

Child-Protection Systems – Croatian Perspective

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ABSTRACT

The child protection system in the Republic of Croatia reflects the spirit and letter of the fundamental principles prescribed in global and regional legal sources that represent a component of the national legal order. These sources include the CRC, ECHR, ECECR, Charter, etc. Such high standards of child protection require adjustment of the legal, educational, public finance, healthcare and social welfare systems to form an inherent, functional and effective framework of the child protection system. The goal of this report is to present a comprehensive analysis of all relevant instruments the Croatian legislator has used in the context of realisation of the national child protection system.

KEYWORDS

child protection, child at risk, authority measures, child's participation rights, parental responsibility

1. What Is the Core Aim of the National Child Protection System?

The Constitution of the Republic of Croatia (hereinafter, Constitution) guarantees the protection of children.¹ Thus, according to Art. 62 of the Constitution ‘The state shall protect maternity, children and youth, and shall create social, cultural, educational, material and other conditions promoting the exercise of the right to a decent life’. Special protection is guaranteed to particularly vulnerable groups of children, and thus according to Art. 63 of the Constitution, ‘Physically and mentally disabled and socially neglected children shall be entitled to special care, education and welfare. The state shall devote special care to orphans and minors neglected by their parents’.

1 Constitution of the Republic of Croatia, Official Gazette, No. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14 [Online]. Available at: https://www.usud.hr/sites/default/files/dokumenti/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15_January_2014.pdf (Accessed: 15 December 2023).

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Responsibility for the development, growth, upbringing and protection of the child lies primarily with the parents, as prescribed by Art. 18 para. 1 of the United Nations Convention on the Rights of the Child (CRC).^{2,3} However, sometimes parents do not have sufficient parental competencies to protect children from inappropriate actions of third persons, and sometimes they themselves do not comply with the requirement of their primary responsibility for the child's upbringing and development, even though the best interests of the child must be their basic concern.⁴ The competent state authority intervenes to protect children when parent(s) cannot take care of the child independently or satisfactorily. Therefore, it is the task of state authorities to intervene to protect children if the latter's rights and welfare are threatened by the unlawful actions of parent(s), family member(s) or third unrelated person(s). Procedures and measures undertaken by the state authorities are a form of assistance to the child, parents and the family, as prescribed by Art. 18 para. 2 in accordance with Art. 9 of the CRC.^{5,6} Understandably, this is one of the most important concepts within the Croatian child protection system, but it is also one of the most difficult concepts to apply in practice.⁷

When it comes to children without (adequate) parental care, the institute of guardianship, regulated by the FA, is intended for their protection and care. The goal of guardianship is to replace parental care in circumstances in which the child is without parents or the parents have legal or factual reasons that prevent them from taking care of the child⁸. In cases wherein the child's rights in the family are endangered or violated, it is possible to impose several preventive or repressive measures

2 CRC (Official journal of the SFRY, No. 15/90, Official Gazette – International treaties, No. 12/93, 20/97, 4/98, 13/98) is an international global legal source that represents a component of the domestic legal order of the Republic of Croatia, and it has primacy over domestic legal sources but not over the Constitution (Art. 134 Constitution).

3 See Art. 6 of the Family Act (Official Gazette, No. 103/15, 98/19, 47/20, 49/23; hereinafter: FA) that stipulates that “Parents above all have the right, duty and responsibility to live with their child and to take care of the child, and help is provided and intervened only in case of need”.

4 Hrabar, 2021, p. 239.

5 Ibid.

6 Although it is not explicitly prescribed in Art. 6 of the FA, help and intervention in such sensitive family relations is expected from state authorities. Therefore, it is primarily the right and duty of parents to take care of their children, while state authorities, in case of need, have a duty to help parents in the exercise of their fundamental right and duty. State authorities also have the competence to supervise parents in exercising parental care; in case they do not fulfil their duties towards the child for either physical or moral reasons and thus endanger the welfare of the child, the state is obliged to intervene in the family life of parents and children.

7 A confirmation of such a thesis can be found within the jurisprudence of the European Court of Human Rights (ECtHR). In this regard, in several cases, the ECtHR criticised the conduct of the national authorities that have not made any attempt to provide the family with additional social and economic support to meet the family's basic needs and, in failing to do so, prevent further intervention in their family life; see: *Wallová and Walla v. the Czech Republic*, No. 23848/04, 2006 (paras. 73–74); *Saviny v. Ukraine*, No. 39948/06, 2008 (para. 57); *R.M.S. v. Spain*, No. 28775/12, 2013 (para. 85–86); *Soares de Melo v. Portugal*, No. 72850, 2016 (para. 106).

8 Art. 219 para. 1, Arts. 224–225, Arts. 227–228 and Art. 230 of FA.

to protect his or her rights and welfare. The measures imposed must correspond to a degree of endangerment of the child's rights established in each individual case.⁹ Namely, one fundamental principle that must be respected when determining the child protection measures is the principle of proportionality, meaning that state authorities are required to intervene by proportionate means, as provided by law¹⁰, in only exceptional cases wherein parents or other family members endanger the welfare of the child by their actions or omissions. By acting in accordance with the above principle, the state ensures that interference in the sphere of family life is reasonable, proportionate and necessary for the protection of the welfare of children.¹¹

Imposing the aforementioned measures constricts parental rights as subjective civil rights to a greater or lesser extent, and certain measures limit the right of the child to live with his or her parent(s) and the right to respect for family life,¹² which is guaranteed by Art. 35 of the Constitution as well as Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms or the European Convention on Human Rights (ECHR).^{13,14} These measures aim to protect personal or property rights and the welfare of the child and not to punish the parents. If there are more serious cases of child endangerment and the child's life, health and development are at risk, the child will be separated from the family. During separation from the family, it is necessary to provide adequate care for the child, create conditions for the child's return to the family if possible and, otherwise, take steps for other forms of permanent care for the child.¹⁵

An integral part of the court's decision on separating the child from the family is the placement of the child, as well as contact with the parents and/or other family members¹⁶. Namely, contact is an integral element of family life that remains between the child and his or her parents and/or other family members in cases wherein the

9 Hrabar, 2021, p. 242.

10 Art. 7, Art. 128 and Art. 485 para. 3 of FA.

11 This is in line with the provision of Art. 16 of the Constitution, which prescribes that freedoms and rights may only be restricted by law to protect the freedoms and rights of others. Furthermore, it sets a condition that any restriction of freedoms and rights must be proportionate to the nature of the need for such restriction in each individual case. In this regard, it should be noted that the ECtHR "also requires Contracting States to evaluate proportionality of interfering in private and family life". See Büchler and Keller, 2016, p. 536.

12 The concept of family life in the European legal and social framework is often depicted as a 'right of members of the family to enjoy each other's company'. See the Guide on Art. 8 of the ECHR, Para. 295. Available at: https://www.echr.coe.int/documents/d/echr/guide_art_8_eng (Accessed: 15 December 2023); Mandija, 2020, p. 101. See also the jurisprudence of the ECtHR, such as in the following cases: *X v. Croatia*, No. 11223/04, 2008 (para. 36); *Ribić v. Croatia*, No. 27148/12, 2015 (para. 88) and *Gluhaković v. Croatia*, No. 21188/09, 2011 (para. 54).

13 ECHR, Official Gazette – International Treaties, No. 18/97, 6/99, 14/02, 13/03, 9/05, 1/06, 2/10.

14 Hrabar, 2021, p. 242; Hrabar, 2022, pp. 1–188; Radina, 2017, pp. 93–116.

15 See: Hrabar, 2021, p. 245; Radina, 2017, pp. 96. and 98; Sladović Franz, 2016, pp. 235–236 and 238; Vejmelka and Sabolić, 2015, pp. 72–98. See also jurisprudence of the ECtHR, such as in the following cases: *Levin v. Sweden*, No. 35141/06, 2012 (paras. 61–64), *K. and T. v. Finland*, No. 25702/94, 2001 (para. 179), *Saviny v. Ukraine*, No. 39948/06, 2008 (para. 52).

16 Arts. 119–120 of FA.

child is separated from the family. Such contact can be limited, exercised under supervision or completely prohibited by a court decision, provided that such a decision is necessary for the child's welfare¹⁷. In addition, separation should not last longer than is needed to protect the rights and welfare of the child, and parents have the right to assistance and support to try to eliminate the causes of separation and return the child to the family in accordance with the child's welfare.^{18,19}

In addition, the social welfare system governed by special regulations aims to provide material conditions and various forms of assistance to children and families in need. This is done through activities, measures and programmes intended to prevent, detect and solve problems that occurred due to disturbed relationships, parental difficulties in care for the children or other unfavourable circumstances. Some examples include different forms of benefits in social welfare and social services, including foster care.²⁰ Moreover, if the child is at risk as the parent does not fulfil his or her maintenance obligation, a temporary maintenance institute is provided, the aim of which is to ensure the child's right to a standard of living in circumstances when parents and other maintenance debtors do not fulfil their obligation in whole or in part.^{21,22}

2. What Are the Guiding Principles of the National Child Protection System?

The guiding principles of the Croatian child protection system include the following: Primary protection of the best interests of the child, as a supreme legal standard set by the CRC²³, represents one of the fundamental principles incorporated into the FA. Namely, according to Art. 5 para. 1 of the FA, courts and public authorities conducting proceedings that directly or indirectly decide on the rights of the child must, above all, protect the rights and welfare of the child.²⁴

Protection of the best interests and indeed the welfare of the child is the duty of all – the parents being the first responsible for their children, followed by family members, the community in general and the state. The most important role in protecting the child's welfare lies with the family. In general, parents raise their children in accordance with the needs of the children, hence protecting and safeguarding

17 Arts. 123–124 of FA.

18 Čulo Margaletić, 2014, pp. 13–21; Hrabar, 2022, pp. 101–102.

19 Art. 129 Paras 4–5 of FA.

20 Social Welfare Act, Official Gazette, No. 18/22, 46/22, 119/22, 71/23; Foster Care Act, Official Gazette, No. 115/18, 18/22.

21 Temporary Maintenance Act, Official Gazette, No. 92/14.

22 Art. 7 of the Temporary Maintenance Act.

23 Art. 3 of the CRC.

24 *Amplius Šeparović*, 2014, pp. 29–58; Zermatten, 2010, pp. 483–499. General comment No. 14 (2013) [Online]. Available at: https://www2.ohchr.org/english/bodies/crc/docs/gc/crc_c_gc_14_eng.pdf (Accessed: 15 December 2023).

their rights and best interests. Sometimes, parents need assistance to raise their children properly, which is perhaps more often recognised than before. It is then the state's responsibility to support parental efforts through complementary measures and activities²⁵ to enable parents to provide adequate care and upbringing in line with the best interests of their children.²⁶

Child participation, that is, the child's right to be heard,²⁷ is one of the basic principles of the CRC²⁸, and it is also implemented in the basic national family law regulation in the provisions of Art. 86 of the FA:

- '(1) Parents and other persons who take care of the child are obliged to respect the views of the child in accordance with his/her age and maturity.
(2) In all proceedings involving decisions on the child's right or interest, the child is entitled to be informed in an appropriate way of the relevant circumstances of the case, obtain advice and express his/her views and to be informed of the possible consequences of respecting those views. The child's views shall be given due weight in accordance with his/her age and maturity.'

By giving due weight to the children's views in all matters affecting them, their legal subjectivity and autonomy of will is respected. Consequently, this contributes significantly to the children's more active role in the society in general and especially within the family.

