

# SLOVENIA: EMPOWERING FAMILIES – LEGAL INSTRUMENTS FOR SUPPORTING CHILDREN, PARENTS, AND FAMILIES AMIDST DEMOGRAPHIC CHALLENGES



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### Abstract

Like other countries, the Republic of Slovenia also faces selected demographic challenges, which have significant impacts on the field of family law and family relationships. Rapid demographic changes require various measures by the authorities of the Republic of Slovenia (e.g., ministries, courts, social work centers, etc.), which provide appropriate solutions and adaptations to changing demographic structures (e.g., aging population, delayed childbirth, poverty). The author analyzes selected family law financial instruments through which the Republic of Slovenia supports families and their family members. These instruments and measures extend to many areas, which are common in their importance for the formation of the family itself (e.g., legal regulation in the field of reproductive health and assisted reproductive technologies). Likewise, instruments and measures supporting parenthood, families, and children are presented, whether from the perspective of education, healthcare, labor law, or social aspects. Changes perceived in family law in recent years are also analyzed, which have also contributed to significant demographic shifts and required legislative changes in the Republic of Slovenia (e.g., same-sex partnerships, joint adoption by same-sex partners, an increase in couples seeking medical assistance in conceiving a child). The author thus addresses and links contemporary demographic changes with measures aimed at strengthening families and addressing the diverse

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needs of children, parents, and families in the developing demographic context of the Republic of Slovenia. In doing so, the importance of holistic approaches addressing not only material needs but also emotional, social, and developmental aspects is emphasized, as only then can the strengthening of family and child welfare amidst the significant demographic challenges be ensured.

**Keywords:** demographic changes, family support instruments, child's best interest, family and child protection, reproductive health, education, parenthood

## 1. Family policy in Slovenia

### *1.1. Demographic data*

On 1 January 2023, Slovenia had 2,116,972 inhabitants—9,800 more than a year earlier. In 2023, the number of Slovenian citizens decreased by almost 7,600, while the number of foreigners increased by 17,400. Among them, the number of Ukrainians increased the most, with the influx of nearly 6,100 Ukrainians indicating a 250% increase compared to 2022.<sup>1</sup>

In 2022, only 17,627 children were born in Slovenia, a decline of 7% or 1,357 children over the previous year. Of 2022 births, 9,051 were boys and 8,576 were girls. According to live birth data from the last 101 years, 2022 ranks fifth in terms of years with the fewest recorded births. The smallest generation was born in 2003, followed by 2001, 2002, and 1999.<sup>2</sup>

The total fertility rate for 2022 was 1.55. The average age of mothers at child-birth has not changed in the last four years, that is, since 2019. On average, births occurred to women aged 31.1 years. In 2022, the average age of women who gave birth for the first time was 29.6 years. Therefore, mothers aged 26–32 gave birth to proportionally more children in 2022.<sup>3</sup>

Of the total number of children born in 2022, some 2,704, or 15%, were born to foreign nationals. Of these, the majority occurred to Bosnian and Herzegovinian mothers (46%), followed by Kosovan (20%) and Croatian (11%) mothers. The average age of foreign-born women who gave birth in Slovenia in 2023 was 29.4 years, 2 years younger than the average age of Slovenian women that year (31.4 years).

1 Razpotnik, 2023.

2 Žnidaršič, 2023.

3 Žnidaršič, 2023.

In 2022, 7,534 children were born to married mothers and 10,093, or 57%, to unmarried mothers. The average age of married mothers was 31.3 years, approximately 0.4 years higher than that of unmarried mothers (30.9 years).<sup>4</sup>

Slovenia has experienced a natural decrease every year since 2017, with more people dying each year than are being born. In 2022, the natural growth was positive only in September. At an annual level, the natural increase was -4,865 inhabitants or -2.3 per 1,000 inhabitants.

In 2022, 22,492 (11,136 males and 11,356 females) residents of Slovenia died. This was 3% less than in 2021, and 6% less than in 2020, but 9% higher than in the pre-epidemic year of 2019. At the national level, the death rate was 10.7 per 1,000 inhabitants. In 2022, the average age of death was 78.7 years, 0.4 years higher than in 2021 (78.3 years) but six months lower than the average age of death in 2020 (79.2 years), when mortality was heavily affected by the Covid-19 pandemic. In 2022, the average age of death was 74.9 years for males and 82.5 years for females.<sup>5</sup>

If mortality rates remain constant, boys born in Slovenia in 2022 can expect to live to the age of 78.4 years, almost one year longer (0.8 years) than boys born the year before. Girls born in 2022 can expect to live to 83.9 years of age, approximately 0.2 years longer than girls born the year before.

Among the deaths recorded in 2022 were 44 infants (29 boys and 15 girls), equating to 2.5 per 1,000 live births. The infant mortality rate is decreasing in Slovenia. In the years after the Second World War (1939–1945), there were more than 50 infant deaths per 1,000 live births. However, in the last 16 years, the death rate has fallen below 3 deaths per 1,000 live births.<sup>6</sup>

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

As an EU Member State and contracting party to international instruments, Slovenia has a duty to detect changes in family life in a timely manner. It should design or plan its family policy to respond to the new situation and prepare strategic documents and legislation that will comprehensively regulate this domain, offer various forms of assistance and support, ensure equality and social inclusion, and protect the most vulnerable groups in society. As the field of family policy is relatively broad, Slovenia as a State can only fulfil this task through close intersectoral and interdisciplinary co-operation and appropriate collaboration with experts. To this end, the Council of the Republic of Slovenia for Children and Family (hereinafter, the Council) has been established as a permanent expert advisory body on the basis of the Family Code (FC).<sup>7</sup> The Council performs expert and consultative tasks for

<sup>4</sup> Žnidaršič, 2023.

<sup>5</sup> Šter, 2023.

<sup>6</sup> Šter, 2023.

<sup>7</sup> Family Code (Slovene Družinski zakonik) (FC): Uradni list RS, št. 15/17, 21/18 – ZNOrg, 22/19, 67/19 – ZMatR-C, 200/20 – ZOOMTVI, 94/22 – odl. US, 94/22 – odl. US, 5/23.

the Government of the Republic of Slovenia, including assisting in the drafting of legislation, monitoring the situation of children and the family, and reporting on the matter of children's rights in Slovenia. Council members are appointed by the Government of the Republic of Slovenia on the proposal of the Minister responsible for the Family. Council members comprise representatives of the Government of the Republic of Slovenia, non-governmental organisations in the field of children and the family, and professional institutions.<sup>8</sup>

Courts and social work centres have been entrusted with an important role in ensuring and implementing children's rights. As a rule, the district courts have jurisdiction to decide on cases under the first instance. In this respect, court cases relating to parent-child relationships, adoption, granting of parental responsibility to relatives, foster care, and guardianship are dealt with as a matter of priority.<sup>9</sup>

Broadly speaking, social work centres can decide on administrative matters under the FC. Appeals against decisions of social work centres are decided by the Ministry responsible for the Family. Administrative matters under the FC are also dealt with as a matter of priority.<sup>10</sup>

In addition, Art. 12 of the FC provides that the State, through education, health care, social welfare, and counselling, shall enable people to prepare themselves in all respects for a harmonious partnership and family life, and shall also help them to resolve problems in their relationships with each other and with their children.

### ***1.3. Family support benefits***

It is the responsibility of the State to create the right conditions for families, make choices and achieve a high quality of life for families, and ensure that all family members—especially children—are protected and safeguarded. The State does this in part by contributing to the cost of subsistence, caring for and protecting children, and granting special rights on the grounds of parenthood. The purpose of these rights and direct financial support to families is to enable parents to provide good quality parenting and ensure that children have a good quality childhood; provide families with the best possible living conditions; facilitate the reconciliation of family and professional responsibilities; and improve the living conditions of socially weaker families, multi-child families, single-parent families, and families with children with special needs.<sup>11</sup>

Parental Protection and family benefits are regulated by the Parental Protection and Family Benefits Act (PPFBA-1).<sup>12</sup> Among its various functions, the PPFBA-1 regu-

<sup>8</sup> Republika Slovenija, 2018, p. 7.

<sup>9</sup> Art. 14, FC.

<sup>10</sup> Art. 15, FC.

<sup>11</sup> Republika Slovenija, 2018, p. 34. ff.

<sup>12</sup> Parental Protection and Family Benefits Act (Slovene Zakon o starševskem varstvu in družinskih prejemkih) (PPFBA-1): Uradni list RS, št. 26/14, 90/15, 75/17 – ZUPJS-G, 14/18, 81/19, 158/20, 92/21, 153/22.

lates insurance for parental protection and the rights arising therefrom, family benefits, and the conditions and procedure for claiming individual rights. The PPFBA-1 defines the following rights and benefits: a) the right to maternity, paternity, and parental leave and benefits; b) the right to part-time work resulting from parenthood; c) the right to payment of contributions in the case of four or more children; d) the right to breastfeeding breaks; e) parental allowance; f) childbirth grant; g) child benefit; h) large family allowance; (i) child care allowance; and j) partial payment for loss of earnings.

Parental protections, in particular parental leave and, to some extent, part-time work, are essential to closing the gender gap in the labour market insofar as they allow women to remain active in the labour market after childbirth. They also promote a more equal sharing of childcare responsibilities between women and men and facilitate the reconciliation of work and family life.

Maternity leave is designed to allow women to prepare for childbirth, care for and protect the child immediately after birth, and protect the mother's health during and after the birth. Mothers are entitled to 105 consecutive days of leave, of which 15 days are compulsory. Maternity leave shall begin 28 days before the expected date of birth, except in cases of premature birth. In exceptional cases, the father, another person or a grandparent shall be entitled to maternity leave. Maternity allowance comprises 100% of the basic amount and is capped at 2.5 times the average monthly salary in the Republic of Slovenia.<sup>13</sup>

Paternity leave is designed to give fathers the opportunity to take part in the care and protection of their children from an early age. Fathers are entitled to 15 calendar days (11 working days) of paid leave and 15 days of partial or full leave with pay to care for a child up to six months of age or, under exceptional circumstances, up to twelve months of age. Thereafter, fathers have the right to 130 days of parental leave for that child until the child's first year of primary school. Other persons actually caring for and protecting the child after its birth (i.e. the other person and the mother's spouse or cohabitation partner) are also entitled to paternity leave. The paternity allowance is 90% of the basic amount and capped at 2.5 times the average monthly salary in the Republic of Slovenia. In 2016, when 20,345 children were born, 16,291 fathers took the first 15 days of paternity leave.<sup>14</sup>

Parental leave is provided for the care and protection of the child. It is granted to mothers and fathers for 130 days for each parent (260 days in total) in the form of full or partial leave from work. While the mother can transfer 100 days of parental leave to the father, 30 days are non-transferable and can only be taken by the mother. In general, the father can take a maximum of 230 days of parental leave or, in exceptional cases, all 260 days. The father can transfer 130 days of parental leave to the mother, who may take all 260 days of parental leave. Parental leave is extended in the event of the birth of twins or more children at the same time, a prematurely

<sup>13</sup> Republika Slovenija, 2018, p. 36.

