Chapter II

Croatia: The Content of the Right to Parental Care

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1. Introduction and historical remarks

The relationship between parents and their children in contemporary law is reflected in the rights, duties, and responsibilities that parents have when exercising their parental role in helping children gain their independence in social, psychological, emotional, and legal senses.

The relevant legal concept has undergone many changes, from the *patria potestas* in Roman law, to the pertinent *ius vitae et necis,* to the father's power (whereby, in later historical periods, the "power" was also given to the mother), to both parents as the parental right, and finally, to parental care.

The evolution of understanding the relationship between parents and children has been developing toward an ever-greater emphasis on the parents' duties, increasingly stressing the child's interest, finally culminating with the Convention on the Rights of the Child[1] and its incorporation in national legislations.

The recent Croatian legal history has been particularly interesting. At the beginning of the twentieth century, after WWI, no uniform family-law regulation existed in the territory of Yugoslavia (first the State of Slovenes, Croats, and Serbs, and later, the Kingdom of Yugoslavia) but only various regulations that were in force in individual administrative parts of Croatia. The Austrian General Civil Code (1811) was applied in the territories of Croatia and Slavonia. In Dalmatia, in a part of Istria,

1 *Convention on the Rights of the Child*, 20 November 1989, *United Nations*, *G.A. Res 44.*

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in Slovenia, and in the region of Prekomurje, the same Code was applied but amended by the First and Third Amendments of 1914 and 1916.[2] The First Amendment increased the protection of children from the father's abuse of power, as well as in cases where the father fails in fulfilling his duties regarding his children. There was a possibility that to protect children, the father was equated with a tutor (para. 178). Both amendments contained provisions that improved the position of children born out of wedlock and their mothers. In the Yugoslavia of that time, the Islamic Code applied to all Muslims, and its main characteristic was the patriarchal system that gave the father significant rights in relation to the children. In case of divorce, the children continued to live with their father and his family.[3]

In the socialist Croatia (which was a part of the Federative People's Republic of Yugoslavia), the regulation of 1947, governing the relationship between parents and children, was effective (Basic Act on the Relationship between Parents and Children)[4] and was amended in 1956[5] and in 1965.[6] The Basic Marriage Act[7] provided for the legal consequences of divorce regarding children and established the rules applying to children born in marriage that was proclaimed to have been nonexistent or was annulled.

The republican (Croatian) legislation on marriage in Yugoslavia was adopted in 1978 (Marriage and Family Relations Act),[8] further increasing the protection of the right of children, highlighting the role of welfare centers as institutions that had a preventive role in protecting them. Their primary task was to provide assistance to parents and intervene into parental care as necessary. The view that each republic, regardless of the number of inhabitants, was authorized to organize family relations resulted from the standpoint that any family legislation must be in harmony with the existing social relations, which were diverse and depended on the level of development of the existing entities. This approach may be appreciated today in the European Union as it was in the state of some 22 million inhabitants.

The socialist family law legislation introduced a major change in the relations between parents and children but was marked with both positive and negative characteristics. A significant step forward toward a better protection of women was a legal transition from the patriarchal model into that of the egalitarian family. It was also reflected in the viewpoint that parental rights belonged to both

2 Cf. Prokop, 1966, pp. 17–19.

3 Ibid, p. 22.

4 *Osnovni zakon o odnosima roditelja i djece,* Official Gazette FNRY, No. 104/47. Official Gazette SFRY, No. 10/65 and Officcial Gazette of the RoC, No. 52/71 i 52/73.

5 *Zakon o izmjeni i dopuni Osnovnog zakona o odnosima roditelja i djece,* Official Gazette FNRY, No. 53/56.

6 *Zakon o izmjenama i dopunama Osnovnog zakona o odnosima roditelja i djece,* Official Gazette SFRY, No. 10/65.

7 *Osnovni zakon o braku,* Official Gazette FNRY, No. 29/46.

8 *Zakon o braku i porodičnim odnosima,* Official Gazette of the RoC, Nos 11/78, 27/78, 45/89, 51/89 – consolidated text Nos 59/90, 25/94, 162/98.

the father and the mother, and in the betterment of the legal position of children born out of wedlock, first only in relation to parents and later also to third parties. However, it was still necessary to preserve the concept of legitimation because the legal system did not fully equated children born out of wedlock with those born in wedlock.

The main characteristic of the socialist period was the beginning of understanding that parental rights included a whole set of rights and duties (the then-valid legislation highlighted the duty of maintenance, the duty of care for life and health, and the duty of raising children, whereas in legal theory, representation was also interpreted as the duty of parents).[9] According to such understanding, "*the rights were exercised by parents, so they could in a better and more efficient way fulfill their duties and exclude any third party illicitly encroaching upon their rights*."[10]

However, a strong ideological component was obvious, according to which parents exercised their rights and duties to care for the person and for the rights and interests of their minor children "and raise them to become useful and conscientious citizens of the Socialist Federative Republic of Yugoslavia", as Art. 1 of the Basic Act on the Relations between Parents and Children requested. This doctrine gained its true form in the interpretation that it is in the "children's interest to become… morally and politically correct…" to be able to act in both their own interest and in the interest of the community.[11] The following was subsequently clearly formulated in Art. 70 of the Marriage and Family Relations Act:

> It is the parents' duty and right to raise their minor children in the spirit of loyalty to their socialist homeland, to develop their working habits and to prepare them for their independent lives as active members of the socialist self-management society.

Following the independence of the Republic of Croatia, the concept of "parental rights" (*roditeljsko pravo)* was replaced by that of "parental care" (*roditeljska skrb)*. The Croatian legal system has no legal term "parental responsibility" (*roditeljska odgovornost*), although both *parental responsibility* and *parental care* have almost same content and legal effects. However, the new Family Act firstly emphasized the rights of children, and only secondly did it emphasize parental responsibilities, duties, and rights.[12] Parental care, as a subjective and also human right, was highlighted within the parental right to freely decide on the children's upbringing and education and the right to make sure that third parties—or the state itself—do not encroach illicitly upon parental right. In the contemporary family-law literature, the following is highlighted:

9 Prokop, 1966, p. 186.
10 Ibid.
11 Ibid., p. 185.
12 Hrabar, 2007, p. 403.

> Parental care exists as a legal concept to enable children to exercise their rights because parents are called upon to provide, "in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights, recognized in the present Convention (Art. 5 of the Convention on the Rights of the Child). Additionally, parental care, as a legal concept, gives parents legitimacy and titulus erga omnes, i.e. in relation to third parties, to care for their child. Their primacy in terms of bringing up their children is derived from the provisions of Art. 18 of the Convention.

Parental care, as a legal concept, exists to make it possible for children to exercise their rights and to give parents legitimacy and legal basis in relation to third parties to care for their child.[13]

However, when speaking of the most severe measure taken by governmental bodies when encroaching upon parental care to protect the child's personal interests, the formulation "deprivation of the right to parental care" is used.

It seems that by overemphasizing parental care, the parents' legal position toward third parties can be diminished; "responsibility" is important because of the parents' functional role in ensuring the protection of their children and in exercising their rights. Professional-legal terminology has not been chosen by accident, but it possesses both the content of values and a message. These duties adjust parental rights as (possibly) the opposite to children's rights.

One of the contests of parental care is also highlighted as a human right, namely the right of the parents to freely decide on their children's upbringing and education: "*in the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions*", according to Protocol 2, Art. 1, of the Convention for the Protection of Human Rights and Fundamental Freedoms.

In the contemporary, postmodern society characterized by its markedly pluralist nature, this duty of the state may be extremely demanding; however, it seems to be necessary owing to the many contrary viewpoints and various value systems whose formation is impacted by the parents' religious and philosophical convictions. This is particularly obvious in the field of the so-called health education, in the organization of events in schools where confessional officials participate, and most recently, in the civics. Sometimes, this leads to frequent tensions in different legal argumentations at both the national and international levels. Therefore, this complex issue is yet another reason for a re-examination of the legal definition of parental care, which must include not only the content but also who is considered a "parent" (who can be entered as "parent" in the birth register) and the meaning of the concept "holder

13 Hrabar, 2021, p. 194.

of parental care," which is used in some contemporary international documents.[14] It must be pointed out that the concept of the "holder of parental responsibilities" is alien to Croatian law because only parents (adopters as well) are entitled to parental care by the very fact that they are entered in the register as the child's parents.

A certain deviation from such views occurred in the Family Act of 2014,[15] where an attempt was made to introduce a provision that not only parents, but also other natural or legal persons, could provide parental care along with parents or instead of them on the basis of a court's decision, as well as other persons who had temporarily been entrusted by the parents to provide parental care to the child.[16] Owing to the excessive deficiencies, this act was suspended by the Constitutional Court.[17] In the new and amended Family Act of 2015, it was established that other persons could also provide (everyday) care to the child; this was a significant change, particularly since parental care was stipulated both as a natural and personal as well as the parents' human right, which belonged to them by the very fact of the existing parent–child relationship.

As a rule, the child's origin is determined by both parents (for more about the term "parent" see *infra*). This competition between two holders of the right to the same child (who, in the contemporary legal system, is the third subject in this relationship), makes the whole legal situation even more complex.

In this paper, the Croatian (national) legal system is presented, together with some references to the relevant international framework by which the Republic of Croatia is bound.

In the national legislation, the concept of *parental care* is used; this will be used as equivalent to the concept of *parental responsibility* in this text as well.

14 Art. 2 of the European Convention on the Exercise of Children's Rights * Strasbourg, 25/01/1996: "The term 'b) holders of parental responsibilities' means parents and other persons or bodies entitled to exercise some or all parental responsibilities."
The Explanatory Report of this Convention in Chapter "European Treaty Series," No. 160, para. 24, explains as follows: "*The term 'holders of parental responsibilities' refers not only to parents who are entitled to exercise some or all parental responsibilities but also to other persons or bodies, including local authorities, entitled to exercise some or all parental responsibilities. Foster parents or establishments in which children are placed could therefore be included in this definition, where appropriate*."

15 Family Act, Official Gazette NN 75/2014.

16 Art. 102, para. 2 of the Family Act of 2014.

17 Decision of the Constitutional Court of the Republic of Croatia, No. U-I-3101/2014, 12. January 2015, Official Gazette, No. 5/2015.

