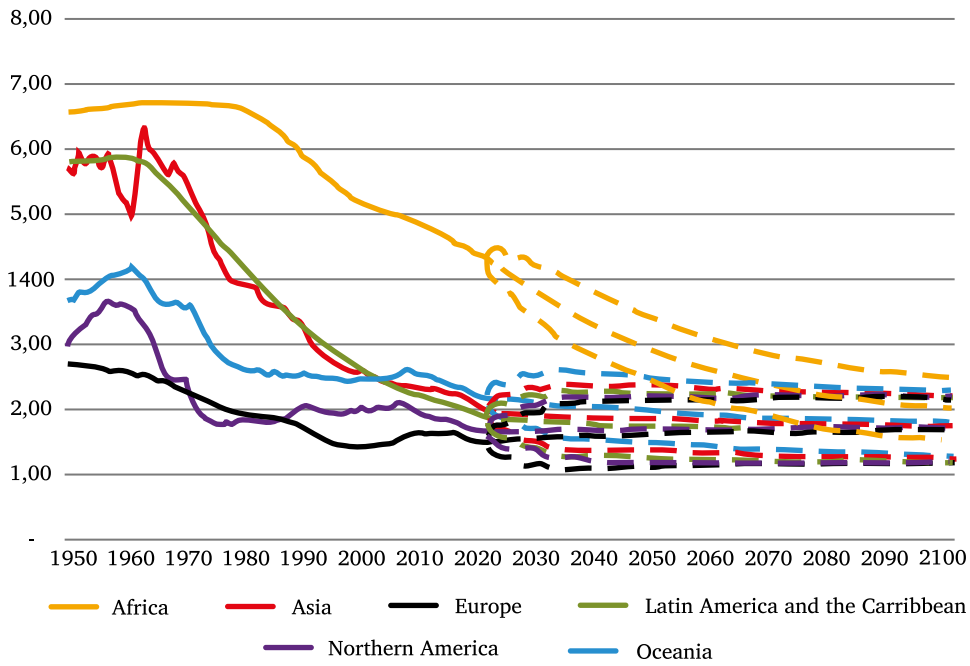
Source: Eurostat (online) data code:demo_gind)

8 Eurostat, 2023a, p. 11.
9 Eurostat, 2023a, p. 13.
10 Source: Eurostat, 2023, p. 11.

1.3. The total fertility rate and natural population change

The demographic changes in Europe are worrying, and Central European countries are no exception. One of the introductory chapters[11] in this volume provides an overview of the demographic statistics across Europe. Noting that Europe's fertility rate was 1.53 in 2021, the authors stress that neither the birth nor fertility rate reach the replacement level. As the following figure shows, based on United Nations data, Europe exhibits the lowest total fertility rate in the world.

Figure 3. Total fertility rate of the World[12]

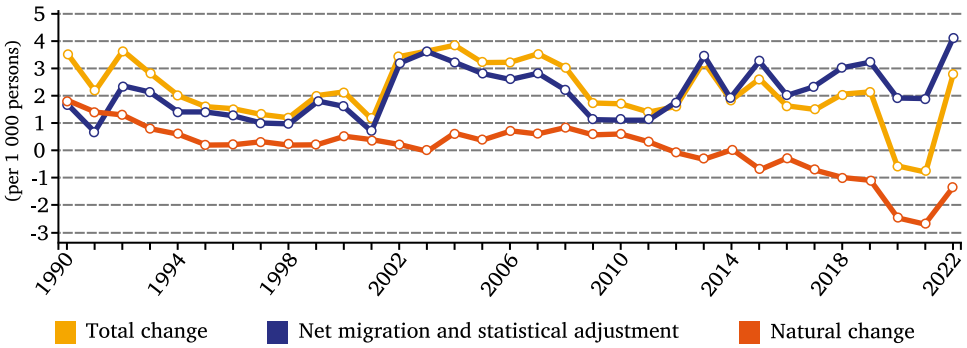


Today, no EU Member States reaches the 2.1 level needed for population reproduction. However, while the EU's fertility rate is still declining, its population size is increasing. This demographic situation is due to immigration.

11 Pári, Rövid and Fűrész, 2024.

12 Source: UN Population database. I am grateful to Dr András Pári for the professional preparation of the charts.

Figure 4. Population change of the EU by component[13]



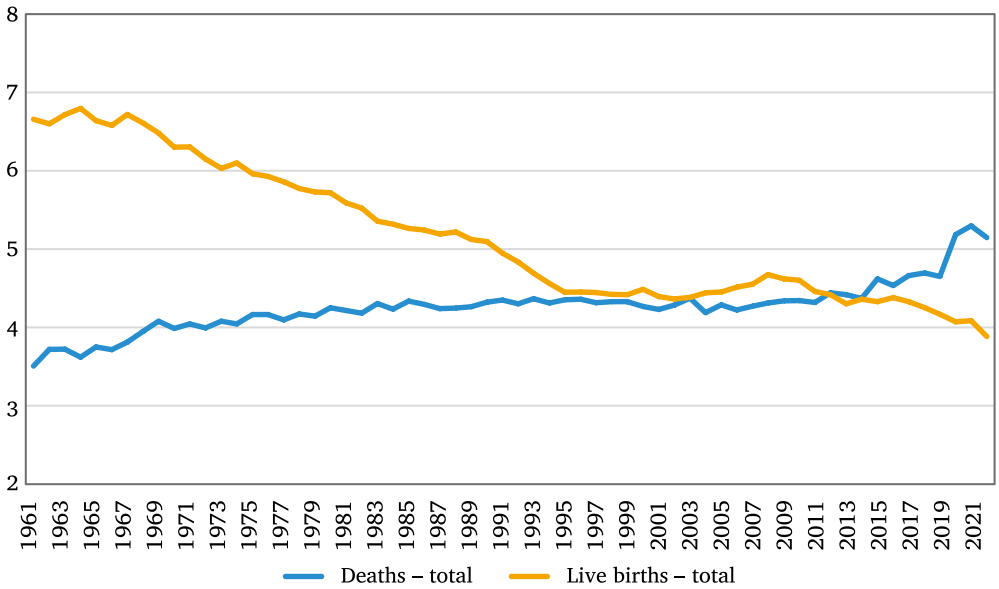
Note: Excluding French overseas departments up to and including 1997.
Breaks in series: 1991, 1998, 2000–01, 2008, 2010–12, 2014, 2015, 2017, 2019, 2021 and 2022.
2022: Eurostat estimate

Having and raising children requires considerable investments of both time and economic resources from parents. At the same time, statistics and reports show that the richest territories of the world have the fewest children. There is a gap between wanting and having children. In order to understand the current and future potential of society and identify and address the challenges Europe may face, it is imperative to minimise the so-called fertility gap between the number of children initially planned (i.e. desired children) and the children actually born.[14]

Population trends are determined by the balance between births and deaths. More specifically, the so-called *natural population change* is the difference between the number of live births and deaths during a given time period. Trends can be either positive or negative. *Natural population increase* is a positive natural change whereby the number of live births is larger than the number of deaths during the time period considered. In contrast, *natural population decrease* is a negative natural change whereby the number of deaths exceeds the number of births.[15]

13 Source: Eurostat, 2023b.
14 Pári and Rövid, 2023, p. 27.; Engler and Pári, 2022, p. 27.
15 See: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Natural_population_change (Accessed: 3 January 2024)

Figure 5. Births and deaths of the EU[16]



According to the literature, changes in the family structure can destabilise the family institution, weakening and destroying family cohesion.[17] However, it is worth noting that this change does not necessarily portend the disintegration of the family. On the one hand, marital instability has led to an increase in the number of marriages of a short duration. On the other hand, increased life expectancy has resulted in an unprecedentedly high number of marriages of particularly long duration. In Europe, changes in family structure show that certain types of families are becoming more common, with a notable increase in the proportions of single-parent, multinuclear, and cohabiting families in society.[18]

1.4. The aim and structure of the present volume

The present volume seeks to answer the question of what measures and good practices can be used to turn the frustrating data defining the demographic situation in Europe and Central Europe into a more positive vision of the future. Of the books published by the Central European Academy to date, this book is unique insofar as it goes beyond the usual jurisprudential and comparative-legal perspective and approaches the issue from an interdisciplinary perspective. The interdisciplinary focus

16 See: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Population_and_population_change_statistics (Accessed: 3 January 2024)
17 Harcsa, 2014, pp. 2–13.
18 Pári and Rövid, 2023, p. 22.

permeated the entire year of research, which was dedicated to one of the biggest challenges facing contemporary Europe: demographic challenges.

If one looks at the structure of this book, the interdisciplinary perspective is immediately apparent. Given the complex and interdisciplinary nature of the subject, this volume comprises four main parts. The first two parts of this book discuss the population of the world,[19] as the omega of the issue, before turning to the demographic situation in Europe,[20] especially Central Europe. Discussions of this complex issue need to consider the social background of population decline,[21] the postmodern challenges facing the family (including the rediscovery of family ties),[22] the macroeconomic impacts of demographic change,[23] and the relationship between the economy and the family, as the 'Economy begins in the family'.[24] This approach also requires attention to regional aspects, including Christian ethics as a factor promoting the traditional model of the family,[25] the appropriate approaches of labour law,[26] and the provision of a sustainable pension system.[27]

The third part of this book presents country reports of eight Central European countries: Czechia, Croatia, Hungary, Poland, Romania, Serbia, Slovakia, and Slovenia. Beside the Central European solutions, the Spanish aspects can be read in the third part as well. Each country report provides an empirical discussion and analysis of the country's demographic situation and potential solutions for the 'demographic winter'. In these reports, the authors place significant emphasis on family support solutions and family policy. This volume also provides a chapter on the constitutional funding of family policy,[28] which is of utmost importance.

As such, the first two parts of this book contain the introductory and preparatory studies, which are based on demographic data and provide an empirical basis for this research. The complexity of the demographic problem renders purely jurisprudential or legislative approaches insufficient. The approach to this problem must reflect its complexity. Therefore, in preparing this book, the decision was taken to expand the scope beyond law-oriented analyses.

Jurisprudential responses to demographic issues need to be examined from multiple perspectives. In preparing the country reports, the authors drew on both private and public law approaches within jurisprudence. Both the questions and answers are multifaceted. As public law (constitutional law) is the basis of family policy, one of the approaches to solving demographic problems involves the adoption of a more

19 Arsenović, 2024.
20 Pári, Rövid and Fűrész, 2024.
21 Lenkovics, 2024.
22 Montserrat Gas-Aixendri, 2024.
23 Michalski, 2024.
24 Michalski, 2024.
25 Bielecki, 2024.
26 Jakab, 2024.
27 Barta and Novoszáth, 2024.; Korom, 2024.
28 Sobczyk, 2024.

public law approach. At the same time, it is not possible to address population issues without considering family law, the relevant substantive rules of which fall under private law.

This chapter presents a summary of the relevant family policy measures and family law instruments of the abovementioned countries, providing a synthesis of the Central European country reports. This chapter is based on and synthesises the country reports presented in this volume. Accordingly, this chapter has fewer footnotes pertaining to scientific sources literature; rather, footnotes detail the relevant Acts and legal sources related to the legal environment of the topic. Detailed analyses of and references for legal institutions and solutions are available in the relevant country report.

In compiling this chapter, we did not seek to present the legal institutions of each country in alphabetic order, but to situate them in a much more comprehensive context. Therefore, we opted to compose the chapter on a comparative logic, discussing the similarities and differences between the given legal institutions and family policy measures. In doing so, we provide a summary of the factors that link the Central European countries. Although these demographic problems affect the whole of Europe, this chapter emphasises the specific features of Central Europe. In this respect, it is necessary to consider whether the same problems are perceived as the major threats in each country. In the majority of cases, low fertility rates and the ageing of the population appear to be the strongest source of problems.

This book introduces the essential elements and consequences of Europe's demographic winter and provides an overview of the best practices and possible solutions to demographic issues proposed in Central Europe. In summating these dynamics, this chapter similarly focuses on the characteristics of Central European countries.