<sup>14</sup> Republika Slovenija, 2018, p. 36.

born baby, the birth of a child needing special care, etcetera. A maximum of 75 days of parental leave may be carried over and taken by the parents until the child has completed their first year of primary school. Also entitled to parental leave are adoptive parents and persons entrusted with the care and custody of a child for adoption, including one of the child's grandparents. Parental allowance is 90% of the basic amount and is capped at twice the average monthly salary in the Republic of Slovenia. Slovenia has a relatively low rate of take-up of parental leave by fathers. The proportion of fathers taking parental leave has remained roughly the same throughout the years at 6–7%.<sup>15</sup>

The parental allowance is paid to mothers (or fathers after 77 days from the birth of the child) who are not insured for parental responsibility (e.g. students, unemployed persons) and amounts to EUR 252.04 per month. Beneficiaries are covered by pension and invalidity insurance for the duration of the entitlement. The beneficiary and the child must have permanent residence in the Republic of Slovenia and actually reside in Slovenia. The entitlement typically lasts 365 days and is extended in the event of the birth of twins or more children at the same time, a prematurely born baby, a child in need of special care, etcetera. In the last two years, approximately 3,600 beneficiaries have been entitled to parental allowance annually, totalling some EUR 10.5 million.<sup>16</sup>

The birth grant is allocated for the purchase of equipment for the new-born baby. The benefit is paid in a lump sum and currently amounts to EUR 280.00. It is available to any child whose mother or father has permanent residence and currently resides in the Republic of Slovenia and whose average monthly income per person does not exceed 64% of the net average wage (EUR 659.30), in accordance with the provisions of the Exercise of Rights from Public Funds Act (ERPFA),<sup>17</sup> which are applicable to the determination of entitlement to child benefit. Based on the Act on Fiscal Balance Act (FBA)<sup>18</sup> and the 2015 amendment to the PPFBA-1, childbirth assistance was limited to families in the sixth income class. It is imperative that the right to childbirth assistance be restored as a universal right as soon as possible. To improve the impact of the entitlement, it should be transformed from a direct cash transfer into a credit redeemable in select shops exclusively for products intended for children. Doing so will ensure that the funds are used in a targeted way. As the State wishes to create a supportive environment for children enabling their ability

15 Republika Slovenija, 2018, p. 36.

16 Republika Slovenija, 2018, p. 38.

17 Exercise of Rights from Public Funds Act (Slovene Zakon o uveljavljanju pravic iz javnih sredstev) (ERPFA): Uradni list RS, št. 62/10, 40/11, 40/12 – ZUJF, 57/12 – ZPCP-2D, 14/13, 56/13 – ZŠtip-1, 99/13, 14/15 – ZUUJFO, 57/15, 90/15, 38/16 – odl. US, 51/16 – odl. US, 88/16, 61/17 – ZUPŠ, 75/17, 77/18, 47/19, 189/20 – ZFRO, 54/22 – ZUPŠ-1, 76/23 – ZŠolPre-1B)

18 Fiscal Balance Act (Slovene Zakon za uravnoteženje javnih financ) (FBA): Uradni list RS, št. 40/12, 96/12 – ZPIZ-2, 104/12 – ZIPRS1314, 105/12, 25/13 – odl. US, 46/13 – ZIPRS1314-A, 56/13 – ZŠtip-1, 63/13 – ZOsn-I, 63/13 – ZJAKRS-A, 99/13 – ZUPJS-C, 99/13 – ZSVarPre-C, 101/13 – ZIPRS1415, 101/13 – ZDavNepr, 107/13 – odl. US, 85/14, 95/14, 24/15 – odl. US, 90/15, 102/15, 63/16 – ZDoh-2R, 77/17 – ZMVN-1, 33/19 – ZMVN-1A, 72/19, 174/20 – ZIPRS2122, 139/22 – ZSPJS-AA).

to make choices, the level of funding for this entitlement should be higher for the second child and subsequent children.<sup>19</sup>

Rights to family benefits and allowances help parents support, raise, educate, and care for their children. The primary purpose of the various rights and benefits is to ensure that the birth of a child does not have a negative impact on the family's financial situation. This is particularly important for large families and families caring for a child requiring special care and protection.<sup>20</sup>

The child benefit is supplementary to a child's maintenance, education, and upbringing. The benefit is provided to any parent or person responsible for a child with a registered residence in the Republic of Slovenia until the child reaches the age of 18, provided that the child also meets other conditions under the law regulating family benefits.

*Table 1. Amount (in euros) of child benefit for a child until the end of primary school or until the age of 18 as of 1 March 2023)<sup>21</sup>*

Income Class	Average monthly income per person	First child	Second child	Third and subsequent child
1	Up to EUR 221.46	135.44	148.97	162.53
2	Above EUR 221.46 up to EUR 369.11	115.79	128.00	140.14
3	Above EUR 369.11 up to EUR 442.94	88.25	98.64	108.99
4	Above EUR 442.94 up to EUR 516.76	69.61	79.42	89.42
5	Above EUR 516.76 up to EUR 652.12	56.91	66.42	75.86
6	Above EUR 652.12 up to EUR 787.44	36.07	45.13	54.16
7	Above EUR 787.44 up to EUR 1,008.93	27.06	36.07	45.13
8	Above EUR 1,008.93 up to EUR 1,218.08	23.56	32.58	41.59

19 Republika Slovenija, 2018, p. 39.

20 Republika Slovenija, 2018, p. 41.

21 Republika Slovenija Gov.si, 2023.

If the child is in secondary school, the child benefit is increased for income classes 7 and 8.<sup>22</sup>

*Table 2. The amount of child benefit in euros according to the income class for a child in high school, but no later than the age of 18<sup>23</sup>*

Income Class	Average monthly income per person	First child	Second child	Third and subsequent child
7	Above EUR 787.44 up to EUR 1,008.93	34.16	43.17	58.82
8	Above EUR 1,009.93 up to EUR 1,218.08	27.11	36.13	47.26

If the child lives in a single-parent family, the amount of child benefit is increased by 30% on the condition that the other parent is unknown or provides no financial support, either because they have died or are not receiving benefits. For children under the age of four who are not in pre-school education, the amount of child benefit is increased by 20%.

The large family allowance is an annual benefit for families with three or more children under the age of 18 or for as long as the parents are obliged to support them under the rules governing family relationships (up to a maximum of 26 years). Another person, such as a foster parent or carer, may be entitled to the allowance if three or more children from the same family live without their parents. For example, one parent is entitled to the large family allowance if the parent and the children share a permanent place of residence and live in the Republic of Slovenia, and if they meet the means test of 64% of the average monthly income per family member or EUR 659.30 per family member. Another person is also entitled to this allowance if three or more children from the same family live without parents. The allowance is EUR 468,00 for a family with three children and EUR 568,71 for a family with four or more children. The large family allowance is paid in a lump sum. Entitlement to the large family allowance is limited to families in the sixth income class (53–64%).<sup>24</sup>

Childcare allowance is a benefit that can be claimed by a parent or other person (e.g. a foster parent or carer) for a child in need of special care providing the child is a permanent resident and lives in the Republic of Slovenia. The child is entitled to this allowance for as long as the reasons apply until the age of 18, and thereafter if the parents are obliged to support the child, in accordance with the rules governing family relationships. Entitlement to care allowance is granted based on the opinion of a medical committee. The care allowance is a monthly benefit of EUR 100, or

<sup>22</sup> Republika Slovenija Gov.si, 2023.

<sup>23</sup> Republika Slovenija Gov.si, 2023.

<sup>24</sup> Republika Slovenija, 2018, p. 42; Republika Slovenija Gov.si, 2023a.



EUR 200 for children with severe mental disabilities, severe physical disabilities, or children with certain illnesses on the list of serious diseases. More detailed criteria for the identification of children in need of special care are stipulated in the rules on criteria for exercising rights for children in need of special care and protection.<sup>25</sup>

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

The child tax credit (deduction) is granted to parents for each dependent child until the age of 18 and for children below the age of 26 who are in continuous or intermittent education up to one year at the secondary, higher or higher education level, are not employed or self-employed, and who have no income or an income less than the amount of the special allowance for each other member of the family. The tax credit for the first dependent child is EUR 2,698, reducing the income tax base. The tax credit for dependent children increases to EUR 2,933 for the second child, EUR 4,892 for the third child, EUR 6,851 for the fourth child, and EUR 8,810 for the fifth child. Parents are entitled to an additional credit for a dependent child who needs special care and protection.<sup>26</sup>

Certain persons have the right to assistance in the purchase of a highway vignette. Specifically, a parent or other person who owns or uses a vehicle classified in the second toll class B under the law governing toll roads and tolls, and who, at the time of the last registration of the vehicle, was entitled to and exercised the right to a 50% reduction in the annual charge for large families for that vehicle (4 children up to the age of 18) under the law governing the annual charge for the use of vehicles on the road, shall be entitled to a one-off grant for the annual highway vignette for that vehicle of the difference between the price of the annual highway vignette set for the second toll class A in the law governing toll roads and tolls.<sup>27</sup>

Payment exemption from the annual charge for using vehicles in road transport may be granted for certain passenger cars if they are used for transporting children who need special care and protection until the age of 18 or up to the age of 26 if they are in school. Families and foster families with at least four children under the age of 18 registered at the same permanent address who use a private car are entitled to a 50% reduction in the annual charge for one of the vehicles owned or used by one of the family members.

Motor vehicle tax is not payable on vehicles purchased for the transport of families with three or more children, that is, a motor vehicle with five or more seats. This exemption is limited to the purchase of one such vehicle within a three-year period by one parent in a family with three or more children under the age of eighteen.

25 Rules on criteria for claiming rights for children in need of special care (Slovene Pravilnik o kriterijih za uveljavljanje pravic za otroke, ki potrebujejo posebno nego in varstvo): Uradni list RS, št. 89/14, 92/15, 18/17, 17/18, 3/19, 97/21.

26 Finančna uprava RS (FURS), 2022.

27 Republika Slovenija Gov.si, 2023a.

Motor vehicle tax is also not payable on vehicles purchased for the transport of disabled persons. This exemption is limited to the purchase of a vehicle once every five years by disabled persons' organisations and by persons who hold a driving license or require the assistance of other persons who have a driving license (including children who need special care and protection).

Parents of children enrolled in public and private preschool institutions with concessions and private preschool institutions financed from municipal budgets may apply for reduced payment of kindergarten fees.

### ***1.5. Housing and household creation***

As housing is an important element of social security and individual dignity, it is the responsibility of the State to create opportunities for citizens to acquire adequate housing. The Constitution of the Republic of Slovenia and some international documents (e.g. Istanbul Declaration, Habitat Agenda, and the 2030 Agenda for Sustainable Development) clearly state that adequate housing is a fundamental human right. Housing is undoubtedly an essential area in the context of family policy, as a family's housing situation is a prerequisite for a good quality family life.<sup>28</sup>

In order to regulate this area, the Republic of Slovenia regularly prepares and adopts strategic documents that identify current problems and define measures to address them. In this regard, the Resolution on the National Housing Programme 2015–2025<sup>29</sup> is a fundamental document that sets out the general objectives of housing provision and the future development of the housing sector. These objectives include ensuring a balanced supply of suitable housing on the housing market, facilitating access to housing for all residents, providing quality and functional housing, and encouraging residents to be more mobile in their homes. The Resolution on the National Housing Programme 2015–2025 also recognises the problem of the accessibility of housing for more vulnerable target groups, placing emphasis on young people, young families, and single-parent families within this target group, as well as large families, single-person households over 65 years of age, persons with disabilities (especially mobility impairment), and persons in complex social situations (e.g. victims of violence, ethnic minorities, migrants, refugees, and persons with long-term mental health problems). The competent ministry and the Housing Fund of the Republic of Slovenia promote the construction of public rental housing to increase accessibility to housing in the country.<sup>30</sup>

In the context of youth housing, the relatively late age at which young people leave their parental homes is particularly worrisome. Moving into an independent household is generally considered one of the key markers of the transition to

28 Republika Slovenija, 2018, p. 103.

29 Resolution on the National Housing Programme 2015–2025 (ReNSP15–25) (Slovene Resolucija o nacionalnem stanovanjskem programu 2015–2025): Uradni list RS, št. 92/15.

30 Republika Slovenija, 2018, p. 103–104.

adulthood. Several factors influence when young people make the transition to independent housing, and thus to the creation of an independent household and their own family. In addition to individual factors, youth housing is affected by significant structural factors. Experts have pointed out that housing availability has an important impact on leaving home, with young people tending to move away from home earlier in countries with a larger rental sector. Slovenia has a very small rental sector in both the for-profit and non-profit housing sectors. Consequently, young people have fewer opportunities to become independent and face greater difficulty in transitioning to independent housing, often resulting in their postponing the decision to start a family. Housing is key to achieving a high quality of life. Therefore, the State must take as many measures as possible to regulate this area adequately and provide young people and young families with a degree of social security. Doing so will also create a supportive environment enabling young people to start a family.<sup>31</sup>

Even when young people do manage to move away and start a family, their housing conditions are worse than those of other families. Trends in home ownership show that entry into the owner-occupied sector is extremely difficult, especially for young families, and often only possible with the help of intra-family transfers in the form of loans, land or a housing unit, in addition to their own investment and bank loans. Consequently, young people in Slovenia gain independence much later than in most Western European countries.

