Chapter VII

Slovenia: Parental Care in the Context of the Modern Family

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1. Introduction

The relationship between parents and children is the cornerstone of family law and one area that has undergone extraordinary dynamism and change over the last 100 years. It is a significant area of our lives and, in particular, of the law, since every individual goes through this period, which, following Art. 1 of the Convention on the Rights of the Child[1] (hereinafter, CRC) and Art. 5 of the Slovenian Family Code[2] (hereinafter, FC), generally extends from birth to the age of 18. Changes in child law and the relationship between parents and children have been gradual as, until the nineteenth century, child law was influenced by Roman law. The child was seen as an "object of control by the father."[3] Although children have always been a significant component for the continuation of the family, their position has historically been poor; today, the child is no longer an object but has become a legal subject

1 See Art. 1 of the Convention on the Rights of the Child (Slovene: Konvencija o pravicah otrok): Official Gazette of the RS – MP, no. 9/92): "*For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.*"

2 See Art. 5 of the Family Code (Slovene: Družinski zakonik): Official Gazette of the RS (Slovene: Uradni list RS), no. 15/17, 21/18 – ZNOrg, 22/19, 67/19 – ZMatR-C, 200/20 – ZOOMTVI): "*Under the Code, a child is a person who has not yet reached the age of 18 unless they have previously acquired full legal capacity.*"

3 Dethloff, 2015, p. 275; Oliphant and Van Steegh, 2016, p. 149.

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and thus a bearer of rights—both general rights that belong to all human beings and rights that only children have. Therefore, the present work also briefly presents selected key historical starting points for developing child's law.

Roman law, whose influence is also present in Slovenian family law, shaped the position of children, which then extended until the nineteenth century when significant changes in child's law began. It is characteristic of family law at this time that, at the outset, the father, as the elder of the family, had complete and unrestricted authority (Latin *pater familias*), which was manifested both concerning the wife (Latin *manus*) and the children (Latin *patria potestas*).[4] Over time, these powers of the father or husband weakened, and mutual rights and duties were established; thus, in the earlier period of Roman law, the father had the right to decide on the life and death of his child (Latin *ius vitae necisque*). This right allowed him to determine, for example, the punishment of his child—even on a possible death sentence. However, in the earliest times, before imposing the most severe punishments, he had to consult the council of the house (*consilium domesticum*), which comprised the adult males of the house (including friends). The state also began to intervene in law enforcement through the censor, who punished abuses of paternal authority with a punishment of censure (Latin *nota censoria*), and this had severe consequences. As mentioned above, over time, there was greater control and a stricter view of the possible arbitrariness of the *pater familias*. In the fourth century, the death penalty imposed by a *pater familias* was considered homicide; at this time, in the case of severe misconduct by a child, the father could only report the matter to the authorities and could no longer decide for himself. Apart from the *ius vitae necisque* mentioned above, the father also had the right to sell the child (Latin *ius vendendi*) into *in mancipium* and slavery (Latin *trans Tiberim*). The father's right was limited as he could only sell the child three times. The father also had the right to demand the delivery of the child from third parties (Latin *ius vindicandi*). He, therefore, had the action of *vindicatio filii*; later, the praetor allowed the use of a special interdict for this purpose.[5,6]

In the Middle Ages, children's situation was generally deplorable. They were consistently distinguished between legitimate and illegitimate children, and owing to the influence of the Christian religion, children born out of wedlock were not even recognized as kinship.[7] Initially, any child born out of wedlock was considered an illegitimate child; later, the circle of legitimate children was broadened to include children conceived in a putative or pre-marital union but subsequently born in wedlock as well as children legitimized by subsequent marriage or an act of mercy (e.g., owing to the impossibility of marriage).[8]

4 Romac, 1973, p. 99.
5 Latin *interdictum de liberis exhibendis item ducendis*.
6 Romac, 1973, p. 117.
7 Bubić and Traljić, 2007, p. 23.
8 Neuhaus, 1979, p. 226.

Another significant breakthrough in children's rights also came in 1641 with the Massachusetts Body of Liberties, which advised parents not to choose their children's partners and not to use unnatural harshness against their children. Children also had the right to complain to a state authority if their parents did not comply. However, it should not be ignored that the same source also provided the death penalty for children over 16 who were disobedient to their parents.[9] On the other hand, in the second half of the eighteenth century, France developed the idea that children should be treated differently and need special protection, and in 1881, it also recognized children's right to education.[10]

Another significant milestone in child's law was reached in 1923, when Save the Children International Union (hereinafter, SCIU) adopted a five-point declaration setting out the fundamental conditions that society should adopt to provide adequate protection and care for children. In 1924, the League of Nations, influenced by the SCIU, adopted the so-called Geneva Declaration on the Rights of the Child (hereinafter, Geneva Declaration)—the first international document to recognize children's vulnerability as a source of special rights and protection and to define the responsibilities of adults in five simple principles.[11] The Geneva Declaration also stressed that the child's care and protection is no longer the sole responsibility of the family or community or the individual state but of the world as a whole because "humanity owes to the child the best that it has to give."[12]

With the Second World War, the situation of children deteriorated again. The events of the war left many children without parents; therefore, it was necessary to provide adequate care for these children after the cessation of hostilities. On December 11, 1946, the United Nations General Assembly established The International Children's Emergency Fund (hereinafter, UNICEF), whose primary purpose was to assist all (European) children affected by the war. UNICEF's purpose, however, needed to have a broader scope. Therefore, in 1953, UNICEF became a specialized and permanent UN organization, and its scope was extended to all countries and children needing assistance owing to war-related events, placing particular emphasis on education, health, and nutrition. The acronym UNICEF (today United Nations Children's Fund) has been retained, but the words "International" and "Emergency" have been removed from the organization's name.[13]

9 Rama Kant Rai, n. d., p. 3.

10 Kraljić, 2019, p. 372.

11 The fundamental needs of children were summarized in five principles: "*The child must be given the means requisite for its normal development, both materially and spiritually; 2. the child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succored; 3. the child must be the first to receive relief in times of distress; 4. the child must be put in a position to earn a livelihood, and must be protected against every form of exploitation; the child must be brought up in the consciousness that its talents must be devoted to the service of fellow men.*"

12 Kraljić, 2019, p. 373.

13 UNICEF, n. d.

Just over 10 years later, on November 20, 1959, the United Nations General Assembly adopted the Declaration on the Rights of the Child.[14] Although the text of the 10 principles of the Declaration on the Rights of the Child is not binding, it set a further milestone in recognizing and regulating children's rights, and 1979 was declared the "International Year of the Child." Ten years later (November 20, 1989), the CRC was finally adopted, containing 54 articles regulating the child's civil, economic, social, and cultural rights. Today, the CRC represents a fundamental milestone in protecting the child's best interests. The CRC recognizes children as having all the rights to which they are entitled as human beings, which they enjoy according to their age and maturity.

Slovenia succeeded to the status of a contracting party to the CRC and other international treaties as one of the successor states of the former Yugoslavia. Slovenia accepted, on July 1, 1992, the Act of Notification that entered into force on July 17, 1992.[15] Slovenian legislation aligns with the international standards of children's protection in CRC and other international treaties. In 2017, Slovenia adopted the new FC, which also enacted significant changes in the relations between parents and their children. The FC has also redefined some fundamental concepts, replacing the term "parental right"—which was criticized because it was understood as a parents-centered term in the past[16]—with "parental care."

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

The Constitution of the Republic of Slovenia[17] (hereinafter, CRS) already references the content of children's rights in several articles; thus, Art. 14 of the CRS already provides the constitutional legal basis for the equality of children. Children are guaranteed the same rights and fundamental freedoms as adults according to their age and maturity, irrespective of their national origin, race, gender, language, religion, political or other conviction, material standing, birth, education, social status,

14 Declaration of the Rights of the Child – United Nations General Assembly, November 20, 1959, Resolution 1386 (XIV).

15 Notification of succession in respect of United Nations Conventions and conventions adopted by IAEA (Slovene: Akt o notifikaciji nasledstva glede konvencij Organizacije združenih narodov in konvencij, sprejetih v Mednarodni agenciji za atomsko energijo): Official Gazete of the RS, no. 9/92, 9/93, 5/99, 9/08, 13/11, 9/13, 5/17.

16 See Drnovšek and Markač Hrovatin, 2019, p. 105.

17 Constitution of the Republic of Slovenia (Slovene: Ustava Republike Slovenije): Official Gazette of the RS, no. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121, 140, 143, 47/13 – UZ148, 47/13 – UZ90, 97, 99, 75/16 – UZ70a, 92/21 – UZ62a.

disability, or any other personal circumstance. Whether within or outside marriage, the birth of a child should not be the basis for treating children differently.

Article 41(3) of the CRS gives parents the right to provide their children with a religious and moral upbringing in accordance with their beliefs. Children's religious and moral guidance must be appropriate to their age and maturity and be consistent with their free conscience and religious and other beliefs or convictions. Article 10 of the Freedom of Religion Act[18] (hereinafter, FRA) complements the CRS by giving parents the right to educate their children according to their religious beliefs. In doing so, they must respect the child's physical and mental integrity. A child who has reached the age of 15 has the right to make their own decisions relating to religious freedom.

Article 52(2) of the CRS guarantees children with physical or mental disabilities the right to education and training for an active life in society. This reflects the principle of equality from Art. 14 of the CRS, which stipulates that disability may not be the basis for differential treatment. There is a double qualification of a vulnerable group here as it concerns children and children with special needs.