Therefore, the child is a party to all judicial and administrative proceedings in which his or her rights and interests are decided²⁹ and has the right to be informed and express his or her opinion³⁰, always following the principle of primary protection of his or her best interests³¹. If the court does not give the child the opportunity to be heard in these proceedings, and there are no particularly justified reasons for this, this would represent a substantial violation of civil procedure rules³² as well as a violation of the constitutional right to a fair trial.^{33,34} This confirms that compliance

25 Art. 3 para. 2 of the CRC obliges the states to take all appropriate legislative and administrative measures to ensure the child has such protection and care as is necessary for his or her welfare.

26 Hrabar, 2021, p. 241.

27 *Amplius* Majstorović, 2017a, pp. 55–71.

28 Art. 12 of the CRC.

29 Art. 358 of the FA.

30 *Ibid.*, Arts. 86 and 360.

31 *Ibid.*, Art. 5.

32 Art. 346 of the FA, in connection with Art. 354 para. 2 Subpara. 6 of the Civil Procedure Act – violation of the principle of hearing the parties. Civil Procedure Act, Official Gazette, No. 53/91, 91/92, 112/99, 129/00, 88/01, 117/03, 88/05, 2/07, 96/08, 84/08, 123/08, 57/11, 148/11 – official consolidated text, 25/13, 89/14, 70/19, 80/22, 114/22.

33 Aras, 2014, p. 63; Aras Kramar, 2022, p. 122; Šimović, 2011, p. 1642.

34 Art. 29 para. 1 of the Constitution.

with the child's right to be informed and express his or her opinion is of essential importance within the Croatian child protection system.³⁵

Additionally, it needs to be emphasised that guidelines regarding this right of the child exist at the international level,³⁶ and this right is guaranteed in other international documents besides the CRC (e.g. European Convention on the Exercise of Children's Rights [ECECR], Convention on Contact Concerning Children and Charter of Fundamental Rights of the European Union [Charter]).^{37,38}

According to the non-discrimination principle, which is derived from the Constitution³⁹

'All persons in the Republic of Croatia shall enjoy rights and freedoms, regardless of race, colour, gender, language, religion, political or other conviction, national or social origin, property, birth, education, social status or other characteristics.'⁴⁰

The principle of the primary right of parents to take care of the child and the duty of the state to provide them with assistance⁴¹ indicates that

'Parents above all have the right, duty and responsibility to live with their child and take care of him/her. Assistance is provided and interventions are made only when necessary.'⁴²

Moreover, the principle of proportionate and mildest intervention into family life⁴³ indicates that

35 Proper exercise of the child's right to be informed and heard is considered a precondition for the correct assessment and protection of the best interest of the child. See: Constitutional Court of the Republic of Croatia (CCRC), U-III/1008/2015, 1 July 2015, para. 8.1 and 11.2; CCRC, U-III/4069/2013, 10 September 2014, paras. 2 and 4.2.

36 General comment No. 12 (2009) [Online]. Available at: <https://www.refworld.org/docid/4ae562c52.html> (Accessed: 15 December 2023); See: Korać Graovac, 2012, pp. 117–137.

37 Hrabar, 2021, p. 224.

38 Although the ECHR does not contain a separate article on children's participation rights, it nevertheless represents an important source for these rights, thanks to the unique position of the ECtHR and its interpretations of procedural requirements deriving from Arts. 6 and 8 through its case law: Case *C v. Croatia*, No. 80117/17, 2020 (paras. 73, 76–78 and 81–82); Case *M. and M. v. Croatia*, No. 10161/13, 2015 (paras. 129, 171, 181 and 184–187).

39 Art. 14 para. 1 of the Constitution.

40 A similar provision stipulating the prohibition of discrimination against children is provided by Art. 2 of the CRC.

41 Art. 6 of the FA.

42 A similar provision stipulating the indispensable role of the parents for the upbringing and development of the child is provided by Art 18 para. 1 of the CRC.

43 Art. 7 of the FA.

‘Measures affecting family life are acceptable as long as they are necessary and their purpose cannot be successfully met by undertaking more lenient measures, including preventive assistance, i.e. family support.’

The principle of proportionality is especially emphasised in relation to measures for the protection of the rights and welfare of the child in Art. 128 of the FA, according to which the authority that conducts the proceeding when choosing a measure suitable for the protection of the rights and welfare of the child is obliged to determine the measure that least restricts the right of the parents to take care of the child, if it is possible to protect the rights and welfare of the child with such a measure.

For the most part, compliance with the subject principle is accomplished in legal practice through the application of a pragmatic procedural mechanism that obliges the courts to state the reasons for applying the least restrictive measure in the reasoning of the decision entailing the separation of children from their parents and their placement in public care⁴⁴. Thus, the Croatian legislator confirmed that national legal solutions, as well as majority of the judicial practice, reflect the position of the ECtHR:

Any order related to the public care of a child should, firstly, be capable of convincing an objective observer that the measure is based on a careful and unprejudiced assessment of all evidence on file, with the distinct reasons for the care measure being stated explicitly.⁴⁵

According to the principle of guardianship protection⁴⁶, ‘Guardianship protection of a child without parental care must be proportionate to the need of protection, with the obligation of respecting the fundamental human rights and the rights and welfare of the child’.

The principle of urgency in resolving family law matters related to the child⁴⁷ states that ‘In all family-law proceedings regarding the child, competent authorities must proceed with urgency, while protecting the welfare of the child at the same time’. However, if the decision-making procedures are not completed swiftly enough, this would pose a risk of the so-called de facto decision-making, namely codification of the status quo.⁴⁸

As regards the duty of notification and cooperation with the goal of child protection, according to Art. 132 paras. 1–2 of the FA, there is a legal duty of all to report a potential violation of the child’s personal and property rights to the Croatian Institute

44 Art. 485 Para. 3 of the FA.

45 *K.A. v. Finland*, No. 27751/95, 2004 (Para. 103). See also CCRC, U-III/34/2020 of 15 July 2020, Para. 11; General comment No. 14 (2013), para. 61.

46 Art. 8 of the FA.

47 *Ibid.*, Art. 10.

48 Šimović and Majstorović, 2017, p. 7. See Guide on Article 8 of the ECHR, para. 44. Available at: https://www.echr.coe.int/documents/d/echr/guide_art_8_eng (Accessed: 15 December 2023). See also significant cases before the ECtHR: *Ribić v. Croatia*, No. 27148/12, 2015 (Para. 92), *K. B. and others v. Croatia*, No. 36216/13, 2017 (para. 142), *Begović v. Croatia*, No. 35810/14, 2019 (Para. 62) and *Adžić v. Croatia*, No. 22643/14, 2015 (para. 93).

for Social Work (CISW); then, it is the CISW's duty to investigate the case and take measures to protect the rights of the child. The court, CISW, parents and other persons or social welfare institutions entrusted with the care of the child (e.g. police administration, public health institutions and educational institutions) are obliged to mutually cooperate and inform each other about the actions they have undertaken⁴⁹. The court before which the misdemeanour or criminal proceedings are conducted, the state attorney and the police are obliged to notify the CISW within 24 hours of the initiation of proceedings in connection with violation of a child's rights or night outings of a child aged under 16 years.^{50,51} This provision prescribes an obligation as a part of the holistic cooperation of state authorities. This opens the possibility, and probably the need, to impose some preventive or repressive family law measures towards parents with the goal of timely protection of the child, regardless of the outcome of the misdemeanour or criminal proceedings.⁵² The CISW is obliged to investigate the case and take measures to protect the child's rights immediately upon receiving the notification and to inform the person who submitted the notification⁵³.

The duty of cooperation between authorities and persons in matters of guardianship is specifically regulated in Art. 276 of the FA. This refers to the CISW's obligation to cooperate with state administration bodies, local governments, legal entities and persons, while the social welfare, educational, health and other institutions, as well as other providers of social or health services (i.e. the family in which the ward is placed), must inform the guardian and the CISW about all important circumstances concerning the ward.

3. Who Is Responsible for Maintaining the Child Protection System and In What Percentage? How Is the System Financed?

The child protection system is conceptually based on the strategy of investing public (state) funds in the social welfare, healthcare, educational and justice systems with the goal of ensuring security, development and well-being of all individuals and their families (including children), based on equal participation and access to the benefits of economic, legal and social development. There is no precise scientific research that confirms the percentage or share of state funds in financing the child protection system. However, this percentage is roughly estimated at 65%, while the rest – around 35% – comes from the funds of cities, counties and municipalities. Some of these local self-government units usually bear a considerable part of the costs of preschool upbringing and education of children (nursery and kindergarten), day

49 Art. 132 para. 3 of the FA.

50 *Amplius* Majstorović, 2017b, pp. 103–107.

51 Art. 132 para. 4 of the FA.

52 Hrabar, 2021, p. 243; Herceg and Salitrežić, 2014, pp. 76–81.

53 Art 132 para. 5 of the FA.

care in elementary schools, free textbooks for children in elementary and secondary schools, etc.⁵⁴ The Catholic Church in Croatia has no financial obligation to bear the costs of the child protection system, but it partially participates in the organisation of preschool as well as primary and secondary school education, thus helping to meet the needs of parents and children (free of charge).

4. Who Is a Child at Risk?

A child at risk is any child whose rights, welfare and development are endangered or whose rights and welfare have been violated.

The rights of a child are considered as endangered if that child's care is inadequate; if the child has psychosocial difficulties that are manifested through behavioural, emotional, educational and other problems in the child's upbringing; or if there is a likelihood that this will occur⁵⁵. In the process of decision-making regarding the necessity and scope of state authority intervention, useful instruments are provided in the Bylaw on the Measures of Protection of Personal Rights and Welfare of the Child, passed by the Ministry of Labour, Pension System, Family and Social Policy.⁵⁶ The two instruments assisting professionals in the process of decision-making regarding the risk assessment and need of intervention are the Child Developmental Risk Assessment List and Safety of the Child Assessment List, both of which form an integral part of the bylaw.⁵⁷

Additionally, a child at risk is one who has certain developmental difficulties, that is, a child who has some form of disability. According to the Constitution, the state is obliged to provide special care and protection to such children.⁵⁸

A child who is without adequate parental care because of certain factual or legal circumstances⁵⁹ on the part of the parents that prevent them from taking care of the child is also considered at risk. Furthermore, a child who does not receive

54 *Amplius* Šimović and Deskar-Škrbić, 2020, pp. 79–204, 323–350; Babić, 2020, pp. 56–64.

55 Art. 131 of the FA.

56 Pravilnik o mjerama zaštite osobnih prava i dobrobiti djeteta (Bylaw on the measures of protection of personal rights and welfare of the child), Official Gazette, No. 123/15.

57 The lists in question are of great importance in the process of making a court decision in proceedings regarding the separation of children from the parents. This is because they are used by courts as a tool to confirm the existence of a legal basis for imposing a repressive measure for the protection of the welfare of children. This is best illustrated in the judgement of the CCRC, U-III/2901/2020 of 18 February 2021, para. 24.

58 Art. 63 para. 3.

59 A child will be placed under guardianship if his or her parents (a) are dead, disappeared, unknown or have been of unknown temporary residence for at least one month; (b) are deprived of the right to parental care; (c) deprived of legal capacity in the part that prevents them from exercising parental care; (d) are minors who have not acquired legal capacity by getting married; (e) are absent or unable to take care of their child and have not entrusted the exercise of parental care to a person who meets the requirements for a guardian; (f) have given their consent for the adoption of a child (Art. 224 of the FA).

maintenance from the parents who are primarily obliged to support the child, or from other maintenance debtors such as grandparent(s) or stepparent(s), should also be considered as a child at risk because his or her right to an adequate standard of living is endangered.^{60,61} If the child lives in poverty in a family that does not have enough resources to meet basic life needs, that child is also at risk, as a result of being in a family in need.