2. Summary of the demographic situation of Central Europe

The country reports provide concrete data on the demographic situation of the given countries. Data were primarily obtained from respective countries statistical offices.[29] The Population and Housing Census (hereinafter, the Census) was also useful, particularly as the most recent census was conducted in several Central European countries. For instance, the country report for *Czechia* included the results of the 2021 Populations and Housing Census conducted in the country.[30] The family

29 The statistical data of the Czech Statistical Office are available at: https://www.czso.cz/csu/czso/population (accessed: 06 January 2024).

30 Králíčková, 2024.

policy strategies of the countries involved in this research project were determined by the population and demographic situation of the given country.

This summary chapter also surveyed data from the Eurostat and the Data Portal of the UN. The following table presents a summary of the data of natural population change in Central European countries over a roughly 12-year period.[31] More specifically, it shows the difference between the number of live births and deaths between 2010[32] and 2022.[33] Note, in the table, the figures for 2023 are based on data collected as of 1 January 2023.

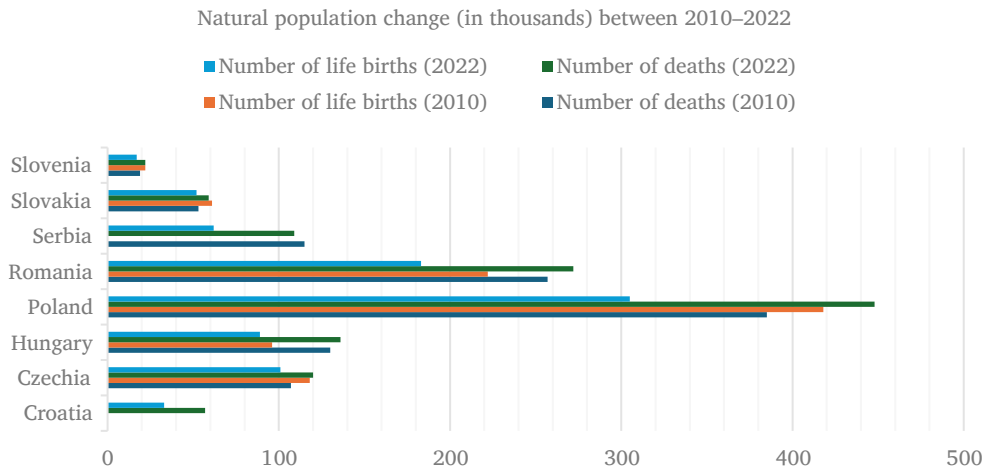
Table 2. Natural population change and fertility rate of the Central European countries[34]

	2010		2010	2022		2023	Fertility rate	
	Number of deaths (thousands)	Number of life births (thousand)	Population (thousands)	Number of deaths (thousands)	Number of life births (thousands)	Population (thousands)	2010[35]	2022
Croatia	52	44	4,417	57	33	3,850	1.5	1.4
Czechia	107	118	10,507	120	101	10,827	1.5	1.6
Hungary	130	96	10,013	136	89	9,597	1.4	1.5
Poland	385	418	38,167	448	305	37,635	1.4	1.4
Romania	257	222	21,462	272	183	19,051	1.4	1.7
Serbia	115		7,291	109	62	6,664	1.4	1.5
Slovakia	53	61	5,425	59	52	5,428	1.4	1.5
Slovenia	19	22	2,047	22	17	2,116	1.5	1.6

The following figure illustrates the natural population change between 2010 and 2022.

31 According to the abovementioned sources: Eurostat and country reports.
32 For the data of the natural population change of 2010 and the population data of 2010 (1 January), see: Eurostat, 2010.
33 For the data of the natural population change of 2022 and the population data of 2023 (1 January), see: Eurostat, 2022.
34 Source: Author's own work.
35 United Nations, 2014.

Figure 6. Natural population change of the Central European countries[36]



In short, the 2010–2022 data presented above show that the fertility rates in Central Europe have largely stagnated. Some countries have seen a slight decrease, while others have experienced a slight increase. *Romania* stands out insofar as it experienced a noticeable increase in its fertility rate, which currently stands at 1.7.[37]

Influenced by political, social, and economic shifts since 1989, family structure in *Czechia* and other ex-Soviet countries has undergone significant changes. As of summer 2023, Czechia had a population of 10,873,553 people. According to the 2021 Census, women with two children are represented in population most frequently, and the country has a fertility rate of 1.57. According to Eurostat data, there has been a slight increase in Czechia's total fertility rate, which was 1.6 in 2023.[38]

According to the most recent census, *Croatia* had a permanent population of 3.87 million in 2021, a decline on previous years. The country report notes that 99.24% of citizens are of Croatian citizenship, while the remaining 0.74% of inhabitants are foreign citizens.[39] The fertility rate in Croatia is 1.4. In line with the summary table, Croatia has experienced a slight decline in fertility rate and population.[40]

Like other European countries, *Romania* has an ageing population. However, the country also saw a very slight increase in the proportion of children from 2011 to

36 Source: Author's own work.
37 Florian and Floare, 2024.
38 Králíčková, 2024.
39 The Census of Population, Households, and Dwellings in the Republic of Croatia, 2021.
40 Korać Graovac, 2024.

2021. While Romania's fertility rate is below the desirable level of 2, at 1.74, it is the third highest in the EU.[41]

Building on data, the author of the *Polish* country report, Marek Andrzejewski, gives a detailed and holistic picture of the demographic crisis of contemporary Europe and Poland, noting that in 2022, the number of births was almost half what it was some 40 years ago. This downward trend places Poland near the bottom of global fertility rates. Poland's current fertility rate is 1.4, which is well below the historical peak of 2.1 from the 1960s to the 1980s.[42]

Serbia is one of the countries with more recent census data, their latest census having been conducted in 2022.[43] According to the 2022 Census, the Republic of Serbia had a total population of 6,647,003 and a fertility rate of 1.5, which aligns with the Central European average.[44]

As *Slovenia* is a relatively small country in terms of territory, it is hardly surprising that it had a population of approximately 2,116,972 people in 2023. As Suzana Kraljic notes, this number is actually some 9,800 higher than the previous year. However, the number of Slovenian citizens actually decreased by almost 7,600, while the number of foreigners increased by 17,400. Among them, the number of Ukrainian citizens had increased the most. Slovenia currently has a fertility rate of 1.6, which is slightly higher than 10 years ago.[45]

As of mid-2023, *Slovakia* had an estimated population of 5,795,199 people and a fertility rate of 1.5, indicating a slight increase. The most recent population census in Slovakia was conducted in 2021. The country report also refers to the fact that development of the total fertility rate, although very moderate, has been on an upward trend for the past 20 years. The cumulative fertility rate increased from 1.2 in 2001, to 1.5 in 2021.[46]

A moderate increase can also be observed in the *Hungarian* fertility rate, which currently stands at 1.5, compared to 1.4 a decade ago. Hungary has an estimated population of 9,597,000 people. According to official statistical data and research by the Kopp Mária Institute for Demography and Families (KINCS), the perception of marriage and family formation in Hungarian society has been increasingly positive since the early 2010s, largely driven by family-friendly thinking and a targeted family support system, among other things. Although Hungarian society traditionally views family and children as valuable, but for many decades now, fewer children have been born than are planned.[47]

41 Florian and Floare, 2024.
42 Andrzejewski, 2024.
43 Census of Population, Households, and Dwellings. Law on the 2022 Census of Population, Households, and Dwellings, *Official Gazette of Serbia* no. 9/2020, 35/2021.
44 Kovaček Stanić, 2024.
45 Kraljić, 2024.
46 Garayova, 2024.
47 Pári and Rövid, 2023, p. 20.

3. The responses of Central European countries to demographic challenges: Family policy

This subchapter summarises the legal and family policy responses that the given countries have adopted to address demographic challenges. Although all of the Central European countries under review are addressing these challenges along similar lines, there are specificities unique to each country. This subchapter first introduces the institutional context before turning to the various family policy elements and measures.

3.1. The institutional and legal background

In each of the countries surveyed, the institutional framework for dealing with demographic problems is primarily provided by a ministry. All of the Central European countries prepared their own policies and strategies for addressing demographic challenges. That said, they share the view that society has been undergoing constant social, demographic. and economic development and change.

In *Czechia*, the Ministry of Labour and Social Affairs and the Expert Committee for Family Policy are the primary institutions responsible for family policy affairs. The two bodies co-operated in preparing the so-called 'A New Approach to Family Policy', which comprises more than 24 reform measures across five areas. They subsequently issued a new policy entitled, 'The New Family Policy Strategy 2023–2030' (hereinafter, the Strategy). The Strategy is based on the premise that the family remains a priority value today. In its unique function, the family is a space for the creation of human capital, one in which the human personality is formed and future generations are nurtured and they grow. As such, it is undoubtedly the basic and most important unit of our society. The Strategy stresses that only stable and prosperous families can guarantee the provision of a good environment for the upbringing of children, the sustainable development of society and the functionality and cohesion of society. That said, the Strategy respects the diversity of life paths and forms of family cohabitation. To achieve demographic stability, the Strategy emphasises a threefold approach of valuing the family, promoting the stability of families, and providing a supportive and stable socio-economic environment for families. Another objective of the Strategy is to reduce demographic debt, which has built up due to the extremely low birth rate over the last two to three decades.

The author notes an important feature of the family policy and the related substantive law provisions: to facilitate the implementation of the Strategy, several points of public law have been amended, destabilising this area of law. Consequently,

young couples are not necessarily aware of the tax, social security, or benefit rules that apply to them when they have children.[48]

In respect to the concrete legal background, the author highlights the following acts: a) Charter of Fundamental Rights and Freedoms as a part of the constitutional order; b) Labour Code; c) Act on Sickness Insurance; d) Act on State Social Support; d) Act on Social and Legal Protection of Children ('Children Act') ; e) Act on Pension Insurance; f) Act on Income Tax.

In *Croatia*, the legal environment of the family policy is based on the provisions of the Constitution of the Republic of Croatia, where the basic law declares the special protection of the family,[49] the protection of children,[50] and that the rights pertaining to childbirth, maternity, and childcare shall be regulated by law.[51] Beside the Constitution of the Republic of Croatia, other important legal acts include: a) The Child Allowance Act; b) The Labour Act; c) Free Legal Aid Act; d) Temporary Maintenance Act; e) The Social Welfare Act.

In terms of institutional context, Croatia's demographic policy is set by the Ministry of Social Policy and Youth, Ministry of Labour and Pension System, Ministry of Finance, Ministry of Health, and Ministry of Defence. Local and regional self-governments are the competent bodies responsible for social care. However, as the country report for Croatia emphasises, there are huge differences in the economic development of different municipalities. In this respect, the author notes the work of the Central State Office for Demography and Youth, which publishes overviews of demographic measures and the activities of local units. Croatia's current family policy was enacted in 2003. Since April 2022, Croatia has been preparing the 'Strategy for Demographic Revitalisation of Croatia until 2031'. One of the goals of 'National Development Croatia 2030' is the strengthening of the family.[52]

Regarding the institutional background in *Romania*, at the central level, demographic policy is guided by the recently established Ministry of Families, Youth and Equal Opportunities, Ministry of Work and Social Solidarity, Ministry of Justice, Ministry of Education, and Ministry of Health. Government strategy seeks to protect families and the youth, safeguard children's rights, facilitate adoption, provide equal opportunities for women and men, and take action against domestic violence. In the Romanian legal system, there are a number of sectoral laws covering various sub-issues—which are described in detail in the country report—including:[53] a) The Universal Child Allowance Act[54]; b) Romanian Tax Code[55]; c) Labour Code[56];

48 Králíčková, 2024.
49 Art. 62 of the Constitution of the Republic of Croatia.
50 Art. 65 of the Constitution of the Republic of Croatia.
51 Art. 57 of the Constitution of the Republic of Croatia.
52 Korać Graovac, 2024.
53 Florian and Floare, 2024.
54 Law No. 61/1993.
55 Law No. 571/2003.
56 Law No. 53 of 24 January 2003.

d) Government Emergency Decree[57]; e) Law on Paternal Leave[58]; e) Law on Young People[59]; f) Public Pension Law.[60]

