Part III

# FAMILY LAW INSTRUMENTS TO SUPPORT FAMILIES, PARENTS, AND CHILDREN

Chapter 11

# Croatia: Demographic Policy and Family Law Combatting Demographic Decline

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**Abstract**

This chapter focuses on family policy in Croatia, reviewing demographic data, the institutional framework for family policy, family support benefits (including the country's generous maternity and paternity leave), child allowances, and baby bonus for the third and fourth child. The chapter explains state allowances and local (self-government) supported family allowances. Generational policy, tax and contribution benefits, family and work allowances, family-friendly provisions in the pension system (an additional 6-month period for each child), and the social security institutions supporting families are also reviewed within the family policy framework. In addition, the chapter discusses the advantages and disadvantages of the real estate tax for housing in areas of special state concern and the subsidisation of housing loans for families. Criticism of the fact that expenditures for social policy in Croatia are among the lowest in the European Union is also presented.

Though it does not significantly or directly influence demography, family law is extremely important owing to the system of principles and the values that these principles reflect. In the context of family policy, this chapter describes the principles of family law, family law regulation concerning property rights between family members (the concept of the family home, rules for the division of family property, representation of the child in property matters, etc.). It also introduces the legal norms that regulate establishing the origin of the child, as well as the rights and duties related to maintenance among relatives that offer financial security to family members based on the principle of family solidarity. Given that every 20th child in Croatia is born through medically assisted reproduction, this procedure influences

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the fertility rate to some extent. Consequently, the Croatian state provides generous support for reproductive health.

**Keywords:** Family policy, family allowance, child allowance, matrimonial property, family law, medically assisted reproduction, assisted reproductive technology

## 1. Introduction

Europe is experiencing worrying demographic changes. Croatia is no exception to this issue, with a fertility rate of 1.4 births per woman in 2024. This is a critical topic in the pre-election programmes of each successive government, which are full of promises to address negative demographic trends. When concrete programmes must be drafted, there are often many delays, obstacles, and compromises, with 'more important' values and expenditures taking precedence. The political problem is that pro-natal policies are long-term; thus, the effects are delayed and visible only years after persistent implementation.

As a natural unit of society, the family is the cradle of future generations. By supporting families, states ensure stable development and the continuity of social values. Social values are the guarantee for the democratic social development of every country and allow the survival of the nation.

This chapter presents key demographic data, the institutional framework of family policy, the most important family support benefits and policies, and the family law instruments that support families, parents, and children in Croatia. Family law can provide families with a predictable and acceptable legal framework. It helps family members feel safer and more satisfied and encourages them to have more children. In this chapter, the role of family law is presented through these lenses.

Medically assisted reproduction (MAR) contributes to 5% of new births and is a significant help for infertile couples. However, the procedure raises ethical concerns and must be regulated to preserve human dignity from the beginning of a child's life.

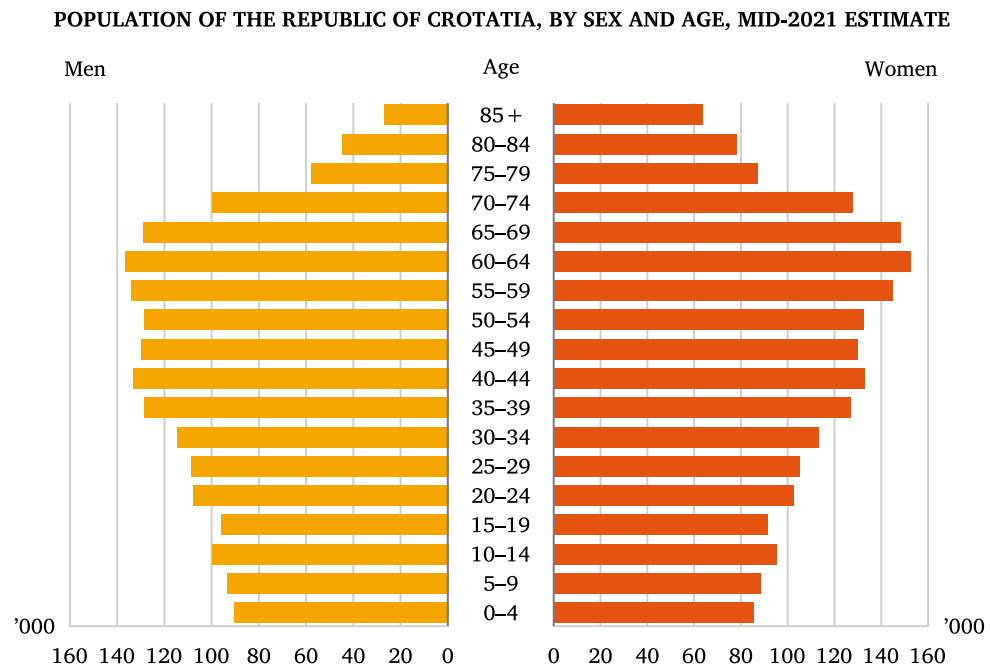
## 2. Demographic data and family policies

### *2.1. Demographic data*

Croatia's population has declined by 9.64% since 2011. According to the latest census, the permanent population in Croatia reached 3.87 million inhabitants in 2021, including 1,865,129 (48.17%) men and 2,006,704 (51.83%) women. Among

them, 14.27% were aged 0–14, and 22.45% were aged 65 and over, as shown in the below chart.[1]

*Table 1. Population of the Republic of Croatia*[2]




The share of young people in Croatia's population increased in 2022. However, the country has one of the highest shares of people aged 65 or older in the European Union (EU). [3] According to UN population projections, by 2030, one-quarter of Croatians will be older than 64. If current demographic trends continue, the population of Croatia will have decreased to well below 4 million people by 2030. As such, the number of people above 65 years old is predicted to be around 1 million, representing a significant increase (around 250,000) from 2013. Within this group, more than 250,000 will be within the oldest-old category (aged 80+).[4] Currently, 99.24% of the population are citizens, and 0.74% are foreign citizens.[5]

1 Croatian Bureau of Statistics, 2021.
2 Source: Croatian Bureau of Statistics, 2022a.
3 Eurostat, date extracted in February 2024.
4 Vlada Republike Hrvatske, 2021, p. 10.
5 Croatian Bureau of Statistics, 2021.

In 2022, the live birth rate in the Republic of Croatia was 8.8 live births per 1,000 inhabitants. In the same year, *the natural increase rate* was negative at -6.0 (-23,096 persons). The vital index (live births per 100 deaths) also confirmed a negative natural increase, reaching 59.5. A negative natural increase rate was recorded in all counties. A positive natural increase was recorded in 24 towns/municipalities, a negative increase was recorded in 527 towns/municipalities and the City of Zagreb, and a zero natural increase was reported in four municipalities.[6] The contemporary demographic picture in Croatia is characterised by three processes: ageing, natural depopulation, and the spatial polarisation of the population.[7] The fertility rate is 1.4 children per woman.

### *2.2. Institutional framework for family policy*

Family policy has traditionally been based on constitutional provisions, namely, Art. 57, para. 2, which states, 'Rights in connection with childbirth, maternity and childcare shall be regulated by law'; Art. 62, which reads, 'The family is under the special protection of the state'; and Art. 65, para. 1, which stipulates, 'The duty of all is to protect children and the infirm'.[8]

The last time explicit family policy was implemented was in 2003. Since April 2022, Croatia has been preparing the Strategy for Demographic Revitalisation of Croatia by 2031.[9] Further, one of the goals of the National Development Strategy 2030 is strengthening the family unit.[10]

Numerous laws and regulations regulate different aspects of family policy in Croatia, where family policy overlaps with social policy. Family policies are applied by the central government and self-government and local units. At the central level, the following ministries are the main institutions responsible for the implementation of social protection (including family policy): the Ministry of Social Policy and Youth, Ministry of Labour and Pension System, Ministry of Finance, Ministry of Health, and Ministry of Defence (the last two focus more on social protection). Some central government bodies dealing with social protection have several user groups (functions) within their scope. For example, the Ministry of Social Policy and

6 Croatian Bureau of Statistics, 2022b.

7 The birth rate has been falling consistently since the 1950s, whereas the death rate has been rising since the 1970s. On Croatian initiative, the question of demographic revitalisation was included in the EU's strategic agenda for 2019–2024. Croatian Dubravka Šuica, the European Commissioner for Democracy and Demography, began her five-year mandate as Vice-President of the European Commission for Democracy and Demography in 2019. Croatia.eu – Land and People: Demography.

8 The Constitution of the Republic of Croatia, Official Gazette, Nos. 56/90, 135/97, 8/98, 13/00, 124/00, 28/01, 41/01, 76/10, 85/10, 5/14.

9 See: https://demografijaimladi.gov.hr/UserDocsImages//Fotografije/Fotografije%202Novi%20direktorij//Odluka%20o%20pokretanju%20postupka%20izrade%20Strategije%20demografske%20revitalizacije%20Republike%20Hrvatske%20do%202031.%20godine.pdf (Accessed: 27 August 2023).

10 Croatia National Development Strategy 2030, pp. 88–94.

Youth implements policies relating to disability, family and children, housing, social exclusion, and education.[11]

Local and regional self-government are competent institutions for social care, and the planning and development of a social institution network is explicitly highlighted as a function of social security.[12] A problem is that there are huge differences in the economic development of different municipalities; therefore, the central government financially supports different projects.

Within their spheres of competence, municipalities and towns perform activities of local importance that directly address citizens' needs and which are not constitutionally or legally assigned to government bodies. In particular, these activities relate to childcare, social care, basic education, and other duties that are not relevant to this chapter.[13] The Central State Office for Demography and Youth publishes an overview of all the demographic measures and activities undertaken by local units in Croatia.[14]

### *2.3. Family support benefits*

Croatia offers maternity and parental benefits, with the benefits system prescribing the rights of parents and persons of equal status to time off and monetary awards. These rights can be exercised only by individuals with valid mandatory health insurance, as regulated by the Croatian Health Insurance Fund.[15] The beneficiaries of maternal and parental benefits are employed and self-employed parents, unemployed parents, 'other income' earners and farmers, parents outside the labour system (i.e. retirees, beneficiaries of the right to occupational rehabilitation, beneficiaries of the right to a disability pension due to occupational inability to work, persons unable to work, regular students and pupils), and all other persons insured with the Croatian Health Insurance Fund who cannot exercise their right as employed or self-employed parents or unemployed parents.

Employed and self-employed parents are entitled to maternity leave; parental leave; part-time work; part-time work if the child requires additional care due to health reasons; breaks for breastfeeding; leave for employees who are pregnant, have given birth, or are breastfeeding; days off for prenatal check-ups; and leave or part-time work to care for a child with severe developmental disabilities. Employed parents are also entitled to the suspension of employment until the child turns three. Entitlement to maternity and parental assistance is the same for adoptive parents, caregivers of a minor child, and foster parents as it is for the parents (married or cohabitating) of a child. Foreign nationals with permanent residence in Croatia,

11 Family Policies, 2019, p. 18.
12 Ibid.
13 Art. 19, *Law on regional and local self-government* (Official Gazette, 144/20).
14 Ministarstvo demografije i useljeništva, n.d.
15 e-Citizens, n.d.

asylum grantees, and persons under subsidiary protection have the same rights as Croatian nationals.[16]

Maternity leave can be used until the child turns 6 months; parental leave can be used thereafter. Employed and self-employed pregnant women must take maternity leave 28 days before the expected date of birth and may take it no earlier than 45 days before this date. The mandatory part of maternity leave covers the period between 28 days before the expected birth date and 70 days after the birth (a total of 98 days without interruptions). Additional maternity leave covers the period after the expiry of the mandatory part of maternity leave (from the 71st day after the child's birth) until the baby turns 6 months old. While on maternity leave, the beneficiary is entitled to compensation equal to 100% of the salary compensation base determined pursuant to the regulations on mandatory health insurance (unlimited).