5. Children With Disabilities in the Child Protection System – Are There Any Special Measures to Integrate Them and Provide Them With the Same Rights?

According to the Constitution, children with physical and mental disabilities and socially neglected children shall be entitled to special care, education and welfare⁶².

Increased material needs that may exist on the part of the child because of some form of disability will be considered when determining the amount of child maintenance in court proceedings.⁶³

In the social welfare system, in accordance with the Social Welfare Act (SWA), certain allowances and social services are provided especially for this vulnerable category of children: personal disability allowance, allowance for help and care and allowance for the status of the parent-caregiver. Moreover, social services of special importance for these children include psychosocial support, early development support and assistance with inclusion in education and regular education programmes.⁶⁴ Children with disabilities can be beneficiaries of other compensations and social services in the social welfare system⁶⁵, but we emphasised those that we consider particularly important for this group of children.⁶⁶

60 Serious endangerment of the child, due to non-payment of maintenance by the maintenance debtor, is confirmed by the fact that the Criminal Act (Official Gazette, No. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22, 114/23) regulates the criminal offense of failure to provide maintenance in the provision of Art. 172.

61 Art. 27 paras. 1–2 CRC in connection with Art. 288 of the FA.

62 Art. 64 para. 3 of the Constitution.

63 A child may have increased material needs if he or she needs constant enhanced care related to the child's health condition, which must be considered when determining maintenance in civil proceedings (Art. 312 of the FA).

64 *Amplius* Milić Babić et al., 2023, pp. 43–96; Sladović Franz, 2018, pp. 543–544.

65 e.g. residence, Art. 104; organised housing, Art. 106; and accommodation, Art. 109 of the SWA.

66 In statistical reports of the competent ministry, it is possible to see how many children with disabilities were beneficiaries of certain rights from the social welfare system. The last report for the year 2022: Ministarstvo rada, mirovinskoga sustava, obitelji i socijalne politike, 2022, pp. 74–75; pp. 77–78.

The pre-school Education Act (PEA)⁶⁷ and Primary and Secondary School Education Act (PSSEA)⁶⁸ regulate the status and certain benefits of children with disabilities within the national education system (e.g. provision of a teaching assistant and professional communication mediator). Thus, they elaborate certain mechanisms for the protection of their right to upbringing and education, as prescribed by Art. 94 of the FA in connection with Art. 64 para. 3 of the Constitution.

Several national legal sources (e.g. the Health Protection Act,⁶⁹ Mandatory Health Insurance Act⁷⁰ and Maternity and Parental Subventions Act⁷¹) regulate the status and certain benefits of children with disabilities and their parents as primary caregivers within the national health care system, thus elaborating certain mechanisms for the protection of the right to health, development, care and protection of the aforementioned category of children, as prescribed by Art. 93 of the FA in connection with Art. 64 para. 3 of the Constitution.

6. What Is the Definition of Necessary Intervention?

Interventions in the family life of parents and children are allowed if they are necessary. This means that the aim – protection of the rights and welfare of the child – could not be achieved with any less restrictive, that is preventive, measure. Therefore, necessity indicates that the intervention responds to an essential social need and is proportional to a certain legitimate aim – protection of the rights and welfare of the child.⁷² Proportionality means the imposition of a measure that is appropriate to the degree of threat to the child's rights, as derived from the expert assessment of a competent body.⁷³ Proportionality in deciding on measures to protect the rights and welfare of the child is a core principle and is in accordance with the requirements of the ECHR when it comes to the right to respect for family life, as derived from Art. 8.⁷⁴

In accordance with the aforementioned principle, the court or the CISW, as the competent authority that conducts the proceeding to choose a measure suitable for the protection of the rights and welfare of the child, is obliged to determine the measure that least restricts the right of parents to take care of the child, if it is possible

67 PEA, Official Gazette, No. 10/97, 107/07, 94/13, 98/19, 57/22, 101/23, 145/23; Arts. 17 and 24a.

68 PSSEA, Official Gazette, No. 87/08, 86/09, 92/10, 105/10, 90/11, 5/12, 16/12, 86/12, 126/12, 94/13, 152/14, 7/17, 68/18, 98/19, 64/20, 133/20, 151/22.

69 Health Protection Act, Official Gazette, No. 100/18, 125/19, 133/20, 147/20, 136/21, 119/22, 156/22, 33/23.

70 Mandatory Health Insurance Act, Official Gazette, No. 80/13, 137/13, 98/19, 33/23.

71 Maternity and Parental Subventions Act, Official Gazette, No. 152/22.

72 Hrabar, 2021, p. 242; *Amplius* Omejec, 2021, pp. 1–26.

73 Such a proportionate intervention should be based on an expert interdisciplinary assessment of the family situation. See: Khazova, 2016, p. 30; Sladović Franz, 2016, pp. 227–228; Hrabar, 2021, p. 242.

74 *Amplius* Čulo Margaletić, 2014, pp. 13–21; Radina, 2017, pp. 93–116.

to protect the rights and welfare of the child with such a measure. Acting contrary to this principle would represent a violation of the rights of the child and parents guaranteed in Art. 8 of the ECHR.⁷⁵

7. Structure of the Child Protection System

7.1. Monetary and In-Kind Benefits

Regarding monetary and in-kind benefits as part of the child protection system, the Croatian legislator uses several instruments to form an inherent monetary child protection framework. Thus, the Value Added Tax (VAT) Act⁷⁶ prescribes tax benefits for certain groups of products and services that are primarily intended to meet the needs of children and their families. For instance, VAT is calculated and paid at a reduced rate of 5% on bread, milk, meat, fish, fruit and vegetables, medication, medical equipment, textbooks for primary and secondary education and baby food⁷⁷ and 13% on water, electricity and gas supply, baby diapers and children's car seats.^{78,79}

The VAT Act also prescribes a complete tax exemption for services and goods related to medical protection provided by hospitals and other public or regional medical institutions and bodies with public authority; protection of children and youth provided by institutions and bodies with public authority; social care; and education of children and youth, school or university education and professional training and retraining, which are provided by institutions and bodies with public authority⁸⁰.

Another instrument the Croatian legislator used is the government subsidy housing loan programme prescribed by the Act on Subsidising Housing Loans.⁸¹ This measure has been implemented since 2017 for subsidising housing loans for citizens residing on the territory of the Republic of Croatia who are not older than 45 years and will use funds obtained from the loan for the purchase or (re)construction of a house or flat to meet the basic living needs for themselves and members of their (newly formed) families. This measure also has a demographic dimension, as the subsidised loan term is additionally extended by two years for each child born or adopted during

75 See the jurisprudence of the ECtHR, such as in *Case C v. Croatia*, No. 80117/17, 2020 (paras. 73, 76–78 and 81–82); *Case M. and M. v. Croatia*, No. 10161/13, 2015 (paras. 129, 171, 181 and 184–187); and *Case S. H. v. Italy*, No. 52557/14, 2015 (paras. 43–58). See also jurisprudence of the CCRC, such as in U-III/1411/2021, 14 October 2021, paras. 2.2, 2.5, 2.10, 12 and 15; U-III/1359/2019, 19 June 2019, Paras. 4.1, 4.3, 4.5, 16 and 19.

76 Value Added Tax Act, Official Gazette, No. 73/13, 99/13, 148/13, 153/13, 143/14, 115/16, 106/18, 121/19, 138/20, 39/22, 113/22, 33/23.

77 Art. 38 para.2 of the VAT.

78 The regular VAT rate in Croatia is 25%.

79 Art. 38 para. 3 of the VAT.

80 Art. 39 para. 1 of the VAT.

81 Act on Subsidizing Housing Loans Official Gazette, No. 65/17, 61/18, 66/19, 146/20.

the subsidised loan period. The subsidised loan term is also extended by one year per child or member of the applicant's household who is not aged over 18 years.⁸²

The child maintenance system is also used as an instrument of the monetary child protection framework. This instrument is prescribed by the FA for protecting the child's constitutional and conventional right to an adequate standard of living⁸³. This means that the Croatian legislator has the difficult task of foreseeing measures that would ensure the child's right to receive maintenance from parents or other persons who are materially responsible for him or her, no matter if they live within the Republic of Croatia or abroad.⁸⁴ Thus, the Croatian legislator prescribes three categories of child maintenance debtors: the parent(s) as primary debtor(s); grandparent(s) as first subsidiary debtor(s) and stepparent(s) as second subsidiary debtor(s).^{85,86}

Child maintenance is determined as the total amount of money the court has estimated, considering the needs of the child as the maintenance creditor and abilities of the parent with whom the child does not live as the maintenance debtor⁸⁷. It is important to emphasise that child maintenance is privileged within the enforcement proceedings in relation to the claims of other creditors of the maintenance debtor. For instance, child maintenance is privileged because enforcement of the salary and other permanent income of the parents or any other maintenance debtor can be carried out before the enforcement of any other claims on these incomes, regardless of the time these claims incurred. To realise the principle of the primary protection of the best interests of the child⁸⁸, other creditors must wait until the child, as the maintenance creditor, is first settled, and only then can they be settled in accordance with the rules of enforcement law.⁸⁹ Moreover, if the child is at risk because the maintenance debtor does not fulfil his or her maintenance obligation, a temporary maintenance institute is provided⁹⁰. The aim of such an institute is to ensure the child's right to a standard of living in circumstances wherein parents and other maintenance debtors do not fulfil their obligation in whole or in part.

The FA also provides for special protection of the family home as a yet another instrument of the monetary child protection framework. In this regard, the court may determine that the right to live in the family home, which represents a part of the parents' matrimonial property, is exercised by only one parent with whom joint minor children live based on the court's decision, following the end of marriage or

82 *Amplius*, see: <https://apn.hr/subvencionirani-stambeni-kredit/put-do-kredita> (Accessed: 30 November 2023).

83 Art. 63 of the Constitution and Art. 27 paras. 1–2 of the CRC.

84 Korać Graovac, 2021, p. 401; Korać Graovac, 2016, pp. 83–98; Čulo, 2009, pp. 157–173; Rešetar, 2022, pp. 989–1078.

85 Korać Graovac, 2021, pp. 417, 419.

86 Art. 288 of the FA.

87 *Ibid.*, Arts. 307, 309 and 311–317.

88 Art. 3 of the CRC and Art. 5 para. 1 of the FA.

89 Korać Graovac, 2021, p. 407.

90 Art. 7 of the Temporary Maintenance Act.

extramarital union of the parents⁹¹. However, this instrument is rarely used in practice due to strict legal preconditions that must be met for such legal protection to be provided to children as indirect beneficiaries.⁹²

Finally, the child allowance system is also used as an instrument of the monetary child protection framework. The right to child allowance is acquired depending on the total income of the members of the beneficiary's household.^{93,94} Therefore, children's allowance is a monetary income used by a parent or other person to whom the upbringing and care of the child has been entrusted (e.g. adoptive parent, guardian, stepparent and grandparent), with the goal of supporting the maintenance and upbringing of that child.^{95,96}

7.2. Basic Child Welfare Services Within the Framework of Personal Care

The availability of preschool programmes such as nurseries and kindergartens is of crucial importance for the early development and upbringing of preschool children, as well as for helping parents balance their family and employment obligations. Local and regional self-government units organise, implement and co-finance preschool education programmes within their territorial areas⁹⁷. However, one part of the funds needed to finance this system is realised by kindergartens charging the parents for their services, except for the preschool programme, which is free for the parents⁹⁸. The remaining part of funds for programmes related to public needs in the field of preschool education is provided in the state budget⁹⁹.