In *Serbia*, the Ministry of Family Care and Demography is responsible for all aspects of the management of demographic challenges. The relevant laws pertaining to family policy include the Law on Financial Support for Families with Children, several regulations of the Act on Labour Law, the Law on Biomedical Assisted Fertilisation, the Law on Pension and Disability Insurance, and the Family Act. The country has also adopted several strategies in line with family policy, including the 'National Strategy for Youth (2015–2025)', 'Strategy for Youth in the Republic of Serbia (2023–2030)', and the 'Strategy to Encourage Childbirth'.[61]

Slovakia has also developed a new strategy to support families in the context of adverse demographic trends. Regarding the institutional framework, the government had adopted the 'National Strategic Framework for Family Support and Demographic Development until 2030', which aims to protect children and the youth, improve health care, reconcile family care and employment, and safeguard the labour market and financial instruments in the context of demographic issues. The importance of protecting the family is also mentioned in 'The Programme Declaration of the Government of the Slovak Republic for 2021–2024'. The legal background is secured by the Constitution and the Family Act, per the protection of families and marriage, and by the Labour Code and Social Insurance Act, which seeks to enhance the work–life balance. The Ministry of Labour, Social Affairs, and Family of the Slovak Republic is the institution responsible for drafting the relevant legislation.[62]

The Council for Children and the Family of the Republic of *Slovenia* is a permanent expert advisory body providing expert and advisory services to the government in respect to the drafting of legislation as well as monitoring and reporting on the situation of children and the family. The Family Code serves as the relevant legal basis for these matters, governing not only the substantive regulations of family law, but also the process of the aforementioned Council. The Parental Protection and Family Benefits Act and the Exercise of Rights from Public Funds Act are also significant legal bases, as they provide detailed regulations on family allowances. In terms of housing creation, The Resolution on the National Housing Programme 2015–2025 is an important strategy implemented and managed by the Housing Fund of the Republic of Slovenia. In response to demographic challenges, including the need to care for a growing number of elderly people in an ageing society, the country has adopted the Long-Term Care Act and the 'Strategy for a Long-Lived Society'.[63]

57 Law No. 158/2005.
58 Law No. 210/1999.
59 Law No. 350/2006.
60 Law No. 263/2010.
61 Kovaček Stanić, 2024.
62 Garayova, 2024.
63 Kraljić, 2024.

Essentially, the demographic strategies and family policy action plans of all of the Central European countries examined in this book identify the relationship between demography and family relations. While the *Polish* policy document, '2040 Demographic Strategy', addresses this relationship, it does not recognise the role of family law in solving the demographic problem. Rather, the Polish government focuses on opportunities in other legal institutions outside family law, particularly in family mediation, conflict resolution, and other types of pedagogical and psychological assistance. This indicates that the Polish legislator does not consider family law a sufficient and effective means of addressing demographic problems, such as the need to encourage childbearing. Regarding the Polish solution, it should be noted that although the 'Family 500+ Programme'—or the 'Family 800+ Programme' as of 1 January 2024—succeeded in lifting many families out of deep poverty, it has yet to produce any demographic results. As far as the legal background is concerned, besides the Constitution of the Republic of Poland, the following documents are worth noting: the Family and Guardianship Code,[64] the Act of 11 February 2016 on state assistance in the upbringing of children, the Act of 28 November 2003 on family benefits, and the Act of 4 November 2016 on the assistance of pregnant women and family support 'For Life'.[65]

Regarding the *Hungarian* situation, a new approach to family policy was initiated in 2010, namely, the delineation between social policy and family policy.[66] Where the former is based on means-testing and benefit-based policies, family policy seeks to support the internal stability of families, protect the autonomy and security of the family, encourage childbearing, and enhance intergenerational cooperation.[67] Since 2010, family policy has been separate from social policy. Family policy is a sub-system with its own objectives. As a community policy that regards the family as a fundamental value of the national community, family policy goes beyond the provision of financial support for families. As a coherent system, family policy protects and serves society in many ways by ensuring family security.[68] Consequently, over the past 10 years, family policy has become a policy in its own right, and with the 2019 Family Action Plan, it can now be considered a 'Hungaricum'. The main features, objectives, and areas of family policy in Hungary are summarised below.[69] As for the legal background, the Fundamental Law of Hungary, Act CCXI of 2011 on the Protection of Families, Act CLXXIV of 2005 on support for young people starting their lives, Act LXXXIV of 1998 on Family Support, Act I of 2012 on the Labour Code, and Act LXXXI of 1997 on Social Insurance Pension Benefits are essential measures at the level of statutory legislation. Regarding the institutional background, the Kopp Mária Institute for Demography

64 Act of 25 February 1964.
65 Andrzejewski, 2024.
66 Sápi, 2024.
67 Molnár, Szarvas and Gellérné, 2022, p. 90.
68 Novák and Fűrész, 2021, p. 85.
69 Fűrész and Molnár, 2020, pp. 4–6.

and Families is worth noting. The Institutions Research Office prepares professional concepts, strategies, and action plans, carries out applied research, and contributes to decision-making to support family and population policy objectives. Moreover, in collaboration with other departments, this body conducts and provides scientific research, methodological development and services, and statistical and information services.[70]

Table 3. Summary table of the institutional and legal background of the family policy of Central Europe[71]

	Institutional background	**Basis of the family policy**	
		Laws	**Strategies**
Czechia	– Ministry of Labour and Social Affairs – Expert Committee for Family Policy	– Charter of Fundamental Rights and Freedoms – Act No. 262/2006 on Labour Code – Act No. 187/2006 on Sickness Insurance – Act No. 117/1995 on State Social Support – Act No. 359/1999 on Social and Legal Protection of Children as the Children Act – Act No. 155/1995 on Pension Insurance – Act No. 586/1992 on Income Tax	– A New Approach to Family Policy 2016 – The New Family Policy Strategy 2023–2030

70 https://www.koppmariaintezet.hu/hu/tevekenyseguenk (Accessed: 28 November 2023)
71 Source: Author's own work.

	Institutional background	Basis of the family policy	
		Laws	Strategies
Croatia	– Ministry of Social Policy and Youth – Ministry of Labour and Pension System – Ministry of Finance – Ministry of Health (more social than family policy) – Ministry of Defence (more social than family policy) – Local and regional self-governments – Central State Office for Demography and Youth	– Constitution of the Republic of Croatia – Child Allowance Act – Labour Act – Free Legal Aid Act – Temporary Maintenance Act – Social Welfare Act – Act on Subsidizing Housing Loans	– Explicit family policy of 2003 – Since April 2022, preparing the Strategy for Demographic Revitalisation of Croatia until 2031 – National Development Croatia 2030, focused on strengthening of the family
Hungary	– Kopp Mária Institute for Demography and Families	– Fundamental Law of Hungary – Act CCXI of 2011 on the Protection of Families – Act CLXXIV of 2005 on Support for Young People Starting Their Lives – Act LXXXIV of 1998 on Family Support – Act I of 2012 on the Labour Code – Act LXXXI of 1997 on Social Insurance Pension Benefit	– 2019 Family Action Plan

	Institutional background	Basis of the family policy	
		Laws	Strategies
Poland	– Government Plenipotentiary for Demographic Policy	– Constitution of the Republic of Poland – Family and Guardianship Code – Act of 11 February 2016 on State Assistance in the Upbringing of Children – Act of 28 November 2003 on Family Benefits – Act of 4 November 2016 on the Assistance of Pregnant Women and Family Support 'For Life'	– 2040 Demographic Strategy – Family 800+ Programme
Romania	– Ministry of Families Youth and Equal Opportunities – Ministry of Work and Social Solidarity – Ministry of Justice – Ministry of Education – Ministry of Health	– Constitution of Romania – Universal Child Allowance Act – Romanian Tax Code – Labour Code – Government Emergency Decree – Law on Paternal Leave – Law on Young People – Public Pension Law	– Government Strategy
Serbia	– Ministry of Family Care and Demography	– Law on Financial Support for Families with Children – Act on Labour Law – Law on Biomedical Assisted Fertilisation – Law on Pension and Disability Insurance – Family Act	– National Strategy for Youth (2015–2025) – Strategy for Youth in the Republic of Serbia (2023–2030) – Strategy to Encourage Childbirth

	Institutional background	Basis of the family policy	
		Laws	Strategies
Slovenia	– Council for Children and the Family of the Republic of Slovenia – Housing Fund of the Republic of Slovenia – Ministry of Labour, Family, Social Affairs, and Equal Opportunities	– Constitution – Family Code – Parental Protection and Family Benefits Act – Exercise of Rights from Public Funds Act – Long-Term Care Act	– Strategy for a Long-Lived Society – Resolution on the National Housing Programme 2015–2025
Slovakia	– Ministry of Labour, Social Affairs, and Family of the Slovak Republic	– Family Act – Labour Code – Social Insurance Act	– National Strategic Framework for Family Support and Demographic Development until 2030

3.2. Family policy measures in Central European countries

This subchapter provides a systematic review of the family policy measures that have emerged in Central European countries in recent years to alleviate and address demographic challenges. The most effective way to compare and synthesise family policy measures is to group them. According to this methodology, family policy measures can be categorised into the following groups: a) Family support benefits; b) Other tax and contribution benefits ; c) Home creation; d) Family and work allowances; e) Generational policy; f) Family-friendly provisions in the pension system; g) Social security institutions supporting families.

That said, the country reports show that not all family policy packages and action plans use this classification. Some countries (e.g. Hungary) have a more detailed list in their Action Plan, although these elements can also be placed into the categories identified above. Therefore, for the sake of clarity, this subchapter does not summarise the specificities and essential elements of each country's measures separately. Conversely, this subchapter places and discusses the relevant measures of each country following the classification above to synthesise them.

It is worth noting that all of the measures discussed above are essential elements of family support. That said, certain family support benefits, other tax and contribution benefits, home creation measures, family and work allowance institutions, and certain elements of generational policy have been the main contributors to the

increase in birth rates. For this reason, a comparative analysis of these measures is provided below. Detailed analyses of the other measures can be found in the country reports themselves.

3.2.1. Family support benefits: Maternity and paternity allowances

Within the classification framework, the category of *family support benefits* includes the most diverse range of benefits as it incorporates child welfare measures, maternal and parental benefits, and childcare allowances.

In the matter of *maternal and parental benefits*, there are legal instruments that *require social insurance* and others that are available to everyone in the given country, regardless of whether they possess social insurance.

One of the most important legal institutions in this category is *maternity leave*, which is available in every Central European country, albeit at varying lengths. In *Croatia*, maternity leave is available until the child turns six months old. It can be followed by parental leave for employed or self-employed parents at 6 months for each of the first two children and 30 months for the third and subsequent children.[72] Similarly, *Hungary* provides for maternity leave of up to 168 days.[73] In *Slovakia*, the duration of maternity leave is 34 weeks, which is almost 8 months. However, single mothers are entitled to maternity leave of 37 weeks and women giving birth to two or more children simultaneously are entitled to maternity leave for 43 weeks.[74] In *Slovenia*, mothers are entitled to 105 days of maternity leave, of which 15 days are compulsory.[75] According to the *Serbian* law, maternity leave lasts for three months with an additional nine months of leave for childcare.[76] In *Poland*, all pregnant contract employees are entitled to maternity leave of 20 weeks, 6 of which can be taken before the due date. In the case of a multiple birth, maternity leave is extended.[77] In *Czechia*, maternity leave is 28 weeks long, and extended to 37 weeks in the event of the birth to two or more children at the same time.[78]

Most of the countries provide *paternity leave* in addition to maternity leave. In *Hungary*, after the birth of a child, fathers are entitled to 10 extra days of paid leave, which are reimbursed by the state to the employer. A similar regulation has been implemented in *Croatia*, where employed and self-employed fathers are entitled to paternity leave for a child from birth until the six months of age.[79] Paternity leave is 10 business days for one child and 15 business days for twins or a multiple birth. Fathers are entitled to 15 calendar days (11 working days) of leave in *Slovenia*. In

72 Korać Graovac, 2024.
73 Sápi, 2024.
74 Garayova, 2024.
75 Kraljić, 2024.
76 Kovaček Stanić, 2024.
77 Andrzejewski, 2024.
78 Králíčková, 2024.
79 Korać Graovac, 2024.