The state shall protect the family, motherhood, fatherhood, children, and young people and create the conditions necessary for such protection.[19] The family is the fundamental unit of any society, and the child is the central subject that makes up the family. A family may be a family in the narrow sense (e.g., nuclear family) or a family in the broader sense (e.g., foster family, extended family). Motherhood and fatherhood are critical concepts related to child's law or the relationship between a child and their parents. The state ensures that these family law relationships are respected through its protection system. The state's intervention in these relationships must be in accordance with the principle of proportionality and be primarily directed toward protecting the child and their best interests.

The rights and duties of parents are the subject matter of Art. 54 of the CRS. Parents have the right and duty to maintain, educate, and raise their children,[20] and this right and duty may be revoked or restricted only for reasons provided by law to protect the child's best interests. The foundations of the principle of the primacy of parents as holders of the right and duty to maintain, educate, and raise their children are established in Art. 54(1) of the CRS. Only if the statutory prerequisites are met can there be a deprivation or limitation of these rights and duties of parents (see, e.g., Articles 171, 173, and 174 of the FC). Article 54(2) of the CRS, in conjunction with Art. 14 of the CRS, reaffirms the principle of the equality of

18 Freedom of Religion Act (Slovene: Zakon o verski svobodi): Official Gazette of the RS, no. 14/07, 46/10 – odl. US, 40/12 – ZUJF, 100/13.

19 Art. 53(3) of the CRS.

20 See ECLI:SI:VSLJ:2014:IV.CP.3120.2014, December 10, 2014: "*When parents have new children, they take on new responsibilities for their survival, upbringing and education. But they cannot make excuses for having too many children and earning too little, but must do their best to earn enough to support all their children, which is their duty under Article 54 of the Constitution of the Republic of Slovenia.*"

children by birth: children born out of wedlock have the same rights as children born within it.

The freedom to decide whether to bear children is enshrined in Art. 55 of the CRS. The state shall guarantee the opportunities for exercising this freedom and create such conditions to enable parents to decide to bear children.

The CRS provides that children shall enjoy special protection and care and that they shall enjoy human rights and fundamental freedoms consistent with their age and maturity.[21] The CRS guarantees children special protection and care because of their vulnerability and defenselessness. Parents must bear the primary responsibility for this, and the child's best interests must be their primary concern.[22] The principle of the child's best interests, to which the duties of parents correspond, is set out in Art. 56(1) of the CRS and must be respected even if they are divorced. Concern for the safety and upbringing of their children is a constitutional value.[23]

Children shall be guaranteed special protection from economic, social, physical, mental, or other exploitation and abuse. Provisions to give effect to this are contained in numerous legal acts e.g., FC, Criminal Code[24] (hereinafter, CC-1), and Domestic Violence Prevention Act[25] (hereinafter, DVPA). Children and minors who are not cared for by their parents, who have no parents, or who are without proper family care shall enjoy the state's special protection. Many laws regulate their protection (e.g., FC, Provision of Foster Care Act[26] [hereinafter, PFCA], Placement of Children with Special Needs Act[27] [hereinafter: PCSNEA], etc.).

Primary education is defined as a minimal educational standard supplied by states to all people—particularly children—in several international documents and Art. 57 of the CRS. Primary education may be seen as an investment in the child's future and an opportunity for joyful activities, respect, participation, and the fulfillment of ambitions.[28] Therefore, primary education is also compulsory in Slovenia.[29]

21 Art. 56(1) of the CRS.

22 See ECLI:SI:VSLJ:2019:IV.CP.2533.2018, January 17, 2019.

23 See ECLI:SI:VSLJ:2021:VII.KP.9926.2020, August 19, 2021.

24 Criminal Code (Slovene: Kazenski zakonik): Official Gazette of the RS, no. 50/12 – official consolidated version, 6/16 – popr., 54/15, 38/16, 27/17, 23/20, 91/20, 95/21, 186/21.

25 Domestic Violence Prevention Act (Slovene: Zakon o preprečevanju nasilja v družini): Official Gazette of the RS, no. 16/08, 68/16, 54/17 – ZSV-H, 196/21 – ZDOsk.

26 Provision of Foster Care Act (Slovene: Zakon o izvajanju rejniške dejavnosti): Official Gazette of the RS, no. 110/02, 56/06 – odl. US, 114/06 – ZUTPG, 96/12 – ZPIZ-2, 109/12, 22/19.

27 Placement of Children with Special Needs Act (Slovene: Zakon o usmerjanju otrok s posebnimi potrebami): Official Gazette of the RS, no. 58/11, 40/12 – ZUJF, 90/12, 41/17 – ZOPOPP, 200/20 – ZOOMTVI.

28 Committee on the Rights of the Child, 2013, p. 17.

29 See more in Kraljić, 2020, pp. 29–30.

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

Because of the child's vulnerability and sensitivity, special care must be taken to safeguard their best interests, rights, and well-being. The parents play the primary role as holders of parental care; however, where they are unable to do so appropriately, the state should intervene in the parent–child relationship. The state will take measures aimed primarily at safeguarding the child's best interests. Conversely, such measures are considered to constitute an intervention by the state in the autonomy of parental care and, as a consequence, may also limit it. The measures taken by the state have their basis in the CRS and the new Slovene FC as the fundamental family law legal act.

Slovenia also has ratified relevant international treaties. Article 8 of the CRS states that ratified and published international treaties are directly applicable in Slovenia, which is a party to the following international treaties that, by their content, also affect the field of parental care and have also influenced the content of the new FC:

a) 1950: European Convention for the Protection of Human Rights and Fundamental Freedoms[30] (hereinafter, ECHR);
b) 1980: Hague Convention on the Civil Aspects of International Child Abduction;[31]
c) 1989: CRC;
d) 1993: Conventions on Protection of Children and Co-operation in Respect of Intercountry Adoption;[32]
e) 1996: European Convention on the Exercise of the Rights of the Child;[33]
f) 1996: Hague Conventions on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children;[34]
g) 2011: Council of Europe Convention on preventing and combating violence against women and domestic violence[35] (the Istanbul Convention).

The case law of the HCHR has also contributed to developing the understanding of parental care in Slovenia and has made its way into Slovenian case law. The latter is particularly visible through the principle of proportionality,[36] which is also derived from international law that binds the Republic of Slovenia. The principle of

30 Official Gazette of the RS – MP, no. 7/94.
31 Official Gazette of the RS – MP, no. 6/93, 14/12.
32 Official Gazette of the RS – MP, no. 14/99.
33 Official Gazette of the RS – MP, no. 26-82/99.
34 Official Gazette of the RS – MP, no. 24/04.
35 Official Gazette of the RS – MP, no. 1/15.
36 For more on principle of proportionality, see Kraljić and Drnovšek, 2021, pp. 264–276.

proportionality forms the basis for establishing positive obligations for active state action concerning the balance between the interests of society and those of the individual. The state is obliged to intervene and protect the child's interests,[37] and this intervention must always be proportionate; otherwise, the child and parents' rights might be violated.

4. The concept of a parent

4.1. Motherhood

Motherhood is the legal bond between mother and child, established when the child is born. Starting from Art. 112 of the FC, the child's mother is the woman who gave birth to the child. This is an ancient Roman legal presumption of "*mater sempre certa est*," which has survived to the present day, although not explicitly mentioned in the prior Marriage and Family Relations Act[38] (hereinafter, MFRA).

Today, the FC explicitly defines this presumption in Art. 112, and it is a mandatory provision that does not allow for autonomy in determining who will be the child's mother. Although the presumption of maternity was considered irrebuttable in the past, the development of medical science in biomedicine has led to the conclusion that a mother who gives birth to a child is not necessarily their biological mother. A woman expecting a child (the pregnant woman) usually outwardly displays the physical changes in her body that have been historically shaped as signs of pregnancy (e.g., a large belly, a clumsy gait, weight gain, childbirth, and so on). Moreover, we should not ignore the fact that it is medically and legally possible for a person who is recognized as a man to become pregnant and give birth.

Although deviations from the legal presumption of maternity may have occurred in the past (e.g., switching a child in hospital and deliberately switching or abducting a child), with the development of biomedicine, significant deviations from this classical legal presumption have occurred. The development of biomedicine has also led to various assisted reproductive techniques (artificial insemination, in vitro fertilization, egg and embryo donation, surrogacy).[39] Artificial insemination with donated egg cells and surrogacy, where the gestational mother is not necessarily the biological mother, constitute a deviation from maternity legal presumption as the woman expecting a child is not necessarily the child's biological mother.

37 Art. 9 of the CRC.

38 Marriage and Family Relations Act (Slovene: Zakon o zakonski zvezi in družinskih razmerjih): Official Gazette of the RS, no. 69/04 – official consolidated version, 101/07 – odl. US, 90/11 – odl. US, 84/12 – odl. US, 82/15 – odl. US, 15/17 – DZ, 30/18 – ZSVI.

39 See more in Lowe and Douglas, 2007, p. 306.

On the other hand, adoption also constitutes a derogation from the presumption. Through the adoption, the child will be separated from the biological family and, as a legal act, will be given the same status to the adoptive parent as a biological child would have had. The presumption of maternity is distinguished from the presumption of paternity as it does not differentiate whether a child is born within or outside marriage.