Employed and self-employed fathers may take paternity leave from the date of birth until the baby is 6 months old, with the length of this leave dependent on the number of children born (10 business days for one child and 15 business days for twins, triplets, or multiple births). Employed and self-employed fathers may use this right without interruptions if they are not exercising a right provided for in the maternity and parental benefits system for the same child. The father may exercise this right regardless of the mother's employment, legal status, and whether she is taking parental leave. However, this right is non-transferable and may only be exercised by the employed or self-employed father of the child. During the exercise of the right to paternity leave, the salary compensation is equal to 100% of the salary compensation base and is paid out from the state budget.

An employed or self-employed parent has the right to parental leave after the child is 6 months old up until the child turns eight. The right to parental leave is a personal right of both employed or self-employed parents, which they may exercise for 8 months (for the first and second child) or 30 months (for twins, a third child, and each subsequent child). Typically, both parents take parental leave, each for 4 or 15 months (depending on the number of children). However, if only one parent uses the right to parental leave on an agreed basis, this parent may take parental leave for 6 or 28 months (each parent reserves the right to 2 months of parental leave, which may not be transferred to the other parent).

Employed or self-employed parents may take parental leave in its entirety or separate parts no more than twice a year and with a duration of at least 30 days per period. The number of children born on which the duration of the right to parental leave is dependent includes stillborn and deceased children; adopted children; underage children placed in the care of a beneficiary of this right as their foster parent who provides these underage children with accommodation; and children placed in the day-to-day care of a beneficiary of this right by the competent authority.

Unemployed parents, other income earners, and farmers are entitled to maternity and parental exemption from work. The mother must use the maternity exemption

16 Ibid.

from work from birth until the child is 70 days old and may use it, without interruptions, until the child turns 6 months of age.

Once the right to maternity exemption from work expires, the beneficiary is entitled to parental exemption from work until the first year of the child's life for the first and second child, and until the third year of the child's life for twins, a third child, and each subsequent child. While exercising their right to maternity and parental exemption from work, beneficiaries are entitled to a cash benefit equal to 70% of the monthly budget base (around EUR 310).

Parents outside the labour system are also entitled to maternity and parental childcare. Maternity childcare comprises the period from birth until the child is 6 months old. Meanwhile, parental childcare covers the period from 6 months until the child turns 1 year of age for the first and second child, and until the third year of the child's life for twins, a third child, and each subsequent child. Mothers outside the labour system are entitled to a cash benefit equal to 70% of the budget base (approximately EUR 310) during maternity and parental childcare.

Employed or self-employed adoptive parents are entitled to take adoptive parent leave as of the day the adoption becomes legally valid. This leave may last for 6 months for children up to the age of 18. An additional 6 months of adoptive parent leave is granted for an adopted child under eight.[17]

Child allowance is a cash provision used by a parent or another person and is defined in the Child Allowance Act as support in raising and caring for children.[18] The right to child allowance may be granted to a parent, foster parent, guardian, stepparent, grandparent, or a person to whom a child is entrusted for custody and care based on the decision of a body competent for social welfare affairs.

Child allowance may also be granted to a parentless young adult child in regular schooling until they are 15 years of age (i.e. up to the end of the school year in which the child turns 15). Further, child allowance is granted to children up to the end of regular secondary education and no longer than the end of the school year in which the child turns 19. Exceptionally, child allowance may be granted for a child with a health disorder up to the completion of regular secondary education even after 19 years of age, but not later than 21 years of age. A child with severe disability, determined according to special regulations, is entitled to child allowance from the date of filing an application for the allowance, and this entitlement continues if such disability exists.

Child allowance is granted based on census, according to the average income per household member. There are three census groups upon which the amount of child allowance depends; however, there is a political promise to include more children by raising the census. As a child's right, universal child allowance is opposed by

17 e-Citizens, n.d.a.

18 *Zakon o doplatku za djecu* (Child Allowance Act, Official Gazette Nos. *94/01, 138/06, 107/07, 37/08, 61/11, 112/12, 82/15, 58/18).*

governmental policy and seen as a burden on the state, indicating that the state budget is considered more important than the rights of the child.

In addition to child allowance, the Croatian Pension Insurance Institute also grants beneficiaries a baby bonus of EUR 66.36 for the third and fourth child. This means that EUR 66.36 a month is added to the total amount of child allowance granted to the beneficiary, pursuant to a decision if the beneficiary is using child allowance for three children; that is, EUR 132.72 a month is added to the total amount if the beneficiary is using child allowance for three or more children.[19]

The Croatian Health Insurance Fund gives one-time allowances of EUR 310 for the birth of a child. All persons who have health insurance and meet the prescribed requirements are entitled to this bonus.[20] Many local and self-government units also offer allowances for the birth of a child. The highest amount provided for the birth of a third child is up to EUR 9,290, and for the birth of a fourth and fifth child is up to EUR 25,482, paid in instalments.[21]

### *2.4. Other tax and contribution benefits*

Personal child tax allowance is a benefit provided in the Croatian income tax system whereby the tax base of a taxpayer with dependent children is lowered. All taxpayers who are resident in Croatia are entitled to a personal allowance; however taxpayers who support a spouse, children, and other family members, can, in addition to the basic personal allowance, also deduct the personal allowance for supported family members from their own taxable income.

The tax reduction for a dependent child is obtained by multiplying the coefficient for dependent children with the amount of the 'personal allowance base'. The amounts of the child tax allowance increase progressively with each subsequent child. The child's parents may divide the total amount of the child's tax allowance and, thereby, may both lower their tax base. In this case, the amount of savings will depend on both parents' income level. The child tax allowance may be used by taxpayers with dependent children who have income from employment (salaries and pensions), income from self-employment (artisans, free occupations), and certain forms of other income. These types of income are included in the annual tax calculation.[22]

The larger share of tax relief applies to children and family, followed by pensioners and older adults. If education is added to the family/children tax relief allowances, the share of expenditures on children and families, distributed through tax exemptions, amounts to approximately 63% of Croatia's total tax expenditures.[23]

19 e-Citizens, n.d.
20 e-Citizens, n.d.a.
21 Ministarstvo demografije i useljeništva, n.d.a.
22 Vlada Republike Hrvatske, 2021, pp. 6–7.
23 Ministry of Social Policy and Youth of the Republic of Croatia, 2016, p. 86.

### *2.5. Home creation*

First houses and housing in areas of special state concern are exempt from real estate tax.[24] Housing loans are subsidised in a housing care programme through which the state contributes to the repayment of a portion of a housing loan for the purchase of an apartment or a house or for the construction of a house for up to five years. The subsidy period shall be extended by two additional years for each child born for the duration of the subsidy. The subsidy shall also be extended by an additional year for each child the loan applicant has at the time of application, and by one year if the applicant or a member of his or her household has an established disability exceeding 50%.

Housing loan subsidies aim to stimulate the demographic reconstruction of society and the urban regeneration of settlements, reduce the number of young people leaving the Republic of Croatia, support less developed towns and municipalities by providing them with larger subsidies, and subsidise births, juvenile children, and persons with disabilities. In this way, housing issues are addressed by creating loan conditions that are significantly more favourable than general conditions in the housing market.

The amount of the subsidy depends on the development index of the location where the real estate is purchased or built, ranging from 30 to 51% of the loan instalment. The highest subsidies are granted to those who intend to buy an apartment or house or build a house in the least developed areas, whereas 30% of the monthly loan instalment is granted to those who have decided to buy or build real estate in urban centres such as Zagreb.[25] Nevertheless, critics have claimed that such subsidisation has a negative influence as the sudden demand for housing properties disturbs the real estate market, pushing up its prices.

### *2.6. Family and work allowances*

Local and self-government units finance day care services for preschool children, meaning that there is tremendous diversity in these provisions. Day care institutions (nursery and kindergarten) founded by local and regional governments charge parents for their services, in accordance with the criteria stipulated by the representative body of the government unit. The exception is the one-year school preparation programme, which is free of charge. However, Zagreb has an insufficient number of kindergartens, as 3,180 out of 12,260 children could not be enrolled in 2023. In addition, many self-government and local units sadly cannot finance a single kindergarten. In October 2022, it was announced that the state would increase kindergarten services for an additional 17,000 children, so that 90% of preschool children could be enrolled.[26]

24 Ministry of Social Policy and Youth of the Republic of Croatia, 2016, p. 84.
25 Ministry of Physical Planning, Construction and State Assets, n.d.
26 Government of the Republic of Croatia, 2022.

During the first 12 months after a child's birth, mothers who are employed full-time and are breastfeeding are entitled to a 2-hour absence from work (once a day for 2 hours or two times a day for 1 hour), paid at 100% of the calculation base, recalculated to the hourly rate. After parental leave, one employed/self-employed parent has the right to work shorter hours until their child turns three if the child requires more care due to its health and development, but only if parental leave was used in full. This is paid at 50% of the calculation base (recalculated to the hourly rate and only for the hours outside work). Employed or self-employed parents of a child with a serious developmental disorder, including physical disability, can take leave to care for the child or work shorter hours until the child is 8 years old. If an employed pregnant woman or a mother breastfeeding her child has a job that is harmful to her health or the health of the child she is breastfeeding, and if the employer has not provided another position for her within the company, she has the right to leave with full salary, paid by the employer. Nevertheless, NGOs that work to protect parents' rights constantly note that compensation for parents who care for children with disabilities is insufficient for their needs.[27]

### *2.7. Generational policy*

Croatia's government provides income tax relief for specific age groups (people younger than 30 years). A small number of benefits are provided for older adults, although these benefits have the highest total amount. The highest is the old-age pension, which is provided in addition to a protective pension supplement, the minimum pension for war veterans and their family members, care for older adults and people with disabilities, and home care services for older adults. Family and intergenerational solidarity play an important role in Croatian society, although the modern lifestyle and everyday pressure have eroded the mutual daily companionship of different generations.

Since 2021, the National Benefit for the Elderly is granted to a Croatian citizen who, immediately before applying for the benefit, has reached the age of 65 and resided in the territory of the Republic of Croatia for 20 years without interruption. An applicant must, in principle, comply with the following conditions: a) he is not a pension beneficiary or an insured person covered by the mandatory pension insurance; b) his monthly income or the income earned by each of his or her household members in the previous calendar year does not exceed the determined amount of the National Benefit for the Elderly; c) he is not entitled to the Guaranteed Minimum Benefit according to the regulations on social welfare; d) he is not entitled to an accommodation service according to the regulations on social welfare, and e) he has not concluded a Contract of Support Until Death or a Lifelong Support Contract in the capacity of a supported person.

27 Hina, 2022.

Unfortunately, the National Benefit has not fulfilled its goal, as half of the eligible individuals are not using it because, for example, they are already in receipt of the Guaranteed Minimum Benefit, they are homeless, they do not have an insurance number or bank account, or they are not aware of the existence of this benefit. The conditions to use the National Benefit will weaken in 2024, and the National Benefit will be increased to EUR 150.[28]

### *2.8. Family-friendly provisions in the pension system*

There is a credited period for parents in the Croatian pension system**.** For a mother or adoptive mother who acquires her pension right, the total qualifying period is calculated by crediting an additional 6-month period to the actual qualifying period for each child born or adopted (in order to determine the pension amount, rather than eligibility). For a mother or adoptive mother entitled to a basic pension from the mandatory pension insurance of generational solidarity, a 6-month period is credited for each child born or adopted. This 6-month period is credited to the part of the pension acquired under the qualifying period completed before or after the introduction of the mandatory pension insurance based on capitalised savings, depending on the period in which the predominant qualifying period was completed.

Exceptionally, if instead of the mother or adoptive mother, the father or adoptive father of the child uses the additional post-natal leave according to the regulations on maternity and parental benefits, he will be credited an additional 6-month period when exercising his pension right, provided the father was the parent who used the predominant part of the additional post-natal leave. A parent will not be entitled to the additional qualifying period if his or her right to parental care was terminated.[29]

Various types of compensation are also available for surviving dependents, including the family pension, one-time financial help, family disability support benefits, increased family disability support benefit, family disability support benefit compensation for family members of the detained and the missing, compensation to the amount of the family pension for families of the detained and the missing, and the family pension for family members of war veterans.