2. Constitutional foundations for the protection of parental care

In the post-war Yugoslav State, Croatia was a part of Federative People's Republic of Yugoslavia (later named Socialist Federative Republic of Yugoslavia), which had constitutional texts at both the republican and federal levels. At the republican level, the constitutions were adopted in 1947,[18] 1963,[19] and 1974.[20] In the same years (with the exception of the Constitution of the FPRY of 1946), federal constitutions were also adopted, and Croatia was bound by them. The provisions of both the federal and republican constitutions of 1947 and 1974 on the citizens' rights and duties had the same content. The Federal Constitution of 1963[21] had separate provisions on the freedoms, rights, and duties of humans and citizens in Chapter II, but its version for Croatia did not contain them.

One of the characteristics of all socialist constitutions was their value system, whereby greater emphasis was on the needs, interests, and values of the political and legal order—in other words, of the dominant group as opposed to an individual (as well as the entire community)[22]—while the rights and freedoms of humans were scattered in different places in the provisions of the Constitution.

Some of the provisions provided for the relationship between parents and children, and the entire legal system was bound by them, while some of them only dealt with family law. For example, pursuant to Art. 27 of the Constitution of 1947, minors were under the state's special protection, and in 1963, this protection referred only to the minors without parental care. A similar provision also existed in the Constitution of 1974, and it was part of the social rights group – Art. 275, paras. 1, 2 and 4 of the Constitution of 1974, binding the legislator to determine the minimum social protection.

Children born out of wedlock also had their place in the constitutional provisions: the Constitution of 1947 established that the position of children born out of wedlock was stipulated by law and that parents have the same obligations and duties toward them, just like they do toward those born in wedlock[23]. However, those two groups of children were equated only in respect of the rights and duties toward their parents but not toward other relatives. It was only the Constitution of 1974 that established in Art. 271, para. 4 that *children born out of wedlock had the same rights and duties like those born in wedlock*, and it thus equated the rights of children born out of wedlock in all legal relations and in the relationship with any third party (which was

18 The Constitution of the People's Republic of Croatia, Official Gazette, No. 7/1947.
19 The Constitution of the People's Republic of Croatia, Official Gazette, No. 15/1963.
20 The Constitution of the Socialist Republic of Croatia, Official Gazette, No. 8/1974.
21 The Constitution of the SFRY, Official Gazette, No. 14/1963.
22 For more about the importance of social, personal, and common needs in the constitutions of that time, cf. Miličić, 1989, pp. 643–649.
23 Art. 27, para. 3 of the Constitution of 1947.

extremely important because of the effect of hereditary rights toward their parents' relatives). It did not specify any individuals toward whom they would have the same rights and duties.

The Constitution of 1963 expressly recognized the parental right to care for their children's upbringing and education in Art. 58, para. 3 of the Federal Constitution of 1963, transposed also to Art. 37 of the Croatian Constitution of the same year,[24] as well as Art. 271, para. 3 of the Constitution of 1974. The same provision of the Constitution of 1974 was reinforced by the principle of mutual family solidarity, according to which children were also obliged to care for their parents in case they needed assistance.

Before the adoption of the Croatian democratic constitution of 1990, two progressive principles had already been well established, adding considerable value to the European dimension of the protection of human rights: the principle of equality of the woman and man in family relations and the principle of equal legal position of children born in wedlock and those born out of wedlock. Although, in reality, the first principle had not been implemented to the full, both principles carved the way to changes in collective awareness and raised the level of the expected standard of protection for the rights of family members, departing from the patriarchal system of family relations. When speaking of parental care, what it means is that the mother and the father are equal holders exercising their responsibility, and they, Simultaneously, positively compete with each other, both aimed at protecting the well-being of their common child.

The Constitution of the Republic of Croatia of 1990 was mostly a continuation of the principles defining the process of building the family-law system on the already achieved positive standards of the protection of families and human rights in general.

One of the personal and political freedoms and rights of citizens has been that "*everyone shall be guaranteed respect for and legal protection of personal and family life, dignity, reputation and honor*", as stated in the Art. 35 of the Constitution. Since the possibility of providing parental care is part of the right to respect family life,[25] this constitutional provision guarantees legal protection in the cases of unjustified restriction of parental care.

The provision of Art. 62 of the Constitution of 1990 provides the following to other social rights: "*The State shall protect maternity, children and young people and shall create social, cultural, educational, material and other conditions promoting the right to a decent life*."

Indirectly, Art. 63, para. 3 of the Constitution deals with parental care, according to which "*physically and mentally disabled and socially neglected children shall have the right to special care, education and welfare*"; moreover, the provision states that

24 This was a single provision of the Constitution of the Socialist Republic of Croatia which also directly applied to family law. It found its place in Chapter II of the Constitution (Social System), under paragraph 2 (Education, Science and Culture), and it read as follows: "*Parents have the right and duty to care for their children's upbringing and education*."

25 See the case law of the European Court of Human Rights concerning Croatia. Cf. Hrabar et al., 2021.

"*the State shall take special care of parentless minors or parentally neglected children*", as stated in Art. 63, para. 4 of the Constitution. All these constitutional provisions are declaratory, and their content is determined by the legislator's political will and their application in practice.

As already said, when regulating the relationship between parents and children, the Constitution has adopted its principles, albeit only a year after the UN Convention on the Rights of the Child. Instead of dealing solely with parental rights, what is now emphasized are parental duties and responsibilities; it is established in Art. 63, para. 1 of the Constitution that "*parents shall have the duty to bring up, support and educate their children, and shall have the right and freedom to decide independently on the upbringing of their children*".

A *novum* has been the parents' constitutional right to decide independently on the upbringing of their children,[26] but this has indirectly been limited by their responsibility for ensuring the right of their children to a full and harmonious development of their personalities[27] and by their obligation to ensure that their children have the right to primary education that is compulsory and free.[28]

> The provisions of Art. 63, paras. 1, 2 and 4, among the rights and freedoms of man and citizen, lay down the following duties: "Parents shall have the duty….", "Parents shall be responsible….", "Children shall be bound…." These parental duties correlate with the rights of children that are not expressly emphasized. The provision may thus also be read as follows: "Children have the right to be brought up, supported and educated by their parents…"; or "The child is entitled to a full and harmonious development of its personality ensured by parents; or "Old and helpless parents are entitled to be taken care of by their children". The difference lies only in the wording, so that this formal inversion of the rights and duties does not change the meaning of the norm. According to the provision of Art. 64, para. 1, "everyone shall have the duty to protect children and helpless persons."[29]

The principles of family solidarity justness are reflected in the requirement that children are bound to care for old and helpless parents and by the duty of children of legal age to support their parents under the conditions determined by law.

The Constitution does not contain the definition of parental care or of the potential holder of this right; thus, the determination of the content and reach of these concepts is left to the legislator.

Having an insight in the case law of the Constitutional Court,[30] it is clear that in the last 10 years, the proceedings have mostly been conducted upon the complaints

26 This has been the impact of the Convention on the Protection of Human Rights and Fundamental Freedoms and the Convention on the Rights of the Child.
27 Art. 63, para. 2, Cfr. Alinčić, 2007, p. 16.
28 Art. 65, para. 2 of the Constitution.
29 Korać, 1996, p. 78.
30 https://sljeme.usud.hr/usud/praksaw.nsf, (Accessed April 25, 2022).

involving the violation of human rights when exercising parental care mainly in disputes between parents.

At the level of case law, the only court decision referring to the rights arising from parental care was that of the Constitutional Court of 2013, ruling on the request for a review of constitutionality of the school curriculum developed by the ministry competent for education. In this important decision, the Constitutional Court established the following:

> … a positive obligation of the state exists in the area of the public school system, within the meaning of Article 63.1 and 2 of the Constitution and Article 2 of Protocol no. 1 to the Convention. From the responsibility of parents to ensure the rights of their child to a full and harmonious development of its personality stems the obligation of the state, when forming teaching programs, to respect the different convictions of parents and their constitutional right and freedom to decide independently on the upbringing of their own children. This constitutional obligation of the state may only be implemented when the parents are included in the process of forming the teaching content.

Therefore, enabling parents to participate in the process of creating teaching content is the state's constitutional obligation toward the procedural nature, and it is especially important for teaching content relating to the differing "convictions" or "beliefs" of parents, in the sense described in point 12.1 of the statement of reasons for this decision.

Finally, it has already been said that the responsibility of parents, within the meaning of Art. 63 para. 2 of the Constitution, is limited by the child's right to a full and harmonious development of their personality. This also means that parents do not have the right to keep their children ignorant and prevent them from learning basic information or content that is important for such full and harmonious development. In this sense, it is the task of the public school system to be neutral and, in a balanced teaching program and in cooperation with the parents, to provide children with basic information that must be presented in an objective, critical, and pluralistic manner.[31]

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

In addition to the constitutional protection of fundamental freedoms and rights of citizens, the Republic of Croatia is also bound, as a contracting state, by some treaties providing for the protection of the rights of man (e.g., of the International Pact on Civil and Political rights, the UN Convention on the Rights of the Child and

31 Para. 12.2 of the Decision of the Constitutional Court U-II-1118/2013 *et al.* of May 22, 2013.

its Protocols, the European Convention on the Exercise of the Children's Rights). Regarding bilateral agreements, it is important to single out the agreement with the Holy See on Cooperation in the Area of Education and Culture,[32] by which religious education was introduced in schools as an optional subject. Religious education includes other major religious communities as well (Islamic, Jewish, evangelistic, and so on). The Constitutional Court of the Republic of Croatia ruled that from a constitutional point of view, this is acceptable.[33]

The Republic of Croatia is a Member State of the European Union, and it is thus bound by EU law. However, since these rules regulate the issues of private international law concerning family matters, they are not addressed in this text, and neither are other multilateral agreements (those of the Hague Conference on private international law) or bilateral agreements dealing with the resolution of cross-border disputes.

The Constitutional Court of the Republic of Croatia often refers to the provisions of international agreements, while this is extremely rarely done by regular courts.[34]

The main source of law dealing with parental care is the Family Act, but many other regulations also have an impact on the way in which individual contents of parental care are exercised—in other words, the Act on the Education in Primary and Secondary School,[35] the Social Welfare Act,[36] Criminal Code,[37] the Protection of Family Violence Act,[38] the Hospitality and Catering Industry Act,[39] and others. Some of these legislative acts are also accompanied by the corresponding implementing regulations as well as some recommendations given by competent bodies to help parents exercise their parental care. For example, the Council for Electronic Media has launched Recommendations for the Protection of Children and Safe Use of Electronic Media.[40]

The importance of international agreements on the protection of parental rights is significant, and it can be seen in the example of the request that parents take part in the development of the content of school curricula. It is obvious that there is still a relatively high level of misunderstanding in public debate on the draft of theFamily Act of 2017. Some tensions arose regarding whether this right ought to be provided

32 The agreement with the Holy See on Cooperation in the Area of Education and Culture, Official Gazette – International Treaties, No. 2/1997. The agreement sets up Catholic religious education as a subject in all schools in Croatia and enables the Catholic Church in Croatia to found and run official schools and institutions of higher education financed by the state.