Another important indicator in assessing the housing situation of families is the household's housing cost burden. Although not outstanding, Slovenia's household housing cost burden is relatively low compared to the EU average. For instance, in 2014, Slovenia had a household housing cost burden of 6.4%, lower than the EU average of 11.4%.<sup>32</sup>

### ***1.6. Family and work allowances***

More flexible forms of work, including the right to shorter working hours, make it easier to reconcile work and family commitments. PPFBA-1 provides that a parent who is caring for and looking after a child up to the age of three has the right to work part-time rather than full-time. If they are caring for at least two children, this right extends until the youngest child has completed their first year of primary school in accordance with the regulations governing primary school.<sup>33</sup> One year of part-time work is non-transferable for each parent, subject to certain exceptions. In 2014, the duration of the entitlement was extended until the younger child had completed their first year of primary school, provided that the parents have the care and

31 Republika Slovenija, 2018, p. 104.

32 Republika Slovenija, 2018, p. 108.

33 See Basic School Act (Slovene Zakon o osnovni šoli): Uradni list RS, št. 81/06 – uradno prečiščeno besedilo, 102/07, 107/10, 87/11, 40/12 – ZUJF, 63/13, 46/16 – ZOFVI-K, 76/23.

custody of at least two children. A non-transferability condition of one year for each parent was added to encourage fathers to use this right.<sup>34</sup>

The number of beneficiaries and the amount of resources available to pay social security contributions for part-time work have increased over the years. In 2011, EUR 11.5 million in funding was needed to cover 10,108 beneficiaries, while in 2016, EUR 17.2 million was needed to cover 14,485 beneficiaries. Note that as contributions are paid on a pro-rata basis on the minimum wage, the amount of funding needed increases as the minimum wage rises, rather than depending solely on the number of beneficiaries. That the payment of contributions is linked to the minimum wage means that a large proportion of beneficiaries are paying their contributions on a base lower than their salary, resulting in a lower pension assessment. Given the impact on pension rights, it is worth considering a change in legislation to ensure that the beneficiaries of the right to part-time work receive the same pension as they would have if they not taken advantage of this measure.<sup>35</sup>

It is important to stress that, like men, the majority of women in Slovenia are employed on a full-time basis. Compared to other EU Member States, the Republic of Slovenia has one of the highest employment rates for women with children, and their situation is more equal to that of men. In recent years, a new trend has been observed, namely, an increase in the share of women working part-time when they have young children. It is important to note that this type of measure is predominantly used by women and has a negative impact on women's position in the labour market. There has also been an increase in sole traders' use of this right.<sup>36</sup>

Mothers in full-time employment are entitled to an allowance of one hour a day for breastfeeding breaks for a child up to nine months of age (based on a certificate from a paediatrician, up to the child's ninth month of age) at a pro-rata share of the minimum wage. Mothers in full-time employment can take breastfeeding breaks for children aged 9–18 months (based on a certificate from a paediatrician), for which the State provides a social security contribution of a pro-rata fraction of the minimum wage. This measure has not proved overly popular in Slovenia, with only a small number of eligible women taking advantage of it (less than 10 per year). This is probably due to the length of parental leave, which is primarily taken by mothers.<sup>37</sup>

Partial payment for loss of income is a personal benefit received by a parent or other person when they leave employment or start working part-time, or when they deregister from the register of unemployed persons to stay at home with a child who needs special care and protection because of a severe mental disability, severe physical disability or a disease on the list of serious diseases (i.e. a child with the most severe degree of disability or handicap). A spouse or civil partner is also entitled to a partial payment when they actually care for and protect the child of

34 Republika Slovenija, 2018, p. 38.

35 Republika Slovenija, 2018, p. 38.

36 Republika Slovenija, 2018, p. 38.

37 Republika Slovenija, 2018, p. 38.

their spouse or cohabitation partner, provided that this right is not exercised by the mother or father of the child and that they fulfil the prescribed conditions. One of the parents (i.e. the mother or father) receives a salary allowance of 1.2 times the minimum wage per month and is entitled to childcare allowance; if they work part-time, they are entitled to a pro-rata share of the partial payment for loss of income. If one of the parents or another person cares for and looks after two or more children, the amount of the partial payment for loss of income shall be increased by 30%. However, the right to a partial payment for loss of income shall also be granted to a parent who cares for and looks after two or more children with a moderate or severe mental or physical disability at home. In this case, the mother or father of the child is entitled if they have two or more children, even if they do not have the most severe developmental disability. One parent may be entitled to a partial payment until the child reaches the age of 18. To qualify for this entitlement, both the child and the parent must have permanent residence and actually live in the Republic of Slovenia. The right is valid until the child reaches the age of 18 or for a maximum of two months after the child's death. If the social work centre issues a negative decision to one parent based on the opinion of a medical commission, the parent has the right to appeal to the Ministry of Labour, Family, Social Affairs and Equal Opportunities.<sup>38</sup>

### ***1.7. Generational policy***

According to statistics for 2022, 21.4% of the population of the Republic of Slovenia is over the age of 65. The ageing of the population and lengthening of working lives are changing the need for institutional and other care for older people and adults in need. The organisation of elderly care undoubtedly impacts the quality of family life and the reconciliation of work and family life. Therefore, it is essential that the State offers a sufficient variety of services to help care for the elderly while ensuring the provision of various forms of institutional care, such as retirement homes and assisted living facilities. The latter are generally intended for older people who can no longer care for themselves or those who can still live relatively independently but require some degree of assistance from professional staff. This institutional care service should be strengthened, particularly with the recognition of the positive effects such care has on people's quality of life by experts at home and abroad. However, if older people are not strong enough for or do not want this form of care, the state must provide sufficient capacity in care homes. While the waiting time for homes has decreased to some degree, need still outpaces supply.<sup>39</sup>

The elderly care sector is important in several respects. As we are becoming a long-lived society with an increasing number of older people, there is growing need for comprehensive solutions and co-ordinated responses. Accordingly, in July 2017, the Government of the Republic of Slovenia adopted the Strategy for a Long-Lived Society

<sup>38</sup> eUprava, n.d.

<sup>39</sup> Republika Slovenija, 2018, p. 60.

as the basis for co-ordinated responses by individual stakeholders (e.g. ministries, the economy, science, non-governmental organisations, and civil society). Additionally, the Long-Term Care Act<sup>40</sup> was adopted in response to demographic challenges.

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

Children, stepchildren, grandchildren, other children without parents, and parents who were dependent on the deceased insured person or beneficiary may be entitled to a family pension. Family members should acquire the right to a family pension after the death of the insured person or beneficiary if the deceased fulfilled the conditions for entitlement to an early retirement pension, old-age pension or disability pension, and the death is considered a category 1 disability. If the death resulted from an occupational injury or disease, the family members should acquire the right to a family (survivor's) pension irrespective of the pensionable period completed by the deceased.

Children are entitled to a family pension until they reach the age of 15 or the end of their schooling up to the age of 26. Children who are not attending school are entitled to a family pension until the age of 18 if they are registered as 'unemployed' with the Employment Service as unemployed and meet all of the obligations under the labour market rules. The same conditions apply to stepchildren, grandchildren and other children without parents who the insured person or beneficiary has maintained until their death.

Parents who were dependent on the deceased until their death may be entitled to a family pension if they had reached the age of 60 at the time of the insured person's or beneficiary's death or if they are incapable of work.

An insured person or beneficiary of a family (survivor's) pension is deemed to have supported their family members if: a) they shared a common habitual residence with them at the time of their death; and b) the average monthly income of the family member in the last calendar year before death did not exceed 29% of the minimum pensionable earnings.

Total incapacity for work, a condition for entitlement to a family (survivor's) pension in the case of children, is defined as the inability to live independently and, in the case of other persons, as a category 1 disability.

### ***1.9. Social security institutions providing support for families***

The purpose of the Republic of Slovenia's social protection system is to provide individuals and families with social security and facilitate social inclusion. To this end, the State must ensure conditions that will enable the realisation of development opportunities to achieve a quality of life for individuals, families and children

40 Long-Term Care Act (Slovene Zakon o dolgotrajni oskrbi): Uradni list RS, št. 196/21, 163/22, 18/23 – ZDU-10.

comparable to that of others in the environment and which meets the criteria of human dignity. Where, for various reasons, an individual or family is unable to provide for their own social security and well-being, they are entitled to certain social protection rights.

The state has a duty to ensure the social security, protection, and inclusion of families, especially children, and to prevent or reduce the risk of poverty through various mechanisms. The various forms of assistance (e.g. services, programmes, and social transfers) are fundamental in this context and must be of good quality, widely available, and diversified. Such forms of assistance—especially social protection services—can make a significant contribution to the reconciliation of work and family life.

Social work centres are critical to the social protection system, particularly insofar as they serve as to link the entire social protection system. As their role in the community continues to strengthen, social work centres serve to promote new programmes and actions adapted to the needs of particular environments. These needs, which are growing in number and complexity, require a single new, rapid, and effective response: namely, a modern social protection system that works in the community.

Home help for families includes professional advice and support to help families manage their relationships, professional advice and support to help them care for their children, and training to help them carry out their daily tasks. The service is provided by every social work centre and is widely available.

Another important service that can aid a family in need is home help, which includes social care at home and mobile assistance. Home care is a social service provided in the home for those who cannot care for themselves due to old age or severe disability, and whose relatives are unable or incapable of providing such care. It consists of various forms of organised practical assistance to replace, for a limited period of time, the institutional care available in an institution with another family or another organised form. A specific form of home-based assistance is mobile assistance, which is a form of professional assistance that provides persons with mental and physical disabilities with professional treatment at home. The provision of this service depends on the needs of the persons in need and is also directed towards their relatives. It primarily provides special educational, social, and psychological treatment.

A third important service for families is social services, which include helping with household and other tasks in the event of a child's birth, illness, disability, and accidents, as well as other situations where such help is needed to integrate a person into everyday life. The service is primarily directed towards providing practical forms of assistance, such as delivering meals, buying groceries or other necessities, and washing and ironing laundry.

For families or individuals in need of a different type of assistance to that offered by the aforementioned services, there are a number of social protection programmes aimed at preventing and solving social problems affecting vulnerable groups and, in some cases, at maintaining an acceptable social situation for individuals or families who cannot be expected to find a (quick) solution to their problems. These

programmes are complementary to social protection services and measures. They are implemented based on meeting the verification requirements and other conditions set out in the call for tenders. Programmes are designed to consider the characteristics and needs of each target group and the specificities of the environment in which they are implemented. Social protection programmes cover the following areas: prevention of violence, support for victims of violence, and work with perpetrators of violence; addiction; mental health; homelessness; support for children and adolescents deprived of suitable family life and adolescents with mental problems; support for older people in need of support in their daily lives; support for independent living for people with disabilities; psychosocial support for children, adults, and families; social inclusion of Roma; and the prevention and redress of social hardship of other vulnerable groups.

The Republic of Slovenia also offers a Maintenance Fund, which provides basic social security in the form of a maintenance allowance to children who do not receive maintenance.

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## **2. Family law instruments to support families, parents, and children in Slovenia**

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

#### ***2.1.1. The principle of marriage and family***

In recent years, Slovenia has experienced significant changes in family structures and dynamics. This is particularly evident in the pluralisation of family forms and ways of family life, the changes in the parent–child relationship, couple dynamics, and family roles. Every family, regardless of its form (e.g. nuclear family, patch-work family, extended family), represents an ‘individuum’ who differs from other families. Each family has its own characteristics and is shaped by the individuals themselves, as well as their religious, cultural, geographical, historical, economic, and social context.