Slovakia, men are entitled to the same amount of leave as the mothers, provided that they are caring for the newborn child instead of the mother.[80] A similar regulation can be found in *Serbia*, where fathers can take leave if the mother is not able to care for the child. It is possible for parents to share childcare leave under certain conditions.[81] *Czechia* also regulates paternity leave.[82]

In *Croatia*, only those who have a valid status in the mandatory health insurance regulated by the Croatian Health Insurance Fund are entitled to family support benefits. Foreign nationals with permanent residence in Croatia, asylum grantees, and persons under subsidiary protection have the same rights as Croatian nationals.[83]

In *Hungary*, the infant care allowance (CSED) childcare allowance (GYED) and child raising allowance for large families (GYET) are insurance-based benefits. The additional childcare allowance (GYES) has a lower amount and is not insurance-based.[84]

3.2.2. Other tax and contribution benefits

Most Central European countries have attempted to encourage childbearing via different taxation initiatives. The *Czech* country report makes explicit reference to the consequences of this approach. The frequent changes in legislation have made this area non-transparent. In addition to the legal uncertainty that this can create, this non-transparency poses a problem for families, especially those with many children or in difficult financial circumstances, even if Czech tax law also acknowledges the *family tax bonus system*.[85]

In the *Croatian* income tax system, the *personal child tax allowance* is a benefit reducing the tax base of taxpayers with dependent children. The amount of the child tax allowance increases gradually for each additional child. It is also important to note that the parents of a child can share the full amount of the tax credit, which can reduce the tax base for both of them. The legislator prescribes the requirement of the tax allowance, which is available to taxpayers with dependent children who have income from employment or self-employment.[86]

In *Slovenia*, the so-called *child tax allowance* (deduction) is granted to parents for each dependent child up to the age of 18 and for children up to the age of 26 who are in continuous or intermittent education for up to one year at the secondary, higher, or tertiary education level and who are not in employment or self-employment and who have no or less income to support themselves than the amount of the special allowance for each other member of the family. Slovenia has developed a unique

80 Garayova, 2024.
81 Kovaček Stanić, 2024.
82 Králíčková, 2024.
83 Korać Graovac, 2024.
84 Sápi, 2024.
85 Králíčková, 2024.
86 Korać Graovac, 2024.

solution to facilitate travel-related costs. A parent or other person who owns or uses a vehicle classified in the second toll class B under the law governing toll roads and tolls and who, at the time of the last registration of the vehicle, was entitled to and exercised the right to a 50% reduction in the annual charge for large families for that vehicle (four children up to the age of 18) under the law governing the annual charge for the use of vehicles on the road, are entitled to a one-off grant for the annual vignette for that vehicle of the difference between the price of the annual vignette set for the second toll class A in the law governing toll roads and tolls.[87] *Motor vehicle tax* is not payable on vehicles purchased for the transport of families with three or more children, namely, one motor vehicle with five or more seats purchased no more than once in any three years by one parent in a family with three or more children under the age of 18. Motor vehicle tax is also not payable on vehicles purchased for the transport of disabled persons, purchased no more than once in any five years by disabled persons' organisations and by persons who hold a driving license or who require the assistance of other persons who have a driving license (including children who need special care and protection).[88]

Serbian law provides some special provisions in terms of tax and pension policies and family benefits to improve the lives of minors and persons with disabilities. In Serbia tax law includes provisions for the *exemption from income tax*, which impacts family maintenance.[89]

In *Slovakia*, the so-called tax bonus system has been instituted to help families. Under this system, employees have the right to claim a tax bonus for each dependent child residing in their household. The tax bonus can be claimed by the employee from the month of the child's birth until the month in which the child turns 25, but only if the child is consistently engaged in full-time study at a secondary school or university. The monthly child tax bonus amount varies based on the age of the dependent child (EUR 140 up to the age of 18, and EUR 50 for children over 18 years of age).[90]

In the *Romanian* system, all children and young people between the ages of 18 and 26 (if they are engaged in education) are exempted from health insurance contributions.[91]

Since 2020, *Hungarian* mothers with four or more children *benefit from a full personal income tax exemption* under the Family Action Plan. The Hungary country report also notes the reinstatement of *family taxation (family-friendly taxation)*. Family-friendly taxation is premised on the notion that families of different compositions but similar incomes should have the same standard of living after taxation. Therefore, families with more children (i.e. large families) should be taxed less than

87 Republika Slovenija Gov.si, 2023a.
88 Kraljić, 2024.
89 Kovaček Stanić, 2024.
90 Garayova, 2024.
91 Florian and Floare, 2024.

families with fewer children or without children on the same income. In addition to tax allowances depending on the number of children and a full tax exemption for mothers of four or more children, there is a *tax allowance for first-time married couples*, which newlyweds are entitled to for two years.[92]

Table 4. Summary table of the family-friendly taxation schemes[93]

Country	Is there family-friendly taxation?	Most important elements of the family-friendly taxation
Croatia	✓	– Personal child tax allowance: The amount of the child tax allowance increases gradually for each additional child
Slovenia	✓	– Child tax allowance – Motor vehicle tax
Slovakia	✓	– Tax bonus system
Serbia	✓	– Exemption from income tax in line with family maintenance
Hungary	✓	– Full personal income tax exemption for mothers of at least four children – Family taxation: large families should be taxed less – Tax allowance for first-time married couples
Czechia	✓	– Family tax bonus system

3.2.3. Home creation

Creating a family home is a key to ensuring that couples who want to have children feel safe and secure themselves and for their future children. According to the *Slovenian* country report, the State is responsible for creating opportunities for citizens to acquire adequate housing, with international documents stipulating that adequate housing is a fundamental human right.[94] The *Polish* country report suggests that the provision of housing and the proper management of the housing market significantly promote the desire to have children.[95] In principle, the governments of several Central European countries recognise supporting the ability of couples to create a home as one of the key elements of population growth. Therefore, it is

92 Sápi, 2024.
93 Source: Author's own work.
94 Kraljić, 2024.
95 Andrzejewski, 2024.

important to ensure that the couple's desire to have children is not hindered by the fact that they do not own property suitable for having children. The importance of the family nest and public assistance to obtain it has thus been recognised by many countries. The following subchapter discusses the specificities and main conditions of the countries that provide support for home creation. However, this approach faces an issue insofar as couples can take advantage of home creation benefits as long as they are of childbearing age, that is, as long as the authorities of the country can actually and realistically expect population growth from the assistance of home creation programmes.

Per the country reports, countries can be divided into three main groups according to their attitudes towards the importance of home creation and home ownership.

The first group (Romania, Czechia, Slovakia) includes countries where the specific status of the family home is emphasised by private law, but where there are no explicit demographic-oriented home creation programmes.

The second group (Serbia and Poland) of countries offer solutions via formal public instruments promoting home creation, but these primarily involve collateral subsidies. Common examples include preferential interest rates for loans and credit and tax allowances.

The third group (Hungary, Croatia, Slovenia) includes countries where couples are entitled to state-subsidised loans and direct state support in exchange for having children, facilitating the demographic reconstruction of society.

Ad 1) According to the country reports, the family home enjoys special legal protection in most Central European countries, primarily via family law provisions. In *Romanian* law, the family home has a special legal status, which is only available to married couples and for their main residence and not a secondary dwelling. A rented house or apartment can be designated a family home.[96] As the *Czech* report shows, the importance of the family home and the definition of its status is particularly evident in the event of divorce and the provision of accommodation for minor children.[97] Based on survey data, the *Slovak* report notes that, on average, people are having one less child than they would like to have a tendency that can be traced back to the family's financial and housing situation.[98]

Ad 2) To facilitate home creation, some countries have implemented tax reimbursement provisions (e.g. Serbia) and sought to control interest rates on home purchase loans (e.g. Poland).[99] The latter is true of the *Serbian* system, where a person is entitled to reimbursement of value added tax when purchasing their first dwelling. Serbian nationality and a residence in Serbia are required for such reimbursement.

96 Florian and Floare, 2024.
97 Králíčková, 2024.
98 Garayova, 2024.
99 Andrzejewski, 2024.

According to the Serbia country report, this measure is particularly useful for the young persons and families, as it is available for the first dwelling.[100]

Poland's 'Demographic Strategy 2040' includes many points on the issue of housing, including a low interest rate (2%) on house purchases.[101]

Ad 3)Regarding the importance of the family home, *some countries have special home creation programmes* per specific financial support (e.g. Hungary, Slovenia, Croatia).

Croatia has implemented a complex solution involving an exemption from real estate tax for the first home and a 'proper housing care programme'. The housing loan subsidy is a housing care scheme under which the state contributes to the repayment of a part of a housing loan taken out for the purchase of a house over a five-year period. The support period is extended by two years for each child born during the support period. The grant is extended for a further year for each child the applicant has at the time of applying for the loan.[102]

In *Hungary*, the system of home creation subsidies, known collectively as CSOK (family home creation subsidy), has undergone reform since 2014. CSOK has a specific demographic objective: increasing the propensity to have children. Since 2016, the support scheme has been significantly expanded and its administration simplified. CSOK provides up to HUF 10,000,000 (approximately EUR 26,146) if the pair have three or more children, or if they are planning to have three or more children if they are building or buying a new home. An essential element of the CSOK is that it is actually a loan for up to two children. Once the couple has a third child, the CSOK is considered a free state subsidy. In order to support the countryside, on 1 July 2019, the Village CSOK was introduced to provide favourable conditions for the purchase and renovation of housing in disadvantaged settlements with a population of less than 5,000. On 1 January 2024, the amount of the Village CSOK was increased by 50%.[103]

Slovenia also has a separate policy regarding home creation. The legal institutions of Slovenia's Resolution on the National Housing Programme 2015–2025 target a broad range of beneficiaries, including young people, young families and single-parent families, large families and single-person households over 65 years of age, persons with disabilities, and persons in complex social situations. As the Slovenia country report notes, young people have fewer opportunities to become independent and acquire independent housing, often leading them to postpone the decision to start a family. The National Housing Programme intends to renovate the housing stock and build new housing in areas where there is the greatest need by providing long-term loans with favourable interest rates and aid via the payment of loans.[104]

100 Kovaček Stanić, 2024.
101 Andrzejewski, 2024.
102 Korać Graovac, 2024.
103 Sápi, 2024.
104 Kraljić, 2024.

Table 5. Concrete measures of home creation allowances[105]

Country	Nature of the allowance	Most important elements of the legal institution
Hungary	– CSOK – Village CSOK – CSOK Plus	– Approximately EUR 26,146 for married couples building or buying a new home if the pair have or are planning to have three or more children – Until the birth of two children, the allowance is a loan; after the birth of a third child, it is a free state subsidy
Serbia	– Reimbursement of value added tax	– Requirements: Serbian nationality and residence in Serbia; only for the first dwelling
Poland	– Interest rate of housing loans	– A low controlled interest rate (2%) on house purchases
Croatia	– Subsidising interest rate of housing loans – Tax exemption for the first home	– Housing care programme
Slovenia	– National Housing Programme 2015–2025	– Wide range of beneficiaries – Renovation of the housing stock – Building of new housing in areas – Providing long-term loans with favourable interest rate – Aid in the payment of loans

3.2.4. Family and work allowances

Work–life balance is particularly important for having children and starting a family. However, the way in which countries approach the work–life balance requirement varies. Here, the most important questions are: a) How much is work–life balance promoted?; b) What actual measures are taken to achieve a work–life balance?; c) Is there an actual legal basis for it or is it is 'only' good practice performed by some employers who recognise the importance of this factor?

As far as the work–life balance is considered, typical elements of national legislation include parental leave, leave for the birth of a child, flexible working hours, and part-time work.

In general, all of the countries included in this book provide parental leave for parents. As the provision of *flexible working hours* and *part-time employm*ent is more

105 Source: Author's own work.

likely to have a demographic impact and increase the propensity to have children, this subchapter focuses on these measures. The notion of more flexible forms of work encompasses the right to shorter working hours and assistance to facilitate the reconciliation of work and family commitments.