Compulsory education in the Republic of Croatia is free of charge, as prescribed by the Constitution¹⁰⁰. The same does not apply to secondary education, but most students attend secondary schools that are predominantly organised within the network of public schools whose programmes are free of charge for enrolled students.¹⁰¹

Textbooks for all primary school students in the Republic of Croatia are free and provided by the state budget. In addition, the government may, in accordance with available funds, (co-)finance the purchase of textbooks for secondary school students. Accordingly, it provides compulsory textbooks for secondary school students who are

91 Art. 46 in connection with Art. 491 of the FA.

92 *Amplius* Šimović, 2016, pp. 141–163; Šimović, 2015, pp. 33–45.

93 Child Allowance Act, Official Gazette, No. 94/01, 138/06, 107/07, 37/08, 61/11, 112/12, 82/15, 58/18.

94 Arts. 2 para. 1 and Arts. 16–22 of the Child Allowance Act.

95 For a more detailed exposition on the issue of interdependence and interconnection of child maintenance and children's allowance as instruments of the monetary child protection framework, see Supreme Court of the Republic of Croatia, Rev 5403/2016, decision from 9 March 2016; Supreme Court of the Republic of Croatia, Rev 1577/2015, decision from 31 August 2015.

96 Art. 1 in connection with Art. 6 para. 1 of the Child Allowance Act.

97 Art. 2 of the PEA.

98 *Ibid.*, Art. 48 Paras. 4–5.

99 *Ibid.*, Arts. 50 and 50a.

100 Art. 65 of the Constitution.

101 UNICEF, 2022, p. 34.

members of a household that receives guaranteed minimum benefit—a social welfare benefit prescribed by Art. 21 SWA.¹⁰²

Involvement of children in after-school activities such as the extended stay service in primary schools is available in 43% of cities and 10% of municipalities in the Republic of Croatia. Most often, it covers only the first two grades of primary school, and older children are covered less often. Extended stay programmes are most often attended by children of employed parents and are financed partly by local and regional self-government units¹⁰³ and partly by parents of children attending these programmes.¹⁰⁴

Regarding transportation costs in the education system, the primary school founder provides student transportation for children attending the programme in this school: for children from the first to fourth grades, the distance from the residential address to the school should be at least three kilometres, and for children from the fifth to eighth grades, it should be five kilometres¹⁰⁵. For children with developmental disabilities, the founder is obliged to provide transportation regardless of the distance of the residential address to the school.¹⁰⁶ The transportation of secondary school students is regulated by the Decision on the Criteria and Method of Financing the Costs of Public Transport of Regular Secondary School Students, which is adopted for each school year. According to this decision, organised transport of students is subsidised by the Ministry of Science and Education in the amount of 75% or 100% of the costs of public transport, depending on the prescribed criteria.¹⁰⁷

Regarding access to quality nutrition, which is essential for the optimal development of children, the Government of the Republic of Croatia has decided in 2023 to finance the programme of one free meal for all children in elementary schools using the state budget. Unfortunately, there is no system of organised or subsidised school nutrition for secondary school children.¹⁰⁸

Access to healthcare and health services are means of achieving the child's right to the highest possible level of health guaranteed by the Constitution¹⁰⁹ and CRC¹¹⁰. Free access to regular health checks and availability of child health protection programmes until the age of majority ensures early detection of physical and mental health problems, as well as prevention and preservation of future health. In

102 Ibid.

103 Art. 143 para. 8 of the PSSEA.

104 UNICEF, 2022, pp. 34–35.

105 Art. 69 PSSEA.

106 UNICEF, 2022, pp. 38–39.

The Decision on the Criteria and Method of Financing the Costs of Public Transport of Regular Secondary School Students [Online]. Available at: <https://mzo.gov.hr/UserDocsImages/dokumenti/Obrazovanje/SrednjeObrazovanje/Prijevoz-srednje/Prijevoz-SS-2023-2024/Odluka-o-kriterijima-i-nacinu-financiranja-troskova-javnog-prijevoza-redovitih-u%C4%8Denika-srednjih-skola-2023-2024.pdf> (Accessed: 30 November 2023).

108 UNICEF, 2022, p. 57.

109 Art. 69 of the Constitution.

110 Art. 24 of the CRC.

this regard, the healthcare system of the Republic of Croatia is based on compulsory health insurance, thanks to which all children aged under 18 years, and older if they are included in the regular education system, have free access to health services and healthcare. Although there is a model of participation in the costs of health services and medicines (so-called participation), children aged up to 18 years and those older in the regular education system do not pay for participation and have free access to hospitals and specialist examinations.¹¹¹

7.3. Special Child Welfare Services Within the Framework of Personal Care

For a more detailed exposition on this issue, see chapter 5, Children with Disabilities in the Child Protection System.

7.4. Authority Measures

7.4.1. Taking Under Protection

When parents do not have sufficient parental competencies to protect the child from inappropriate actions of third persons or they themselves endanger the upbringing, development and welfare of the child, the intervention of competent state authorities is needed.¹¹² Procedures and measures undertaken by the state authorities are a form of assistance to children, parents and the family¹¹³. Therefore, state authorities have the competence to supervise parents in exercising parental care; if parents do not fulfil their duties towards the child for either physical or moral reasons and thus endanger the welfare of the child, state authorities are obliged to intervene in the family life of parents and children. Understandably, while this is one of the most important concepts within the Croatian child protection system, it is also one of the most difficult to apply in practice.

In cases wherein the child's rights in the family are endangered or violated, it is possible to impose several preventive or repressive measures to protect the rights and welfare of the child. The measures imposed must correspond with the principle of proportionality, meaning the state authorities are required to intervene by proportionate means, as provided by law¹¹⁴. In this regard, the Croatian legislation defines a plethora of measures, starting from the warning issued to parents regarding errors

111 UNICEF, 2022, pp. 67–68.

112 Hrabar, 2021, p. 239; Sladović Franz, 2016, pp. 228–230.

113 Art. 18 para. 2 in accordance with Art. 9 of the CRC, and Art. 6 and Art 129 paras. 3–5 of the FA.

114 Art. 7, Art 128 and Art. 485 para. 3 of the FA.

and omissions related to the care and raising of the child¹¹⁵, up to very serious measures that entail the separation of the child from his or her parents.^{116,117}

Imposing the aforementioned measures constricts parental rights to a greater or lesser extent, and certain measures limit the right of the child to live with his or her parent(s) and the right to respect for family life.^{118,119} The aim of these measures is to protect personal or property rights and the welfare of the child and not to punish the parents. If there are more serious cases of child endangerment wherein the child's life, health and development are at risk, the child will be separated from the family. The strictest measure within the Croatian child protection system is the deprivation of the right to parental care, which is imposed by the court in a non-contentious proceeding when it establishes that the parent abuses or gravely infringes parental responsibilities, duties and rights.¹²⁰ When deprived of the right to parental care, the parent loses all rights pertaining to the institute of parental care, with some possible exceptions provided by law.¹²¹ If both parents are deprived of parental care the institute of guardianship is provided for the protection and care of their children¹²².

7.4.2. Welcoming by a Family That Is Named by Blood Parents and Ordering Under Supervision

Parents as holders of the right to parental care are authorised to decide to whom they will temporarily entrust the care of the child if they are prevented from taking care of the child due to justified reasons (e.g. hospital treatment, surgery, rehabilitation, seasonal work, unresolved housing issues and a prison sentence). In this regard, the parents usually place their trust in family members and friends. The FA prescribes that both parents (if exercising parental care jointly) or one parent (if exercising parental care solely) may temporarily entrust the everyday care and upbringing of the child, including accommodation, to a person who meets the requirements stipulated for a guardian¹²³. For doing this, the parent(s) do not need to acquire the approval or

115 Art. 134 of the FA.

116 The CISW has jurisdiction over emergency measures such as separating and placing a child outside the family, warning of errors and omissions in childcare provision, professional assistance and support in childcare provision, intensive professional assistance, and supervision over childcare provision (Arts. 134–148 of the FA). The court's jurisdiction includes measures in response to parents' serious failure in the care and upbringing of the child, such as temporary entrustment of the child to another person, foster family or social welfare institution; banning of access to the child; deprivation of the right to live with the child; entrustment of the child's daily care to another person, foster family or social welfare institution; entrustment of a child with behavioural problems to a foster family or social welfare institution for help in his or her upbringing; and deprivation of the right to parental care (Arts. 149–177 of the FA).

117 Art. 149 of the FA.

118 Hrabar, 2021, p. 242; Hrabar, 2022, pp. 1–188; Radina, 2017, pp. 93–116.

119 Art. 35 of the Constitution and Art. 8 of the ECHR.

120 Art. 170 of the FA.

121 Ibid., Art 175 paras. 1–2.

122 Ibid., Art. 219 para. 1, Arts. 224–225, Arts. 227–228 and Art. 230.

123 Ibid., Art. 102 para. 1.

decision of the CSWI. However, if the parent(s) is/are entrusting everyday care and upbringing of the child for a period longer than 30 days, their signature on the statement must be certified by a notary public¹²⁴.

The FA prescribes that both parents (if exercising parental care jointly) or one parent (if exercising parental care solely) may temporarily entrust the everyday care and upbringing of the child, including accommodation, to a foster family or another social services provider. For doing this, the parent(s) need(s) to acquire a prior decision of the CSWI as the state covers the costs of accommodation and various services provided by the foster family or social welfare institution.¹²⁵ However, if such accommodation of the child lasts for a period longer than six months, the CSWI will, within a period of 30 days, assess the justification for extending such accommodation or file a request to the court for the imposition of an appropriate judicial measure for protecting the rights and welfare of the child, together with an individual plan and professional assessment of the family.^{126,127}

If the parent(s) is/are unable to take care of the child and has/have failed to entrust everyday care and upbringing of the child to a foster family, social welfare institution or person that meets the requirements stipulated for a guardian, the child will be appointed a guardian.¹²⁸

7.4.3. *Placing Under Temporary Placement or Foster Care*

In the Croatian legal order, special attention is provided to the integration of the spirit and letter of relevant provisions of the CRC¹²⁹ into the provisions of the FA regulating the institution of the separation of the child from the family¹³⁰. Therefore, separation of a child from the family is understood as any judicial or administrative measure based on which the child is separated from the family and placed with another person who meets the requirements stipulated for a guardian, in a foster family, in a social welfare institution or with another individual or legal entity that performs social services within the social welfare system.¹³¹ The only measure within the competence of the CISW that separates the child from the family is the emergency measure of separation and placement of the child outside the family¹³². Other measures by which the child is separated from the family are within the competence of the court: temporary entrustment of the child to another person, foster family or social welfare institution¹³³; deprivation of the right to live with the child and entrustment of the child's

124 *Ibid.*, para. 2.

125 Art. 103 para. 1 of the FA in connection with Art. 112 para. 2 of the SWA.

126 See: Hrabar, 2021, pp. 221–222; Rešetar, 2022, pp. 432–436; Sladović Franz, 2016, pp. 230–234; Sovar, 2015, p. 312.

127 Art. 103 para. 2 of the FA in connection with Art. 113 para. 2 of the SWA.

128 Art. 224 of the FA.

129 Art. 9 para. 1 and Arts. 20 and 25 of the CRC.

130 Art. 129 of the FA.

131 *Ibid.*, Art. 129 para. 2.