33 Decison of the Constitutional Court Nos. U-I-4504/2010, U-I-1733/2012 (2018). https://sljeme.usud.hr/usud/praksaw.nsf/fOdluka.xsp?action=openDocument&documentId=C12570D30061CE54C12583680043A4D1 (Accessed June 8, 2022.)

34 Korać, 2016, p. 130.

35 Zakon o odgoju i obrazovanju u osnovnoj i srednjoj školi, Official Gazette, No. 87/08, 86/09, 92/10, 105/10, 90/11, 5/12, 16/12, 86/12, 126/12, 94/13, 152/14, 07/17, 68/18, 98/19, 64/20.

36 Zakon o socijalnoj skrbi, Official Gazette, Nos. 18/22, 46/22.

37 Kazneni zakon, Official Gazette, Nos. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21.

38 Zakon o zaštiti od nasilja u obitelji, Official Gazette, Nos 70/17, 126/19 and 84/21.

39 https://www.iusinfo.hr/aktualno/u središtu/28690 (Accessed: May 1, 2022).

40 https://www.aem.hr/vijesti/vijece-za-elektronicke-medije-usvojilo-preporuke-za-zastitu-djece-i-sigurno-koristenje-elektronickih-medija (Accessed: April 23, 2022).

for in the Family Act, and some distinguished professors noted that it was a source of serious danger for the child.[41]

4. The concept of parent

According to family legislation, "parent" is a person from whom a child has inherited its origin, or a person who is registered as the child's parent in the birth register based on adoption decision issued by the competent body (a social welfare office).

The Family Act contains the provisions on the child's origin, and based on these provisions, maternity is anticipated or established on presumption or by a court decision.

Pursuant to Art. 58 of the Family Act, the "child's mother means the woman who gave birth to this child."[42] According to Art. 59 of the Family Act, if maternity cannot be established by presumption, court proceedings may be conducted to establish maternity when it is not possible to accept the claim, but the court must conduct evidential procedure. In practice, a DNA test is conducted, whereby the child's right is exercised to know with absolute certainty the person from whom their genetic origin is derived.

Paternity may be established by presumption, acknowledgment, or a court decision. Presumption relates to children born in wedlock or within 300 days following an annulment, divorce, or death as declaration of death of a late spouse. In the case where a person has entered another marriage within a period of 300 days from the termination of marriage because of death, the mother's husband from the last marriage is considered to be the child's father, as regulated by Art. 61 paras. 1 and 2 of the Family Act.

Such presumption does not apply if the previous marriage had ceased by a court decision on divorce or annulment. In that case, the mother's husband from the previous marriage is considered to be the child's father, unless the mother's second

41 "We argued only over two or three points. First, there was a clear trend with some members of the group working on the Bill that parents have the right that their children 'are ensured upbringing and education in conformity with their parents' religious and philosophical beliefs'. This would mean, in my opinion, boycotting the reform of schooling and of everything it was supposed to bring. However, the decision of the Constitutional Court, which I respect, was that no one has the right to keep children in ignorance, let alone their parents. Children must be contemporary people and not those who stick to the world view of their parents." These were the words of distinguished Professor Marina Ajduković, who is a children's psychologist and expert.
https://www.jutarnji.hr/naslovnica/ugledna-psihologinja-vazno-je-urazumiti-bogate-roditelje-dionjih-ne-zna-za-probleme-siromasne-djece-ne-zanima-ih-siromastvo-9654421 (Accessed April 19, 2022)
Opposite approach: Hrabar, 2018, pp. 319–336.

42 Prior to the Family Act of 2014, this presumption had existed as *praesumptio iuris et de iure*, and after 2014, it was replaced by *praesumptio iuris*.

husband (if the child was born during the mother's second marriage and not more than 300 days had passed from the first marriage) has acknowledged his paternity with the consent of the mother and her first husband, as regulated by Art. 61, para. 3 of the Family Act. This provision implies the possibility that in the case of an early contraction of a new marriage, the child has probably been conceived with the man whom the mother subsequently married. However, the downside is that the acknowledgment of paternity is left to the autonomy of the interested parties; up to now, the Croatian order had not enabled the establishment of the paternity in marriage (also) by acknowledgment. Simultaneously, this provision does not imply the spouses' mutual obligation of faithfulness[43] as one of the value components upon which a marriage rests.

The acknowledgment of paternity is the least reliable in terms of truthfully establishing the child's origin because the verification of this truthfulness is entrusted to the persons giving their consent to the acknowledgment of paternity, namely the mother, the child, and/or their guardian, with the previous approval by the social welfare office in accordance with statutory preconditions. It is possible to imagine a situation where the aforementioned persons abuse these statutory provisions and make false statements regarding the child's origin aimed at the man to be registered as the child's father. In such situations, the social welfare office may appoint a special guardian to the child and thus try to challenge the acknowledged paternity. The abuse of the child's origin would constitute a criminal offense for changing the child's family status, as prescribes Art. 175 of the Criminal Code.

In the case of medical fertility treatment, the situation is even more complex because the legislator may accept either the rule that the child had been conceived by the woman who gave birth or by the woman whose egg had been fertilized. There is a general rule that the woman who bore the child is their mother if both the woman whose cell was (possibly) used in the fertility treatment procedure and the woman who gave birth to the child had given their consent to the medical treatment. If the corresponding consents had not been given, it is possible to initiate the proceedings for challenging maternity of the woman who gave birth to the child and subsequently establish the maternity of the woman from whom the child genetically originated.

Art. 31 of the Medically Assisted Procreation Act prohibits surrogate gestational motherhood,[44],[45] although it is known that some couples travel abroad and come back with a child born after the conclusion of a contract on surrogate motherhood. In the Republic of Croatia, "contracts, agreements and other legal transactions of bearing children for another (surrogate gestational motherhood) and handing over a child after a fertility treatment, with or without a pecuniary remuneration, are null and void". This provision is considered only if there is a dispute regarding taking

43 "The spouses have the duty to be faithful to each other, help and support each other, respect each other and maintain harmonious marital and family relations" (Art. 31, para. 2 of the Family Act).

44 The Act on Medically Assisted Procreation, Official Gazette No. 86/2012.

45 Cf. Hrabar, 2020b, pp. 171–212.

over a child. Up to now, the competent bodies have never checked how the data on the mother and father were entered in the birth register because these issues are considered extremely sensitive. The public only knew about the problem of non-recognition of the right to a maternity leave because a woman who came back from abroad with a child and registered as their mother could not prove that her pregnancy had been medically monitored, so that the Croatian Institute for Health Insurance initially withheld her rights ensuing from the maternity leave. However, the competent bodies failed to examine the circumstances under which the child had been conceived, and there was no legal sanction for removing the child, as was the case in the famous case *Paradiso and Campanelli v. Italy*.[46]

In the cases of determination of paternity, when the semen of another man was used, a similar rule applies: if the child's father and the man who is the mother's marital or extramarital partner had given their consent for medically assisted procreation with another man's semen, and the mother's extramarital partner had given his consent to the acknowledgment of paternity ahead of time, then the child's father is the mother's marital or the extramarital partner.[47]

When a child is adopted, the adoptive parents may be entered in the register of births as its parents (if the child, older than 12, has given its consent, and the adoptive parents have so agreed in front of the social welfare office). In such a case, a legal fiction is created that the adoptive parents are the child's parents by blood; thus, the child is also in a legal relationship with their blood relatives.

The Decision of the Supreme Administrative Court in April 2022[48] ruled that homosexual life partners as a couple should have the possibility to undergo a pre-adoption procedure in front of the social welfare office, and afterward, they might be declared suitable as adoptive parents. Such possibility was not enabled in the Family Act, but the Supreme Administrative Court has concluded that preventing homosexual couple from becoming adoptive parents should be considered as discrimination on the basis of sexual orientation. The best interest of the child has not been discussed, and how this possibility will be reflected in the way in which birth registry is conducted with regard to the current notion of parents as mother and father remains to be seen.

The legal theory has taken a stand in accordance with normative stipulation. It has always been clear in legal theory that the parents' legal position is established either by origin or by adoption. Only parents may be holders of the right to parental care. Indeed, the legislator has been highly consistent when stating the following in Art. 91, para. 1 of the Family Act: "Paternal care includes responsibilities, as well as the parents' rights and duties …".

To some extent, the Same-Sex Life Partnership Act departs from the Family Act. Although the same-sex partner cannot be registered as the parent of their life

46 ECHR, Paradiso and Campanelli v. Italy, Grand Chamber Judgment on January 24, 2017.
47 Art. 83 Paras. 1 and 2 of the Family Act
48 The High Administrative Court decision on April 20, 2022, No Usž-2402/21-4.

partner's child, the act envisages that parental care may be exercised by the parent's (same-sex) life partner if the court decides accordingly. A life partner may even share parental care not only with one but with both parents, and in the legal sense, the concept of "parent" has never been reconsidered.

Apart from life partners, Croatian family legislation does not envisage any other persons being able to exercise parental care, and for that purpose, some other concepts are used (daily care of a child, representation, and the like). Stepfathers and stepmothers do not have any specific rights involving children, except for some elements of parental care belonging to parents, such as the rights to a contact or the rights and duties of maintenance.[49]

5. The concept of a child

Croatian family legislation presents no definition of a "child," but Art. 117, para. 2 of the Family Act determines that a person acquires full legal capacity at the age of 18 or by entering into marriage. According to Art. 117, para 3 of the Family Act a person who has reached the age of 18 becomes of legal age—in other words, a major.

In legal theory, it is always emphasized that the concept of a child is defined in accordance with Art. 1 of the Convention on the Rights of the Child: "For the purpose of the present Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier."

Parents exercise parental care for the child until the child reaches the age of majority (18 years). As the child matures, they reach partial legal capacity by the age of 18 (they are entitled to make some statements of will regarding the issues of status—for example, after having attained the age of 10, 12, 14, 16 years…).

In 2014, the Family Act abolished the possibility that parents exercise parental care for their major child deprived of their own legal capacity, but they may be appointed as the child's guardian(s) in conformity with the general rules governing guardianship and the appointment of guardians.

If a minor marries and thus acquires legal capacity, the need for parental care ceases to exist; nevertheless, the child preserves all its specific rights guaranteed by the Convention on the Rights of the Child until they reach the age of majority.

