

Child-Friendly Justice – Slovenian Perspective

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ABSTRACT

The article presents the position, rights, and participation possibilities of children in different civil and criminal proceedings in Slovenia. It introduces the constitutional framework for the protection of children's rights and some fundamental guarantees for children in all types of proceedings. It provides a systematic overlook of the fundamental legislation dealing with children's rights in civil litigation, non-contentious civil proceedings, administrative proceedings, and criminal proceedings. Furthermore, it highlights some key findings from all these different types of proceedings involving the principle of the best interest of the child and the child's right to express their opinion, as well as certain procedural adaptations that were made to accommodate children's interests and their specific position throughout the relevant legislation in different fields of law. Through examination of the relevant provisions, it concludes that progress has been made, particularly with the unification of family law proceedings with the relatively new Family Code and Non-Contention Civil Procedure Act; however, further harmonisation is still needed, especially in criminal cases involving minors. Overall, Slovenia's legal system demonstrates a commitment to prioritising children's participation, representation, and best interests and sufficiently protects children's rights in various civil and criminal proceedings.

KEYWORDS

protection of children's rights, children's participation, civil proceedings, criminal proceedings, administrative proceedings, best interests of the child, the right to express opinion

1. Introduction

It is the reality of life that, just as adults, children might also come into contact with the judicial system. A child might be involved in family matters like the separation of his/her parents that need to arrange his/her maintenance and contact rights or can be put up for adoption or in foster care. He/she might be involved in administrative matters, where his/her citizenship or his/her social security and habitation needs to be arranged. Additionally, the child might also be connected to a criminal proceeding in the role of a victim, witness, or even the perpetrator. Children cannot always

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understand the role they have been put into or the proceedings they are a part of. Adapting justice to their needs is, therefore, necessary. These adaptations help make sure that the procedures are carried out in the child's best interest.

There is no single legislative act protecting children's rights in Slovenia. They are ensured in a wide variety of areas, such as health, education, social care, and family legislation and are, therefore, regulated in numerous legal acts. Before further analysing a child's position in civil, administrative, and criminal proceedings in Slovenia, let us first examine the constitutional framework for children's rights in Slovenia.

Article 53 of the Constitution of the Republic of Slovenia,¹ which defines marital and family relations, imposes the State with the duty to protect children and youth and create conditions necessary for their protection. Article 54 of the Constitution further provides the rights and duties of parents and the protection of children for their best interest. Children's rights are also established in Article 57, which provides for the freedom of education and the obligation of primary education, which is financed by public funds. With this legal framework, the State creates opportunities for children to acquire an appropriate education, thus developing and, consequently, integrating more easily into society when they become adults. Additionally, Article 52 deals with the rights of disabled persons and children with physical or mental disabilities and provides these children with the right to education and training for an active life in society.

The Constitution of the Republic of Slovenia also determines that children shall enjoy special protection and care, as well as human rights and fundamental freedoms consistent with their age and maturity. Children shall be guaranteed special protection from economic, social, physical, mental, or other exploitation and abuse, which shall be regulated by law. Finally, the Constitution determines that children and minors who are not cared for by their parents, have no parents, or are without proper family care shall enjoy the special protection of the State and their position shall be regulated by law. Children can, therefore, enjoy their human rights and freedoms in accordance with their age and maturity.² While most of their rights are required from birth (for example, the right to life, to safety, to physical integrity), they are exercised for them by parents in the context of their care for the child. Also, the rights and freedoms of the child are limited by the rights of others; therefore, when they come into conflict with the rights of others, a weighing of rights must be carried out.³ Some

1 Constitution of the Republic of Slovenia, Official Gazette No. 33/91-I with amendments.

2 Art. 56 of the Constitution of the Republic of Slovenia.

3 Art. 15 para. 3 of the Constitution of the Republic of Slovenia. It is worth highlighting the decision VSL IV Cp 1440/2020, in which the Ljubljana High Court, after weighing the rights, decided that the rights of the child to respect for private and family life and to ensure healthy growth and personal development take precedence over the right of parents to express their views about their children on social networks.

human rights and fundamental freedoms become important for a child only later (for example, freedom of conscience, freedom to decide on the birth of children, etc.).⁴

The question, unanswered by the Constitution, remains who is considered a child under the Slovenian law. A definition of a child, which also takes into account the provisions of international legal sources,⁵ is provided by the Family Code.⁶ In Article 5, the Family Code defines a child as a person who has not yet reached the age of 18, unless he/she has previously acquired full legal capacity.⁷ This would be possible, e.g. if the child got married or was granted legal capacity by the court because it became a parent. It is considered that a minor who can take care of himself/herself no longer needs special protection granted to the child.⁸ The milestone between a child and an adult is therefore the acquisition of legal capacity, not the age of majority.⁹ The Non-Contentious Civil Procedure Act,¹⁰ which is used in most family law proceedings, defines a child in the same way.¹¹

The internal relationship between parents and children is broken down in time, which means that the content of this relationship and the rights arising from it change over time. With the age and maturity of the child, the range of duties of parents decreases. The more mature the child is, the more parents need to consider the child's opinion. This is also reflected in the regulation of the position of the child in the proceedings: the child first acquires the right to express his/her opinion, then the procedural ability to perform all procedural actions independently and validly.¹² Procedural capacity corresponds to legal capacity in substantive law. Anyone with legal capacity is also able to perform procedural actions independently in legal proceedings. A person who is not capable of proceedings must perform procedural acts through his/her legal representative, just as a person who is legally incompetent must conclude legal transactions through his/her legal representative.¹³ While legal capacity is acquired by children from birth, procedural capacity is acquired later.

It is important that the legislator provides sufficient procedural guarantees to a child involved in a certain proceeding. In part, this was established when the legislator

4 Some authors consider that children do not enjoy human rights and freedoms that are not yet applicable to them because of their physical or mental underdevelopment (Zupančič, 1999, p. 35). Others believe that children enjoy all human rights and freedom, however, they enjoy them in line with their age and maturity, meaning that it is important to distinguish between the capability of having (or gaining) these rights and the capability of enforcing them (Končina Peternel in Šturm, 2002, para 3).

5 Novak, 2022, p. 79.

6 Family Code, Official Gazette No. 15/17 with amendments.

7 It is worth noting that, as a rule, parents are obliged to support their children until they reach the age of majority, but exceptionally, the duty to support can also be extinguished earlier or later depending on different circumstances (legal capacity, schooling of the child etc.).

8 Korošec, 2009, p. 36.

9 Zupančič, 1999, p. 17.

10 Non-Contentious Civil Procedure Act, Official Gazette No. 16/19 with amendments.

11 Art. 6 para. 3 of the Non-Contentious Civil Procedure Act.

12 Končina Peternel, 2019, p. 93.

13 Ude et al., 2005, p. 330.

transferred decisions on all measures for the protection of the interests of children from social work centres to courts when the new Family Code, the fundamental Act in the field of family law in Slovenia, came into force in 2019. Thus, the decisions in family law matters should no longer be dealt with partly in separate administrative proceedings and partly in civil proceedings in front of courts as before, but merely in proceedings in front of courts.