### *2.9. Social security institutions supporting families*

Social security systems generally include social insurance (or social security), social assistance and categorical benefits, and a system of social services that are available to citizens and are often country-specific.[30] Comparing the level of spending on social protection in Croatia with that of other European countries, it is clear that

28 In June 2023, there were 6,786 beneficiaries of the National Benefit (65.54% female and 35.46% male). HZMO, 2023.

29 HZMO, n.d.

30 Ministry of Social Policy and Youth of the Republic of Croatia, 2016, p. 2.

at 21.1% of GDP, Croatia spends significantly less on social protection than the EU average.[31] Accordingly, the country's public investment in families remains low by European standards: Croatia is among the European countries that spend the least on family policies. Central government expenditure on social protection accounts for about 69% of all social expenditures in Croatia.[32]

Other types of compensation offered through social protection programmes for families, children, and youth in Croatia include compensation for transportation costs; free primary healthcare for all minor children; home care services for older adults; compensation for the social exclusion function (care for children without parental care, care for children, temporary child support right); compensation for elementary and high school pupils, such as the co-financing of transportation, accommodation, and textbooks; compensation for students in the form of co-financing the compensation for regular studies; and national subsidies for students' transportation, accommodation, meals, and textbooks. [33]

The Government of the Republic of Croatia works with the NGO sector. It launches an annual tender plan for public services and other programmes to finance the projects of civil society organisations in the field of social services and other fields from the state budget.[34]

## 3. Family law instruments to support families, parents, and children

### *3.1. The importance of family law principles*

Family law principles are indicators of the value system upon which family law regulations of a country are based. These principles provide value guidelines for competent authorities and citizens. When family law values are further elaborated in family law provisions, they offer legal certainty to family members and, thereby, reduce uncertainty when there is a need to solve conflicts of interest during the existence of a family union or after its dissolution.

According to Art. 61, para. 1 of the Constitution of the Republic of Croatia, the family shall enjoy the special protection of the state. The effects of an informal extramarital union are equalised to those of marriage,[35] and same-sex partners

31 Ministry of Social Policy and Youth of the Republic of Croatia, 2016, p. 3.
32 Ministry of Social Policy and Youth of the Republic of Croatia, 2016, pp. 69–70.
33 Ministry of Social Policy and Youth of the Republic of Croatia, 2016, pp. 30–39.
34 Ibid., p. 104.
35 *Ustav Republike Hrvatske*, Constitution of the Republic of Croatia, Official Gazette Nos. 56/90, 135/97, 8/98, 13/00, 124/00, 28/01, 41/01, 76/10, 85/10, 5/14.

living in a registered or informal union also enjoy the legal recognition of their family life.[36] In any references to spouses in this chapter, all rights and duties belonging to them also belong to extramarital and same-sex partners, unless otherwise stated.

The principle of the equality of women and men (Art. 3 of the Family Act[37]) is consistently applied throughout the current regulations (e.g. both the mother and father of a child born out of wedlock have the right to maintenance for up to a year from the day the child was born if the child lives with either of them). In any family law agreement, there is a presumption that the parties are equal, although this may not always be true. In most cases, the court confirms the parents' agreement on parental care,[38] including a maintenance agreement; however, the agreement itself does not always reflect the will of equal partners. For instance, the man may be willing to pay higher alimony to be able to have frequent contact with the child, or a wife may agree to lower alimony payments for the child or to an unjust dissolution of matrimonial property if she is afraid of a violent ex-husband. This kind of inequality may easily remain concealed if the court does not receive direct evidence in the form of statements from the involved parties (sometimes, the parties choose to be represented by their counsellors during court proceedings and do not approach the court themselves). Data on domestic violence suggests that equality is not maintained in this area because women are more frequently victims of domestic violence.[39] On the other hand, there are no 'safe houses' for men, although older male adults are also often victims of domestic violence. There are frequent complaints about the inequality between parents following the termination of the family unit, and fathers often cite discrimination when it comes to exercising their right to parental care.

The primacy of the best interests of the child has been consistently implemented at the normative level in family law and in many other branches of law. However, there are still numerous violations because of inappropriate interpretations of the law or issues with the functioning of the system (e.g. disputes related to inappropriate

36 *Amplius* Korać Graovac, 2021.

37 Family Act (*Obiteljski zakon*), Official Gazette Nos. 103/15, 98/19, 47/20, 49/23.

38 Parental responsibility, comprising the rights and duties of parents, is called '*roditeljska skrb*' (parental care) in Croatian family law. As such, this terminology is used within this chapter. Korać Graovac, 2022.

39 In the City of Zagreb, the number of victims of the criminal offence of domestic violence increased by 12% in 2021 compared to 2020. In total, 79% of these victims were women. 'In 2021, a total of 30 persons were killed in the Republic of Croatia, and 14 of them were women.... Femicide, i.e. hate crime committed against women, motivated by the victim's gender, is particularly frequent and it reveals a very high rate of gender inequality in the Croatian society and inadequate response by the institutions'. The Zagreb strategy for combating domestic violence for the period from 2023 to 2025 (*Zagrebačka strategija zaštite od nasilja u obitelji za razdoblje od 2023. do 2025.*) [Online]. Available at: https://www1.zagreb.hr/sluzbeni-glasnik/#/app/akt?id=1ac0cdc1-%203983-4f04-bac1-db9675cae7d1 (Accessed: 24 April 2023).

content broadcast on public television,[40] selling tobacco products and alcohol to minors).

The principle of fairness is not expressly emphasised in family law (except in connection with maintenance). This is unfortunate because doing so would interpret the regulations in the spirit of fairness in sensitive family relations, particularly when it comes to the protection of the weaker party, depending on the circumstances of the case.

Finally, the principle of family solidarity is one of the keystones of family law in Croatia. This principle reflects the irreplaceable value of family for an individual and the community.

### *3.2. Civil law provisions protecting the family and children*

The Family Act lays down the particularities in the property law relations of family members. If an issue is not provided for in the family regulations, general civil law provisions apply in a subsidiary manner.

The concept of a family home is included in the Family Act in alignment with Recommendation No. R (81) 15 of the Committee of Ministers to all EU Member States on the rights of spouses relating to the occupation of the family home and the use of the household contents. The word 'home' has not only legal and economic meanings but also a psychological meaning for every family.[41] By positioning this provision among spouses' personal rights and duties, the legislator has regulated the right of dwelling in a family home as 'a new personal right and the duty of spouses'.[42] It is clear from the subsequent provisions that, in this sense, it deals with the rights of the child and not only those of parents.

Spouses determine, in agreement, the location of dwelling and the family house or apartment where they will dwell with the children over which they exercise their parental care. This dwelling is considered the family home for both the spouses and their children (Art. 32, para. 1 of the Family Act. This agreement is of an informal nature and is clarified by spouses' registration of their permanent residence at the same address. A family home may be the spouse's own property or the matrimonial property of both spouses. Restrictions on the disposal of a family home apply only to an immovable, that is, the spouses' matrimonial, property. During marriage, a spouse may not alienate or encumber their family home (where the other spouse and the children over which they exercise their parental care also live) without the written consent of the other party, whose signature must be verified by a notary public.

40 One of the most recent cases was the broadcast of the French cartoon series *Culottées* (Brazen). One episode of this series is dedicated to surgical sex reassignment and was shown on state television programming five times in one day. The Media Council found nothing controversial about the cartoon not being classified for only adult viewers. Hrstić, 2023.

41 Graham, Gosling and Travis, 2015.

42 Šimović, 2015.

The prohibition of the alienation or encumbrance of the family home covers only the share of the family home that is regarded as the common property of each spouse (one-half by law). Upon a request to review whether the Family Act was in conformity with the Constitution, the Constitutional Court of the Republic of Croatia decided that this Act interfered in ownership rights and the limitation of the right of ownership. The Court held that 'a legitimate objective of the disputed Article was the protection of a family home so that by making it impossible for a spouse to alienate or encumber their family home or flat, being their matrimonial property in the course of the marriage, without the other spouse's written consent, either in their entirety or its indivisible part, was proportionate to that objective'.[43] The Constitutional Court also noted that such prevention is of limited duration because it ceases to exist upon the termination of marriage or lasts until the spouses decide, in agreement or through the court, to dissolve their co-ownership of that particular immovable property; therefore, the Court concluded that this solution is not unconstitutional.

A leased immovable may also be a family home and a place of residence. Under Art. 4, para. 1 of the Lease of Flats Act,[44] a lease contract is, as a rule, signed by only one person. This person's spouse, child, parent, or a person who, by the law, the lessee is obliged to support, or a person who provides necessary care and assistance, may always also reside in the leased immovable. In this way, the lessee's closest family is protected. The leased immovable may also have the status of a family home if the conditions are fulfilled.

Under the family regulations, if one spouse is the lessee of a flat where both spouses reside with the children under their parental care, he or she may not cancel the lease contract alone. In this case, the lessee must secure written consent signed by the other spouse and certified by a notary, unless it is a tied accommodation arrangement, which is governed by separate rules (e.g. for the lease of a flat for a Member of Parliament). If the court finds that a spouse has denied consent, without a justified reason, to dispose of a family home (being a matrimonial property) or denied consent to cancel the lease contract, the court may, on the proposal of the other spouse, replace that consent by a court ruling. When assessing whether the proposal is justified, the court must consider the housing needs of both spouses and the children residing with them, as well as all the other circumstances of the case.[45] At the same time, the court must consider the child's best interests and the protection of the constitutional right of ownership.

After the breakdown of a marital union, the court may assign the right of dwelling in a family home, being a matrimonial property, in favour of one parent and their common minor children in their parental care[46] but only until the dissolution of the

43 Constitutional Court decision, U-I-3941/2015, decision and ruling, 18/04/2023 [Online]. Available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2023_05_49_830.html (Accessed: 6 May 2023).

44 Lease of Flats Act (*Zakon o najmu stanova*), Official Gazette Nos. 91/96, 48/98, 66/98, 22/06, 68/18, 105/20.

45 Art. 32, para. 4 of the Family Act.

46 Art. 46 of the Family Act.

parents' co-ownership of the immovable considered as their family home. When rendering its decision, the court must consider the principle of proportionality, protect the children's right to reside in the family home, and act justly towards the parent who will bear the burden of exercising the housing right. The court may reject the request for dwelling in a family home if the total income of the spouses cannot cover the costs of separate housing for the spouses and their children. Considering the circumstances of the case, the court may also order that the parent who stays with the children in their family home must pay rent and utilities to the other parent.

Such a solution places the protection of the child's rights before the right of ownership, which is very limited when it comes to the right to housing. The right to housing may last until the dissolution of the co-ownership of an immovable constituting a family home, until the age of majority of the child or until any change in the circumstances upon which the decision was rendered.[47] The valid legislation has attracted much criticism because of its insufficiently elaborated concept, particularly the fact that the legal position of the parent, whose ownership rights are limited, is not completely clear.[48]

When a dissolution of the matrimonial property takes place, the movables mostly used by minor children remain in the children's possession or in the possession of the parent with whom the children live.[49] In Croatian family law, there are no provisions regarding the costs and expenses for the care and maintenance of a minor child in the parents' property contracts upon total separation of property.

It is also important to highlight here the protection measure referred to in the Protection of Domestic Violence Act[50] regarding the removal of a violent spouse from a common household (Art. 17). This measure may be imposed on the person who commits domestic violence against a member of the family with whom he or she lives in the same apartment, house, or any other housing space of their common household if there is a danger that this behaviour will be repeated. The measure is imposed for not longer than two years. It has a similar function to the right to reside in a family home; however, it stipulates that the spouses' common minor children also live in the same union.