The definition of the concept of "child" has also been harmonized in other branches of law. Interestingly enough, according to Art. 89, paras. 9 and 10 of the Criminal Code of 1997,[50] a person aged under 14 years was called "a child", and a person aged 14–18 years "a minor".

49 Cf. Winkler, 2019, pp. 75–92.

50 Criminal Code, Official Gazette No. 110/97.

The current Criminal Code considers a person aged under 18 years "a child" by accepting the definition established in the Convention on the Rights of the Child, but it envisages criminal liability only for children older than 14. Children under the age of 14 may only attain some features of a criminal offense.[51] The Croatian Criminal Code applies to all minor perpetrators of criminal offenses, and to major perpetrators under the age of 21, either the Criminal Code or the Juvenile Courts Act may apply (i.e., the criminal justice system for juveniles).[52]

Separate criminal proceedings also come into play when a criminal offense is committed against a child (pursuant to Art. 113, para. 2 of the Juvenile Courts Act, where it is also established that it applies to persons of up to 18 years of age) for a series of offenses involving sexual freedom and morality, marriage, family and youth, kidnapping, trade in human beings, slavery, and the like).

6. Principles of parental care

In the family-law theory, it is emphasized that

> parental … responsibility is a legal term, of personal and legal nature, and it is, therefore, classified into personal and subjective rights and it belongs to the personal status of an individual. Apart from being a personal right, parental care is also a human right. In the judicature of the European Court of Human Rights, it is defined, when possessed or exercised, as a part of the right for respect of everyone's family life (referred to in Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol No. 1 to the same Convention).[53]

On the constitutional principles, see *supra*. The principles relating to parental care are analyzed in more detail in the introductory part of the Family Act and listed as the principle of equality,[54] the principle of solidarity as the fundamental right of family life, mutual respect and assistance among all members of the family,[55] the

51 Cf. Dragičević Prtenjača, Bezić, 2018, pp. 1–37.

52 Juvenile Courts Act, Official Gazette, No. 84/11, 143/12, 148/13, 56/15, 126/19.

53 Hrabar et al., 2021, p. 193.

54 Art. 3 of the Family Act: "Both woman and man have the same rights and duties in all family and legal relations, and in particular regarding parental care."

55 Art. 4 of the Family Act:
"(1) Solidarity is the fundamental principle of family life. All family members must respect and support one another.
(2) Domestic violence is a particularly severe infringement of the principle referred to in paragraph 1 of this Article. Prevention, combatting and sanctioning any kind of domestic violence is provided for in a separate Act."

principle of the primary protection of the welfare and the rights of the child,[56] the principle of the primary parental right to care for the child and the duty of the competent bodies to assist them,[57] the principle of proportional and the least intervention in their family life,[58] the principle of consensual solution of family relations,[59] and the principle of urgent resolution of family-law matters involving children.[60]

The legislator's goal has been to balance all these principles, so that they correspond to the contemporary system of family relations. Some of them are applied within families (the principle of equality, the principle of solidarity, the principle of mutual respect and assistance, and the principle of consensual solution of family relations), while others deal with the relations between individual family members and third parties, in particular state bodies (the principle of the primary parental right to care for their child and the positive duty of state bodies to offer them assistance, the principle of proportional intervention in the family life, and the principle of urgent resolution of the proceedings involving families).

These principles are, *per se*, of declaratory nature, and only their transposition into implementation norms leads to their high-quality application.

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

In the Croatian Family Act, the right and obligation of protecting the child's personal rights to health, development, care and protection, its upbringing and education,[61] establishment of personal relations, and determination of the place of

56 Art. 5 of the Family Act: "The courts and public law bodies conducting the proceedings where, directly or indirectly, it is decided on the child's rights, must primarily protect the rights of the child and its well-being.
(2) The child is entitled to exercise personal relationship with both parents, unless this is contrary to the child's well-being."

57 Art. 6 of the Family Act: "Parents, before everybody else, have the right, duty and responsibility to live with their child and care for it, and they are offered assistance only if needed";

58 Art. 7 of the Family Act: "Measures encroaching upon family life are acceptable only if they are necessary and their purpose cannot successfully be accomplished by taking more lenient measures, also including preventive assistance or help offered to a family."

59 Art. 9 of the Family Act: "To encourage peaceful resolution of family relations is the task of all those who offer professional assistance to families or who decide on family relations."

60 Art. 10 of the Family Act: "In any proceedings dealing with family law matters involving children, the competent bodies must act in an urgent manner by protecting, Simultaneously, the child's well-being."

61 The Act on Primary and Secondary Education establishes that primary education is compulsory for all children (Art. 4, para. 2, point 1), unless the child suffers from multiple difficulties (Art. 19, para. 1 of), and it is free. The Constitution allows the establishment of private schools and institutions of higher education in conformity with law (Art. 67 of the Constitution of the Republic of Croatia). In schools, parents' councils are organized where parents give their opinions on the proposals of

residence are included in the content of parental care. The same is the case with the right and duty to manage the child's property and the right and duty to represent the child's personal and property rights and interests.

Parental care is *titulus*, but we must distinguish parental care *per se* from exercising parental care and from fulfilling its individual (or all) contents.

The content of parental care is further developed in other provisions of the Family Act—in particular, the ways of acting due to the competition between both parents who exercise their parental care, depending on whether they live together or separated.

When exercising parental care, parents must consider the rights of the child. In the contemporary legislation, particularly important is the parents' obligation to respect the child's opinion in accordance with its age and maturity, as stated in Art. 86 of the Family Act. Respecting the child's opinion does not mean that it must always be observed. Indeed, here we speak of the application of participatory rights referred to in Art. 10 of the Convention on the Rights of the Child in its family environment: participation means the exchange of information and a dialogue between children and adults based on their mutual respect, whereby children learn how both their opinions and those of adults are respected.[62] There is also a specific analysis of participatory rights in accordance with the European Convention on the Exercise of Children's Rights)[63] in administrative and court proceedings where it is (also) decided on the rights and interests of the child (see *infra* in this chapter).

The legislator does not differentiate, by way of greater or lesser importance, between the parents' rights and obligations making up the content of parental care. They are equal, and if any interpretation is necessary in terms of priority, the principle of the best interest of the child must be applied.

The child's duties are under the umbrella of the general principle of solidarity according to which according to Art. 4, para. 1 of the Family Act: "all family members must …… respect and help each other". Pursuant to Art. 89, "the child must respect its parents and assist them in getting things done in the family in accordance with its age and maturity and be considerate toward all its family members." This provision is of principled and moral nature; however, if the parents cannot properly raise their child and also need assistance, and the child threatens—among other aspects—the rights and interests of family members and other persons, the court may render its decision on entrusting the child with behavioral difficulties to a welfare institution—or a foster family—to assist in its upbringing.

With regard to children who are employed and earn by working, it is ruled in Art. 90 of the Family Act that they have an obligation to contribute to their own

school curricula, annual plans and programs, the Heads' reports on their realizations are discussed, the parents' complaints regarding the school's educational achievements are considered, measures to improve education are taken, and members of school boards are recommended (Art. 137, para. 4 of the Act on Primary and Secondary Education).

62 Korać Graovac, 2012, p. 118.

63 European Convention on the Exercise of Children's Rights (1996), European Treaty Series – No. 160.

maintenance and education. The amount allocated to their maintenance provided by their parents, or other eligible persons, is then reduced accordingly. The child is not bound to contribute to the maintenance of other family members as long as it is under legal age (a minor).

The most recent Family Act has failed to expressly include maintenance into the content of parental care (we consider it a nonintentional legislator's omission), although the family-law tradition has always interpreted maintenance as part of parental care.[64]

It seems that the legislator considers the protection of personal rights and interests of the child as more important than the protection of its property rights and interests because more provisions in the Family Act are obviously dedicated to the former. To some extent this is also logical because, by the nature of things, it is unusual for a child to have its own property of significant value.

8. Sexual education of children and parental care

Sexual education of children is provided in the school curriculum designed by the competent ministry. In 2012, the Ministry of Education tried to introduce a new content in the school curriculum—health education,[65] not as a separate subject but as a teaching content to be taught across various school subjects.[66] The curricula adopted by the minister bind all educational institutions—both public and private—and they are thus of extreme importance for children's education.

At a later stage, the fourth module of health education turned out to be disputable because of its component dealing with sexual education. A very broad social and professional discussion took place regarding this proposal of cross curricular health education, and it was guided by two conservative nongovernmental

64 Thus, for example, Prokop, 1966, pp. 188 and 189; Alinčić et al., 2007, pp. 262 and 268.

65 In Croatia, a minister competent for education adopts the national curriculum for individual levels of upbringing and education (primary and secondary) as well as the national framework curriculum. In addition to the national curriculum, the minister also adopts the curricula for individual subjects (containing the purpose and goals of learning and teaching a subject, the structure of individual subjects within the whole educational vertical, the educational outcome and/or content and other important data).
Teaching plans describe the form of conducting the curricula (obligatory, optional, facultative, cross-curricular, and/or interdisciplinary), specifying the annual number of teaching hours and their timetable by grades. Teaching plans may be common for a particular level or type at individual levels of teaching, and it can also be designed together with the curriculum of a particular subject. The curricula for all teaching subjects and plans are adopted by a decision issued by the minister competent for education.

66 https://mzo.gov.hr/istaknute-teme/odgoj-i-obrazovanhje/nacionalni-kurikulum/125 (Accessed: April 21, 2022).

organizations.[67] They claimed that what it was all about and highly disputable was the fact that children would not be informed but rather indoctrinated, that health education consisted of gender ideology, and that by teaching it, the parents' right to freely decide on their children's upbringing and education would be infringed. They also emphasized that in such a way, health education would inform children about LGBTQ+ topics too early.