Some of the most important provisions regarding the position and rights of children in various civil (civil litigation, non-contentious civil proceedings, and administrative proceedings) and criminal proceedings are presented below.

2. A Child's Position in Different Civil Law Proceedings

2.1. Civil Litigation and Non-Contentious Civil Proceedings

The position of a child in civil litigation and non-contentious civil proceedings mainly depends on the provisions of the following three sources of law: Civil Procedure Act,¹⁴ Non-Contentious Civil Procedure Act, and the Family Code.

As previously mentioned, full legal capacity in accordance with Article 152 of the Family Code is acquired by a child from the age of 18, exceptionally earlier. A child who has reached the age of 15 has limited legal capacity.¹⁵ This means that the child can make transactions on his/her own unless otherwise provided by law. The child can also enter into an employment relationship.¹⁶ However, if the legal transactions are so important that they have a significant impact on the child's life, the permission of the parents (of other legal representative) is needed for the validity of such transactions.¹⁷ Until the child reaches full legal capacity, he/she is represented by the parents or guardian. The parents or guardian also represent the child in other legal proceedings. If the legal representative has initiated the proceedings, he/she may perform actions in the proceedings only until the child, who has reached the age of 15 and is capable of understanding his/her own actions and the consequences of such actions, declares that he/she will independently perform procedural actions.¹⁸

In civil proceedings, the child is also guaranteed the right to a special representative (collision guardian). A social work centre or court shall appoint a collision guardian to a child for whom parents exercise parental responsibility in cases where

14 Civil Procedure Act, Official Gazette No.73/07 with amendments.

15 Art. 146 of the Family Code.

16 Končina Peternel, 2019, p. 94.

17 Art. 145 para. 2 of the Family Code.

18 Art. 45 para. 3 of the Non-Contentious Civil Procedure Act.

their interests are in conflict.¹⁹ At the same time, the child has the right to express his/her opinion during a certain proceeding with the help of a confidant or defender (attorney).²⁰ The child has this right, but not also the duty (if he/she wishes so, the child does not have to express his/her will).²¹ A confidant is a person chosen by the child because he/she trusts him/her; a defender is a person assigned to the child under the Human Rights Ombudsman Act²² with the consent of the parents, unless they are deprived of parental responsibility, or if the court, upon application by the Ombudsman, deems the confidant to be in the child's favour.²³

With the amendment of the Civil Procedure Act in 1999, Article 410 was added. Said article regulated the right of the child to express his/her opinion in the proceedings.²⁴ Article 410 of the Civil Procedure Code ceased to be valid when the Family Code and the new Non-Contentious Civil Procedure Act entered into force; however, the stance on the child's right to express himself/herself was largely considered in the new legislation as well. Regarding procedures for the protection of the interests of children, the court, therefore, requires the social work centre to inform the child (if the child is able to understand the meaning of the procedure and the consequences of the decision) of the procedure and of his/her right to express his/her opinion.²⁵ When a child wishes to express his/her opinion, he/she may do so at the social work centre or in an interview with an advocate assigned to him/her in accordance with the Human Rights Ombudsman Act or, depending on age and other circumstances, at an informal interview with the judge, also with the participation of a professionally qualified person, always without the presence of the parents. At the interview at the social work centre or with the judge, the person whom the child trusts and chooses or the child's advocate may be present. Such a person or advocate can help the child express his/her opinion. The court may prohibit the presence of a person if it considers that it is not a person whom the child trusts and has chosen or that the participation of that person in the proceedings would be contrary to the best interests of the child. A record is drawn up about the interview, and the judge or the social work

19 Arts. 269 para. 1 and 269 para. 2 of the Family Code, Article 45(5) of the Non-Contentious Civil Procedure Act. As explained by the Ljubljana Higher Court in its decision IV Cp 1716/2023, the decision to appoint a collision guardian has the necessary basis in Art. 269 para. 1 of the Family Code, according to which a collision guardian is appointed for a child over whom parental care is exercised by the parents, if their interests are in conflict. It is not a conflict of interests between the parents, but a conflict of interests between the parents and the child. A collision guardian is appointed when doubts are raised as to whether the parents are able to protect not only their own interests in the proceedings, but first and foremost the interests of the children.

20 Art. 69 para. 3 of the Non-Contentious Civil Procedure Act.

21 See more in: Končina Peternel, 2019, p. 93.

22 Human Rights Ombudsman Act, Official Gazette No. 109/12 with amendments.

23 Novak, 2022, p. 308.

24 Ogrizek, 2000, pp. 35–52.

25 For example, the Ljubljana Higher Court clarified in VSL IV CP 1454/2022 that in order to protect the best interests of the child, the court must actively and, where necessary, innovatively and flexibly, endeavour to present to the child with the possibility of taking part in the proceedings and the benefits that he/she may derive from his/her active participation.

centre may also decide that the interview is recorded in audio or video. To protect the best interests of the child, the court may decide not to allow parents to view the record or listen to or view the recording. There is no special appeal against such a court order.²⁶ In this case, the court summarises parts of the statements from the interview with the child in the reasoning of its decision if it based its decision on such a statement. The court serves the decision to a child who has already reached the age of 15 and has expressed his/her opinion in the process, and this child has the right to appeal against it.²⁷ The court shall also take into account the opinion of the child when making the decision on the protection, upbringing, and maintenance of the child, on contacts, implementation, and granting of parental care, if the child expresses it himself/herself or through a person whom he/she trusts and has chosen, and if he/she is able to understand its meaning and consequences.²⁸

A child has the right to make a statement and express an opinion, and this statement can play a decisive role (but not necessarily) in the process of deciding on his/her rights.²⁹ As explained by the Ljubljana Higher Court in the decision IV Cp 609/2023, the principle of best interests of children cannot be judged without taking into account the opinion of a child who is old and mature enough to exercise his/her right to make a statement.³⁰ The competent authority or court will take such statements into account and assess them in each individual case, trying to determine what is most beneficial for the child. It should be noted that the right of the child to express an opinion is only a right, not a duty of the child. As such, the court has the informational duty to explain to the child that he/she does not necessarily have to express an opinion. It should also not force a child to express an opinion.³¹ Moreover, this right of a child is not absolute, which means that state authorities or courts are not always required to hear the child in person. The need for hearing the child's opinion depends on the circumstances of the individual case and the age and maturity of the child. This can also be seen in Article 158 of the Family Code, which specifies when and how the court

26 See also: VSL IV Cp 503/2020.

27 Art. 96 of the Non-Contentious Civil Procedure Act.

28 Ibid., Art. 143.

29 Respect for the child's will does not mean that the court must necessarily decide in accordance with the child's will, it is only one of the circumstances that the court must consider in the substantive fulfilment of the notion of the best interests of the child (Novak, 2019, p. 489). In certain cases, the court cannot, of course, follow the child's opinion. This was the case, for example, in the case of the Ljubljana Higher Court IV Cp 212/2023, in which the court clarified that the issues of placement or custody, maintenance and contact should be resolved jointly, which is in line with the principle of the best interests of the child, which must be respected already in the conduct of the proceedings, not only when making the decisions. In a situation where it has been established that the father's conduct endangers the children, the wishes or opinions of the two children with regard to contact cannot be taken into account. The failure to obtain the children's opinion therefore did not constitute a breach of the procedural provisions.