The importance of maternity is already enshrined in the CRS as Art. 53(3) provides that the state shall protect maternity and create the necessary conditions for it. This constitutional provision on maternity is complemented by the content of Art. 55 of the CRS, which provides that parents shall be free to decide whether to bear children. The state shall guarantee opportunities for exercising this freedom and shall create conditions that will enable parents to decide to bear children. The Infertility Treatment and Procedures of Medically Assisted Reproduction Act[40] (hereinafter, Infertility Act) and the Health Measures in Exercising Freedom of Choice in Childbearing Act[41] (hereinafter, Health Measures Act) are particularly relevant to the exercise of this freedom. A child's mother is considered the woman who gave birth to the child; from the above, it follows that the birth of a child is sufficient for this legal relationship to arise, and entry into the civil registry merely verifies that relationship.[42] The child must be registered in the civil register immediately after birth. The registration in the civil register is also defined as a fundamental right of the child in the CRC.[43] In addition, Art. 4(1)(4) of the Register of Deaths, Births and Marriages Act[44] (hereinafter, Register Act) supports this right of the child. The civil register records birth data for citizens of the Republic of Slovenia and, in particular, information on the parents (i.e., the mother and father of the child).

4.2. Fatherhood

The child's mother's husband is considered the father of a child born in wedlock according to Art. 113(1) of the FC, and this legal presumption of paternity has its roots in Roman law (Latin *pater est quem nuptiae demonstrant*[45]). While maternity could be linked to birth, which someone usually witnessed, paternity was long considered impossible to establish with certainty. Therefore, to ensure, above all, the child's financial security, the mother's husband was presumed to be the father of a

40 Infertility Treatment and Procedures of Medically-Assisted Reproduction Act (Slovene: Zakon o zdravljenju neplodnosti in postopkih oploditve z biomedicinsko pomočjo): Official Gazette of the RS, no. 15/17 – DZ.

41 Health Measures in Exercising Freedom of Choice in Childbearing Act (Slovene: Zakon o zdravstvenih ukrepih pri uresničevanju pravice do svobodnega odločanja o rojstvu otrok): Official Gazette of the SRS, no. 11/77, 42/86; Official Gazette of the RS, no. 70/00 – ZZNPOB.

42 Hrabar IN Alinčić et al., 2007, p. 133.

43 Art. 7(1) of the CRC.

44 Register of Deaths, Births and Marriages Act (Slovene: Zakon o matičnem registru): Official Gazette of the RS, no. 11/11 – official consolidated version, 67/19.

45 Paulus D. 2, 4, 5.

child born in wedlock.[46] Since marriage was based on monogamy, it was assumed that the mother's husband was the one with whom the mother had most sexual relations.

Therefore, the legal relationship between the child and the father is based on a presumption rather than the actual establishment of genetic paternity. The legal presumption of paternity is based on the probability that the child's mother's husband is also the child's father. The legal presumption of paternity for a child born in wedlock is based on two suppositions:

a) the positive presumption: the husband of the child's mother had sexual relations with his wife—the child's mother—at the critical time, namely at the time when conception could have occurred; and
b) the negative presumption: the wife—the child's mother—did not have sexual relations with another man, namely a man who is not married to her, at the critical time.[47]

The second paragraph of Art. 113 of the FC is a novelty. Under Art. 86 of the MFRA, the legal presumption of paternity was extended to 300 days after the dissolution of the marriage, irrespective of the manner of dissolution. The new FC, however, extends the legal presumption of paternity to 300 days after the dissolution of the marriage only in the case of dissolution due to the death of the mother's husband. In this case, the narrowed legal presumption of paternity (300 days after death) will only be relevant if the death is sudden and unexpected and takes into account the subjective characteristics of the deceased husband, including medical and age characteristics:

The paternity of a child born within the marriage—or within 300 days of the dissolution of the marriage by the death of the husband of the child's mother—shall be established by the birth of the child itself based on a legal presumption of paternity.

Last, with regard to the relationship between the spouses before death, the arrangement is based on the idea of avoiding the so-called mixing of blood (Latin *turbatio aut perturbatio sanguinis*). The legal presumption of paternity is based on the further presumption that, after the husband's death, the wife has entered into mourning (Latin *tempus lugandi*) and has not had sexual intercourse. In the past, a widow could not contract a new marriage before the mourning period had expired. The legal presumption of paternity and the mourning period prevented blood mixing, thereby extending "legal paternity" to the period after the father's death. This was to prevent the child, with whom the wife was already pregnant at the time of her husband's death, from being left without a father. Therefore, the scope of the legal presumption of paternity extended to 300 days after the dissolution of the marriage, either by the death of the mother's husband or by divorce. The new FC has abolished the latter.

46 Cretney, 2000, p. 193.
47 Mladenović, 1981, p. 38.

Another novelty is represented by Art. 114(3) of the FC, which has a dual purpose. On the one hand, it excludes the application of the legal presumption of paternity to a child born 300 days after the divorce or annulment of the marriage; the legislator was guided by the premise that spouses who divorce because of mutually aggravated (hostile) relations do not have sexual relations. On the other hand, it expressly provided that the father of a child born in a marriage entered by the mother within 300 days of the dissolution of the previous marriage is to be considered the mother's husband from the new marriage, irrespective of the reason for the dissolution of the previous marriage.

Article 7 of the CRC provides that a child has the right to know their parents where possible. States parties to the CRC must ensure that this right is exercised under their domestic law and the obligations imposed on them by the relevant international instruments in this field. Article 7 of the CRC is then complemented by Art. 8 of the CRC, which commits states parties to respect the right of the child to maintain their own identity, including family relationships. States parties must ensure, through their legislation, no unlawful interference or, in the event of deprivation, that appropriate assistance and protection is provided to secure the child's identity.

The rights of a child to know their parents and their own identity are also guaranteed and enforced through the legal arrangements for establishing the paternity of children born out of wedlock (i.e., through the acknowledgment or judicial establishment of paternity). The new FC does not speak of "legitimate" and "illegitimate" children as Art. 14 of the CRS states that discrimination based on birth is prohibited. This is also confirmed by Art. 54(2)[48] of the CRS.

However, a difference exists regarding the creation of a legal relationship between the child and the father (i.e., paternity). The father of a child born out of wedlock or 300 days after the dissolution of the marriage by the death of the child's mother's husband is the man who acknowledges paternity or whose paternity is established by a court decision. In both cases, the children are not subject to the legal presumption of paternity. Such child is a child who is "*filius nullius*" at birth.[49]

In the first case, the man who makes the acknowledgment will be considered the father (subject to the requisite conditions established in the FC). This is a consent of the wills since the child's mother must also agree to the acknowledgment. Whether the man who makes the acknowledgment is also the child's father is not examined. The situation is different in the case of paternity by judicial decision, where, at the end of the judicial proceedings, the man whose paternity has been established in the judicial proceedings will actually know whether they are the father or not (which is not necessarily the case if the child is born in wedlock or if an acknowledgment of paternity is made).

48 Article 54(2) of the CRS: "*Children born out of wedlock shall have the same rights as children born into wedlock.*"

49 Gernhuber and Coester-Waltjen, 1994, p. 795.

The paternity acknowledgment and consent to acknowledgment are strictly personal declarations of will and do not prohibit a man who knows that he is not the father of a child from acknowledging that child as his own. The same applies to the mother of a child, who may consent to the acknowledgment of any man with whom she wishes to exercise parental care, irrespective of whether a biological link exists between the man and the child.[50]

It should also be pointed out that it is impossible to acknowledge paternity as long as the legal presumption of paternity is provided.[51] The principle of priority, which favors the legal presumption, applies; therefore, the acknowledgment of paternity is a subsidiary since it may be granted in the absence of a legal presumption of paternity.

5. The concept of a child

Article 1 of the CRC provides that for the purposes of the CRC, a child means every human being under the age of 18 years, unless majority is attended earlier under the law applicable to the child. The prior MFRA did not contain a definition of "child"; still, following Art. 8 of the CRS, ratified and published international treaties are directly applicable in the Republic of Slovenia. The definition of a child in the CRC was binding even without the MFRA's definition. Despite the direct application of the CRC, the new Slovene FC still expressly provided in Art. 5 that a child is a person who has not yet reached the age of 18.

Eighteen years of age is accepted in international treaties and national jurisdictions as the general legal boundary separating a child from an adult. The boundary between child and adult—or between minority and majority—is defined by chronological age, namely the age of 18.[52] The onset of adulthood is thus linked to an objective circumstance[53] leading to so-called "legal emancipation."[54] When a child reaches the age of 18, a legal presumption is established, based on which the child is presumed to be old and mature enough to acquire full legal capacity. This enables the child to enter into legal transactions independently and acquire the rights and obligations arising therefrom. When a child reaches the age of majority, parental

50 See ECLI:SI:VSRS:2020:II.IPS.127.2019, June 5, 2020.

51 Art. 113(1) of the FC.

52 Although the CRC set a uniform threshold separating a child from an adult, the exceptions and the lower age limit (15 under the FC) for acquiring full legal capacity before the age of 18 vary from country to country. Moreover, according to some authors, despite the adoption of the CRC, certain issues relating to the beginning (pre-birth) or end (post-maturity) of childhood remain open and are regulated in different ways (Bainham & Cretney, 1993, p. 249).

53 Kraljić, 2019, str. 60.

54 See more in Kraljić and Drnovšek, 2020, pp. 111–127.

care ceases; consequently, the parents are no longer the child's legal representatives, and they are left with the obligation to maintain the child, provided that the child is in full-time education. The parents have this obligation until the child completes their education but not after they turn 26.