132 *Ibid.*, Arts. 135–138.

133 *Ibid.*, Arts. 150–153.

daily care to another person, foster family a social welfare institution¹³⁴; entrustment of the child with behavioural problems to a foster family or social welfare institution for help in his or her upbringing¹³⁵; and deprivation of the right to parental care¹³⁶.

Measures imposing separation of the child from the family necessarily lead to the need to find adequate placement for the child. Within the social welfare system, accommodation represents a social service outside one's family that is provided as institutional care in a social welfare home, with other social service providers or as non-institutional service in a foster family¹³⁷. Accommodation is a social service that provides the child, as a beneficiary, with intensive care and satisfaction of basic life needs when their provision is not possible in the family or by providing other social services¹³⁸. Accommodation may also encompass preparing the child for the return to his or his family or for accommodation in a foster family, as well as preparing him or her for independent life or adoption¹³⁹. The CISW may grant a child, particularly a child younger than seven years, the right to accommodation primarily in a foster family. Only when accommodation for the child cannot be ensured within a foster family, the CISW may exceptionally grant a child the right to accommodation in a social welfare home or at another social service provider, and such accommodation shall last up to a maximum of one year¹⁴⁰. Placing a child in a social welfare home or with other social service providers should be the last option, when all other options have been exhausted.¹⁴¹

In the Croatian legal order, foster care is a form of social service, whereby a child or adult is provided accommodation in a foster family or by a single foster parent¹⁴². The FCA prescribes conditions that a foster family or a single foster parent must fulfil, the manner of performing foster care and its termination and other issues regarding foster care. Thus, a foster family or single foster parent must have special knowledge and skills to provide care for beneficiaries and is required to complete additional training.¹⁴³

7.4.4. Aftercare

For a more detailed exposition on this issue, see Chapter 8 – Aftercare.

134 Ibid., Arts. 155–163.

135 Ibid., Arts. 164–169.

136 Ibid., Arts. 170–177.

137 Art. 74 para. 4 of the SWA.

138 Ibid., Art. 109 para. 2.

139 Ibid., Art. 109 para. 3.

140 Ibid., Art. 111 paras. 2–3.

141 *Amplius* Hrabar, 2021, p. 222; Sladović Franz, 2016, pp. 228–234; Rešetar, 2022, pp. 569–573; Sladović Franz, 2018, pp. 543–545.

142 Art. 9 para. 1 of the Foster Care Act [FCA] in connection with Art. 236 of the SWA.

143 Art. 14 if the FCA.

7.4.5. Ordering Preventive Measures

The Croatian legal order is, above all, based on the state's constitutional obligation to provide special protection to the family.¹⁴⁴ In doing so, it offers a wide range of preventive measures and programmes, focused mainly in two areas: the social welfare and family law frameworks.

As regards the social welfare system in general, protection of the welfare of the family is one of the primary goals of the activities undertaken. The SWA foresees the so-called social services, which encompass activities, measures and programmes intended to prevent, detect and solve problems and issues of individuals and the family, as well as the improvement of their life within the community¹⁴⁵. One beneficiary of the social services is indeed 'a family which, due to disturbed relationships or other unfavourable circumstances needs professional assistance or other form of support'.¹⁴⁶

Provision of counselling and assistance to the family is a social service that includes all forms of professional assistance with the aim of overcoming family and parental difficulties in care for the children, as well as empowering the family to function in daily life. It includes support to the family, intensive support to the family in crises and long-term work with family members for improving family relationships. This service is primarily provided by professionals from social welfare institutions, but other organisations, religious communities and other legal and natural persons whose work is monitored by the state also provide them.¹⁴⁷

As regards the family law framework, in light of the obligation of assistance, Croatia offers a wide range of counselling services for family members. Two predominant means of assistance to a family in times of crises are compulsory counselling and family mediation.¹⁴⁸ Compulsory counselling is a form of assistance to family members in reaching consensual decisions regarding family relationships, paying particular attention to the protection of those which include the child, as well as the legal consequences of failure to reach an agreement and of court proceedings in which the meritum concerns personal rights of the child.¹⁴⁹ Family mediation, on the other hand, represents a proceeding during which the parties endeavour to resolve the family dispute consensually with the assistance of family mediators. It is considered that both procedures serve as a "safety net," hence diminishing the need and obligation of the state to intervene into family life.^{150,151}

Nevertheless, the efforts of the family and preventive activities by the state sometimes remain useless. In such cases, the parents need assistance to (re)establish the

144 Art. 61 para. 1 of the SWA.

145 Ibid., Art. 70.

146 Ibid., Art. 18 para. 1.

147 Ibid., Art. 81.

148 *Amplius* Čulo Margaletić, 2021, pp. 71–76; Majstorović, 2017c, pp. 133–137.

149 Art. 321 of the FA.

150 Majstorović, 2017c, pp. 137–146.

151 Art. 331 of the FA.

balance and harmonious relationships within the family and protect the rights and welfare of the child; this need is more often recognised than before. It is then the state's responsibility to provide support to parental efforts through complementary (preventive) measures and activities¹⁵², to enable them to provide adequate care and upbringing.¹⁵³ In this regard, the Croatian legislation defines a plethora of preventive measures within the jurisdiction of the CISW, starting from warning of errors and omissions in childcare provision¹⁵⁴, professional assistance and support in childcare provision¹⁵⁵, intensive professional assistance and supervision over childcare provision¹⁵⁶.

7.4.6. Guardianship of Those Under Child Protection Care

Guardianship tasks regarding children are carried out by the CISW, a guardian and a special guardian from the Centre for Special Guardianship,¹⁵⁷ as well as a temporary representative outside the system appointed by the decision of a court or authority before which the proceedings are conducted and who also has the authority of a special guardian.^{158,159}

A guardian will be appointed to a child whose parents have died, have disappeared, are unknown or have been of unknown temporary residence for at least one month, been deprived of the right to parental care or been deprived of legal capacity in the part that prevents them from exercising parental care.^{160,161} A guardian will also be appointed for a child in cases where parents are minors and have not acquired legal capacity by entering into marriage, when parents are absent or unable to take care of their child and have not entrusted the exercise of parental care to a person who meets the requirements for a guardian and when parents have already given their consent for child adoption.¹⁶²

The CISW decides to place a child in the care of a guardian and appoints a guardian. By the CISW's decision, the child's day-to-day care might be entrusted to a guardian or other person, foster family, children's home or legal institution that performs social welfare services, depending on the circumstances.¹⁶³

The CISW is required to respect the parents' previously expressed wishes (in an advance directive¹⁶⁴) regarding the selection of a guardian by the parents in the form

152 Art. 3 para. 2 of the CRC.

153 Hrabar, 2021, p. 241.

154 Art. 139 of the FA.

155 *Ibid.*, Arts. 140–144.

156 *Ibid.*, Arts. 145–148.

157 Aras Kramar, 2017a, pp. 22–23; Aras Kramar, 2017b, pp. 16–25.

158 Hlača, 2021, p. 384; Hrabar, 2021.

159 Art. 222 of the FA.

160 *Amplius* Korać Graovac, 2017, pp. 51–73.

161 Art. 116 para. 4, Art. 195, Art. 218 and Art. 224 of the FA.

162 Hlača, 2021, p. 384.

163 Art. 225 paras. 1 and 4 of the FA.

164 Žganec-Brajša, 2018, pp. 70–82.

of a notarial document if that person meets all legal requirements prescribed by Art. 225 para. 3 of the FA. When appointing a guardian, the CISW is required to obtain the opinion of a child who can understand the meaning of guardianship and to consider his or her wishes regarding the choice of a guardian, unless they conflict with his or her welfare.¹⁶⁵

The CISW decides to appoint a guardian through an administrative proceeding in accordance with the provisions of the General Administrative Proceeding Act.¹⁶⁶ The decision on the appointment of a guardian is delivered to a child who has reached the age of 14 years and to a child under the age of 14 years if he or she is capable of understanding the meaning of the decision and if it is in accordance with his or her welfare. The decision is also sent to the child's parents, guardian, competent registrar and land registry department of the court in whose territory the child's property is located.¹⁶⁷

Custodial protection must be appropriate, individualised and in accordance with the welfare of the child.¹⁶⁸ The guardian is responsible for the child's personal and property rights and obligations, including his health, upbringing and education.¹⁶⁹ Only with prior approval of the CISW may the guardian decide on the child's school and profession and termination of schooling or employment; take more important measures regarding the child's person such as health and statements about personal condition; and take more important measures regarding the child's property.¹⁷⁰

Guardianship for the child ends with restoration of the parents' right to parental care; the child's acquisition of legal capacity; restoration of the parents' legal capacity in the part that refers to the exercise of parental care; parents' acquisition of legal capacity by reaching the age of majority or entering into marriage; and death or adoption of the child.^{171,172}

Besides the abovementioned individual guardianship for the child, FA distinguishes guardianship for special cases.¹⁷³ Although it is common in theory and legislation to associate the institution of individual guardianship with special guardianship, it is necessary to emphasise that the content of protection is fundamentally different.^{174,175} A special guardian *ad litem* is essentially a representative of a person in a very limited scope for the proceeding in which he or she has the authority to act based on appointment of the competent authority. His or her authority is legally and

165 Art. 225 para. 2 and Art. 230 of the FA.

166 General Administrative Proceeding Act, Official Gazette, No. 47/09, 110/21.

167 Art. 226 para. 1 of the FA.

168 *Ibid.*, Art. 221.

169 *Ibid.*, Art. 227.

170 *Ibid.*, Art. 228.

171 Hlača, 2021, p. 385.

172 Art. 231 of the FA.

173 The special guardian is a lawyer who has passed the bar exam and works at the Centre for Special Guardianship. See: Rešetar and Rupić, 2016, pp. 1175–1200.