Parents manage a child's property depending on the legal basis of its acquisition. The main criteria for distinction are to establish whether any income or principal is involved and whether the child's property is the result of his or her own work or is acquired through some other legal basis (e.g. through inheritance, bestowal, etc.). In principle, property that does not stem from the child's work may only be used for his or her maintenance. Exceptionally, proceeds from this property can be used for the medical treatment of the child's parents or siblings unless they are required

47 Korać Graovac, 2021a, pp. 469–470.

48 On the criticism of the existing regulation, see: Šimović, 2016.

49 Art. 46, para. 2 of the Family Act.

50 Protection of Domestic Violence Act (*Zakon o zaštiti od nasilja u obitelji*), Official Gazette Nos. 70/17, 126/19, 84/21, 114/22.

for maintenance, medical care, or the child's education. These facts must be established by the court in proceedings that may be initiated by the child, the owner of the property involved, or a parent. Although parents are the first to provide for the child's maintenance, because of the principle of family solidarity, the income generated from property may also be used for the medical treatment of the child's closest family members.[51] The limitation of this purpose solely to medical treatment indicates an exceptional use of the child's property. In the proceedings for rendering a decision on allowing the income to be used for siblings or parents, the court must first obtain the opinion of the child whose income is planned to be used.[52]

The child's property may be alienated only if the parents themselves do not have sufficient funds for the child's maintenance, medical treatment, or education and cannot provide the necessary funds from any other sources.[53] This is in line with the requirement that parents must manage the child's property in the manner of good hosts.

For any representation of the child in connection with more valuable property, the parent involved must have the other parent's written consent and the court's approval.[54] The main drawback of these legislative solutions is that they cannot easily be controlled, primarily because parents may freely dispose of the child's income of up to the amount of EUR 1,300, according to the instructions given to the banks by the ministry competent for social welfare issues. When contracts deal with property exceeding EUR 6,622, a notarial deed is necessary.[55]

A parent may not dispose of a minor child's possible future property and may not impose any obligations in the future ensuing from such contracts (sporting, art, or similar activities). Before the conclusion of such contracts, it is also necessary to obtain written consent from the other parent who exercises parental care, as well as the court's permission. Obligations arising from such contracts may last only until the child comes of age. Minors younger than 15 (actors and actresses, sport persons, models, and others) may not manage property they acquire through work and when entering into work contracts, and in all other property matters, they must be represented by their legal representatives in accordance with the law.

Since one of the rights of the child is the right to education[56] and working at the same time makes this impossible, children's work is controlled by the competent authorities. A legal representative may authorise a minor older than 15 to enter into

51 Art. 97, paras. 1, 3, and 4 of the Family Act.
52 Art. 86, para. 2 of the Family Act.
53 Art. 97, para. 3 of the Family Act.
54 Korać Graovac 2023, pp. 61–62.
55 Art. 53/1/ 2. i st. 2. Notary Act (*Zakon o javnom bilježništvu*), Official Gazette Nos. 78/93, 29/94, 162/98, 16/07, 75/09, 120/16, 57/22.
56 Cf. Art. 32, para. 1 of the United Nations Convention on the Rights of the Child: 'States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development'.

a work contract, except if the minor still attends primary school. A minor acquires a limited civil capacity for the conclusion and termination of work contracts and for undertaking any legal activities regarding fulfilling the rights and obligations arising from such contracts or being connected with them.[57] If there is a dispute over the child's employment between the parents exercising parental rights, they must gain permission from a social welfare office. The same is required from the child's guardian.

Legal representatives may, on behalf of minors or against their will, always cancel any work contract or restrict the assigned power. Although this is not expressly laid down, we are of the opinion that minors could nevertheless ask the social welfare office (*Hrvatski zavod za socijalni rad*) to appoint a guardian for a particular case, who would then enter into contracts on their behalf instead of their legal representatives.

According to Art. 85 of the Family Act, a child who has reached the age of 15 and is earning money may independently dispose of his or her earnings if his or her maintenance is not jeopardised by this disposal. However, if the disposal causes a substantial impact on his or her personal and property rights, the child must obtain the consent of his or her legal representative.

### *3.3. Family law issues relating to the establishment of family status*

As parents are the first to have rights and duties towards their children, establishing family status helps children know who is responsible for them. According to Art. 7 of the United Nations Convention on the Rights of the Child, every child has the right to know and be cared for by his or her parents. This right is also fulfilled under the Croatian family law in the proceedings for the establishment of the maternity and paternity of a child and in the cases of adoption.[58]

Paternity may be established by presumption (*pater est quem nuptiae demonstrant,* if the child was born in wedlock, or within 300 days after the termination of marriage, Art. 61, para. 2 of the Family Act), by acknowledging paternity, or by a court decision.[59] The establishment of paternity allows the child to enjoy parental care by both parents and not only by the mother. In principle, both parents exercising parental care guarantees better protection of the child's welfare through joint care and maintenance.

In the case of a conflict regarding paternity, if within 300 days after the termination of marriage through the death of the child's mother who had entered into a subsequent marriage, the husband from the last marriage will be regarded as the child's father (Art. 61, para. 2 of the Family Act). This rule does not apply if a

57 Art. 18, para. 1 of the Labour Act (*Zakon o radu*), Official Gazette Nos. 149/09, 61/11, 82/12, 73/13, 93/14.

58 Lucić and Rešetar, 2021.

59 *Amplius,* Korać Graovac, 2021b, pp. 65–66.

marriage is terminated through divorce or annulment. As previously mentioned, paternity may also be established by acknowledgement or a court judgment.[60]

There is a typical family law rule that paternity may be acknowledged for a child whose father is not known. In the national family law system, the consent of the mother and/or the child or a social welfare office is required, depending on the circumstances of the case. A novelty in the Croatian family legislation since 2014 and 2015 has been that a man who considers himself to be the father may acknowledge a child whose paternity has been established by marital presumption (by either the first or the second husband of the mother) upon the consent of the mother and her husband.[61]

The legislator has, thus, made it possible that marital paternity can be replaced by the acknowledgment of paternity. A man who considers himself to be a child's father, the man registered as the father of the matrimonial child, and the mother may give a statement that the child originates from a man who considers himself to be the child's father. These provisions are classified under the Article entitled 'Presumption of Paternity'.

The Constitutional Court held that the provisions of Art. 61, paras. 3 and 4 of the Family Act were unconstitutional, noting that 'presumption' was a legal standard and a prerequisite that is refutable or irrefutable. In this concrete case, it is a refutable presumption (a presumption of the paternity of a child born out of wedlock), which means that it may be contested in court or in some other legal way.

The Constitutional Court also emphasised that by these exemptions, nothing is presumed. The case can be re-examined, and the child's paternity can be re-established 'in favour' of a third person – the man who considers himself to be the child's father, and the consent is given by the mother and her husband. Upon such acknowledgment, it is possible that following the registration of the husband's paternity, the acknowledgment of another man takes place, whereby the legal basis for the removal of the registered husband's paternity is questionable and, thus, so is the new registration of paternity. In addition, the substantive and procedural law prerequisites for determining or disputing paternity are different. In line with such argumentation, in point 49 of its decision, the Constitutional Court concluded, 'If the legislator holds that they [norms] are necessary for an overall regulation of acknowledgement or determination of paternity, their content must be much more elaborated to remove any

60 Ibid.

61 Art. 61 paras. 2,3 and 4 of the Family Act:
(2) If the child's mother, in the period of 300 days from the termination of marriage by death, entered into a subsequent marriage, the mother's husband from the last contracted marriage is regarded as the child's father.
(3) The man who is considered to be the father of the child born during marriage or in the course of the period of 300 days following the termination of marriage by divorce or annulment, may with the mother's and her husband's consent, acknowledge the child.
(4) In the case referred to in para. 2 of this Article, the man who considers himself to be the father may, with the consent of the mother and her husband from a later marriage, acknowledge the child.

doubts or potential manipulations which may appear in their implementation'. Unfortunately, the Court failed to provide any reference to the necessary legal security to prevent any manipulations by adults regarding the status of a child.

In addition to acknowledgement, paternity can also be established in court proceedings where various time limits are envisaged, depending on the party entitled to initiate the proceedings: the child, the mother, the man who considers himself to be the father, or the social welfare office. In practice, paternity is, as a rule, established by medical expertise. Following the case *Mikulić v. Croatia*,[62] in order to accelerate the proceedings to prevent attempts to avoid medical evaluation, the court must determine the deadline until which it will wait for the production of evidence (not longer than 3 months). Croatian family legislation does not recognise the compulsory taking of DNA samples as medical evidence. However, if one of the parties fails to appear for medical evaluation or refuses it, the court is authorised to assess the significance of these actions.[63] After the paternity has been established, the father acquires parental care *ex lege*.

The child's right to know his or her origin in court is made easier by an advance for the costs of a DNA test that is paid for by the court (Art. 391 of the Family Act). The court subsequently decides which party is bound to cover the costs of the DNA evaluation, depending on the circumstances of the case.

Under current legislation, maternity may be determined by presumption (*mater semper certa est*) or by a court decision. Maternity is currently determined by *praesumptio iuris* ('The woman who has given birth to a child is regarded to be his or her mother' – Art. 58 of the Family Act). Prior to 2014,[64] the family legislation defined the old Roman principle as a *presumptio iuris et de iure*. With no explanation, the legislator changed the wording into a refutable presumption, probably by considering the situations ensuing from MAR (*vide infra*).

The family legislation reforms of 2014 and 2015 abandoned the acknowledgement of maternity. Besides presumption, it is possible to establish maternity by a court decision, following the child's court action, by the mother who considers herself to be the mother of the child, or by the social welfare office.[65]

The Constitutional Court proclaimed this solution as being unconstitutional.[66] In its decision, the Court held that,

> The principle *mater semper certa est*, ever since Roman times, has been a self-explanatory and natural law category arising from, in the nature of things, a clear and obvious reason – carrying and giving birth to a child is an indisputable fact …. To

62 *Mikulic v. Croatia*, Appl. No. 53176/99, Judgment of 7 February 2022.

63 Art. 390 of the Family Act

64 Family Act (*Obiteljski zakon*), Official Gazette, Nos. 75/14, 5/15, 103/15. The Family Act of 2015 kept the same wording in most of its provisions.

65 Art. 59, para. 1 of the Family Act.

66 Constitutional Court decision, U-I-3941/2015, decision and ruling, 18 April 2023 [Online]. Available at: https://www.iusinfo.hr/sudska-praksa/USRH2015B3941AI (Accessed: 17 August 2023).

> date, the legal doctrine largely advocates the reasons in favour of the aforementioned principle, highlighting the convincing comparative reasons that the provisions regulating so-called reproductive technologies should be governed by separate medical and legal regulations, instead of the provisions challenging the coherence of the system of family law relations of parents and children. From the constitutional law aspect, the only obligation of the legislator, when laying down individual concepts, is to take into account the requirements imposed by the Constitution, and in particular those stemming from the principles of the rule of law, as well as those by which specific constitutional domains and values are protected. In other words, their stipulation must always ensure the fulfilment of the legitimate goals of individual proceedings; the legal security of the objective legal order; the certainty, accessibility, foreseeability, and legal predictability of norms; and the procedural equality of the parties in the proceedings, in line with the requirements ensuing from the rule of law as the highest value of the constitutional order of the Republic of Croatia as the basis for interpreting the Constitution.[67]

The Constitutional Court pointed out that the legislator, although authorised to change some specific rules, was also bound to also give reasons for such changes. In this case, 'the reasons were not clear for which the legislator, together with the aforementioned change regarding the presumption of maternity and the ways of determining maternity by the court, left out the concept of acknowledging maternity and, thus, made it impossible for the child to be able to easily and efficiently find out about his or her origin (as is the case with the acknowledgement of paternity)'. Consequently, the Constitutional Court held that the disputed Arts. 58 and 59 of the Family Act of 2015 were not in conformity with the Constitution.