However, the FC provides two exceptions under which a child under the age of 18 can acquire full legal capacity if the prescribed conditions are met. Under the FC and Non-Contentious Civil Procedure Act[55] (hereinafter, NCCPA-1), the emancipation of a child before the age of 18 can only occur based on a court decision in a non-contentious procedure.

The first exception is the marriage of a child over 15 years of age, which the court may, for justified reasons, authorize. The court will permit the marriage if the child has attained such physical and mental maturity that they can understand the meaning and consequences of the rights and obligations arising from it.[56] Therefore, the court will have to determine, on a case-by-case basis, whether the child is given a sufficient degree of physical and mental maturity to understand the meaning and consequences of their rights and obligations. If all prescribed conditions are fulfilled, the court will give them permission to marry before the age of 18 (the so-called "overlooking minority").

The second exception arises when a minor has become a parent and the court grants them full legal capacity in a non-contentious procedure based on a petition filed.[57] Proceedings for full legal capacity may be initiated upon the petition of the child who has become a parent or, with the child's consent, upon a petition filed by the social work center[58].

6. Principles of parental responsibility

The term "parental care" is new in the Slovenian legal system, having been introduced in 2017 by the new FC, which is comparable in content to the term "parental right" in the former MFRA. The change in terminology was necessary as the FC is child-centered and thus also terminologically aligned with contemporary guidelines and developments.

In the Slovenian language, the term for "parental rights" was "*roditeljska pravica*," which originates from the word "*roditelji*" (a word for "parent," but it implies that the person gave birth or is a biological parent of a child) and "*roditi*" (to

55 Non-Contentious Civil Procedure Act (Slovene: Zakon o nepravdnem postopku): Official Gazette of the RS, no. 16/19.

56 Art. 24 of the FC in conjunction with Art. 152 of the FC.

57 Art. 152 of the FC and Art. 71-75 of the NCCPA-1.

58 Art. 71 of the NCCPA-1.

give birth).[59] The use of the term "*roditeljska pravica*" was unsuitable because it implied that only the child's biological parents have this right and not, for example, their adoptive parents (who would not be considered "*roditelji*"). In the Slovenian language, the new term for parental care is "*starševska skrb*," which originates from the word "*starši*," meaning, *inter alia*, "men and women in relation to their child" or "men and women with children."[60] This term has a notably broader scope and covers all persons who may be considered parents to a child and are therefore granted parental care. Another reason why this expression is more appropriate is because some parents understood the word "right" in a somewhat possessive manner, implying that the child is the subject of their rights and—in a way—their property. The new expression is more child-oriented and implies that the parents have not only the right but also obligations to take care of the children and their interests.[61]

The FC provides a definition of parental care in Art. 6, which is further elaborated in later provisions. Parental care thus constitutes the whole of the parents' obligations and rights to create, following their respective capabilities, conditions in which the child's complete development will be ensured. Parental care belongs jointly to both parents. This definition is a derivation of the constitutional provision, which grants parents the right to maintain, educate, and raise their children.[62] Parental care may be revoked or restricted only for the reasons provided by law to protect the child's interests. These constitutional rights and obligations are reflected in the family law provisions that regulate parental rights (now parental care), the right to maintenance, and the right to contact.

The content of parental care is therefore specified in several articles of the FC; however, the basic principle is that parents must follow the child's best interests. The principle of the best interests of the child is a fundamental principle of child law; it dictates that parents must, in all activities relating to the child, look after the child's best interests and raise them with respect for their person, individuality, and dignity.[63] Parents are considered to be acting in the best interests of the child if, considering the child's personality, age, and stage of development and desires, they adequately meet their material, emotional, and psychosocial needs by acting in a manner which demonstrates their care for and responsibility toward a child and by providing the child with appropriate educational guidance and encouragement for their development.[64] State authorities, public service providers, holders of public powers of attorney, local authorities, and other natural and legal persons also have a duty of care for the best interests of the child in all activities and procedures relating

59 See Slovar slovenskega knjižnega jezika (Dictionary of Standard Slovenian Language), ZRC SAZU, available at https.www://fran.si/ (Accessed: April 20, 2022).

60 See Slovar slovenskega knjižnega jezika (Dictionary of Standard Slovenian Language), ZRC SAZU, available at https.www://fran.si/ (Accessed: April 20, 2022).

61 Drnovšek and Markač Hrovatin, 2019, pp. 107–108.

62 Art. 54(1)(1) of the CRS.

63 Art. 7(1) of the FC.

64 Art. 7(3) of the FC.

to them.[65] To develop positive parenting, the state provides the conditions for the activities of nongovernmental organizations and professional institutions.[66] Following Art. 3 of the CRC, in all actions concerning children—whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies—the best interests of the child shall be a primary consideration.

Consequently, states parties to the CRC undertaking to ensure the child with such protection and care as is necessary for their well-being and considering the rights and duties of the parents, legal guardians, or other individuals legally responsible for the child, shall, to this end, take all appropriate legislative and administrative measures. States parties shall also ensure that the institutions, services, and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities—particularly in the areas of safety, health, the number and suitability of their staff, as well as qualified supervision.

The child's best interest is a legal standard to be developed for each child on a case-by-case basis. Although parents have an obligation to care for and protect their children, they have no absolute right to invade a child's privacy. As children grow up, their need for privacy increases. If child-rearing used to be an absolute right of parents, today, it is increasingly becoming a part of the public and professional services. There is a great interest in defining the elements of successful parenting as this can aid parents in helping their children reach their potential and lead fulfilled lives.[67] The concept of good parenting cannot be generic and static as its content may vary from family to family, and the underlying values (moral, educational, religious, philosophical, etc.) distinguish a particular parent or family from others.[68]

However, it should be noted that the state cannot and should not take on the primary role in regulating family relationships as this is a role of parents.[69] The primacy of parental care principle entitles parents to take precedence over all others in their care and responsibility for the child's best interests.[70] Article 135 of the FC provides that parents have the primary and equal responsibility for the child's care, upbringing, and development. This also follows from Art. 8 FC, according to which children enjoy the special protection of the state when their healthy development is endangered and when the child's other interests require it. Parents are the ones who should know their children and their wishes and needs best. It follows from the above that the state (e.g., social work centers, police, courts), through its bodies/authorities, will only intervene in the family relationships if the child's best interests are at stake (e.g., if the parents, as the primary holders of parental care, fail to exercise this).

From Roman law until the end of the nineteenth century, paternal authority (Latin *patria potestas*) prevailed, placing the father at the forefront as the key person

65 Art. 7(4) of the FC.
66 Art. 5(4) of the FC.
67 Scott, 1998, p. 90.
68 Shmueli and Blecher-Prigat, 2011, pp. 787–789.
69 Wardle, 2013, p. 209.
70 Art. 7(2) of the FC.

in the child's care. This legal presumption was based primarily on the fact that the father had the means to support the child.[71] Today, parental care in Slovenia and many other jurisdictions belongs jointly to both parents following the principle of parental equality, which gives parents primary and equal responsibility for their child's care, education, and development. The best interests of the child must be their primary concern, and the state shall assist them in exercising their responsibility.[72] Article 5 of Protocol 7 to the ECHR also guarantees the equality of spouses, who have equal civil rights and consequences for their children both during and after the dissolution of the marriage[73]; however, states may take measures dictated by the children's best interests.

In Slovenia, joint parenting/custody was first established with the amendment to the MFRA-C,[74] which stipulated, in Art. 105, that if the parents do not or will no longer live together, they must agree on the care and upbringing of their common children in accordance with their best interests. As a novelty, it was also made possible by law to agree that they should both have or retain the children's parental rights (under the MFRA). The FC went further by making joint custody the first choice in Art. 151(2),[75] even in cases where the parents no longer live or will no longer live together. As a matter of primacy principle, the parents should reach an agreement on the child's custody; if they fail to do so, the court will proceed based on the legal presumption that both parents—and thus shared parenting—are acting in the child's best interests. This legal presumption will only apply if the court finds that the parents have already shared the parental tasks reasonably before the court's decision and no circumstances disqualify one parent as being unsuitable for the care and upbringing of the child (e.g., mental illness, violence, abuse of the child, etc.).[76]

The principle of joint parenting/custody is the starting point for implementing parental care under the new FC. Parental care is shared by both parents,[77] reflecting the principle of parental equality. Parental care is shared by the parents of a child born in wedlock as well as by those of a child born out of wedlock, and it is also irrelevant whether the parents live together or not. In doing so, the FC has consistently implemented the constitutional provision in Art. 54(2) of the CRS (and international conventions), which guarantees the equality of children born out of wedlock and

71 See more in Šelih, 1992, pp. 16–17; Vučković Šahović and Petrušić, 2016, p. 25.

72 Art. 135 of the FC.

73 See ECLI:SI:VSLJ:2021:IV.CP.98.2021, May 19, 2021: "*From the point of view of the parents' rights, it would be preferable for them to care for and exercise their rights together at all times, even if they are separated.*"

74 Marriage and Family Relations Act (Slovene Zakon o zakonski zvezi in družinskih razmerjih – official consolidated version [ZZZDR-UPB1]): Official Gazette of the RS, no. 69/2004.

75 See Art. 152(1) of the FC: "*Where the parents do not live together and the child is not entrusted to the care and upbringing of both parents, they shall decide by agreement and in accordance with the best interests of the child on matters which substantially affect the child's development.*".

76 Oliphant and Van Steegh, 2016, p. 153.

77 Art. 6(2) of the FC.

children born in wedlock. The new FC has thus gone one step further and established joint parenting as a rule that can only be waived in cases provided for in the FC.