174 Hlača, 2021, p. 391.

175 Arts. 240–246 of the FA.

temporally limited, and it is dependent on the unique circumstances. For example, if there is a conflict of interest between the child under guardianship and his or her individual guardian, or between numerous wards who have the same individual guardian, the special guardian ad litem must be appointed.¹⁷⁶ Thus, in life events such as a conflict divorce of the parents, who are also the child's joint and equal legal representatives, a special guardian appears to be an acceptable protector of the child's rights.¹⁷⁷ In marital disputes for annulment or divorce, as well as proceedings disputing motherhood or paternity, the CISW will appoint a special guardian for the child to preserve specific personal and property rights and interests. When there is a conflict between the child and her or his parents as legal representatives, a special guardian will be appointed for the child in other processes in which decisions about parental care, specific components of parental care and contacts concerning the child are made. Similarly, a special guardian will be appointed when the interests of the child and his or her parents as legal representatives are in conflict.¹⁷⁸

In the event of a disagreement between a ward and the individual guardian employed by the CISW, the court will appoint a special guardian and define the scope of his or her powers with the goal of protecting the ward's rights and interests.¹⁷⁹ A special guardian will also be appointed to safeguard the child's rights in judicial proceedings for imposing measures for the protection of the child's personal rights and welfare¹⁸⁰. If the parents unjustifiably refuse to consent to the adoption, the special guardian will represent the child's interests in court proceedings for adoption of a decision that replaces the consent of parents.^{181,182}

A special guardian will not be appointed in the case when a child has reached the age of 14 years and whose capacity to participate in the proceedings has been acknowledged by a court decision¹⁸³. When the CISW assigns a special guardian for a child, children over the age of 14, their parents and the person appointed as a special guardian have the right to appeal.^{184,185}

The obligations of the special guardian are limited by the type and character of the proceedings in which the child must be represented.¹⁸⁶ The special guardian is required to inform the child about the subject of the dispute, its course and its outcome in an age-appropriate manner, and to contact the parent or other persons close to the child if necessary.¹⁸⁷ Custody of a child ends upon his or her death or

176 Hlača, 2021, p. 391.

177 Ibid.

178 Art. 240 para. 1 of the FA.

179 Ibid., Art. 245.

180 Ibid., Art. 240 para. 1.

181 Hlača, 2021, p. 392.

182 Art. 240 para. 1 of the FA.

183 Ibid., Art. 240 para. 4.

184 Hlača, 2021, p. 393.

185 Art. 242 para. 6 of the FA.

186 Hlača, 2021, p. 392.

187 Art. 240 para. 2 of the FA.

termination of the circumstances for which a guardian was appointed. If a special guardian or temporary representative with the powers of a special guardian has been appointed for the child, the guardianship ends when the duties for which he or she was appointed in a judicial or administrative proceeding are fulfilled.¹⁸⁸

The CISW or the court that appointed the special guardian are competent to make the decision on the termination of the special guardianship.¹⁸⁹ The special guardian's rights and obligations end when the decision to terminate the guardianship becomes enforceable, that is, when the legal consequences of that decision come into force.¹⁹⁰

8. Aftercare

In practice, the right to care outside the biological family is exercised by children who are without parents; whose parents neglect or abuse their parental duties, obligations and rights; who have behavioural problems; whose parents are temporarily unable to care for them due to illness, lack of proper accommodation or other justifiable difficulties – if this is in their best interest; and who have developmental disabilities, if this ensures their adequate care, education and psychosocial rehabilitation.¹⁹¹

Depending on the circumstances, the child's day-to-day care may be entrusted to a guardian or other person, foster family, children's home or legal institution that provides social welfare agency by a decision of the CISW.¹⁹²

However, in Croatia, a child's placement is frequently determined by

‘the available place and the accommodation capacity of the institutions themselves, so the placement of a child is often conditioned by the location of an available place, which is frequently not close to the child's previous place of residence.’¹⁹³

Children's homes continue to be the most common type of accommodation for children who do not have adequate parental care in the Republic of Croatia, indicating that work should be done on their transformation in terms of content (activities and equipment) and personnel (diverse and educated professional staff) for this form of care to reach the highest possible level.¹⁹⁴ Foster care is being increasingly chosen as the first choice of placement for a child as part of the deinstitutionalisation process.¹⁹⁵

188 Hlača, 2021, p. 384.

189 Art. 246 para. 1 of the FA.

190 Ibid., Art. 246 para. 2.

191 Sladović Franz, 2016, pp. 229–230.

192 Art. 225 para. 4 of the FA.

193 Vejmelka and Sabolić, 2015, pp. 72–98; Sladović Franz, 2016, p. 231.

194 Vejmelka and Sabolić, 2015, pp. 72–98.

195 Sladović Franz, 2004, pp. 215–228; Sladović Franz, 2016, pp. 232–234.

In 2022, the Ombudsperson for Children requested information on children entrusted to care from all institutions to determine the trend in the number of children and young people in accommodation, residence and organised housing. The numbers supplied imply a minor increase in the number of children in foster care and organised housing in 2022, although there are still several times more children in foster care.¹⁹⁶

The problems in securing accommodation in foster families are comparable to those encountered in institutions. However, the number of new foster care licences in 2022 was approximately 20% higher than that in 2019, but the number of foster families remains insufficient when considering the needs for care of children outside their home.¹⁹⁷

Besides insufficient capacity in institutions and foster families and many requests for child placement, there are issues with uneven territorial representation of foster families, lack of professional foster care, lack of foster families in urban areas and lack of specialised foster parents who are additionally educated to care for children with behavioural disorders or specific physical or mental disabilities. Difficulties also exist in terms of foster parents' structure and needs (e.g. age of foster parents; lower educational structure of foster parents; insufficient professional support for foster parents, children and biological families, insufficient education and supervision of foster parents and professional staff; and uneven quality of services provided by foster families). Deficits are also seen in terms of monitoring of services given by foster families, as well as children's non-participation in making decisions about them.¹⁹⁸

9. What Is the Institutional Background?

CISW is a place that, on behalf of the state and society, applies professional social work procedures and thus provides special care for children whose development and upbringing is endangered. CISW workers directly provide social services such as first social service, counselling service and family mediation service. Thus, CISW is also an institution providing services.^{199,200}

Through assistance of the CISW, the family can receive high-quality and timely professional support and, in cooperation with experts and parents, ensure sufficiently good conditions for the child to grow up. Certain forms of care for children are also provided in foster families and in institutions for children, such as institutions for children with developmental disabilities, care institutions for the upbringing and re-education of children and children's homes.²⁰¹

196 Ombudsman for Children, 2023, pp. 31–32.

197 Ibid.

198 Ibid.

199 Sladović Franz, 2018, p. 543.

200 Art. 71 in connection with Art. 74 para. 2 of the SWA.

201 Sladović Franz, 2018, p. 543.

The state provides a social housing service for children who cannot be cared for in their own home, which can be institutional care in a social care home or with other service providers, or non-institutional care in a foster family.^{202,203}

Children can get non-institutional social services in addition to institutional care, such as psychosocial support, early development support, assistance with inclusion in education and regular education programmes, accommodation and structured housing.²⁰⁴

Social welfare institutions, local and regional self-government units such as the City of Zagreb, associations, religious communities, other legal entities, craftsmen and other natural persons who execute social welfare activities provide social services²⁰⁵. The Ministry of Labour, Pension System, Family and Social Policy oversees the conduct of social welfare initiatives.²⁰⁶

In situations wherein children's development is endangered, the CISW can itself operate as an authority by imposing certain measures that protect the rights and well-being of the child and carry out interventions. In other cases, the CISW can give opinions to the court as well as initiate judicial proceedings for imposing repressive measures towards the parents.²⁰⁷

Thus, when the CSWI determines that the child is exposed to a medium level of risk of undesirable developmental outcomes but that the family has resources to ensure basic safety and needs of the child, it decides to issue warning measures to the parents due to mistakes and omissions regarding the care and upbringing of the child or measures to supervise the execution of parental care. These measures are of a preventive nature, and their goal is to improve family circumstances and relationships.²⁰⁸

If the CSWI determines that the child is exposed to great risks that seriously jeopardise his or her overall health or even his or her life, and unfavourable consequences for physical, social and psychological development have occurred or will certainly occur, at the proposal of the CSWI, the court will impose repressive measures that result in the separation of the child from the family.²⁰⁹

202 See: Hrabar, 2021c, pp. 1–39; Župan, 2022, pp. 509–517; Sovar, 2015, pp. 311–332; Babić, 2014, pp. 145–153; Žganec and Kujundžić, 2003, pp. 189–203.

203 Art. 74 para. 4 of the SWA.

204 Ibid.

205 Ibid., Art. 17 para. 1.

206 Ibid., para. 3.

207 Sladović Franz, 2018, p. 544.

208 Ibid.

209 Ibid., p. 545.

10. What Is the Procedural Background?

If children have parents who are negligent, the competent authorities (CSWI and court) must impose family law measures on the parents to protect the children's welfare.²¹⁰ Measures for the protection of children, particularly those relating to children's personal rights, must be of a temporary character to assist parents and families in becoming functional again and, in circumstances of child separation, to reunite the family wherever possible.^{211,212}

The measures imposed must correspond to the degree of endangering the child's rights, that is the proportionality principle; therefore, they are 'acceptable as long as they are necessary and their purpose cannot be successfully met by undertaking more lenient measures, including preventive assistance, i.e. family support'.²¹³ Moreover,

'The authority that conducts the proceeding when choosing a measure suitable for the protection of the rights and welfare of the child is obliged to determine the measure that least restricts the right of the parents to take care of the child, if it is possible to protect the rights and welfare of the child with such a measure.'²¹⁴

The child's best interests must be considered in proceedings imposing child protection measures carried out by the CISW and the courts, as required by Art. 3 of the CRC. Proportionality implies the application of a measure proportionate to the degree of threat to the child's rights, as determined by an expert assessment of the facts²¹⁵.

Care for the child is endangered when it is inadequate, that is, insufficient and inappropriate, or if the child has psychosocial challenges visible in the child's behaviour, emotional, educational or other upbringing problems. In certain circumstances, an appropriate measure can be enforced if the child's rights may be jeopardised.²¹⁶

To initiate the proceeding to defend the child's rights, the competent authority must first obtain initial information regarding the child's endangerment, whether in the personal or property sphere.²¹⁷ Everyone who discovers a violation or endangerment of the child's right is required to report it to the CISW, whose duty then is to investigate the case and take measures to protect the rights of the child. The court

210 Hrabar, 2021b, p. 21. Data from the competent ministry support the notion that milder measures are used more frequently, and more severe ones are used less frequently. See the reports of the Ministry of Labour, Pension System, Family and Social Policy, which can be found at: <https://mrosp.gov.hr/strategije-planovi-programi-izvjesca-statistika/4165> (Accessed: 1 July 2025).

211 Hrabar, 2021a, p. 242; Hrabar, 2022, pp. 1–188; Radina, 2017, pp. 93–116.

212 Art. 128 of the FA.

213 Ibid., Art. 7.

214 Ibid., Art. 128.

215 Ibid., Art. 7 and Art. 131 para. 1.

216 Ibid., Art. 131 para. 2.

217 Hrabar, 2021a, p. 242.

and the CISW, parents and other persons or social welfare institutions entrusted with the care of the child (e.g. police administration, public health institutions and educational institutions) are obliged to mutually cooperate and inform each other about the actions they have taken.^{218,219} Violence can be reported to the police and to a misdemeanour or criminal court. The court before which the misdemeanour or criminal proceedings are conducted, the state attorney and the police are obliged to notify the CISW within 24 hours of the initiation of proceedings in connection with violation of a child's rights²²⁰. This provision prescribes an obligation of cooperation of state authorities with the aim of opening the possibility of imposing some preventive or repressive family law measures towards the parents for timely protection of the child, regardless of the outcome of the misdemeanour or criminal proceedings.^{221,222}

Besides the foregoing, the law requires parents and caregivers to cooperate with the CISW in the process of imposing child protection measures, which includes allowing employees of the CISW to examine housing conditions, provide information on income and assets and provide other personal and family data to get a general picture of the family²²³.

Another topic covered by the FA is the prerequisites for determining all measures²²⁴. It is also important to conduct an expert interdisciplinary evaluation of the family situation to determine whether the child's rights have been violated or threatened, as well as whether the child's development has been jeopardised.²²⁵ Parents cannot plead the right to privacy (family) in this circumstance since the interest of protecting the child outweighs this right.^{226,227}

In the case of measures under the jurisdiction of the CISW, the prerequisite for initiating the procedure is the CISW's knowledge of the need to impose some of the measures, which can occur particularly when applying Art. 132 of the FA, which requires every individual and legal entity to report a violation of the child's rights.²²⁸ Regarding initiation of the proceeding for imposing measures within the competence of the court, the CISW, parent and child are authorised for all measures, and the state

218 Ibid.

219 Art. 132 para. 3 of the FA.

220 Art. 132 para. 4 of the FA.

221 Hrabar, 2021a, pp. 242–243.

222 Art. 132 para. 1 of the FA.

223 Ibid., Art. 132 para. 3 and Art. 133 para. 1.

224 Ibid., Art. 131.

225 "The child's rights are jeopardized, which means they have not yet been violated, if: the child's care is inadequate; the child has psychosocial difficulties, or there is a risk of psychosocial difficulties." Hrabar, 2021a, p. 246; Khazova, 2016, p. 30; Sladović Franz, 2016, pp. 227–228.