Despite these changes, the family remains a fundamental social institution of great importance to the individual. In Slovenia, the family is essential to individuals at all stages of their lives and is ranked highest on the list of their values. In 2015, 98% of respondents to a public opinion survey stated that family was important to them. Even for young families, the family represented an essential positive value. Interestingly in comparison to a study from 1990th, responses indicated an increase in the value placed on fidelity, mutual respect, mutual understanding, and a happy sexual relationship for a successful marriage. However, there was a decrease in the proportion of respondents who considered adequate income, suitable housing, the



same religious and political beliefs, and social environment as important for a successful marriage.<sup>41</sup>

The family is the fundamental social unit of every society. As such, it is hardly surprising that the family receives considerable national and international attention. The field of family law has undergone significant changes since 2017, when the Republic of Slovenia adopted a new FC replacing regulations that had been in effect for more than 40 years. In 2018, the country adopted the ‘Resolution on the Family Policy 2018–2028: “A Society Friendly to All Families”’,<sup>42</sup> which defines the basis of Slovenian family policy for the period from 2018 to 2028. Per Art. 2 of the FC, the current definition of ‘the family’ is fairly broad. Specifically, a family is defined as the living community of a child, regardless of the child’s age, with both or one parent or with another adult person, if the latter cares for the child and has certain obligations and rights towards the child. Therefore, the FC recognises the family as an important social institution that enjoys special protection. However, Art. 3(2) of the FC explicitly states that the importance of marriage lies in the conception of the family. By defining marriage in this way, the FC deviates from modern definitions of marriage.

Since the adoption of the ‘Resolution of the Family Policy’ (‘Resolucija o družinski politiki’), family policy in Slovenia has adopted an integral or holistic or inclusive approach. This means that family policy includes all types of families, considers the plurality of family forms and the different needs arising therefrom, respects the autonomy of the family and the individuality of its individual members, protects children’s rights within the family and beyond, and prioritises the protection and quality of life of families and children. Other important components of the family policy include harmonising professional and family life, ensuring equal opportunities for both sexes, establishing a wide range of programmes and services for families, and contributing to the costs of facilitating child maintenance and protecting families in particular circumstances.<sup>43</sup>

### *2.1.2. The principle of equality between spouses*

The constitutional legal basis of marriage is laid down in Art. 53 of the Constitution of the Republic of Slovenia (CRS).<sup>44</sup> Art. 53(1)(1) of the CRS stipulates that marriage is based on the equality of the spouses, thereby providing a constitutional basis for the principle of the equality of spouses. This is a derivation of the provision

<sup>41</sup> Rus and Toš, 2021, p. 164.

<sup>42</sup> Resolution on the Family Policy 2018–2028: ‘A Society Friendly to All Families’ (Slovene: Resolucija o družinski politiki 2018–2028: ‘Vsem družinam prijazna družba’) (hereinafter, Resolution on the Family Policy): Uradni list RS, št. 15/18.

<sup>43</sup> Resolucija o družinski politiki, 2018, p. 7.

<sup>44</sup> Constitution of the Republic of Slovenia (Slovene: Ustava Republike Slovenije (hereinafter, CRS) Uradni list RS, št. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99, 75/16 – UZ70a, 92/21 – UZ62a.

of Art. 14 of the CRS, which refers to the right to equality before the law. The FC strengthens this principle in Art. 21, which also explicitly states that spouses are equal in marriage. In June 2022, the Constitutional Court of the Republic of Slovenia ruled that Art. 3(1) of the FC was incompatible with the CRS, as it provided that marriage was the union of husband and wife.<sup>45</sup> To resolve this unconstitutionality, the Act on Amendments to the Family Code (FC-B)<sup>46</sup> introduced the following amendments: a) Art. 3(1) of the FC now reads, 'A marriage is a life union of two persons, the formation, legal consequences and dissolution of which are governed by this Code'; b) Art. 4 of the FC now defines cohabitation as 'a long-lasting living union of two persons'; and c) in Art. 22 of the FC, which pertains to the conditions for the existence of a marriage, the first indent, which stipulated that the two persons entering into a marriage had to be of different sexes, was repealed.

As a result of the amendment to the FC, equality is granted in entering marriage and cohabitation, which can now be entered into by both different- and same-sex spouses or partners. Therefore, the amendment of the FC led to the termination of the Civil Unions Act.

### *2.1.3. The primacy of the best interests of the child*

The family is the fundamental unit and is primarily dedicated to protecting children (Art. 2(2) of the FC). Given their youth and their (in)capacity to understand, children constitute a vulnerable population group, whose dependence on others has exposed them to the will and power of adults throughout history. Adults have made decisions about their child in accordance with their own wishes, expectations, and needs. As a result, children have been subjected to a wide range of abuse, neglect, violence, and exploitation. Today, children's rights are protected at the international level, notably in the Convention on the Rights of the Child (CRC), and at the national level. In the Republic of Slovenia, the child's best interests have taken on new dimensions since the adoption of the CRC and have become an indispensable basis for decision-making in all matters concerning children. The CRC is an international human rights treaty that defines children's civil, political, economic, social, health, and cultural rights, and has brought about a collective responsibility towards children.

Art. 3 of the CRC aims to ensure that children's rights are applied and respected in accordance with the child's best interests. This extends to judicial and administrative decisions concerning the child as an individual and to all stages of the adoption of laws, policies, strategies, programmes, plans, budgets, legislative and budgetary initiatives, and guidelines. Therefore, this general provision applies to everyone who deal with children, including parents and guardians.

The principle of the child's best interests is a fundamental starting point in all vertical and horizontal relationships. This has increased the obligations of both the

<sup>45</sup> The decision of the Constitutional Court of the Republic of Slovenia U-I-486/20-14, 16 June 2022.

<sup>46</sup> Act Amending the Family Code: Uradni list Republike Slovenije, št. 5/23.

State and parents since the adoption of the CRC. The child must be afforded both material and emotional protection. They must be protected from all forms of discrimination, particularly neglect, torture, and exploitation. Art. 7 of the FC stipulates what is in the best interests of the child at an abstract level. The notion of the ‘best interests of the child’, the fundamental guiding principle in all matters concerning the child, is not defined in Slovenian positive jurisdiction but constitutes a legal standard. However, the legal standard is individually adaptable and traceable to the individual child’s needs. The court must fill in its content by considering the circumstances of each specific case. It is for the court to assess how to safeguard the child’s best interests in the most appropriate way.<sup>47</sup>

In defining the content of this legal standard, the court must also follow the principle of proportionality because the exercise of parental responsibility and the obligations and rights arising from therefrom are primarily the responsibility of the parents, who exercise them in accordance with the principle of autonomy. Therefore, parents have priority over all others in exercising parental responsibility. The fundamental premise that parents act in their child’s best interests applies in this case. Anyone who disagrees—whether a natural person (e.g. the other parent) or a legal person (e.g. a public authority)—has the burden of rebutting this legal presumption and proving the contrary to the appropriate standard of proof. This is because interventions in parental responsibility (e.g. restriction or deprivation) must be proportionate and in line with the principle of the least restrictive measure. In choosing a measure to protect the best interests of the child, two limitations must be taken into account: a) the adopted measure should restrict the parents as little as possible in the exercise of parental responsibility, provided that it is sufficient to protect the best interests of the child; b) in particular, the adopted measure should not deprive the parents of the child, provided that it is sufficient to protect the best interests of the child.<sup>48</sup> In assessing what is in the child’s best interests, the current, short-term, and long-term best interests of the child must be considered.

#### *2.1.4. Principle of fairness and protection of the weaker party*

The Domestic Violence Prevention Act (DVPA)<sup>49</sup> provides measures to protect domestic violence victims.<sup>50</sup> Art. 3(1) of the DVPA explicitly prohibits domestic violence. The purpose of the DVPA is to protect the victim of domestic violence in urgent and expeditious proceedings by preventing and stopping acts of violence. However, the violence must be of such a nature as to require urgent and immediate intervention by the State in private relationships. Of course, the principle of proportionality must

<sup>47</sup> The decision of the Constitutional Court of the Republic of Slovenia Up-70/15, 10 December 2015.

<sup>48</sup> Art. 156, FC.

<sup>49</sup> Domestic Violence Prevention Act (Slovene: Zakon o preprečevanja nasilja v družini) (hereinafter, DVPA); Uradni list RS, št. 16/08, 68/16, 54/17 – ZSV-H, 196/21 – ZDOsk.

<sup>50</sup> Art. 1(1) of the DVPA.

be taken into account. That said, the imposition of a measure under the DVPA does not have any punitive function. Nonetheless, the imposition of an urgent measure is intended to prevent the possibility of further domestic violence. It is a protection against violence, not a sanction for violence that has already occurred.

Children enjoy special protection from violence. A child is a victim of violence even if they are present when violence is perpetrated against another family member, or live in an environment where violence is perpetrated.<sup>51</sup>

Authorities and organisations are obliged to take all procedures and measures necessary to protect the victim, considering the level of their vulnerability and protecting their best interests while ensuring that the victim's integrity is respected. If the victim of violence is a child, the best interests and rights of the child shall take precedence over the best interests and rights of the other parties to the proceedings.<sup>52</sup> Furthermore, authorities, organisations, and non-governmental organisations which, in the course of their work, become aware of circumstances that may lead to the conclusion that violence is being committed have a duty to inform. They are obliged to inform the social work centre immediately unless the victim expressly objects and there is no suspicion of the commission of an offense which is prosecuted ex officio.<sup>53</sup> Notwithstanding the provisions on professional secrecy, everyone—particularly health professionals and staff of educational, educational, and social institutions, as well as providers of facilities for children in sports and cultural associations—is obliged to immediately inform the social work centre, police, or public prosecutor's office if they suspect that a child or a person who is unable to care for themselves due to personal circumstances is a victim of violence.<sup>54</sup>

## ***2.2. Civil law provisions protecting the family and children, family property law, and other proposals***

### ***2.2.1. Management of children's property***

The child's parents manage the child's property for the child's benefit (Art. 147 of the FC). Parents are free to manage the child's property but must act in accordance with the fundamental principles of obligation. In their management, they must respect the principle of good faith and fair dealing (Art. 5(1) of the Obligation Code).<sup>55</sup> They must act with the care of a good steward. In assessing whether the parents' conduct can be characterised as the care of a good steward, their education, skill, ability, responsiveness, and age, amongst other factors, are considered. The environment in which the parents live is also taken into account. An objective criterion is

<sup>51</sup> Art. 4 of the DVPA.

<sup>52</sup> Art. 5 of the DVPA.

<sup>53</sup> Art. 6, para. 1, DVPA.

<sup>54</sup> Art. 6, para. 2, DVPA.

<sup>55</sup> Obligations Code (Slovene: Obligacijski zakonik) (hereinafter, OC): Uradni list RS, št. 97/07 – uradno prečiščeno besedilo, 64/16 – odl. US, 20/18 – OROZ631).

created for any person with the same characteristics as the parent regarding whom the judgment is made as to whether they have acted as a good steward in managing the child's property. Parents may also be liable for damages for the harm they cause.

As a good steward, parents must do their best to preserve their children's assets. If possible, they should also try to increase their children's assets (e.g. by filing claims for damages). In managing the child's property, parents should also consider the child's wishes, provided that the child can express them and understand the meaning of their expressed wishes and the potential consequences thereof. However, the child's best interest is the guiding principle.

Parents are allowed to use the income from the child's property for the child's maintenance, upbringing, and education and, if they do not have sufficient resources, for the family community's urgent needs<sup>56</sup>. Parents are expected to provide the resources necessary to cover the child's needs, but parents are also allowed to use the child's property for the child's needs. Parents may dispose of or encumber items from their child's property only for the child's maintenance, upbringing, and education, or if required for the child's best interests<sup>57</sup>. However, there is a risk that the parents will jeopardise their child's best interests by disposing of or encumbering items from their child's property. In this case, the court must impose the measures provided for in the FC to protect the child's best interests (Art. 146(2) of the FC).<sup>58</sup>

Parenting also involves preparing children to handle money independently and responsibly. They can start doing so when their child is at a very early age by involving them in different financial situations in which they learn to manage money (e.g. handling pocket money or money received for a birthday). The possibility of concluding an employment contract independently is undoubtedly a significant step towards the child's independence even before reaching the age of majority. Therefore, it is understandable that a child who has reached the age of 15 and is in employment can dispose of their salary. However, to raise a child and prepare them for independence from the age of 18, children must contribute to their maintenance and education, although the parents are obliged to maintain and provide for their education until the age of 18 or 26 if the child is studying.