30 In the specific case, it was a statement about whether the child wished to have contact with the other parent or not.

31 See e.g.: VSRS II Ips 658/2007, VSL IV Cp 3485/2005 and VSL IV Cp 3196/2014.

takes into account and obtains the opinion of the child when deciding on a measure for the protection of the best interests of the child.³²

Children's rights are also protected by the provisions determining that court hearings in family law cases are closed to the public.³³

2.1.1. *A Child's Position Under the Civil Procedure Act*

At all times during the proceedings in civil litigation, the court shall be bound *ex officio* to pay attention to whether the person appearing as a party may actually be a party to the litigation and whether he/she has litigation capacity, whether a party who lacks litigation capacity is represented by his/her statutory representative and whether the statutory representative has a special authorisation when such authorisation is necessary, and whether the party is represented by a counsel in line with the Civil Procedure Act.³⁴ It follows, that the court keeps an eye on the proper representation of the parties to the proceedings at all times. Where the court finds that a party does not have a legal representative or that the legal representative does not have the necessary qualifications, it requires the social works centre to appoint a guardian to the litigiously incompetent person and requires the legal representative to obtain the necessary authorisation or to do what is necessary to ensure that the litigiously incompetent party is properly represented.³⁵ The stated also applies to the position of a child – in civil litigation and non-contentious civil procedures.³⁶

2.1.2. *A Child's Position Under the Non-Contentious Civil Procedure Act*

The new law on the non-contentious procedure came into force on 15 April 2019. The need for the new law was shaped by the reform of family legislation, which was outlined in 2017 with the adoption of the Family Code (which came into force later in 2019). The law regulated family substantive law relations and fully transferred the power to decide in family law matters from the social work centres to the courts. This law, thus, contains several provisions regulating the position of a child in non-contentious proceedings that the courts (judges that deal mainly with family law in so-called “family departments” in the district courts)³⁷ use when deciding on these matters.

As a preliminary point, it should be clarified that the court, participants, and other persons participating in the proceedings are required to make every effort throughout the proceedings to have the rights and legal interests of the participants

32 The court considers the child's opinion or that of a person he/she trusts and has chosen, provided that the child is capable of understanding its meaning and consequences. The court may also make an interim order without first obtaining the child's opinion.

33 In accordance with Article 43 of the Non-Contentious Civil Procedure Act, the public is excluded in proceedings regulating civil statuses and family relations.

34 Art. 80 of the Civil Procedure Act.

35 Ibid., Art. 81 para. 2.

36 The Civil Procedure Act also contains specific provisions on territorial jurisdiction in disputes over statutory maintenance obligations. See: Art. 50.

37 These departments are not officially established in all the district courts.

established and protected as soon as possible. This is demanded by the principle of expeditiousness of proceedings, enshrined in Article 6 of the Non-Contentious Act. The court must also adopt *ex officio* any measures aimed at protecting the rights and legal interests of children and persons who, owing to mental developmental disorders or other mental health problems or other circumstances, lack the capacity to look after their own rights and interests.

The already mentioned right to a declaration is regulated in Article 5 of the Non-Contentious Civil Procedure Act. The article does not specifically mention children; however, since under certain conditions, children may also participate as participants in certain non-contentious proceedings, the right to a declaration under Article 5 of the Non-Contentious article also applies to them. In this way, the Non-Contentious Procedure Act follows the regulations of the Convention on the Rights of the Child and the European Convention on the Exercise of Children's Rights. The child's opinion is then judged on a case-by-case basis since it is important to take into account the age of the child and his/her ability to understand the position he/she is in and the fact that the child can be influenced by various factors, e.g. experience, environment, religious circumstances, social and cultural expectations, etc.³⁸ Each child, therefore, has the right to express his/her opinion, and the weight of this opinion is then judged by the court in accordance with the child's age and maturity.

Article 5 of the Non-Contentious Civil Procedure Act is complemented by Articles 6(2) and 96 of the same Act. Article 96 focuses on all procedures for the protection of the best interests of the child. Following this provision, the court must call upon the social work centre to inform the child, who is capable of understanding the meaning and importance of the procedure and the consequences of the decision, in an appropriate manner, of the opening of the proceedings and the consequences of the decision to express his/her opinion. When a child wishes to express his/her opinion, he/she may do so at the social work centre or in an interview with the advocate assigned to him/her in accordance with the law governing the ombudsman or, depending on age and other circumstances, at an informal interview with a judge, also with the participation of a professionally qualified person. When the child expresses his/her opinion, the parents are not present.³⁹ At the interview at the social work centre and with the judge, the person whom the child trusts and chooses may be present, or the advocate for the child, if assigned in accordance with the law governing the ombudsman. Such a person or advocate of the child can help the child express his/her opinion. The court may prohibit the presence of a person if it considers that it is not a person whom the child trusts and whom the child has chosen or that the cooperation of that person in the proceedings would be in conflict with the best interests of the child. A record is then drawn up about the interview, and the judge or social work centre can also decide that the interview is recorded in audio or audio-video. Interestingly, in order to protect the best interests of the child, the court may decide not to allow

38 Kraljić et al., 2022, p. 55.

39 Ibid, p. 56.

parents to view the record or listen to or view the recording; no special appeal can be raised against such a court decision. In such cases, the court summarises parts of the statements from the interview with the child in the reasoning of the decision if it has based its decision on them. It is important to note that the court serves its decision to a child who has already reached the age of 15 and has expressed his/her opinion in the process; this child has the right to appeal against it.