Parental care belongs initially to both parents;[78] however, the court may prohibit one or both parents from exercising individual rights of parental care if the child is endangered. Following the least restrictive measure principle, the measure should interfere as little as possible with the parent–child relationship while ensuring adequate protection. Restrictions on parental care must be based on legitimate grounds and should not be discriminatory.

Parents exercise their parental care consensually. Following the principle of equality, the parents agree on exercising the obligations and rights constituting their parental care. The child's best interests must always be the primary consideration; if they fail to reach an agreement, they may be assisted by the social work center or, if they so wish, by family mediators. However, if they cannot reach an agreement even with the help of the social work center and/or mediators, the court will decide.

7. The rights and obligations of parents and children resulting from parental responsibility

Parental care encompasses all the parent's responsibilities and rights to establish, to the best of their abilities, the conditions that will enable the child's full development. Both parents share responsibility for parental care,[79] and they have the right and responsibility to care for, educate, and raise their children. Therefore, parents are the key persons in the child's life and development; they play a central role as they have priority over all others in their care and responsibility to fulfill the child's best interests.[80] The child's rights represent a correlation with the parents' obligations.

Article 136(1) of the FC provides that parental care comprises the following obligations and rights of parents:

a) to care for the child's life and health;
b) upbringing, protection, and care;
c) supervision of the child;
d) care for child's education;[81]
e) representation;
f) maintenance of the child; and
g) the management of the child's property.

78 Art. 6(1) of the FC.
79 Art. 6 of the FC.
80 Art. 7(2) in conjunction with Art. 135 of the FC—the principle of primacy.
81 See ECLI:SI:VSLJ:2021:IV.CP.906.2021, June 8, 2021: "*According to case law, the question of where a child goes to school and where they will live is a question of the exercise of parental care and must be agreed between the parents; if there is no agreement, the court decides.*"

Parents have autonomy in exercising parental care, but the principle of the child's best interests limits this.[82] As far as possible, every effort is made to preserve the child's family of origin and family environment; however, where parents are unable (e.g., disability), inadequate (e.g., young age), or prevented (e.g., deprivation of parental care) from caring for their child, the state provides them with assistance in exercising their parental care. Thus, state authorities, public service providers, holders of public powers, local authorities, and other natural and legal persons are obliged to look after the child's best interests in all activities and proceedings relating to the child. Only for legal reasons for preserving the child's best interests[83] may this right and obligation be revoked or limited.[84]

Parents' rights and obligations are not set out only in the FC but also in other legal acts.[85] One such legal act is the Personal Name Act[86] (hereinafter, PNA), which stipulates that parents must determine the child's personal name (first name and surname) and register it with any administrative unit no later than 30 days after the child's birth.[87] The parents determine the child's personal name consensually unless one of the parents is unknown, no longer alive, or unable to exercise parental care. In this case, the other parent shall determine the child's personal name. The child may be given the surname of one or both parents, or the parents may give the child a different surname. However, if the child's parents are no longer alive or are unable to exercise parental care, the child's personal name is assigned to the child by the person entrusted with their care, with the consent of the competent social work center (Art. 7 of the PNA).

It is important to note that parental care, the right to maintenance, and the right to contact are independent and separate rights and should be interpreted as such (e.g., the withdrawal of parental care does not affect the parents' obligation to maintain their children).

82 See ECLI:SI:VSCE:2016:CP.506.2016, May 29, 2016: "*Deprivation of parental care must be subject to exceptional circumstances, so as not to violate the constitutional right to family life.*"

83 Art. 54(1) of the CRS.

84 See ECLI:SI:VSLJ:2016:IV.CP.2650.2016, November 9, 2016: "*Child sexual abuse is one of the most serious and rejected forms of violence against a child, and it causes irreparable harm to the child. If the perpetrator is a parent, this constitutes grounds for deprivation of parental right.*"

85 See also Obligations Code (hereinafter: OC) (Slovene: Obligacijski zakonik – Official Gazette of the RS, no. 97/07 – official consolidated version, 64/16 – odl. US, 20/18 – OROZ631), Elementary School Act (hereinafter: ESA) (Slovene: Zakon o osnovni šoli (Official Gazette of the RS, no. 81/06 – official consolidated version, 102/07, 107/10, 87/11, 40/12 – ZUJF, 63/13, 46/16 – ZOFVI-K); Patients' Rights Act (hereinafter, PRA; Slovene: Zakon o pacientovih pravicah): Official Gazette of the RS, no. 15/08, 55/17, 177/20; etc.

86 Personal Name Act (Slovene: Zakon o osebnem imenu): Official Gazette of the RS, no. 20/06, 43/19.

87 Art. 6(1) of the PNA.

8. Sexual education of children and parental responsibility

No systemic sex education has been provided in Slovenian schools since 1985. At that time, the abolition of health education meant that two other curricula of real importance for life were eliminated: hygiene, safety, and with it, first aid.

Experts point out that in Slovenia, sex education in primary schools is not adequately regulated. No existing legislative provisions determine who can provide formal or non-formal forms of sexual education in educational institutions; in practice, this is mainly done by biology teachers in the subject of biology, although some schools involve external providers, most often nurses or other professionals (e.g., the VIRUS Society). Because these sex education programs are voluntary and not systematically regulated, few schools are involved. In addition, the school management has a decisive role in implementing the content delivered by the invited experts.[88]

The VIRUS Project is an educational and health-preventive program that operates within the framework of Slovenian Medical Students' Association. The project is run voluntarily by medical students. The main motive for the implementation of the VIRUS Project programs is the spread of the epidemic of sexually transmitted infections and the need for effective sex education in Slovenian primary and secondary schools. The project's main activity is transferring knowledge and motivation for safe and healthy sex and preventing the spread of sexually transmitted infections, focusing on HIV and AIDS. To this end, several activities are regularly conducted within the project, the main activity of which is peer education workshops on the topic of healthy and safe sexuality. Workshops are held in primary and secondary schools and youth associations throughout the school year, and the providers of the workshops are volunteers—mostly medical students—who are appropriately professionally educated.[89]

9. Detailed issues related to parental responsibility

9.1. General on the representation of the child

Parents are the legal representatives of their children (Art. 145 of the FC).[90] Representing their child is one of parents' fundamental rights and obligations, and it is a broader concept than the conclusion of legal transactions, regulated by Art. 146 of

88 Arula, 2020.

89 See more in Projekt VIRUS, 2011.

90 See ECLI:SI:VSLJ:2022:VII.KP.32793.2020, January 12, 2022: "*The father of the minor victims as prosecutors is their legal representative by law and is entitled by law to act on their behalf and to make pleadings before the court…It is clear from the description of the offense and the contents of the indictment that the father is bringing the indictment as the legal representative of the minor victims as prosecutors, and not as the injured party.*"

the FC. Because of their young age, children are not capable of looking after their rights and interests and, consequently, of representing their interests in legal transactions. Parents have autonomy and equality in representing their children, and the child's best interest is the main guiding principle regarding representation. Parents must act diligently and carefully in their representation. In assessing the diligence and care of a parent, the standard of good stewardship applies.[91]

If something must be served, delivered, or communicated to the child, it can be done by either parent and, if the parents do not live together, by the parent with whom the child lives or the parent named in the court settlement or court decision on joint custody as the parent to be served, delivered, or communicated.[92]

9.2. Restrictions

Parents cannot represent their children in matters of a personal nature[93] or concerning the child's personal rights, even though they are minors. Where the law provides, the child's independent consent is required in cases expressly provided for. The children will have to give their consent if the prerequisites are met. The first presumption is that they can provide this consent and also understand the meaning of the act (subjective presumption); however, some legal acts require an objective presumption, namely a certain age (usually 15 years), in addition to the subjective presumption. For example,

a) Registration of marriage: a minor over 15 years of age must register (together with the future spouse) for marriage with the administrative unit in whose territory they intend to marry. Representation through parents as legal representatives is impossible as this is a personal decision.[94]
b) Art. 24 of the FC provides that a child may not enter into a marriage unless the non-contentious court permits a child who has attained the age of 15 to enter a marriage. The court will permit the child—who has reached such physical and mental maturity that they can understand the meaning and the consequences of the rights and obligations arising from the celebration of the marriage—to enter into a marriage. The legislator has thus set an objective limit of 15 years as a starting point for the possibility of marriage.[95] The subjective criterion is the individual's personal maturity and judgment, which are examined on a case-by-case basis. Parental representation is not possible.[96]

91 Kraljić, 2019, p. 494.
92 Art. 145(2) of the FC; cf. also Art. 139 of the FC.
93 Latin *intuitu personae*.
94 Art. 30(1) of the FC.
95 See ECLI:SI:VSLJ:2019:V.KP.61744.2018, September 10, 2019: "*In the context of assessing whether a witness is privileged, the existence of an extramarital union relationship must be assessed by reference to the time when the witness was questioned. Since the victim was not yet 15 years old at the time of her examination before the examining judge, an extramarital union relationship between the defendant and the victim could not have existed at that time.*"
96 See more in Kraljić and Drnovšek, 2020, pp. 111–127; Novak IN Novak, 2019, pp. 117–118.

c) Acknowledgment of paternity can also only be made in person by a man capable of understanding the meaning and consequences of the acknowledgment.[97] As a result, the new FC is based only on the subjective assumption that the man making the acknowledgment is capable of understanding the meaning and consequences of the given acknowledgment of paternity.
d) Last will (testament) may be made by anyone who is of sound mind and has attained the age of 15[98]. Since a will is a strictly personal legal transaction, in our case, it may be made only by the ward themselves. Parents in the context of legal representation cannot validly substitute the child's will in drawing up, modifying, or revoking it.