### *2.2.2. Independent legal declarations of incapacitated children or children who have limited capacity to act*

According to the FC, a child is a person who has not yet reached the age of 18, unless they have previously acquired the full capacity to contract.<sup>59</sup> The age of 18 constitutes an objective criterion distinguishing a child from an adult. When a child

<sup>56</sup> Art. 148, FC.

<sup>57</sup> Art. 149(1), FC.

<sup>58</sup> Kraljić, 2019, p. 499.

<sup>59</sup> According to the FC, this is possible if the minor marries before the age of 18 (court authorisation required), or if the minor becomes a parent and the court grants them full capacity to contract in a non-contentious civil proceeding on the basis of a petition.

reaches the chronological age of 18, a legal presumption arises whereby they are presumed old and mature enough to acquire full capacity to contract, enabling them to enter into legal transactions independently and to acquire the rights and obligations arising therefrom. Therefore, the age of 18 is the age of legal emancipation by operation of law. Parental responsibility ceases at the age of majority, and parents are no longer the child's legal representatives. The child becomes legally independent from their parents.

However, children can express their own opinions or take independent decisions on some issues regardless of whether they are 18 years old. For instance, under the Freedom of Religions Act,<sup>60</sup> a child who has reached the age of 15 has the right to make their own decisions related to religious freedom. Under the Patients' Rights Act,<sup>61</sup> a child who has reached the age of 15 is deemed to have the capacity to consent unless the doctor assesses the child's maturity and considers them incapable of consent. In such a situation, the doctor will consult the legal representative of the child (parents or guardian). Under the FC, a child over the age of 15 may marry if they obtain the permission of the court. Under the Personal Names Act,<sup>62</sup> a child over the age of nine must consent to a change of personal name. In family law disputes, the court shall allow a child who has attained the age of 15 years and is capable of understanding the meaning and legal consequences of their actions to perform procedural acts independently as a participant in the proceedings (Art. 45(2) of the Non-Contentious Civil Procedure Act<sup>63</sup>). Additionally, the child's legal representative may only perform procedural acts until the child declares that they will perform procedural actions independently<sup>64</sup>.

### *2.2.3. Family Home Privileges: Child Rights and Property Division*

Housing issues should be resolved jointly and by mutual agreement, even during divorce. However, as this is not always possible in divorce, each spouse may request that the other spouse give them the use of the dwelling in which they live or lived together or a part thereof<sup>65</sup>.

The principle of equality puts both spouses in an equal position, allowing either spouse to apply to the court for the use of the dwelling. In deciding whether to grant the use of the dwelling to a spouse in non-contentious civil proceedings, the court will consider the children's best interests, the housing needs of the

60 Freedom of Religion Act (Slovene: Zakon o verski svobodi): Uradni list RS, št. 14/07, 46/10 – odl. US, 40/12 – ZUJF, 100/13.

61 Patient's Rights Act (Slovene: Zakon o pacientovih pravicah): Uradni list RS, št. 15/08, 55/17, 177/20, 100/22 – ZNUZSZS.

62 Personal Name Act (Slovene: Zakon o osebнем imenu): Uradni list RS, št. 20/06, 43/19.

63 Non-Contentious Civil Procedure Act (Slovene: Zakon o nepravdnem postopku) (hereinafter, NC-CPA-1): Uradni list RS, št. 16/19.

64 Art. 45(3), NCCPA-1.

65 Art. 109(1), FC.

spouses, and their legitimate interests<sup>66</sup>. The principle of the child's best interests is also the fundamental guiding principle in deciding whether to grant the use of the dwelling. The circumstances arising from the divorce should affect the children as little as possible. As the home is a familiar environment for children, where possible, every effort is made to ensure that they remain in the dwelling in which they live.

If, at the time of the divorce, only one of the spouses is the owner or holder of a building right or a right of usufruct or use over the land on which the dwelling is situated, or only one of the spouses is the floor owner of the dwelling or the beneficiary of an easement over the dwelling, or if those rights belong to one of the spouses jointly with a third party, the court shall only grant the dwelling, in whole or in part, to the use of the other spouse if the other spouse does not have any other suitable dwelling and the refusal of their claim would result in an extremely difficult living situation for this spouse and for the children.<sup>67</sup>

The decision to allocate to the other spouse rests on two cumulative presumptions, namely, that the spouse to whom the court will allocate the dwelling will have no other suitable accommodation and that refusal of the request would result in a challenging living situation for the spouse and the children. The court addresses these two legal standards—adequate housing and extreme hardship—on a case-by-case basis. After examining the circumstances of each case, the court will make a decision on and grant the use of the dwelling only for the period necessary for the spouse and the children to adjust to the new situation and their living conditions (Art. 109(4) of the FC).<sup>68</sup> The court will grant the use of the dwelling to the spouse for a maximum period of six months, with the possibility for six-month prolongation. If the court allocates the dwelling to the spouse, it shall, on the application of the other spouse, also determine the amount of the user fee to be paid by that spouse as compensation for the use of the dwelling, unless the spouse does not have sufficient resources on which to live.<sup>69</sup> The spouse obliged to give the other spouse the use of the dwelling must refrain from anything that would make it difficult or impossible for that spouse to use the dwelling or part of it<sup>70</sup>. If, on divorce, a spouse who is being abused by the other spouse, or whose children are being abused by the other spouse, may requests the other spouse to give them the exclusive use of the dwelling in which they live or have lived together<sup>71</sup>.

66 Art. 109(2), FC.

67 Art. 109(3), FC.

68 Kraljić, 2019, p. 352.

69 Art. 109(6), FC.

70 Art. 109(7), FC.

71 Art. 109(8), FC.

### ***2.3. Family law issues relating to the establishment of family status, with particular reference to the interests of the child***

#### ***2.3.1. The legal facts pertaining to paternity status***

The legal presumption of paternity is set out in Art. 113 of the FC. For a child born in wedlock, the husband of the child's mother is considered the child's father. If the husband's death dissolves the marriage and the child is born within 300 days of the dissolution of the marriage, the deceased husband of the mother is considered the child's father. However, if the mother enters into a new marriage within 300 days of the dissolution of the previous marriage, the mother's new husband shall be considered the child's father, irrespective of the reason for the dissolution of the previous marriage<sup>72</sup>.

A man who acknowledges paternity or whose paternity is established by a court decision is considered to be the father of a child who was not born in wedlock or within 300 days after the marriage's dissolution by the husband's death<sup>73</sup>. A man capable of understanding the meaning and consequences of acknowledgement may acknowledge paternity at a social work centre, before a registrar, in a public deed, or in a will<sup>74</sup>. The child's mother must also consent to the acknowledgement if she has attained the age of 15 and is capable of understanding the meaning and consequences of consenting to the acknowledgement<sup>75</sup>. However, where the mother is no longer alive or her whereabouts are unknown and the child is not yet capable of consenting to the acknowledgement of paternity, the child's guardian may consent with the permission of the social work centre. Where the mother is no longer alive or her whereabouts are unknown and the man has acknowledged the child who has left issue after the child's death, the consent to the acknowledgement of paternity may be given by the child's children or, in the absence of such children, by the child's descendants of the next generation. A child conceived but not yet born may also be recognised if the mother consents. The acknowledgement of paternity of a child not yet born shall have legal effect only if the child is born alive. A child may also be acknowledged after the child's death, but only if the child has left descendants. Likewise, a stillborn child or child who dies immediately after birth may also be recognised<sup>76</sup>.

If there is no acknowledgment of paternity, a petition for establishing paternity may be initiated. The mother may file a petition for paternity within one year of the child's birth or within one year of the date on which she became aware of the circumstances giving rise to the petition. However, if the person named by the mother

72 Art. 113, FC.

73 Art. 114, FC.

74 Art. 115, FC.

75 Art. 118(1), FC.

76 Art. 119, FC.



as the child's father does not acknowledge paternity, the mother may file a petition for the establishment of paternity within one year from the date of the declaration of whom she considers to be the child's father<sup>77</sup>. A petition for the establishment of paternity may also be initiated by a child born out of wedlock or within 300 days of the dissolution of the marriage if that marriage has been dissolved by the death of the husband of the child's mother or by a child whose paternity has been contested. The child may bring the petition not later than five years from the date on which they became aware of the circumstances decisive for bringing the petition. The five-year time limit for filing a petition on behalf of the child may not begin to run before the child is able to perform the procedural acts independently<sup>78</sup>. If the mother does not agree with the paternity acknowledgment or does not make a declaration within one month of receiving the registrar's notification of the paternity acknowledgment, the person who acknowledged the child as his own may file a petition for a declaration that he is the child's father. He may file the petition within one year of the paternity acknowledgment.<sup>79</sup> Anyone who believes that he is the child's father may, within one year of becoming aware of the circumstances from which he believes that he is the child's father, file a petition for the establishment of paternity.<sup>80</sup>

When a child is conceived with biomedical assistance, the child's father is the mother's husband or partner from cohabitation, provided they have consented to the procedure under assisted reproduction rules. Paternity may not be contested in this case, except where doubt exist that the child was not conceived through the assisted reproduction procedure. If the child has been conceived with the help of a donor's sperm cell, its paternity may not be established (Art. 134 of the FC).<sup>81</sup>

### 2.3.2. *Maternity status*

Maternity is the legal bond between mother and child, traditionally established by a child's birth. It is an ancient Roman legal presumption, '*mater semper certa est*', which has survived to the present day. The legal presumption of maternity was considered absolute as no contrary evidence could be adduced. In contrast to preceding legislation, the FC explicitly regulates this legal presumption. Art. 112 of the FC provides that the woman who gave birth to the child shall be deemed the child's mother. The wording of the legal presumption in the FC reflects the modern view that maternity may also be questionable ('shall be deemed'). The legal presumption of maternity in Art. 112 FC can be challenged. Although this is extremely rare in practice, the legislator has provided for this possibility, referring to the meaningful application of the provisions applicable to the contestation of paternity.

<sup>77</sup> Art. 121, FC.

<sup>78</sup> Art. 122, FC.

<sup>79</sup> Art. 124, FC.

<sup>80</sup> Art. 125, FC.

<sup>81</sup> Kraljić, 2019, p. 430.

Maternity establishment is relevant for children born as foundlings, in countries that allow anonymous births (not permissible in Slovenia), and in cases of child swapping (intentional or unintentional).

If the mother has consented to the assisted reproduction procedure, her maternity cannot be contested. If the child has been conceived with the help of a donor egg, her maternity may not be contested.<sup>82</sup>

### 2.3.3. Adoption

Adoption is a special form of child protection. The relationship between the adoptive parent and the child equivalent is equivalent to that between parents and their children<sup>83</sup> (*adoptio naturam imitatur*). The FC only provides for full adoption (*adoptio plena*).

Both the CRC and the CRS stipulate that children who are not cared for by their parents, who have no parents or who are without adequate family care enjoy special protection from the State.<sup>84</sup> Adoptions should only be carried out if the parents can no longer preserve their family environment, despite receiving help and support, or can no longer take care of their child. Adoption should only be the *ultima ratio* (subsidiarity principle) measure if all less restrictive measures have failed to produce the desired circumstances allowing the child to remain in the family environment of the family of origin. Poverty, poor financial situation, and parent illness alone do not constitute a bare basis for child adoption. In any event, the principle of the protection of the best interests of the child is also a fundamental principle in adoption. Adoption must be in the child's best interests, which must prevail over the interests of the parents or adoptive parents. Adoption is about finding a family for the child, not the child's family.