In non-contentious proceedings regulating civil statuses and family relations, the court allows a child who has reached the age of 15 and is capable of understanding the meaning and legal consequences of his/her actions to implement procedural acts in the proceedings independently as a participant. The statutory representative of such a child may implement acts in the proceedings only until the child declares that he/she will independently perform procedural actions. However, a child who is not yet 15 years old or is considered by the court to be unable to understand the meaning and legal consequences of his/her actions must be represented by a statutory representative. If the interests of the child and his/her representative contradict each other, the court appoints a collision guardian to the child.⁴⁰ In the proceedings, the court may, taking into account restrictions on the use of evidence already taken, use the audio or audio-video recordings of the interview with the child. In certain cases, the court may also use a written expert opinion from another judicial procedure.⁴¹

The Non-Contentious Civil Procedure Act provides that the procedure for obtaining full capacity by a child who has become a parent is also carried out in non-contentious proceedings. According to Article 71, proceedings shall be initiated upon the petition of a child who has become a parent or with the child's consent to the petition of the social work centre.⁴² The same applies to the procedure for obtaining permission for the conclusion of a marriage in line with Article 75 and 77 of the Non-Contentious Civil Procedure Act. Before allowing a child to marry, the court hears the child, the person with whom it intends to marry, and the child's parents or guardian.⁴³ The procedure for establishing and challenging paternity can (among others) also be initiated at the suggestion of the child.⁴⁴

Regarding procedures for the protection of the best interests of the child, the Non-Contentious Civil Procedure Act first introduces which proceedings fall into

40 Art. 45 para. 2 of the Non-Contentious Civil Procedure Act.

41 Ibid., Art.

42 According to the provisions of the Non-Contentious Civil Procedure Act, proceedings may be initiated at the request of the child (although other petitioners are also possible) to decide on contact, custody and maintenance and to decide on measures to protect the best interests of the child. In these provisions, the law specifically provides that to start the proceedings, the child must be at least 15 years of age and "capable of understanding the meaning and legal consequences of his/her actions".

43 Art. 78 of the Non-Contentious Civil Procedure Act.

44 Ibid., Article 88.

this category.⁴⁵ If the court considers that this is in the best interest of the child in the proceedings before the court, it may, on application by the ombudsman, appoint the person proposed by him/her as the defender of the child. It shall decide on the proposal within 8 days of receipt of the proposal.⁴⁶ In proceedings for the protection of the best interests of the child, the Non-Contentious Civil Procedure Act sets quite strict time limits for decision-making in Article 99. The Act further stipulates that the court will schedule the first hearing within 45 days from the receipt of the full petition for the initiation of the proceedings or within 8 days after the receipt of the opinion of the social work centre. It also sets the deadline for the expert's work. Namely, the Non-Contentious Civil Procedure Act provides that in proceedings for the protection of the best interests of the child, the expert, if he/she is appointed, must draw up an opinion within 60 days from the receipt of the decision on the appointment of an expert, and must prepare a supplementary expert opinion, if necessary, within 15 days.⁴⁷ The Act also provides for the issuance of interim orders for the protection of the interests of children⁴⁸ under the conditions established by the Family Code and in accordance with the procedure laid down in the Enforcement and Security Act.⁴⁹

2.1.3. *A Child's Position Under the Family Code*

Certain specifics regarding the position of children in proceedings before the court and the social work centre are also regulated in the Family Code.⁵⁰ As mentioned above, the Family Code provides that children are represented by their parents unless otherwise provided by law. This also means that if a document is to be served or communicated to the child, it can be validly served or communicated to one or the other of the parents, and if the parents do not live together, to the one with whom the child lives or to the one indicated in the court settlement or the court decision on joint custody of the child.⁵¹

45 These are the proceedings for deciding on the care and upbringing of the child, maintenance of the child, contact with the child, issues relating to exercising parental care which have a significant impact on the child's development, measures to protect the best interests of the child, placing the child under guardianship, placing the child in foster care, granting parental care to a relative, adoption of the child and annulment of the adoption of the child. The procedure for the protection of the best interests of the child is also the procedure for deciding on the maintenance of a person that is already 18 years old as long as there is a maintenance obligation under the Family Code. See also: Art. 93 of the Non-Contentious Civil Procedure Act.

46 Ibid., Art. 97.

47 Unfortunately, in practice, these deadlines are not always respected, mostly because of the severe shortage of experts in certain disciplines. More in: Burkelc, 2023, pp. 53–72.

48 Art. 100 of the Non-Contentious Civil Procedure Act.

49 Enforcement and Security Act, Official Gazette No. 3/07 with amendments.

50 This includes, for example, the specifics of the mediation process in disputes concerning children. The mediator may also involve a child in the mediation if the child is „capable of understanding the meaning and consequences of the mediation” if the mediator considers that this is in the child's best interests. See: Art. 210 of the Family Code.

51 Arts. 139 and 145 of the Family Code. The court's decision must in certain cases also name which of the parents will receive post packages for the child. For more, see: Kraljić, 2019, p. 453.

When a child reaches the age of 15, he/she can enter legal transactions on his/her own unless otherwise provided by law. However, in cases where these transactions significantly affect the child's life before or after the age of majority, parental consent is required for a valid conclusion of the legal transaction. The validity of a legal transaction concluded by a child without the permission of the parents is otherwise assessed according to the rules of law of obligations.⁵² Also, the child's property in his/her favour is managed by his/her parents.⁵³ They may use the income from his/her property primarily for his/her maintenance, upbringing, and education; however, if they do not have sufficient resources themselves, they may also use this income for the urgent needs of the family community. The property of the child may be disposed of or encumbered by the parents only for the purpose of his/her maintenance, upbringing, and education or if some other benefit requires it. If there is a risk that, by disposing things from the property of their child, the parents will jeopardise their financial interests, the court must impose appropriate measures to protect the financial interests of the child. If the child has already reached the age of 15 and is employed, he/she can dispose of his/her salary but must also contribute to his/her livelihood and education.⁵⁴

In Slovenia, in exceptional cases, the child may also be the adoptive parent of the child. Although the Family Code provides that only an adult person who is at least 18 years older than the child (that is, he/she is not a child himself/herself) can be an adoptive parent, in exceptional cases, they can also allow the adoption to a person who is not 18 years older than the child, when all the circumstances of the case have been investigated, and it is established that such an adoption would be in the child's best interests. In the process of adoption, the court also takes into account the opinion of the child expressed by the child himself/herself or through a person whom he/she trusts and has chosen, if he/she is able to understand the meaning and consequences of doing so. If the child can understand the meaning and consequences of the process, the child's consent is also required for adoption.⁵⁵

The already repeatedly indicated age limit of 15 years and the capability to understand the meaning and legal consequences of their actions are also taken into account in the procedures for placing a child under guardianship. In proceedings relating to dismissals and appointments of a custodian for a special case, the social work centre allows such a child to independently perform procedural actions as a party to the proceedings in accordance with Article 273 of the Family Code. In such cases, the legal representative may perform actions in the proceedings for such a child only until the child declares that he/she will independently perform procedural actions. A child who is not yet 15 years old or who is deemed by the social work centre to be unable to understand the meaning and legal consequences of his/her actions is represented by a

52 Article 146 of the Family Code.

53 Ibid., Art. 147.

54 Ibid., Arts. 148–150.

55 Ibid., Art. 215.

legal representative. If the interests of the child and his/her legal representative contradict each other, the social work centre appoints a collision representative for the child. In addition, the social work centre must also inform the child, who is capable of understanding the importance of the placement procedure and the consequences of this decision, in an appropriate manner about the initiation of the procedure and about his/her right to express his/her opinion. Depending on the age of the child and other circumstances, the social work centre can also conduct an interview with the child using an expert. A person whom the child trusts and chooses himself/herself may be present in the process. The social work centre may prohibit the presence of a person if it considers that the participation of that person in the proceedings would be contrary to the best interests of the child. The expert then draws up a record of the interview, which the parents can also be denied access to. A child who has already reached the age of 15 and has expressed his/her opinion in the process is served the decision of the court and can appeal against it.⁵⁶