Throughout the family legislation, the right of the child to know, if possible, his or her bloodline origin is consistently provided for[68] so that 'birth in secret' is not possible (*accouchement sous X*).[69] Infanticide happens occasionally but is a rare occurrence. Croatian legal rules for contesting maternity and paternity are similar to those in central European legislation.[70]

Adoption is 'a special form of family law childcare and the protection of children without appropriate parental care by which a permanent relationship between the parents and the child is created'.[71] Adoptive parents acquire the right to exercise parental care. Only a minor child who has not (eventually) acquired civil capacity by marriage may be adopted.

Since 2007, there has been a single form of adoption (*adoptio plena),* where all legal connections between the adoptee and his or her relatives cease completely. The

67 Art. 3 of the Constitution
68 Art. 7, the United Nations Convention on the Rights of the Child)
69 Villeneuve-Gokalp, 2011.
70 Korać Graovac, 2021b, pp. 64–66.
71 Art. 180, paras. 1 and 2 of the Family Act.

same relationship (kinship) is created between the adoptee, the adoptive parents, and all their relatives as if the child were the adoptive parents' biological child. The adoptive parents acquire the right to parental care, and the adoptee acquires all hereditary rights, as well as all other rights and obligations arising from the child's relationship with his or her adoptive parents and their relatives. Adoptive parents may not have to be entered as parents in the Register of Births.[72] It is not possible to terminate adoption; however, any of the child protective measures provided for by family law may be imposed on adopters, just like parents.

To adopt a child, all the prerequisites must be met on both the part of the child and that of his or her adopters. Adoptees must be younger than 18[73] and must not be related by blood in a straight-line relationship or be siblings of the potential adopter. Parents must, as a rule, give their consent to adoption.[74] A parent without civil capacity (a minor or a parent deprived of civil capacity regardless of the segment of deprivation) is entitled to give his or her consent to adoption if he or she is capable of understanding the nature of the consent.[75] The social welfare office is bound to appropriately inform parents about the legal and factual consequences of adoption.[76] A parent deprived of the right to parental care cannot give consent to adoption. If a child is a foundling (i.e. his or her parents are not known), 3 months must have elapsed since his or her birth or abandonment before adoption. A court may replace consent to adoption by decision if it finds facts regarding the parents similar to those that justify the deprivation of the right to parental care.[77]

As the main objective is to protect the right to respect the child's family life in his or her primary family, 3 months before the initiation of court proceedings for the replacement of a parent's consent to adoption, the social welfare office must notify the parent of the possibility of imposing a measure of intensive professional assistance (if the parents' address is known – Art. 189, para. 2. of the Family Act). This measure is considered to help parents gain competencies to appropriately perform their parental responsibilities and to protect the right to family life.

Parents give consent for adoption only by unknown adopters (*bianco* adoption) unless the child is adopted by a parent's spouse or a common-law partner. In such a way, the possibility of giving children up for adoption for financial or other gain is avoided.

72 Art. 215, paras. 1 and 2 of the Family Act.

73 Arts. 181–183 of the Family Act.

74 Jakovac-Lozić, 2021, pp. 308–313.

75 This solution was adopted following the judgment of the European Court for Human Rights, X. v. Croatia, Appl. No. 11223/04, Judgment 1 July 2008. *Amplius:* Čulo Margaletić, 2021.

76 Art. 188, para. 2 of the Family Act.

77 In its Decision of 2023, the Constitutional Court abolished a part of the provision of Art. 190, para. 1, point 1, which envisaged, as a precondition for the replacement of the parent's consent, that a parent 'for a longer period of time … has shown no interest for the child'. In the Court's opinion, the disputed part of point 1, para. 1 of Art. 190 of the Family Act 2015 opens space for unacceptable arbitrary acting and possible abuse (point 66 of the Decision).

Grandmothers or grandfathers are not entitled to give consent to the adoption of their grandchildren. However, in practice, foster care by relatives (including the grandmother and grandfather's family) takes precedence over adoption, protecting the right to the family life of the child and, thus, the right to respect of family life of close relatives.

A child may be adopted by spouses, common-law partners, a person who is married or lives in a non-marital union (with the consent of his or her spouse or common-law partner), and a person who is not married or does not live in a non-marital union.[78] Common-law partners prove their status by a declaratory court decision.[79]

Same-sex couples are not allowed to adopt a child, although there is some pressure to implement such a solution.

As a rule, an adopter may be a person of at least 21 years of age who is at least 18 years older than the adoptee. An assessment is made by the social welfare office, and if there are some particularly justified reasons, an adopter may also be a person younger than 21 and at least 18 years older than the adoptee.

As a rule, adopters must be Croatian citizens, firstly, so that the child stays in the country, where the situation in the new family can subsequently be supervised, and secondly, to prevent the loss of Croatian citizens given the country's current demographic situation. Additional advantages of domestic adoptions are the maintenance of the child's identity by being brought up in the social environment in which he or she was born and the intention to give Croatian citizens who want to adopt a child precedence over foreigners. A foreign citizen may adopt a child only when this is of a particular benefit to the child (for example, the adopter is the child's relative, the child cannot easily be adopted owing to specific health problems,[80] the child is older in age,[81] or the child belongs to a Roma minority). A foreign adopter must receive previous approval from the Ministry competent for social welfare.

A person deprived of the right to parental care, deprived of civil capacity, or whose past conduct and personal characteristics lead to the conclusion that it is not advisable to entrust a child to them may not adopt a child.

Since adoption is an official secret, the child's biological parents are not acquainted with the adopter's identity – the child gets a new basic entry into the Register of Births so that his or her biological parents and blood relatives do not know who has adopted the child or where he or she is. However, after reaching the

78 Art. 185 of the Family Act.

79 The rules on the elements regarding good standing and eligibility for adoption, the content of expert opinion on good standing and eligibility for adoption, the methods of establishing good standing and eligibility, the content of the report on the child, the maintenance of a register on potential adopters and a register of adoptions (Official Gazette Nos. 106/14, 5/15, 28/16, 103/15).

80 Only 26% of adopters in the Republic of Croatia are willing to adopt a child with even mild health problems, and 45% of adopters want to adopt only a healthy child. Matković, Modić and Topčić-Rosenberg, 2016, p. 46.

81 Jurić and Blažeka Kokorić, 2019, pp. 62–97.

age of majority, the adoptee may give his or her consent in the social welfare office to allow close relatives insight into the adoption file[82] and to reveal their new identity. Insight into adoption case files and the Register of Births for adopted children is allowed for an adoptee of full age, an adopter, and the parent who gave the consent to adoption.

After an adoption is established, the social welfare office must monitor the child's adjustment to the adopter's family. The office is then required to compose a report 6 months after the adoption (Art. 216, para. 2); sadly, this provision is rarely implemented in practice.

In addition to the Croatian state's social welfare system, certified NGOs also play an important role in preadoption procedures and the provision of support to existing and future adopters.[83] The process of preparations for an adoption is usually lengthy, and some adopters choose to go through this process in smaller nearby municipalities where they usually get their turn much quicker.

In reviewing adoption in Croatia, it is also necessary to highlight the problems regarding the adoption of children from other countries that are not party to the Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption.[84] Among these problems, the most important are that the Republic of Croatia does not have any register of adoptions for countries that are not signatories to this Convention[85]; there is no unified interpretation of the prerequisites required by the International Private Law Act[86] for the recognition of foreign adoption decisions (as a result, some courts do not ask for the legalisation of documents and do not check whether the adopters have been registered in the Register of Adopters in the Republic of Croatia prior to the adoption);[87] there is no examination of the conditions in the family following the adoption; and potential adopters are left alone and exposed to the danger of becoming victims of illegal adoption practices.[88] The danger of illegal adoptions, as a possible element of child-trafficking, is a European problem and one that must urgently be solved in the Republic of Croatia. A recent case of four Croatian couples arrested in Zambia due to possible illegal adoption,

82 Jakovac-Lozić, 1996.

83 The activities of these NGOs are laid down in a special Book of Rules. A social worker and a psychologist must be in the team. A rehabilitation worker responsible for education, a social pedagogue, and a speech pathologist may also participate.

84 Hague Conference on Private International Law: Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 29 May 1993, 32 I.L.M. 1134.

85 Any data can be obtained only indirectly. Indeed, it has only subsequently been established that in the past 10 years, 94 passports have been issued to children adopted from the Democratic Republic of Congo, although this is not the only state from which children have been adopted and which has not ratified the Hague Convention. From a demographic perspective, this figure does not represent a large number of children; however, it will likely rise in the future because the ratio of potential adopters to children adopted annually is five to one.

86 The International Private Law Act (*Zakon o međunarodnom privatnom pravu*), Official Gazette, No. 101/17.

87 Hrabar, 2023.

88 Cantwell, 2017.

who were cleared of the accusations after 6 months, resulted in legislative proposals that should offer more legal certainty for children and adoptive parents *in spe*.

### *3.4. Maintenance of relatives*

The maintenance of relatives in Croatia is regulated by the Family Act. The security of enjoying the right to maintenance makes it possible for a child to exercise many rights. A parent whose child lives with him or her is, thus, able to plan the child's education and economic future in the case of the termination of the family union and can trust that their standard of living will not be significantly jeopardised.

Child maintenance reflects the principle of family solidarity. Parents are obliged to provide maintenance and are invited to do so first, followed by the grandmother and grandfather on the side of the parent who does not provide maintenance. A stepfather or a stepmother is obliged to provide maintenance for his or her stepchild if the child cannot obtain maintenance from his or her parent (stepfather's or stepchild's spouse) or their grandmother or grandfather. Grandparents' and stepparents' obligations are of a subsidiary nature, and the scope of maintenance is not the same for every obliged individual. If a minor child has a spouse, he or she is primarily responsible for maintenance, even before the child's parents.

The Same-Sex Partnership Act[89] establishes the obligation of maintenance between children and the parent's life partner through the application of the provisions of the Family Act that provide for the maintenance of a stepmother, stepfather, and stepchild (Art. 39, para. 4).

A parent capable of working, regardless of whether they are employed or unemployed, must maintain his or her child until the child reaches the age of majority. The legislator intends to encourage parents to make additional efforts to legally procure financial resources for their child's maintenance. The parent's duty is to maintain their minor child regardless of whether the child attends secondary school and has already completed previous compulsory schooling. A minor with his or her own income is obliged to contribute to his or her maintenance and education, but the norm is very general, and there are almost no examples from practice. This provision is based on the principle of fairness. The main rule when establishing maintenance is that it is determined in accordance with the needs of the recipient and the capabilities of the maintenance provider.

The overall material needs of the child include the costs of housing, food, clothing, hygiene, upbringing, education, healthcare, and similar expenses. These needs are determined so that the child has the same living standards as the parent paying for the child's maintenance.[90] The court will decide on the increased material needs

89 Same-Sex Partnership Act (*Zakon o životnom partnerstvu osoba istog spola*), Official Gazette Nos. 92/14, 126/19.

90 Art. 311 of the Family Act.

if the child requires permanent enhanced care because of his or her health conditions.[91] When establishing the level of maintenance for the child, possible family allowances (such as child allowance)[92] are not taken into account, and any tax relief for the maintained family member (even for a child) is divided into equal amounts between the employed parents, unless there is another agreement.

The maintenance of a minor is always paid in pecuniary amounts. In practice, there have been significant differences in the amounts decided upon by different courts when interpreting the same statutory provisions. There have been attempts to align such actions by laying down additional rules that determine the average and minimum needs of a child of a specific age.

By 1 April each year, the Ministry in charge of social welfare affairs publishes a minimum amount of maintenance and tables listing the average needs of a child. The minimum maintenance amount is determined as a percentage of the average salary in the Republic of Croatia. In 2023, the minimum amount was EUR 172.67 for a child aged 1 to 6 years, EUR 203.15 for a child aged 7 to 12 years, and EUR 223.46 for a child aged 13 to 18 years. Exceptionally, the court may also determine a lower amount than the established minimum if the parent has two or more children or if the child has his or her own income and contributes to his or her maintenance. However, this lower amount may not be less than half the minimum amount.