In 2023, *Poland* boasted the lowest unemployment rate in Europe and the third lowest in the world after Japan and Korea. Between 1990 and 2015, unemployment was a structural problem in Poland. The country report refers to the good experience of some countries, like France, regarding the provision of flexible employment for women and the demographic impacts thereof. With this in mind, Poland's 'Demographic Strategy 2040' emphasises the need to reform labour law, particularly in terms of flexible working, which can ensure and promote the stability of parental employment.[106]

In *Croatia*, employed and self-employed parents are entitled to maternity leave, parental leave, and *part-time work*. Employees who are pregnant, have given birth, or are breastfeeding are entitled to leave, days off for prenatal check-ups, and *breaks for breastfeeding*. Employees are entitled to leave or part-time work if the child requires more care due to health reasons or to care for a child with severe developmental disabilities. Employed parents are also entitled to suspension of employment until the child turns three.[107]

In the *Slovenian* legal system, parents who have a child under the age of three have the right to work as a part-time employee, rather than a full-time worker. Nevertheless, according to the Slovenian country report, women are mainly employed full-time and Slovenia has one of the highest employment rates in the EU. At the same time, the country report highlights an increase in the number of mothers in part-time work, which has had a negative impact on women's position in the labour market. The labour laws of several countries include provisions for breastfeeding breaks. This provision is available in both Slovenia and Croatia. However, the Slovenian report notes that the provision of breastfeeding breaks has not proven particularly important in Slovenia as only a small number of eligible women take advantage of it. This is presumably due to the length of parental leave, which mostly take by mothers.[108]

In *Romania*, breastfeeding employees have the right to two one-hour 'breastfeeding' breaks during worktime per day, until the child is one year of age. These breaks include the travel time to the place where the child is. The Labour Code also allows for the employer to establish individual work schedules for all employees at the request or with the consent of employees, which imply a flexible division of work hours. According to the Romanian Labour Code, flexible working time includes work from home, flexible schedules, individual schedules, and part-time employment.[109]

106 Andrzejewski, 2024.
107 Korać Graovac, 2024.
108 Kraljić, 2024.
109 Florian and Floare, 2024.

The *Hungarian* Family Action Plan also supports family-friendly jobs. Since 2012, both parents can take additional leave for children under the age of 16. After the birth of the child, fathers are entitled to 10 extra days of paid leave. The amendment on 5 extra days of paternity leave entered into force on 1 January 2015, and the provision of 10 extra days of paternity leave entered into force on 1 January 2023. With the introduction of GYED Extra in 2014, it is now possible for mothers to work full-time while receiving benefits, even from the time their child reaches six months of age. In addition, thanks to GYED Extra, a parent who has a child born on or after 1 January 2014 can receive the child benefit while still receiving the benefit for the older child.[110]

According to the *Slovak* country report, Slovakia ranks last in the use of part-time employment among OECD countries. This tendency can be traced back to the lack of real opportunities for part-time employment after parental leave. As a negative consequence, this situation often causes mothers to take up low-skilled jobs because it allows more time to take care of the child, which does not fully exploit their knowledge potential and human capital.[111] As Professor Garay underscores, *'Flexible forms of employment could be beneficial in this sense, and it is one of the key pillars of the Government's Strategic Framework that needs significant improvement by the year 2030'*.[112]

As mentioned above, there are also examples where flexible working hours and actual employee benefits linked to parental status are provided by individual companies to their employees based on their own internal rules. An example of this solution can be observed in *Serbia*, where such best practices can be seen within the by-laws of big companies, most of which are international, such as the 3AP company or the L'Oreal. The former company ensures a so-called 'soft landing' for mothers after returning from maternity leave. For the first two weeks upon returning to work, mothers enjoy a work engagement of 50%, that is, they work for about four hours a day as they get back into the routine of work, catch up with work, and adapt to working while caring for a newborn. In terms of the latter's best practice, L'Oreal provides six weeks of paternity leave.[113]

3.2.5. Generational policy

The system of family relationships and the strength of these relationships impact the treatment of older people in a given society. We know that there are countries, such as Italy and Spain, where close family ties and the role of the elderly in keeping families together are a priority, resulting in the elderly being much more respected in these countries than elsewhere. The well-being and care of the more vulnerable members of the family—especially children and the elderly—is largely dependent

110 Sápi, 2024.
111 Garayova, 2024.
112 Garayova, 2024.
113 Kovaček Stanić, 2024.

on the relationship between the members of the family. At the same time, the state plays an important role in caring for those who cannot rely on family members due to a lack of family or financial means. There are also examples of countries in Central Europe where family and intergenerational solidarity play an important role. This tendency can be observed in *Croatia*[114] or in *Serbia*, for example, where young people are prioritised in society. The *Slovakian* strategy, the National Strategic Framework, emphasises the importance of intergenerational solidarity to protect all family members from poverty.[115]

Countries can be distinguished on the basis of the instruments they use to support and privilege older people and/or young people. Some countries use public law rules, policies, and strategies to give priority to these groups, while others prefer to use private law instruments. The country reports show that generational policy primarily focuses on supporting young people and the elderly, mostly by providing specific tax benefits for the elderly and cultural and educational services for young people. However, generational policy measures vary.

Serbia prioritises young people, as evidenced by the 'National Youth Strategy (2015–2025)', 'Youth Strategy in the Republic of Serbia (2023–2030)', and the former Action Plan. In order to improve the position of the elderly, the Serbian Government adopted the 'National Strategy on Ageing (2006–2015)', which seeks to provide an even better quality of life and improve the position of the elderly in the country.

In *Croatia*, the National Benefit for the Elderly is granted to those meeting certain criteria, including Croatian citizenship, at least 65 years of age, resident in the territory of the Croatia for twenty years without interruption, not a pension beneficiary or an insured person covered by the mandatory pension insurance, and receiving a low amount of monthly income. However, while this is a good idea in principle, the country report shows that only about half of people are able to take advantage of this measure. Recognising this shortcoming, the Croatian government plans to loosen the requirements from 2024.[116]

One of the elements of generational policy in *Hungary* is the introduction of the 'grandmother's pension', known as WOMEN 40, which allows women to retire with a full pension without reduction after 40 years of eligibility (minimum 32 years of employment and a maximum 8 years of childcare), regardless of their age. It is also possible for grandmothers to have unlimited gainful employment in addition to their pension. This opportunity allows to women around the age of 60 to play an active role in caring for their grandchildren or elderly relatives in need for care.[117]

As part of its generational policy (elderly care area), *Slovenia* offers a wide variety of services to help care for the elderly while ensuring access to disposal various forms of institutional care, such as retirement homes and assisted living facilities. To

114 Korać Graovac, 2024.
115 Garayova, 2024.
116 Korać Graovac, 2024.
117 Sápi, 2024.

protect and support the elderly, the government adopted the Long-Term Care Act on the basis of the 'Strategy for a Long-Lived Society'.[118]

The *Romanian* government adopted the Law on Young People no. 350/2006 to prioritise young people and ensure equal opportunities. According to the law, young people will benefit from the provision of more favourable conditions for starting a business and easier access to cultural services (e.g. free access to libraries). There is also specific legislation on financial support for the elderly, namely, Government Emergency Decree no. 6/2009, which established the 'minimum social pension'; the pension is amended every year in view of the public budget. In 2023, social indemnity was approximately EUR 227.[119]

The *Polish* country report notes that elderly people who own land or a house are protected by several economic measures intended to ensure economic stability for the elderly. These regulations contribute to ensuring decent living conditions for the elderly. Such support for the elderly is only available to a small group of people, with the majority of the elderly reliant on insurance or regular pensions via private law (family law, contract law) and the autonomous application of legal instruments rather than public law measures.[120]

Table 6. Most important elements of the generational policy[121]

Country	Elements of the generational policy
Czechia	– A New Approach to Family Policy 2016 – The New Family Policy Strategy 2023–2030
Croatia	– Intergenerational solidarity – Public law instruments – National Benefit for the Elderly
Slovakia	– Strategic Framework: intergenerational solidarity
Serbia	– Public law instruments – National Youth Strategy (2015–2025) – Youth Strategy in the Republic of Serbia (2023–2030) – National Strategy on Ageing (2006–2015)
Hungary	– Public law instruments – WOMEN 40 – Grandmothers can have unlimited gainful employment in addition to their pension

118 Kraljić, 2024.
119 Florian and Floare, 2024.
120 Andrzejewski, 2024.
121 Source: Author's own work.

Country	Elements of the generational policy
Slovenia	– Public law instruments – Elderly care area – Strategy for a Long-Lived Society – Long-Term Care Act
Poland	– Private law institutions: contracts
Romania	– Public law instruments – Law on Young People no. 350/2006 – Government Emergency Decree no. 6/2009

4. The importance of family law principles as basic guidelines that support families, parents, and children in Central Europe

Principles are generally considered the guiding ideas in a field of law. They are not only characteristic of the legislation embraced by that area of law, but also define the basic features of the legislation. Under the expression of basic principles, *Hungarian* civil law understands the guiding ideas of a legal area that both reflect the content and define the basic features of the legislation covered by the given legal area. The principles are particularly important in a changing society, of which we are witnesses, as they are rooted in development and social change.[122] In respect to family law principles, the sociological interpretation of family is broader than the narrow legal definition of family based on marriage, which includes other criteria such as cohabitation and running a household together. The broader definition includes children born out of wedlock and children conceived or adopted. This basic approach is reflected in the content of the family law principles of most Central European countries. [123]

The following subchapter provides a summary of the essential elements of the family law principles of the Central European countries examined in this book: a) The principle of protection of marriage and family; b) The principle of equality between spouses; c) The primacy of the best interests of the child; d) The principle of fairness and protection of the weaker party.

In line with the abovementioned principles, this discussion is guided by several issues and questions. Regarding the *principle of protection of marriage and family*, the sociological approach to the concept of family needs to be considered, particularly in

122 Pap, 1982, p. 22.
123 Sápi, 2024.

terms of whether such protection refers to family based on marriage or in a broader sense. The main issue of the *principle of equality* between spouses is whether it is applicable to all relationships. One of the cornerstones of family protection is the *primacy of the best interests of the child*. Here, the key question is whether the principle of the best interests of the child is only relevant to family law relationships or whether it has a broader interpretation. Similarly, the *principle of fairness and protection of the weaker party* raises the issue of the protection of the family against domestic violence, which can be a transgenerational problem.

Table 7. Summary of the principles of family law[124]

Country	The principle of protection of marriage and family	The principle of equality between spouses	The primacy of the best interests of the child	Principle of fairness and protection of the weaker party	Other relevant and expressly listed principles
Croatia	✓ – Constitution of the Republic of Croatia	✓ – Family Act	✓ – Family Act and other branches of law	Only indirectly among maintenance rules	1. Principle of family solidarity – Family Act
Czechia	✓ – Charter of Fundamental Rights and Freedoms (all forms of family) – Civil Code (Book Two – Family Law)	✓ – Charter of Fundamental Rights and Freedoms – Civil Code (Book Two – Family Law)	✓ – Civil Code	✓ – Civil Code (indirectly)	1. Principle of family solidarity – Civil Code
Hungary	✓ – Constitution – Civil Code (Family Law Book)	✓ – Civil Code (Family Law Book)	✓ – Civil Code (Family Law Book)	✓ – Civil Code (Family Law Book)	

124 Source: Author's own work.

Country	The principle of protection of marriage and family	The principle of equality between spouses	The primacy of the best interests of the child	Principle of fairness and protection of the weaker party	Other relevant and expressly listed principles
Poland	✓ – Constitution – Family and Guardianship Code	✓ – Constitution – Family and Guardianship Code	✓ (As the principle of the good of the child) – Constitution of the Republic of Poland – Family and Guardianship Code	✓ – Family and Guardianship Code – Law on Counteracting Domestic Violence	1. Principle of family autonomy – Constitution of the Republic of Poland 2. The principle of maternity protection – Constitution of the Republic of Poland – Family and Guardianship Code
Romania	✓ – Constitution – Civil Code	✓ – Constitution – Civil Code	✓ – Civil Code – Law No. 272/2004	✓ – Law No. 217/2003	
Serbia	✓ – Constitution of the Republic of Serbia – Family Act	✓ – Constitution of the Republic of Serbia – Family Act	✓ – Family Act	✓ – Family Act	1. Principle of free decision of the childbirth – Constitution of the Republic of Serbia – Family Act