2.2. A Child's Position in Administrative Proceedings

Administrative procedure is a procedure before administrative and other state bodies, bodies of self-governing local communities, and holders of public authority. These bodies are bound by the provisions of the Administrative Procedure Act.⁵⁷ Administrative jurisdiction is established by law. The authority shall decide only when an administrative matter is involved.⁵⁸ The fundamental characteristics of the administrative proceeding are its speed and simplification of the procedure. As a result, the dispositive principle, the principle of debate, the principle of mutual hearing, and the principle of immediacy are undermined. However, this does not necessarily interfere with the protection of children's rights⁵⁹ since, in certain cases, administrative proceedings may be even more appropriate than judicial proceedings due to their economy and speed.

In Slovenia, the social work centre is responsible for assisting in the protection of children and their rights based on a public mandate. Until April 2019, the administrative dispute also provided judicial protection in the field of custody for children and adults, as well as on the issue of foster care and adoption. However, with the entry into force of the new Family Code, these issues were transferred under the jurisdiction of the district courts, which is why social works centres are now cooperating with

⁵⁶ Ibid., Art. 275.

⁵⁷ Administrative Procedure Act, Official Gazette No. 24/06 with amendments.

⁵⁸ Ibid., Art. 2.

⁵⁹ In 1999, the Constitutional Court, in its decision U-I-237/98, stated that both the administrative procedure conducted by the social work centre and the judicial procedure conducted by a judge are not unconstitutional and are appropriate for the protection of children and the regulation of their relationships. There is no urgent need for a judge and for judicial protection since sufficient protection was also guaranteed in administrative proceedings. It merely took the view that everything should be dealt with in one procedure, to avoid a situation where the subject matter is the same, but the result may be different because two different authorities are deciding.

the courts in these proceedings.⁶⁰ However, social work centres still work in the field of international protection and children seeking asylum. In this area, social work centres are responsible for setting up legal representatives for unaccompanied children and for children travelling and seeking asylum accompanied by their parents in the event of a conflict of interests with their parents or guardians. The social works centre can also name a guardian for a special case for a child who is in the process of return or deportation to a foreign country. The decisions of administrative authorities in these situations may then be reviewed in an administrative dispute before the administrative court.

The ability to be a party to administrative proceedings is defined in Article 42 of the Administrative Procedure Act. The ability to be a party is a procedural premise and a condition for conducting an administrative process.⁶¹ Legal capacity is not limited by age, so every child has the ability to be a party to the process from birth. At all times during the proceedings, the authority must pay *ex officio* attention as to whether a person who acts as a party can actually be a party to the procedure and whether a party without procedural capacity is represented by their statutory representative.⁶²

The Administrative Procedure Act does not contain any special provisions regarding the representation of minors. Therefore, in administrative proceedings, the previously mentioned regulations apply, according to which a minor becomes partially legally capable when he/she reaches the age of fifteen; otherwise, except exceptionally (if he/she acquires legal capacity), he/she is not legally capable and, therefore, needs someone to perform all procedural actions in administrative proceedings on his/her behalf. However, every child has procedural legitimacy in administrative proceedings, as this is not linked to procedural capacity but only to the existence of the ability to be a party to the proceedings.⁶³

In administrative proceedings, a child acts as a subject of administrative proceedings when his/her rights are decided on obligations or legal benefits. The child is not fully legally capable until he/she comes of age. This means that until then, by his/her own actions, he/she cannot acquire rights and assume obligations, as well as independently perform actions in the administrative process. Instead of the child, these actions are performed by his/her legal representative or guardian⁶⁴ or by

60 All the powers to decide on measures that had been in the hands of administrative authorities were transferred to the civil district courts (Art. 155 of the Family Code). This change was made because social work centres were not considered to be the best suited to decide on administrative proceedings using coercive means, as this was not always compatible with their professional social welfare work. The aim of this was to regulate family matters more thoroughly and to transfer competence to a single body (administrative or judicial), which was a need, also emphasised by the Constitutional Court in its decision U-I-273/98.

61 Breznik, Štucin and Marflak, 2001, pp. 146–147.

62 Art. 49 of the Administrative Procedure Act.

63 Kerševan and Androjna, 2017, p. 144.

64 Art. 47 para. 1 of the Administrative Procedure Act.

another person designated by the administrative authority in the absence of a legal representative.⁶⁵

Children can also be participants in an administrative dispute or bear rights or legal benefits decided before an administrative court.⁶⁶ In these areas, the administrative court provides judicial protection in cases decided in administrative proceedings before various competent authorities, acting in accordance with the provisions of the Administrative Dispute Act.⁶⁷ This Act, which is primarily applicable to the conduct of judicial proceedings before administrative courts, does not contain any specific provisions explicitly relating to the position of the child in administrative proceedings. The previously mentioned general principles, therefore, also apply to administrative court proceedings involving or relating to children. This is in line with Article 22(1) of the Administrative Dispute Act, which specifically determines that in an administrative dispute, the provisions of the Act regulating civil procedure shall apply unless otherwise provided by this Act. Among the general principles that come into play is the principle of non-discrimination. In addition to the general rules of procedure, the administrative courts directly apply the European Convention on the Exercise of Children's Rights and the United Nations Convention on the Rights of the Child while also relying on the case law of the CJEU for specific issues.

3. A Child's Position in Criminal Proceedings

Children may be involved in criminal proceedings as victims, witnesses, or perpetrators of a crime. The main concern in these proceedings is to look after their best interests and reduce the harm and harmful effects of secondary victimisation that children might suffer as a result of their involvement. In addition to child protection being provided by the Criminal Code,⁶⁸ which contains several special provisions relating to crimes against children,⁶⁹ child protection in proceedings is also provided by the Criminal Procedure Act⁷⁰ and other laws. Though the system currently in force is often criticised for its fragmentation, it addresses several different situations in which a child may find himself/herself in connection with criminal proceedings.

It is important to note that in Slovenia, children under the age of 14 are not criminally liable. Their liability is limited with regard to their age. The Criminal Code states that they can commit an unlawful act, but they cannot be the perpetrators of a criminal offence. By the age of 14, persons become younger minors (from 14 to 16 years of age) and later older minors (from 16 to 18 years of age) and can be

65 Ibid., Art. 51 para. 1.

66 These can be issues such as education, migration status, nationality, etc.

67 E.g. The Slovenian Institute of Education, social work centres, Ministry of Education, Ministry of the Interior, etc. Administrative Dispute Act, Official Gazette No. 105/06 with amendments.