The tables listing the average needs of children also indicate the child's age and the parents' salary brackets (similar to the Düsseldorfer Tabelle in Germany[93]). The amounts of maintenance range from EUR 172.67 to EUR 876 per month.[94] On the proposal of the legal representative of a child under legal age, the court will render a decision on its maintenance in line with the amounts in the tables published by the Ministry in short proceedings. If the parent responsible for maintenance lodges a complaint, he or she is advised to bring an action seeking that the court determine another (lower) amount of maintenance. The tables offer predictability regarding the expected amount of maintenance that will be judged by a court and diminish conflict between parents, pushing them towards an agreement. The system is not perfect as the cost of living differs in different parts of the country, but it does help.

91 It is important to note that although parents have the duty of 'care of their child's many-sided, regular and, in accordance with their possibilities, continuous education and encourage the child's artistic, technical, and sporting interests' (Art. 94, para. 3), the legislator has failed to establish that the court is in the position to determine an increased amount of maintenance if, for instance, the child is very talented and needs additional resources to engage in the activities where his or her talent will be manifested. Art. 312 of the Family Act

92 Urban and Pezer, 2019.

93 ISUV, n.d.

94 Decision on the tables containing average needs of minor children (*Odluka o tablici o prosječnim potrebama maloljetnog djeteta*), Official Gazette No. 48/23.

When, according to their joint parental care plan, parents spend a more or less equal amount of time with their child and care for the child daily, the pecuniary maintenance may be established in agreement and in accordance with their family circumstances.[95] This provision expresses the autonomy of parents who have reached an agreement on their parental care, and the court is authorised to examine whether their agreement conforms with the best interest of the child. Very rarely, there are situations where a parents' life union is terminated (matrimonial union ceased to exist) and the parents continue to live together with their child and care for him or her on a daily basis. They can then reach an agreement, and the court may decide that they will satisfy the child's material needs in accordance with their individual incomes.[96]

When the child does not live with either of their parents and neither parent cares for the child on a daily basis, both parents are obliged to pay for the child's maintenance in accordance with each of their financial capabilities.[97] The court does not examine the financial capabilities of the parent with whom a child lives as there is a (mistaken) praesumption that care provided is equal to maintenance provided by the parent who does not reside with a child.[98]

The capabilities of the parent who supports the child are determined by analysing his or her income and overall financial situation. In civil proceedings, the parent must show his or her total net income, including all permanent and periodical financial receipts (such receipts may be, for example, from artistic performances, sales of author's works, and various fees for professional services). To ensure as large an amount of maintenance as possible, the court must consider any of the parent's other possibilities for income in line with his or her age, education, and work capacity. If the parent has financial obligations with third persons (e.g. a housing or vehicle loan, debts for personal needs or craft), the court will take them into account only in exceptional cases if they have lasted for a long period of time or are necessary to satisfy the basic necessities of life.[99]

A huge problem when determining the parent's actual income involves failures to disclose the real amount of salary earned as an employee and 'moonlighting'.[100] In her annual report, the Ombudswoman for Children points to the fact that a parent who owns a company often declares a minimum salary and, in such a way, falsely

95 Art. 310, para.1 of the Family Act.

96 Art. 315, para. 2 of the Family Act.

97 Art. 316 of the Family Act.

98 Art. 310 of the Family Act:
'(1) The parent who the child lives with fulfils his or her portion of the maintenance of the child by caring for the child on a daily basis, and the parent who does not live with the child fulfils his or her obligation by satisfying the child's material needs in the form of financial support.
(2) Everyday care of the child is considered to be equal to fulfilling his or her material needs in the form of financial maintenance'.

99 Art. 313 of the Family Act.

100 Croatia is trying to supress this phenomenon through inspections and the Act on Combating Illicit Work (*Zakon o suzbijanju neprijavljenog rada*), Official Gazette No.151/22.

presents his or her financial capacity so as to pay a smaller amount for his or her child's maintenance.[101]

The child's right to maintenance is achieved by various means, including the court's duty to render an *ex officio* decision on the maintenance in any proceedings where the court decides on parental care; the social welfare office's power to initiate maintenance proceedings when this is not done by the parent with whom the child lives: in simplified and short maintenance proceedings, by announcing the minimum and average needs of the child; using the primary right of a child under legal age (a minor) as opposed to the recipients of maintenance who are of legal age; by the grandmother and grandfather's, or stepmother or stepfather's, subsidiary duties to pay for maintenance, if it is not done by the parent; and by the child's privileged position in enforcement proceedings related to the parent's salary. The Croatian Bar Association is also willing to help children by providing free-of-charge legal representation in maintenance cases. Sometimes, parties take advantage of secondary, free legal aid as a means-tested benefit.[102]

It is worth mentioning the very useful concept of the temporary maintenance of a child, which was introduced in 2003.[103] Temporary maintenance was launched as a fund for maintenance, whereby the state pays a portion of the maintenance amount, and the parent subsequently settles the debt. Initially, children were entitled to temporary maintenance until they reached the age of majority; thereafter, this period was shortened to not more than 3 years, and the amount of temporary maintenance was also lowered.

After the social welfare office has received the final court decision or a decision on the judicial settlement regarding a child's maintenance, it is obliged to warn the parent with whom the child lives that they must be informed about the other parent's potential failure to fulfil the obligation. The social welfare office must also be fully informed about the conditions under which the child is entitled to temporary maintenance in conformity with a separate regulation that provides for this maintenance. The office will also warn the parent who is responsible for the child's maintenance that he or she is bound to pay and that if they do not, the office will bring a criminal charge against him or her within 15 days after the day it is discovered that the obligation has not been regularly and fully met. The social welfare office will also warn the parent that the Republic of Croatia is entitled to seek the repayment of the temporary maintenance amount.

Although the amount provided for temporary maintenance is very modest (50% of the minimum amount for the maintenance of the child of a particular age – Art.

101 Report of the Ombudswoman for Children (*Izvješće o radu pravobraniteljice za djecu)* for 2022 [Online]. Available at: https://dijete.hr/hr/izvjesca/izvjesca-o-radu-pravobranitelja-za-djecu/ (Accessed: 23 May 2023).

102 Free Legal Aid Act (*Zakon o besplatnoj pravnoj pomoći)*, Official Gazette, Nos 143/13, 98/19.

103 Rešetar, 2005. Temporary maintenance is provided for in the Temporary Maintenance Act (*Zakon o privremenom uzdržavanju)*, Official Gazette No. 92/14.

9, para. 1 of the Family Act),[104] when granting temporary maintenance, the social welfare office is obliged to initiate criminal proceedings against a parent who does not pay for their child's maintenance. This is a particularly effective measure because not paying for the maintenance of a child is a criminal offence in Croatia (Art. 172 of the Criminal Code).[105]

A grandmother and grandfather, or a stepmother and stepfather, pay for the maintenance of a child in accordance with their financial situation and only until the child reaches the age of majority. In practice, a warning that the grandmother and/or the grandfather will have to pay for the child's maintenance (or an independent claim for maintenance) has a positive effect and usually encourages the parent to start paying. Stepmothers and stepfathers are responsible for the maintenance of their stepchild even upon the death of the child's parent if, at the time of the parent's death, they lived with their stepchild.

Parents are responsible for the maintenance of their child during his or her regular schooling and after the completion of the child's regular education if the child cannot find employment for a period of 1 year and no longer than up to the age of 26. The state has, thus, transferred the burden of maintenance for an unemployed young person to the parents for a certain period. Parents are also responsible for maintaining a child who is incapable of working because of a severe and permanent illness or disability throughout the child's illness or disability.

The tables listing children's average needs do not apply to the maintenance of children after they reach the age of majority. As such, adult children cannot seek maintenance in simple, non-contentious proceedings.

Where adults and children at the age of majority are concerned, the same rule applies: they can exercise their right to maintenance only if the person who is supposed to provide it has sufficient means. When assessing that person's capability, the court will consider his or her financial situation, total income, the possibility of earning additional amounts of money, his or her own needs, and possibly other maintenance obligations.[106] In practice, there are examples of those responsible for

104 In 2021, temporary maintenance was awarded to approximately 1,300 children. Annual statistical report on social welfare, legal protection of children, youth, marriage, family, and persons deprived of civil capacity and the protection of physically and mentally disabled persons in the Republic of Croatia in 2021, Ministry of Labour, Pension System, Family and Social Policy, August 2022 [Online]. Available at: https://mrosp.gov.hr/UserDocsImages/dokumenti/Socijalna%20politika/Odluke/Godisnje%20statisti%C4%8Dko%20izvje%C5%A1%C4%87e%20za%202021.%20godinu.pdf (Accessed: 15 August 2023).

105 Criminal Code (*Kazneni zakon*), Official Gazette Nos. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22; Moslavac, 2021. According to data from the Ministry of the Interior, in 2022, 618 criminal offences of violating the duty of maintenance were reported, of which 425 were detrimental to children of up to 14 years and 193 to children aged between 14 and 18 years. For comparison, in 2021, 552 such criminal offences were reported; in 2020, 436 were reported; and in 2019, 569 were reported. Report of the Ombudswoman for Children for 2022 [Online]. Available at: https://dijete.hr/hr/izvjesca/izvjesca-o-radu-pravobranitelja-za-djecu/ (Accessed: 15 August 2023).

106 Art. 307, para. 1 of the Family Act.

maintenance concealing their capabilities, similar to those previously mentioned in this chapter in connection with the maintenance of minors.

When the court assesses the needs of persons of legal age and their maintenance, it will consider his or her income, overall financial situation, working capacity, possibility for employment, health status, and all other circumstances on which a court decision on maintenance depends.[107]

The maintenance of parents by their children is based on children's constitutional obligation to care for their old and weak parents.[108] A child of legal age must provide maintenance if his or her parent is incapable of working and does not have sufficient means of subsistence or property to derive it from. Nevertheless, a child may be freed from this obligation if the parent fails to provide for the same child's maintenance for unjustified reasons when it was the parent's statutory obligation.[109]

It is a stepchild's duty to provide maintenance for his or her stepmother or stepfather if they are not capable of working and do not have sufficient means of subsistence or cannot derive it from their property, and the stepmother or stepfather cared for him or her and provided the necessary maintenance for a longer time during childhood. The same requirements also exist when a grandchild must care for his or her grandmother and grandfather.[110]

It is unusual for parents, grandparents, or even more rarely, stepmothers or stepfathers to file the court to sue for maintenance from their children. This may be because of their weakened economic situations: economic means are often exhausted because they must care for their own children and their income is insufficient to begin legal proceedings. Sometimes, the reason is shame that they might have to sue their child or grandchild. If a parent, grandmother, or grandfather does not want to seek maintenance from those who bear a statutory responsibility to care for them, they are not allowed to seek assistance from the state, unless the social welfare office finds that the person obliged to provide maintenance cannot provide it (in which case, the principle of subsidiarity applies).[111]

Older people make up almost one-fourth (22.4%) of the population of the Republic of Croatia, and a third of them are at risk of poverty. Consequently, they are forced to enter into contracts for support until death or contracts of lifelong support, in which they are often cheated.[112]

The enforcement of maintenance follows the same pattern as the enforcement of the settlement of other monetary claims, which means that there are often major

107 Art. 307, para. 2 of the Family Act.
108 Art. 63, para. 4 of the Constitution of the Republic of Croatia.
109 Art. 292 of the Family Act.
110 Art. 293 of the Family Act.
111 Art. 4, Social Welfare Act (*Zakon o socijalnoj skrbi*), Official Gazette Nos. 18/22, 46/22, 119/22.
112 Report of the Ombudswoman for Children for 2022 [Online]. Available at: https://dijete.hr/hr/izvjesca/izvjesca-o-radu-pravobranitelja-za-djecu/, p. 5. and pp. 55–57. 'In 2022, about 7,500 old people entered into contracts for support until death or contracts of life maintenance and were, thereby, often exposed to a risk of abuse'.

obstacles because debtors may conceal their property. The statutes of limitation for the enforcement of maintenance do not apply before the child reaches legal age.