Although the adoption procedure was transferred from social work centres to the courts, social work centres still play a key role in adoption, as they verify both the conditions of the child to be adopted (i.e. passive adoptive capacity) and the conditions to be met by the person who wishes to become an adoptive parent (i.e. active adoptive capacity). In particular, the court must verify, in non-contentious civil proceedings, whether the adoption is in the child's best interests.<sup>85</sup>

Only a child may be placed for adoption. The conditions for the adoptee are as follows: a) if the parents consented to the adoption after the child's birth, either before a social work centre or a court. For a child under eight weeks of age, the consent must be confirmed after the child reaches eight weeks, otherwise the consent has no legal effect. The consent of a parent deprived of parental or permanently incapable

82 Art. 133, FC.

83 Art. 9, FC.

84 cf. Art. 56. of the CRS and Art. 21. of the CRC.

85 Art. 229, para.1, FC.

of expressing their will is not required.<sup>86</sup> Prenatal adoption is also not possible because adoption is a special form of child protection and not *nasciturus*; b) if the child's parents are unknown; c) if the parent's place of residence has not been known for a year;<sup>87</sup> d) if the child has no living parents.<sup>88</sup>

The conditions for adopters are as follows: a) Spouses or cohabitants (including same-sex partners) can only adopt a child together unless one adopts the child of their spouse or cohabitee. Exceptionally, a child may also be adopted by one person if this is in the best interests of the child;<sup>89</sup> b) The child and the adoptive parent should not be relatives in the direct line (ancestor–descendant) or siblings;<sup>90</sup> c) The adoption could not be concluded while the relationship of guardianship was present between the adoptive parent and the child;<sup>91</sup> d) If the child, who is capable of understanding the meaning and consequences, should give their opinion on the adoption;<sup>92</sup> e) he adoptive parent should not be a person who is deprived of parental responsibility; lives together with the person deprived of parental responsibility; has been convicted by a final judgment of an intentional offense prosecuted *ex officio* or of an offense against life and limb or of an offense against sexual integrity for which the perpetrator is being prosecuted on the motion; lives with a person who has been finally convicted of an intentional offense which is being prosecuted *ex officio* or of an offense against life and limb or of a sexual offense for which the offender is being prosecuted on the application; is reasonably believed to have exploited the adoption to the detriment of the child; does not give a guarantee that they will exercise parental responsibility for the best interest of the child; is of unsound mind or suffering from a mental disability or illness, such as to make the adoption not in the child's best interests.<sup>93</sup>

The social work centre registers a child who meets the conditions for adoption in the central database on children needing adoption. A person who fulfils the conditions for adoption is, in turn, granted the status of 'candidate for adoption' by the social work centre and entered in the central database of candidates for adoption.<sup>94</sup>

For a child registered in the central database of children in need of adoption, the social work centre will select the most suitable candidate from among all possible candidates for adoption—taking into account the child's characteristics and needs, the wishes expressed by the candidate, the expert opinion of the social work centre, the wishes of the biological parents regarding prospective adoptive parents, and the time of registration in the central database of candidates for adoption—and file a

86 Art. 218, para. 1, FC.

87 Art. 218, para. 2, FC.

88 Art. 218, para. 4, FC.

89 Art. 213, FC.

90 Art. 214, para. 1, FC.

91 Art. 214, para. 2, FC.

92 Art. 215, para. 2, FC.

93 Art. 216, FC.

94 Art. 225, FC.

petition for adoption with the court. The time of registration does not have to be considered if it is in the best interest of the child to be adopted by a specific candidate for adoption.<sup>95</sup>

Based on Art. 122(2) of the NCCPA-1, in conjunction with Art. 213 of the FC, a distinction can be made between single and joint adoption. In a single adoption, the child is adopted by the partner (e.g. new husband or cohabiting partner) of the child's parent (e.g. mother). If the child's other parent (e.g. father) is still alive, he must consent to the adoption (unless he has been deprived of parental responsibility). A single adoption is also given when only one person adopts the child. In the first case, the child has two parents or two persons have parental responsibility of the child, whereas in the second case, only one person has parental responsibility. In the case of a joint adoption, the child is adopted by spouses or cohabiting partners (different- and same-sex partners).

If the court finds that the conditions for adoption laid down in the FC are fulfilled, and in particular, that the adoption is in the child's best interests, it will issue a decision on the adoption.<sup>96</sup> If the court finds, in a non-contentious proceeding, that the conditions for adoption are not fulfilled or that the adoption would not be in the child's best interests, it will reject the adoption petition.<sup>97</sup>

Once the adoption order becomes final, it has consequences for the child and their biological parents. On the one hand, the legal relationship between the child and their natural parents is severed when the adoption order becomes final. On the other hand, adoption creates the same relationship between the child and their offspring and between the adoptive parent and their relatives as between the child and their biological parents.<sup>98</sup> Adoption establishes a stable and lasting relationship between the adoptive parent and the adopted child, and the adoption relationship cannot be dissolved. If all the conditions laid down by law for adoption are not met, the adoption will be invalid.

The final adoption order also marks a significant turning point for the information relating to all three parties involved, namely, the adopted child, the child's biological parents, and the adoptive parents. Once the adoption decision has become final, the adopted person has no right to be informed of the personal data of their biological parents. Neither biological parent has the right to know who adopted their child. Information on the adoption from the civil register is possible only with the written consent of the person to whom it relates. A child who has attained the age of 15 years may give their own consent if they are capable of understanding the meaning and consequences. The social work centre will obtain consent at the initiative of the adoptee or the biological parents.

<sup>95</sup> Art. 226, FC.

<sup>96</sup> Art. 229, para. 1, FC.

<sup>97</sup> Art. 229, para. 2, FC.

<sup>98</sup> Art. 219, FC.

#### *2.3.4. Maintenance of a relative, with special regard to the maintenance of minors and adult children*

Maintenance is an important issue of family law in Slovenia. Maintenance is based on the principle of mutual assistance between family members and family solidarity. Following the maintenance obligation under Art. 196 of the FC, maintenance is fixed monthly in arrears, starting from the date of the maintenance petition. The amount of maintenance may be modified at the request of the creditor or the debtor. It may be increased, reduced or abolished by an enforcement order to be decided by the court. However, for maintenance to be modified, there must also be a change in the creditor's needs or the debtor's capacity since the maintenance was ordered.

The concept of 'maintenance' includes anything that someone is legally obliged to devote to the necessary support of either a child, spouse or parent. In the first instance, maintenance refers to a sum of money fixed by a court or agreed between the creditor and the debtor in the form of an enforceable notarial deed. However, maintenance can also mean support, maintenance, and assistance or the provision of material goods and necessities that the beneficiary needs to live.

When the court decides on the amount of the maintenance obligation of a parent as the maintenance obligor, it must also assess the parent's means. In doing so, the court considers his/her material and earning capacity, which is typically determined by reference to income, regular and extraordinary. That is, the income from employment plus any financial income the taxable person may have. It is clear from the case-law that a reduction in income alone (e.g. termination of employment) is not a necessary condition for a reduction in maintenance, as the amount of a maintenance obligation depends on the financial situation of the maintenance debtor and not on his/her income. Thus, even a maintenance obligor who has credit obligations cannot reduce the maintenance obligation towards the child by the latter.

In determining the amount of child support, Art. 190 of the FC considers the individual needs and best interests of the child. The maintenance determined must be appropriate to ensure the child's successful physical and mental development. Therefore, maintenance must cover the child's living needs, particularly accommodation, food, clothing, footwear, care, education, upbringing, recreation, entertainment, and other special needs.<sup>99</sup>

The right to maintenance cannot be waived.<sup>100</sup> Nor does the withdrawal of parental responsibility lead to waiving the obligation to support the child.

A statutory maintenance obligation (not a contractual one) is personal and ends on the death of the maintenance debtor or beneficiary. The maintenance obligation arises when certain conditions laid down by law are met. The court decides whether specific prerequisites are met in a particular case on a case-by-case basis (e.g. spousal dependency, full-time education of an adult child). The Slovenian FC establishes a

<sup>99</sup> Art. 190, FC.

<sup>100</sup> Art. 188, FC.

maintenance obligation a) from parents to children, b) from children of full age to their parents, c) between spouses as well as between former spouses.

If a person is obliged to support several other persons, the principle applies that the children take precedence over the support of the other potential beneficiaries. However, there are differences between individual beneficiaries and obligors.

Parents are obliged to support their children until the age of 18. Parents shall provide their children with the living conditions necessary for their development, per their capacities.<sup>101</sup> The maintenance obligation refers to the provision of financial resources for the child's basic needs, including living expenses, food, clothing, housing, education, and healthcare. Where the parents do not support the child in their household, they are obliged to contribute to the child's maintenance monthly.<sup>102</sup> Parents are also obliged to support a child of full age who is in full-time education and who is not in employment or registered as unemployed. The maintenance obligation lasts until the child reaches the age of 26 at the latest.<sup>103</sup> Parents are obliged to support a child who is married or cohabiting only if the spouse or cohabiting partner is unable to support the child.<sup>104</sup> A spouse or cohabiting partner is obliged to support the child of spouse or cohabiting partner who lives with them unless the child can be supported by the parent or the other parent. This obligation shall cease upon the dissolution of the marriage or cohabitation with the child's mother or father, unless the marriage or cohabitation has been dissolved by the death of the child's mother or father. In this case, the surviving spouse or cohabitee is obliged to support the child of their deceased spouse or cohabitee only if they were living with the child at the time of the dissolution of the marriage or cohabitation.<sup>105</sup>

An adult child must support their parents to the best of their ability if they do not have sufficient resources to live on and cannot acquire them, but for no longer than the period for which the parents have actually supported them. An adult child need not maintain a parent who has, for unjustifiable reasons, failed to fulfil the maintenance obligations towards them.<sup>106</sup>

A spouse who lacks the means to live and who, through no fault of their own, is not employed may request the other spouse to support them as far as they are able during the marriage.<sup>107</sup> A dependent spouse who has no means of subsistence and who, through no fault of their own, is not employed may claim maintenance from the other spouse in a non-contentious civil divorce proceeding, or by means of a special petition, which must be brought within one year of the divorce becoming final.<sup>108</sup> The post-divorce petition for maintenance may be filed only if

101 Art. 183, para. 1, FC.

102 Art. 183, para. 5, FC.

103 Art. 183, para. 3, FC.

104 Art. 183, para. 4, FC.

105 Art. 187, FC.

106 Art. 185, FC.

107 Art. 62, FC.

108 Art. 100, para. 1, FC.

the conditions for maintenance existed at the time of the divorce and continue to exist when the maintenance is claimed.<sup>109</sup> However, the court will reject a maintenance petition if the maintenance payment to the former spouse would be unfair given the causes that led to the marriage becoming unsustainable. The maintenance petition may also be rejected if, before or during the divorce proceedings or after the divorce is finalised, the former spouse claiming for maintenance has committed a criminal offence against the former spouse, a child or the spouse's parents.<sup>110</sup> No maintenance obligation will be created between divorced spouses if doing so would jeopardise their own maintenance or that of the children they have to support.

The maintenance should be provided voluntarily by the maintenance debtor. If they fail to do so, the courts may enforce the maintenance obligation in enforcement proceedings. If the parent ordered to pay maintenance fails to do so, the child or the child's representative can apply to the Maintenance Fund of the Republic of Slovenia and request a maintenance refund.

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### **3. The importance of human reproductive techniques (assisted reproductive technologies) in solving demographic problems in Slovenia**

#### ***3.1. The rapid increase in the number of infertile couples in Europe: facts and trends***

Fertility is a crucial element of the reproductive system, as it enables the continuation of the human species in the broadest sense. As such, infertility is a public health and social problem.<sup>111</sup> Infertility is especially problematic when it concerns couples who want children but cannot conceive them naturally.