68 Criminal Code, Official Gazette No. 50/12 with amendments.

69 See e.g.: Arts. 192–194 of the Criminal Code.

70 Criminal Procedure Act, Official Gazette No. 176/21 with amendments.

held criminally liable for their actions. However, even after reaching the age of 18, the Criminal Code treats them in a special way until they reach the age of 21 (young adults); namely, although in principle, the Criminal Code stipulates that it applies equally to all persons of legal age, regardless of whether they are Slovenian citizens or foreigners, Article 5(3) presumes a special legal act that defines the criminal liability of minors and may also determine that young adults may, due to their personal development, receive a punishment similar to minors. The division of minors into younger minors, older minors, and later into younger adults is, therefore, important mainly due to the type of punishment they might receive.

Article 5(2) of the Criminal Code predicts the criminal liability of minors to be determined by a special regulation. Since such regulation has not yet been adopted, provisions of the Criminal Code and Criminal Procedure Act still *mutatis mutandis* apply, since they both contain specific chapters or provisions relating to the treatment of minors. In 2019, the Liability of minors for Criminal Offences Act, the Act that is intended to combine the treatment of minors from the current multiple regulations into one, was put into public discussion. Since 2021, the Protection of Children in Criminal Procedure and their Comprehensive Treatment in Children's House Act⁷¹ has been in force.⁷² The procedural legal basis for the court's decision-making in criminal proceedings does not change with this Act; the Criminal Procedure Code provisions still apply. However, it is expected that by reducing the administrative burden, the courts will be able to focus more easily on the substantive treatment of the situation of the minor witness or the injured party and on the substantive conduct of the hearing itself.

Slovenian legislation, however fragmented, provides for a system with several protective elements for children. These protective elements include, for example, the educational measures, the fact that the exclusion of a minor from his/her environment is considered a last resort, and the fact that social work centres also play an active role in the process. Most clearly, the protective attitude of the Slovenian model is manifested in the imposed sanctions that are adapted to minors.⁷³

Court hearings in criminal proceedings are usually public to ensure that courts operate openly and that their decisions are subject to public scrutiny. In criminal proceedings, the court may decide to close the hearing to the public (for example, if the victim is a minor) and, in such a way, protect the child's rights.⁷⁴

71 Protection of Children in Criminal Procedure and their Comprehensive Treatment in Children's House Act, Official Gazette No. 54/21 with amendments.

72 The Protection of Children in Criminal Procedure and their Comprehensive Treatment in Children's House Act provides for the protection of juvenile victims and witnesses of offences under the chapters against humanity (Chapter 14), against life and body (Chapter 15), against sexual integrity (Chapter 19), against marriage, family and children (Chapter 21), and Arts. 131-138, 140, 141, 143, 283, 284, 286, 296, 323, 324 of the Criminal Code. If the court deems it necessary for the protection of the best interests of the child, the law may also be applied to the hearing and comprehensive treatment of a child who is a victim or witness of another criminal offence.

73 Ibid.

74 Ibid.

3.1. *Child as Witness or Victim of a Criminal Offense*

Criminal proceedings in Slovenia consist of preliminary proceedings and formal criminal proceedings. During preliminary proceedings, namely the investigation phase of the proceeding, the police are allowed to exercise police measures or powers. They have the power to collect notices from persons, not only from adults but also minors, whereby the law does not prescribe the mandatory presence of parents or guardian.⁷⁵ The need for the police to provide considerate treatment to such children is imposed in the Police Powers and Tasks Act.⁷⁶ In essence, this Act merely provides in general terms that, when dealing with children and minors, police officers must take into account their age, physical and mental development, sensitivity, and any other observable characteristics.⁷⁷

The pre-trial procedure is then followed by the investigation stage, during which the investigating judge carries out investigative actions, including the examination of a witness. The current regime for hearing victims and underage witnesses in the Criminal Procedure Act is fragmented. The Act regulates different interrogation regimes for different categories of injured parties and minor witnesses.⁷⁸ According to Article 240(4) of the Criminal Procedure Act, when interrogating a minor, especially if such person has suffered harm from the criminal offence concerned, it must be conducted with particular care to avoid possible detrimental consequences to his/her mental state. If necessary, the hearing of a minor shall be carried out with the assistance of an educational or other expert. In hearing a witness who is less than 15 years old, a person whom the witness trusts may be present. The hearing of a witness who is a victim with a special need for protection may be carried out, depending on his/her personal circumstances, in specially adapted premises. The hearing of a witness who is less than 15 years old and who was the victim of the criminal offence referred to in Article 65(3) of the Criminal Procedure Act⁷⁹ shall be carried out in specially adapted premises unless this is not necessary for justifiable reasons that must be specifically substantiated by the court.⁸⁰ If necessary, the court may impose protection measure for a witness in line with Article 240.a of the Criminal Procedure Code.⁸¹

75 Šepec et al., 2023, p. 795.

76 Police Tasks and Powers Act, Official Gazette No. 15/13 with amendments.

77 Ibid., Art. 18.

78 For example: Art. 240a provides for the protection of witnesses at risk, Art. 244a provides for the possibility of videoconferencing and Article 240(4) establishes the duty to act with due diligence and provides for the possibility of questioning with the assistance of an expert, etc.

79 These include crimes against sexual integrity under Chapter 19 of the Criminal Code, crimes against marriage, family and youth under Chapter 21 of the Criminal Code, the crime of enslavement under Article 112 and the crime of trafficking in human beings under Article 113 of the Criminal Code.

80 Art. 240 para. 5 of the Criminal Procedure Act.

81 The court may order one or more of the following measures to protect the witness or his/her close relative: removal of all or particular data, marking of all or some of the data as data not available to the public due to the interests of the proceeding, issuing an order to keep particular facts or data secret, the assignment of a pseudonym to the witness, hearing the witness by means of technical equipment.

In certain criminal proceedings,⁸² an injured party who is a minor must have, throughout the criminal proceedings, a counsel to ensure his/her rights, particularly regarding the protection of his/her integrity during the hearing before the court and the enforcement of pecuniary claims. Minors as victims of criminal offences referred to in the preceding sentence must also have a counsel during the hearing in pre-trial proceedings. Minors as victims who do not have a counsel shall be assigned one by the court *ex officio* from among the attorneys.⁸³ In pre-trial and criminal proceedings, a minor as victim, an injured party who is a victim of violence or another injured party, if so required by the nature and gravity of the crime, his/her personal circumstances, or the degree of threat to his/her life and body, may be accompanied by a person of his/her choosing, unless this is contrary to the interests of the successful implementation of pre-trial or criminal proceedings or the benefit of the injured party.⁸⁴

It follows that the legislator focused primarily on the protection of minors as victims and did not put special regard toward child witnesses.⁸⁵ It is true that children as victims of criminal offences are in a particularly difficult situation, especially when they are victims of crime by family members. Furthermore, the very decision to report a crime can be extremely traumatic for them.⁸⁶ They find themselves in an environment created by adults and adapted to adults that they do not understand and most likely find hostile or at least uncomfortable.⁸⁷ Nevertheless, it is questionable whether such a distinction between underage witnesses and victims is appropriate. Minor witnesses are placed in a very difficult position as well, especially when their role in the proceedings may affect their family relationships outside the proceedings. The distress of a minor witness is all the greater because it is also subject to the duty to respond to the summons of the court and testify to the truth. In the interests of criminal proceedings, this further exacerbates the child's distress.