Country	The principle of protection of marriage and family	The principle of equality between spouses	The primacy of the best interests of the child	Principle of fairness and protection of the weaker party	Other relevant and expressly listed principles
Slovenia	✓ – Family Code	✓ – Constitution – Family Code	✓ – Family Code	✓ – Domestic Violence Prevention Act	1. Principle of free decision of the childbirth – Constitution of the Republic of Slovenia
Slovakia	✓ – Constitution of the Slovak Republic	✓ – Family Act	✓ – Family Act	Only indirectly in the Constitution of the Slovak Republic	1. Principle of family solidarity – Family Act

Ad 1) The *principle of protection of marriage and family* appears in the legislation of most Central European countries at both the level of family law and directly in the constitution. It appears in the constitutions of Serbia,[125] Romania,[126] Hungary,[127] Croatia,[128] and Slovakia,[129] and in the Charter of Fundamental Rights and Freedoms as a part of the constitutional order of *Czechia* (all forms of family, not only family based on marriage).[130] In addition to the constitution, as the highest level of legislation, the Family Code or Civil Code of the given country also provides guidelines on this principle.[131] Regarding the characteristics of the regulating system, the official justification of the *Hungarian* Civil Code emphasises that the special principles of the Family Law Book articulate the differences between family relations and business life, which are also significant in other rules of civil law and the Civil Code.[132] The content and main elements of the *principle of protection of marriage and family* are essentially the same across all of the countries examined in this book. The principle is essentially based on the primacy of marriage, typically defined as a *consensual*

125 Constitution of the Republic of Serbia, Art. 66.
126 The Constitution of Romania, Art. 26.
127 Fundamental Law of Hungary, Art. L).
128 Constitution of the Republic of Croatia, Art. 61.
129 Constitution of the Slovak Republic, Art. 41.
130 Charter of Fundamental Rights and Freedoms of Czechia, Art. 32.
131 Králíčková, 2024.
132 For further detail, see: Barzó, 2017, pp. 37-38.

union between a man and a woman. However, several country reports emphasise that the sociological concept of the family is broader than the narrow legal definition of marriage. For example, according to *Serbian* law, protection of the family is understood as the protection of all families based on marriage, non-marital cohabitation, as well as single-parent families, such that children born out of wedlock are regarded as equal to those born in marriage.[133] *Croatian* law also interprets the principle as equally applicable to a marriage, informal extramarital union, and same-sex registered partnerships.[134] The country reports reiterate that the family remains a fundamental and uniquely valuable social institution to the individual. For instance, according to the *Slovenian* report, in 2015, 98% of respondents to a public opinion poll claimed that the family is important to them. Even for young families, the family represents an essential positive value.[135] *Polish* law stresses that while the family is formed on the foundation of marriage, the principle can also be applied to other relations (e.g. multigenerational families, reconstructed families, and cohabitation).[136]

Ad 2) *The principle of equality between spouses* is now a requirement in all civilised countries, and it is included in several international documents. Consequently, it is a significant guiding principle of family law relationships and primarily regulated by the Family Act or Civil Code of respective countries. In some countries (e.g. *Romania, Slovenia, Serbia*, and *Poland*), spousal equality is enshrined in the constitution, as the principal is rooted in international human rights law and the requirement of equality before the law. In the *Polish*[137] and *Czech* legal frameworks, both the Constitution and the Family and Guardianship Code or Civil Code highlight the importance of equality.[138] Equality between a married couple also incorporates the requirements of the principle of parental equality.[139] An important element of the equality of partners is that it is not only meant for spouses, but the relationship of de facto partners and cohabitants.[140] According to *Hungarian* family law, the principle represents the equality of rights and obligations, including the right to make joint decisions in family issues, the provisions concerning the personal and property relations of spouses, and the rules concerning spouses as parents. Equality is ensured in two directions: namely, the marital relationship and in family life. The basic content is that neither spouse has power over the other's person or property, nor can they enjoy privileges in the area of parental custody over the other either during the marriage or upon its termination. The principle also incorporates the following elements:

133 Kovaček Stanić, 2024.
134 Korać Graovac, 2024.
135 Kraljić, 2024.
136 Andrzejewski, 2024.
137 Andrzejewski, 2024.
138 Králíčková, 2024.
139 e.g. Art. 483 of the Romanian Civil Code.
140 See, for example, the Serbian country report.

co-operation and support obligation, joint and independent decision-making rights, and choosing the place of residence.[141]

At the same time, we cannot ignore the *practical problem*—explicitly referred to in the *Croatian* country report—that, despite being a fundamental principle, equality is *not always achieved in real life*. As the author of the aforementioned report notes, on the one hand, data on domestic violence suggest that women are more frequently victims. On the other hand, fathers often complain about discrimination in the event of the termination of marriage and when exercising their right to parental care.[142]

Ad 3) *The primacy of the best interests of the child* is one of the most important guidelines of family law and family protection, as it is protected at the international level within the framework of the Convention on the Rights of the Child. The aim of Art. 3 of the United Nations Convention on the Rights of the Child is to ensure that the rights of the child are applied and respected, with the best interests of the child serving as the primary consideration. Most countries recognise the principle at the national and normative level, although interpretations vary. For example, in the *Hungarian* Civil Code, the principle appears as the 'protection of the interests of children', which is not necessarily the same as 'best interests of the child'. According to country regulations, the principle involves the following elements: a) In family law, the interests and rights of children merit enhanced protection.; b) All children have the right to grow up in their own family; c) If raising a child in his own family is not an option, all possibilities should be explored to find ways for the child to grow up in a family environment and to maintain prior family ties; d) The right of children to grow up in their own families, or alternatively in a family setting, and to maintaining prior family ties may be limited in cases defined by law, under exceptional circumstances and in the best interests of the child.

The principle is expressly listed in the *Romanian* Civil Code and a separate Act,[143] wherein the principle incorporates the child's right to normal physical and moral development, socio-affective balance, and family life, which is linked to the rights and duties of parents.[144] Within the framework of the *Croatian* system, the principle appears at the normative level in family law among other branches of law.[145] *Polish* law emphasises that the 'principle of the good of the child' is a principle of the entire Polish legal system, which is stipulated not only by the Family and Guardianship Code but by the Constitution as well. It also encompasses the requirement that the best interests of the child be considered in all proceedings that directly or indirectly affect the child. However, inappropriate interpretations and the non-functioning of the system have been observed in the practice.[146] In the *Slovenian* law, the principle of the best interests of the child is a fundamental guiding principle in all matters

141 Sápi, 2024.
142 Korać Graovac, 2024.
143 Law No. 272/2004 on the protection and furthering of the rights of the child.
144 Florian and Floare, 2024.
145 Korać Graovac, 2024.
146 Andrzejewski, 2024.

concerning the child as a legal standard. That said, this legal standard is individually adaptable based on the given child's needs.[147] As in other countries, the court must fill in its content based on the circumstances of each specific case. According to the *Czech* Civil Code, the principle of the best interests of the child has gained significance within the framework of the rules of parental responsibility. It reflects to the fact that the child is no longer a passive object of the parents' activities, but an active subject with legally guaranteed rights.[148] That said, in most countries, the principle is a matter of *family law* (as highlighted in the *Serbian* country report[149]) rather than *civil law*, which weakens its application in legal relationships that have an important impact on the life and interests of the child, even if they are not clearly family law relationships. As such, the best interests of the child should be seen as a principle that permeates civil law as a whole, and not just as a principle of family law.

Ad 4) The special role and nature of the *principle of fairness and protection of the weaker party* is reflected in the regulatory system, where it can serve as the basis of special independent acts, or as a particular family law principle, or as indirect guidance. An example of the independent-nature solution can be found in the *Slovenian* system, where a separate act, the Domestic Violence Prevention Act,[150] provides measures to protect victims of domestic violence and gives children special protection.[151] Within the framework of *Romanian* law, there is a special act concerning domestic violence.[152] However, these provisions have a very nuanced approach to family violence, and only an indirect relationship can be observed.

In other countries, the principle is understood as a family law principle enshrined in the Family Code or in the family law section of the Civil Code, as is the case in *Hungary* and *Czechia*.[153] According to *Hungarian* legal theory and practice, although there is a link between the principles of fairness and the protection of the weaker party, these two principles do not necessarily apply to the same situations.[154] The protection of the weaker party protects the person who, on account of his or her situation and circumstances, is less able to represent and assert his or her interests. Who constitutes the weaker party in a given situation can only be assessed in relation to the specific situation. Regarding fairness, the specific circumstances and the fact that the application of the law in a given life situation results in unfairness are relevant. In both cases, the circumstances need to be explored in detail, particularly in view of the fact that in family law relationships, fairness applied to one party can easily lead to unfairness to the other.[155] For instance, in *Serbia*, the protection of the

147 Kraljić, 2024.
148 Králíčková, 2024.
149 Kovaček Stanić, 2024.
150 The decision of the Constitutional Court of the Republic of Slovenia Up-70/15.
151 Kraljić, 2024.
152 Law No. 217/2003 on the prevention of domestic violence, Florian and Floare, 2024.
153 Králíčková, 2024.
154 Sápi, 2024.
155 Szeibert, 2024.

weaker party is a family law principle regulated by the Family Act. According to the principle and the related rules, the weaker party has special rights in a family law proceeding. It also stipulates that the child may initiate action in a dispute over the protection of his or her rights and in a dispute over the exercise or deprivation of parental rights before a court regarding the territory in which the child has residence or a dwelling place.[156]

However, more abstract interpretations can be observed. For instance, the principle appears only indirectly within the provisions of the *Slovak* Constitution, where it stipulates that *'Marriage is a unique union between a man and a woman. The Slovak Republic broadly protects and promotes its good. Marriage, parenthood and the family are protected by law. Special protection of children and minors shall be guaranteed'.*[157] An indirect solution can also be found in the *Croatian* system, where the principle of fairness is not explicitly emphasised in family law.[158]

Ad 5) *The principle of family solidarity* also appears as a relevant principle of family law in some countries—namely, *Croatia*,[159] *Czechia*,[160] and *Slovakia*[161]—where it is linked to the socio-economic role of the family, encompassing all its members indiscriminately, and where its interpretation is reflective of societal values. Contributing to collective well-being should be an inherent value for all individuals, especially within the family, as it represents the fundamental social unit to which one belongs. This solidarity extends beyond financial matters in the eyes of the law. It is also recognised as the keystone of mutual aid and support. There is also a deep connection between the principle of family solidarity and the legal institution of maintenance.

The *principle of the free decision of childbirth* is a unique principle that can be regarded as a human right. This principle is protected by *Serbian* law, with the Constitution of the Republic of Serbia providing for the free decision of childbirth as a human right that can only be restricted on the ground of health protection.[162]

In the *Polish* legal system, the *principle of family autonomy* is of paramount importance to the institutions of the state. However, while this ensures the ability of the family to function freely, it may be the basis of the erosion of the notion of family as a value. Therefore, it is imperative that the principle of family autonomy be interpreted in the right way, particularly insofar as an incorrect interpretation can create problems for societies. Under the Constitution of the Republic of Poland and the Family and Guardianship Code, *the principle of maternity protection* is an obligation of the state.[163]

156 Kovaček Stanić, 2024.
157 Garayova, 2024.
158 Korać Graovac, 2024.
159 Korać Graovac, 2024.
160 Králíčková, 2024.
161 Garayova, 2024.
162 Kovaček Stanić, 2024.
163 Andrzejewski, 2024.

5. The role and regulation of assisted reproductive techniques

'Globally, an estimated 1 out of every 6 people are affected by the inability to have a child at some point in their life. This is regardless of where they live and what resources they have."[164] According to a Word Health Organisation (WHO) report and statistics, infertility affects a relatively high percentage of couples who want to have children.[165] Similar infertility figures can be seen across the globe. Around 17.5% of the adult population is facing infertility. As Dr Tedros Adhanom Ghebreyesus, the Director-General of the WHO, asserted, *'The report reveals an important truth: infertility does not discriminate."*[166] Per the WHO definition, infertility is a disease of the male or female reproductive system defined by the failure to achieve a pregnancy after 12 months or more of regular unprotected sexual intercourse.