One of the eminent authors of the Health Education Curriculum, Štulhofer, who is a professor of sociology and sexology, pointed out that despite the expressed resistance to sexual education, in the research he conducted,

> a large majority of participants (78,6%) supported the program. A significant association between familiarity with and support for the program was observed only after more (detailed) information about health education became publicly available. The teachers, trusted by parents, seemed to facilitate the parents' familiarity with the program. Considering the controversial character of sexuality education, timely and systematic efforts directed at providing parents with comprehensive information about the program may be crucial for its successful implementation.[68]

Since the minister competent for education is responsible for introducing the school curriculum by his decision, review proceedings were initiated before the Constitutional Court to examine its conformity with the Constitution. In its decision, the Constitutional Court held the following:

> 13.1. It follows, therefore, that only the part of the Health Education Curriculum, Module IV entitled "Sexual/Gender Equality and Responsible Sexual Behavior", deals with the questions that are still very sensitive in our society. In the Health Education Curriculum, it is stated that through this material, the desire is "to give pupils scientifically based information, but also an insight into different ways of thinking and a variety of value perspectives. The aim of the module is to enable pupils to acquire skills necessary for making responsible decisions that are important for preserving their physical and mental health and to help them, through an understanding of differences and critical thought, to build a positive relationship toward themselves and others.
>
> Despite the acceptability of these aims, it is not necessary to argue in particular that these are still topics which parents, as a rule, see as an area in which the guarantees of freedom and protection of their personal "religious or philosophical convictions" must be taken into consideration. This in itself is sufficient to bind the State and its competent bodies to provide parents and their children with an objective and critical, pluralistic and tolerant environment, in which these aims will be effectively realized,

67 https://www.bitno.net/vijesti/hrvatska/grozd-ministru-mornaru-dokinite-konacno-nestrucan-i-protuzakonit-zdravstveni-odgoj-u-skolama/ (Accessed: April 21, 2022).

68 Kureba, Elezović, Štulhofer, 2015, pp. 323–334.

> including the obligation of the State to ensure that the content and/or the manner of implementation of the teaching program of Module IV are neutrally shaped, with an active and effective participation of parents.

The Constitutional Court abolished the decision on introducing the controversial Health Education Curriculum for not having been adopted in the appropriate democratic process, particularly because its contents were highly sensitive for society.

> 13.2. …. In this specific case, the State has not met its procedural, constitutional obligation to align the content of health education in state/public schools in a balanced manner with the constitutional right and freedom of parents to bring up their children. The process of the legal formation of the content of health education in the Republic of Croatia showed a significant lack of a democratic and pluralistic approach.

The Constitutional Court also referred to the case law of the European Court of Human Rights:

> 12.4. In the case Folger and others v. Norway (judgment, Grand Chamber, 29 June 2007, application no. 15472/02), the ECtHR examined the applicant's complaint pursuant to Article 2 of Protocol n0.1 to the Convention, and in light of Article 8 (the right of respect to a private and family life) and Article 9 of the Convention (freedom of thought, conscience and religion) established violation of the Convention right to education, and violation of the positive obligation of the state to respect the right of parents to ensure the upbringing and education of their children in line with their own religious and philosophical convictions, or their parental responsibilities.

The protection of children from explicit sexual content is provided for in the Electronic Media Act[69] and in the Ordinance on the Protection of Minors in Electronic Media.[70] There is a general provision in the Electronic Media Act, in Art. 5, para. 1, according to which "*it is prohibited to harm minors physically, mentally or morally by audio-visual commercial communications*", but there is no explanation as to what this clearly means. Only the Ordinance in Art. 2 clarifies that "*the programs which may harm the physical, mental or moral development of a minor are all types of programs containing any scenes …. of sex and sexual exploitation*" unless they "*in an appropriate way and by justified contents illustrate or analyse topics in educational, documentary, scientific and informative programs*".

To protect children, television programs are divided into categories appropriate to particular ages, and they may be shown at the time of the day according to the existing classification. Before and while broadcasting a particular content, there is a

69 The Electronic Media Act, Official Gazette, No. 111/21.

70 The Ordinance on the Protection of Minors in Electronic, Official Gazette, No. 28/2015.

written recommendation regarding the age for which a particular program is not appropriate, so that parents can more easily have control of the contents to which their children may be exposed. Although neither the Electronic Media Act nor the Ordinance on the Protection of Minors in Electronic Media specify the content appropriate for a particular age or the time for broadcasting, the positive example "*of the Croatian Audiovisual Centre offers a database of films accompanied by appropriate age categorization*."[71]

In addition, the Electronic Media Agency, in cooperation with the professionals dealing with the protection of children and minors, as well as publishers, has issued the Recommendations for the Protection of Children and Safe Use of Electronic Media stating which and what kind of content is appropriate for a particular age.[72]

Pornographic TV contents may not be broadcast uncoded. Radio broadcasts must also transmit a sound signal as a warning that a content is inappropriate for children of a certain age. Not long ago (in September 2021), the European Commission sent a reasoned opinion to Croatia and many other EU countries for failing to provide information about the implementation of the EU Audiovisual Media Services Directive (AVMSD)[73] into their national laws. The new rules apply on all audiovisual media—both traditional TV broadcasts and on-demand services as well as video-sharing platforms.

Minors are also protected from "on-demand" contents that are presumed to be used by them even more frequently. Pursuant to Art. 20 (1):

> the on-demand audiovisual media services which might seriously impair the physical, mental or moral development of minors, are only available in such a way which ensures that minors will not in normal circumstances hear or see such on-demand audiovisual media services.

In the private sphere, regarding the accessibility of pornographic content on the Internet, the parents' role is more limited. It mostly depends on their interest for the sexual aspect of their children's upbringing by using Internet applications and social networks, as well as on their knowledge of how to use them.

71 Media Regulatory Authorities and Protection of Minors, Council of Europe, 2019, p. 43. https://rm.coe.int/0900001680972898 (Accessed: April 27, 2022.)

72 https://www.medijskapismenost.hr/preporuke-za-zastitu-djece-i-sigurno-koristenje-elektronickih-medija/ (Accessed: May 3, 2022.)
A conservative NGO started petition "Stop to homo-agenda of the state television Stop fake rainbow families, protect children and families" against broadcasting the documentary German movie "Jana's Rainbow Family" in the morning session. Another LGBTIQ+ NGO sued the conservative NGO, and the Supreme Court decided that this petition, due the the statement "*such environment is harmful for children and contributes to the formation of unhealthy individuals and an unstable society*" is disturbing and discriminatory. The NGO has been ordered to stop discriminating LGBTIQ+ persons, their families, and children through its website and other actions.

73 Directive (EU) 2018/1808 of the European Parliament and of the Council of November 14, 2018 amending Directive 2010/13/EU on the coordination of certain provisions established by law, regulation of administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities.

According to a research project conducted in Croatia, 27% of Internet users aged 10 to 16 have at least once been exposed to explicit sexual content, either intentionally or by chance.[74] Every service provider has some rules regarding protection, and the Croatian Regulatory Authority for Network Industries permanently organizes educational activities for parents and publishes various handbooks not only in connection with the protection of children from explicit sexual contents but also from other dangers lurking on the Internet.[75]

The Croatian Ministry of the Interior organizes various activities aimed at protecting children from online sexual harassment and from broadcasting pornographic contents and activities to children younger than 15. Specifically educated police officers work on the protection of children, and an action called "the red button" has been launched, enabling every child to report any online harassment.[76] In reality, it is expected that children's protection will depend on the established confidence between the child and its parents because parents who are not proactive do not have any adequate way of controlling their child, particularly if it is of older age.

9. Representation of the child as part of the content of parental care

A child becomes a legal entity by birth, but it only later acquires legal capacity—first only partially and then also fully—by reaching the age of 18 or by entering into marriage while still being a minor. Within the content of parental care, parents are entitled to represent their child in personal and property matters unless it is established otherwise. These general rules include exemptions in the areas of both personal law and property law declarations.

Because of the increasingly complex relations, the area of parental right to represent a child is slowly weakening, and increasing importance is attached to the child's opinion and will. A particularly obvious, specific trend in administrative and judicial proceedings decides on the rights and interests of a child to which a significant contribution has been given by the concept of a special representative of the child, as referred to in the European Convention on the Exercise of Childrens' Rights[77] also ratified by the Republic of Croatia.

74 Buljan Flander, Ćosić, Profaca, 2009, pp. 849–856.

75 Example: *Kako zaštititi dijete u svijetu interneta, mrežnih tehnologija i mobilnih telefona?* (How to Protect a Child in the World of the Internet, Network Technologies and Mobile Phones?) https://hakom.hr/UserDocsImages/2018/dokumenti/HAKOM_BROSURAmala.pdf (Accessed: April 18, 2022).

76 https://mup.gov.hr/ostalo-48/online-prijave/online-prijava-zlostavljanja-djeteta-red-button/281667 (Accessed: April 20, 2022).

77 Cf. Hrabar, 2012, pp. 103–116.

In the South European area, children's economic dependence on their parents is prolonged (according to the Eurostat data, in Croatia, children live, on average, up to 32,4 years of age in the same household with their parents),[78] and Simultaneously, the age limit for making legal declarations of will is lowered. In the recent past, after World War II, in the process of industrialization and migration of minors to cities, often without their parents, it became clear that it was necessary to recognize children's limited business capacity. Nowadays, because of the extended possibilities for recognizing such capacity, the reasons are totally different, prompted by understanding that a child is not "a small person" but one who, in line with their developmental needs, must recognize very specific children's rights, including the right of having an impact on decisions related to its rights and duties.

Pursuant Art. 86, paras 1, 2 of the Family Act, parents and other persons caring for children must respect their opinion depending on their age and maturity. This provision has the significance of a recommendation in everyday family and common life, although the meaning of this norm is strong and imperative. The right of the child to get to know the most important circumstances of the case, receive advice, express their opinion, and be informed about possible consequences of the respect of their opinion in proceedings deciding on their rights or interests is stipulated in the act with more details, even at the level of principle. Indeed, whenever a conflict of interest arises between a child and their parents, the child will not be represented in the proceedings by their parent/s but by a special guardian (*see infra*).

The child may—and by law must—make statements regarding particular status issues independently. Thus, for example, at the age of 12, the child alone gives their consent to adoption[79] and the consent to the change of their name and nationality following adoption[80]. At the age of 14, the child is entitled to give their consent to the recognition of paternity.[81] A 16-year-old child may recognize paternity if they are capable of understanding the meaning and legal consequences of consent, and a younger child may also recognize paternity but to be able to do it, the consent of the child's legal representative is necessary.[82] Art. 130, para. 2 of the Family Act recognizes the child's acquisition of the right that the court, in the proceedings dealing with the protection of its right and interests, may allow them to present facts, propose proofs, use legal remedies, and take other actions if the child can comprehend the meaning and the legal consequences of such actions, which must be assessed in every individual case. According to Art. 242, para. 6 of the Family Act every child above the age of 14 is entitled to lodge an appeal to a decision on the appointment of a guardian and has also some other procedural rights. Pursuant Art. 449, para. 1 a child who is older than 16 may bring an action to seek permission to enter into marriage.

78 https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=yth_demo_030&land=en (Accessed: April 20, 2022).
79 Art. 191, para. 1 of the Family Act.
80 Art. 198, para. 5 of the Family Act.
81 Art. 64, para. 1, point 4 of the Family Act.
82 Art. 63, para. 1, points 3 and 4 of the Family Act.