226 Hrabar, 2021a, p. 246.

227 Art. 132 of the FA.

228 Hrabar, 2021a, p. 247.

attorney for youth is authorised in the case of a child with behavioural problems and deprivation of the right to parental care.²²⁹

In all procedures for the imposition of measures, regardless of whether a preventive or repressive measure is imposed, the competent authorities must act promptly while simultaneously protecting the child's well-being²³⁰.

The child has the right to participate in and voice his or her opinion in procedures in which measures are imposed, and the child will be appointed a special guardian ad litem in court proceedings in which some of the repressive measures are imposed.²³¹ The special guardian ad litem represents the child (not the parents) in those proceedings; informs the child about the subject, course and possible outcome of the proceeding in an appropriate way; and assures that the child's right to express his or her opinion is realised.^{232,233} The child's right to participate in the process is defined as

presenting facts, proposing evidence, submitting legal remedies and taking other actions in the proceeding, as a cumulative condition prescribes the ability to understand the meaning and legal consequences of these actions and the child's age, i.e. 14 years of age.²³⁴

The constraints adopted to protect children's interests also limit the parent's practically unfettered parental care. Depending on the degree of threat to the child's rights and welfare, they are pronounced as either support and prevention or repression. The CISW's competence refers to preventive measures for the protection of the child's personal rights, whereas the court's jurisdiction includes more severe repressive measures for the protection of the child's personal and property rights.²³⁵ Some reasons for such a division of competence are impartiality, professionalism and experience in judicial proceedings, as well as the impression of a stronger legal protection provided by the court, in comparison with the protection provided by administrative bodies such as the CISW. Such an impression is present mostly in the general public, but it was recognised by the legislator as relevant for such a division of powers to make the system as efficient as possible. Data from the competent Ministry of Labour, Pension System, Family and Social Policy support the notion that softer measures are used more frequently, and harsher measures are used less frequently.²³⁶

229 Ibid., p. 249. Data on the number of measures imposed are available in the reports of the Ministry of Labour, Pension System, Family and Social Policy, which can be found at <https://mrosp.gov.hr/strategije-planovi-programi-izvjesca-statistika/4165> (Accessed: 1 July 2025).

230 Art. 10, Art. 347 of the FA.

231 Hrabar, 2021a, p. 243. Art. 130 and Art. 240 para. 1 in connection to Art. 487 of the FA. This also means that in these non-contentious proceedings, the child is represented by a special guardian, while the parents are not authorised to act in the name and on behalf of the child.

232 For the role of a child's special guardian *ad litem*, see: Korać, 2003, pp. 32–43; Hlača, 2021, pp. 383–385, 391–395; Šimović, 2021, p. 176; Lucić, 2021b, pp. 100–101, 104–106, 109; Rešetar and Lucić, 2021, pp. 149–150; Aras, 2014, pp. 58–59.

233 Art. 240 para. 2 in connection with Art. 360 Paras. 3, 5 and 6 of the FA.

234 Ibid., Art. 130.

235 Ibid., Arts. 134 and 149.

236 See footnote 229.

The CISW has jurisdiction over emergency measures of separating and placing a child outside the family, warning of errors and omissions in childcare provision, providing professional assistance and support in childcare provision, providing intensive professional assistance and supervising childcare provision.^{237,238}

In non-contentious proceedings, the court's jurisdiction includes measures that are in response to the parents' serious failures in the care and upbringing of the child. Those measures are: temporarily entrusting the child to another person, a foster family or a social welfare institution; banning access to the child; taking away the right to live with the child, and entrusting the child's daily care to another person, foster family or social welfare institution; entrusting a child with behavioural problems to a foster family or social welfare institution for help in upbringing; and depriving parents of the right to parental care.^{239,240}

The measures are imposed on the parents, and their aim is to protect personal or property rights and the welfare of the child and not to punish the parents. The only measure imposed by the court on the child, rather than the parent, is entrusting the child with behavioural difficulties to a foster family or social welfare institution for help with his or her upbringing.^{241,242} The most severe measure imposed on parents is deprivation of the right to parental care.²⁴³ The goal of implementing this measure is to entirely impair parents in their care of the child owing to extremely detrimental actions and behaviour.²⁴⁴ The judgement on parental care deprivation can apply to one or both parents, and it might limit the parent's parental care for an individual child or for all children.²⁴⁵ When deprived of the right to parental care, the parent(s)

237 Hrabar, 2021a, p. 246.

238 Art. 134 of the FA.

239 Hrabar, 2021a, p. 246.

240 Art. 149 of the FA.

241 Hrabar, 2021a, p. 253. For the measure to be imposed, the child must (a) jeopardise his or her own rights and interests and (b) endanger the rights and interests of family members or other individuals. There is disregard of the child's upbringing or the impossibility of good parenting on the side of the parents, and the earlier, milder remedies are ineffective. The court will entrust the child to a social welfare institution or foster family during the weekend, in a half-day or full-day stay, based on an expert assessment and a proposal for placement by the CISW (and the results of a multidisciplinary diagnostic procedure; Arts. 164–169 of the FA.

242 Art. 127 para 3 of the FA.

243 The court shall deprive the parent of the right to parental care in an extra-contentious procedure when it establishes that the parent abuses or gravely infringes parental responsibilities, duties and rights. Furthermore, the FA depicts the special circumstances in which such a decision shall be passed: abandonment of the child; exposing of the child to violence among adult members of the family; disrespect for the measures previously passed by both the social welfare measures and the court; grave danger for the life, health and development of the child in case of return of the child to the family; final conviction of the parent for certain criminal acts at the detriment of his or her own child; and significantly limited mental abilities of the parents, which endanger the welfare of the child and permanently preclude him or her from exercising parental care (Arts. 171–172 FA).

244 Hrabar, 2021a, p. 254.

245 Ibid.

lose all rights pertaining to the institute of parental care, with the exception of possibly allowing contact with the child. Furthermore, the parent is obliged to provide maintenance to the child.²⁴⁶

This measure is imposed in accordance with the *rebus sic stantibus* principle, meaning that the right to parental care can be re-established by a court decision when the reasons for depriving the right no longer exist, unless the child has already been adopted, in which case the request for restoration of parental care would be pointless.^{247,248} The court's judgement necessitates an expert family assessment performed by the CISW, aimed at ending the reasons for which the measure was determined.^{249,250}

Regarding implementation of the court's decision on measures to protect the personal rights and well-being of the child, the CISW can submit a proposal for the implementation of enforcement to surrender the child²⁵¹. A proposal for enforcement can also be submitted by a parent or another person with whom the child will live according to the court's decision²⁵².

To protect the property and property rights of the child, the court may render a decision in a non-contentious proceeding by which one or both parents are divested of the right to manage the child's property and represent him or her in property matters.^{253,254}

A child, a parent or the CISW initiates the proceeding²⁵⁵. The court's decision will pertain to a specific topic or business (e.g., the purchase and sale will be carried out by a third party in the name and on behalf of the child), and the parent's access to the child may be restricted for a specific amount of time or indefinitely.^{256,257}

The court may render a decision on establishing protection measures on the parents' property, this being the most severe legal measure that could be imposed on parents of the child²⁵⁸. The party initiating such a proceeding can be a child, parent or the CISW, and the CISW can be informed about the necessity to commence court proceedings either intentionally or unintentionally. If the court grants such a request, a mortgage on real estate and a lien on movables will be registered against the parents' property. In this way, parents are barred from selling their property in the event of

246 Art. 175 of the FA.

247 Hrabar, 2021a, p. 252.

248 Art. 176 of the FA.

249 Hrabar, 2021a, p. 252.

250 according to Art. 155 of the FA.

251 *Ibid.*, Art. 513 para. 5.

252 *Ibid.*, Art. 513 para. 4.

253 Hrabar, 2021a, p. 257.

254 Art. 178 paras. 1-2 of the FA.

255 Art. 178 para. 1 of the FA.

256 Hrabar, 2021a, p. 257; Hrabar, 2021c, pp. 1-39.

257 Art. 178 para. 1 of the FA.

258 *Ibid.*, para. 2.

damage to their child's property, and the damage is not compelled to be collected.²⁵⁹ Children are registered in the land and corresponding registers as owners, and in this case also as creditors with the primary right of claim.²⁶⁰ Of course, it is a specific problem if the parents do not have their own property or a steady financial income using which the child may sustain him or herself.²⁶¹

Both measures can be amended or repealed at the request of the child, parents or the CISW if the circumstances that led to their implementation or the court order no longer exist.²⁶²

To achieve an even higher level of legal certainty, the right to legal remedy is always respected as an inseparable element of basic human rights.²⁶³ Namely, as regards all the state authorities involved in the child protection system, the citizens, that is family members, have the right to file an appeal and hence express their dissatisfaction with the decision²⁶⁴. This is in line with the provision of Art. 18 para. 1 of the Constitution that guarantees the right to appeal against individual legal acts made in first-instance proceedings by courts or other authorised bodies, as well as with the jurisprudence of the ECtHR.²⁶⁵ Such rights are well protected in practice, and the legal path is clear.

11. Participation of Children in the Child Protection System

The Croatian legal order positions children as legal subjects (not de facto objects) who should actively participate and make autonomous decisions in all judicial and administrative proceedings in which their rights and interests are decided, thus exercising the rights prescribed by global and regional international legal sources. These sources include Art. 12 of the CRC, Art. 3 of the ECECR,²⁶⁶ Art. 8 of the ECHR and Art. 24 of the Charter.^{267,268}

The child's right to be informed and express his or her opinion has a pivotal position within the participation rights and is prescribed by both substantive and

259 Hrabar, 2021a, p. 257.

260 Ibid.

261 Ibid.

262 Ibid.

263 Triva and Dika, 2004, p. 659; Korać Graovac, 2013, p. 38.

264 See: Art. 489 of the FA.

265 See the following cases: *X v. Croatia*, No. 11223/04, 2008 (Paras. 48–49 and 51–53); *A.K. and L. v. Croatia*, No. 37956/11, 2013 (paras. 63–64 and 75); and *S.S. v. Slovenia*, No. 40938/16, 2018 (paras. 87 and 98).

266 ECECR, Official Gazette – International treaties, No. 1/2010, 3/2010.

267 Charter (2012), Official Journal of the European Union, C 326, 26 October 2012.

268 Hrabar, 2012, p. 104; Hrabar, 2021, pp. 192–195; Majstorović, 2017a, p. 57; Uzelac and Rešetar, 2009, pp. 163–179.

procedural provisions of the FA.²⁶⁹ The substantive provision of Art. 86 para. 1 of the FA²⁷⁰ prescribes how this right of the child should be realised in everyday life, referring to family, school, health, diet, sports, religious, cultural and upbringing issues.²⁷¹ This provision also prescribes the primary obligation of the parents to respect the child's right to be heard and help him or her realise this right in practice. Therefore, the parents have an obligation to talk to their children and try to reach an agreement while exercising their right to parental care, always taking into consideration the age and maturity of the children.^{272,273}

The substantive provision of Art. 86 para. 2 of the FA²⁷⁴ prescribes how this right of the child should be realised in all judicial and administrative proceedings in which his or her rights or interests are decided, emphasising the child's right to be informed and obtain advice, before eventually deciding to exercise the right to express his or her opinion. This provision is the legal basis of all considerations regarding participation of children in judicial and administrative proceedings, meaning that it is the duty of the society, represented by judicial and administrative bodies, to protect children's right to be "visible."²⁷⁵ The logic behind such a standpoint is that if the child's opinion is not established because he or she was not given the opportunity to express his or her considerations, thoughts, wishes, etc., then the child cannot be protected as it will be impossible to determine what is in the child's best interest and how to protect it! Therefore, proper exercising of the child's right to be informed and heard is somewhat of a precondition for the correct assessment and protection of the best interests of the child within the domestic judicial and administrative child protection system.²⁷⁶ This is particularly reflected in the provision of Art. 130 para. 1. of the FA, which provides the child with the right to participate and express his or her opinion in all procedures of assessment and determination of the need to impose preventive or repressive measures to protect his or her personal or proprietary rights and welfare.