In addition to affecting birth rates, infertility has a negative impact on the psychological wellbeing of individuals struggling with infertility. Aleksandra Korać Graovac points out that we can expect to see a rise in the number of infertile couples in the future, underscoring the urgent need for solutions to infertility. The prevalence of infertility among reproductive-aged couples ranges between 12.6% and 17.5% worldwide, with relatively higher prevalence rates in some regions of the Americas, Western Pacific, Africa, and Europe.[167]

On a practical level, as infertility rates increase, so the use of reproductive techniques is becoming more expensive. Moreover, these procedures are rarely 100% successful after the first treatment. Couples typically undergo at least three to four treatments, which is increasingly costly for their wallets. It is also clear that in vitro fertilisation (IVF) procedures have a low success rate. As such, the WHO argues,[168] it is becoming increasingly necessary for countries to provide state aid to help finance human reproductive procedures.

While this complex disease has a negative impact on the psyche and the formation of a family, current medical science already provides several answers and solutions for the treatment of infertility. However, it is necessary to provide an institutional and legal framework that can deal with the problem effectively and facilitate access to the assisted treatment of infertility and birth of desired children. Many of the country reports[169] included in this volume refer to the ethical and religious aspects and dilemmas of assisted reproduction procedures, all of which can be found in the broader literature on assisted reproduction. Assisted reproductive technology

164 WHO, 2023a, p. 5.
165 WHO, 2023b.
166 WHO, 2023a, p. 5.
167 Njagi et al., 2023, p. 2.
168 WHO: 'More needs to be done to: (…) Enhance inclusion of infertility in health policies, services, and financing, and achieve universal access to fertility care for all.' cited in WHO, 2023a, p. 29.
169 E.g. Marek Andrzejewski, Aleksandra Korac Graovac, Gordana Kovacek Stanic.

(ART) for the treatment of infertile couples (or persons) is considered an important biomedical intervention throughout the world.[170]

This subchapters summation focuses on the following core issues:

It is necessary to compare and present the legal background and institutional system and highlight the curiosities.

An essential question is what kind of assisted reproductive techniques are accepted in the given country. This prompts the question of whether posthumous reproduction is allowed and whether single women can take part in such procedures. In this regard, the issue of the permitted or prohibited nature of surrogacy is significant.

It is important to review those measures and instruments—not only the legal ones—that can be used to promote assisted reproductive procedures. Therefore, focus is placed on the financial framework, that is, the costs incurred and the provision of state aid and subsidies for ART. Consequently, the approval of ART by a given country is not only reflected in the legal authorisation or acknowledgement, even in an effective institutional background, but also in the full or partial funding of these technologies.

5.1. The legal and institutional background

Most of the countries examining in this volume regulate ART via multilevel rules. In some cases, there is a separate act on human reproduction, typically linked to a healthcare act. The private law basis of assisted reproduction (i.e. family law relations) can be found in the civil codes or family law acts. Some countries have specific separate laws on medically assisted reproduction; others have no such separate legislation and regulation is fairly fragmented. This subchapter focuses on countries with comprehensive legislation in this area. It first presents the countries with comprehensive regulation of reproductive procedures, before discussing those where regulation is more fragmented.

In *Czechia*, the regulation of assisted reproduction is established by a special act[171] and linked to other health services. This act defines the basic concepts (e.g. assisted reproduction, infertile couple, anonymous donor, mutual anonymity of the donor, the infertile couple, and the child) and conditions for ART (i.e. informed consent), as well as the various restrictions (e.g. age and kinship). In Czechia, regulation of this field is fairly liberal.[172]

In *Serbia*, the Law on Biomedical Assisted Fertilisation[173] is a significant element of the country's family policy and regulates the most important questions of assisted reproduction system as a comprehensive separate act.[174]

170 Njagi et al., 2023, p. 4.
171 Act No. 373/2011 Sb., as amended, on Specific Health Services.
172 Králíčková, 2024.
173 Law on biomedical assisted fertilisation, *Official Gazette of Republic of Serbia* 40/2017.
174 Kovaček Stanić, 2024.

In *Croatia*, the activities connected with medically assisted reproduction are laid down in the Medically Assisted Reproduction Act[175] and connecting regulations. In Croatia, the right to medically assisted reproduction may also be exercised by a *single woman* providing it is supported by medical opinion and the woman is regarded as medically infertile. From an institutional perspective, the National Commission for Medically Assisted Reproduction plays a key role, as does the Croatian Institute for Public Health and the Croatian Health Insurance Fund, which provides financial assistance (see below).[176]

In *Poland*, IVF can only be conducted in a medically assisted procreation centre and may be initiated after other treatments conducted for no less than 12 months have been exhausted. The time limit does not apply if, according to medical knowledge, these treatments do not make it possible to obtain a pregnancy.[177]

Romania has no specific independent statute on medically assisted human reproduction procedures. The regulation is a quite fragmented, with various laws addressing the question from different points of view. Significant legislation includes the Civil Code, the Law on Healthcare Reform, the Law on the Rights of the Patient, and various lower-level regulations (e.g. Health Minister's Order on Therapeutical Transplants and the Health Minister's Order on the Implementation of National Public Health Programmes). Regarding the institutional framework, the Romanian Association for Human Reproduction plays an important role.[178]

Regarding the *Hungarian* legal basis of ART is complex. The most important legal components are the Civil Code, which provides the family law aspects of ART; the Criminal Code, which stipulates the limits and restrictions of the procedures; the Health Care Act and its implementing decree, which regulate the permitted types of ART; and Decree 30/1998 (VI. 24.) on the detailed rules for the performance of specific procedures for human reproduction and for the disposal and frozen storage of gametes and embryos. In terms of the institutional system, most treatments are provided in infertility clinics. The 1729/2019 (XII. 19.) Government Decision on the National Human Reproduction Programme seeks to secure Hungary's demographic stability and ensure equal access to human reproductive procedures.[179]

According to the *Slovak* country report, the legal background of ART in Slovakia is inadequate, incoherent, and beset by internal contradictions. The most important domestic elements of the legal basis are the Measure of the Ministry of Health of the Slovak Socialist Republic No. 24/1983 and Act No. 317/2016 Coll. on Requirements and Procedures for the Collection and Transplantation of Human Organs, Human Tissues, and Human Cells and on Amendments to Certain Acts.[180]

175 The Medically Assisted Reproduction Act (*Zakon o medicinski potpomognutoj oplodnji*), Official Gazette, No. 86/12.
176 Korać Graovac, 2024.
177 Andrzejewski, 2024.
178 Florian and Floare, 2024.
179 Sápi, 2024.
180 Garayova, 2024.

Table 8. The legal and institutional background of ART[181]

Country	Legal basis	Institutional background
Czechia	Act on Specific Health Services Civil Code	
Croatia	Medically Assisted Reproduction Act Family Act	National Commission for Medically Assisted Reproduction Croatian Institute for Public Health Croatian Health Insurance Fund
Hungary	Civil Code Criminal Code Health Care Act and its implementing decree Decree 30/1998 (VI. 24.) on the detailed rules for the performance of specific procedures for human reproduction and for the disposal and frozen storage of gametes and embryos	Infertility clinics National Laboratory for Human Reproduction National Research Centre for Reproductive Methodology
Poland	Law on infertility treatment	Medically assisted procreation centre
Romania	Civil Code Law on Healthcare Reform Law on the Rights of the Patient Lower-level regulations	Romanian Association for Human Reproduction
Serbia	Law on Biomedical Assisted Fertilisation	
Slovakia	Measure of the Ministry of Health of the Slovak Socialist Republic, no. 24/1983 Act no. 317/2016 Coll. on Requirements and Procedures for the Collection and Transplantation of Human Organs, Human Tissues, and Human Cells and on Amendments to Certain Acts	Ministry of Health of the Slovak Republic Institute of Medical Ethics and Bioethics Central Ethics Committee of the Ministry of Health
Slovenia	Infertility Act Criminal Code	Slovenian National Institute of Public Health

181 Source: Author's own work.

5.2. Acknowledged and questionable types of assisted reproductive technologies: The situation of single women, posthumous reproduction, and surrogacy

The approach to procedures and the types of procedures are largely similar across countries, as the same international standards are applied. The two main types of assisted reproduction are *in vivo* and *in vitro* fertilisation, with the latter comprising numerous types in terms of medical treatment.

Artificial insemination is the oldest assisted reproductive technology and constitutes an *in vivo* fertilisation technique. From a historical perspective, artificial insemination is significant because it can be considered the basic method of assisted reproduction. It is available in the contemporary legal environment of the countries examined in this book. *Serbia* regulates insemination with the sperm of the husband, partner, or donor. Insemination with the sperm of the husband or partner is referred to as a homologues procedure, while insemination using a donor's sperm is referred to as a heterologous procedure.[182] This is also the case in Hungary. So-called posthumous fertilisation is not regulated in Serbia.[183]

In vitro fertilisation (IVF) is also regulated and applied in the given countries, where the first IVF babies were generally born in the 1980s. In *Poland*, IVF treatments are allowed for heterosexual pairs (married couples and cohabitants) who provide declarations of consent. However, these statements are not legal binding as their validity is not monitored. This opens up the possibility for single people or same-sexual couples to benefit from IVF procedures. A maximum of six female reproductive cells can be fertilised, unless the recipient is over 35 years of age or fertilising more is medically justified. Destroying embryos capable of normal development is not permissible (Art. 23). At the end of 2020, 122,000 embryos were stored in *Poland* (20,000 more than the previous year). The destruction of embryos capable of normal development incurs a punishment of six months to five years in prison. If a couple does not use all of their embryos, they will be donated to anonymously after 20 years. In-vitro procedures are permitted in Poland and the legal status of children born as a result of these procedures and their relationship with their parents may not be questioned.[184]

In *Serbia*, married or heterosexual partners can be considered the subjects of medically assisted fertilisation procedures, as Serbia does not make provisions for same-sex partnerships.[185] The right to biomedically assisted fertilisation procedures is provided to adult and legally capable women who live alone and are capable performing parental duties in the best interests of the child. Under family law, a child born as a result of the donor insemination (AID) of a woman without a partner would not have a father, as establishing the paternity of a donor is not permitted.

182 Kovaček Stanić, 2024.
183 Kovaček Stanić, 2024.
184 Andrzejewski, 2024.
185 Kovaček Stanić, 2024.

In this case, the child would only have one parent, the mother. In terms of family law, a child's right to have two parents should be considered. If a single woman has access to AID, the right of the child to have two parents would not be respected. On the other hand, single women have reproductive rights, including the right to AID. Whether a single woman has the right to AID or not depends on which of these conflicting rights the legislator of a particular country considers more important: the right of the child to have both parents or the single woman's right to AID. In the United Kingdom, supportive parenting is a legal solution in situations where a woman without partner utilises ART.[186] In Serbia, posthumous fertilisation is not regulated.[187]

In *Croatia*, single women are entitled to ART. However, embryos cannot be used *posthumously* as this would lead to the birth of a child unable to enjoy parental care from both parents.[188]

Romania has not regulated posthumous in-vitro fertilisation, but does permit the use of ART by single women.[189]

In *Hungary*, only ART defined in Act CLIV of 1997 on Health Care are permitted.[190]

The *Slovenian* Infertility Act defines biomedical assisted reproduction procedures, namely, intra-uterine insemination and extra-uterine insemination (the union of egg cells and sperm cells outside the woman's body; the transfer of early embryos into a woman's uterus). A man and woman who are married or cohabiting and are regarded as infertile are entitled to use ART procedures. After the Constitutional Court annulled the Article of the Rules on Compulsory Health Insurance (RCHI), which stipulated that a woman has the right to insemination with biomedical assistance up to the age of 43, the Infertility Act stipulates that a woman must be of an age suitable for childbearing. Slovenian legislation does not allow posthumous fertilisation.[191]

According to *Czech* law, assisted reproduction may be performed on a woman under 49 years of age, based on a written request from the woman and man who intend to undergo this medical procedure together. Significantly, ART procedures cannot be performed on a single woman; only on married couples or de facto couples. While the law does not explicitly prohibit posthumous assisted reproduction, the need for consent effectively prevents it.[192]

The following table summarises how paternal and maternal status is awarded for children born through ART. This topic is closely linked to the issue of surrogacy, which is discussed in more detail in the next paragraph.