Medical issues are regulated by Art. 88 of the Family Act. Under family legislation, a child older than 16 who, according to a medical doctor's opinion, disposes of sufficient information to form their own opinion on the concrete matter and who is mature enough to make a decision on preventive, diagnostic, or therapeutic procedures aimed at their health or therapy, may independently give consent to an examination, a test, or a medical intervention (informed consent of the child). Though, a medical doctor is authorized to assess that it is a medical intervention connected with some risks of severe consequences for the child's physical or psychic condition as the patient and to seek the consent of the child's parents or other legal representative. If the parent(s) exercising parental care has (or have) a different opinion than the child on the application of a medical intervention, any of them may initiate court proceedings in which the court will render a decision on the protection of the child's well-being. General rule of Art. 16 of the Act on the Protection of Patients' Rights[83] applies in case of urgent medical intervention, when there is no need of the patient's consent when the patient's life and health are at risk.

The Family Act does not solve the issue of whether the termination of pregnancy is a medical intervention connected with serious risks, but in practice, a medical regulation is applied as *lex specialis* according to which a minor over the age of 16 may freely give her consent to the termination of pregnancy. If she is under 16, she will need the approval given by her parents or guardian, according to Art. 18, para. 2 of the Act on Health Measures on the Exercise of the Right to the Freedom of Decision-Making on Giving Birth[84].

Criticism of such a decision is expressed in the legal literature, in particular with regard to the way in which a medical doctor may present a medical intervention or its consequences to a child.[85]

If the termination of pregnancy may severely impair the minor's health, or if it is performed after the 10th week from conception, the competent commission of the first instance is authorized to decide on the request for the termination of pregnancy. In that case, regardless of the minor's age, the parents or guardian must be informed

83 Act on the Protection of Patients' Health, Official Gazette, Nos. 169/04, 37/08.

84 Act on Health Measures on the Exercise of the Right to the Freedom of Decision-Making on Giving Birth Official Gazette, Nos. 18/78, 31/86, 47/89, 88/09.

85 "It is sufficient to imagine a minor's pregnancy and her dilemma regarding the termination of pregnancy and on the other hand *pro-life* or *pro-choice* of the medical doctor and his information on the patient's health following the intervention. There is absolutely no doubt that the child's decision will depend on the manner in which the situation is presented to her. We are faced with the adults' influence (even those who are not related by blood) on the child's decision made on the basis of the opinion formed 'from the outside', by manipulating the truth." Hrabar, 2020a, p. 665.
"Not only that because of this principle the need of the parents and of guardians to care for the minor is increased, and in such cases the legitimate interest of the State to care for a young person is also strengthened. The care may be direct in the way that the consent of a state authority is sought to give its approval of the minor's termination of pregnancy (or the Social Welfare Office or the court). It can also be indirect, when the parents' or the guardian's consent is requested. In this concrete situation, the minor's interest to independently decide on the abortion are directly confronted with the interests of the State that by requesting the consent, the minor's best interests are met." Ritossa, 2005, p. 977.

about the referral to the commission, unless the minor has acquired civil capacity by entering into marriage.[86] Parents do not have the possibility to prevent the termination of pregnancy, but by informing them, if the termination of pregnancy has been approved, there is assurance that the parents are aware of their child's need for appropriate healthcare.

Considering property, parents should manage their child's property with the care of a responsible parent,[87] and it is the legal standard that jurisprudence must still take a stand on it. The legislator distinguishes the management of the child's income or property. According to Art. 97, paras. 2, 4 of the Family Act The former may only be used for its maintenance and only exceptionally for medical treatments of parents or the child's siblings when it is not used for the child's maintenance, medical care, and education. To use the child's income for other persons, it is necessary to receive the court's permission in a non-contentious procedure; however, as no control mechanisms for the use of income are envisaged, the initiation of the proceedings depend on the parents' knowledge of whether they should ask for it or not. The child's property may be alienated by parents only if they themselves do not have sufficient funds for the child's maintenance, medical care, or education, and the necessary funds cannot be provided in any other way. If parents want to alienate more valuable assets, they must obtain the court's permission, as required by Art. 97, para. 3, Art. 98 para. 3 in connection with Art. 101 of the Family Act.

Art. 85, para. 2 of the Family Act regulates business capacity of a child. A child who earns having reached the age of 15 acquires only limited business capacity and may independently bring legal actions, enter into legal transactions, and assume obligations amounting to their earnings and freely dispose of them. However, if by undertaking such legal actions or legal transactions a child jeopardizes their maintenance, or if this has a serious impact on their personal and property rights, to undertake these actions, the child must have the parents' or another legal representative's consent.

In all cases where the parents' interests are contrary to the child's interests, a special guardian is appointed to the child. Children's guardians are also appointed in the following situations: in disputes and the proceedings challenging maternity or paternity; in other proceedings where it is decided on parental care, particular contents of parental care, and personal relations with the child where a dispute has arisen between the parties; in court proceedings pronouncing measures for the protection of personal rights and children's well-being; in the proceedings of rendering a decision replacing consent to adoption, when there is a conflict of interest between a child and their legal representatives in property matters or disputes, entering into legal transactions; in the case of disputes or transactions with a person exercising parental care; and in other cases when so provided in the provisions of the Family

86 Art. 20, para. 2 of the Act on Health Measures on the Exercise of the Right to the Freedom of Decision-Making on Giving Birth.

87 This is a new legal standard for parents in the Croatian family legislation of 2014. Earlier, due care was required, which is a well-known concept of the law on civil obligations.

Act or special regulations, and if it is necessary for the protection of the child's rights and interests.[88]

These are cases involving various conflicts of interest between the child and their legal representatives or the proceedings in which it must only be established whether any reasons for the restriction of the right to parental care exist.

A special guardian is a lawyer who has passed a bar examination and is employed at the Centre for Special Guardianship, whose operation and organization are specified in a separate piece of legislation.[89]

10. Parental authority in case of divorce

Divorce is most certainly one of the most stressful events, having serious consequences for both the spouses and the child. The principle that parental care is a joint parental duty is exposed to major challenges both during and following divorce because the parents' personal and individual interests often take precedence over their common interest and duty to ensure their child's well-being.

Divorces may be classified according to level of conflict, which permeates the relations of the soon former spouses; after divorce, this is reflected in how they exercise their parental care for their common children.

The first and basic principle in any proceedings, as well as in those involving divorce, is the principle of the protection of the child's best interest. Therefore, the competent bodies are bound to take legal actions and render decisions by always implying and considering the protection of the child's best interest. The second important principle is the principle of amicable resolution of family matters, while the third principle refers to proportional and the weakest interference in family life.[90]

To ensure these principles before a divorce, mandatory counseling is pursuant Art. 7 of the Family Act obligatory for parents who have common children under legal age. If the parents succeed in reaching an agreement on their joint parental care agreement, the process of divorce will continue in non-contentious proceedings, where the court is authorized to confirm the agreement on divorce and the parents' joint parental care having established that their agreement is made in conformity with the best interests of the child.

If the spouses have not succeeded in reaching an agreement, divorce proceedings will continue as a civil lawsuit, and the spouse who has brought an action for divorce must take part in at least one mediation session. If they have agreed to initiate the proceedings, they must both participate in mediation. Mediation is, in principle—and

88 Art. 240, para. 1 of the Family Act.
89 Act on the Centre for Special Guardianship, Official Gazette, No. 47/2020.
90 Lucić, 2017, p. 406.

in majority of cases—conducted at the state's expense. Its purpose is to agree on the legal consequences of divorce and on the way in which they will exercise shared parental care.

The court must always, also *ex officio* in the lawsuit, decide on the legal consequences of divorce concerning the exercise of parental care; for example, with which parent the child will reside, how parental care will be exercised, the child's personal relations with the parent, and the child's maintenance.[91] On all these issues, the court may also decide in independent proceedings on the request of the authorized party.

The Family Act contains several complex provisions on the ways of joint exercise of parental care following a divorce. It distinguishes decisions on the child's important personal rights (in some of them, the other party's written consent is necessary, and in others, no such consent is necessary) and decisions on the child's valuable property rights (where, cumulatively, the consent of the other parent and the court's approval are needed).

If the parents have not reached an agreement on parental care, the court, in accordance with Art. 106 of the Family Act, may only decide that parental care will be independently exercised by the parent who lives with the child, or it may render a decision that when representing the child in regard to its personal rights,[92] that parent must obtain a (written) consent of the other parent who does not live with the child, as required by Art. 105, paras. 3 and 5 of the Family Act. Such stipulation due to which the parent not living with the child cannot participate in decisions and in the exercise of parental care has been strongly criticized by family-law theoreticians.[93] The case law is going in a *contra legem* direction: the court may render a decision on joint parental care whenever it is in line with the protection of the principle of the child's best interest.

Although a general provision establishes that the child takes part as a party in every proceeding where it is decided on its rights and interests, this is not expressly provided in non-contentious divorce proceedings.[94] The child's right to express its

91 Art. 413 of the Family Act.

92 Representation regarding the child's personal rights is the representation when changing the child's personal name and its permanent and temporary residence and when choosing or changing their religious affiliation.
For more on representation in basic personal rights, see in Lucić, 2017.

93 Cf. Korać Graovac, 2017, pp. 51–73.

94 In literature, there is still an interpretation that the child is a party to any proceedings—thus, also when joint parental care is planned. Aras Kramar, 2015, pp. 235–267.
Ensuring that the child can express their opinion is particularly important for the application of the Regulation Brussel II bis (Council Regulation (EC) No 2201/2003 of November 27, 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental care, repealing Regulation (EC) No 1347/2000 (Regulation Brussels II bis).
Pursuant to Article 23, "Grounds for recognition of judgments relating to parental care."
A judgment relating to parental care shall not be recognized:
"-(b) if it was given, except in case of urgency, without the child having been given an opportunity to be heard, in violation of fundamental principles of procedure of the Member State in which recognition is sought; …"

opinion was intended to be ensured by Art. 106, para. 5 of the Family Act, pursuant to which parents must introduce their child to the content of their parental care agreement and allow the child to express their views in compliance with their age and degree of maturity.

In civil proceedings, a special guardian is appointed to the child, representing them in lieu of their parents. It is the guardian's duty to make the child familiar with the circumstances of the case, to obtain the child's opinion if they are willing to give it, to represent the child as a party to the proceedings, and to make the child acquainted with the content of the court's judgment. As a rule, parents are not inclined to expose the child to additional conversations with a special guardian, and therefore, they usually try to reach an agreement to protect the child.