The World Health Organisation (WHO) defines infertility as 'a disease of the male or female reproductive system defined by the failure to achieve a pregnancy after 12 months or more of regular unprotected sexual intercourse'.<sup>112</sup> Infertility is divided into primary and secondary infertility. We talk about primary infertility in a woman if she has never gotten pregnant and in a man if he has never impregnated any of his partners. In the case of a woman, secondary infertility is defined as the inability to conceive again, and in the case of a man, the inability to impregnate a

109 Art. 100, para. 2, FC.

110 Art. 100, para. 3, FC.

111 Najzdravnik, n.d.

112 World Health Organization, 2023b, p. ix.

female partner after the previous successful fertilisation of the same or any previous female partner.<sup>113</sup>

Addressing infertility is central to achieving two Sustainable Development Goals (SDGs), namely, SDG 3 ('Ensure healthy lives and promote well-being for all at all ages') and SDG 5 ('Achieve gender equality and empower all women and girls'). Infertility is also recognised as crucial to achieving human rights to the enjoyment of the highest attainable standard of physical and mental health and to deciding the number, timing, and spacing of one's children.<sup>114</sup>

### ***3.2. Causes of infertility***

Today, many couples face problems related to infertility. According to the European Society of Human Reproduction and Embryology (ESHRE), one in six couples in the world faces some form of infertility at least once in their reproductive lives. According to ESHRE estimates, between 8 and 12% of women aged 20–44 years around the world are currently infertile and will be for at least 12 months. Most assisted reproductive technology (ART) treatments occur in women between the ages of 30 and 39.<sup>115</sup>

Many factors can affect fertility or infertility. Culture, environment, and socio-economic status are amongst the most important factors. It is also necessary to consider the standard of living or lifestyle (e.g. smoking, stress, body weight; the increasing age of the partner is also one of the most common reasons for infertility today), level of medical care, and the quality and access to food, among other factors.<sup>116</sup>

In less economically developed countries, the factors affecting infertility are linked to the consequences of sexually transmitted infections (STIs) and poorer or insufficient medical care.<sup>117</sup> The highest level of infertility is recorded in Sub-Saharan Africa, where 30–40% of couples are identified as infertile during their fertile years. This is primarily due to STIs, largely as the result of low awareness of STI prevention and protection. Cultural habits, such as polygamy and ritual circumcision of the female external genitalia, often lead to infection and other complications that reduce reproductive capacity. Past births that took place in poor and unsanitary conditions also have significant consequences for couples who wish to have more children.<sup>118</sup>

In Mexico, the increase in infertility is associated with industrial and agricultural environmental pollution, such as the presence of arsenic in drinking water, which significantly increases the risk of congenital malformations and infertility

113 WHO, 2023.

114 World Health Organization, 2023b, p. ix.

115 ESHRE, 2022.

116 Najzdravnik, n.d.

117 Bregar, 2015, p. 281.

118 Najzdravnik, n.d.



in women. Mexico also has a high rate of intravenous drug abuse, which is also an important factor in infertility. In some countries (e.g. Brazil), women still suffer discrimination and lack equal access to health care.<sup>119</sup>

While infertility is also an issue in developed countries, the influencing factors differ from those in less economically developed countries. Certainly, the EU also faces the problem of infertility. One of the critical factors affecting infertility in the EU is later family planning. Essentially, women are deciding to have children later, but women's fertility declines with age. Infertility is also affected by the prevalence of obesity and cancer, which is higher in European countries than elsewhere. EU countries also have a greater proportion of people living high-stress lifestyles, with stress recognised as a key factor contributing to reduced fertility in men and women. The increase in infertility is also influenced by smoking, alcohol, drugs, and even the excessive consumption of coffee.<sup>120</sup>

The physiological causes of infertility differ between men and women. Physiological causes are responsible for 20–30% of infertility cases in men and 20–35% of cases in women. Meanwhile, 25–40% of cases of infertility are due to problems in both partners.<sup>121</sup> Physiological causes of female infertility mainly include ovulation disorders (e.g. polycystic ovary syndrome, obesity), endometriosis, and tuboperitoneal cause with obstructed fallopian tubes. Other factors include the woman's age, developmental abnormalities of the uterus, fibroids, excess body weight, STIs, systemic diseases (e.g. diabetes, thyroid diseases), and medications (e.g. antidepressants, steroids). In men, testicular neoplasia, hypogonadism, and inflammation are recognised as the primary reasons for infertility.<sup>122</sup>

### ***3.3. Infertility treatment and reproductive technologies***

Countries legislate ART procedures in different ways. Regardless, these procedures remain largely inaccessible to many people in the world, notably due to barriers of geographic location and financial cost. The legal regulation, legalisation, or prohibition of particular ART and eligibility criteria for the (co)financing of reproductive technologies differ from country to country. Consequently, many individuals and couples opt to seek help in the field of reproductive medicine outside their home country. This is the case in Slovenia.

Slovenia accepted the Infertility Treatment and Procedures of Medically-Assisted Reproduction Act (Infertility Act) in 2000. Art. 1 of the Infertility Act states that it regulates medical measures that help women and men conceive a child and thus enable them to exercise their freedom of decision regarding the birth of their children. ART procedures can be performed within the framework of the public

119 Najzdravnik, n.d.

120 Najzdravnik, n.d.

121 ESHRE, 2022.

122 Najzdravnik, n.d.

health service in centres for ART procedures that have a special permit for this activity.<sup>123</sup>

Art. 55 of the CRS stipulates that everyone shall be free to decide whether to bear children. However, the State provides opportunities for realising this freedom and creates conditions that allow parents to make decisions about the birth of their children. The constitutional provision of Art. 55 of the CRS is also supplemented by the first paragraph of Art. 2 of the Infertility Act, which stipulates that everyone has the right to infertility treatment in the manner and under the conditions stipulated by the Infertility Act. The Infertility Act defines infertility treatment as a) treatment determining the causes of infertility or impaired fertility; b) the elimination of these causes through professional advice, medication or surgical interventions; and c) the removal and storage of sperm cells of a man or egg cells of a woman who, according to the findings and experience of medical science, is at risk of becoming infertile (Art. 3 of the Infertility Act).

Art. 4 of the Infertility Act defines biomedical ART procedures. ART procedures are procedures for impregnating a woman, which are carried out with the help of biomedical science to achieve pregnancy in a way other than sexual intercourse.<sup>124</sup> Under the Infertility Act, ART procedures mainly comprise a) intra-uterine insemination (intake of sperm cells into the female genital organs; b) intake of egg cells together with sperm cells into the female genital organs) and extra-uterine insemination (the union of egg cells and sperm cells outside the woman's body; c) transfer of early embryos into a woman's uterus).<sup>125</sup>

ART procedures may only be performed with the intention of giving birth to a child.<sup>126</sup> Entitled to ART procedures are a man and a woman living in a mutual marriage or cohabitation (hereinafter, spouses) who, according to the experience of medical science, cannot expect to achieve pregnancy through sexual intercourse and cannot be assisted with other infertility treatment procedures.<sup>127</sup> Spouses are also entitled to ART procedures in cases where these procedures can prevent severe hereditary disease from being passed on to the child.<sup>128</sup> Mutual marriage or cohabitation must exist during the intake of gametes (sex cells) or early embryos into the woman's body.<sup>129</sup>

Entitled to ART procedures are spouses who are reasonable adults at a suitable age to provide parental responsibility. They must be of an appropriate psychosocial state, such that it can be reasonably expected that they will be able to perform parental responsibility for the benefit of the child. Additionally, the woman must of an age suitable for childbearing (Art. 6 of the Infertility Act).

123 Art. 15, para. 1, Infertility Act.

124 Art. 4, para. 1, Infertility Act.

125 Art. 4, para 2, Infertility Act.

126 Art. 5, para. 1, Infertility Act.

127 Art. 5, para. 2, Infertility Act.

128 Art. 5, para. 3, Infertility Act.

129 Art. 4, para. 5, Infertility Act.

In 2021, the Constitutional Court of the Republic of Slovenia (CCRS)<sup>130</sup> annulled Art. of the Rules on Compulsory Health Insurance (RCHI), which stipulated that a woman up to the age of 43 years has the right to insemination with biomedical assistance within the framework of specialist outpatient services. The CCRS found that the health insurance rules restricted access to this right for couples when the woman reached 43. The Infertility Act stipulates that a woman must be of an age suitable for childbearing.

According to Art. 4 of the Infertility Act, an ART procedure can only be performed based on the written consent of the spouses, which is issued for each ART procedure separately. If necessary, the doctor refers the spouse to psychosocial counselling about the intended ART.<sup>131</sup> The doctor must explain the rules regarding the storage of germ cells and embryos to the spouses and ask them about their wishes regarding the storage duration and decision-making about unused embryos (paragraph 3 of Art. 22 of the Infertility Act). The doctor is also required to explain any other measures for solving or circumventing the cause of their infertility to the spouses, even those that are not performed at the doctor's practice, as well as non-medical options, such as adoption or the abandonment of treatment.<sup>132</sup>

One or the other of the spouses can revoke consent and withdraw from the ART procedures until sperm cells, unfertilised ova or early embryos have been introduced into the woman's body.<sup>133</sup>

The donor's reproductive cells can only be used when, under the basis of biomedical science and experience, it can be judged that they are suitable for fertilisation and that their use will not pose a risk to the health of the woman or the child.<sup>134</sup>

Slovenian legislation does not allow *posthumous fertilisation*. ART procedures introducing gametes or early embryos into a woman's body are prohibited from using the gametes of a donor who is no longer alive. Before the doctor transfers the donor's gametes or an early embryo created with the help of the donated gametes into the woman's body, the doctor must determine whether both donors are still alive.<sup>135</sup>

Gametes from one male or female donor can be used for ART procedures as long as no children are born in a maximum of two different families.<sup>136</sup>

### ***3.4. Legal status of the so-called spare embryos and the genetic material***

Before the spouses give written consent to the ART procedure, the doctor must educate them about the ART procedure, including the possibility of success, possible consequences, and dangers of the procedure for the woman, man, and child, and

130 Decision Ustavno sodišče Republike Slovenija U-I-307/19-10, 21 January 2021.

131 Art. 22, para. 2, Infertility Act.

132 Art. 22, para. 47, Infertility Act.

133 Art. 23, para. 1, Infertility Act.

134 Art. 28, para. 1, Infertility Act.

135 Art. 28, para. 2, Infertility Act.

136 Art. 29, Infertility Act.

advise them accordingly. The doctor must inform them of the purposes for which their personal data are collected and processed and explain that their data are protected as a professional requirement.<sup>137</sup>

As a rule, ART procedures use the gametes of a woman and a man who are married to each other or are extramarital partners.<sup>138</sup> For ART procedures, the egg or sperm cells of the donor—who, according to paragraph 1 of Art. 14 of the Infertility Act, must be of legal age, healthy, and of sound mind—can be used under the following circumstances: a) if, according to the experience of biomedical science, there is no possibility that pregnancy will occur using the gametes of spouses or extramarital partners; b) if other ART procedures provided for by the Infertility Act have been unsuccessful; or c) doing so is necessary to prevent the transmission of a severe hereditary disease to the child.<sup>139</sup>

However, ART procedures involving the simultaneous use of donated egg and sperm cells are not permitted.<sup>140</sup> Therefore, at least one of the parents must be the biological parent of the child conceived with the help of the procedures.

A sperm donor is a man whose sperm cells are used to impregnate a woman who is not his legal wife or cohabiting partner. An oocyte donor is a woman whose oocytes are used to fertilise another woman.<sup>141</sup> Giving and receiving payment or any other benefit for donated reproductive cells is prohibited, with any such contracts void under the law.<sup>142</sup> A gamete donor may only give their egg or sperm cells to the same centre for ART procedures.