186 For a more detailed picture: Kovaček Stanić G., 2014, pp. 151–169. and Kovaček Stanić and Samardžić, 2019, pp. 235–250.
187 Kovaček Stanić, 2024.
188 Korać Graovac, 2024.
189 Florian and Floare, 2024.
190 For further detail, see: Navratyil, 2011, pp. 109-121.
191 Kraljić, 2024.
192 Králíčková, 2024.

Table 9. Summary of the parental status of children born through assisted reproductive technique[193]

Country	Maternal status	Paternal status
Czechia	– Mater semper certa est, the woman who has given birth to the child	– Mother's husband or partner of the opposite sex; written consent is always required
Croatia	– Mater semper certa est, the woman who has given birth to the child	– Mother's husband – De facto cohabitant partner shall provide a statement acknowledging paternity (certified by a notary)
Hungary	– Mater semper certa est, the woman who has given birth to the child	– Presumption based on the reproduction process – If the parents are married: presumption is based on the marriage bond – If the parents are not married: the man who has been involved in a reproductive process with the mother during their partnership shall be considered the father of the child
Poland	– Mater semper certa est, the woman who has given birth to the child	– The husband of the child's mother – A man who has acknowledged his paternity – A man whose paternity has been acknowledged in a court case
Romania	– Mater semper certa est, the woman who has given birth to the child	– The mother's husband, although he can contest the paternity if he did not consent to the procedure – Cohabitation: consent – Cohabitation: judicial establishment of paternity
Serbia	– Mater semper certa est, the woman who has given birth to the child	– The mother's husband (or the mother's partner) is to be considered the father of the child, but written consent is required – In the case of donated semen cells, the paternity of the man who donated the semen cells may not be established

193 Source: Author's own work.

Country	Maternal status	Paternal status
Slovakia	– Mater semper certa est, the woman who has given birth to the child	– The mother's husband (or the mother's partner) is to be considered the father of a child, but written consent is required
Slovenia	– Mater semper certa est, the woman who has given birth to the child	– The mother's husband or partner from cohabitation, provided they have consented to the procedure under assisted reproduction rules – If the child has been conceived with the help of a donor's sperm cell, paternity of the donor may not be established

Surrogacy is not legally accepted in any Central European country. There are minor differences in the way in which countries prohibit surrogacy. While some countries prohibit surrogacy through the concrete regulation of law (direct prohibition), others provide no regulations on surrogacy, thus excluding the possibility of surrogacy by omission (indirect prohibition). Many of the countries examined in this book do not regulate surrogacy in private law (i.e. Family Code and/or Civil Code); rather, they maintain the traditional principle of 'Mater semper certa est', which does not acknowledge surrogacy. However, public laws (i.e. Criminal Code and/or Health Law) expressly prohibit surrogacy.

Polish family law *indirectly prohibits* surrogacy insofar as the law stipulates that the mother of the child is the woman who gave birth to it.[194] Additionally, the invalidity of surrogacy contracts is reflected in the principles of social co-existence and good morals.[195] There is a gap in *Romanian* legislation on surrogacy, which is a grey area. Surrogacy is neither expressly forbidden nor specifically allowed. The fact of motherhood is based on the giving birth. While nursing pregnancy (altruistic surrogacy) is not fully prohibited, there are many obstacles to it and multiple rules negate the legal acknowledgement of surrogacy.[196] In *Czechia*, surrogacy has never been regulated or acknowledged by medical law. However, private clinics provide surrogacy without any legal regulation. It is important to note that civil law also rejects surrogate motherhood as a legal institution, as the Civil Code declares that the mother is the woman who delivered the child. The Civil Code stipulates that adoption is excluded among persons who are relatives in the direct line and siblings 'except for kinship based on surrogate motherhood' (§ 804, CC).[197] Slovak law stipulates the woman who gives birth to a child is recognized as its mother. Any agreements

194 Andrzejewski, 2024.
195 Art. 58 paras. 1 and 2 of Civil Code.
196 Florian and Floare, 2024.
197 Králíčková, 2024.

or contracts contradicting this principle are deemed null and void. However, if there is uncertainty regarding maternity, the court will adjudicate based on factual evidence related to the child's birth.[198]

Direct prohibition can be found in *Serbia*, where the Family Act does not contain any concrete regulations on surrogacy.[199] That said, surrogacy is explicitly prohibited by the Law on Biomedical Assisted Fertilisation of 2017,[200] and performing surrogate motherhood is a criminal offence punishable by imprisonment.[201] A similar method of regulation can be observed in *Croatia*, where surrogate motherhood is prohibited by the Medically Assisted Reproduction Act.[202] The Criminal Code of *Slovenia* also regards surrogacy as a felony, with the Criminal Code stipulating that anyone who illegally carries out the procedure of fertilisation with biomedical assistance using surrogacy shall be imprisoned for up to three years.[203] In *Hungary*, surrogacy is not accepted, as stipulated by the Civil Code through recourse to the 'mater semper certa est' rule.[204] Additionally, a direct prohibition can be found in the Criminal Code under the felony of 'Illegal Use of a Human Body', which stipulates that *'Any person who illegally acquires, sells or trades for pecuniary gain human genes, cells, gametes, embryos, organs, tissues, or a cadaver or part(s) of such, or a deceased fetus, is guilty of a felony punishable by imprisonment not exceeding three years'*.[205]

Table 10. Summary of the regulation of surrogate motherhood[206]

Country	Direct prohibition	Indirect prohibition
Czechia	–	– Civil Code
Croatia	– Medically Assisted Reproduction Act	
Hungary	– Criminal Code	– Civil Code – Healthcare Ac
Poland	–	– Family and Guardianship Code
Romania	–	– Civil Code
Serbia	– Law on Biomedical Assisted Fertilisation – Criminal Code	

198 Garayova, 2024.
199 Kovaček Stanić, 2024.
200 Art. 49/18.
201 On the topic, cf. Kovaček Stanić, 2013, pp. 35–57.
202 Korać Graovac, 2024.
203 Kraljić, 2024.
204 Art. 4:115 of the Hungarian Civil Code.
205 Art. 175 of the Hungarian Criminal Code.
206 Source: Author's own work.

Country	Direct prohibition	Indirect prohibition
Slovakia	–	– Family Law Act
Slovenia	– Criminal Code – Infertility Act	

5.3. The financial framework

Recent research funded by Human Reproduction Programme (HRP) and WHO has examined the costs associated with infertility treatments in low- and middle-income countries.[207] Analysis found that the direct medical costs paid by patients for a single round of IVF are often higher than the average annual income—indicating the prohibitive costs of such treatment for most people around the world. Some countries have turned to the financial support system to promote reproduction. According to the country reports, several countries have reformed their financial support systems over the last two to three years after governments recognised the need to financially support medically assisted reproduction. Broadly speaking, few couples can comfortably cover the cost of medically assisted reproduction procedures.

In *Czechia*, assisted reproduction is covered by the general health insurance system.[208]

In *Serbia*, access to biomedical assisted fertilisation processes have increased since 2020. For couples trying to have their first child, a limitless number of stimulation procedures are available *free of charge* and women under the age of 43 are entitled to *three embryo transfers free of charge*.[209] For the second child, women are entitled to two stimulation procedures and one embryo transfer free of charge.[210]

In *Croatia*, the Croatian Health Insurance Fund covers *four intrauterine insemination* (IUI) and *six IVF attempts*, with an obligation that two attempts must be performed in a natural cycle. Generally, a woman cannot be older than 42 years of age, unless justified by health reasons. In an effort to increase the birth rate, several Croatian cities *co-finance more medically assisted reproduction attempts* in the amount of 40–80 percent of the total costs (e.g. Osijek, Makarska, Split, Sisak, and Umag).[211]

Under *Slovenian* law, the state pays for at least 80% of the value of health care services. If a person does not have supplementary health insurance, they will have to bear 20% of the costs of ART procedures. In the case of IVF, a woman is entitled

207 Njagi et al., 2023.
208 Králíčková, 2024.
209 State Instructions for conducting biomedical assisted fertilisation, *Official Gazette of Serbia* No. 06/2020.
210 Kovaček Stanić, 2024.
211 Korać Graovac, 2024.

to a maximum of six procedures for the first live birth and up to four procedures for subsequent births.[212]

In *Hungary*, the control and institutional background of ART has shifted in recent years.[213] These procedures now receive full social security support, namely, six insemination and five IVF treatment procedures. However, there are groups who are completely deprived of free access, such as women over 45 and those who have already undergone five implantation procedures.

6. Closing thoughts

6.1. Lessons from the relationship between family policy and EU law

The lessons to be drawn from the relationship between family policy and the law of the European Union are the subject of a separate chapter in this volume.[214] Given the crucial role of the substantive law and judicial practice of the EU, it is worth briefly summarising these conclusions here. There are two main areas to focus on: demographic measures that can be implemented through the pension system, and measures that take family status into account. Although this is a matter for EU Member States, the case law of the Court of the Justice of the European Union (CJEU) shows that family policy aimed at promoting population growth can be seriously influenced by EU law and that the CJEU has given a very broad interpretation to the relevant EU provisions.

In the area of demographic subsidies of the pension system, the EU legislation on the prohibition of discrimination between men and women does not allow national legislators to recognise the fact that women usually spend more time raising children compared to men in the respective pension systems. This tendency usually has a negative impact on the pensions of women. This study also found that while the relevant EU legislation provides for the possibility of maternity allowances, the practice of the CJEU strictly limits this possibility to the birth and the weeks following the birth of the child.

The second issue concerns the granting of benefits on the basis of family status. In this respect, the chapter again draws attention to the fact that the practice developed by the CJEU on the basis of primary and secondary EU legislation does not allow for the achievement of demographic objectives, as CJEU practice does consider having children a public interest that would constitute an exception to the prohibition of discrimination. As a result, countries where only spouses can take

212 Kraljić, 2024.
213 Sápi, 2024.
214 Korom, 2024.

advantage of family support benefits will likely find themselves in conflict with the interpretation of the CJEU on the prohibition of discrimination.

6.2. A final conclusion

As a general conclusion to this chapter, it can be established that all of the Central European countries studied in this book have implemented family policy measures aimed at encouraging childbearing.

Table 11. Fertility rate of the Central European countries between 2010-2022[215]

Country	Fertility rate	
	2010[216]	2022
Croatia	1.5	1.4
Czechia	1.5	1.6
Hungary	1.4	1.5
Poland	1.4	1.4
Romania	1.4	1.7
Serbia	1.4	1.5
Slovakia	1.4	1.5
Slovenia	1.5	1.6

Looking again at the fertility data for the last decade, although not consistent or necessarily dramatic, it is clear that fertility rates have increased in the reviewed countries over the last 10 years. Findings suggest that family policies have a positive impact on encouraging childbearing. Several of the Central European countries have strong family policies, such as Slovenia, Hungary, and Croatia, where—as this book shows—some elements of family policy are genuinely family-friendly.

However, we need to recognise that the number of births does not depend on family policies alone. In recent years, several events have had a negative effect on childbearing. In this respect, geopolitics can be understood as playing an important role in the propensity to have children, perhaps even more so than family policy measures. Arguably, had the major events of recent years—such as the COVID-19 pandemic, Russian–Ukrainian war, Israeli conflict, and resulting energy and financial crises—not taken place, the positive effects of family policies may have been

215 Source: Author's own work.
216 WHO, 2014.

much more visible. The sense of insecurity created by these events and their impact on the energy and economic crises, as well as they effect on psychological well-being, should not be underestimated.

Nonetheless, family policy measures are still necessary. Where there are no real family policies, the demographic winter could be much longer and colder. Attention should also be paid to the fact that the effects of family policies are long-term, influencing our evaluations of their efficacy. As the geopolitical situation improves, we can hope for an increase in the number of births and for the demographic winter to give way to spring.

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