The main intention of the Family Act has been to encourage parents to reach an agreement because, otherwise, a special guardian will have to be appointed to the child as a party to the proceedings, which will become more complicated and often prolonged. However, it has been observed in practice that the parents' agreement does not always correspond to their actual will, and disagreements exist even after the formally consensually finalized divorce. Dissatisfied parents may initiate new proceedings for the protection of the child's rights or for the protection of their own rights as *clausula rebus sic stantibus* applies to all family-law decisions.

An agreement or a decision on parental care always contains a determination of contacts. The content of the plan on common parental care already contains many details on the manner of organizing contacts: the amount of time the child will spend with each parent (weekly, monthly, on holidays, and during school recess), also specifying the exact time and place of handing over/receiving the child of a younger age and the way of exchanging information in connection with the child (e.g., orally, by mail, telephone, telefax, SMS, e-mail, or in any other suitable way). It may also be agreed that another person will be present when the child is taken over as well as the mode of transport and who pays for it, as regulated by Art. 417, para. 2 of the Family Act. The court's decision, for the sake of legal security and easier enforcement, must be as specific as possible.[95]

If the parents can agree on things, they will be able to adjust the requirements of the decision to their life habits and needs, and if they have any difficulties with it, they may seek enforcement because of very clearly specified manner of organizing contacts.[96]

95 Cf. Pavić, Šimović, Čulo Margaletić, 2017, p. 23.

96 According to official data in 2020, as many as 2083 children did not exercise their right to contacts with the other parent, or they did exercise it, but in the scope lesser than what had been stated in the court decision (because of the manipulative behaviour of the parent with whom they lived). As many as 352 children were exposed to manipulation by the parent with whom they lived at the time their personal relations under supervision took place.
These data come from the annual statistical report on the applied rights to social welfare, the legal protection of children, youth, marriage, family, and persons deprived of business capacity and the protection of persons with physical or mental disabilities in the Republic of Croatia in 2020.

Pursuant to Art. 523 of the Family Act The means of punishment to enforce a decision for the failure to organize contacts can be a fine or imprisonment. This drew some criticism from theoreticians because the procedure of handing over the child is not foreseen[97] and because no gradation of the means of enforcement is envisaged.

The consequences of the child's refusal to have contact with a parent depend on the child's age: a child younger than 14 may be referred to the social welfare office for a conversation with a professional. If the child is over 14 and, even after this conversation, still objects to enforcement, this cannot be carried out.[98]

Legislation has only solved the issue of enforcement in relation to the person with whom the child lives, but no sanctions are envisaged for the parent who does not fulfill their duty (and the right) to have personal relations with the child.[99]

Changing the place of permanent residence is of particular importance because it may have impact the possibility of realizing personal contacts and is regulated by Art. 100 of the Family Act. Therefore, to change permanent residence, a written consent from the other parent is necessary. If a parent cannot get the other parent's consent, it may be given by the social welfare office if the change of permanent or temporary residence, or moving, do not have any serious impact on the realization of personal contacts with the other parent or if this is not absolutely necessary to protect the child's rights and interests . The ministry competent for families does not provide any data on the number of cases in which Social Welfare Offices have given their consent for the change of permanent residence, and no research of case law exists on that matter. It is well known among the professional public that courts rarely reject applications for the change of permanent residence of the parent who resides with the child on the basis of an enforcement decision.

Both the plan on the parents' joint parental care and the court's decision may undergo changes because of the application of the *rebus sic stantibus* clause Art. 107, para. 2 etc. It is sufficient to prove that has been a significant change of circumstances since the previous plan has been reached. Any parent—or the child—may seek a new decision on parental care from the court, or the parents may agree on a

However, "a special problem is the protection of the rights of children whose parents, after divorce, refuse to exercise their parental duties and obligations toward the child. Apart from taking the appropriate measures against parents, a child certainly needs to be granted support and assistance in overcoming the situation where he or she is told by the parent to be unwanted. In such cases, it is very important to re-examine the child's interests regarding the previous decision. Sometimes a parent, faced with the possible consequences of neglecting the child, starts insisting on exercising parental care but only to avoid possible sanctions. If that is the case, the child's needs and its feelings must be given priority, and any professional interventions in the relationship between the child and its parents must be carefully planned." Report on the ombudswoman's work, 2021, p. 26. https://dijete.hr/download/izvjesce-o-radu-pravobraniteljice-za-djecu-za-2021 (Accessed: April 15, 2022).

97 Pavić, Šimović, Čulo Margaletić, 2017, pp. 193, 194; Stokić, 2013, pp. 11, 12 and Šeparović, 2014, p. 223.

98 Art. 525 of the Family Act.

99 Cf. Korać Graovac, 2018, pp. 35–43.

new plan for their joint parental care, which must be approved by the court in non-contentious proceedings to acquire the capacity of an enforcement document.

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

It is primarily the parents' duty to care for their children, while the duty of the state sets, only in a subsidiary manner, to protect children who do not enjoy proper parental care.

According to Art. 5, para. 1 of the Convention of the Rights of the Child,

> State Parties shall respect the responsibilities, rights and duties of parents …. In a manner consistent with the evolving capacities of the child, appropriate directions and guidance in the exercise by the child of the rights recognized in the present Convention.

In addition, according to Art. 18, para. 1 of the same Convention, "*Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basis concern*."

However, in many life situations when this is not possible and when it is in the child's best interest that someone else exercises parental care, the parents' rights may be more or less limited.

If children are left without parental care, they will be placed under guardianship,[100] and the guardian will become their legal representative, or they will be adopted. Adoption is the best form of family protection of the child left without parental care; however, it is not always the best solution for every child (for instance, if the child has close relatives who are prepared to accept the duty of a guardian or just foster them). Sometimes, it is not even possible to find adoptive parents because the child to be adopted is "difficult to adopt" owing to age, health status, and other factors.

Since 2014, the Croatian family law has introduced the concept of "dormant parental care,"[101] according to which parents do not permanently lose their right to parental care; however, the situation is only temporary, although it may be extended until the child reaches the age of majority.

100 In 2020, in the Republic of Croatia, 1,105 children were placed under guardianship, and in the course of 2020, 446 children.
Annual statistical report for RoC for 2020 of the Ministry of Labour, Pension System, Family and Social Policy.
https://mrosp.gov.hr/UserDocsImages/dokumenti/Socijalna%20politika/Odluke/Godisnje%20statisticko%20izvjesce%20u%20RH%20za%202020.%20godinu.PDF (Accessed: April 27, 2022).

101 Modelled on "*Ruhen der Elterliche Sorge*," Art. 1673 and Art. 1674, *BGB*.

Dormant parental care caused by the existing legal obstacles takes place when a child's parent is a person under legal age (a minor) or a person deprived of legal capacity not capable to exercise parental care.[102] Nevertheless, although a parent is not allowed to exercise parental care, they can still provide daily care to the child either alone or together with the other parent or the child's guardian. However, that parent may not represent the child, but the social welfare office must place the child under guardianship and appoint its guardian.

The parent whose parental care is dormant, as well as the child alone (if they do not agree how the guardian wants to represent the child when dealing with important decisions), may initiate non-contentious proceedings where the court will determine who is going to represent the child in a particular matter.

A parent under legal age may always choose the child's personal name in conformity with the Personal Name Act.[103]

When the aforementioned reasons cease to exist, dormant parental care ceases to exist *ex lege*.

Art. 115 of the Family Act regulates another group of reasons for dormant parental care: if a parent is absent, their temporary residence is unknown, or they are prevented from exercising parental care for a longer period of time for objective reasons. The court must render a decision in non-contentious proceedings, and the parent may not exercise parental care until the court has established that the circumstances (for which dormant parental care had been ordered) ceased to exist (regardless of if, in the meantime, the parent has returned and wants to assume direct parental care for the child).

In all these situations of dormant parental care, the child is placed under guardianship. The child is also placed under guardianship if its parents have died, disappeared, are unknown or deprived of the right to parental care, are absent or prevented from caring for their child, and, Simultaneously, they have not entrusted the child's care to a person fulfilling the conditions for being a guardian, or they have given their approval for the child's adoption.[104] For the sake of legal security, all examples should name in the same article, although it is not the case, what is challenging for legal security.

The social welfare office issues a decision on the appointment of a minor's guardian and determines the child's address. More than a single guardian may be appointed with different tasks. When bringing its decision, the office must take into consideration the child's wishes (in conformity with their age and maturity) regarding the selection of the guardian, unless they are contrary to the child's well-being. The guardian's consent is a crucial condition for this responsible position, but the guardian does not necessarily have to live with the child.

102 Art. 114 of the Family Act.
103 Personal Name Act, Official Gazette, Nos 118/2012, 70/2017, 98/2019.
104 Art. 224 of the Family Act.

The deceased parent's will (if the parent had exercised parental care before their death), may be expressed in an advanced directive, drafted in the form of a notarial instrument according to Art. 116 of the Family Act. The social welfare office must take the advance directive into consideration, unless it is contrary to the child's well-being.

The court must deliver its decision on the appointment of a guardian to a child older than 14 and to a younger child only if they are capable of understanding its meaning and if it is in conformity with the child's well-being. The decision must also be delivered to the child's parents, to the appointed guardian, to the person named as a guardian in an advanced directive (unless the social welfare office has taken into consideration the parent's wishes), to the competent registrar, and to the land registry (if the child owns any immovable).[105]

Guardianship may be discontinued if the parents have regained their parental care, if their right to parental care is reassumed, if their legal capacity concerning parental care is (again) established, and if the child's parents under legal age have reached the age of majority or gotten married, having thus gained legal capacity. Guardianship also ceases if the child is adopted or if the same-sex life partner has acquired the partner's care under Art. 44 of the Same-Sex Life Partnership Act.[106]

Guardianship is always terminated when the child reaches legal age. If a child with special needs is involved, and if there are reasons to deprive them of legal capacity, it is necessary to conduct the proceedings and place them again under guardianship as an adult.

All the rights of the child that they are entitled to in relation to their parents, they are also entitled to while under guardianship.

12. Summary and *de lege ferenda* conclusions

In Croatia's recent legal history, the family-law system of the relationship between parents and children has changed from patriarchal to egalitarian. From a bilateral one which includes the parents, it has become trilateral, and it is often like a triangle whose base are the children. It is marked by the ideas referred to in the Convention on the Rights of the Child, dedicating full attention to the child as the most important subject in family relations owing to the concept of the child's best interests.