9.3. Education

In Slovenia, primary education is compulsory.[99] It is, therefore, an obligation rather than a right. Parents can choose the form of their child's primary education between public school, private school, and home-schooling (Art. 5 of the ESA).[100]

Parents must enroll their children in primary education in the year they turn 6. Parents deriving from Art. 4 of the ESA must ensure that the child fulfills the primary education obligation. Compulsory primary education lasts for 9 years and ends when the pupil successfully completes the ninth grade or fulfills the primary education obligation after 9 years of education.[101]

Parents are involved in all the activities of primary education arising from the ESA, and they may also be fined if they fail to enroll their child in the first grade of primary school or to ensure that the child fulfills the primary education obligation.[102] The aim of caring for a child's education is directed toward the ultimate goal of enabling the child to work and live independently after they reach the age of majority.[103]

97 Art. 116 of the FC.
98 Art. 59(1) of the Inheritance Act (Slovene: Zakon o dedovanju): Official Gazette of the SRS, no. 15/76, 23/78, Official Gazette of the RS, no. 13/94 – ZN, 40/94 – odl. US, 117/00 – odl. US, 67/01, 83/01 – OZ, 73/04 – ZN-C, 31/13 – odl. US, 63/16.
99 Art. 57(2) of the CRS.
100 See ECLI:SI:UPRS:2016:I.U.1412.2016, October 27, 2016: "*In the present case, the transfer of a pupil from a branch school to the parent primary school cannot be regarded as a transfer within the meaning of Article 54 of the Elementary School Act. In the context of the implementation of the principle of the protection of the best interests of the child of a minor who is in the process of being re-schooled for the purpose of educational measures, the rights to the safety and dignity of other children and of the members of the teaching staff and other staff of the primary school, as well as the inviolability of the physical and mental integrity, must also be taken into account, privacy and personality rights of other pupils and teachers and other employees of an institution providing primary education, and the exercise of the legal rights of children to primary education under the Elementary School Act, which are endangered by the actions of a particular child.*"
101 Art. 2 of the ESA.
102 Art. 102 of the ESA.
103 Kraljić and Križnik, 2021, p. 283.

9.4. Medical treatments

Parental care is the totality of the obligations and rights of parents to create, following their abilities, the conditions in which the child's full development is ensured.[104] Parental care, therefore, also includes the obligations and rights of parents, which (among others) relate to the care of the child's life and health.[105] Parents are obliged to take care of the physical as well as the mental health of their children. However, when the child becomes capable of consenting independently to medical treatment or care, the parents' obligation and right to decide on this also ceases.

When a child can consent independently to medical intervention or treatment under the PRA, an interim measure for medical examination or treatment can only be made with the child's consent. Where a child lacks the capacity to consent to a medical procedure or treatment, treatment may only be conducted with the permission of their parents or guardian.[106] The PRA has established a legal presumption that a child under the age of 15 is not capable of consenting unless the doctor, in light of the child's maturity, assesses the child's capacity to do so. The doctor will consult the child's parents or guardian on the circumstances relating to the child's capacity to make decisions for themselves.

A child who has reached the age of 15 shall be presumed to have the capacity to consent unless the doctor assesses that they are incapable of doing so in light of their maturity. In such cases, the doctors shall, as a general rule, consult the parents or guardian concerning the circumstances relating to the capacity to make decisions concerning themselves.[107] A child is therefore capable of deciding if, in light of their age, maturity, state of health, or other personal circumstances, they are able to understand the meaning and consequences of exercising their rights under the PRA.[108]

The Oviedo Convention[109] has not adopted a specific age as a threshold for allowing minors to make their own decisions about interventions. The minor's opinion is considered an increasingly decisive factor in proportion to their age and level of maturity and is therefore primarily taken into account. However, if the minor is legally incapable of consenting to the medical treatment, the parents will be involved in the procedure following the principle of subsidiarity. This standpoint is also taken up in the Slovene PRA.[110]

On the other hand, when parents decide on medical treatment, they usually decide mutually; however, the consent of both parents is required for medical

104 Art. 6(1) of the FC.
105 Art. 136(1) of the FC.
106 Art. 35(1) of the PRA.
107 Art. 35(2) of the PRA.
108 Art. 19(2) of the PRA.
109 Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine – Convention on Human Rights and Biomedicine (Oviedo convention): Official Gazette of the RS – MP, no. 17/98.
110 Kraljić, 2019, p. 555.

treatment involving a higher risk or greater burden or medical intervention likely to have significant consequences for the child. However, consent of both parents is not required if

a) one of the parents is unknown or of unknown residence;
b) one of the parents has been deprived of parental responsibility;
c) one of the parents is temporarily absent and cannot give an opinion in time without risk of serious harm to the child;
d) one of the parents does not fulfill the conditions required for the patient to be able to make decisions for themselves.[111]

Where the parents cannot reach a mutual decision on a surgical or other medical treatment involving a higher risk or more significant burden or on a medical procedure likely to have significant consequences for the child, they may propose that the social work center or mediators assist them. If the parents cannot reach a mutual decision even with the help of social work center or mediators, they may apply to the non-contentious court.[112] For other medical treatments or care that do not involve a higher risk or burden, the parent who is present may give consent; if both are present and do not consent, the doctor shall obtain the consent of the consilium, which will follow the principle of the best interests of the child. If it is not possible to obtain the consent of the consilium, the consent should be obtained from another doctor who has not been and will not be involved in the patient's treatment. The decision on a consent form shall be signed by the parent who consents to the medical treatment or care and by the members of the consilium or the doctor who gave the consent.[113] When other persons decide on their medical treatment, the child has the right to have their opinion taken into account as much as possible, provided that they can express it and understand its significance and consequences.[114]

The court does not need the parents' consent to make an interim measure for medical examination or treatment of a child who lacks capacity to consent to medical treatment or care. The starting point for issuing even this interim order is a demonstrated likelihood of the child's endangerment; the purpose of the interim measure is to prevent harm to the child's physical or mental health and development.[115] Therefore, parental consent for medical examination or treatment is not required in this case, since the aim is to protect the child's best interests. However, where the child is capable of consenting to medical intervention or treatment under the PRA, their consent is required for an interim order for medical examination or treatment. If the child objects to making this interim order, the court will not make it; however, if the child consents to the interim measure, this consent does not extend to the

111 Art. 35(4) of the PRA.
112 Art. 35(6) of the PRA.
113 Art. 35(7) of the PRA.
114 Art. 35(8) of the PRA.
115 Art. 161 in conjunction with Art. 157(3) of the FC.

consent to the medical intervention or treatment itself. This consent will be given by the child, who is competent under the PRA, after the doctor has performed their explanatory duty in the health care institution. However, the child also has the right to refuse the proposed medical treatment or care if they are capable.

An interim measure for medical treatment or care can only relate to a specific medical procedure or treatment. It cannot relate to the whole of medical interventions and medical care as it would be difficult—if not impossible—to demonstrate the child's risk for all interventions in advance; the risk must be preexisting or highly probable. The harm or probability of harm must be the result of an act or omission of the parents or the result of psychosocial problems of the child, manifested as behavioral, emotional, learning, or other difficulties in their upbringing.[116]

However, the court may decide to medically examine or treat a child without the parents' consent or contrary to their decision, where this is strictly necessary because the child's life is in danger or their health is seriously endangered. When a child is capable of consenting to a medical intervention or to medical treatment under the law governing patients' rights, this measure may be conducted only with their consent.[117]

However, emergency medical treatment of a child can also be provided when the parents or guardian refuse it,[118] thus ensuring the protection of the child's best interests.

Slovenia is one of the countries that implemented a mandatory vaccination program for children. In line with Art. 22(1)(1) of the Communicable Diseases Act[119] (hereinafter, CDA), mandatory vaccination for nine contagious diseases (tuberculosis vaccination is no longer mandatory since 2005) has been enacted. The question of whether or not a parent consents to vaccination does not arise in the context of compulsory vaccination as the parent is obliged to vaccinate the child, as mandated by the CDA. The CDA also foresees the possibility of omitting mandatory vaccination only based on health reasons. The doctor must establish reasons for an eventual temporary or complete omission of vaccination before each vaccination by examining the child, having insight into their health documentation and establishing whether some reasons might permanently worsen the child's health. Among the health reasons for the omission of vaccination are

a) allergy to composite parts of vaccine;
b) serious unwanted effect of vaccine after a prior dose of the same vaccine;
c) disease or health status that is incompatible with vaccination.[120]

116 Art. 157(2) of the FC.
117 Art. 172 of the FC.
118 Art. 36 of the PRA.
119 Communicable Diseases Act (Slovene: Zakon o nalezljivih boleznih): Official Gazette of the RS, no. 33/06 – official consolidated version, 49/20 – ZIUZEOP, 142/20, 175/20 – ZIUOPDVE, 15/21 – ZDUOP, 82/21, 178/21 – odl. US; see more in Kraljić and Kobal, 2018, pp. 434–436.
120 Art. 22a(2) of the CDA.

9.5. Decisions about contraception and abortion

The provisions of Art. 55 of the CRS on the freedom to decide on the birth of children regulate a fundamental freedom (not a right), which the state guarantees the possibility of exercising by creating conditions that allow parents to decide freely on the birth of their children.