The minimum income that must remain for subsistence is laid down in the rules of the law of enforcement and is smaller if there is an obligation of maintenance for a child under legal age. The social welfare office is bound to seek enforcement if it represents a child in proceedings for maintenance. The right of the child to maintenance is also protected by the possibility of enforcement against the person's salary or other regular pecuniary income and against the person's account prior to enforcement to settle all other claims, regardless of the time of their accrual.[113]

In 2022, the Ombudswoman for Children recommended, 'By amended regulations, it is necessary to improve the position of children as enforcement creditors in enforcement cases for maintenance (and other claims in favour of children), in terms of time limits and the costs of the proceedings, determination of priorities in the settlement of maintenance and proportional settlement when more children are enforcement creditors. This recommendation clearly highlights current problems in enforcement proceedings that can be solved'.

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## 4. The importance of medically assisted reproduction

### *4.1. Terminology and significance of medically assisted reproduction in Croatia*

MAR involves reproduction brought about through various interventions, procedures, surgeries, and technologies to treat different forms of fertility impairment and infertility. This includes ovulation induction, ovarian stimulation, ovulation triggering, all assisted reproduction technology (ART) procedures, uterine transplantation, and intrauterine, intracervical, and intravaginal insemination with the semen of a husband/partner or donor.[114]

Croatia has a long history of *in vitro* fertilisation (IVF). The first IVF baby in Croatia was born in Zagreb in 1983, only five years after the birth of Louisa Brown, the first ever IVF baby. Before the COVID-19 pandemic, around 1,800 children a year were born in Croatia through MAR (including intrauterine insemination and egg stimulation), representing approximately 5% of the total births in the country. In 2020, this percentage decreased by 20% because some MAR centres were shut down as a result of the pandemic.[115]

113 Art. 527 of the Family Act.

114 According to: International Committee for Monitoring Assisted Reproductive Technology, 2017a. Different definitions of MAR and ART exist, so it is important to point them out.

115 In 2020, 35,845 children were born in the Republic of Croatia. Out of 35,845 live births, 18,389 (51.3%) were boys, and 17,456 (48.7%) were girls. The live birth rate (live births per 1,000 inhabitants) was 8.9 in 2020. Croatian Bureau of Statistics, 2022b.

On average, women in Croatia bear their first child at the age of 28.9 (2019).[116] This age results in a decrease in the possibility of conceiving. Professor Šimunić, a doctor of medicine and a leading specialist in human reproduction, notes that in Croatia, 'around 80,000 couples are infertile. Fertility starts decreasing at the age of 32 by 5% annually; after age 38, the annual decrease is 15–20%. In the fourth decade of a woman's life, various diseases damaging reproductive organs are more and more frequent. For a couple older than 41, it is five times more difficult and less probable to achieve pregnancy'. Discussing the causes of increased infertility, Dr Šimunić mentions, 'changed views of the world regarding reproductive infertility of some women and the fact that … reliable contraception made it possible to separate sexuality from reproduction … and today, the infertility of men is a more frequent phenomenon. Spermatogenesis is … very sensitive to so-called epigenetic factors, so environmental pollutants are harmful to creating sperms'.[117] We can, thus, expect a rise in the number of infertile couples, meaning that a cure is becoming an increasingly important problem.

ART[118] challenges the traditional concept of family as it enables single women and men, LGBTQ couples, and LGBTQ individuals to establish family law relationships with a conceived child if acknowledged by law. The child does not have to be genetically related to the legally acknowledged parents because she or he was conceived using donated gametes or embryos.

MAR, and in particular ART, raises many legal and ethical issues, especially regarding heterologous fertilisation, that is, when gametes from a donor are used. These procedures also provoke further issues regarding the rights of the persons involved and the destiny of the embryo. Especially intriguing is surrogate motherhood in terms of the aspects of the (non-existent) right to become a parent and the child's individual rights.[119]

### *4.2. Legal regulation of medically assisted reproduction*

In Croatia, activities connected with MAR are laid down in the Medically Assisted Reproduction Act[120] and the corresponding bylaws. The relevant EU directives

116 Eurostat, 2021.

117 Šimunić, 2018.

118 According to: International Committee for Monitoring Assisted Reproductive Technology, 2017b. The International Glossary on Infertility and Fertility Care, ART are 'all interventions that include the in vitro handling of both human oocytes and sperm or of embryos for the purpose of reproduction. This includes, but is not limited to, IVF and embryo transfer ET, intracytoplasmic sperm injection ICSI, embryo biopsy, preimplantation genetic testing PGT, assisted hatching, gamete intrafallopian transfer GIFT, zygote intrafallopian transfer, gamete and embryo cryopreservation, semen, oocyte and embryo donation, and gestational carrier cycles. Thus, ART does not, and ART-only registries do not, include assisted insemination using sperm from either a woman's partner or a sperm donor'.

119 Hrabar, 2020, p. 2.

120 The Medically Assisted Reproduction Act (*Zakon o medicinski pomognutoj oplodnji*), Official Gazette No. 86/12.

define all the technical quality and safety requirements in the area covered by the Act.[121]

Any EU country may freely regulate any MAR procedure, and their citizens may also seek medical assistance in other EU countries. A problem might arise when there is a different regulation in an individual's homeland, for example, concerning establishing parentage.

Croatia's Medically Assisted Reproduction Act (2012) was welcomed as one of the most permissive laws in Europe.[122] The ultimate ratio principle of the Act holds that medical assistance may be provided only when the previous treatment of infertility[123] has been unsuccessful or hopeless and when it is necessary to avoid, in the cases of natural conception, the transmission of a serious disease to the child (Art. 4, para. 1).

The beneficiaries of MAR are defined in Article 10, paras 1–3 of the Act. These beneficiaries are women and men of legal age who have legal capacity,[124] are married or live in a non-marital union, and who, in terms of their age and their overall health condition, are capable of exercising parental responsibility. The existence of a

121 Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells.
This Directive is primary legislation and sets the standards of quality and safety for the donation, processing, preservation, storage, and distribution of human tissues and cells. This Directive should be replaced by the Proposal for a Regulation of the European Parliament and of the Council on setting standards of quality and safety for the substances of human origin intended for human application and repealing Directives 2002/98/EC and 2004/23/EC (Proposal of 14 July 2022).
Further Directives include the Commission Directive 2006/86/EC of 24 October 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards traceability requirements, notification of serious adverse reactions and events and certain technical requirements for the coding, processing, preservation, storage and distribution of human tissues and cells; Commission Directive 2012/39/EU of 26 November 2012 amending Directive 2006/17/EC as regards certain technical requirements for the testing of human tissues and cells, Text with EEA relevance; Commission Directive (EU) 2015/565 of 8 April 2015 amending Directive 2006/86/EC as regards certain technical requirements for the coding of human tissues and cells; and Text with EEA relevance and Commission Directive (EU) 2015/566 of 8 April 2015 implementing Directive 2004/23/EC as regards the procedures for verifying the equivalent standards of quality and safety of imported tissues and cells. All these Directives set forth the minimum standards of quality and safety for the procedures for the donation, processing, preservation, storage, and distribution of human reproductive cells.

122 Čartolovni, Casini, and Spagnolo, 2014.

123 The World Health Organization defines infertility as a disease of the male or female reproductive system, characterised by the failure to achieve a pregnancy after 12 months or more of regular unprotected sexual intercourse. WHO, 2024.

124 Under Art. 23 of the Convention on the Rights of Persons with Disabilities, a person with disabilities has the right to decide freely and responsibly on the number and spacing of their children. According to this requirement, a person who is not deprived of legal capacity in the field of giving statements regarding his or her personal condition is also entitled to the right to MAR (Art. 10 par. 3 of the Medically Assisted Reproduction Act).

non-marital union must be endorsed in a statement certified by a notary public (Art. 11, para. 3 of the Act).

The right to MAR may also be exercised by a woman of legal age who has legal capacity and does not live in a marital, extramarital, or same-sex union (i.e. a single woman), whose previous treatment for infertility has ended unsuccessfully or hopelessly, and who, because of her age and overall health condition, is capable of caring for the child. It is essential that a doctor of medicine establishes the woman's health problem and confirms that the reason for her infertility is medical, not social.

Recently, the National Commission for Medically Assisted Reproduction has also received requests for the storage of gametes by persons who claim confidentially to his or her physician that they plan to undergo gender transition. These requests have been approved as there were no legal reasons to refuse them. Thus far, there have been no requests for transfers of gametes to another country or their use by transgender persons.

The Medically Assisted Reproduction Act recognises homologous and heterologous procedures, covering intrauterine insemination, *in vitro* insemination, intracytoplasmic sperm injection, the cryopreservation of gametes or embryos, *in vitro* fertilisation-embryo transfer, gamete intra-fallopian transfer, zygote intra-fallopian transfer, frozen embryo transfer, and preimplantation genetic diagnostics (Article 9). Of the total number of MAR procedures carried out in 2020, most involved intracytoplasmic sperm injection (37%). Frozen embryo transfer ranked second (27%), IVF ranked third (21%), and intrauterine insemination ranked fourth (16%).[125]

According to Art. 10, para. 5 of the Act on Medically Assisted Reproduction, the Croatian Health Insurance Fund covers four intrauterine inseminations and six *in vitro* fertilisation attempts, with an obligation that two attempts must be in a natural cycle. Generally, a woman must not be older than 42, unless there are particularly justified health reasons. Aiming to increase the birth rate, several Croatian cities (e.g. Osijek, Makarska, Split, Sisak, Umag) co-finance more attempts of MAR up to the amount of 40–80% of the costs of the procedure.

### *4.3. Family law provisions on establishing the origin of the child*

A separate part of the Family Act covers the maternity and paternity of children conceived through MAR techniques. The *Mater semper certa est* rule applies: the mother of a child conceived by a donated gamete or embryo is the woman who gave birth to the child (formulated as *praesumptio iuris et de iure*.[126] The mother's husband is held to be the child's father. If the beneficiary of MAR is a common-law couple, the common-law partner must have given a previous statement, certified by a notary, acknowledging paternity. Consent certified by a notary, particularly regarding the type of procedure and the origin of the reproductive cells or embryos

125 Ministry of Health of the Republic of Croatia, 2020.
126 Art. 82, para 1 of the Family Act.

(Article 14, para. 2 of the Act), must be given for every MAR procedure. Although associations that are engaged in defending patients' rights object to such stipulations, stating that they complicate the procedure, we believe that a request for a certified statement contributes to legal certainty. The maternity or paternity of a child conceived by MAR, with the donor's consent, may not be established or contested in court proceedings.[127]

If the child is conceived with the help of a homologous technique, it is not disputable whether it originates from persons who need medical assistance. If the child is conceived with the help of a heterologous technique, the persons who receive the infertility treatment accept in advance the fact that the child genetically originates from a donor and accept parental responsibilities.

Nevertheless, a woman registered as a child's mother or the woman who considers herself to be the child's mother is entitled to challenge maternity if they have not given the necessary consent to assisted reproduction by a donated ovum.[128] The mother's husband is held to be the father of a child conceived with donated semen or a donated embryo in a MAR procedure if the child was born during marriage or within 300 days of the termination of marriage and if the husband gave his consent for the appropriate MAR procedure, in accordance with the provisions governing the procedure.[129]

When a child is conceived by a heterologous method and the parents live in a non-marital union, the mother's partner, who must have previously given his consent for the specific MAR procedure and a statement acknowledging paternity (both statements certified by a notary public), shall be entered as the child's father upon the birth of the child.[130] If a child is conceived through a MAR procedure without the required consent, the man registered as the child's father or the man who considers himself the child's father may challenge paternity. At the same time, the man who considers himself the child's father must seek to establish his paternity[131]. The time limits are the same as in the case of establishing or challenging a child's biological origin when conception took place naturally.[132]

For both maternity and paternity, it is possible to initiate court proceedings to establish or challenge the genetic origin of a child conceived through MAR and the use of a donated gamete or embryo only if all the necessary consents have not

127 Art. 82, para 2 of the Family Act.

128 Art. 82 para. 3 of the Family Act. In 2009, several medical doctors, who were specialists in human reproduction, were cleared of the accusation that between 2000 and 2002, they illicitly transplanted the egg cells of other women into their female patients. In the court proceedings, the prosecution's allegations that egg cells were a part of a human body and that they had been taken out of women to be transplanted into other women's bodies for illegal material gain were disproven (felony: Illicit Transplantation of Parts of the Human Body).