269 Another Croatian legal source that is of relevance is the Bylaw on the Methods of Communication with the Child (Official Gazette, No. 123/15), which prescribes in more detail methods of obtaining the opinion of the child in judicial proceedings.

270 Art. 86 para. 1. of the FA: "Parents and other persons who take care of the child are obliged to respect the views of the child in accordance with his/her age."

271 See: Hrabar, 2020, p. 664; Rešetar, 2022, p. 352.

272 Age and maturity of the child are factors that should be considered, because the older and more mature the child is, the greater the influence his/her opinion has on the decision-making process. *Amplius* Korać Graovac, 2012, p. 121; Majstorović, 2017a, p. 57; Hrabar, 2021, pp. 194–195.

273 Art. 91 para. 3 in connection with Art. 86 para. 1 of the FA.

274 Art. 86 para. 2 of the FA.: "In all proceedings involving decisions on the child's right or interest, the child is entitled to be informed in an appropriate way of the relevant circumstances of the case, obtain advice and express his/her views and to be informed of the possible consequences of those views. The child's views shall be given due weight in accordance with his/her age and maturity." A similar procedural provision is included in Art. 360 Para. 5 of the FA.

275 Majstorović, 2017a, p. 59.

276 Hrabar, 2020, p. 664; Šeparović, 2014, pp. 52, 75–76, 205–206, 216; Rešetar, 2022, p. 349; Šimović, 2011, p. 1639; Majstorović, 2017a, p. 56.

The procedural provision of Art. 360 para. 1 of the FA²⁷⁷ confirms that the right to be heard is solely a right and never the obligation of the child; however, at the same time, it imposes an obligation to inform the child that he or she can decide not to participate at any point in the proceeding.²⁷⁸ If the child decides to participate, the court is obligated to enable him or her to express his or her opinion in an appropriate place and in the presence of a professional if it considers that necessary for obtaining an authentic opinion of the child.²⁷⁹ In connection with this, the competent court is not obligated to obtain a child's opinion in cases where there are particularly important reasons that need to be explained in the decision (e.g. if the child is exposed to a conflict of loyalty or a high amount of stress or manipulation by parents, household members or third persons).²⁸⁰

Considering the fact that children usually lack legal capacity, as a general rule, they enter into legal transactions and undertake legal actions through a legal representative. For this reason, the Croatian legal order considers the parents as their most common legal representatives²⁸¹ who act consensually on behalf of the child.^{282,283} Adoptive parents, as holders of the right to parental care, have the legal basis for representation of the adoptee.^{284,285}

The Croatian legal order has incorporated a legal principle that guarantees the child's right to objective and impartial representation as one of his or her basic procedural rights. For this reason, a child who has been left without parents or without their adequate parental care will be protected and represented by the individual guardian²⁸⁶. Considering that guardianship substitutes parental care for minor wards, the individual guardian shall conscientiously, like a parent, represent the minor ward and care about his or her personal and proprietary rights, always considering the opinion of the minor ward in accordance with his or her age and

277 Art. 360 para. 1. of the FA: "In proceedings concerning the personal or proprietary rights and interests of the child, the court will enable the child to express his or her opinion, unless the child declines."

278 Majstorović, 2017a, p. 58; Hrabar, 2020, p. 663.

279 Art. 360 para. 2 of the FA: "The court shall enable the child to express his or her opinion in an appropriate place and in the presence of a professional if it considers that necessary in the circumstances of the case."

280 Majstorović, 2017a, p. 66.

281 Although the term "*representation*" of a child is most often associated with representation in judicial and administrative proceedings, this term implies a much wider range of actions and decision-making on behalf of the child. See: Lucić, 2021a, p. 816.

282 It is possible for one parent to solely represent the child in areas of parental care in which the other parent is limited by (a) provisions of the FA (Art. 99 para. 3 in connection with Art. 105 para. 2) and (b) a court decision (Art. 99 para. 3 in connection with Art. 105 paras. 1, 3 and 5 and Art. 175 para. 1).

283 Art. 92 para. 3, Art. 99 paras. 1-2 and Arts. 100-101 of the FA.

284 Hrabar, 2021, pp. 182, 184-185, 188, 190-192; Korać Graovac, 2017, pp. 51-73; Lucić, 2021a, pp. 815-840.

285 Art. 180 para. 2 and Art. 197 of the FA.

286 Ibid., Art. 219 para. 1 and Arts. 224-225.

maturity²⁸⁷. The position and duties of the child's special guardian ad litem come to the fore in proceedings in which the interests of the child conflict with those of the parents as their most common legal representatives, or in cases where there is the risk of such a conflict²⁸⁸. Moreover, if there is a certain conflict of interests between the child and his or her individual guardian or between several wards who have the same individual guardian, it is necessary to appoint a special guardian ad litem to the child. The special guardian ad litem represents the child in proceedings for which he or she was appointed; informs the child about the subject, course and possible outcome of the proceeding in an appropriate way; and ensures that the child's right to express his or her opinion is realised.^{289,290}

12. Adoption

The Croatian family law system distinguishes two groups of assumptions: for adoption on the part of the child (passive adoptive capacity) and for adoption on the side of the adopter²⁹¹.

First, for a person to be adoptable, he or she must exist biologically and legally. It must be the subject of the law. Therefore, a conceived but not yet born child (*nasciturus*) cannot be adopted.²⁹²

It is not feasible to adopt a conceived but unborn child, but it is essential to wait a set amount of time after delivery, specifically six weeks, for the child to become adoptable²⁹³. The lawmaker attempted to prevent the giving of hurried, inconsiderate and unjustifiable consent for adoption in practice, most often by young, unmarried women, by imposing a six-week time restriction.²⁹⁴ A child of unknown origin can also be adopted, but only after three months have passed after the child's birth or abandonment²⁹⁵.

The potential adoptee must be under the age of 18 years²⁹⁶. The purpose of adoption rests on this criterion, which consists of care and protection of a child who was left without adequate parental care.^{297,298}

287 *Ibid.*, Art. 230.

288 *Ibid.*, Art. 240 in connection with Art. 99 para. 6 and Art. 243.

289 *Amplius* Hlača, 2021, pp. 383–385, 391–395; Šimović, 2011, p. 176; Lucić, 2021b, pp. 100–101, 104–106, 109.

290 Art. 240 para. 2 in connection with Art. 360 Paras. 3, 5 and 6 of the FA.

291 active adoptive capacity; *Ibid.*, Arts. 181–187.

292 Jakovac Lozić, 2021, p. 285.

293 Art. 194 para. 3 of the FA.

294 Jakovac Lozić, 2021, p. 285.

295 Art. 181 para. 2 of the FA.

296 *Ibid.*, para. 1.

297 Jakovac Lozić, 2021, p. 284.

298 Art. 180 para. 1 of the FA.

Adoption can be established if it is in the best interests of the child²⁹⁹. As a result, the CISW is required to examine a child's eligibility and suitability for adoption by possible adopters in connection to the child's well-being, suitability for adoption and value of adoption for the child.³⁰⁰

Except in extraordinary circumstances, it is not possible to adopt a child of minor parents³⁰¹. These circumstances relate to a child born to minor parents who has no chance of being reared in the family of his parents, grandparents or other close relatives, even after a year has passed.^{302,303} In the case of a minor parent's child being adopted, the legislature deems that the parents' consent is required³⁰⁴.

If the child has reached the age of 12 years, his or her consent is needed for establishing the adoption and if a child is younger, under 12 years of age, that child has the right to express his or her opinion on adoption; the child's opinion and wishes are taken into account in accordance with his or her age and maturity³⁰⁵.

It is not feasible to adopt a blood relative, such as a brother or sister³⁰⁶. The legal norms of FA 2015 do not prescribe whether it is possible to adopt a half-sister or half-brother. However, brothers and sisters, like half-brothers and half-sisters, are second-degree collateral lineage relations; thus, to alleviate any uncertainties, the norm would be complete by including this category of relatives.³⁰⁷

The guardian cannot adopt his or her ward until the CISW relieves the guardian of his or her guardianship duties³⁰⁸. This prohibition is preventive in nature because the custodial relationship might be promptly turned, by adoption, into a parental or kinship tie, allowing the custodian to avoid any control.³⁰⁹

The existence of certain legally stated assumptions on the side of the adopter, which make the adopter suitable and capable for the responsible and difficult position of an adopter, is implied by his or her active adoptive capability.³¹⁰ An adoptive parent, unlike a biological parent, must provide some guarantees in advance, such as possessing traits and qualities that will make him or her a good parent in addition to completing the legal requirements. Thus, a person cannot adopt if he or she is deprived of the right to parental care, is deprived of business capacity or has past behaviour and characteristics indicating that it is not desirable to entrust him or her with parental care of the child³¹¹.

299 *Ibid.*, para. 3.

300 Jakovac Lozić, 2021, p. 286.

301 Art. 183 paras. 1-2 of the FA.

302 Jakovac Lozić, 2021, p. 287.

303 Art. 183 para. 2 of the FA.

304 *Ibid.*, para. 3.

305 *Ibid.*, Art. 191 paras. 1 and 3.

306 *Ibid.*, Art. 182 para. 1.

307 Jakovac Lozić, 2021, p. 288.

308 Art. 182 para. 2 of the FA.

309 Jakovac Lozić, 2021, p. 289.

310 *Ibid.*, p. 290.

311 Art. 187 of the FA.

Further, the FA prescribes that an adoptive parent must be at least 21 years old and at least 18 years older than the adopted child³¹². In exceptional circumstances, the adoptive parent may be a person under the age of 21 who is at least 18 years older than the adopted child³¹³. A child can be adopted jointly by marital and extramarital spouses, one marital or extramarital spouse if the other marital or extramarital spouse is the child's parent or adopter, one marital or extramarital spouse with the consent of the other marital or extramarital spouse and by a person who is not married or cohabiting³¹⁴.

The child can be adopted by a Croatian citizen³¹⁵. Exceptionally, the adoptive parent may also be a foreign citizen if this is in the best interests of the child³¹⁶. If the adopter or the child are foreign nationals, the adoption can only be established with prior approval of the ministry responsible for social welfare affairs³¹⁷.

The process of assessment of suitability and eligibility for adoption and the procedure for establishing the adoption are carried out by the CISW as the actual competent authority in the adoption procedure³¹⁸.

312 Ibid., Art. 184 para. 1.

313 Ibid.

314 Ibid., Art. 185.

315 Ibid., Art. 186 para. 1.

316 Ibid., para. 2.

317 Ibid., para. 3.

318 Ibid., Arts. 203–217.

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