Starting from Art. 6 of the Health Measures in Exercising Freedom of Choice in Childbearing Act[121] (hereinafter, Childbearing Act), women and men have the right to advice on how they can prevent conception. Prevention of conception is either temporary (contraception) or permanent (sterilization); thus, a woman and a man have the right to be advised by a doctor or to be prescribed by a doctor the means best suited to them for the temporary prevention of conception.

As a general rule, artificial termination of pregnancy (hereinafter, abortion) can only be conducted at the pregnant woman's request. Abortion is possible if it lasts less than 10 weeks.[122]

Pregnant women may also request an abortion of a pregnancy lasting more than 10 weeks. In this case, abortion will be performed only if the danger of the procedure to the pregnant woman's life and health, as well as her future maternity, is lesser than the risk to the pregnant woman or the child from continuing the pregnancy (Art. 18 of the Childbearing Act). If a minor pregnant woman requests an artificial termination of pregnancy, as a general rule, the health organization performing the termination of pregnancy will inform on the procedure the parents or guardian.[123]

9.7. Conflict of interests

The social work center or the court will appoint a so-called conflict guardian in case of a conflict of interests. Anyone faced with such a situation must immediately inform the court or social work center. The interests of the legal representative and the child in conflict are assessed according to the circumstances of the case.[124]

If there is a conflict of interest, parents/guardians (as legal representatives) cannot represent their child/ward because of this as they cannot appear in a dual role: on the one hand, representing their own interests in a dispute or proceeding, and on the other hand, representing the interests of their child/ward. The purpose of appointing a conflict guardian is to ensure that the rights and best interests of the child or ward are safeguarded as they cannot do so independently. The appointment

121 Health Measures in Exercising Freedom of Choice in Childbearing Act (Slovene: Zakon o zdravstvenih ukrepih pri uresničevanju pravice do svobodnega odločanja o rojstvu otrok): Official Gazette of the SRS, no. 11/77, 42/86, Official Gazette of the RS, no. 70/00 – ZZNPOB.

122 Art. 17 of the Childbearing Act.

123 Art. 22(2) of the Childbearing Act.

124 ECLI:SI:VSLJ:2021:IV.CP.627.2021, May 7, 2021.

of a conflict guardian ensures that an objective and impartial person represents the child or ward. The court or social work center will therefore appoint the conflict guardian

a) to a child over whom the parents exercise parental care, if their interests conflict;
b) to a ward, if the interests of the ward and their guardian conflict;
c) to any child, where the interests of children over whom the same person has parental care conflict;
d) to any person where the interests of persons having the same guardian conflict.[125]

9.8. Cyberspace tools

The Slovenian FC does not contain provisions that explicitly address the issue of children's access to cyberspace tools. However, following Art. 35[126] of the CRS, children also have the right to the protection of their privacy and personality rights. The Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and the repeal of Directive 95/46/EC[127] (hereinafter, GDPR) also intervenes in the area of legal protection of children in the online environment. Children merit specific protection regarding their personal data as they may be less aware of the risks, consequences, and safeguards concerned and their rights in processing personal data. Such specific protection should, in particular, apply to the use of children's personal data for marketing or creating personality or user profiles and the collection of personal data concerning children when using services offered directly to a child. The consent of the holder of parental responsibility should not be necessary for the context of preventive or counseling services offered directly to a child (Para. 8 of the GDPR).

Concerning offering information society services directly to a child, the processing of a child's personal data shall be lawful when the child is at least 16 years old. Where the child is below the age of 16, such processing shall be lawful only if and to the extent that consent is given or authorized by the holder of parental care over the child. According to Art. 8(1) of the GDPR EU Member States may provide by law for a lower age for those purposes, provided that such lower age is not below 13 years.

125 Art. 269 of the FC.
126 See Art. 35 of the CRS: "*The inviolability of the physical and mental integrity of every person and his or her privacy and personality rights shall be guaranteed.*"
127 *OJ L 119, 4.5.2016, pp. 1–88.*

10. Parental authority in case of divorce

10.1. General on divorce

A marriage can undergo divorce:
a) by mutual consent, either
   i) in court or
   ii) before a notary,[128]
b) or at the request of one of the spouses.

The district courts are competent to decide on divorce in the first instance.[129] The court will dissolve the marriage in a non-contentious procedure based on a mutual agreement between the spouses if they have reached an agreement
a) on the custody, upbringing, and maintenance of the joint children and their contact with their parents; and
b) if they have submitted the agreement as an enforceable notarial deed
   i) on the division of community property,
   ii) on which of them shall remain or become the tenant of the dwelling,
   iii) and on the maintenance of a spouse who has no means of subsistence and who, through no fault of their own, is not employed.[130]

If one of the agreements that the petitioners must conclude for their marriage to be dissolved under Art. 96 of the FC is absent, the conditions for a divorce by agreement are no longer fulfilled.[131]

10.2. Protection of the child during divorce

Before the court dissolves the marriage, it must determine whether the agreement between the spouses providing for the custody, upbringing, and maintenance of the children and contact between the children and their parents is in the children's best interests. If the court finds that this agreement is not in the children's best interests, it will reject the application for a divorce by mutual consent.[132] This is because the court cannot rule *ultra et extra petitum* in the case of a divorce by mutual consent.

The situation is different in the case of a divorce based on a petition by one of the spouses, whereby the spouse requests a divorce for whatever reason the marriage

128 Spouses can only divorce before a notary if they have no children in common over whom they have parental care. This form of divorce is therefore not discussed in detail. For more on notarial divorce, see Kraljić, 2020a, pp. 157–175.
129 Art. 10 of the NCCPA-1.
130 Art. 96(1) of the FC.
131 ECLI:SI:VSKP:2010:CP.675.2010, June 17, 2010.
132 Art. 96(2) of the FC.

has become unbearable[133]. In this case, the court also examines whether the spouses have reached an agreement on the custody, upbringing, maintenance of, and contact with their children and whether this agreement is in the children's best interests[134]. If the court finds that the agreement is not in the children's best interests, it will not be bound by the claims raised in the divorce petition and may even rule without a claim being raised. It can therefore rule *ultra et extra petitum*, which it cannot do in the case of a divorce by mutual consent.[135]

10.3. Child's residence

Where the parents live separated, they must also agree on the child's place of permanent residence; if they fail to do so, the court will also decide on the child's place of permanent residence in the court order deciding on custody.

Under the Residence Registration Act[136] (hereinafter, Residence Act-1), one parent may declare the child's permanent residence with the other parent's consent; however, the consent of the other parent is not required when declaring the permanent residence of the child if the child's permanent residence is determined by an agreement on the custody, upbringing, and maintenance of joint children or by a decision of a competent court.[137] The establishment of the child's permanent residence is of paramount importance as it also determines the territorial jurisdiction of the court and of the social work center.

10.4. Parental care after divorce

FC promotes joint custody also after divorce. Parental care pertains after divorce to both parents and is exercised, by joint mutual agreement, by both parents in the child's best interests. If the parents do not live together and the child does not live in the custody of both parents, the parent with whom the child lives in custody decides on issues about the child's everyday life. In contrast, both parents decide on issues critical for the child's development by common accord and in the child's best interests.[138] If the parents agree on custody, they can propose a court settlement. The court will examine the content of the proposal for a court settlement *ex officio*.

The line between the day-to-day and the essential issues in a child's life can be challenging. Issues that have a significant impact on a child's life include decisions on their education, profession, major medical interventions, decisions on the child's religious upbringing, taking the child on holiday outside the country of origin, changing

133 Art. 98(1) of the FC.
134 Art. 98(3) of the FC.
135 Kraljić, 2019, p. str. 276.
136 Residence Registration Act (Slovene: Zakon o prijavi prebivališča): Official Gazette of the RS, no. 52/16, 36/21, 3/22 – ZDeb.
137 Art. 5(5)(5) of the Residence Act-1.
138 Art. 151(4) of the FC.

the child's personal name,[139] disposing of assets of significant value, bringing an action to contest paternity, and so on.[140] These matters require the agreement and joint regulation of both parents. The parents are free to reach their own agreement with the assistance of the social work center or mediators. If the parents still disagree on an issue that significantly impacts the child's life, they can turn to the courts, which will have the child's best interests as their main consideration. Issues that affect the child's daily life include deciding on their food, their clothes, and how to spend leisure time, among others. However, the court can assess whether a given circumstance constitutes a significant issue likely to affect the child's life in each case.

However, one parent will exercise parental care alone when the other parent is absent.[141] If one of the parents is no longer alive or is unknown, or if they have been deprived of parental care, parental care will belong to the other parent.[142]

However, if the court finds neither parent suitable for the child's future development, the child may also be awarded to a third party—usually a close relative or a person to whom the child feels a special attachment or to an institution for the child's care and upbringing. When a child is placed in the care and custody of a third party, a foster care relationship is established, the purpose of which is to enable children to grow up healthily with persons other than their parents; to be raised, educated, and develop a pleasant personality; and to be trained for independent life and work.[143] These two measures are exceptions and are only applied by the court when the child cannot live with a parent or if it is contrary to the child's best interests.