According to the Slovenian Infertility Act, the following acts are prohibited: a) the donation of human embryos; b) use of a mixture of sperm cells from two or more men or egg cells from two or more women in the ART procedure<sup>143</sup>; c) use of a donor's sperm cells to impregnate a woman who cannot marry him due to kinship. In respect to the latter, the donor's egg cells may not be fertilised with the sperm cells of a man who cannot enter into a valid marriage with her due to kinship.<sup>144</sup>

### ***3.5. The availability of ART in practice***

Compulsory insurance guarantees that insured persons will receive at least 80% of the value of health care services for services relating to the provision and treatment of reduced fertility and artificial insemination, sterilisation, and the artificial termination of pregnancy.<sup>145</sup> The Health Care and Health Insurance Act (HCHIA) provides

137 Art. 22, para. 1, Infertility Act (medical confidentiality).

138 Art. 8, para. 1, Infertility Act.

139 Art. 8, para. 2, Infertility Act.

140 Art. 8, para. 3, Infertility Act.

141 Art. 9, Infertility Act.

142 Art. 1, para. 10, Infertility Act.

143 Art. 13, Infertility Act.

144 Art. 14, para. 2, Infertility Act.

145 Art. 23, paras. 1, 3, Health Care and Health Insurance Act (HCHIA).

for paying at least 80% of the value of health care services. If a person does not have supplementary health insurance, they will have to bear 20% of the costs related to the provision of services and treatment for reduced fertility and assisted reproduction, sterilisation, and termination of pregnancy.

In the case of IVF, a woman is entitled to a maximum of six procedures for the first live birth and up to four procedures for each subsequent live birth. In the case of a woman under 35 years of age, the first two IVF procedures shall involve the elective transfer of one embryo of good quality. An ART procedure with thawed embryos is counted as part of the same IVF procedure in which the embryos were frozen.<sup>146</sup>

### ***3.6. Legal human reproductive procedures and their implications for parenthood***

The Republic of Slovenia's FC contains provisions on paternity and maternity for children conceived with biomedical assistance. If the mother consented to the process of insemination with biomedical assistance in accordance with the procedures governing ART procedures, her maternity may not be contested. If the child was conceived with biomedical assistance using a donor's ovum, the donor is prohibited from establishing maternity.<sup>147</sup>

The father of a child conceived with biomedical assistance is the mother's husband or her extramarital partner, provided they have consented to the procedure under the ART procedures regulations. Therefore, the paternity of the person who is considered to be the child's father may not be challenged, except when asserting that the child was not conceived through the ART procedure. If the child was conceived with biomedical assistance using a donor's sperm cell, the donor is prohibited from establishing paternity.<sup>148</sup>

However, a woman who intends to leave the child to a third party after birth (surrogate motherhood), with or without payment, is not entitled to ART procedures.<sup>149</sup> According to the Criminal Code in paragraph 4 of Art. 121, anyone who illegally carries out the procedure of fertilisation with biomedical assistance due to surrogacy shall be imprisoned for up to three years.

Following Art. 27 of the Infertility Act, donors have no legal or other obligations or rights to children conceived in ART procedures.

<sup>146</sup> Art. 37, para. 2, RCHI.

<sup>147</sup> Art. 133, FC.

<sup>148</sup> Art. 134, FC.

<sup>149</sup> Art. 7, Infertility Act.

## 4. Other responses to demographic issues

### *4.1. Raising the retirement age*

On 1 January 2023, the gender pay scale in Slovenia was equalised. As of 1 January 2023, the vesting percentage for women and men is 63.5% for 40 years of pensionable service and 29.5% for 15 years. For each additional year of pensionable service, 1.36% of the pensionable base is added to the pensionable age for both men and women.

To qualify for an old-age pension, the insured person (male and female) must satisfy both the age and the pensionable service conditions: a) they must be at least 60 years of age with 40 years of pensionable service without supplementation; or b) 65 years of age with at least 15 years of insurance service. Slovenia does not currently envisage pension reform raising the retirement age.

Among OECD countries, Slovenia has one of the lowest labour market participation rates of workers above retirement age. In Slovenia, workers with an uninterrupted working career since the age of 20 can retire with a full pension at age 60. This is below the international average, with the gap between Slovenia and the OECD average expected to widen further as Slovenia is not planning to increase the average age of retirement. Indeed, in other OECD countries, the current age of retirement is 64 years, and is anticipated to increase to about 66 years for those entering the labour market today.<sup>150</sup>

### *4.2. Increasing the number of family-friendly workplaces and additional labour law benefits*

Point 3.5 of the Resolution on the Family Policy defines the labour market and employment. In recent years, Slovenia has been affected by the global economic crisis, which has significantly impacted the labour market. The most notable consequence of this has been the decline in the employment rate and rise in the unemployment rate. Although unemployment has increased in all age categories, young people under 30 have been the most affected. Even before the crisis, young people were already facing employment insecurity, which was reflected in precarious and temporary forms of employment (e.g. temporary jobs, contract work).<sup>151</sup> While Slovenia's overall labour force participation rate is one of the highest in the EU, it is below average among young people. This is partly due to the relatively lengthy participation of young people in the education system. All of these factors undoubtedly impact young people's material and social situation. Their position in the labour market negatively affects their chances of becoming independent, ability to plan

<sup>150</sup> OECD, 2022.

<sup>151</sup> Resolution on the Family Policy, point 3.5.

their lives, and likelihood of starting a family, impacting their family's material and social situation.<sup>152</sup>

To address this issue, Slovenia has enacted the Active Employment Policy (AEP), which intensively targets young people in the labour market through various measures, and increased labour market regulation to encourage permanent employment. While the first measure, the AEP, provides young people with relevant work experience and speeds their ingress into the labour market, it does not provide them with permanent jobs. Accordingly, the second measure is intended to provide quality, secure, and sustainable full-time jobs. In the long term, secure jobs enable young people start a family and ensure the material and social security of their families.<sup>153</sup>

Reconciling work and family life is essential to family policy and crucial in creating or promoting equal opportunities for women and men in society. It is understood as a broader mechanism encompassing a wide range of measures, including childcare and long-term care for the elderly and other dependent family members and dependants; adequately regulated paid maternity, paternity, and parental leave (as individual and non-transferable rights) and allowances; benefits for absence from work in the event of children's illness; and flexible forms of labour and employment. The following conditions must be met for family and working life to be reconciled. First, there must be parental consent in two-parent families for the fair sharing of care and household responsibilities. Second, adequate social infrastructure and measures to facilitate the reconciliation of these responsibilities must be adopted and implemented by both the State and employers.<sup>154</sup>

The labour market affects young families in two ways. First, employment (i.e. unemployment/employment, form and security of employment, and so on) is an important factor in planning and deciding to start a family. Young people are particularly exposed to the risks of unemployment, precarious work, and general job insecurity, which can have a negative impact on their life choices and opportunities, including decisions about partnership and parenthood. Second, the labour market impacts the social and economic security of families with children, as the parents' labour market situation (i.e. employment or unemployment, type of employment) determines the household's disposable income. Given the impact of the labour market on young people's chances of starting a family and the quality of life of families, the Resolution on the Family Policy identifies objectives and measures in the labour market and employment sector that could have indirect positive impacts on the quality of life of families and facilitate the decision to have children. It is the responsibility of the State to design policies and measures that will create favourable conditions for maximising the labour market participation of the active population, ensure quality and secure employment (especially for young people), and create a

152 Ibid.

153 Ibid.

154 Resolution on the Family Policy, point 3.6.

supportive and non-discriminatory working environment for parents.<sup>155</sup> Low-paid, insecure, and part-time jobs can lead to poverty, and efforts should be made to increase the labour intensity of individuals with families.

In Slovenia, more than 240 public and private sector organisations employing over 80,000 people have been certified as Family Friendly Businesses. This indicates that an increasing number of employers recognise the importance of reconciling their employees' family and professional lives and are willing to pay special attention to this area.<sup>156</sup>

Young people consider the following to be important aspects of a job: job security, freedom to organise working time, prospects for reconciling family and work commitments, and possibility of taking sick leave to care for a sick child. The latter was important to 90% of women and 75% of men.<sup>157</sup>

Both mothers and fathers face difficulties in the labour market due to parenthood. Women often do not have their contracts renewed because of pregnancy or do not have the same job waiting for them when they return from parental leave, and motherhood makes it harder for them to progress in their careers. Men face the problem that employers often see them only as workers, and not as fathers. Although paternity leave is well-established and taken by the vast majority of fathers entitled to it, employers are less sympathetic to fathers who take part in their parental leave. The Fathers and Employers in Action Survey (2015) found that fathers seldom take paternity and parental leave because their employer did not favour it. Of these respondents, only 8% took parental leave, 9% took 15-day paternity leave, and 12% took 75-day paternity leave. Men reported that they opted against doing so because they believed their job would suffer as a result, with 15% taking parental leave, 19% taking 15-day paternity leave, and 31% taking 75-day paternity leave.<sup>158</sup>

#### ***4.3. Additional family support practices***

The family is a fundamental social institution in Slovenia and a key component of family policy. It is an essential task of the State to create the conditions for families and individuals to achieve a high quality of life. In this respect, the State is responsible for ensuring social inclusion and protection, thereby creating the possibility for the healthy development of all family members. To achieve these objectives more effectively, the State has developed a family support programme model that focuses on providing various forms of assistance to families and, in some ways, complements other programmes and services, such as those pertaining to social protection. These programmes primarily target children, adolescents, and their families, positively impacting the quality of life of the individual and the family

<sup>155</sup> Resolution on the Family Policy, point 3.5.

<sup>156</sup> Resolution on the Family Policy, point 3.5.2.

<sup>157</sup> Resolution on the Family Policy, point 3.5.2.

<sup>158</sup> Resolution on the Family Policy, point 3.5.2.



and reducing various risks. They are mainly oriented towards prevention activities and programmes.<sup>159</sup>

Family support programmes are explicitly defined in the FC. They are aimed at preparing for parenthood, promoting positive parenting and strengthening parenting competencies, improving communication and family relations, encouraging creative and active leisure time for children and families, facilitating the reconciliation of work and family life, providing psychosocial support for children and parents, and other activities to improve the quality of family life. Positive parenting is based on the idea of respecting children's rights and providing a safe environment, which also implies the absence of any form of violence as an educational method. As such, it involves ensuring the best protection and best interests of the child, which means taking proper care of the child, empowering the child, guiding the child, and treating the child as an individual with inherent rights. Positive parenting should not be understood in the context of permissive parenting; rather, it is based on the healthy setting of the boundaries that the child needs to develop to their full potential. Genuine contact with the child, spending quality time together, and considering the child's needs and wishes are thus essential. The latter is significant as we want children to participate in all aspects of life as much as possible. It is the responsibility of the State to promote and disseminate the concept of positive parenthood while creating the conditions necessary for it (e.g. the adequate regulation of the reconciliation of work and family life).<sup>160</sup>

#### ***4.4. The role of the father in the family***

Economic independence is essential for equality between women and men, and reconciling family and professional responsibilities is a prerequisite for achieving it. Like elsewhere in Europe and the world, in Slovenia, women are still responsible for a more unpaid work, hindering their career development in the labour market. At the same time, due to entrenched traditional ideas about the social roles of women and men, employers seldom see men as fathers, only as workers with no care responsibilities. Consequently, women face career barriers due to their role as mothers, while men face obstacles to being active fathers. Eliminating such stereotypes and raising awareness among employers and society in general that men have a right to active fatherhood is one of the most important measures in promoting the fairer distribution of care responsibilities between men and women.<sup>161</sup>

The aim is to equally share care and family responsibilities between women and men. Involvement in parenthood starts with attendance at childbirth. Therefore, in 2019, 84.1% of fathers were present for their first-born children.<sup>162</sup>

159 Resolution on the Family Policy, point 3.1.

160 Resolution on the Family Policy, point 3.1.

161 Resolution on the Family Policy, point 3.5.

162 NIJZ, n.d., p. 5.

Although the situation is improving and men are increasingly involved in childcare and other family responsibilities (e.g. housework), there are still significant gender gaps in the use of time. Indeed, women spend just over 200 hours more per year on housework than men, and over 500 hours more on childcare. Slovenia also exhibits the traditional distribution of caring for sick family members and members of the family. Women take 81% of all leave days to care for a sick family member, compared to just 19% for men. An important reason for this traditional distribution of care and household responsibilities is the entrenched stereotypes regarding the social roles of women and men, in which the man is perceived as the breadwinner and the woman as the emotional carer of the family.<sup>163</sup>

<sup>163</sup> Resolution on the Family Policy, point 3.6.1.

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