129 Art. 83, para. 1 of the Family Act.

130 Art. 83, para. 2 of the Family Act.

131 Arts. 83 and 401–403 of the Family Act

132 Art. 75, Arts. 393–396, and Art. 82, para. 3 for the contestation of motherhood; and Arts. 79–81, 83, and 400–405 of the Family Act for the contestation of fatherhood.

been obtained. There are no data in the Register of Births on how a child is conceived (unless a previous acknowledgment of paternity has been obtained from the mother's common-law husband pursuant to Art. 83, para. 2 of the Family Act). As such, it is possible to imagine a situation where the prohibition of a challenge can be avoided if, in the court proceedings, no one draws the court's attention to the fact that the child has been conceived through MAR. Only the child (if conceived through MAR) cannot challenge its genetic origin from the mother or father, even when the necessary consents of the beneficiaries of the procedure have not been obtained.

Though allowed and regulated, heterologous techniques (donating gametes or embryos) are not performed in practice. In addition, there is no bank of sex cells intended for heterologous fertilisation, although there are statutory regulations for its foundation. Even if such a bank did exist, the right of a child of legal age to discover the donor's identity or the identity of the person from whom he or she derives his or her genetic origin would dissuade any donors. Consequently, serious consideration is being given to possible imports of genetic material from licensed EU institutions, allowing knowledge of the donor's identity. Currently, patients use heterologous procedures paid for by the Croatian Institute for Public Health, usually in the Czech Republic and the Northern Republic of Macedonia.

### *4.4. Surrogacy, postmortem conception, and frozen embryos – the hot potatoes of medically assisted reproduction*

Surrogate motherhood is prohibited in the Republic of Croatia[133]. According to Art. 31, para. 3 of the Medically Assisted Reproduction Act, 'contracts, agreements and other legal transactions of bearing children for another (surrogate gestational motherhood) and handing over a child after a fertility treatment, with or without a pecuniary remuneration, are null and void'. Nevertheless, some couples travel abroad and return with a child born through surrogate motherhood. Although rare, reports of parents who made surrogacy arrangements abroad sometimes appear in the media. The competent authorities have never checked how these children's origin is established, and the children have not been entered into the Register of Births in the relevant consulate. The problem of the non-recognition of the right to maternity leave has once been reported publicly: one woman who returned from abroad with a child and registered as its mother could not prove that her pregnancy had been medically monitored. The Croatian Health Insurance Institute initially refused, although later agreed, to grant her maternity leave. No family law action was taken, and removing the child was not an option, as was the case in *Paradiso and Campanelli v. Italy*.[134,135]

133 Art. 31 of the Medically Assisted Reproduction Act.
134 ECHR, *Paradiso and Campanelli v. Italy*, Grand Chamber Judgment of 24 January 2017.
135 Korać Graovac, 2022, pp. 48–49.

Today, the National Committee on Medically Assisted Reproduction requires that patients in Croatia requesting the transfer of gametes and embryos to clinics where surrogacy is available must provide a statement that they will not be used for any surrogate arrangements.[136] Some transfers are disputable when the legislation of the state to which they are transferred does not secure the child's right to know his or her origin (i.e. the identity of his/her genetic parents).

Legal theory warns that from the biological and medical perspectives, surrogate motherhood is considered 'the most controversial form of medicinal reproduction'. In the cases of surrogate motherhood, the genetic and social parenthood may be completely separated. For example, the child's genetic origin could come from one woman, while another woman bears the child, and a third woman (the commissioner) is registered in the Register of Births as the child's mother. At the same time, the man registered as the child's father may or may not be his or her genetic father. 'According to the J. Griffin theory of rights, priority needs to be given to the right with intrinsic value that is more important to the personhood. Thus, in the case of surrogacy, the value of [the] procreator's self-fulfilment may confront with values of self-identity and dignity. That leads us to the conclusion that in procreation arrangements such as surrogacy, children are at the mercy of adult decision-making that only aims to pursue adult happiness and personal fulfilment by manufacturing a child into existence through procreation technologies. We should not forget that the children are not the commodity, and they should not exist for the fulfilment of adults'.[137]

Cross-border surrogacy arrangements, which are popular today and are untraceable, make it possible to bypass domestic legislation. The absence of any formal consensus within the EU on how to address the problem of cross-border surrogacy represents a serious threat to protecting children's rights.[138]

Yet another outcome of surrogate motherhood is that it can provide the possibility for homosexual male partners or couples where one person is transgender to become parents.

The EU Parliament has adopted a resolution that 'condemns the practice of surrogacy, which undermines the human dignity of the woman since her body and its reproductive functions are treated as a commodity [and] considers that the practice of gestational surrogacy which involves reproductive exploitation and use of the human body for financial or other gains, in particular in the case of vulnerable women in developing countries, shall be prohibited and treated as a matter of urgency in human rights instruments'.[139] In 2021, the European Parliament 'acknowledged that

136 Observation by the author, who is a member of the National Commission for Medically Assisted Reproduction.

137 Preložnjak, 2020, p. 97.

138 Čulo Margaletić, Preložnjak, and Šimović, 2019.

139 Para. 114. of the European Parliament (2015) Annual Report on Human Rights and Democracy in the World 2014 and the EU Policy on the Matter: Committee on Foreign Affairs. PE567.654 European Parliament Resolution of 17 December 2015 on the Annual Report on Human Rights and Democracy in the World 2014 and the EU's policy on the matter (2015/2229(INI)) 2017/C399/19.

sexual exploitation for surrogacy and reproductive purposes … is unacceptable and a violation of human dignity and human rights'.[140] The highly disputed issue of cross-border arrangements is reflected in a project on parentage and surrogacy by the Hague Conference on Private International Law.[141] The EU is also active in this field and has prepared a new directive concerning parentage.[142]

In Croatia, posthumous fertilisation is not allowed because 'marriage or an extramarital union must exist at the time of placing sexual cells or embryos into a woman's body'.[143] In the case of the death of the person from whom the stored sex cells or tissues originate, the health institution must destroy them within 30 days following news of the death.[144]

Indeed, the child's interest to enjoy the parental care of both parents prevails over the surviving spouse's or partner's (a woman) desire to give birth to the child. Hence, in the case of the death of one or both persons from whom the embryos originate, they may be donated to another beneficiary of the right to medically assisted fertilisation and childbearing (Art. 33, para. 4). A wife is not allowed to use embryos *postmortem* as this would lead to the birth of a child who would never be in a position to enjoy parental care by both parents.

Among the state-owned and private Croatian institutions dealing with medically assisted fertilisation, it is reported that between 9,000 and 10,000 embryos are stored that have, thus far, not been used in MAR procedures. Most embryos are stored in one of the state's hospitals. This is because over 10 years ago, embryos were unselectively frozen, and many of them are no longer suitable for the further division of cells and development into embryo.

The number of embryos in storage is large because, despite the fact that the related regulation is clear, it is in the spirit of the law to protect embryos (*pro-life*). As such, health institutions refuse to destroy them after the deadline, even upon request from persons from whom the stored embryos originate who no longer intend to use them.

Here, we are dealing here with an unresolved legal issue that will have to be explicitly addressed, most likely by applying the advanced directives of persons seeking medical help.[145]

To avoid the unnecessary freezing of too many embryos, the Medically Assisted Reproduction Act sets out that up to 12 egg cells can be fertilised in one procedure.

140 Para. 32 of the European Parliament (2019) EU Strategy for Gender Equality:
Committee on Women's Rights and Gender Equality
PE650.408
European Parliament Resolution of 21 January 2021 on the EU Strategy for Gender Equality (2019/2169(INI)) 2021/C456/19.

141 HCCH, n.d.

142 Proposal for a council regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood, COM/2022/695 final.

143 Art. 11, para. 1 of the Medically Assisted Reproduction Act.

144 Art. 33, para. 3 of the Medically Assisted Reproduction Act.

145 Pennings, 2020.

Couples must make written statements before starting the procedure of medically assisted fertilisation on the number of egg cells they want to be fertilised, from two up to 12. If they choose to fertilise two egg cells, these cells are inserted into the woman's womb.

Any remaining egg cells and/or embryos are frozen and stored by the Croatian Health Institute for up to 5 years. After 5 years and upon the genetic parents' consent, the cells and/or embryos are donated for pregnancy and childbearing to a beneficiary of the right to MAR who agrees to such a procedure. If spouses or common-law partners want to prolong the storage of embryos for an additional 5 years, they must bear the costs of this storage.[146] The purpose of this regulation is to donate embryos for 'adoption'; however, this is not possible for those embryos that have been frozen to date because the persons they originate from have not undergone the health and medical verification procedure for possible donors (as is required by the ESHRE).[147]

## 5. Concluding remarks

This chapter offered a review of the most important aspects of family policy in Croatia. Family policies are complex and overlap with demographic policies, meaning there are different approaches to drafting them.

Croatian demographers have long warned of a demographic catastrophe, but these warnings are not taken seriously enough. In 2022, Croatia recorded the fewest births in the last 30 years, with fewer and fewer children seeming likely in the future. This presents enormous consequences at both the societal and individual levels.

Croatia has a complex system of social security benefits. Nevertheless, measures to address demographics in the country are ineffective and insufficient, and there is no strong family policy that supports families that have more children. Demographer Jurić adds that the smaller number of births is (also) are result of neoliberalism: "Measures alone cannot change the atmosphere of the neoliberal spirit that says, *if you have children, you will not be happy*".[148]

Economic obstacles and a lack of optimism regarding the future force young people to migrate to more developed EU countries and to start a family abroad or postpone starting a family. The state seeks to attract young couples to stay or return to their homeland by offering benefits; however, they are not enough. Often, young couples who stay in the country do not have sufficient economic support to fulfil their desires for children.

146 Art. 7, paras. 2–5 of the Medically Assisted Reproduction Act.
147 European Society of Human Reproduction and Embryology, n.d.
148 Pranić, 2023.

The situation is complex. Without serious political efforts and the engagement of all available sources, we will slowly disappear as a nation. Despite politicians' promises, change rarely happens. In the Demographic Yearbook 2022, the Central State Office for Demography and Youth set a target fertility rate for Croatia of 1.8 children per woman by 2030. However, this rate currently seems like wishful thinking.

Family law indirectly helps families. It provides a safe, legal frame that establishes the clear rights and duties of family members, and additionally, family law principles offer insights into common values. The later elaboration of these principles into particular norms built a family law system that supports family members, whether family relations are harmonious or turbulent.

The protection of the family home, maintenance of children, and the state-subsidised maintenance of children and intergenerational family solidarity, which are especially vivid in Croatian society, are important for building an economically safer environment in which to bring up children. The enforcement of maintenance obligations remains a problem that needs to be addressed more efficiently.

In the Republic of Croatia, MAR is provided for by modern regulation. The main characteristics of this regulation are the principle of *ultima ratio,* the primacy given to homologous techniques, the right of the child to know its genetic origin if conceived by a heterologous method, the prohibition of *post mortem* conception, and the prohibition of surrogate motherhood.

Some beneficiaries seek health services abroad, which may result in new proceedings in the future (e.g. the issue of the right of the child to know his or her origin). There have been many requests to liberalise legislation regarding the access of single women and same-sex couples to MAR, solutions for cryopreserved embryos, and the import of gametes. Legislative changes must acknowledge social realities while also protecting different individual and public interests, especially the best interests of the child.

The future of changes in population growth does not seem to be bright, and Croatia will have to work hard to improve its demography and family policy.

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