As aforementioned, the legislator additionally provided for a special Protection of Children in Criminal Procedure and their Comprehensive Treatment in Children's House Act. The procedural solutions proposed in this Act strive for a uniform,

82 In criminal proceedings conducted for crimes against sexual integrity under Chapter 19 of the Criminal Code, crimes against marriage, family and youth under Chapter 21 of the Criminal Code, the crime of enslavement under Article 112 and the crimes of trafficking in human beings under Article 113 of the Criminal Code.

83 Art. 65 para. 3 of the Criminal Procedure Act.

84 Ibid., Art. 65 para. 4.

85 More in: Filipčič, 2015, p. 96.

86 More in: Božič, 2006, pp. 28–29.

87 Šugman Stubbs, 2000, p. 207.

comprehensive treatment of the child in the hearing,⁸⁸ either as a witness or (also) as an injured party. They are designed in such a way that the court also decides on the application of all measures aimed at protecting the child's mental integrity: avoiding contact with the defendant, using adapted premises, hearing with the help of an expert, and minimising the number of hearings (so-called one-stop-shop approach).⁸⁹ The Act also provides for special procedures in the case of physical examination of the child, crisis support and psychosocial assistance to the child,⁹⁰ and predicts special training for the providers of the planned activities.⁹¹

3.2. A Child as the Person Who Committed a Criminal Offense

The Criminal Procedure Act also contains a chapter related to proceedings against minors. The provisions of this chapter apply to proceedings against persons who committed a criminal offence as minors and have not yet attained the age of twenty-one at the time of the institution or conducting of proceedings.⁹² The chapter contains multiple provisions in regard to minors, among other general provisions the proceedings involving minors, provisions on composition of the court, institution of proceedings, legal remedies, etc. This section only highlights selected ones.

If it is established during the proceedings that the minor, at the time of committing a criminal offence, had not yet attained the age of 14, the criminal proceedings are discontinued, and the social welfare authority (social work centres) is informed.⁹³ Where the age of the perpetrator cannot be established, in doubt as to whether he/

88 The principle of comprehensive treatment of a child, stemming from Article 3 of the Protection of Children in Criminal Procedure and their Comprehensive Treatment in Children's House Act, requires state authorities and other actors to exercise special care in ensuring holistic treatment to respect the dignity and best interests of the child while ensuring equal protection of rights, respect for due process guarantees and the rights of the defence. They need to take into account the child's age, maturity, capacity to understand the meaning and consequences of his/her actions and other personal characteristics, and the nature, character and circumstances of the offence, and they shall ensure that the child is provided with the necessary information and explanations to ensure the child's protection and personal safety, to prevent exposure to secondary victimisation, that the interrogation and physical examination of the child are carried out only as far as it is strictly necessary and in the minimum possible number in order to prevent further victimisation, that the child is heard and that the actions are carried out without undue delay.

89 Special protection of the child is reflected, for example, in the possibility of a hybrid nature of the interrogation (with the participation of an expert), in the concretisation of the principle of care and consideration in the physical examination, in the provision for crisis support and psychosocial assistance to the child (support at the time of the interrogation itself, psychosocial assistance being a more permanent form of assistance which follows in the aftermath of the interrogation and lasts for a period of up to 6 months), etc. See Arts. 16-28 of the Protection of Children in Criminal Procedure and their Comprehensive Treatment in Children's House Act.

90 Arts. 33-37 of the Protection of Children in Criminal Procedure and their Comprehensive Treatment in Children's House Act.

91 Ibid., Art. 38.

92 Art. 451(1) of the Criminal Procedure Act.

93 Ibid., Art. 452.

she has already reached the age of 14, 16, 18, or 21, it is presumed that he/she has not reached the age of which there is doubt.⁹⁴

A minor may not be tried *in absentia*, and the authorities involved in the proceedings must take into account his/her interests in all proceedings. In the course of the proceedings, all persons involved in proceedings against the child, lawyers, experts, experts, etc., must respect his/her dignity and act with particular care and consideration, taking into account the minor's age, maturity, mental development, level of understanding, sensitivity, personal and psychological characteristics, and any special needs, so that the proceedings do not adversely affect his/her development.⁹⁵ The Criminal Procedure Act also prescribes that all stakeholders participating in the proceedings must acquire additional knowledge in the field of juvenile delinquency. For this purpose, basic training and regular training are organised for them by the competent authorities.⁹⁶ This is important since Article 454 of the Criminal Procedure Act stipulates that a minor may have a defence counsel throughout the proceedings against him/her.⁹⁷ In any case, a minor must have a defence counsel if he/she is deprived of his/her liberty; if he/she does not, the court shall appoint him/her one *ex officio*. Furthermore, there are special juvenile panels in the district, higher, and supreme courts that decide on these matters. District courts also have one or more juvenile judges.⁹⁸

A minor also has the right to be accompanied in the process by his/her parents or guardian.⁹⁹ The competent authority must inform the minor without delay that he/she is suspected or accused of having committed a criminal offence and all his/her rights

94 Ibid., Art. 452.a.

95 Ibid., Art. 453.

96 Ibid., Art. 452.b.

97 In addition to the other instances provided for in the Criminal Procedure Act, a minor must have a defence counsel from the start of the preparatory proceedings if he/she is being tried for an offence punishable by a term of imprisonment exceeding three years. However, for other offences for which a lighter penalty is prescribed, he/she shall have a defence counsel if the juvenile judge considers that he/she needs one, taking into account, in particular, the mental development, the capacity for understanding and the personal characteristics of the minor, the complexity of the case and the severity of the sanction or other measures which he/she may apply to the minor in the particular proceedings.