In a society such as the Croatian one, characterized by Mediterranean and southern influences but also by a highly traditional mentality, children are considered to be of exceptional value. In the family legislation of Croatia, the relations

105 Hlača, 2021, pp. 385, 386.
106 Act on Same-Sex Life Partnership, Official Gazette, Nos 92/2014, 98/2019.

between parents and children are based on a paradigm of the protection of children's rights to such an extent that may easily be considered as pedocentric. The principle of the protection of the child's best interests is of paramount consideration when speaking of legislation; however, the social protection of children—although strongly proclaimed—always suffers owing to the weakness of the social and judicial systems.

Moreover, the family-law system, by also deriving support from international documents for the protection of human rights, still emphasizes the parents as primary educators. In the Croatian system, the concept of "parent" has so far been reserved for the mother and father and for adoptive parents, although genetic parenthood does not always correspond with the legal one, when the child is conceived by medically assisted insemination by heterologous methods. Medically assisted insemination is aimed at offering medical assistance to persons who cannot realize their desire for descendants, excluding commercialization and possible contracts on surrogate motherhood, although it is undergoing significant changes; for example, in April 2022, the High Administrative Court opened the possibility to adopt also for same-sex couples. This possibility will destroy the legal premise that a child's parents may be only a woman (mother) and a man (father). Changes in the birth registrar are expected to follow this new legal approach by considering the child's origin.

Parental care is understood as a personal and human right, although the parents' responsibility for bringing up their children is particularly emphasized as its component part. There is a demand in the legal system, whenever a conflict of interest arises between the child and its parents, to appoint a special guardian to the child. In such a way, the parents' right to representation is limited. Indeed, the child alone exercises the increasing right to express not only their opinion but also their will in an autonomous way through a special representative and to participate as a party in the proceedings where it is decided on their rights and interests. It is even possible, in particular cases, to have their procedural capacity recognized even before acquiring legal capacity.

Since society is under a great deal of pressure to change social values, it is sometimes difficult for parents to decide how to raise their children. The family-law system is making significant efforts to provide some well-balanced solutions that can more easily be found in the areas of upbringing and education or the media. However, children's protection is a difficult mission for many parents when it comes to the Internet and social networks. This is where technology is developing much faster than the law, and the parents' knowledge is often insufficient to have an impact on the contents to which their children are unselectively exposed, undisturbed, despite the technological progress.

Parental care is also subject to many challenges in interpersonal relations with the other parent who is an equal holder of parental care. Although relatively good legal solutions exist, they are insufficient; what is needed is coherent therapeutic work with families, which is quite often almost inaccessible in smaller cities. The problem of conflicting divorces, parents who are alienated from their children, and

unrealized children's needs (including maintenance) are global phenomena that cannot be easily solved without an awareness that by the termination of marriage, parental care does not vanish. Croatia has enhanced the procedural rights of children by ensuring a special guardian in line with the European trends (still developing institution with many human resource weaknesses). However, it is necessary to allocate significant funds for non-legal support to be offered to families undergoing crises.

A certain number of children remain without any parental care, and the social system steps in to provide it. Any encroaching upon parental care becomes subject to the principle of proportionality and the protection of the right to respect family life, but there are also concerns that the measures for the protection of children's personal interests are not sufficiently intensive. In addition, intensive deinstitutionalization and the insistence on foster families as a desired form of alternative care for children have resulted in a shortage of vacancies in children's homes and in an insufficient number of available foster families (the campaigns organized to increase interest for becoming foster parents have been unsuccessful). As a result, children end up staying with their incompetent parents, although it would be much better for them to be excluded from such families.

The postmodern era we live in is full of challenges for families. It is difficult to come to terms with the parents' rights ensuing from parental care (comprehending parental rights as well as duties) on the one hand and with the rights of children—particularly in education—on the other. It would be a good idea to observe very closely the social changes taking place in society and to enhance parents' rights as long as they are directed toward children's well-being in pluralistic societies. Also, the appropriate support offered to parents must always be ensured because they are torn between their private lives and their business obligations. Various systems have different solutions, and what they all need is effective cooperation between scientists and policymakers to be able to recognize and adopt good practices, high-quality legislations, and supportive non-legal systems for families.

Bibliography

Alinčić, M. (2007) 'Pravni izbori obiteljskog prava', in Hrabar, D. (ed.) *Obiteljsko pravo*, Zagreb: Narodne novine.

Aras Kramar, S. (2015) *Novi pristup uređenju postupka radi razvoda braka u Hrvatskoj,* Zbornik radova s međunarodnog savjetovanja Aktualnosti građanskog procesnog prava – nacionalna i usporedna pravnoteorijska i praktična dostignuća, Split: Pravni fakultet Sveučilišta u Splitu, pp. 235–267.

Buljan Flander, G., Ćosić, I., Profaca, B. (2009) 'Exposure of children to sexual content on the internet in Croatia' *Child Abuse and Neglect*, 33, 12, pp. 849–856. https://doi.org/10.1016/j.chiabu.2009.06.002.

Dragičević Prtenjača, M., Bezić, R. (2018) 'Perspektiva uvođenja doktrine doli incapax u hrvatsko maloljetničko kazneno pravo', *Macedonian Journal for Criminal Law and Criminology*, 25, 1, pp. 1–37.

Hlača, N. (2021) *Skrbništvo in Obiteljsko pravo,* ed. Hrabar, D., Zagreb: Narodne novine, pp. 355–398.

Hrabar, D. (2007) *Pravni odnosi roditelja i djece, in Obiteljsko pravo*, ed. Grubić, V., Zagreb: Narodne novine, pp. 125–310.

Hrabar, D. (2012) 'Europska konvencija o ostvarivanju dječjih prava – poseban zastupnik djeteta', *Dijete u pravosudnom postupku – Primjena Europske konvencije o ostvarivanju dječjih prava*, *Zbornik priopćenja sa stručnih skupova pravobraniteljice za djecu,* Zagreb: Pravobranitelj za djecu, pp. 103–116.

Hrabar, D., (2018) 'Odjek roditeljskih vjerskih i filozofskih uvjerenja na odgoj i obrazovanje djece u hrvatskoj legislative', *Zbornik Pravnog fakulteta u Zagrebu*, 68, 3-4, pp. 319–336

Hrabar, D. (2020a) 'Postmoderno doba kao predvorje negacije dječjih prava', *Zbornik radova Pravnog fakulteta u Splitu*, 57, 3, pp. 657–688. https://doi.org/10.31141/zrpfs.2020.57.137.657.

Hrabar, D. (2020b) 'Surogatno majčinstvo kao moderan oblik eksploatacije žena i trgovine djecom', *Zbornik Pravnog fakultet u Zagrebu*, 70 (2-3), pp. 171–212. https://doi.org/10.3935/zpfz.70.23.01.

Hrabar, D., Hlača, N., D., Jakovac-Lozić, D., Korać Graovac, A., Majstorović, I., Čulo, A., Šimović, (2021) *Obiteljsko parvo.* Zagreb: Narodne novine.

Hrabar, D., Korać Graovac, A., Omejec, J., Majstorović, I., Čulo Margaletić, A., Šimović, I. (2021) *Presude o roditeljskoj skrbi Europskog suda za ljudska prava protiv Republike Hrvatske.* Zagreb: Pravni fakultet Sveučilišta u Zagrebu.

Korać Graovac, A. (2018) 'Materijalna odgovornost za povrede prava i dužnosti iz obiteljsko-pravnih odnosa?' *Zbornik radova Šesti međunarodni naučni skup Porodičnog prava „Imovinskopravni aspekti porodičnih odnosa", Pravni fakultet Džemal Bijedić u Mostaru*, pp. 35–43.

Korać Graovac, A. (2016) 'Family Forms and Parenthood in Croatia', in Büchler, A., Keller H. (eds.) *Family Forms and Parenthood – Theory and Practice of Article 8 ECHR in Europe*., Cambridge: Intersentia, pp. 125–144.

Korać Graovac, A. (2017) 'Od zajedničkog do samostalnog ostvarivanja roditeljske skrbi i natrag – kako zaštiti prava djece i roditelja', *Godišnjak Akademije pravnih znanosti Hrvatske, 8* (a special issue), pp. 51–73.

Korać Graovac, A. (2012) 'Pravo djeteta da bude saslušano – Opći komentar br. 12 Odbora za prava djeteta', *Dijete u pravosudnom postupku – Primjena Europske konvencije o ostvarivanju dječjih prava, Zbornik priopćenja sa stručnih skupova pravobraniteljice za djecu,* Zagreb: Pravobranitelj za djecu, pp. 117–137.

Korać, A. (1996) *Obiteljskopravne presude Europskog suda za ljudska prava*. Doctoral Thesis (unpublished), Pravni fakultet u Zagrebu.

Kureba, I., Elezović I., Štulhofer, A. (2015) 'Parents' Attitudes About School-Based Sex Education in Croatia', *Sexuality Research and Social Policy*, 12, pp. 323–334, https://doi.org/10.1007/s13178-015-0203-z.

Lucić, N. (2017) 'Protection of the Right of the Child to be Heard In Divorce Proceedings – Harmonization of Croatian Law With European Legal Standards', in Duić D., Petrašević, T. (eds.) *Procedural aspects of EU law: EU and comparative law issues and challenges series 1 (ECLIC 1)*. Osijek: Faculty of Law Osijek, pp. 391–423. https://doi.org/10.25234/eclic/6538.

Miličić, V. (1989) 'Antropološko-aksiološki sustav potreba kao matično područje ljudskih prava', *Zbornik Pravnog fakulteta u Zagrebu*, 39, 5–6, pp. 625–637.

Omejec, Jasna (2021) 'Značenje i doseg prava na poštovanje obiteljskog života u praksi Europskog suda za ljudska prava', in Hrabar, D. (ed) *Presude o roditeljskoj skrbi Europskoga suda za ljudska prava protiv Republike Hrvatske.* Zagreb: Pravni fakultet Sveučilišta u Zagrebu, pp. 1–26.

Pavić, M., Šimović, I, Čulo Margaletić, A. (2017) 'Postupak ovrhe radi ostvarivanja osobnih odnosa roditelja i djece kao pretkazivač povrede prava iz europske konvencije za zaštitu ljudskih prava i temeljnih Sloboda', *Godišnjak Akademije pravnih znanosti Hrvatske*, 8, pp. 171–198.

Prokop, A. (1966) *Porodično pravo. Odnosi roditelja i djece*. Zagreb: Školska knjiga.

Ritossa, D. (2005) 'Prijepori o pravu na pobačaj u Republici Hrvatskoj', *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 26, 2, pp. 971–997.

Winkler, S. (2019) 'Roditeljska skrb i uzastopne obitelji', *Godišnjak Akademije pravnih znanosti Hrvatske*, 8, pp. 75–92.