Chapter 16

Serbia: Legal Solutions in Family Law to Existing Serious Demographic Problems

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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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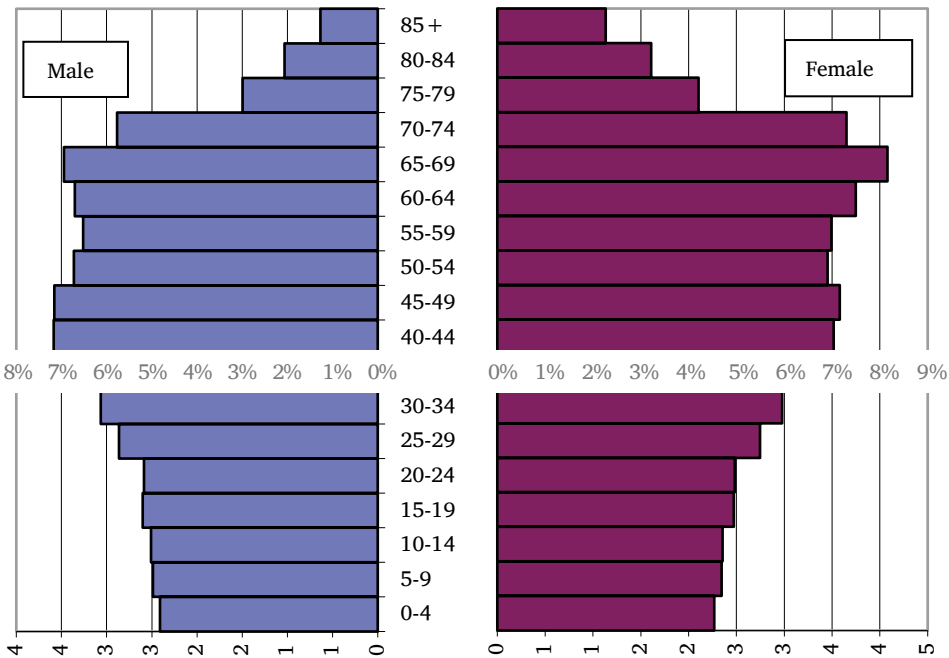
1. Family policy in Serbia[1]

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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