98 Art. 462 of the Criminal Procedure Act.

99 In accordance with Art. 452c of the Criminal Procedure Act, if the presence of such persons would be contrary to the best interests of the minor, if they could not be contacted despite reasonable efforts by the authority, if their identity is unknown, or if it would be contrary to the interests of the successful conduct of the pre-trial or criminal proceedings, the minor may choose another adult in whom he/she can confide. If the minor does not choose another adult, or if the reasons referred to in the preceding sentence also apply in respect of a person chosen by the minor, the authority before which the proceedings are pending shall, taking into account the best interests of the minor, appoint the other adult or inform the competent social work centre that it will appoint him/her without delay.

in his/her mother tongue or language he/she understands. The same informational duty goes for his/her parents or guardian.¹⁰⁰

Furthermore, special provisions are in place for dealing with situations when a minor is deprived of his/her liberty. According to Article 452.d of the Criminal Procedure Act, he/she must be immediately informed of his/her rights, and he/she may only be deprived of his/her liberty in exceptional cases where the same purpose cannot be achieved by a milder measure; the deprivation of liberty may only last the minimum time necessary and regular judicial review must be ensured. When deprived of his/her liberty, a minor must be kept separately from adults.¹⁰¹ The same goes for exceptional cases when a minor is detained in accordance with Article 472 of the Criminal Procedure Code. A minor must be detained separately from an adult. An exception is allowed only on the condition that the stay together with the adult detainee is in the minor's favour. Such regulation is consistent with Article 37 of the Convention on the Rights of the Child. Both regulations clearly allow an exception only if this protects the best interests of the child and does not allow the pursuit of any other purposes.¹⁰²

If a minor has participated in a criminal offence jointly with adult persons, the proceedings against the minor shall be separate. Proceedings against a minor may only be joined with proceedings against adults and conducted in accordance with the general provisions of this Act if the joinder is necessary for a comprehensive clarification of the case.¹⁰³

Finally, it is also important to note that criminal proceedings against minors shall, in respect of all criminal offences, only be instituted upon the request of the state prosecutor.¹⁰⁴ In the case of a criminal offence punishable by up to three years of imprisonment or a fine, the state prosecutor may decide not to request the institution of criminal proceedings even where evidence exists that a minor has committed a criminal offence, if in view of the nature of the criminal offence, the circumstances

100 The minor must be informed of these rights in an understandable way, orally and in writing, which he/she must confirm with a signature.

101 However, pursuant to Art. 452d of the Criminal Procedure Act, a police officer may exceptionally decide that a minor should be detained together with an adult where, in the light of the minor's personality and other circumstances of the particular case, it is in the minor's best interests or where, in exceptional circumstances, it is not possible to provide for separate accommodation, provided that the minor is detained together with the adult in a manner consistent with the minor's best interests. The detention order shall state the reasons for such placement. A minor who is already of legal age at the time of detention but who has not yet reached the age of twenty-one may be detained together with the minor if, in the light of the minor's personality and the other circumstances of the particular case, it is in the minor's best interests and in the best interests of the minor who is detained together with him/her to do so. The competent authority shall inform the minor's parents or guardian as soon as possible of the deprivation of liberty and shall give the minor the opportunity to contact them.

102 This was also emphasised by the Constitutional Court of the Republic of Slovenia in its decision U I 103/95 which emphasised that the reason for ordering the joint residence of a minor with an adult detainee should not be the solution of space constraints in prisons or the inability to provide for the separate detention space for minors.

103 Art. 456 of the Criminal Procedure Act.

104 Ibid., Art. 465.

in which it was committed, and the past life and personal traits of the minor, the prosecutor realises that the proceedings against the minor would not be expedient.¹⁰⁵

4. Conclusion

Just like adults, children (defined by the Family Code as persons who have not yet reached the age of 18, unless they have previously acquired full legal capacity) might also encounter the judicial system in different civil procedures or even in criminal matters. They can be put in the role of the plaintiff, initiator of non-contentious civil proceedings, witness, victim, or even the perpetrator of a criminal offence. While Slovenia recognises children's rights in various legal acts, a unified framework outlining their specific procedural guarantees is still lacking due to the fragmentation and different nature of the proceedings. The position of a child in civil litigation and non-contentious civil proceedings mainly depends on the provisions of the following three sources of law: the Civil Procedure Act, the Non-Contentious Civil Procedure Act, and the Family Code. In administrative proceedings, an analysis of the Administrative Procedure Act and the Administrative Dispute Act is necessary. Finally, the main provisions on child participation and rights in criminal proceedings can be found in the Criminal Code and the Criminal Procedure Act.

Following the analysis of a child's rights in civil (civil litigation, non-contentious civil procedure and administrative procedure) and criminal proceedings, some general takeaways can be made. Firstly, the relationship between parents and children changes over time. With the age and maturity of the child, the range of duties and responsibilities of parents decreases, which is also reflected in the rules on the child's capacity and rights in the proceedings: the child first acquires the right to express his/her opinion and then also the procedural ability to perform all procedural actions independently and validly. Full legal capacity, in accordance with Article 152 of the Family Code, is acquired by a child from the age of 18, exceptionally earlier. A child who has reached the age of 15 has a limited legal capacity. This means that he/she can make certain transactions on his/her own unless otherwise provided by law. In this regard, the child's capability of understanding the procedure and its consequences is used as a non-defined legal standard, filled in individual situations. If the transactions are so important that they have a significant impact on the child's life, the permission of the parents (or other legal representative) is needed for the validity of such transactions.

Secondly, all of the proceedings strive to follow the principle of the child's best interest. Though this might show in different ways considering the nature of a particular proceeding, it is key for all authorities to keep the child's best interest in mind.

105 To establish these circumstances, the public prosecutor may request information from the minor's parents or guardian and from other persons and institutions. See: Art. 466 of the Criminal Procedure Act.

Thirdly, in all the proceedings, the Slovenian legislator makes procedural adaptations when proceedings involve children, whatever their role in the proceeding might be. These adaptations need to be applied to specific situations while recognising the age and maturity of the child involved. The analysis shows that the legislator found this to be of crucial importance. The adaptations also include granting children the right to express opinions (which is considered a right, not a duty) and the right to name their confidants, i.e. a person whom they confide in and want them to be present at hearings and when making statements, naming a collision guardian, and also generally making the legislation child friendly by giving them the option to participate in the proceedings according to their capacities, which ensures that their voices are heard.

Next, the analysis shows that the legislator tried to ensure that all the legal professionals and other participants of the proceedings involving children are equipped with the necessary skills and knowledge to effectively represent and advocate for children. To achieve this, the legislator predicted special training programs or prescribed an education or skills that a certain participant must have in order to be involved in such proceedings.

Lastly, in all the proceedings, the legislator either made sure that a child is protected from public scrutiny in sensitive proceedings by closing the hearings for the public (for example, in family law matters, in line with the relevant provision of the Non-Contentious Civil Procedure Act) or at least gave the authorities an option to do so (in criminal proceedings) and safeguarded the children's rights and dignity in this way.

Though the legislator took a big step toward unifying the legislation in the field of family law proceedings by transferring decisions on all measures for the protection of the interests of children from social work centres (and administrative proceedings) to courts (and non-contentious civil procedures) with the new Family Code and Non-Contentious Civil Procedure Act in 2019, such unification step is still to be made in the field of criminal proceedings, in particular, regarding minors who commit a criminal offence.

In conclusion, while fragmented, the Slovenian legislation provides a sufficient legislative framework for ensuring children's participation, representation, and best interests in all the examined proceedings. Slovenian legal system, therefore, sufficiently prioritises the best interests and participation of children in the proceedings. It is ensured that children's voices are heard and their rights protected, this way paving the way for a more just and equitable society for all.

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