10.5. Children's rights to contact or visit a parent

The child has a right to contact both parents, and both parents have a right to contact the child. The child's best interests are ensured through contact (Art. 141 of the FC),[144] which means that there is a legal presumption that the contact secures the child's best interests. Therefore, when deciding whether a child will have contact with a parent with whom they will not live, it is not necessary to prove that the contact is in the child's best interests as this is presumed. However, where proceedings are to be brought to withdraw or restrict contact, for reassignment of the child[145] and for a change of contacts owing to the occurrence of changed circumstances,[146] this legal

139 ECLI:SI:VSKP:2007:I.CP.198.2007, March 6, 2007; ECLI:SI:VSLJ:2010:IV.CP.365.2010, May 12, 2010.
140 ECLI:SI:VSLJ:2016:IV.CP.1685.2016, September 7, 2016.
141 Art. 151(5) of the FC.
142 Art. 151(6) of the FC.
143 Art. 232(1) of the FC.
144 ECLI:SI:VSLJ:2022:IV.CP.344.2022, March 14, 2022: "*There is no doubt that without continuous contact between the father and the child, the latter's best interests are at stake. Since the mother repeatedly prevents contact without good reason, the Court of First Instance was right and justified in imposing a fine and threatening a new, higher fine if she did not immediately cease to prevent and impede contact.*"
145 Art. 141(7) of the FC.
146 Art. 141(8) of the FC.

presumption will have to be challenged. Suppose the legal presumption is rebutted and the court finds that the contact is not in the child's best interests; in that case, the court will withdraw or limit the contact, reassign the child's custody or, because of a change in circumstances, change contact arrangements. Enforcing contact is crucial when the child and parent do not live together as it helps maintain their mutual connection and attachment. Contact also allows the child to know their origins and can impact their overall development. The right of a child to contact is strictly personal and is inalienable and non-transferable; it is linked to the child's closest family relationship. The waiver of the right of access has no legal effect and is not extinguished by its non-exercise, nor can anyone be compelled to exercise contact if they do not wish to do so. The right of contact shall be protected against interference by third parties, and it includes the right to visit the child, the right to take part in the child's upbringing, the right to take the child on holiday, and so on.

Contact is primarily for the child's benefit because it allows them to maintain a connection and attachment to both parents, even when separated. The child's best interests must be the main consideration in implementing contact. To ensure the child's short-term—and, in particular, long-term—well-being, both parents must be able to communicate with each other and behave appropriately despite their separation, so that contact can take place without hindrance or obstruction. The parent to whom the child has been entrusted for care and upbringing, or the other person with whom the child has been placed, must refrain from anything that makes contact difficult or impossible. They must ensure that the child has an appropriate attitude toward contact with the other parent or parents. Anything that makes contact difficult for the other parent must therefore be abandoned, including any influence (conscious or unconscious) on the child that causes them to be reluctant to have contact. The parent with whom the child lives is even obliged to be active since their upbringing must positively influence the child and prepare them for contact. If the child is reluctant to have contact, the parent must help the child establish an appropriate and positive attitude toward contact with the other parent.

In the case of rejection of contact by the child, the court must determine whether the denial is a reflection of genuine resistance on the part of the child or whether it is the result of possible influence (manipulation) by the other parent or a third party (e.g., a grandparent). To determine the (il)legitimacy of the refusal of contact by the child, the court may involve a forensic expert (e.g., a psychologist or a pedopsychiatrician), who will ascertain the (in)authenticity of the child's refusal.

If the court finds that the exercise of contact would not be in the child's best interests, it may withdraw or restrict the right of contact.[147] Since contact ensures the continuity of the personal connection and attachment between the child and the parent with whom the child does not live, a disproportionate restriction or withdrawal of the right of contact may constitute a violation of the child's right to regular

147 Art. 141(6) of the FC.

contact and to have a direct relationship with the parent with whom the child is supposed to have contact.

The court may restrict or withdraw the right to contact from one or both parents who have acquired the right of contact by a court decision or a court settlement if the child is at risk of harm as a result of this access and their best interests can only be sufficiently safeguarded by restricting or withdrawing the right to contact. The court may also decide that the contact shall not be conducted by personal meetings and socializing but in other ways, if this is the only way to safeguard the child's best interests. A decision to exercise supervised contact with the child is only permissible by an interim order under Art. 163 of the FC.

10.6. Child's opinion

In deciding on the custody, upbringing, and maintenance of the child, on contact, on the exercise of parental care, and on the granting of parental care to a relative, the court shall also take into account the child's opinion, expressed by the child themselves or through a person whom they trust and whom they have chosen, provided that the child is capable of understanding its meaning and consequences.[148]

The right of the child to express their opinion is a child's right of choice. The child should not be forced to give their opinion, but this should be their free choice. The child is free to express their views without pressure, and they can choose whether or not to express them. A child should express the opinion without any manipulation, influence, or pressure.[149]

When a child decides to express an opinion, they can do so

a) at a social work center; or
b) in an interview with the child's advocate assigned to them under the provisions of the ZVARCP; or
c) depending on the child's age and other circumstances, in an informal interview with a judge. The judge may include the assistance of a professionally qualified person but always without the presence of the parents.[150]

The position of a confidant person can therefore only be held by a person chosen spontaneously and by the child. This may be a sibling or other relative, a godparent, a teacher, a doctor, a trainer, and so on. The position of confidant is also held by a person with whom the child has come into contact in official proceedings and between whom and the child trust has spontaneously developed and been established (e.g., an expert in court proceedings, a social worker at a social work center, a conflict guardian).

148 Art. 143(1) of the FC.
149 United Nations, 2009, p. 7.
150 Art. 96(2) of the NCCPA-1.

Such a person or advocate can help the child express their views. The court may prohibit the presence of a person if it considers that they are not a person in whom the child has confidence and whom they have chosen or that the participation of that person in the proceedings would be contrary to the child's best interests.[151]

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

The new FC introduced a new institution of so-called "granting parental care to a relative." According to Art. 231(1) of the FC, a court may grant parental care to a relative of a child whose parents are no longer alive if this is in the child's best interests and if the relative is ready to assume custody and fulfill the conditions for a child's adoption. The court may grant parental care to a grandparent for their grandchild, to a brother or a sister for their sibling, to an aunt or an uncle for their niece or nephew, to a niece or a nephew for their (much younger) aunt or uncle, to a cousin for their cousin, or to a relative for their brother's or sister's grandchild. This also includes half-relatives (e.g., half-brothers and half-sisters).[152] The court may only grant parental care to be exercised jointly to married or cohabiting relatives who fulfill the necessary conditions.[153] If persons who were granted parental care jointly later divorce or separate, the court needs to establish whether the granted parental care is still in the child's best interest and either decide on the custody, withdraw either person's granted parental care, or replace a measure with a more suitable one. The relative who will be granted parental care will acquire the same rights and obligations that the child's parents would have and will become the child's legal representative.

A child whose parents are unknown or whose residence has not been known for a year may also be placed for adoption.[154] A child who does not have living parents may also be placed for adoption.[155] Adoption requires the child's consent if they can understand the meaning and consequences of the adoption.[156]

When parental care is withdrawn, the court also decides whether the child should be placed with another person, in foster care, or in an institution and whether they should be placed under guardianship.[157]

151 Art. 96(3) of the NCCPA-1.
152 Kraljić, 2019, p. 823.
153 Art. 231(2) of the FC.
154 Art. 218(2) of the FC.
155 Art. 218(4) of the FC.
156 Art. 215(3) of the FC.
157 Art. 176(4) of the FC.

12. Summary and *de lege ferenda* conclusions

The new Slovenian Family Code has replaced term "parental right" with "parental care," which has its own terminological implications; however, the fundamental aspects of a connection between parents and their children have remained the same. Parental care, under Slovene law, encompasses the obligations and rights of parents concerning care for the child's life and health, upbringing, care and treatment, supervision of the child, and provision of their education, as well as the obligations and rights of parents concerning the child's representation and maintenance and the management of a child's property. The term "parental care" is more pedocentric as it attempts to focus on the parent's obligations, duties, and responsibilities that they have toward their child. However, under Art. 6 of the Slovenian Family Code, parents have the autonomy to create, following their capacities, the conditions for the comprehensive development of a child. Such legal regulation also ensures respect for the principle of proportionality: on the one hand, it gives parents autonomy in the exercise of parental care; on the other hand, it still guarantees that the state will intervene in this relationship if the child's best interests are at stake. The new Slovenian legal regulation can thus be described as adequate.

Another important step forward is that, as a general rule, parental care belongs to both parents jointly, even when the parents are separated. This ensures the principle of parental equality and that the child continues to have both parents. In this way, Slovenia has also followed current guidelines on this issue and has put the child's best interests at the forefront in this case.

Slovenia has, however, left open the possibility of a more modern definition of maternity and paternity, in which it has continued the traditional approach. It should be borne in mind that the development of medicine caused by the traditional presumption of maternity does not always correspond to the reality of the situation, but it will be given in the case of surrogacy and donated gametes. Nor should we ignore the possibility that a person who is legally and medically a man can give birth to a child. These cases represent a deviation from the traditional definition of maternity, which is why some legal systems have already taken steps to deal with those modern family structures. There are, indeed, still few cases of this kind that depart from the traditional definition of maternity. Nevertheless, it is also necessary to consider harmonizing the legal regimes in these cases.

It should also be borne in mind that all countries are confronted with many secondary families where stepfather or stepmother also come into the role. Here, too, some states have taken a step forward and have approached the subject in question. An appeal should also be made to other states, encouraging them to address this issue more actively at the legislative and judicial levels. It should not be overlooked that here, too, the parties' autonomy and consensual resolutions must be placed at the forefront. The state must, however, provide appropriate legal support and assistance.

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